



Western Australia

## **Mental Health Act 2014**

Compare between:

[14 Apr 2022, 01-h0-00] and [01 Jul 2022, 01-i0-01]



## **Mental Health Act 2014**

**An Act —**

- **to provide for the treatment, care, support and protection of people who have a mental illness; and**
- **to provide for the protection of the rights of people who have a mental illness; and**
- **to provide for the recognition of the role of carers and families in providing care and support to people who have a mental illness, and for related purposes.**

## **Part 1 — Preliminary matters**

### **1. Short title**

This is the *Mental Health Act 2014* <sup>1</sup>.

### **2. Commencement**

This Act comes into operation as follows —

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

### **3. Act binds Crown**

This Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.



***Charter of Mental Health Care Principles*** means the Charter of Mental Health Care Principles in Schedule 1;

***Chief Mental Health Advocate*** means the Chief Mental Health Advocate appointed under section 349;

***Chief Psychiatrist*** means the Chief Psychiatrist appointed under section 508(1);

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

***child and adolescent psychiatrist*** means a psychiatrist who has qualifications and clinical training in the treatment of mental illness in children;

***close family member***, of a person, has the meaning given in section 281(1);

***community mental health service*** means a service that conducts assessments or examinations for the purposes of this Act or provides treatment in the community, but does not include the private practice of a medical practitioner or other health professional;

***community treatment order*** has the meaning given in section 23(1);

***Director of the Complaints Office*** means the Director as defined in section 305;

***discharge***, of a patient, means the discharge of the patient by a mental health service, whether the patient was admitted as an inpatient or otherwise;

***document*** has the meaning given in the *Evidence Act 1906* section 79B;

***electroconvulsive therapy*** has the meaning given in section 192;

***emergency psychiatric treatment*** has the meaning given in section 202;

***enduring guardian***, of an adult, means the person's enduring guardian as defined in the GAA Act section 3(1);

- (a) an enduring power of guardianship made under the GAA Act Part 9A; or
- (b) an instrument recognised as such under the GAA Act section 110O;

**GAA Act** means the *Guardianship and Administration Act 1990*;

- (a) an authorised hospital;
- (b) a maternity home;
- (c) a nursing home;

**Health Department** means the agency (as defined in the *Public Sector Management Act 1994* section 3(1)) principally assisting the Health Minister in the administration of the *Health Legislation Administration Act 1984*;

- (a) a medical practitioner; or
- (b) a nurse; or
- (c) an occupational therapist; or
- (d) a psychologist; or
- (e) a social worker; or

- (f) in relation to a person who is of Aboriginal or Torres Strait Islander descent —
  - (i) a health professional listed in paragraphs (a) to (e); or
  - (ii) an Aboriginal or Torres Strait Islander mental health worker;

**hospital** means —

- (a) an authorised hospital; or
- (b) a general hospital;

**informed consent**, to the provision of treatment, means consent to the provision of the treatment given in accordance with Part 5 Division 2;

**inpatient treatment order** has the meaning given in section 22(1);

**involuntary community patient** means a person who is under a community treatment order;

**involuntary inpatient** means a person who is under an inpatient treatment order;

**involuntary patient** has the meaning given in section 21(1);

**involuntary treatment order** has the meaning given in section 21(2);

~~**legal practitioner** means an Australian legal practitioner as defined in the *Legal Profession Act 2008* section 3;~~

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

**mental health advocate** means —

- (a) the Chief Mental Health Advocate; or
- (b) a mental health advocate engaged under section 350(1);

**mental health practitioner** has the meaning given in section 538;



- (a) means any of these services —
  - (i) a hospital, but only to the extent that the hospital provides treatment or care to people who have or may have a mental illness;
  - (ii) a community mental health service;
  - (iii) any service, or any service in a class of service, prescribed by the regulations for this definition;and
- (b) does not include —
  - (i) a private psychiatric hostel; or
  - (ii) a declared place as defined in the MIA Act section 23;

(a) whose name is contained in the register of specialist surgeons kept by the Medical Board of Australia under the *Health Practitioner Regulation National Law (Western Australia)* section 223; and

- (b) who has clinical training in neurosurgery;

**nominated person**, of a person, means the person nominated under section 273(1) to be the person's nominated person;

**nomination** means a nomination made under section 273(1);

**nurse** means a person who is registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing profession —

- (a) whose name is entered on Division 1 of the Register of Nurses kept under that Law as a registered nurse; or
- (b) whose name is entered on Division 2 of the Register of Nurses kept under that Law as an enrolled nurse;

**occupational therapist** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the occupational therapy profession;

**parent or guardian**, of a child, means the person who has parental responsibility (as defined in the *Family Court Act 1997* section 68) for the child;

**patient** means —

- (a) an involuntary patient; or
- (b) a mentally impaired accused required under the MIA Act to be detained at an authorised hospital; or
- (c) a voluntary patient;

**patient's psychiatrist** means —

- (a) if the patient is a voluntary patient — the treating psychiatrist; or
- (b) if the patient is an involuntary patient who is under an inpatient treatment order — the treating psychiatrist; or
- (c) if the patient is an involuntary patient who is under a community treatment order — the supervising psychiatrist; or
- (d) if the patient is a mentally impaired accused required under the MIA Act to be detained at an authorised hospital — the treating psychiatrist;

**personal information** has the meaning given in the *Freedom of Information Act 1992* in the Glossary clause 1;

**personal support person**, of a person, means a person referred to in section 7(2)(b)(i), (ii), (iii), (iv) or (v);

**private hospital** has the meaning given in the *Private Hospitals and Health Services Act 1927* section 2(1);

**private psychiatric hostel** has the meaning given in the *Hospitals and Health Services Act 1927* section 26P;

**psychiatrist** means a medical practitioner who is —

- (a) a Fellow of the Royal Australian and New Zealand College of Psychiatrists; or
- (b) a person, or a person in a class of person, prescribed by the regulations for this definition;

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

**psychosurgery** has the meaning given in section 205;

**public hospital** has the meaning given in the *Health Services Act 2016* section 6;

**registration board** has the meaning given in the *Health and Disability Services (Complaints) Act 1995* section 3(1);

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

**seclusion** has the meaning given in section 212;

**social worker** means a person who is a member of, or is eligible for membership of, the Australian Association of Social Workers;

**staff member**, of a mental health service (however defined in this Act) or a private psychiatric hostel, means a person —

- (a) who is employed in the mental health service or private psychiatric hostel under a contract of employment or contract of training; or

- (b) who provides services to the mental health service or private psychiatric hostel under a contract for services;

**supervising psychiatrist** has the meaning given in section 113;  
**traditional healer**, in relation to an Aboriginal or Torres Strait Islander community, means a person of Aboriginal or Torres Strait Islander descent who —

- (a) uses traditional (including spiritual) methods of healing; and
- (b) is recognised by the community as a traditional healer;

**transport officer** means a person, or a person in a class of person, authorised under section 147 to carry out a transport order;

**treating psychiatrist**, in relation to a patient, means the psychiatrist who is in charge of the patient's treatment;

**treatment** means the provision of a psychiatric, medical, psychological or psychosocial intervention intended (whether alone or in combination with one or more other therapeutic interventions) to alleviate or prevent the deterioration of a mental illness or a condition that is a consequence of a mental illness, and does not include bodily restraint, seclusion or sterilisation;

**treatment decision**, in relation to a person, means a decision to give consent, or to refuse to give consent, to treatment being provided to the person;

**treatment in the community** means treatment that can be provided to a patient without detaining the patient at a hospital under an inpatient treatment order;

**treatment, support and discharge plan** has the meaning given in section 186;

**voluntary inpatient** means a voluntary patient who is admitted by a mental health service as an inpatient;

**voluntary patient** means a person to whom treatment is being, or is proposed to be, provided by a mental health service but who is not —

- (a) an involuntary patient; or
- (b) a mentally impaired accused required under the MIA Act to be detained at an authorised hospital.

Note for this definition:

A voluntary patient can also be —

- (a) a person who is referred under section 26(2) or (3)(a) or 36(2) or is under an order made under section 55(1)(c) or 61(1)(c); or
- (b) a mentally impaired accused who is released from an authorised hospital (whether unconditionally or on conditions) under a release order made under the MIA Act section 35.

*[Section 4 amended: No. 36 of 2015 s. 4; No. 11 of 2016 s. 296(2)-(4); No. 4 of 2018 s. 114; [No. 9 of 2022 s. 424.](#)]*

## **5. Notes and examples not part of Act**

A note or example set out at the foot of a provision of this Act is provided to assist understanding and does not form part of this Act.

## **Division 2 — Mental illness**

### **6. When person has a mental illness**

- (1) A person has a mental illness if the person has a condition that —
  - (a) is characterised by a disturbance of thought, mood, volition, perception, orientation or memory; and
  - (b) significantly impairs (temporarily or permanently) the person's judgment or behaviour.

- (2) A person does not have a mental illness merely because one or more of these things apply —
- (a) the person holds, or refuses or fails to hold, a particular religious, cultural, political or philosophical belief or opinion;
  - (b) the person engages in, or refuses or fails to engage in, a particular religious, cultural or political activity;
  - (c) the person is, or is not, a member of a particular religious, cultural or racial group;
  - (d) the person has, or does not have, a particular political, economic or social status;
  - (e) the person has a particular sexual preference or orientation;
  - (f) the person is sexually promiscuous;
  - (g) the person engages in indecent, immoral or illegal conduct;
  - (h) the person has an intellectual disability;
  - (i) the person uses alcohol or other drugs;
  - (j) the person is involved in, or has been involved in, personal or professional conflict;
  - (k) the person engages in anti-social behaviour;
  - (l) the person has at any time been —
    - (i) provided with treatment; or
    - (ii) admitted by or detained at a hospital for the purpose of providing the person with treatment.
- (3) Subsection (2)(i) does not prevent the serious or permanent physiological, biochemical or psychological effects of the use of alcohol or other drugs from being regarded as an indication that a person has a mental illness.
- (4) A decision whether or not a person has a mental illness must be made in accordance with internationally accepted standards prescribed by the regulations for this subsection.

### **Division 3 — Best interests of a person**

#### **7. Matters relevant to decision about person's best interests**

- (1) This section applies whenever a person or body is required under this Act to decide what is or is not in the best interests of a person.
- (2) The person or body making the decision must have regard to these things —
  - (a) the person's wishes, to the extent that it is practicable to ascertain those wishes;
  - (b) the views of each of these people —
    - (i) if the person has an enduring guardian or guardian — the enduring guardian or guardian;
    - (ii) if the person is a child — the child's parent or guardian;
    - (iii) if the person has a nominated person — the nominated person;
    - (iv) if the person has a carer — the carer;
    - (v) if the person has a close family member — the close family member;
  - (c) any other matter that the person or body considers relevant to making the decision.

### **Division 4 — Wishes of a person**

#### **8. Matters relevant to ascertaining person's wishes**

- (1) This section applies whenever a person or body is required under this Act to ascertain the wishes of a person in relation to a matter.
- (2) For the purposes of ascertaining those wishes, the person or body must have regard to the following —
  - (a) any treatment decision in an advance health directive made by the person that is relevant to the matter;

- (b) any term of an enduring power of guardianship made by the person that is relevant to the matter;
- (c) anything that the person says or does that is relevant to the matter if it is said or done at a time that is reasonably contemporaneous with when those wishes are required to be ascertained;
- (d) any other things that the person or body considers relevant to ascertaining those wishes.

### **Division 5 — Communicating with a person**

#### **9. Language, form of communication and terms to be used**

- (1) For this section, communication with a person includes the provision to a person of any advice, explanation, information, notification or reasons.
- (2) Any communication with a person under this Act must be in a language, form of communication and terms that the person is likely to understand using any means of communication that is practicable and using an interpreter if necessary and practicable.



## **Part 3 — Objects**

### **10. Objects**

- (1) The objects of this Act are as follows —
  - (a) to ensure people who have a mental illness are provided the best possible treatment and care —
    - (i) with the least possible restriction of their freedom; and
    - (ii) with the least possible interference with their rights; and
    - (iii) with respect for their dignity;
  - (b) to recognise the role of carers and families in the treatment, care and support of people who have a mental illness;
  - (c) to recognise and facilitate the involvement of people who have a mental illness, their nominated persons and their carers and families in the consideration of the options that are available for their treatment and care;
  - (d) to help minimise the effect of mental illness on family life;
  - (e) to ensure the protection of people who have or may have a mental illness;
  - (f) to ensure the protection of the community.
- (2) A person or body performing a function under this Act must have regard to those objects.

## **Part 4 — Charter of Mental Health Care Principles**

### **11. Regard to be had to Charter**

A person or body performing a function under this Act must have regard to the principles set out in the Charter of Mental Health Care Principles.

### **12. Compliance with Charter by mental health services**

- (1) In this section —  
*mental health service* includes a private psychiatric hostel.
- (2) A mental health service must make every effort to comply with the Charter of Mental Health Care Principles when providing treatment, care and support to patients.

## **Part 5 — Decision making capacity and informed consent**

### **Division 1 — Decision making capacity generally**

#### **13. Capacity of adult to make decisions**

- (1) For the purposes of this Act, an adult is presumed to have the capacity to make a decision about a matter relating to himself or herself unless the adult is shown not to have that capacity.
- (2) For the purposes of this Act, if an adult does not have the capacity to make a decision about a matter relating to himself or herself, the person who is authorised by law to do so may make the decision on the adult's behalf.

#### **14. Capacity of child to make decisions**

- (1) For the purposes of this Act, a child is presumed not to have the capacity to make a decision about a matter relating to himself or herself unless the child is shown to have that capacity.
- (2) For the purposes of this Act, if a child does not have the capacity to make a decision about a matter relating to himself or herself, the child's parent or guardian may make the decision on the child's behalf.

#### **15. Determining capacity to make decisions**

- (1) For the purposes of this Act, a person has the capacity to make a decision about a matter relating to himself or herself if another person who is performing a function under this Act that requires that other person to determine that capacity is satisfied that the person has the capacity to —
  - (a) understand any information or advice about the decision that is required under this Act to be provided to the person; and
  - (b) understand the matters involved in the decision; and
  - (c) understand the effect of the decision; and

- (d) weigh up the factors referred to in paragraphs (a), (b) and (c) for the purpose of making the decision; and
  - (e) communicate the decision in some way.
- (2) For the purposes of this Act, a decision made by a person about a matter relating to himself or herself must be made freely and voluntarily.

### **Division 2 — Informed consent to treatment**

#### **16. Requirements for informed consent**

- (1) A person gives informed consent to the provision of treatment to a patient (whether he or she or another person is the patient) only if —
  - (a) the requirements of this Division in relation to making a treatment decision about the provision of the treatment are satisfied; and
  - (b) the consent is given freely and voluntarily.
- (2) Failing to offer resistance does not by itself constitute giving consent.

#### **17. People who can give informed consent**

Informed consent to the provision of treatment to a patient can be given by —

- (a) the patient; or
- (b) if the patient does not have the capacity to make a treatment decision about the provision of the treatment to himself or herself — the person who is authorised by law to make the treatment decision on the patient's behalf.

Notes for this section:

- 1. An adult can give informed consent by making an advance health directive (see the GAA Act section 110ZJ(2)).
- 2. An adult's enduring guardian or guardian, or the person responsible for an adult, can give informed consent on the adult's behalf (see the GAA Act section 110ZJ(3) to (5)).

3. A child's parent or guardian can give informed consent on the child's behalf unless the child has the capacity to give informed consent (see section 302(3)).

**18. Determining capacity to make treatment decision**

A person has the capacity to make a treatment decision about the provision of treatment to a patient if another person who is performing a function under this Act that requires that other person to determine that capacity is satisfied that the person has the capacity to —

- (a) understand the things that are required under section 19 to be communicated to the person about the treatment; and
- (b) understand the matters involved in making the treatment decision; and
- (c) understand the effect of the treatment decision; and
- (d) weigh up the factors referred to in paragraphs (a), (b) and (c) for the purpose of making the treatment decision; and
- (e) communicate the treatment decision in some way.

**19. Explanation of proposed treatment must be given**

- (1) Before a person is asked to make a treatment decision about the provision of treatment to a patient, the person must be provided with a clear explanation of the treatment —
- (a) containing sufficient information to enable the person to make a balanced judgment about the treatment; and
  - (b) identifying and explaining any alternative treatment about which there is insufficient knowledge to justify it being recommended or to enable its effect to be predicted reliably; and
  - (c) warning the person of any risks inherent in the treatment.

- (2) The extent of the information required under subsection (1) to be provided to a person is limited to information that a reasonable person in the person's position would be likely to consider significant to the treatment decision unless the person providing the information knows, or could reasonably have been expected to know, that the person is likely to consider other information to be significant to the treatment decision.
- (3) Subsection (1) applies despite any privilege claimed by a person.

Note for this section:

Any explanation provided under section 19(1) must be provided in accordance with section 9(2).

## **20. Sufficient time for consideration**

A person cannot be asked to make a treatment decision about the provision of treatment to a patient unless the person is given —

- (a) sufficient time to consider the matters involved in the treatment decision; and
- (b) a reasonable opportunity to discuss those matters with the health professional who is proposing the provision of the treatment; and
- (c) a reasonable opportunity to obtain any other advice or assistance in relation to the treatment decision that the person wishes.

## **Part 6 — Involuntary patients**

### **Division 1 — When a person will be an involuntary patient**

#### **21. Involuntary patient**

- (1) An involuntary patient is a person who is under an involuntary treatment order.
- (2) An involuntary treatment order is —
  - (a) an inpatient treatment order; or
  - (b) a community treatment order.

#### **22. Inpatient treatment order**

- (1) An inpatient treatment order is an order in force under this Act under which a person can be admitted by a hospital, and detained there, to enable the person to be provided with treatment without informed consent being given to the provision of the treatment.
- (2) An inpatient treatment order authorising a person's detention at an authorised hospital may be made under section 55(1)(a), 56(1)(a)(i), 72(1)(a), 120(2)(a), 123(1)(a) or 131(2)(a).
- (3) An inpatient treatment order authorising a person's detention at a general hospital may be made under section 61(1)(a) or 131(2)(a).

#### **23. Community treatment order**

- (1) A community treatment order is an order in force under this Act under which a person can be provided with treatment in the community without informed consent being given to the provision of the treatment.
- (2) A community treatment order may be made under section 55(1)(b), 56(1)(a)(ii), 61(1)(b), 72(1)(b), 75(1), 89(2)(b) or 90(1)(a).

**24. Making involuntary treatment order**

- (1) Only a psychiatrist may make an involuntary treatment order.
- (2) A psychiatrist cannot make an involuntary treatment order except in accordance with this Act.
- (3) A psychiatrist cannot make an inpatient treatment order in respect of a person unless satisfied, having regard to the criteria specified in section 25(1), that the person is in need of an inpatient treatment order.
- (4) Before deciding whether or not to make an inpatient treatment order in respect of a person, a psychiatrist must consider whether the objects of this Act would be better achieved by making a community treatment order in respect of the person.
- (5) A psychiatrist cannot make a community treatment order in respect of a person unless satisfied, having regard to the criteria specified in section 25(2), that the person is in need of a community treatment order.
- (6) An involuntary treatment order made in respect of a person must —
  - (a) be in force for as brief a period as practicable; and
  - (b) be reviewed regularly; and
  - (c) be revoked as soon as practicable after the person no longer meets the criteria for the order.

**25. Criteria for involuntary treatment order**

- (1) A person is in need of an inpatient treatment order only if all of these criteria are satisfied —
  - (a) that the person has a mental illness for which the person is in need of treatment;
  - (b) that, because of the mental illness, there is —
    - (i) a significant risk to the health or safety of the person or to the safety of another person; or



- (ii) a significant risk of serious harm to the person or to another person;
  - (c) that the person does not demonstrate the capacity required by section 18 to make a treatment decision about the provision of the treatment to himself or herself;
  - (d) that treatment in the community cannot reasonably be provided to the person;
  - (e) that the person cannot be adequately provided with treatment in a way that would involve less restriction on the person's freedom of choice and movement than making an inpatient treatment order.
- (2) A person is in need of a community treatment order only if all of these criteria are satisfied —
- (a) that the person has a mental illness for which the person is in need of treatment;
  - (b) that, because of the mental illness, there is —
    - (i) a significant risk to the health or safety of the person or to the safety of another person; or
    - (ii) a significant risk of serious harm to the person or to another person; or
    - (iii) a significant risk of the person suffering serious physical or mental deterioration;
  - (c) that the person does not demonstrate the capacity required by section 18 to make a treatment decision about the provision of the treatment to himself or herself;
  - (d) that treatment in the community can reasonably be provided to the person;
  - (e) that the person cannot be adequately provided with treatment in a way that would involve less restriction on the person's freedom of choice and movement than making a community treatment order.

- (3) A decision whether or not a person is in need of an inpatient treatment order or a community treatment order must be made having regard to the guidelines published under section 547(1)(a) for that purpose.

Note for this Division:

Part 21 Division 3 confers jurisdiction on the Mental Health Tribunal to conduct reviews relating to involuntary patients.

## **Division 2 — Referrals for examination**

### **Subdivision 1 — Person suspected of needing involuntary treatment order**

#### **26. Referral for examination at authorised hospital or other place**

- (1) A medical practitioner or authorised mental health practitioner may refer a person under subsection (2) or (3)(a) for an examination conducted by a psychiatrist if, having regard to the criteria specified in section 25, the practitioner reasonably suspects that —
- (a) the person is in need of an involuntary treatment order; or
  - (b) if the person is under a community treatment order — the person is in need of an inpatient treatment order.
- (2) The practitioner may refer the person for an examination to be conducted by a psychiatrist at an authorised hospital.
- (3) The practitioner —
- (a) may refer the person for an examination to be conducted by a psychiatrist at a place that is not an authorised hospital if, in the practitioner's opinion, it is an appropriate place to conduct the examination having regard to the guidelines published under section 547(1)(b) for that purpose; and
  - (b) if the practitioner refers the person under paragraph (a) — must make any arrangements that are

- (4) Subdivision 3 applies in relation to the referral of a person under subsection (2) or (3)(a).
- (5) Sections 27 to 30 apply in relation to a person who is referred under subsection (2) or (3)(a).

1. A person who is referred under section 26(2) or (3)(a) can be detained under an order made under section 28(1) or (2) to enable the person to be taken to the authorised hospital or other place and can be detained there under section 52(1)(b) or 58(1)(b) to enable the person to be examined.
2. Part 7 Division 4 applies in relation to the release of a person who is detained under section 28(1) or (2), 52(1)(b) or 58(1)(b).
3. Part 7 Division 5 applies if a person who is detained under section 28(1) or (2), 52(1)(b) or 58(1)(b) is absent without leave from the authorised hospital or other place where the person is be detained.

The person must be taken to the authorised hospital or other place as soon as practicable and, in any event, before the referral expires, whether or not a transport order is made under section 29(1) in respect of the person.

- (1) A medical practitioner or authorised mental health practitioner may make an order authorising the person's detention for up to 24 hours from the time when the order is made if satisfied that the person needs to be detained to enable the person to be taken to the authorised hospital or other place.
- (2) A medical practitioner or authorised mental health practitioner may, immediately before the end of the period of detention authorised under subsection (1) or any further period of detention authorised under this subsection in respect of the

person, make an order authorising the continuation of the person's detention for up to 24 hours from the end of that period to enable the person to be taken to the authorised hospital or other place.

- (3) The person cannot be detained under orders made under this section for a continuous period of more than —
  - (a) if the place where the referral is made is in a metropolitan area — 72 hours; or
  - (b) if the place where the referral is made is outside a metropolitan area — 144 hours.
- (4) A practitioner cannot make an order under subsection (2) in respect of the person unless —
  - (a) immediately before making the order, the practitioner assesses the person; and
  - (b) as a consequence, the practitioner is satisfied that the person still needs to be detained to enable the person to be taken to the authorised hospital or other place.
- (5) Subdivision 4 applies in relation to an assessment required by subsection (4)(a).
- (6) An order made under this section must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the date and time when it expires;
  - (c) the reasons for making it;
  - (d) the name, qualifications and signature of the practitioner making it.
- (7) A practitioner who makes an order under this section in respect of the person must, as soon as practicable, file it and give a copy to the person.

- (8) The making of an order under this section is an event to which Part 9 applies and the practitioner who makes the order is the person responsible under that Part for notification of that event.
- (9) A practitioner who makes an order under this section in respect of the person must ensure that the person has the opportunity and the means to contact any carer, close family member or other personal support person of the person, a health professional who is currently providing the person with treatment and the Chief Mental Health Advocate —
  - (a) as soon as practicable after the order is made; and
  - (b) at all reasonable times while the person is detained under the order.
- (10) The person cannot continue to be detained if, by the end of a period of detention authorised under this section in respect of the person —
  - (a) the person has not been taken to the authorised hospital or other place; and
  - (b) an order under subsection (2) authorising the continuation of the person's detention from the end of the period has not been made or, because of subsection (3), cannot be made; and
  - (c) the person has not been apprehended under a transport order made under section 29(1).
- (11) The person cannot continue to be detained if the referral expires before the person is taken to the authorised hospital or other place.
- (12) The release of a person because of subsection (10) or (11) is an event to which Part 9 applies and a medical practitioner or authorised mental health practitioner is the person responsible under that Part for notification of that event.

**29. Making transport order**

- (1) A medical practitioner or authorised mental health practitioner may make a transport order in respect of the person.

- (2) The practitioner cannot make the transport order unless satisfied that —
  - (a) the person needs to be taken to the authorised hospital or other place; and
  - (b) no other safe means of taking the person is reasonably available.
- (3) Part 10 applies in relation to the transport order.
- (4) The making of a transport order under subsection (1) is an event to which Part 9 applies and the practitioner who makes the order is the person responsible under that Part for notification of that event.

**30. Effect of referral on community treatment order**

A community treatment order that is in force in respect of a person who is referred under section 26(2) or (3)(a) is suspended for the period —

- (a) beginning when the referral is made; and
- (b) ending when the first of these things occurs —
  - (i) a psychiatrist makes an order under section 55(1)(a) or (d), 56(1)(a)(i) or (iii), 61(1)(a) or (d) or 72(1)(a) or (c) in respect of the person;
  - (ii) the referral is revoked under section 31(1);
  - (iii) the person cannot continue to be detained because section 28(10) or (11), 52(4), 58(4) or 70(4) applies.

Notes for this section:

- 1. A community treatment order that the patient is under is automatically revoked under section 116(b) if a psychiatrist makes an inpatient treatment order under section 55(1)(a), 56(1)(a)(i), 61(1)(a) or 72(1)(a) in respect of the involuntary community patient.
- 2. A community treatment order is no longer suspended if a psychiatrist makes an order under section 55(1)(d), 56(1)(a)(iii), 61(1)(d) or 72(1)(c) that the involuntary community patient cannot continue to be detained.

3. A community treatment order remains suspended until the period of the suspension ends under section 30(b), or until the community treatment order is revoked under section 120(2)(b) or 131(2)(b), if a psychiatrist makes an order under section 61(1)(c) in respect of the involuntary community patient.

### **31. Revoking referral**

- (1) A medical practitioner or authorised mental health practitioner may make an order revoking a referral made under section 26(2) or (3)(a) if satisfied that the person who is referred is no longer in need of an involuntary treatment order.
- (2) The practitioner cannot revoke the referral if it was made by another practitioner unless —
  - (a) the practitioner has consulted the other practitioner about whether or not to revoke the referral; or
  - (b) despite reasonable efforts to do so, the other practitioner could not be contacted.
- (3) The order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for making it;
  - (c) if the other practitioner was consulted — a record of the consultation;
  - (d) if the other practitioner could not be contacted — a record of the efforts made to do so;
  - (e) the name, qualifications and signature of the practitioner.
- (4) The practitioner must, as soon as practicable, file the order and give a copy to the person.
- (5) The practitioner must, as soon as practicable —
  - (a) advise the transport officer or police officer responsible for carrying out any transport order made under section 29(1) in respect of the person that the referral

has been revoked under subsection (1) and that therefore the transport order has been revoked under section 153; and

(b) file a record of that advice.

- (6) The person cannot continue to be detained if the referral is revoked under subsection (1).
- (7) The release of a person because of subsection (6) is an event to which Part 9 applies and the practitioner who revokes the referral is the person responsible under that Part for notification of that event.

**Subdivision 2 — Voluntary inpatient admitted by authorised hospital**

**32. Application of this Subdivision**

This Subdivision applies in relation to a voluntary inpatient who is admitted by an authorised hospital.

**33. Effect of admission on community treatment order**

Any community treatment order in force in respect of the voluntary inpatient is suspended for the period —

- (a) beginning when the voluntary inpatient is admitted as an inpatient by the authorised hospital; and
- (b) ending when the first of these things occurs —
- (i) a psychiatrist makes an order under section 55(1)(a) or 56(1)(a)(i);
  - (ii) the voluntary inpatient is discharged as an inpatient by the authorised hospital.

Notes for this section:

1. A community treatment order is automatically revoked under section 116(b) if a psychiatrist makes an inpatient treatment order under section 55(1)(a) or 56(1)(a)(i) in respect of the voluntary inpatient.
2. A community treatment order can be revoked under section 120(2)(b) or 131(2)(b).



**34. Person in charge of ward may order assessment**

- (1) The person in charge of the voluntary inpatient's ward may make an order for an assessment of the voluntary inpatient by a medical practitioner or authorised mental health practitioner at the authorised hospital if —
  - (a) the voluntary inpatient wants to leave the authorised hospital against medical advice; and
  - (b) having regard to the criteria specified in section 25, the person in charge reasonably suspects that the voluntary inpatient is in need of an involuntary treatment order.
- (2) The order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for making it;
  - (c) the name, qualifications and signature of the person in charge.
- (3) The voluntary inpatient can be detained under the order at the authorised hospital for up to 6 hours from the time when the order was made to enable the assessment to be conducted.
- (4) The person in charge of the voluntary inpatient's ward must, as soon as practicable, file the order and give a copy to the voluntary patient.
- (5) The person in charge of the voluntary inpatient's ward must ensure that the inpatient has the opportunity and the means to contact any carer, close family member or other personal support person of the inpatient, a health professional who is currently providing the inpatient with treatment and the Chief Mental Health Advocate —
  - (a) as soon as practicable after the order is made; and
  - (b) at all reasonable times while the voluntary inpatient is detained under the order.

- (6) Subdivision 4 applies in relation to an assessment ordered under subsection (1).
- (7) The voluntary inpatient cannot continue to be detained if, by the end of the 6-hour period referred to in subsection (3) —
  - (a) the assessment has not been completed; or
  - (b) the assessment has been completed but a referral has not been made under section 36(2) in respect of the voluntary inpatient.

**35. Revoking order for assessment**

- (1) The person who makes an order under section 34(1) for an assessment of a voluntary inpatient may, at any time before the assessment is commenced, make an order revoking the order for an assessment if satisfied that the patient is no longer in need of an involuntary treatment order.
- (2) The order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for making it;
  - (c) the name, qualifications and signature of the person.
- (3) The person who makes the order must, as soon as practicable, file it and give a copy to the voluntary patient.
- (4) The voluntary inpatient cannot continue to be detained if the order for an assessment is revoked under subsection (1).

**36. Referral for examination at authorised hospital**

- (1) This section applies if the voluntary inpatient is assessed by a medical practitioner or authorised mental health practitioner —
  - (a) because of an order made under section 34(1); or
  - (b) in the course of the voluntary inpatient's treatment while admitted by the authorised hospital.

- (2) The practitioner may refer the voluntary inpatient for an examination to be conducted by a psychiatrist at the authorised hospital if, having regard to the criteria specified in section 25, the practitioner reasonably suspects that the inpatient is in need of an involuntary treatment order.
- (3) Subdivision 3 applies in relation to the referral of a voluntary inpatient under subsection (2).

Notes for this section:

1. A voluntary patient who is referred under section 36(2) can be detained at the authorised hospital under section 53(1) to enable the voluntary patient to be examined.
2. Part 7 Division 4 applies in relation to the release of a voluntary patient who is detained under section 53(1).
3. Part 7 Division 5 applies if a voluntary patient who is detained under section 53(1) is absent without leave from the authorised hospital where the voluntary patient is detained.

### 37. Revoking referral

- (1) A medical practitioner or authorised mental health practitioner may make an order revoking a referral made under section 36(2) if satisfied that the voluntary inpatient who is referred is no longer in need of an involuntary treatment order.
- (2) The practitioner cannot revoke the referral if it was made by another practitioner unless —
  - (a) the practitioner has consulted the other practitioner about whether or not to revoke the referral; or
  - (b) despite reasonable efforts to do so, the other practitioner could not be contacted.
- (3) The order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for the revocation;
  - (c) if the other practitioner was consulted — a record of the consultation;

- (d) if the other practitioner could not be contacted — a record of the efforts made to do so;
  - (e) the name, qualifications and signature of the practitioner making it.
- (4) The practitioner must, as soon as practicable, file the order and give a copy to the voluntary patient.
- (5) The voluntary inpatient cannot continue to be detained if the referral is revoked under subsection (1).

### **Subdivision 3 — Requirements for referral**

#### **38. Application of this Subdivision**

This Subdivision applies in relation to the referral of a person for an examination conducted by a psychiatrist that is made by a medical practitioner or authorised mental health practitioner under section 26(2) or (3)(a) or 36(2).

#### **39. No referral without assessment**

- (1) A practitioner cannot refer a person unless the practitioner has assessed the person.
- (2) Subdivision 4 applies in relation to an assessment required by subsection (1).

#### **40. Time limit for making referral**

- (1) A referral cannot be made under section 26(2) or (3)(a) more than 48 hours after the time when the assessment required by section 39(1) is completed.
- (2) A referral can only be made under section 36(2) immediately after the time when the assessment required by section 39(1) is completed.

## 41. Form of referral

A referral must be in the approved form and must —

- (a) include the following —
  - (i) the date and time when it is made;
  - (ii) the date and time when it will expire;
  - (iii) the place where it is made;
  - (iv) whether or not it can be extended under section 45 and, if it can, the process for extending it;
  - (v) the place where the examination will be conducted;
  - (vi) the date and time when the assessment required by section 39(1) was completed;and
- (b) certify that, having regard to the criteria specified in section 25, the practitioner making it reasonably suspects that the person who is referred is in need of an involuntary treatment order; and
- (c) include the information on which the suspicion is based; and
- (d) in respect of so much of that information as was obtained during the assessment by the practitioner making the referral, distinguish between —
  - (i) the information obtained from the person who is referred, including by observing the person and asking the person questions; and
  - (ii) the information obtained from another person or from the person's medical record;and
- (e) include the name, qualifications and signature of the practitioner making the referral.

**42. Providing information contained in referral to person referred**

- (1) The practitioner must provide the person who is referred with the information referred to in section 41(a) and (b) and, unless subsection (2) applies, the information referred to in section 41(c).
- (2) The practitioner cannot provide the person who is referred any information referred to in section 41(c) that was provided to the practitioner by someone other than the person on condition that the information not be provided to the person.
- (3) The information provided under subsection (1) must be in the approved form.

**43. Copy of referral must be filed**

The practitioner must file a copy of the referral.

**44. Period of referral made under s. 26(2) or (3)(a)**

A referral made under section 26(2) or (3)(a) remains in force for 72 hours from the time when the referral was made unless the referral is extended under section 45.

**45. Extending referral made outside metropolitan area**

- (1) This section applies if —
  - (a) the place where a referral is made under section 26(2) or (3)(a) is outside a metropolitan area; and
  - (b) the person responsible for taking the person who is referred to the place where the examination will be conducted forms the opinion that the referral is likely to expire before the person is received into the hospital or other place.
- (2) The person responsible —
  - (a) may orally request an extension of the referral from —
    - (i) the medical practitioner or authorised mental health practitioner who made the referral; or

- (ii) if the practitioner referred to in subparagraph (i) is not reasonably available — another medical practitioner or authorised mental health practitioner who is at the same place as the practitioner referred to in subparagraph (i); or
  - (iii) if neither the practitioner referred to in subparagraph (i) nor a practitioner referred to in subparagraph (ii) is reasonably available — another medical practitioner or authorised mental health practitioner;
- or
- (b) may extend the referral himself or herself if —
  - (i) there is no medical practitioner or authorised mental health practitioner reasonably available to whom an application could be made under paragraph (a); and
  - (ii) the person responsible is a medical practitioner or authorised mental health practitioner.
- (3) The practitioner or person responsible may extend the referral if satisfied that the referral is likely to expire before the person is received into the authorised hospital or other place.
- (4) The referral may be extended for a further period of 72 hours from the time when the 72-hour period referred to in section 44 ends.
- (5) The person who extends the referral must, as soon as practicable —
  - (a) record the extension in the approved form, specifying the following —
    - (i) the date and time when the referral was extended;
    - (ii) the date and time when, because of the extension, the referral will expire;

- (iii) the reasons for the extension;
  - and
  - (b) file the record and give a copy to the person who is referred.
- (6) The referral cannot be extended more than once.

**46. Changing place where examination will be conducted**

- (1) A medical practitioner or authorised mental health practitioner may make an order changing the place specified in a referral made under section 26(2) or (3)(a) as the place where the examination will be conducted.
- (2) The practitioner cannot change the place specified in the referral unless the practitioner has consulted a medical practitioner or authorised mental health practitioner at the place where, if the change is made, the examination will be conducted.
- (3) The practitioner must, as soon as practicable —
  - (a) advise the person responsible for taking the person who is referred to the place where the examination will be conducted of the change; and
  - (b) record the change in the approved form, specifying —
    - (i) the date and time when the change was made; and
    - (ii) the place where the examination was to have been conducted; and
    - (iii) the place where, because of the change, the examination will be conducted;
  - and
  - (c) file the record and give a copy to the person who is referred.
- (4) If, because of the change, the examination will be conducted at an authorised hospital instead of a place that is not an authorised



hospital, this Act applies as if the referral had been made under section 26(2) instead of section 26(3)(a).

- (5) If, because of the change, the examination will be conducted at a place that is not an authorised hospital instead of an authorised hospital, this Act applies as if the referral had been made under section 26(3)(a) instead of section 26(2).

#### **Subdivision 4 — Conduct of assessment**

#### **47. Application of this Subdivision**

This Subdivision applies in relation to the conduct of an assessment by a medical practitioner or authorised mental health practitioner that is required by, or has been ordered under, section 28(4)(a), 34(1), 39(1) or 62(4)(a).

**48.-1M How assessment must be conducted**

- (1) The assessment must be conducted in the least restrictive way, and the least restrictive environment, practicable.
- (2) Unless subsection (3) applies, the practitioner and the person being assessed —
  - (a) must be in one another's physical presence; or
  - (b) if that is not practicable — must be able to hear one another without using a communication device (for example, by being able to hear one another through a door).
- (3) The practitioner may conduct the assessment using audiovisual communication if —
  - (a) the person being assessed is outside a metropolitan area; and
  - (b) it is not practicable for the practitioner to comply with subsection (2)(a) or (b); and
  - (c) a health professional and the person being assessed —
    - (i) are in one another's physical presence; or

- (ii) if that is not practicable — are able to hear one another without using a communication device (for example, by being able to hear one another through a door).
- (4) For the purposes of this Act, an assessment conducted using audiovisual communication is taken to be conducted, and any referral made as a result is taken to be made, at the place where the person assessed is when the assessment is conducted.

~~*[Section 48: modified by the COVID-19 Response and Economic Recovery Omnibus Act 2020 (No. 34 of 2020) Part 4 Division 2. See endnote 1M.]*~~

**49. Information to which practitioner may have regard**

- (1) The practitioner may have regard to any information about the person being assessed that is obtained by the practitioner —
  - (a) from —
    - (i) the person, including information obtained by observing the person and asking the person questions; or
    - (ii) any other person;
  - and
  - (b) from the person's medical record.
- (2) The practitioner cannot conclude that there is a reasonable suspicion that the person being assessed is in need of an involuntary treatment order solely on the basis of information referred to in either or both of subsection (1)(a)(ii) and (b).

**50. Assessment of person of Aboriginal or Torres Strait Islander descent**

To the extent that it is practicable and appropriate to do so, the assessment of a person who is of Aboriginal or Torres Strait Islander descent must be conducted in collaboration with —

- (a) Aboriginal or Torres Strait Islander mental health workers; and

- (b) significant members of the person's community, including elders and traditional healers.

### **Division 3 — Examinations**

#### **Subdivision 1 — Examination at authorised hospital**

##### **51. Application of this Subdivision**

This Subdivision applies in relation to a person who is referred under section 26(2) or 36(2) for an examination to be conducted by a psychiatrist at an authorised hospital.

##### **52. Detention for examination on referral made under s. 26(2)**

- (1) A person who is referred under section 26(2) —
  - (a) must be received into the authorised hospital unless subsection (2) applies; and
  - (b) can be detained there, to enable the examination to be conducted, for up to 24 hours from the time when the person is received.
- (2) The person cannot be received into the authorised hospital if the referral has expired.
- (3) The person in charge of the authorised hospital must ensure that the person has the opportunity and the means to contact any carer, close family member or other personal support person of the person, a health professional who is currently providing the person with treatment and the Chief Mental Health Advocate —
  - (a) as soon as practicable after the person is received into the authorised hospital; and
  - (b) at all reasonable times while the person is detained there under subsection (1)(b).
- (4) The person cannot continue to be detained if, by the end of the 24-hour period referred to in subsection (1)(b) —
  - (a) the examination has not been completed; or

- (b) the examination has been completed but an order has not been made under section 55(1) in respect of the person.
- (5) Reception at an authorised hospital under this section is not admission by the hospital under this Act.

**53. Detention for examination on referral made under s. 36(2)**

- (1) A person who is referred under section 36(2) can be detained at the authorised hospital, to enable the examination to be conducted, for up to 24 hours from the time when —
  - (a) if section 36(1)(a) applies — the order for the assessment of the person was made under section 34(1); or
  - (b) if section 36(1)(b) applies — the person was referred under section 36(2).
- (2) The person in charge of the authorised hospital must ensure that the person has the opportunity and the means to contact any carer, close family member or other personal support person of the person, a health professional who is currently providing the person with treatment and the Chief Mental Health Advocate —
  - (a) as soon as practicable after the person is detained under subsection (1) at the authorised hospital; and
  - (b) at all reasonable times while the person is detained there under subsection (1).
- (3) The person cannot continue to be detained if, by the end of the 24-hour period referred to in subsection (1)(a) or (b) —
  - (a) the examination has not been completed; or
  - (b) the examination has been completed but an order has not been made under section 55(1) in respect of the person.

**54. Conducting examination**

Subdivision 6 applies in relation to the conduct of the examination referred to in section 52(1)(b) or 53(1).

**55. What psychiatrist must do on completing examination**

- (1) On completing the examination referred to in section 52(1)(b) or 53(1), the psychiatrist must make one of these orders —
  - (a) an inpatient treatment order authorising the person's detention at the authorised hospital for the period specified in the order in accordance with section 87(a) or (b);
  - (b) a community treatment order in respect of the person;
  - (c) an order authorising the continuation of the person's detention at the authorised hospital to enable a further examination to be conducted by a psychiatrist;
  - (d) an order that the person cannot continue to be detained.
- (2) The order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) if it is made under subsection (1)(a), (b) or (c) — the reasons for making it;
  - (c) the name, qualifications and signature of the psychiatrist.
- (3) The person can continue to be detained at the authorised hospital under an order made under subsection (1)(c) for the period specified in the order, which cannot exceed 72 hours from the time when the person was —
  - (a) received into the authorised hospital under section 52(1)(a); or
  - (b) detained at the authorised hospital under section 53(1).
- (4) An order made under subsection (1)(c) cannot be extended.
- (5) The psychiatrist must, as soon as practicable, file the order made under subsection (1) and give a copy to the person.
- (6) The making of an order under subsection (1) is an event to which Part 9 applies and the person in charge of the authorised

hospital is the person responsible under that Part for notification of that event.

Notes for this section:

1. A community treatment order in respect of an involuntary community patient who is referred under section 26(2) or 36(2) is automatically revoked under section 116(b) if a psychiatrist makes an inpatient treatment order under section 55(1)(a) in respect of the involuntary community patient.
2. Part 7 Division 4 applies in relation to the release of a person who is detained at an authorised hospital under an order made under section 55(1)(c).
3. Part 7 Division 5 applies if a person who is under an order made under section 55(1)(c) is absent without leave from the authorised hospital where the person can be detained under the order.
4. A community treatment order in respect of an involuntary community patient who is referred under section 26(2) is no longer suspended if a psychiatrist makes an order under section 55(1)(d) that the involuntary community patient cannot continue to be detained (see section 30(b)(i)).

**56. Effect of order for continuation of detention**

- (1) An order made under section 55(1)(c) authorises the continuation of the person's detention until the first of these things occurs —
  - (a) a psychiatrist conducts the further examination and makes one of these orders —
    - (i) an inpatient treatment order authorising the person's detention at the authorised hospital for the period specified in the order in accordance with section 87(a) or (b);
    - (ii) a community treatment order in respect of the person;
    - (iii) an order that the person cannot continue to be detained;
  - (b) the expiry of the period specified in the order under section 55(3).

- (2) An order made under subsection (1)(a) must be in the approved form and must include the following —
- (a) the date and time when it is made;
  - (b) if it is made under subsection (1)(a)(i) or (ii) — the reasons for making it;
  - (c) the name, qualifications and signature of the psychiatrist making it.
- (3) A psychiatrist who makes an order under subsection (1)(a) must, as soon as practicable, file it and give a copy to the person.

Notes for this section:

1. A community treatment order in respect of an involuntary community patient who is referred under section 26(2) or 36(2) is automatically revoked under section 116(b) if a psychiatrist makes an inpatient treatment order under section 56(1)(a)(i) in respect of the involuntary community patient.
2. A community treatment order in respect of an involuntary community patient who is referred under section 26(2) is no longer suspended if a psychiatrist makes an order under section 56(1)(a)(iii) that the involuntary community patient cannot continue to be detained (see section 30(b)(i)).

## **Subdivision 2 — Examination at place that is not authorised hospital**

### **57. Application of this Subdivision**

This Subdivision applies in relation to a person who is referred under section 26(3)(a) for an examination to be conducted by a psychiatrist at a place that is not an authorised hospital.

### **58. Detention for examination**

- (1) The person —
- (a) must be received into the place unless subsection (2) applies; and
  - (b) can be detained there, to enable the examination to be conducted, for up to 24 hours from the time when the person is received.

- (2) The person cannot be received into the place if the referral has expired.
- (3) The person in charge of the place must ensure that the person has the opportunity and the means to contact any carer, close family member or other personal support person of the person, a health professional who is currently providing the person with treatment and the Chief Mental Health Advocate —
  - (a) as soon as practicable after the person is received into the place; and
  - (b) at all reasonable times while the person is detained there under subsection (1)(b).
- (4) The person cannot continue to be detained if, by the end of the 24-hour period referred to in subsection (1)(b) —
  - (a) either —
    - (i) the examination has not been completed; or
    - (ii) the examination has been completed but an order has not been made under section 61(1) in respect of the person;
  - and
  - (b) if the place is outside a metropolitan area — an order authorising the continuation of the person's detention from the end of that period has not been made under section 59(2).

**59. Detention at place outside metropolitan area**

- (1) This section applies if —
  - (a) the person is referred for an examination at a place that is outside a metropolitan area; and
  - (b) it is not practicable to complete the examination within the 24-hour period referred to in section 58(1)(b).



- (2) A medical practitioner or authorised mental health practitioner at the place may make an order authorising the continuation of the person's detention at the place, to enable the examination to be completed, for up to an additional 48 hours from the end of the 24-hour period.
- (3) The order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the date and time when it expires;
  - (c) the reasons for the continuation;
  - (d) the name, qualifications and signature of the practitioner making it.
- (4) The practitioner who makes the order must, as soon as practicable, file it and give a copy to the person.
- (5) The practitioner who makes the order must ensure that the person has the opportunity and the means to contact any carer, close family member or other personal support person of the person, a health professional who is currently providing the person with treatment and the Chief Mental Health Advocate —
  - (a) as soon as practicable after the order is made; and
  - (b) at all reasonable times while the person is detained under the order.
- (6) The person cannot continue to be detained if, by the end of the additional 48-hour period —
  - (a) the examination has not been completed; or
  - (b) the examination has been completed but an order has not been made under section 61(1) in respect of the person.

**60. Conducting examination**

Subdivision 6 applies in relation to the conduct of the examination.

**61. What psychiatrist must do on completing examination**

- (1) On completing the examination, the psychiatrist must make one of these orders —
  - (a) an inpatient treatment order authorising the person's detention at the general hospital specified in the order for the period specified in the order in accordance with section 87(a) or (b);
  - (b) a community treatment order in respect of the person;
  - (c) an order authorising the person's reception at an authorised hospital, and the person's detention there, to enable an examination to be conducted by a psychiatrist;
  - (d) an order that the person cannot continue to be detained.
- (2) However, the psychiatrist cannot make an order under subsection (1)(a) unless —
  - (a) satisfied that attempting to take the person to, or to detain the person at, an authorised hospital poses a significant risk to the person's physical health; and
  - (b) the Chief Psychiatrist consents to the order being made.
- (3) The order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) if it is made under subsection (1)(a), (b) or (c) — the reasons for making it;
  - (c) the name, qualifications and signature of the psychiatrist.
- (4) The psychiatrist must, as soon as practicable, file the order and give a copy to the person.
- (5) The making of an order under subsection (1) is an event to which Part 9 applies and the psychiatrist who makes the order is the person responsible under that Part for notification of that event.

Notes for this section:

1. A community treatment order in respect of a person who is referred under section 26(3)(a) is automatically revoked under section 116(b) if a psychiatrist makes an inpatient treatment order under section 61(1)(a) in respect of the involuntary community patient.
2. Part 7 Division 4 applies in relation to the release of a person who is detained at an authorised hospital under an order made under section 61(1)(c).
3. Part 7 Division 5 applies if a person who is under an order made under section 61(1)(c) is absent without leave from the authorised hospital where the person can be detained under the order.
4. A community treatment order in respect of a person who is referred under section 26(3)(a) is no longer suspended if a psychiatrist makes an order under section 61(1)(d) that the involuntary community patient cannot continue to be detained (see section 30(b)(i)).

**62. Detention to enable person to be taken to hospital**

- (1) A medical practitioner or authorised mental health practitioner may make an order authorising the continuation of the person's detention for up to 24 hours from the time when the order under section 61(1)(a) or (c) is made if satisfied that the person needs to be detained to enable the person to be taken to the hospital.
- (2) A medical practitioner or authorised mental health practitioner may, immediately before the end of the period of detention authorised under subsection (1) or any further period of detention authorised under this subsection in respect of the person, make an order authorising the continuation of the person's detention for up to 24 hours from the end of that period to enable the person to be taken to the hospital.
- (3) A person cannot be detained under orders made under this section for a continuous period of more than 72 hours.
- (4) A medical practitioner or authorised mental health practitioner cannot make an order under subsection (2) in respect of the person unless —
  - (a) immediately before making the order, the practitioner assesses the person; and

- (b) as a consequence, the practitioner is satisfied that the person still needs to be detained to enable the person to be taken to the hospital.
- (5) Division 2 Subdivision 4 applies in relation to the conduct of an assessment required by subsection (4)(a).
- (6) An order made under this section must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the date and time when it expires;
  - (c) the reasons for the continuation;
  - (d) the name, qualifications and signature of the practitioner making it.
- (7) A practitioner who makes an order under this section in respect of a person must, as soon as practicable, file it and give a copy to the person.
- (8) A practitioner who makes an order under this section in respect of a person must ensure that the person has the opportunity and the means to contact any carer, close family member or other personal support person of the person, a health professional who is currently providing the person with treatment and the Chief Mental Health Advocate —
  - (a) as soon as practicable after it is made; and
  - (b) at all reasonable times while the person is detained under it.
- (9) The person cannot continue to be detained if, by the end of a period of detention authorised under this section in respect of the person —
  - (a) the person has not been taken to the hospital; and
  - (b) the person has not been apprehended under a transport order made under section 63(1); and
  - (c) an order under subsection (2) authorising the continuation of the person's detention from the end of

that period has not been made or, because of  
subsection (3), cannot be made.

**63. Making transport order**

- (1) A psychiatrist may make a transport order in respect of a person who is under an order made under section 61(1)(a) or (c).
- (2) The psychiatrist cannot make the transport order unless satisfied that —
  - (a) the person needs to be taken to the hospital specified in the order made under section 61(1)(a) or (c); and
  - (b) no other safe means of taking the person is reasonably available.
- (3) Part 10 applies in relation to the transport order.

**Subdivision 3 — Inpatient treatment order authorising detention at  
general hospital**

**64. Application of this Subdivision**

This Subdivision applies in relation to an involuntary inpatient under an inpatient treatment order made under section 61(1)(a) or 131(2)(a) authorising the involuntary inpatient's detention at a general hospital.

**65. Treating psychiatrist must report regularly to Chief Psychiatrist**

- (1) At the end of each successive 7-day period that the involuntary inpatient is detained at the general hospital, the treating psychiatrist must report to the Chief Psychiatrist about these matters —
  - (a) the involuntary inpatient's mental and physical condition;
  - (b) any treatment (as defined in section 4) being provided to the involuntary inpatient at the general hospital;

- (c) any other medical or surgical treatment being provided to the involuntary inpatient at the general hospital.

- (2) The report must be in the approved form.

**66. Transfer from general hospital to authorised hospital**

- (1) Once the treating psychiatrist is satisfied that attempting to take the involuntary inpatient to, or to detain the involuntary inpatient at, an authorised hospital no longer poses a significant risk to the inpatient's physical health, then as soon as practicable, the treating psychiatrist must make an order (a **transfer order**) authorising the inpatient's transfer to the authorised hospital specified in the order.
- (2) In deciding whether or not there is still a significant risk to the involuntary inpatient's physical health, the treating psychiatrist may consult with any other medical practitioner or health care provider who is responsible for any medical or surgical treatment being provided to the inpatient.
- (3) The transfer order must be in the approved form and must include the following —
  - (a) the involuntary inpatient's name;
  - (b) the general hospital from which the involuntary inpatient is to be transferred;
  - (c) the authorised hospital to which the involuntary inpatient is to be transferred;
  - (d) the date and time when the order is made;
  - (e) the reasons for the transfer;
  - (f) the name, qualifications and signature of the treating psychiatrist.
- (4) The treating psychiatrist must, as soon as practicable, file the transfer order and give a copy to the involuntary patient.
- (5) The making of a transfer order under subsection (1) is an event to which Part 9 applies and the treating psychiatrist is the person responsible under that Part for notification of that event.

**67. Making transport order**

- (1) A psychiatrist may make a transport order in respect of an inpatient who is under a transfer order made under section 66(1).
- (2) The psychiatrist cannot make the transport order unless satisfied that no other safe means of taking the involuntary inpatient to the authorised hospital is reasonably available.
- (3) Part 10 applies in relation to the transport order.

**68. Confirmation of inpatient treatment order**

- (1) This section applies if —
  - (a) the psychiatrist who conducted the examination for the purpose of making the inpatient treatment order and the involuntary inpatient were not in one another's physical presence when that examination was conducted; and
  - (b) since that examination was conducted, there has been no further examination of the involuntary inpatient conducted by a psychiatrist during which the psychiatrist and the inpatient were in one another's physical presence.
- (2) Within 24 hours after the involuntary inpatient is admitted by the authorised hospital in accordance with the transfer order, the inpatient treatment order must be confirmed by a psychiatrist at the authorised hospital.
- (3) The psychiatrist cannot confirm the inpatient treatment order without examining the involuntary inpatient.
- (4) Subdivision 6 applies in relation to the conduct of the examination.
- (5) The confirmation must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for the confirmation;

- (c) the name, qualifications and signature of the psychiatrist.
- (6) The inpatient treatment order ceases to be in force if it is not confirmed in accordance with subsection (2).
- (7) The release of a person because of subsection (6) is an event to which Part 9 applies and the person in charge of the authorised hospital is the person responsible under that Part for notification of that event.

**Subdivision 4 — Order for further examination at authorised hospital**

**69. Application of this Subdivision**

This Subdivision applies in relation to a person who is under an order made under section 61(1)(c) that the person be received into an authorised hospital, and detained there, to enable an examination to be conducted by a psychiatrist.

**70. Detention at authorised hospital**

- (1) The person —
  - (a) must be received into the authorised hospital unless subsection (2) applies; and
  - (b) can be detained there, to enable the examination to be conducted, for up to 24 hours from the time when the person is received.
- (2) The person cannot be received into the authorised hospital more than 72 hours after the time when the order under section 61(1)(c) is made.
- (3) The person in charge of the authorised hospital must ensure that the person has the opportunity and the means to contact any carer, close family member or other personal support person of the person, a health professional who is currently providing the person with treatment and the Chief Mental Health Advocate —
  - (a) as soon as practicable after the person is received into the authorised hospital; and



- (b) at all reasonable times while the person is detained there under subsection (1)(b).
- (4) The person cannot continue to be detained if, by the end of the 24-hour period referred to in subsection (1)(b) —
  - (a) the examination has not been completed; or
  - (b) the examination has been completed but an order has not been made under section 72(1) in respect of the person.
- (5) Reception at an authorised hospital under this section is not admission by the hospital under this Act.

**71. Conducting examination at authorised hospital**

Subdivision 6 applies in relation to the conduct of the examination.

**72. What psychiatrist must do on completing examination**

- (1) On completing the examination, the psychiatrist must make one of these orders —
  - (a) an inpatient treatment order authorising the person's detention at the authorised hospital for the period specified in the order in accordance with section 87(a) or (b);
  - (b) a community treatment order in respect of the person;
  - (c) an order that the person cannot continue to be detained.
- (2) The order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) if it is made under subsection (1)(a) or (b) — the reasons for making it;
  - (c) the name, qualifications and signature of the psychiatrist.

- (3) The psychiatrist must, as soon as practicable, file the order and give a copy to the person.

Notes for this section:

1. A community treatment order is automatically revoked under section 116(b) if a psychiatrist makes an inpatient treatment order under section 72(1)(a) in respect of the involuntary community patient.
2. A community treatment order is no longer suspended if a psychiatrist makes an order under section 72(1)(c) that the involuntary community patient cannot continue to be detained.

### **Subdivision 5 — Examination without referral**

#### **73. Application of this Subdivision**

This Subdivision applies if a person is examined by a psychiatrist in circumstances other than —

- (a) because of a referral made under section 26(2) or (3)(a) or 36(2); or
- (b) because of an order made under section 55(1)(c) or 61(1)(c); or
- (c) under section 89(1) or 131(3) or (5)(a).

#### **74. Conducting examination**

Subdivision 6 applies in relation to the conduct of the examination.

#### **75. What psychiatrist may do on completing examination**

- (1) On completing the examination, the psychiatrist may make a community treatment order in respect of the person.
- (2) The order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for making it;
  - (c) the name, qualifications and signature of the psychiatrist.

- (3) The psychiatrist must, as soon as practicable, file the order and give a copy to the person.

**76. Confirmation of community treatment order**

- (1) Within 72 hours after the time when the community treatment order is made, it must be confirmed by —
  - (a) another psychiatrist; or
  - (b) if another psychiatrist is not reasonably available —
    - (i) another medical practitioner; or
    - (ii) an authorised mental health practitioner.
- (2) The confirmation must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for the confirmation;
  - (c) the name, qualifications and signature of the practitioner confirming the community treatment order.
- (3) The supervising psychiatrist —
  - (a) must inform the person about whether or not the order has been confirmed; and
  - (b) if it has been confirmed — file the confirmation and give a copy to the person.
- (4) The order ceases to be in force if it is not confirmed in accordance with subsection (1).

**Subdivision 6 — Conduct of examination**

**77. Application of this Subdivision**

This Subdivision applies in relation to an examination conducted in any of these circumstances —

- (a) by a psychiatrist because of a referral made under section 26(2) or (3)(a) or 36(2);

- (b) by a psychiatrist because of an order made under section 55(1)(c) or 61(1)(c) for the detention of a person at an authorised hospital to enable the person to be examined;
- (c) by a psychiatrist for the purpose of confirming an inpatient treatment order, as required by section 68(3) or 124(3);
- (d) by a psychiatrist in circumstances in which Subdivision 5 applies;
- (e) by a supervising psychiatrist before the review period for a community treatment order ends, as required by section 118(2)(a);
- (f) by a medical practitioner or authorised mental health practitioner before the review period for a community treatment order ends, as required by section 118(2)(b);
- (g) by a supervising psychiatrist for the purpose of making an inpatient treatment order, as required by section 120(3), 123(2) or 131(3);
- (h) by a supervising psychiatrist for the purpose of making an order revoking a community treatment order, as permitted by section 120(4)(a), 123(3)(a) or 131(5)(a);
- (i) by a supervising psychiatrist for the purpose of making a continuation order, as required by section 121(2);
- (j) by a psychiatrist for the purpose of giving a further opinion, as required by section 182(6) as applied by section 121(6) or as required by section 182(6).

**78. Referring psychiatrist cannot conduct examination**

An examination referred to section 77(a) cannot be conducted by the psychiatrist who made the referral under section 26(2) or (3)(a) or 36(2).

**79. ~~1M~~ How examination must be conducted**

- (1) An examination must be conducted in the least restrictive way, and the least restrictive environment, practicable.
- (2) For an examination referred to in section 77(a), (b), (d), (f) or (g), unless subsection (3) applies, the psychiatrist or practitioner and the person being examined must be in one another's physical presence.
- (3) The psychiatrist or practitioner may conduct the examination using audiovisual communication if —
  - (a) the person being examined is at a place that is not an authorised hospital and is outside a metropolitan area; and
  - (b) it is not practicable for the psychiatrist or practitioner to comply with subsection (2); and
  - (c) a health professional and the person being examined are in one another's physical presence.
- (4) For an examination referred to in section 77(c) or in section 77(e) if it is also an examination required by section 120(3), the psychiatrist and the person being examined must be in one another's physical presence and the examination cannot be conducted using audiovisual communication.
- (5) For an examination referred to in section 77(e) unless it is also an examination required by section 120(3) or in section 77(h), (i) or (j) —
  - (a) the psychiatrist and the person being examined need not be in one another's physical presence; but
  - (b) if they are not — each of them must be able to see and hear the other while the other is speaking (for example, by being able to see one another through a window and hear one another using a telephone or to see and hear one another using audiovisual communication).

- (6) For the purposes of this Act, an examination conducted using audiovisual communication is taken to be conducted, and any order made as a result is taken to be made, at the place where the person examined is when the examination is conducted.

~~*[Section 79: modified by the COVID-19 Response and Economic Recovery Omnibus Act 2020 (No. 34 of 2020) Part 4 Division 2. See endnote 1M.]*~~

**80. Information to which examiner may have regard**

- (1) The psychiatrist or practitioner may have regard to any information about the person being examined that is obtained by the psychiatrist or practitioner from one or more of the following —
- (a) the person, including information obtained by observing the person and asking the person questions;
  - (b) if the person is of Aboriginal or Torres Strait Islander descent —
    - (i) an Aboriginal or Torres Strait Islander mental health worker; or
    - (ii) a significant member of the person's community, including an elder or traditional healer;
  - (c) any other person;
  - (d) the person's medical record.
- (2) The psychiatrist or practitioner cannot conclude that the person being examined is in need of, is still in need of, or is no longer in need of, an involuntary treatment order solely on the basis of information referred to in one or more of subsection (1)(b)(i) or (ii), (c) or (d).

**81. Examination of person of Aboriginal or Torres Strait Islander descent**

To the extent that it is practicable and appropriate to do so, the examination of a person who is of Aboriginal or Torres Strait Islander descent must be conducted in collaboration with —

- (a) Aboriginal or Torres Strait Islander mental health workers; and
- (b) significant members of the person's community, including elders and traditional healers.

## **Part 7 — Detention for examination or treatment**

### **Division 1 — Preliminary matters**

#### **82. Application of this Part**

This Part does not apply in relation to a mentally impaired accused who is being detained at an authorised hospital under the MIA Act, whether or not the mentally impaired accused was being detained at the authorised hospital under this Act immediately before the mentally impaired accused was detained at the authorised hospital under the MIA Act.

### **Division 2 — Detention at authorised hospital or other place for examination**

#### **83. Detention authorised**

- (1) This section applies in relation to any of these people —
- (a) a person who can be detained at an authorised hospital under section 34(3) because of an order for an assessment made under section 34(1);
  - (b) a person who can be detained at an authorised hospital under section 52(1)(b) because of a referral made under section 26(2);
  - (c) a person who can be detained at an authorised hospital under section 53(1) because of a referral made under section 36(2);
  - (d) a person who is under an order made under section 55(1)(c) authorising the continuation of the person's detention at an authorised hospital to enable a further examination to be conducted;
  - (e) a person who can be detained at a place that is not an authorised hospital under section 58(1)(b) because of a referral made under section 26(3)(a);
  - (f) a person who is under an order made under section 59(2) authorising the continuation of the person's detention at



a place that is not an authorised hospital to enable an examination to be completed;

- (g) a person who is under an order made under section 61(1)(c) authorising the person's detention at an authorised hospital to enable an examination to be conducted.

(2) The referral or order authorises —

- (a) the person's reception at the authorised hospital or other place specified in the referral or order; and
- (b) the person's detention there for the period authorised by this Act for which the person can be detained because of the referral or under the order; and
- (c) a person who is prescribed by the regulations for this paragraph to exercise the powers under section 172 for the purpose of detaining the person there.

Notes for this section:

1. The period for which a person can be detained under section 34(3) is authorised under that provision.
2. The period for which a person can be detained under section 52(1)(b), 53(1) or 58(1)(b), or under an order made under section 55(1)(c), 59(2) or 61(1)(c), is authorised under Part 6 Division 3.

### **Division 3 — Detention at hospital under inpatient treatment order**

#### **84. Application of this Division**

This Division applies in relation to an involuntary inpatient who is under an inpatient treatment order authorising the involuntary inpatient's detention at an authorised hospital or a general hospital.

Notes for this section:

1. An inpatient treatment order authorising a person's detention at an authorised hospital can be made under section 55(1)(a), 56(1)(a)(i), 72(1)(a), 120(2)(a), 123(1)(a) or 131(2)(a).
2. An inpatient treatment order authorising a person's detention at a general hospital can be made under section 61(1)(a) or 131(2)(a).

**85. Terms used**

In this Division —

**continuation order** means a continuation order made under section 89(2)(a);

**detention period**, for an inpatient treatment order, means —

- (a) the period for which the involuntary inpatient can be detained under the order as specified in the order in accordance with section 87(a) or (b); or
- (b) the further period for which the involuntary inpatient can be detained under the order as specified in a continuation order.

**86. Detention authorised**

An inpatient treatment order authorises —

- (a) the involuntary inpatient's admission as an inpatient by —
  - (i) the hospital specified in the order; and
  - (ii) any authorised hospital to which the patient is transferred under section 66(1) or 91(2);
- and
- (b) the involuntary inpatient's detention there for the period authorised by this Act for which the inpatient can be detained under this Act; and
- (c) a person who is prescribed by the regulations for this paragraph to exercise the powers under section 172 for the purpose of detaining the involuntary inpatient there.

**87. Period that must be specified in inpatient treatment order**

The period specified in an inpatient treatment order as the period for which the involuntary inpatient can be detained under the order cannot exceed —

- (a) if, when the order is made, the involuntary inpatient is an adult — 21 days from the day on which the order is made; or

- (b) if, when the order is made, the involuntary inpatient is a child — 14 days from the day on which the order is made.

**88. Period for which detention is authorised**

An inpatient treatment order authorises the involuntary inpatient's detention until the first of these things occurs —

- (a) a psychiatrist makes an order under section 89(2)(b) or 90(1)(a) in respect of the involuntary inpatient;
- (b) a psychiatrist revokes the order under section 89(2)(c) or 90(1)(b);
- (c) the expiry of the detention period unless the detention of the involuntary inpatient under the inpatient treatment order has been continued under a continuation order.

**89. Examination before end of each detention period**

- (1) The treating psychiatrist must ensure that, on or within 7 days before the day on which the detention period for an inpatient treatment order ends, the involuntary inpatient is examined by a psychiatrist.
- (2) On completing the examination, the psychiatrist who conducted it must make one of these orders —
  - (a) if satisfied, having regard to the criteria specified in section 25, that the involuntary inpatient is still in need of the inpatient treatment order — a continuation order continuing the inpatient treatment order from the end of the detention period for the further detention period that is specified in the continuation order in accordance with subsection (3)(a) or (b);
  - (b) if satisfied, having regard to the criteria specified in section 25, that the involuntary inpatient is no longer in need of the inpatient treatment order but is in need of a community treatment order — a community treatment order in respect of the inpatient;

- (c) if satisfied, having regard to the criteria in section 25, that the involuntary inpatient is no longer in need of an involuntary treatment order — an order revoking the inpatient treatment order.
- (3) For subsection (2)(a), the detention period specified in a continuation order cannot exceed —
  - (a) if, when the continuation order is made, the involuntary inpatient is an adult — 3 months; or
  - (b) if, when the continuation order is made, the involuntary inpatient is a child — 28 days.
- (4) An order made under subsection (2) must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) if it is made under subsection (2)(a) or (b) — the reasons for making it;
  - (c) the name, qualifications and signature of the psychiatrist making it.
- (5) A psychiatrist who makes an order under subsection (2) must, as soon as practicable, file it and give a copy to the involuntary inpatient.
- (6) The release of a person because of an order made under subsection (2)(b) or (c) is an event to which Part 9 applies and the person in charge of the hospital is the person responsible under that Part for notification of that event.

**90. Changing involuntary inpatient's status**

- (1) A psychiatrist may make either of these orders during the detention period —
  - (a) if satisfied, having regard to the criteria specified in section 25, that the involuntary inpatient is no longer in need of the inpatient treatment order but is in need of a community treatment order — a community treatment order in respect of the inpatient;

- (b) if satisfied, having regard to the criteria specified in section 25, that the involuntary inpatient is no longer in need of an involuntary treatment order — an order revoking the inpatient treatment order.
- (2) The psychiatrist may make the order without examining the involuntary inpatient.
- (3) The order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) if it is made under subsection (1)(a) — the reasons for making it;
  - (c) the name, qualifications and signature of the psychiatrist.
- (4) The psychiatrist must, as soon as practicable, file the order and give a copy to the involuntary inpatient.
- (5) The making of an order under subsection (1) is an event to which Part 9 applies and the psychiatrist who makes the order is the person responsible under that Part for notification of that event.

**91. Transfer between authorised hospitals**

- (1) This section applies in relation to an involuntary inpatient who is detained at an authorised hospital.
- (2) The treating psychiatrist or, if the treating psychiatrist is not reasonably available, another psychiatrist at the authorised hospital may make an order (a **transfer order**) authorising the involuntary inpatient's transfer from the authorised hospital to another authorised hospital specified in the order.
- (3) The transfer order must be in the approved form and must include the following —
  - (a) the involuntary inpatient's name;

- (b) the authorised hospital from which the involuntary inpatient is to be transferred;
  - (c) the authorised hospital to which the involuntary inpatient is to be transferred;
  - (d) the date and time when the order is made;
  - (e) the reasons for the transfer;
  - (f) the name, qualifications and signature of the psychiatrist making it.
- (4) A psychiatrist who makes a transfer order must, as soon as practicable, file it and give a copy to the involuntary inpatient.
- (5) The making of a transfer order under subsection (2) is an event to which Part 9 applies and the psychiatrist who makes the order is the person responsible under that Part for notification of that event.

Note for this section:

Section 66 applies in relation to the transfer of an involuntary inpatient from a general hospital to an authorised hospital.

**92. Making transport order**

- (1) A psychiatrist may make a transport order in respect of an inpatient who is under a transfer order made under section 91(2).
- (2) The psychiatrist cannot make the transport order unless satisfied that no other safe means of taking the involuntary inpatient to the authorised hospital is reasonably available.
- (3) Part 10 applies in relation to the transport order.

**93. Involuntary inpatient to be advised of expiry**

- (1) This section applies if an inpatient treatment order expires.
- (2) The treating psychiatrist must advise the involuntary inpatient in writing of the expiry and its consequences.
- (3) The treating psychiatrist must file a copy of the advice.

- (4) The expiry of an inpatient treatment order is an event to which Part 9 applies and the person in charge of the hospital at which the involuntary inpatient was being detained is the person responsible under that Part for notification of that event.

#### **Division 4 — Release from hospital or other place**

##### **94. Application of this Division**

This Division applies in relation to a person referred to in paragraph (a), (b) or (c) who is detained for a reason referred to in that provision —

- (a) a person who is detained under Part 6 Division 2 or 3 to enable the person —
  - (i) to be taken to an authorised hospital or other place; or
  - (ii) to be assessed or examined;
- or
- (b) a person who is detained under an inpatient treatment order; or
- (c) an involuntary community patient who is detained under section 130(2)(b).

##### **95. Person must be allowed to leave**

- (1) This section applies whenever a person cannot continue to be detained at a hospital or other place for a reason referred to in section 94.
- (2) A person in charge of the hospital or other place must ensure that, as soon as practicable —
  - (a) the person is advised in writing by a medical practitioner or mental health practitioner that the person cannot continue to be detained for that reason; or
  - (b) if the person leaves the hospital or other place before a medical practitioner or mental health practitioner can comply with paragraph (a) — a record of the time when the person left the hospital or other place is filed.

- (3) The person must be allowed to leave the hospital or other place unless the person's detention at the hospital or other place is authorised —
  - (a) for another reason referred to in section 94; or
  - (b) under section 96.
- (4) The practitioner who provides the advice referred to in subsection (2)(a) must file a copy of the advice.

**96. Delivery into custody under another law**

A person who cannot continue to be detained for a reason referred to in section 94 but is under an order made under the law of the Commonwealth or a State or Territory requiring the person to be kept in custody is not allowed to leave the hospital or other place until the person has been delivered into that custody.

**Division 5 — Absence without leave from hospital or other place**

**97. Persons who are absent without leave**

- (1) For the purposes of this Division, a person is absent without leave from a hospital or other place if —
  - (a) in the case of a person who is detained under Part 6 Division 2 or 3 to enable the person —
    - (i) to be taken to an authorised hospital or other place; or
    - (ii) to be assessed or examined,the person leaves the hospital or other place where the person is detained; or
  - (b) in the case of a person who is under an inpatient treatment order — the person is absent without leave as described in subsection (2); or
  - (c) in the case of an involuntary community patient who is detained under section 130(2)(b) — the person leaves the place where the patient is detained.



- (2) For subsection (1)(b), a person who is under an inpatient treatment order is absent without leave —
- (a) if the person is away from the hospital where the person is detained under the order without being granted leave of absence under section 105(1); or
  - (b) if, on the cancellation under section 110(1) of leave of absence granted to the person under section 105(1) or on the expiry of such leave, the person does not return to either of these hospitals —
    - (i) the hospital from which the person was granted the leave of absence;
    - (ii) the hospital to which the person's transfer has been ordered under section 66(1) or 91(2).
- (3) The absence of a person without leave from a hospital or other place is an event to which Part 9 applies and the person in charge of the hospital or other place is the person responsible under that Part for notification of that event.

**98. Making apprehension and return order**

- (1) The person in charge of a hospital or other place or a medical practitioner may make an order (an ***apprehension and return order***) in respect of a person who is absent without leave from the hospital or other place if satisfied that no other safe means of ensuring that the person returns to the hospital or other place is reasonably available.
- (2) An apprehension and return order must be in the approved form and must include the following —
- (a) the name of the person who is absent without leave;
  - (b) the hospital or other place from which the person is absent without leave;
  - (c) the hospital or other place to which the person must be taken if apprehended;
  - (d) the date when it is made;

- (e) the date when it will expire;
  - (f) the reasons for making it;
  - (g) the name, qualifications and signature of the person making it.
- (3) A person who makes an apprehension and return order must, as soon as practicable, file it and give a copy to the police officer or person prescribed who will carry out the order.

**99. Operation of apprehension and return order**

An apprehension and return order made in respect of a person authorises a police officer or a person prescribed by the regulations for this section to do these things —

- (a) apprehend the person and, for that purpose, exercise the powers under sections 159(2) and 172;
- (b) if the person is apprehended — take the person to the hospital or other place specified in the apprehension and return order under section 98(2)(c) as soon as practicable and, in any event, before the order expires;
- (c) for the purpose of taking the person to that hospital or other place, detain the person until the first of these things occurs —
  - (i) the person is received into the hospital or other place;
  - (ii) the apprehension and return order expires.

**100. Period of apprehension and return order**

- (1) An apprehension and return order remains in force for 14 days from the day on which the order is made.
- (2) An apprehension and return order cannot be extended.

**101. Revocation of apprehension and return order**

- (1) The person in charge of a hospital or other place from which a person is absent without leave or a medical practitioner may

make an order (a **revocation order**) revoking an apprehension and return order made in respect of the person if satisfied that the apprehension and return order is no longer needed.

- (2) The revocation order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for the revocation;
  - (c) the name, qualifications and signature of the person making it.
- (3) A person who makes a revocation order must, as soon as practicable —
  - (a) advise the police officer or person prescribed responsible for carrying out the apprehension and return order of the revocation; and
  - (b) file the order and a record of the advice.

## **102. Return of person to place where apprehended**

- (1) Subsection (2) applies if, after a person is apprehended under an apprehension and return order but before the person is received into the hospital or other place specified in the order under section 98(2)(c), the order is revoked under section 101(1) or expires.
- (2) The police officer or person prescribed who was responsible for carrying out the apprehension and return order must take reasonable steps to ensure the person is taken, at the person's election —
  - (a) back to the place where the person was apprehended; or
  - (b) to a place reasonably nominated by the person.
- (3) Subsection (2) does not require the person to be taken to a place if to do so poses a serious risk to the safety of the person or another person.

**Division 6 — Leave of absence from detention at hospital under inpatient treatment order**

**Subdivision 1 — Preliminary matters**

**103. Application of this Division**

This Division applies in relation to an involuntary inpatient who is under an inpatient treatment order authorising the involuntary inpatient's detention at an authorised hospital or a general hospital.

Notes for this section:

1. An inpatient treatment order authorising a person's detention at an authorised hospital can be made under section 55(1)(a), 56(1)(a)(i), 72(1)(a), 120(2)(a), 123(1)(a) or 131(2)(a).
2. An inpatient treatment order authorising a person's detention at a general hospital can be made under section 61(1)(a) or 131(2)(a).

**104. Term used: leave of absence**

In this Division —

*leave of absence* —

- (a) means leave of absence granted under section 105(1); and
- (b) includes leave of absence as extended or varied under section 106(1).

**Subdivision 2 — Grant, extension, variation or cancellation of leave**

**105. Granting leave**

- (1) A psychiatrist may make an order granting an involuntary inpatient leave of absence from a hospital if satisfied that granting the leave of absence —
  - (a) will —
    - (i) be likely to benefit the involuntary inpatient's recovery from mental illness or to benefit the inpatient's mental health in some other way; or

- (ii) enable the involuntary inpatient to obtain medical or surgical treatment or be likely to benefit the inpatient's physical health in some other way;
  - and
  - (b) is not inconsistent with the involuntary inpatient's need to be provided with treatment for a reason specified in section 25(1)(b).
- (2) The psychiatrist cannot make the order unless the psychiatrist has consulted each of these people about the matters specified in subsection (3) —
- (a) if the involuntary inpatient has an enduring guardian or guardian — the enduring guardian or guardian;
  - (b) if the involuntary inpatient is a child — the child's parent or guardian;
  - (c) if the involuntary inpatient has a nominated person — the nominated person unless the nominated person is not entitled, for the reason referred to in section 269(1), to be consulted;
  - (d) if the involuntary inpatient has a carer — the carer unless the carer is not entitled, for the reason referred to in section 288(2) or 292(1), to be consulted;
  - (e) if the involuntary inpatient has a close family member — the close family member unless the close family member is not entitled, for the reason referred to in section 288(2) or 292(1), to be consulted.
- (3) For subsection (2), these matters are specified —
- (a) whether or not to make the order; and
  - (b) what period and conditions would be appropriate to specify in the order if it were to be made.
- (4) Without limiting a requirement under subsection (2)(a) to consult the involuntary inpatient's enduring guardian or guardian, or under subsection (2)(b) to consult the involuntary

inpatient's parent or guardian, about the matters referred to in subsection (3)(a) and (b), the requirement is taken to be complied with if the psychiatrist ensures that reasonable efforts continue to be made to consult the person about those matters until the first of these things occurs —

- (a) the person is consulted about those matters;
  - (b) it is reasonable for the psychiatrist to conclude that the person cannot be consulted about those matters.
- (5) Part 16 Division 3 Subdivision 2 applies in relation to a requirement under subsection (2)(c) to consult the involuntary inpatient's nominated person about the matters referred to in subsection (3)(a) and (b).
- (6) Part 17 Division 2 applies in relation to a requirement under subsection (2)(d) to consult a carer of the involuntary inpatient, or under subsection (2)(e) to consult a close family member of the involuntary inpatient, about the matters referred to in subsection (3)(a) and (b).
- (7) The psychiatrist must ensure that the following are filed —
  - (a) if a person referred to in subsection (2)(a) to (e) was consulted — a record of the consultation; or
  - (b) if a person referred to in subsection (2)(a) to (e) could not be consulted — a record of the efforts made to do so.
- (8) The psychiatrist cannot make the order unless the psychiatrist has considered whether it would be more appropriate to make an order under section 90(1) in respect of the involuntary inpatient.
- (9) The order authorises the involuntary inpatient's absence from the hospital for the period, and subject to the conditions, the psychiatrist considers appropriate and specifies in the order.

- (10) The conditions imposed under subsection (9) may include conditions about the involuntary inpatient doing any of these things —
- (a) residing at a specified place;
  - (b) receiving specified treatment;
  - (c) attending at a specified place, and remaining there as specified in the order, to enable the involuntary inpatient to be provided with specified treatment.
- (11) The order must be in the approved form and must include the following —
- (a) the date and time when it is made;
  - (b) the period and conditions of the leave of absence;
  - (c) the reasons for granting the leave of absence;
  - (d) the name, qualifications and signature of the psychiatrist.
- (12) The psychiatrist must, as soon as practicable, file the order and give a copy to the involuntary inpatient.
- (13) The making of an order under subsection (1) is an event to which Part 9 applies and the psychiatrist who makes the order is the person responsible under that Part for notification of that event.

**106. Extending or varying leave granted**

- (1) A psychiatrist may make an order —
- (a) extending an involuntary inpatient's leave of absence; or
  - (b) varying the conditions subject to which an involuntary inpatient's leave of absence is granted.
- (2) The order must be in the approved form and must include the following —
- (a) the date and time when it is made;

- (b) the period of the extension or the variation of the conditions;
  - (c) the reasons for the extension or variation;
  - (d) the name, qualifications and signature of the psychiatrist.
- (3) The psychiatrist must, as soon as practicable, file the order and give a copy to the involuntary inpatient.
- (4) The making of an order under subsection (1) is an event to which Part 9 applies and the psychiatrist who makes the order is the person responsible under that Part for notification of that event.

**107. Involuntary inpatient must comply with conditions of leave**

An involuntary inpatient who is on leave of absence from a hospital must comply with the conditions to which the leave of absence is subject.

**108. Monitoring involuntary inpatient on leave**

- (1) This section applies if an involuntary inpatient is away from a hospital on leave of absence for more than 21 consecutive days.
- (2) The treating psychiatrist must consider whether it would be appropriate to make an order under section 90(1) in respect of the inpatient.
- (3) For the purpose of subsection (2), the treating psychiatrist may make any inquiries the psychiatrist considers appropriate.

**109. Changing involuntary inpatient's status while inpatient on leave**

- (1) This section applies if, while an involuntary inpatient is away from a hospital on leave of absence, the treating psychiatrist is given a written opinion from another medical practitioner or a mental health practitioner to the effect that the involuntary inpatient is no longer in need of an inpatient treatment order.



- (2) The treating psychiatrist must file the opinion as soon as practicable, whether or not the treating psychiatrist acts under subsection (3) on the basis of the opinion.
- (3) The treating psychiatrist may make an order under section 90(1) in respect of the involuntary inpatient on the basis of the opinion and without examining the inpatient.

**110. Cancelling leave**

- (1) This section applies if, while an involuntary inpatient is away from a hospital on leave of absence, a psychiatrist forms the reasonable belief that it is inappropriate for the inpatient to continue to be away from the hospital.
- (2) The psychiatrist may make an order cancelling the leave of absence.
- (3) The order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for that belief;
  - (c) the name, qualifications and signature of the psychiatrist.
- (4) The psychiatrist must, as soon as practicable —
  - (a) orally advise the involuntary patient that the leave of absence has been cancelled; and
  - (b) file the order and give a copy to the involuntary inpatient.
- (5) The making of an order under subsection (2) is an event to which Part 9 applies and the psychiatrist who makes the order is the person responsible under that Part for notification of that event.

**Subdivision 3 — Transport to and from hospital**

**111. Application of this Subdivision**

This Subdivision applies in relation to an involuntary inpatient —

- (a) who is granted leave of absence to enable the involuntary inpatient to obtain medical or surgical treatment at a general hospital; or
- (b) who, because of the cancellation under section 110(1) of leave of absence granted to the involuntary patient for a purpose referred to in paragraph (a) or because of the expiry of such leave, must return to —
  - (i) the hospital from which the leave was granted; or
  - (ii) an authorised hospital to which the involuntary inpatient's transfer has been ordered under section 66(1) or 91(2).

**112. Making transport order**

- (1) A psychiatrist may make a transport order in respect of the involuntary inpatient.
- (2) The psychiatrist cannot make the transport order unless satisfied that no other safe means of taking the involuntary inpatient to the hospital is reasonably available.
- (3) Part 10 applies in relation to the transport order.

## **Part 8 — Community treatment orders**

### **Division 1 — Preliminary matters**

#### **113. Terms used**

In this Part —

*community treatment order* includes a community treatment order as varied under section 121(1), 122(1), 135(1)(a) or (2)(a) or 137(a);

*continuation order* means a continuation order made under section 121(1);

*involuntary community patient*, in relation to a community treatment order, means the involuntary community patient who is under the order;

*supervising psychiatrist*, in relation to a community treatment order, means the psychiatrist who is the supervising psychiatrist under the order;

*treating practitioner*, in relation to a community treatment order, means the medical practitioner or mental health practitioner who is the treating practitioner under the order;

*treatment period*, for a community treatment order, means —

- (a) the treatment period for which the order remains in force as specified in the order under section 115(2); or
- (b) the further treatment period for which the order remains in force as specified in a continuation order.

### **Division 2 — Making order**

#### **114. Things psychiatrist must be satisfied of before making order**

A psychiatrist cannot make a community treatment order in respect of a person unless satisfied of these things —

- (a) treatment of the person in the community would not be inconsistent with the person's need to be provided with treatment for a reason specified in section 25(2)(b);

- (b) suitable arrangements can be made for the treatment and care of the person in the community, including —
  - (i) arrangements for a psychiatrist to be the supervising psychiatrist under the order; and
  - (ii) arrangements for a medical practitioner or mental health practitioner to be the treating practitioner under the order.

Note for this section:

The supervising psychiatrist can also be the treating practitioner (see section 136(2)(b)).

### **115. Terms of order**

- (1) The terms of a community treatment order must include these things —
  - (a) the name of the psychiatrist who is the supervising psychiatrist under the order;
  - (b) a requirement that the involuntary community patient comply with all of the supervising psychiatrist's directions to the patient about treatment to be provided to the patient under the order;
  - (c) the name of the medical practitioner or mental health practitioner who is the treating practitioner under the order;
  - (d) the date and time when the order is made;
  - (e) the date and time when the order comes into force, which must be within 7 days after the date and time when the order is made;
  - (f) the treatment period for which the order remains in force as specified under subsection (2);
  - (g) a requirement that the involuntary community patient notify the supervising psychiatrist or treating practitioner of any change in the patient's residential address;

- (h) a requirement that the involuntary community patient notify the supervising psychiatrist or treating practitioner of any interstate or overseas travel by the patient —
  - (i) at least 7 days before the day of the patient's departure; or
  - (ii) if the patient cannot comply with subparagraph (i) because the patient needs to travel urgently — as soon as it is practicable for the patient to give notice of the travel.
- (2) For subsection (1)(f), the treatment period specified in a community treatment order when it is made cannot exceed 3 months from the day on which it is made.

Notes for this section:

1. The supervising psychiatrist can also be the treating practitioner (see section 136(2)(b)).
2. The terms of a community treatment order may require the involuntary community patient to be provided with treatment by a mental health service in another State or a Territory (see section 559).

### **Division 3 — Operation of order**

#### **116. Duration of order**

A community treatment order remains in force until the first of these things occurs —

- (a) the supervising psychiatrist makes an inpatient treatment order under section 120(2)(a), 123(1)(a) or 131(2)(a) in respect of the involuntary community patient;
- (b) a psychiatrist makes an inpatient treatment order under any other provision of this Act in respect of the involuntary community patient;
- (c) the supervising psychiatrist revokes the order under section 120(2)(b) or 131(2)(b);

- (d) the expiry of the treatment period for the order unless the order has been continued under a continuation order.

Notes for this section:

1. In addition to the provisions referred to in section 116(a), an inpatient treatment order authorising a person's detention at an authorised hospital can be made under section 55(1)(a), 56(1)(a)(i) or 72(1)(a) or at a general hospital under section 61(1)(a).
2. A community treatment order may be suspended under section 30 or 33.

**117. Advice about when and where treatment to be provided**

- (1) The supervising psychiatrist must ensure that the involuntary community patient is advised of when and where treatment is to be provided to the patient under the community treatment order.
- (2) Without limiting subsection (1), the supervising psychiatrist must ensure that, on or within 14 days after the day on which the community treatment order is made, the involuntary community patient is advised in writing of the date, time and place of the involuntary community patient's first appointment (whether with the treating practitioner or otherwise) for the provision of treatment under the order.

**118. Monthly examination of patient**

- (1) In this section —  
*first treatment period*, for a community treatment order, means the treatment period for which the order remains in force as specified in the order under section 115(2);  
*review period*, for a community treatment order, means —
  - (a) the period of one month beginning on the day on which the first treatment period for the order begins; or
  - (b) the period of one month beginning on the day after the day on which the involuntary community patient was last examined under subsection (2) for the purposes of the order.

- (2) The involuntary community patient must be examined, on or within 14 days before the day on which a review period for a community treatment order ends, by —
  - (a) the supervising psychiatrist; or
  - (b) another medical practitioner or a mental health practitioner —
    - (i) if the supervising psychiatrist is unavailable; or
    - (ii) if requested by the supervising psychiatrist under section 119(1).
- (3) However, the involuntary community patient cannot be examined by a practitioner under subsection (2)(b) if more than 2 months has elapsed since the day on which the patient was last examined under subsection (2)(a) by the supervising psychiatrist.
- (4) Part 6 Division 3 Subdivision 6 applies in relation to the conduct of an examination under subsection (2).
- (5) A practitioner who examines the involuntary community patient under subsection (2)(b) must provide the supervising psychiatrist with a written report of the examination that includes a recommendation about whether or not, having regard to the criteria specified in section 25, the patient is still in need of an involuntary treatment order.
- (6) The supervising psychiatrist must file the following —
  - (a) a record of each examination of the involuntary community patient that the supervising psychiatrist conducts under subsection (2)(a);
  - (b) each report of an examination of the involuntary community patient provided to the supervising psychiatrist under subsection (5).

**119. Supervising psychiatrist may request practitioner to examine involuntary community patient**

- (1) For the purpose of section 118(2)(b)(ii), the supervising psychiatrist may request another medical practitioner or a

mental health practitioner to examine the involuntary community patient.

- (2) The request must be in the approved form and may specify requirements for carrying out the examination or preparing the report or both.

**120. What supervising psychiatrist may do after examination**

- (1) This section applies —
  - (a) on completion of the examination of the involuntary community patient by the supervising psychiatrist under section 118(2)(a); or
  - (b) on provision of a report about the involuntary community patient to the supervising psychiatrist under section 118(5).
- (2) The supervising psychiatrist must consider whether or not the involuntary community patient is still in need of an involuntary treatment order and may make either of these orders —
  - (a) if satisfied, having regard to the criteria specified in section 25, that the involuntary community patient is still in need of an involuntary treatment order but not satisfied of the things referred to in section 114(a) and (b) — an inpatient treatment order authorising the patient's detention at the authorised hospital specified in the order for the period specified in the order in accordance with section 87(a) or (b); or
  - (b) if satisfied, having regard to the criteria specified in section 25, that the involuntary community patient is no longer in need of an involuntary treatment order — an order revoking the community treatment order.
- (3) The supervising psychiatrist cannot make an inpatient treatment order without examining the involuntary community patient in accordance with Part 6 Division 3 Subdivision 6, which examination can be the examination conducted under section 118(2)(a).



- (4) The supervising psychiatrist can make an order revoking the community treatment order —
  - (a) after examining the involuntary community patient in accordance with Part 6 Division 3 Subdivision 6; or
  - (b) without examining the involuntary community patient but on the basis of a report provided to the psychiatrist under section 118(5).
- (5) An order made under subsection (2) must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) if it is made under subsection (2)(a) — the reasons for making it;
  - (c) the name, qualifications and signature of the supervising psychiatrist making it.
- (6) The supervising psychiatrist must, as soon as practicable, file the order and give a copy to the involuntary community patient.
- (7) The making of an order under subsection (2) is an event to which Part 9 applies and the supervising psychiatrist is the person responsible under that Part for notification of that event.

Note for this section:

A community treatment order is automatically revoked under section 116(a) if a psychiatrist makes an inpatient treatment order under section 120(2)(a), or under section 116(b) if a psychiatrist makes an inpatient treatment order under any other provision of this Act, in respect of the involuntary community patient.

## **121. Continuation order**

- (1) The supervising psychiatrist may, on or within 7 days before the day on which a treatment period ends, make an order (a ***continuation order***) continuing the community treatment order from the end of the treatment period for the further treatment period (not exceeding 3 months) that is specified in the continuation order.

- (2) The supervising psychiatrist cannot make the continuation order without examining the involuntary community patient in accordance with Part 6 Division 3 Subdivision 6.
- (3) The continuation order must be in the approved form and must include the following —
  - (a) the date when it is made;
  - (b) the treatment period for which the community treatment order is continued;
  - (c) the date when, because of the continuation, the community treatment order will expire;
  - (d) the reasons for the continuation;
  - (e) the name, qualifications and signature of the supervising psychiatrist.
- (4) The supervising psychiatrist must, as soon as practicable, file the continuation order and give a copy to the involuntary community patient.
- (5) The involuntary community patient may request in writing the supervising psychiatrist to obtain the opinion (a **further opinion**) of another psychiatrist about whether it is appropriate to have continued the community treatment order by making the continuation order (but not whether the length of the treatment period specified in the continuation order is appropriate).
- (6) Sections 182 and 184 apply (with the necessary changes) in relation to the further opinion.
- (7) The continuation order does not come into force or ceases to be in force, as the case requires, if the further opinion —
  - (a) is not obtained on or within 14 days after the day on which the involuntary community patient's request is received by the supervising psychiatrist; or
  - (b) does not confirm that it is appropriate to have continued the community treatment order.

- (8) Subsection (7) does not apply if the further opinion is not obtained within the 14-day period referred to in subsection (7)(a) because the involuntary community patient did not attend an examination to be conducted by the psychiatrist responsible for giving the further opinion.

**122. Varying order**

- (1) The supervising psychiatrist may, at any time while a community treatment order is in force, make an order varying the terms of the community treatment order in any way that is consistent with section 115 and the supervising psychiatrist considers appropriate.
- (2) The order must be in the approved form and must include the following —
- (a) the date and time when it is made;
  - (b) the variation;
  - (c) the reasons for the variation;
  - (d) the name, qualifications and signature of the supervising psychiatrist.
- (3) The supervising psychiatrist must, as soon as practicable, file the order and give a copy to the involuntary community patient.

**123. Making inpatient treatment order or revoking community treatment order**

- (1) The supervising psychiatrist may, at any time while a community treatment order is in force, make either of these orders —
- (a) if satisfied, having regard to the criteria specified in section 25(1), that the involuntary community patient is in need of an inpatient treatment order — an inpatient treatment order;
  - (b) if satisfied, having regard to the criteria specified in section 25, that the involuntary community patient is no

longer in need of an involuntary treatment order — an order revoking the community treatment order.

- (2) The supervising psychiatrist cannot make an inpatient treatment order without examining the involuntary community patient in accordance with Part 6 Division 3 Subdivision 6.
- (3) The supervising psychiatrist can make an order revoking the community treatment order —
  - (a) after examining the involuntary community patient in accordance with Part 6 Division 3 Subdivision 6; or
  - (b) without examining the involuntary community patient, but in doing so must have regard to the information specified in subsection (4).
- (4) The supervising psychiatrist must have regard to any information about the patient that is obtained by the psychiatrist —
  - (a) from either or both of —
    - (i) the involuntary community patient, including information obtained by observing the patient and asking the patient questions; and
    - (ii) any other person;
  - and
  - (b) from the involuntary community patient's medical record.
- (5) The supervising psychiatrist may make an order under subsection (1) without any of these things occurring —
  - (a) the involuntary community patient being in breach of the community treatment order under section 126;
  - (b) the supervising psychiatrist giving the involuntary community patient notice of a breach of the community treatment order under section 127(2)(b);
  - (c) the supervising psychiatrist making an order to attend under section 128(2).

- (6) An order made under subsection (1) must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) if it is made under subsection (1)(a) — the reasons for making it;
  - (c) the name, qualifications and signature of the supervising psychiatrist.
- (7) The supervising psychiatrist must, as soon as practicable, file the order and give a copy to the involuntary community patient.
- (8) The making of an order under subsection (1) is an event to which Part 9 applies and the supervising psychiatrist is the person responsible under that Part for notification of that event.

Note for this section:

A community treatment order is automatically revoked under section 116(a) if a psychiatrist makes an inpatient treatment order under section 123(1)(a) in respect of the involuntary community patient.

## **124. Confirmation of inpatient treatment order**

- (1) This section applies if —
  - (a) the supervising psychiatrist makes an inpatient treatment order under section 120(2)(a) or 123(1)(a) in respect of the involuntary community patient; and
  - (b) the supervising psychiatrist and the involuntary community patient were not in one another's physical presence when the examination for the purpose of making the inpatient treatment order was conducted; and
  - (c) since that examination was conducted, there has been no further examination of the involuntary community patient conducted by a psychiatrist during which the psychiatrist and the patient were in one another's physical presence.

- (2) Within 24 hours after the involuntary community patient is admitted by the authorised hospital in accordance with the inpatient treatment order, the order must be confirmed by a psychiatrist at the authorised hospital.
- (3) The psychiatrist cannot confirm the inpatient treatment order without examining the involuntary community patient.
- (4) Subdivision 6 applies in relation to the conduct of the examination.
- (5) The confirmation must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for the confirmation;
  - (c) the name, qualifications and signature of the psychiatrist.
- (6) The inpatient treatment order ceases to be in force if it is not confirmed in accordance with subsection (2).
- (7) The release of a person because of subsection (6) is an event to which Part 9 applies and the person in charge of the authorised hospital is the person responsible under that Part for notification of that event.

**125. Involuntary community patient to be advised of expiry**

- (1) This section applies if a community treatment order expires.
- (2) The supervising psychiatrist must advise the involuntary community patient in writing of the expiry and its consequences.
- (3) The supervising psychiatrist must file a copy of the advice.

Note for this Division:

Part 21 Division 3 confers jurisdiction on the Mental Health Tribunal to conduct reviews relating to involuntary patients.

### **Division 4 — Breach of order**

**126.      When involuntary community patient will be in breach**

An involuntary community patient breaches a community treatment order if —

- (a) the involuntary community patient has not complied with the order; and
- (b) all reasonable steps have been taken to obtain the involuntary community patient's compliance; and
- (c) the supervising psychiatrist reasonably believes that, despite the steps that have been taken, the non-compliance is continuing and that, if the non-compliance continues, there is —
  - (i) a significant risk to the health or safety of the involuntary community patient or to the safety of another person; or
  - (ii) a significant risk of serious harm to the involuntary community patient or to another person; or
  - (iii) a significant risk of the involuntary community patient suffering serious physical or mental deterioration.

**127.      What supervising psychiatrist must do if order breached**

- (1) This section applies if an involuntary community patient breaches a community treatment order.
- (2) The supervising psychiatrist must —
  - (a) record the breach; and
  - (b) give notice of the breach to the involuntary community patient.
- (3) The record of breach must be in the approved form and must include these things —
  - (a) details of the involuntary community patient's non-compliance;

- (b) the steps that have been taken to obtain the involuntary community patient's compliance;
  - (c) a statement that the supervising psychiatrist holds the belief referred to in section 126(c);
  - (d) the facts on which that belief is based;
  - (e) the reasons for that belief.
- (4) The notice of breach must be in the approved form and must include these things —
  - (a) details of the involuntary community patient's non-compliance;
  - (b) details of what the involuntary community patient must do to comply;
  - (c) a statement that continued non-compliance with the order may result in the involuntary community patient being required to attend a place to enable the patient to be provided with treatment.
- (5) The supervising psychiatrist must, as soon as practicable, file the record of breach and a copy of the notice of breach.

**128. Order to attend if non-compliance continues**

- (1) This section applies if, having given the involuntary community patient notice of the breach under section 127(2)(b), the supervising psychiatrist is not satisfied that the patient is complying with the community treatment order.
- (2) The supervising psychiatrist may make an order (an ***order to attend***) requiring the involuntary community patient to attend at the time and place specified in the order to be provided with treatment.
- (3) The order to attend must include a warning that, if the involuntary community patient does not comply with the order, a transport order authorising the patient's apprehension and transport to the place specified in the order to attend may be made.



- (4) The order to attend must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for making it;
  - (c) the time and place referred to in subsection (2);
  - (d) the warning referred to in subsection (3);
  - (e) the name, qualifications and signature of the supervising psychiatrist.
- (5) The supervising psychiatrist must, as soon as practicable, file the order to attend and give a copy to the involuntary community patient.

**129. Making transport order**

- (1) This section applies if an involuntary community patient does not comply with an order to attend.
- (2) A medical practitioner or mental health practitioner may make a transport order in respect of the involuntary community patient.
- (3) The practitioner cannot make the transport order unless satisfied that no other safe means of ensuring the involuntary community patient attends the place is reasonably available.
- (4) Part 10 applies in relation to the transport order.
- (5) The making of a transport order under subsection (2) is an event to which Part 9 applies and the practitioner who makes the order is the person responsible under that Part for notification of that event.

**130. Detention at place specified in order to attend**

- (1) This section applies in relation to an involuntary community patient who —
  - (a) attends a place in compliance with an order to attend; or
  - (b) is transported to a place under a transport order made under section 129(2).

- (2) The involuntary community patient —
- (a) must be received into the place; and
  - (b) can be detained at the place until the first of these things occurs —
    - (i) treatment is provided to the involuntary community patient;
    - (ii) the supervising psychiatrist makes an order under section 131(2)(a) in respect of the patient;
    - (iii) the expiry of 6 hours from the time when the patient was received.
- (3) A person prescribed by the regulations for this subsection is authorised to exercise the powers under section 172 for the purpose of detaining the involuntary community patient at the place.
- (4) The involuntary community patient cannot continue to be detained if, by the end of the 6-hour period referred to in subsection (2)(b)(iii) —
- (a) treatment has not been provided to the involuntary community patient; and
  - (b) the supervising psychiatrist has not made an order under section 131(2)(a) in respect of the involuntary community patient.
- (5) The release of a person because of subsection (4) is an event to which Part 9 applies and the person in charge of the place is the person responsible under that Part for notification of that event.

Notes for this section:

1. Part 7 Division 4 applies in relation to the release of an involuntary community patient who is detained at a place under section 130(2)(b).
2. Part 7 Division 5 applies if an involuntary community patient is absent without leave from the place where the patient can be detained under section 130(2)(b).

**131. Other action that may be taken if non-compliance**

- (1) This section applies in these circumstances —
  - (a) an involuntary community patient is in breach of a community treatment order under section 126;
  - (b) the supervising psychiatrist has given the involuntary community patient notice of the breach under section 127(2)(b);
  - (c) since the involuntary community patient was given the notice —
    - (i) the patient's non-compliance with the community treatment order has continued; or
    - (ii) the supervising psychiatrist has made an order to attend under section 128(2) with which the patient has not complied despite being given a copy of the order.
- (2) The supervising psychiatrist may make either of these orders —
  - (a) if satisfied, having regard to the criteria specified in section 25, that the involuntary community patient is still in need of an involuntary treatment order but not satisfied of the things referred to in section 114(a) and (b) — an inpatient treatment order authorising the patient's detention at the hospital specified in the order for the period specified in the order in accordance with section 87(a) or (b);
  - (b) if satisfied, having regard to the criteria specified in section 25, that the involuntary community patient is no longer in need of an involuntary treatment order — an order revoking the community treatment order.
- (3) The supervising psychiatrist cannot make an inpatient treatment order without examining the involuntary community patient in accordance with Part 6 Division 3 Subdivision 6.

- (4) The supervising psychiatrist cannot make an inpatient treatment order authorising the involuntary community patient's detention at a general hospital unless —
  - (a) satisfied that attempting to take the involuntary community patient to, or to detain the involuntary community patient at, an authorised hospital poses a significant risk to the patient's physical health; and
  - (b) the Chief Psychiatrist consents to the order being made.
- (5) The supervising psychiatrist can make an order revoking the community treatment order —
  - (a) after examining the involuntary community patient in accordance with Part 6 Division 3 Subdivision 6; or
  - (b) without examining the involuntary community patient, but in doing so must have regard to any information about the patient that is obtained by the psychiatrist from —
    - (i) clinical observation of the involuntary community patient; and
    - (ii) any person other than the involuntary community patient; and
    - (iii) the involuntary community patient's medical record.
- (6) An order made under subsection (2) must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for making it;
  - (c) the name, qualifications and signature of the supervising psychiatrist.
- (7) The supervising psychiatrist must, as soon as practicable, file the order and give a copy to the involuntary community patient.

- (8) The making of an order under subsection (2) is an event to which Part 9 applies and the supervising psychiatrist is the person responsible under that Part for notification of that event.

Notes for this section:

1. A community treatment order is automatically revoked under section 116(a) if a psychiatrist makes an inpatient treatment order under section 131(2)(a) in respect of the involuntary community patient.
2. Part 6 Division 3 Subdivision 3 applies in relation to the transfer of an involuntary inpatient under an involuntary inpatient treatment order made under section 131(2)(a) from the general hospital specified in the order to an authorised hospital.

### **Division 5 — Transport to hospital**

#### **132. Application of this Division**

This Division applies if the supervising psychiatrist makes an inpatient treatment order under section 120(2)(a), 123(1)(a) or 131(2)(a) authorising the involuntary community patient's detention in a hospital.

#### **133. Making transport order**

- (1) A medical practitioner or mental health practitioner may make a transport order in respect of the involuntary community patient.
- (2) The practitioner cannot make the transport order unless satisfied that —
  - (a) the patient needs to be taken to the hospital; and
  - (b) no other safe means of taking the involuntary community patient is reasonably available.
- (3) Part 10 applies in relation to the transport order.

### **Division 6 — Supervising psychiatrist and treating practitioner**

#### **134. Supervising psychiatrist**

- (1) The supervising psychiatrist under a community treatment order is responsible for supervising the carrying out of the order.

- (2) The supervising psychiatrist under a community treatment order must be —
  - (a) the psychiatrist who makes the order; or
  - (b) another psychiatrist.

**135. Change of supervising psychiatrist**

- (1) The supervising psychiatrist under a community treatment order —
  - (a) may, by arrangement, transfer a psychiatrist's responsibility as the supervising psychiatrist under the order to another psychiatrist; and
  - (b) on transferring that responsibility, must inform the patient in writing of the transfer.
- (2) The Chief Psychiatrist or a person authorised under subsection (3) —
  - (a) may, by arrangement, transfer a psychiatrist's responsibility as the supervising psychiatrist under a community treatment order to another psychiatrist; and
  - (b) on transferring that responsibility, must inform the involuntary community patient in writing of the transfer.
- (3) The Chief Psychiatrist may authorise a person in writing to exercise the power under subsection (2) in respect of all or any of the involuntary community patients —
  - (a) being provided with treatment under community treatment orders by the mental health service specified in the authorisation; or
  - (b) who reside in an area of the State specified in the authorisation.
- (4) An authorisation under subsection (3) has effect for the period specified in the authorisation.

**136. Treating practitioner**

- (1) The treating practitioner under a community treatment order is responsible for ensuring that the involuntary community patient is provided with the treatment specified in the treatment plan outlined in the order.
- (2) The treating practitioner under a community treatment order —
  - (a) must be a medical practitioner or mental health practitioner; and
  - (b) can be the supervising psychiatrist under the order or another psychiatrist.

**137. Change of treating practitioner**

The supervising psychiatrist under a community treatment order —

- (a) may, by arrangement, transfer a practitioner's responsibility as the treating practitioner under the order to another practitioner; and
- (b) on transferring that responsibility, must inform the involuntary community patient in writing of the transfer.

## **Part 9 — Notifiable events**

### **Division 1 — Preliminary matters**

#### **138.     Application of this Part**

- (1) This Part applies in relation to an event (a *notifiable event*) if a provision of this Act specifies —
  - (a) that the event is an event to which this Part applies; and
  - (b) who is the person responsible under this Part for notification of the event.
- (2) Schedule 2 sets out for each event —
  - (a) the relevant provision; and
  - (b) a description of the event; and
  - (c) the person responsible for notification of the event.

### **Division 2 — Notification of carers, close family members and other personal support persons**

#### **139.     Right of any carer, close family member or other personal support person to be notified**

- (1) Any carer, close family member or other personal support person of a person is entitled to be notified, as soon as practicable, that a notifiable event has occurred in respect of the person.
- (2) However, the entitlement of a carer, close family member or other personal support person to be notified under subsection (1) is subject to section 142.

#### **140.     Person responsible required to notify any carer, close family member or other personal support person**

- (1) The person responsible under this Part for notification of a notifiable event must ensure that, as soon as practicable after the event occurs in respect of a person, any carer, close family member or other personal support person of the person is notified of the event.



- (2) However, the person responsible is not required to notify a carer, close family member or other personal support person of a notifiable event if the carer, close family member or other personal support person is not entitled, for a reason referred to in section 142(1) or (2), to be notified of the event.

Note for this section:

Any notification provided under section 140(1) must be provided in accordance with section 9(2).

**141. Reasonable efforts to notify carer, close family member or other personal support person**

- (1) Without limiting the requirement under section 140(1), the requirement is taken to have been complied with if the person responsible for notification ensures that reasonable efforts to notify any carer, close family member or other personal support person of the notifiable event continue to be made until the first of these things occurs —
- (a) at least one carer, close family member or other personal support person is notified of the notifiable event; or
  - (b) it is reasonable for the person responsible to conclude that no carer, close family member or other personal support person can be notified of the notifiable event.
- (2) The person responsible must ensure that one of the following is filed —
- (a) a record of when and how any carer, close family member or other personal support person was notified under section 140(1) of the notifiable event;
  - (b) if no carer, close family member or other personal support person has been notified under section 140(1) of the notifiable event — a record of the reasons for that and any efforts made to do so.

**142. Notification not in person's best interests**

- (1) A carer, close family member or other personal support person is not entitled to be notified under section 140(1) of the making

of an order under section 28(1) or (2) for the detention or further detention of a person, or the making of a transport order under section 29(1) in respect of a person, if the medical practitioner or authorised mental health practitioner who makes the order reasonably believes that it is not in the best interests of the person for the carer, close family member or other personal support person to be notified of the making of the order.

- (2) A carer, close family member or other personal support person is not entitled to be notified under section 140(1) of any other notifiable event that occurs in respect of a person if a psychiatrist believes that it is not in the best interests of the person for the carer, close family member or other personal support person to be notified of the event.
- (3) A practitioner or psychiatrist who decides under subsection (1) or (2) that a carer, close family member or other personal support person is not entitled to be notified of a notifiable event must, as soon as practicable —
  - (a) file a record of the decision and the reasons for it; and
  - (b) give a copy to the Chief Mental Health Advocate.

Note for this section:

For the purpose of deciding under section 142(1) or (2) what is or is not in the best interests of a person, Part 2 Division 3 applies.

**143. Advising carer, close family member or other personal support person of decision**

- (1) A practitioner or psychiatrist who decides under section 142 that a carer, close family member or other personal support person is not entitled to be notified of a notifiable event must, if the carer, close family member or other personal support person requests to be notified of the event —
  - (a) advise the carer, close family member or other personal support person of the decision and the reasons for it; and
  - (b) file a record of the advice and give a copy to the person in respect of whom the notifiable event occurs.

- (2) A carer, close family member or other personal support person to whom advice is provided orally under subsection (1)(a) may request the practitioner or psychiatrist who provided the advice to confirm the advice in writing.
- (3) The practitioner or psychiatrist must —
  - (a) comply with the request; and
  - (b) file a copy of the confirmation and give another copy to the person in respect of whom the notifiable event occurs.

Note for this section:

Any advice provided under section 143(1)(a) or (3)(a) must be provided in accordance with section 9(2).

#### **144. Revocation of decision**

- (1) A practitioner or psychiatrist may revoke a decision made under section 142 that a carer, close family member or other personal support person is not entitled to be notified of a notifiable event if satisfied that the reasons for making the decision no longer apply.
- (2) The practitioner or psychiatrist must, as soon as practicable, file a record of the revocation and the reasons for it.
- (3) If the carer, close family member or other personal support person previously requested to be notified of the event, the practitioner or psychiatrist must ensure that, as soon as practicable —
  - (a) the carer, close family member or other personal support person is notified of the notifiable event; and
  - (b) a record of when and how the carer, close family member or other personal support person was notified is filed and a copy given to the person in respect of whom the notifiable event occurred.

**Division 3 — Notification of other persons and bodies**

**145.      Making, revocation or expiry of involuntary treatment order**

- (1) The person responsible under this Part for notification of the making of an involuntary treatment order must ensure that, as soon as practicable, each of the persons and bodies specified in subsection (4) is —
  - (a) given a copy of the involuntary treatment order; and
  - (b) either —
    - (i) given the name and contact details of any carer, close family member or other personal support person who has been notified under section 140(1) of the making of the involuntary treatment order, to the extent that information is known to the person responsible; or
    - (ii) if no carer, close family member or other personal support person has been notified under section 140(1) of the making of the involuntary treatment order — advised of that and the reasons for it.
- (2) The person responsible under this Part for notification of the making of an order revoking an involuntary treatment order must ensure that, as soon as practicable, each of the persons and bodies specified in subsection (4) is given a copy of the order.
- (3) The person responsible under this Part for notification of the expiry of an involuntary treatment order must ensure that, as soon as practicable, each of the persons and bodies specified in subsection (4) is advised in writing of the expiry.
- (4) For subsections (1), (2) and (3), each of these persons and bodies is specified —
  - (a) the Chief Mental Health Advocate;
  - (b) the Mental Health Tribunal;

- (c) if the involuntary patient is a mentally impaired accused — the Mentally Impaired Accused Review Board.
- (5) The person responsible must ensure that the following are filed —
  - (a) a record of —
    - (i) each person or body to whom a copy of an order is given under subsection (1)(a) or (2) or advice is provided under subsection (3); and
    - (ii) the date on which the copy is given or the advice provided to that person or body;
  - (b) a record of —
    - (i) each person or body to whom any information referred to in subsection (1)(b) is provided; and
    - (ii) details of the information provided to that person or body; and
    - (iii) the date on which the information is provided to that person or body.

## **Part 10 — Transport orders**

### **146.      Application of this Part**

This Part applies in relation to a transport order made under any of these provisions —

- (a) section 29(1) to enable a person who is referred under section 26(2) or (3)(a) to be taken to an authorised hospital or other place;
- (b) section 63(1) to enable a person who is under an inpatient treatment order made under section 61(1)(a) to be taken to a general hospital;
- (c) section 63(1) to enable a person who is under an order for a further examination made under section 61(1)(c) to be taken to an authorised hospital;
- (d) section 67(1) to enable an involuntary inpatient who is under a transfer order made under section 66(1) to be transferred to an authorised hospital;
- (e) section 92(1) to enable an involuntary inpatient who is under a transfer order made under section 91(2) to be transferred to an authorised hospital;
- (f) section 112(1) to enable an involuntary patient who is granted leave of absence, or whose leave of absence has been cancelled or expired, to be taken to a hospital;
- (g) section 129(2) to enable an involuntary community patient who is not complying with an order to attend made under section 128(2) to be taken to a specified place;
- (h) section 133(1) to enable an involuntary community patient who is under an inpatient treatment order made under section 120(2)(a), 123(1)(a) or 131(2)(a) to be taken to a hospital.

**147. Transport officers**

The regulations may authorise a person, or a person in a class of person, (a *transport officer*) to carry out a transport order.

**148. Making transport order**

- (1) A transport order must be in the approved form and must include the following —
  - (a) the name of the person to be transported;
  - (b) the place from which the person is to be transported;
  - (c) the hospital or other place to which the person must be transported;
  - (d) the reasons why, in order to transport the person to that hospital or other place, it is necessary to make the order;
  - (e) whether the order is to be carried out by a transport officer or, if section 149(2) applies, a police officer;
  - (f) if the order is to be carried out by a police officer, having regard to the matters referred to in section 149(2)(a) and (b) — the reasons why it cannot be carried out by a transport officer;
  - (g) the date and time when the order is made;
  - (h) the date and time when the order will expire under section 150(2)(a), (b) or (c);
  - (i) whether or not the order can be extended because of section 151(2) or under section 152(3) and, if it can, the process for extending it;
  - (j) the name, qualifications and signature of the psychiatrist or practitioner making the order.
- (2) A practitioner or psychiatrist who makes a transport order in respect of a person must, as soon as practicable —
  - (a) file it and give a copy to the person; and
  - (b) give a copy to the transport officer or police officer responsible for carrying out the order.

**149. Operation of transport order**

- (1) A transport order made in respect of a person authorises a transport officer or, if subsection (2) applies, a police officer to do these things —
  - (a) apprehend the person and, for that purpose, exercise the powers under sections 159(2) and 172;
  - (b) if the person is apprehended — transport the person to the hospital or other place specified in the order as soon as practicable and, in any event, before the transport order expires;
  - (c) for the purpose of transporting the person, detain the person until the first of these things occurs —
    - (i) the person is received into the hospital or other place;
    - (ii) the transport order expires.
- (2) A transport order can only authorise a police officer instead of a transport officer to carry out the order if the practitioner or psychiatrist making the order is satisfied —
  - (a) that there is a significant risk of serious harm to the person being transported or to another person; or
  - (b) that —
    - (i) a transport officer will not be available to carry out the order within a reasonable time; and
    - (ii) any delay in carrying out the order beyond that time is likely to pose a significant risk of harm to the person being transported or to another person.

**150. Period of transport order**

- (1) A transport order remains in force for the period specified in subsection (2) in respect of the order.



- (2) For subsection (1), the period is —
- (a) if the transport order is made under section 29(1), the period —
    - (i) beginning at the time when the transport order is made; and
    - (ii) ending at the time when the referral expires under section 44 unless the transport order is extended because of section 151(2);
  - or
  - (b) if the transport order is made under section 63(1), the period —
    - (i) beginning at the time when the transport order is made; and
    - (ii) ending 72 hours after the time when the inpatient treatment order was made under section 61(1)(a) or the order for a further examination was made under section 61(1)(c), as the case requires, unless the transport order is extended under section 152(3);
  - or
  - (c) if the transport order is made under section 67(1), 92(1), 112(1), 129(2) or 133(1), the period —
    - (i) beginning at the time when the transport order is made; and
    - (ii) ending 72 hours afterwards unless the transport order is extended under section 152(3).

**151. Extension of transport order made under s. 29(1) if referral extended**

- (1) This section applies if —
- (a) a transport order is made under section 29(1) to enable a person who is referred to be taken to an authorised hospital or other place; and

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- (b) the place from which the person is being transported is outside a metropolitan area; and
  - (c) the referral is extended under section 45(3).
- (2) The transport order is, because of this subsection, extended for the same period as the referral.

**152. Extension of other transport orders**

- (1) This section applies if —
  - (a) a transport order is made under section 63(1), 67(1), 92(1), 112(1), 129(2) or 133(1) in respect of a person; and
  - (b) the place from which the person is being transported is outside a metropolitan area; and
  - (c) the transport officer or police officer who is transporting the person forms the opinion that the transport order is likely to expire before the person is received into the hospital or other place to which the person is being transported.
- (2) The transport officer or police officer may orally request an extension of the transport order from a medical practitioner or mental health practitioner.
- (3) The practitioner may make an order (an ***extension order***) orally extending the transport order from the end of the period specified in section 150(2)(b) or (c) in respect of the order for the further period (not exceeding 72 hours) specified in the extension order.
- (4) The practitioner must, as soon as practicable —
  - (a) record the extension order in the approved form, specifying —
    - (i) the date and time when the order was made; and
    - (ii) the date and time when, because of the extension, the transport order will expire;and

- (b) file the record and give a copy to the transport officer or police officer.
- (5) The transport order cannot be extended more than once.

**153. Revocation of transport order if referral revoked**

A transport order made under section 29(1) in respect of a person who is referred under section 26(2) or (3)(a) is, because of this section, revoked if the referral is revoked under section 31(1).

**154. Revocation of transport order if no longer needed**

- (1) A medical practitioner or mental health practitioner may make an order (a **revocation order**) revoking a transport order made in respect of a person if satisfied that the transport order is no longer needed.
- (2) The revocation order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for the revocation;
  - (c) the name, qualifications and signature of the practitioner.
- (3) The practitioner must, as soon as practicable —
  - (a) file the revocation order and give a copy to the person; and
  - (b) give a copy to the transport officer or police officer responsible for carrying out the transport order.

**155. Return of person if transport order expires or is revoked**

- (1) Subsection (2) applies if a transport order made in respect of a person is revoked because of section 153, or expires, before the person is received into the hospital or other place to which the person was to have been transported under the order.

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- (2) The transport officer or police officer who was responsible for carrying out the transport order must take reasonable steps to ensure the person is taken, at the person's election —
  - (a) back to the place from which the person was being or was to have been transported; or
  - (b) to a place reasonably nominated by the person.
- (3) Subsection (2) does not require the person to be taken to a place if to do so poses a serious risk to the safety of the person or another person.

## **Part 11 — Apprehension, search and seizure powers**

### **Division 1 — Apprehension powers**

#### **156. Apprehension by police officer of person suspected of having mental illness**

- (1) A police officer may apprehend a person if the officer reasonably suspects that the person —
  - (a) has a mental illness; and
  - (b) because of the mental illness, needs to be apprehended to —
    - (i) protect the health or safety of the person or the safety of another person; or
    - (ii) prevent the person causing, or continuing to cause, serious damage to property.
- (2) For the purpose of apprehending a person under subsection (1), a police officer may exercise the powers under sections 159(2) and 172.
- (3) A police officer —
  - (a) must, as soon as practicable after apprehending a person under subsection (1), arrange for the person to be assessed by a medical practitioner or authorised mental health practitioner for the purpose of deciding whether or not to refer the person under section 26(2) or (3)(a) for an examination to be conducted by a psychiatrist; and
  - (b) is authorised to detain the person until the first of these things occurs —
    - (i) the person is received into the place where the assessment will be conducted;
    - (ii) the person is delivered into the care of the medical practitioner or authorised mental health practitioner who will assess the person;

- (iii) the police officer is satisfied that the grounds for suspecting that the person needs to be apprehended no longer exist.
- (4) This section does not prevent a police officer from charging a person apprehended under subsection (1) with an offence.

**157. Assessment of person arrested**

- (1) This section applies if —
  - (a) a person is arrested by a police officer on suspicion of having committed an offence; and
  - (b) the police officer reasonably suspects that the person has a mental illness for which the person is in need of immediate treatment.
- (2) The police officer must, as soon as practicable, arrange for the person to be assessed by a medical practitioner or authorised mental health practitioner for the purpose of deciding whether or not to refer the person under section 26(2) or (3)(a) for an examination to be conducted by a psychiatrist.
- (3) This section does not prevent a police officer from charging the person arrested with an offence.

**158. Police must be notified when person leaves**

- (1) This section applies if —
  - (a) the medical practitioner or authorised mental health practitioner referred to in section 156(3)(a) or 157(2) decides not to refer the person under section 26(2) or (3)(a); or
  - (b) the person, having been referred under section 26(2) or (3)(a), cannot continue to be detained under this Act.

- (2) The practitioner or the person in charge of the authorised hospital or other place where the person was being detained under this Act must ensure that —
- (a) as soon as practicable, a police officer is informed that the person has not been referred under section 26(2) or (3)(a) or cannot continue to be detained under this Act; and
  - (b) as soon as practicable after the police officer is informed, a record of these things is filed —
    - (i) the name of the person who informed the police officer of the person's release;
    - (ii) the police officer's name, rank and location;
    - (iii) the date and time when the police officer was informed of the person's release.

**159. Apprehension of other persons**

- (1) This section applies in relation to the apprehension of a person —
- (a) under section 99(a) by a police officer or person prescribed for the purpose of carrying out an apprehension and return order; or
  - (b) under section 149(1)(a) by a transport officer or police officer for the purpose of carrying out a transport order; or
  - (c) under section 156(1) by a police officer because the person is suspected of having a mental illness and needs to be apprehended.
- (2) For the purpose of apprehending the person, the police officer, person prescribed or transport officer may do any of these things —
- (a) enter any premises where the person is reasonably suspected to be;

- (b) search, in accordance with sections 163 and 172, the person and any article found on or with the person;
  - (c) seize, in accordance with sections 164 and 172, any article listed in section 164(2) that is found on or with the person.
- (3) However, a transport officer can only enter premises prescribed by the regulations for this subsection.

### **Division 2 — Search and seizure powers**

#### **160. Term used: approved form**

In this Division —

*approved form* means —

- (a) a form approved by the Commissioner of Police under section 169 for use by police officers under this Division; or
- (b) a form approved by the Chief Psychiatrist under section 545(1) for use by other persons under this Division.

#### **161. Authorised persons**

The regulations may authorise a person, or a person in a class of person, (an *authorised person*) to exercise the powers under this Division.

#### **162. Search of person while detained or admitted**

- (1) This section applies —
  - (a) to any of these people —
    - (i) a patient who is admitted by a mental health service;
    - (ii) a person who is detained under this Act at a mental health service or other place to enable an examination to be conducted by a psychiatrist;



- (iii) any other person who presents at a mental health service for treatment;
- and
- (b) at these times —
  - (i) when the patient or other person is being admitted by, or is being received into, the mental health service or other place;
  - (ii) at any time while the patient or other person is being provided with treatment or care at the mental health service or other place.
- (2) A police officer or authorised person who reasonably suspects that there is on or with the patient or other person any article listed in section 164(2) may —
  - (a) search, in accordance with sections 163 and 172, the person and any article found on or with the patient or other person; and
  - (b) seize, in accordance with sections 164 and 172, any article listed in section 164(2) that is found on or with the patient or other person.

**163. Conduct of search**

- (1) This section applies in relation to a search of a person —
  - (a) under section 159(2)(b) by a police officer, person prescribed or transport officer; or
  - (b) under section 162(2)(a) by a police officer or authorised person.
- (2) Before the search is conducted, the person who will conduct the search must, if reasonably practicable —
  - (a) identify himself or herself to the person; and
  - (b) inform the person of the reason for the search; and
  - (c) request the person to consent to being searched.

- (3) The person conducting the search must, if practicable, be a person of the same gender as the person to be searched.
- (4) The person conducting the search may do all or any of these things —
  - (a) scan the person with an electronic or mechanical device, whether hand held or not, to detect any thing;
  - (b) remove the person's headwear, gloves, footwear or outer clothing (for example, a coat or jacket), but not the person's inner clothing or underwear, in order to facilitate a frisk search;
  - (c) frisk search the person by quickly and methodically running the hands over the outside of the person's clothing;
  - (d) search any article removed under paragraph (b).
- (5) The person conducting the search may do all or any of these things for the purpose of conducting the search —
  - (a) search anything being carried by or under the immediate control of the person;
  - (b) order the person to remove anything that might injure the person conducting the search from any article that the person is wearing;
  - (c) photograph part or all of the search while it is being done;
  - (d) order the person to do anything reasonable to facilitate the exercise by the person conducting the search of any power in this section.
- (6) The search must be conducted as follows —
  - (a) the search must be done as quickly as is reasonably practicable;
  - (b) the search must not be any more intrusive than is reasonably necessary in the circumstances;

- (c) if the person conducting the search proposes to remove any article that the person is wearing — the person conducting the search must tell the person why it is considered necessary to do so;
- (d) the person must be allowed to dress as soon as the search is finished;
- (e) the person must be provided with a reasonably adequate replacement for any article of clothing or footwear seized if, due to the seizure, the person is left without adequate clothing or footwear in the circumstances.

**164. Seizure of articles**

- (1) This section applies in relation to the seizure from a person of an article under section 159(2)(c) or 162(2)(b).
- (2) Any of these articles may be seized —
  - (a) an intoxicant;
  - (b) an article, including a drug that is prescribed for the person, that may pose a serious risk to the health or safety of the person or another person;
  - (c) an article that the person conducting the search believes is likely to materially assist in determining any question in relation to the person that is likely to arise for determination under this Act.
- (3) Any article that is seized must be dealt with under section 166 or 167.

**165. Record of search and seizure**

- (1) A person who conducts a search of a person under section 159(2)(b) or 162(2)(a) must, as soon as practicable —
  - (a) record the search in accordance with subsection (2); and
  - (b) give the record of the search to, as the case requires —
    - (i) the person in charge of the mental health service or other place to which the person searched is

- required to be taken under the apprehension and return order or the transport order; or
- (ii) the person in charge of the mental health service or other place at which the person searched is received, or the medical practitioner or authorised mental health practitioner into whose care the person is delivered, under section 156(3)(b)(i) or (ii); or
  - (iii) the person searched if the person is released without being taken to a mental health service or other place or delivered into the care of a medical practitioner or authorised mental health practitioner; or
  - (iv) the person in charge of the mental health service or other place where the search is conducted under section 162(2)(a).
- (2) The record of the search must be in the approved form and must include the following —
- (a) the date and time the search was conducted;
  - (b) the reasons for conducting the search;
  - (c) any article seized under section 159(2)(c) or 162(2)(b) in the course of the search;
  - (d) the name, sex, qualifications and signature of the person who conducted the search.
- (3) The person to whom the record of the search is given under subsection (1)(b)(i), (ii) or (iv) must ensure that, as soon as practicable, the record is filed and a copy given to the person searched.

**166. Dealing with articles seized when person apprehended**

- (1) This section applies in relation to an article that is seized under section 159(2)(c) from a person who is apprehended under section 99(a), 149(1)(a) or 156(1).

- (2) The article must be dealt with —
  - (a) under subsection (3)(a) or (b); or
  - (b) otherwise according to law.
- (3) The article must be —
  - (a) given to, as the case requires —
    - (i) the person in charge of the mental health service or other place referred to in section 165(1)(b)(i), (ii) or (iv) when the person is received there; or
    - (ii) the medical practitioner or authorised mental health practitioner referred to in section 165(1)(b)(ii) when the person is delivered into the practitioner's care;
  - or
  - (b) if the person is released without being taken to a mental health service or other place or delivered into the care of a medical practitioner or authorised mental health practitioner — returned to the person when the person is released.
- (4) A person who deals with an article under subsection (2)(a) or (b) must, as soon as practicable —
  - (a) record in the approved form details of how the article was dealt with; and
  - (b) give the record of those details to, as the case requires —
    - (i) the person in charge of the mental health service or other place referred to in section 165(1)(b)(i), (ii) or (iv) when the person is received there; or
    - (ii) the medical practitioner or authorised mental health practitioner referred to in section 165(1)(b)(ii) when the person is delivered into the practitioner's care; or
    - (iii) if the person is released without being taken to a mental health service or other place or delivered

into the care of a medical practitioner or authorised mental health practitioner — the person when the person is released.

- (5) A person to whom a record is given under subsection (4)(b)(i) or (ii) must ensure that the record is filed as soon as practicable.

**167. Return of articles given to or seized by mental health service**

- (1) This section applies in relation to an article that is —
- (a) seized from a patient or other person under section 162(2)(b); or
  - (b) given to the person in charge of a mental health service or other place under section 166(3)(a)(i).
- (2) The article must be dealt with —
- (a) under subsection (3), (4), (5) or (6); or
  - (b) otherwise according to law.
- (3) The article must be returned to the person when the person is released or discharged by or otherwise leaves the mental health service or other place unless subsection (4) applies.
- (4) If, in the opinion of the person in charge of the mental health service or other place, the return of the article to the person may pose a serious risk to the health or safety of the person or another person, the article must be given to a carer, close family member or other personal support person of the person when the person is released or discharged by or otherwise leaves the mental health service or other place unless the person in charge considers that it is not appropriate to do so.
- (5) If the article is not dealt with under subsection (3) or (4) when the person is released or discharged by or otherwise leaves the mental health service or other place —
- (a) the article may be returned to the person, or may be given to a carer, close family member or other personal support person of the person, at any time afterwards; and

- (b) subsections (3) and (4) apply (with the necessary changes) in relation to the article.
- (6) If the article is not dealt with under subsection (3), (4) or (5), it —
  - (a) must be stored at the mental health service or other place; and
  - (b) may be destroyed or otherwise disposed of after 6 months.
- (7) The person in charge of the mental health service or other place must ensure that a record of how the article was dealt with under this section is filed.
- (8) The record must be in the approved form and must include these things —
  - (a) details of the article;
  - (b) if the article was returned to the person — the date when it was returned;
  - (c) if the article was not returned to the person — the reasons for not returning it;
  - (d) if the article was given to a carer, close family member or other personal support person — the date when it was given to that person;
  - (e) if the article was not given to a carer, close family member or other personal support person — the reasons for not giving it to that person;
  - (f) if the article was destroyed or otherwise disposed of under subsection (6)(b) —
    - (i) the date when it was destroyed or disposed of; and
    - (ii) the manner in which it was destroyed or disposed of;
  - (g) if the article was dealt with under subsection (2)(b) — any other relevant information.

**168. Return of articles given to medical practitioner or authorised mental health practitioner**

- (1) This section applies in relation to an article that is given to a medical practitioner or authorised mental health practitioner under section 166(3)(a)(ii) who decides not to refer under section 26(2) or (3)(a) the person from whom the article was seized.
- (2) The medical practitioner or authorised mental health practitioner must ensure that, as soon as practicable —
  - (a) the article is returned to the person or otherwise dealt with according to law; and
  - (b) a record of how the article was dealt with under paragraph (a) is filed and a copy given to the person.

**169. Approval of forms for use by police officers under this Division**

The Commissioner of Police may approve forms for use by police officers under this Division.

Note for this section:

The Chief Psychiatrist approves forms for use by other persons under this Division (see section 545(1)).



## Part 12 — Exercise of certain powers

### Division 1 — Detention powers

#### 170. Principles relating to detention

These principles apply in relation to the detention of a person under this Act —

- (a) the person must be detained for as brief a period as practicable;
- (b) the degree of any force used to detain the person must be the minimum that is required to be used for that purpose;
- (c) while the person is detained —
  - (i) there must be the least possible restriction on the person's freedom of choice and movement consistent with the person's detention; and
  - (ii) the person is entitled to reasonable privacy consistent with the person's detention; and
  - (iii) the person must be treated with dignity and respect.

#### Division 2 — Ancillary powers: reasonable assistance and force and directions

#### 171. Term used: prescribed provision

In this Division —

***prescribed provision*** means a provision listed in the Table.

**Table**

s. 83(2)(c)	s. 86(c)
s. 99	s. 130(3)
s. 149(1)	Part 11
s. 225	

**172. Reasonable assistance and reasonable force authorised**

- (1) A person exercising a power under a prescribed provision may request another person to give the person reasonable assistance in exercising that power.
- (2) A person exercising, or assisting in accordance with a request under subsection (1) another person in exercising, a power under a prescribed provision may use reasonable force in doing so.

**173. Duty to obey directions**

A person assisting a person in exercising a power under a prescribed provision must obey any lawful and reasonable direction of that person.

Penalty: a fine of \$6 000.

**174. Other written laws not affected**

A prescribed provision does not affect any other written law relating to the apprehension or search of a person or to the seizure of an article from a person.

Note for this Division:

It is an offence to obstruct or hinder a person exercising, or assisting another person to exercise, a power under a prescribed provision (see section 580).

## **Part 13 — Provision of treatment generally**

### **Division 1 — Voluntary patients**

#### **175. Informed consent necessary**

- (1) A voluntary patient cannot be provided with treatment without informed consent being given to the provision of the treatment.
- (2) Subsection (1) does not apply in relation to any of these treatments because this Act makes specific provision in respect of each of them —
  - (a) electroconvulsive therapy;
  - (b) emergency psychiatric treatment;
  - (c) psychosurgery;
  - (d) treatment that is prohibited by section 210(1).

#### **176. Informed consent must be filed**

- (1) The person responsible under subsection (2) must ensure that any informed consent given to the provision of treatment to a voluntary patient is filed.
- (2) For subsection (1), the person responsible is —
  - (a) if the treatment is provided at a mental health service — the person in charge of the mental health service; or
  - (b) if the treatment is provided at a place other than a mental health service — the medical practitioner or mental health practitioner providing the treatment.
- (3) The record of the informed consent must include —
  - (a) the date when the informed consent was given; and
  - (b) whether the informed consent was given —
    - (i) by the patient himself or herself; or

- (ii) by a person authorised by law to give the informed consent on the patient's behalf;
- and
- (c) if paragraph (b)(ii) applies —
  - (i) the name and contact details of the person who gave the informed consent; and
  - (ii) details of the person's authority to do so.

Notes for this section:

1. For section 176(3)(b)(i), an adult can give consent by making an advance health directive (see the GAA Act section 110ZJ(2)).
2. For section 176(3)(b)(ii) —
  - (a) an adult's enduring guardian or guardian or the person responsible for an adult can give consent on the adult's behalf (see the GAA Act section 110ZJ(3) to (5)); or
  - (b) a child's parent or guardian can give consent on the child's behalf (see section 302(3) of this Act).

## **Division 2 — Involuntary patients and mentally impaired accused**

### **177. Application of this Division**

This Division applies in relation to —

- (a) an involuntary patient; or
- (b) a patient who is a mentally impaired accused required under the MIA Act to be detained at an authorised hospital.

### **178. Informed consent not necessary**

- (1) The patient can be provided with treatment without informed consent being given to the provision of the treatment.
- (2) Subsection (1) does not apply in relation to any of these treatments because this Act makes specific provision in respect of each of them —
  - (a) electroconvulsive therapy;

- (b) emergency psychiatric treatment;
- (c) psychosurgery;
- (d) treatment that is prohibited by section 210(1).

**179. Patient's psychiatrist must ensure regard had to patient's wishes**

- (1) The patient's psychiatrist must ensure that a medical practitioner, in deciding what treatment will be provided to the patient, has regard to the patient's wishes in relation to the provision of treatment, to the extent that it is practicable to ascertain those wishes.
- (2) The patient's psychiatrist must ensure that a record of the following is filed —
  - (a) the patient's wishes, to the extent they were able to be ascertained by the medical practitioner; and
  - (b) the things to which the medical practitioner had regard in ascertaining the patient's wishes; and
  - (c) if the decision made by the medical practitioner is inconsistent with a treatment decision in an advance health directive, or a term of an enduring power of guardianship, made by the patient — the reasons the decision was made.
- (3) The patient's psychiatrist must ensure that, as soon as practicable, each of these people is given a copy of the reasons referred to in subsection (2)(c) —
  - (a) the patient;
  - (b) if the patient has an enduring guardian or guardian — the enduring guardian or guardian;
  - (c) if the patient has a nominated person — the nominated person unless the nominated person is not entitled, for the reason referred to in section 269(1), to be given a copy;

- (d) if the patient has a carer — the carer unless the carer is not entitled, for the reason referred to in section 288(2) or 292(1), to be given a copy;
  - (e) if the patient has a close family member — the close family member unless the close family member is not entitled, for the reason referred to in section 288(2) or 292(1), to be given a copy;
  - (f) the Chief Psychiatrist;
  - (g) the Chief Mental Health Advocate.
- (4) The patient's psychiatrist is not required to comply with subsection (3) in relation to a decision made by a medical practitioner if each of the people referred to in subsection (2)(c) has been given a copy of the reasons for an earlier decision made by a medical practitioner that was inconsistent with the same treatment decision in the advance health directive or the same term in the enduring power of guardianship.

Notes for this section:

1. For the purpose of a medical practitioner ascertaining the patient's wishes, Part 2 Division 4 applies.
2. In deciding what treatment will be provided to the patient, a medical practitioner must also have regard to —
  - (a) if the patient is a child, the views of the child's parent or guardian (see section 301); and
  - (b) if the patient has a nominated person, except in certain circumstances, the views of the nominated person (see Part 16 Division 3 Subdivision 1); and
  - (c) if the patient has a carer or close family member, except in certain circumstances, the views of the carer or close family member (see Part 17 Division 2).

## **180. Requirements for ascertaining patient's wishes**

- (1) The patient's psychiatrist must ensure that, before a patient's wishes in relation to the provision of treatment are sought to be ascertained, the patient is (to the extent that it is practicable to do so) to be —
  - (a) provided with the same explanation of the treatment;and

- (b) given the same amount of time for consideration of the matters involved in the provision of the treatment; and
- (c) given the same opportunities to discuss and obtain advice or assistance in relation to the provision of the treatment,

as would be required to be provided or given to a person before being asked to make a treatment decision about the provision of the treatment.

- (2) For the purpose of subsection (1), sections 19 and 20 apply (with the necessary changes) in relation to ascertaining the patient's wishes in relation to the provision of the treatment.

Note for this section:

Any explanation provided under section 180(1)(a) must be provided in accordance with section 9(2).

**181. Record of treatment to be filed**

The patient's psychiatrist must ensure that a record of the treatment provided to the patient is filed.

**182. Further opinion may be requested**

- (1) This section applies in relation to any of these people —
  - (a) the patient, whether or not the patient has the capacity to give informed consent to the treatment being provided to him or her were that consent required;
  - (b) if the patient does not have that capacity — the person who is authorised by law to give that consent on the patient's behalf were that consent required;
  - (c) if the patient has a nominated person — the nominated person;
  - (d) if the person has a carer — the carer;
  - (e) if the person has a close family member — the close family member.

- (2) A person to whom this section applies who is dissatisfied with the treatment being provided to the patient may request orally or in writing the patient's psychiatrist or the Chief Psychiatrist to obtain the opinion (a *further opinion*) of a psychiatrist who is not the patient's psychiatrist about whether it is appropriate to provide the treatment to the patient.
- (3) The patient's psychiatrist or the Chief Psychiatrist must file a record of an oral request or a written request.
- (4) The patient's psychiatrist or the Chief Psychiatrist must obtain the further opinion as soon as practicable after receiving the request unless —
  - (a) if a person referred to in subsection (1)(b) to (e) requests the further opinion — the patient objects to the further opinion being obtained; or
  - (b) under section 183 —
    - (i) the patient's psychiatrist or the Chief Psychiatrist decides not to comply with the request; and
    - (ii) if the patient's psychiatrist decides not to comply with the request — the Chief Psychiatrist confirms that decision.
- (5) In obtaining the further opinion, the patient's psychiatrist or the Chief Psychiatrist must have regard to the guidelines published under section 547(1)(c) about the independence of psychiatrists from whom further opinions are obtained.
- (6) A psychiatrist cannot give a further opinion without examining the patient in accordance with Part 6 Division 3 Subdivision 6.
- (7) The further opinion must be given in writing and may include recommendations about the provision of treatment to the patient.
- (8) The patient's psychiatrist must, as soon as practicable after obtaining the further opinion —
  - (a) file the opinion and give a copy to the patient; and



- (b) if the opinion was requested by a person other than the patient — give a copy to that other person.
- (9) The Chief Psychiatrist must, as soon as practicable after obtaining the further opinion, give a copy to each of these people —
  - (a) the patient's psychiatrist, who must file the copy as soon as practicable;
  - (b) the patient;
  - (c) if the opinion was requested by a person other than the patient — that other person.
- (10) In providing treatment to the patient, the patient's psychiatrist must have regard to any further opinion relating to the provision of that treatment that is obtained under this section, including any recommendations included in the opinion under subsection (7).

**183. Request for additional opinion may be refused**

- (1) This section applies if —
  - (a) a further opinion about the treatment being provided to a patient has been obtained under section 182; and
  - (b) a person in relation to whom that provision applies requests that the patient's psychiatrist or the Chief Psychiatrist obtain an additional opinion under that provision about the treatment being provided to the patient.
- (2) The patient's psychiatrist or the Chief Psychiatrist may refuse to comply with the request if satisfied that, having regard to the guidelines published under section 547(1)(d) for that purpose, the additional opinion is not warranted.
- (3) The patient's psychiatrist must, as soon as practicable after deciding under subsection (2) not to comply with the request —
  - (a) file a record of the decision and the reasons for it; and

- (b) give a copy to each of these people —
    - (i) the patient;
    - (ii) if the additional opinion was requested by a person other than the patient — that other person;
    - (iii) the Chief Psychiatrist.
- (4) The Chief Psychiatrist must, as soon as practicable after receiving a copy of the record from the patient's psychiatrist —
  - (a) confirm or refuse to confirm the decision of the patient's psychiatrist; and
  - (b) record the confirmation or refusal and the reasons for it; and
  - (c) give a copy of the record to each of these people —
    - (i) the patient;
    - (ii) if the additional opinion was requested by a person other than the patient — that other person;
    - (iii) the patient's psychiatrist, who must file the copy as soon as practicable.
- (5) The Chief Psychiatrist must, as soon as practicable after deciding under subsection (2) not to comply with the request —
  - (a) file a record of the decision and the reasons for it; and
  - (b) give a copy of the record to each of these people —
    - (i) the patient;
    - (ii) if the additional opinion was requested by a person other than the patient — that other person;
    - (iii) the patient's psychiatrist, who must file the copy as soon as practicable.

**184. Chief Psychiatrist may request reconsideration of treatment**

- (1) This section applies if, after any further opinion in relation to a patient is obtained under section 182, the person who requested that it be obtained remains dissatisfied with the treatment being provided to the patient and advises the Chief Psychiatrist orally or in writing of that dissatisfaction.
- (2) The Chief Psychiatrist must file a record of an oral advice or a written advice.
- (3) The Chief Psychiatrist may request the patient's psychiatrist to —
  - (a) reconsider the decision to provide the treatment; and
  - (b) give the Chief Psychiatrist a written report about the outcome of the reconsideration and the reasons for it.
- (4) The patient's psychiatrist must, as soon as practicable —
  - (a) give the report to the Chief Psychiatrist and file a copy; and
  - (b) give a copy to each of these people —
    - (i) the patient;
    - (ii) if the further opinion was requested by a person other than the patient — that other person.
- (5) Subsection (1) does not limit the powers of the Chief Psychiatrist under section 520.

**Division 3 — Treatment, support and discharge planning**

**185. Application of this Division**

This Division applies in relation to —

- (a) a patient who is admitted by a hospital as an involuntary patient whose detention at the hospital is authorised under an inpatient treatment order; or

- (b) a patient who is admitted by an authorised hospital as a mentally impaired accused required under the MIA Act to be detained at the hospital; or
- (c) a patient who is under a community treatment order.

**186. Treatment, support and discharge plan**

- (1) The treatment, care and support provided to a patient must be governed by a treatment, support and discharge plan.
- (2) The treatment, support and discharge plan for a patient referred to in section 185(a) or (b) must outline —
  - (a) the treatment and support that will be provided to the patient while admitted by the hospital; and
  - (b) the treatment and support that will be offered to the patient after the patient is discharged by the hospital.
- (3) The treatment, support and discharge plan for a patient referred to in section 185(c) must outline —
  - (a) the treatment and support that will be provided to the patient under the community treatment order as set out in that order; and
  - (b) the treatment and support that will be offered to the patient when the patient is no longer under the community treatment order.

*[Section 186 amended: No. 36 of 2015 s. 5.]*

**187. Preparation and review of plan**

- (1) A patient's psychiatrist must ensure that a treatment, support and discharge plan for the patient —
  - (a) is prepared as soon as practicable after the patient is admitted by the hospital or the community treatment order is made; and
  - (b) is reviewed regularly; and

- (c) is revised as necessary.
- (2) The plan must be prepared, reviewed and revised having regard to the guidelines published under section 547(1)(e) for that purpose.
- (3) The patient's psychiatrist must ensure that —
  - (a) the plan (as prepared and as revised) is filed; and
  - (b) a copy of the plan (as prepared and as revised) is given to each of these people —
    - (i) the patient;
    - (ii) the person referred to in section 188(1)(b);
    - (iii) if the patient is a child — the child's parent or guardian;
    - (iv) if the patient has a nominated person — the nominated person unless the nominated person is not entitled, for the reason referred to in section 269(1), to be given a copy;
    - (v) if the patient has a carer — the carer unless the carer is not entitled, for the reason referred to in section 288(2) or 292(1), to be given a copy;
    - (vi) if the patient has a close family member — the close family member unless the close family member is not entitled, for the reason referred to in section 288(2) or 292(1), to be given a copy.
- (4) The patient's psychiatrist may also ensure that a copy of the plan (as prepared or as revised) is given to any other person or body that the psychiatrist considers appropriate.

Note for this section:

For section 187(4), the patient's psychiatrist may for example consider it appropriate to give a copy of the plan to a community mental health service.

**188. Involvement in preparation and review of plan**

- (1) A patient's psychiatrist must ensure that each of these people is involved in the preparation and review of the treatment, support and discharge plan for the patient —
  - (a) the patient —
    - (i) whether or not the patient has the capacity to consent to the plan being implemented in relation to himself or herself; and
    - (ii) whether or not the plan can be implemented without the patient's consent;
  - (b) if the patient does not have the capacity referred to in paragraph (a)(i) —
    - (i) if the plan cannot be implemented without the patient's consent — the person who is authorised by law to consent on the patient's behalf; or
    - (ii) if the plan can be implemented without the patient's consent — the person who would be authorised by law to consent on the patient's behalf if the plan could not have been implemented without consent;
  - (c) if the patient is a child — the child's parent or guardian;
  - (d) if the patient has a nominated person — the nominated person unless the nominated person is not entitled under section 269 to be involved;
  - (e) if the patient has a carer — the carer unless the carer is not entitled under section 288(2) or 292(1) to be involved;
  - (f) if the patient has a close family member — the close family member unless the close family member is not entitled under section 288(2) or 292(1) to be involved.
- (2) Without limiting a requirement under subsection (1)(b) to involve the person who is or would be required by law to consent on the patient's behalf, or under subsection (1)(c) to

involve the child's parent or guardian, in the preparation or review of the treatment, support and discharge plan, the requirement is taken to be complied with if the patient's psychiatrist ensures that reasonable efforts continue to be made to involve the person in the preparation or review of the treatment, support and discharge plan until the first of these things occurs —

- (a) the person is involved in that preparation or review;
  - (b) it is reasonable for the patient's psychiatrist to conclude that the person cannot be involved in that preparation or review.
- (3) Part 16 Division 3 Subdivision 2 applies in relation to a requirement under subsection (1)(d) to involve the patient's nominated person in the preparation or review of the treatment, support and discharge plan.
- (4) Part 17 Division 2 applies in relation to a requirement under subsection (1)(e) to consult a carer of the involuntary inpatient, or under subsection (1)(f) to consult a close family member of the patient, in the preparation or review of the treatment, support and discharge plan.
- (5) The patient's psychiatrist may also ensure that any other person or body that the psychiatrist considers appropriate is involved in the preparation or review of the treatment, support and discharge plan for the patient.
- (6) The patient's psychiatrist must ensure that each of the following is filed —
  - (a) a record of the involvement of any person referred to in subsection (1)(b) to (f), or any person or body referred to in subsection (5), in the preparation or review of the treatment, support and discharge plan;
  - (b) if a person referred to in subsection (1)(b) to (f) could not be involved in the preparation or review of the

treatment, support and discharge plan — a record of the efforts made to do so.

Note for this section:

For section 188(5), the patient's psychiatrist may for example consider it appropriate to involve a community mental health service.

#### **Division 4 — Provision of treatment to patients of Aboriginal or Torres Strait Islander descent**

##### **189. Provision of treatment to patient of Aboriginal or Torres Strait Islander descent**

To the extent that it is practicable and appropriate to do so, treatment provided to a patient who is of Aboriginal or Torres Strait Islander descent must be provided in collaboration with —

- (a) Aboriginal or Torres Strait Islander mental health workers; and
- (b) significant members of the patient's community, including elders and traditional healers.

#### **Division 5 — Compliance with standards and guidelines**

##### **190. Mental health service must comply with standards**

The person in charge of a mental health service must ensure that any standards published under section 547(2) applicable to the mental health service are complied with.

##### **191. Mental health service must take guidelines into account**

The person in charge of a mental health service must ensure that, in the provision by the mental health service of treatment and care to persons who have a mental illness, regard is had to any guidelines published under section 547(1) or (3) applicable to that treatment and care.



## **Part 14 — Regulation of certain kinds of treatment and other interventions**

### **Division 1 — Electroconvulsive therapy**

**192. Electroconvulsive therapy (ECT): meaning**

Electroconvulsive therapy is treatment involving the application of electric current to specific areas of a person's head to produce a generalised seizure that is modified by general anaesthesia and the administration of a muscle relaxing agent.

**193. ECT offence**

A person must not perform electroconvulsive therapy on another person except in accordance with sections 194 to 199.  
Penalty: a fine of \$15 000 and imprisonment for 2 years.

**194. ECT on child under 14 years prohibited**

A person cannot perform electroconvulsive therapy on a child under 14 years of age.

**195. ECT on child over 14 years who is voluntary patient**

- (1) This section applies in relation to a child who has reached 14 years of age but is under 18 years of age and is a voluntary patient.
- (2) A medical practitioner can perform electroconvulsive therapy on the child if —
  - (a) informed consent is given to the electroconvulsive therapy being performed; and
  - (b) the Mental Health Tribunal approves under Part 21 Division 6 the electroconvulsive therapy being performed; and

- (c) in performing the electroconvulsive therapy, the medical practitioner has regard to the guidelines published under section 547(1)(f) for that purpose.

Note for this section:

For section 195(2)(a), the child or the child's parent or guardian can give informed consent (see sections 14 and 15).

**196. ECT on child over 14 years who is involuntary patient or mentally impaired accused**

- (1) This section applies in relation to a child who has reached 14 years of age but is under 18 years of age and is —
  - (a) an involuntary patient; or
  - (b) a patient who is a mentally impaired accused required under the MIA Act to be detained at an authorised hospital.
- (2) A medical practitioner can perform electroconvulsive therapy on the child if —
  - (a) the Mental Health Tribunal approves under Part 21 Division 6 the electroconvulsive therapy being performed; and
  - (b) in performing the electroconvulsive therapy, the medical practitioner has regard to the guidelines published under section 547(1)(f) for that purpose.

**197. ECT on adult voluntary patient**

- (1) This section applies in relation to an adult who is a voluntary patient.
- (2) A medical practitioner can perform electroconvulsive therapy on the patient if —
  - (a) informed consent is given to the electroconvulsive therapy being performed; and

- (b) the electroconvulsive therapy is performed at a mental health service approved under section 544 for that purpose; and
- (c) in performing the electroconvulsive therapy, the medical practitioner has regard to the guidelines published under section 547(1)(f) for that purpose.

Notes for this section:

1. For section 197(2)(a), an adult can give informed consent in an advance health directive (see the GAA Act section 110ZJ(2)) or an adult's enduring guardian or guardian or the person responsible for the adult can give informed consent on the adult's behalf (see the GAA Act section 110ZJ(3) to (5)).
2. The GAA Act sections 110ZI and 110ZIA do not apply in relation to the performance of ECT on an adult who is a voluntary patient.

**198. ECT on adult involuntary patient or mentally impaired accused**

- (1) This section applies in relation to an adult who is —
  - (a) an involuntary patient; or
  - (b) a patient who is a mentally impaired accused required under the MIA Act to be detained at an authorised hospital.
- (2) A medical practitioner can perform electroconvulsive therapy on the patient if —
  - (a) the Mental Health Tribunal approves under Part 21 Division 6 the electroconvulsive therapy being performed; and
  - (b) in performing the electroconvulsive therapy, the medical practitioner has regard to the guidelines published under section 547(1)(f) for that purpose.

**199. Emergency ECT on adult involuntary patient or mentally impaired accused**

- (1) This section applies in relation to an adult who is —
  - (a) an involuntary patient; or

- (b) a patient who is a mentally impaired accused required under the MIA Act to be detained at an authorised hospital.
- (2) A medical practitioner can perform electroconvulsive therapy on the patient if —
  - (a) the patient needs to be provided with electroconvulsive therapy —
    - (i) to save the patient’s life; or
    - (ii) because there is an imminent risk of the patient behaving in a way that is likely to result in serious physical injury to the patient or another person;
  - and
  - (b) the electroconvulsive therapy is performed at a mental health service approved under section 544 for that purpose; and
  - (c) the Chief Psychiatrist approves the electroconvulsive therapy being performed; and
  - (d) in performing the electroconvulsive therapy, the medical practitioner has regard to the guidelines published under section 547(1)(f) for that purpose.
- (3) In approving the electroconvulsive therapy being performed, the Chief Psychiatrist must have regard to the guidelines published under section 547(1)(f) for that purpose.

**200. Report to Mentally Impaired Accused Review Board**

- (1) This section applies in relation to a patient who is a mentally impaired accused required under the MIA Act to be detained at an authorised hospital.
- (2) The patient’s psychiatrist must report the performance of a course of electroconvulsive therapy on the patient as soon as practicable to the Mentally Impaired Accused Review Board.

- (3) The report must be accompanied by a copy of the approval of the Mental Health Tribunal or the Chief Psychiatrist, as the case requires.

**201. Statistics about ECT**

- (1) This section applies in relation to a mental health service where electroconvulsive therapy is performed.

- (2) In this section —

*month* means any of the 12 months of the year;

*serious adverse event*, in relation to a course of treatments with electroconvulsive therapy, includes any of the following —

- (a) premature consciousness during a treatment;
  - (b) anaesthetic complications (for example, cardiac arrhythmia) during recovery from a treatment;
  - (c) an acute and persistent confused state during recovery from a treatment;
  - (d) muscle tears or vertebral column damage;
  - (e) severe and persistent headaches;
  - (f) persistent memory deficit.
- (3) The person in charge of the mental health service must, as soon as practicable after the end of each month, report to the Chief Psychiatrist on these matters —
- (a) the number of people in respect of whom a course of electroconvulsive therapy at the mental health service was completed under subsection (4), or was discontinued under subsection (5), during the month;
  - (b) the number of those people who were children;
  - (c) the number of those people who were voluntary patients;
  - (d) the number of those voluntary patients who were children;
  - (e) the number of those people who were involuntary patients;

- (f) the number of those involuntary patients who were children;
  - (g) the number of those people who were mentally impaired accused required under the MIA Act to be detained at an authorised hospital;
  - (h) the number of those mentally impaired accused who were children;
  - (i) the number of treatments with electroconvulsive therapy in each of those courses;
  - (j) the number of those courses that were courses of emergency electroconvulsive therapy performed under section 199;
  - (k) details of any serious adverse event that occurred, or is suspected of having occurred, during or after any of those courses.
- (4) For the purposes of subsection (3)(a), a course of electroconvulsive therapy is taken to have been completed during a month if the last treatment in the course was performed during the month, whether or not any of the other treatments in the course were performed during the month.
- (5) For the purposes of subsection (3)(a), a course of electroconvulsive therapy is taken to have been discontinued during a month if —
  - (a) one or more of the treatments in the course have been performed, whether or not during the month; and
  - (b) the decision not to perform any more of the treatments in the course was made (for whatever reason) during the month.
- (6) The report must be in the approved form.

## **Division 2 — Emergency psychiatric treatment**

### **202. Emergency psychiatric treatment: meaning**

- (1) Emergency psychiatric treatment is treatment that needs to be provided to a person —
  - (a) to save the person's life; or
  - (b) to prevent the person from behaving in a way that is likely to result in serious physical injury to the person or another person.
- (2) Emergency psychiatric treatment does not include any of these treatments —
  - (a) electroconvulsive therapy;
  - (b) psychosurgery;
  - (c) treatment that is prohibited by section 210(1).

### **203. Informed consent not required**

A medical practitioner may provide a person with emergency psychiatric treatment without informed consent being given to the provision of the treatment.

Note for this section:

The GAA Act sections 110ZI and 110ZIA do not apply in relation to emergency psychiatric treatment.

### **204. Record of emergency psychiatric treatment**

- (1) A medical practitioner who provides emergency psychiatric treatment to a person must, as soon as practicable —
  - (a) file a record, in accordance with subsection (2), of the provision of the emergency psychiatric treatment to the person; and
  - (b) give a copy of the record to each of these people —
    - (i) the person;
    - (ii) the Chief Psychiatrist;

- (iii) if the person is a mentally impaired accused —  
the Mentally Impaired Accused Review Board.
- (2) The record of the treatment provided must be in the approved form and must include these things —
  - (a) the name of the person provided with the treatment;
  - (b) the name and qualifications of the practitioner who provided the treatment;
  - (c) the names of any other people involved in providing the treatment;
  - (d) the date, time and place the treatment was provided;
  - (e) particulars of the circumstances in which the treatment was provided;
  - (f) particulars of the treatment provided.

### **Division 3 — Psychosurgery**

#### **205. Psychosurgery: meaning**

Psychosurgery is treatment involving —

- (a) the use of a surgical technique or procedure or intracerebral electrodes to create in a person's brain a lesion intended (whether alone or in combination with one or more other lesions created at the same or other times) to alter permanently —
  - (i) the person's thoughts or emotions; or
  - (ii) the person's behaviour other than behaviour secondary to a paroxysmal cerebral dysrhythmia;
- or
- (b) the use of intracerebral electrodes to stimulate a person's brain without creating a lesion with the intention that the stimulation (whether alone or in combination with other such stimulation at the same or other times) will influence or alter temporarily —
  - (i) the person's thoughts or emotions; or



- (ii) the person's behaviour other than behaviour secondary to a paroxysmal cerebral dysrhythmia.

**206. Psychosurgery offence**

A person must not perform psychosurgery on another person except in accordance with sections 207 and 208.

Penalty: imprisonment for 5 years.

**207. Psychosurgery on child under 16 years prohibited**

A person cannot perform psychosurgery on a child under 16 years of age.

**208. Psychosurgery on adult or child over 16 years old**

- (1) This section applies in relation to a patient who is —
  - (a) an adult; or
  - (b) a child who has reached 16 years of age but is under 18 years of age.
- (2) A neurosurgeon can perform psychosurgery on the patient if —
  - (a) the patient gives informed consent to the psychosurgery being performed on himself or herself; and
  - (b) the Mental Health Tribunal approves under Part 21 Division 7 the psychosurgery being performed.

Notes for this section:

- 1. For the purpose of section 208(2)(a), an adult patient can give informed consent in an advance health directive (see the GAA Act section 110ZJ(2)).
- 2. For the purpose of section 208(2)(a), a child can only give informed consent if the child has the capacity to do so (see Part 5 Division 1).

**209. Report to Chief Psychiatrist and Mentally Impaired Accused Review Board**

- (1) A patient's psychiatrist must report the performance of psychosurgery on the patient as soon as practicable to —
  - (a) the Chief Psychiatrist; and

- (b) if the patient is a mentally impaired accused — the Mentally Impaired Accused Review Board.
- (2) The report must be accompanied by a copy of the Mental Health Tribunal's approval.

#### **Division 4 — Deep sleep and insulin coma therapy**

##### **210. Deep sleep and insulin coma therapy prohibited**

- (1) A person must not perform any of these things on another person —
  - (a) deep sleep therapy;
  - (b) insulin coma therapy;
  - (c) insulin sub coma therapy.

Penalty: imprisonment for 5 years.

- (2) An offence under subsection (1) is a crime.

#### **Division 5 — Seclusion**

##### **211. Terms used**

In this Division —

***oral authorisation*** means an authorisation given orally under section 214(1);

***seclusion order*** —

- (a) means a seclusion order made under section 215(1); and
- (b) includes a seclusion order as extended under section 218(1).

##### **212. Seclusion: meaning**

- (1) Seclusion is the confinement of a person who is being provided with treatment or care at an authorised hospital by leaving the person at any time of the day or night alone in a room or area from which it is not within the person's control to leave.

- (2) A person is not secluded merely because the person is alone in a room or area that the person is unable to leave because of frailty, illness or mental or physical disability.

**213. Seclusion must be authorised**

A person must not keep another person in seclusion except in accordance with an oral authorisation or a seclusion order.

Penalty: a fine of \$6 000.

**214. Giving oral authorisation**

- (1) A medical practitioner or mental health practitioner at an authorised hospital or the person in charge of a ward at an authorised hospital may orally authorise the seclusion of any of these people —
- (a) a person who is a patient admitted by the authorised hospital;
  - (b) a person who is referred under section 26(2) or 36(2) for an examination to be conducted by a psychiatrist at the authorised hospital;
  - (c) a person who is under an order made under section 55(1)(c) or 61(1)(c) to enable an examination to be conducted by a psychiatrist at the authorised hospital.
- (2) A person cannot give an oral authorisation in respect of a person unless satisfied of the matters specified in section 216.
- (3) A person giving an oral authorisation in respect of a person must specify the room or area where the person can be secluded.
- (4) A person who gives an oral authorisation in respect of a person must, as soon as practicable after the person is secluded under the authorisation —
- (a) record the oral authorisation in the approved form, specifying the following —
    - (i) the date and time when it was given;
    - (ii) the room or area specified under subsection (3);

- (iii) the reasons for giving it;
  - and
  - (b) file the record and give a copy to the person.
- (5) A mental health practitioner or the person in charge of a ward who gives an oral authorisation in respect of a person must, as soon as practicable and, in any event, within sufficient time to enable the person to be examined as required by section 222(4) or 223(2), inform a medical practitioner as to whether —
  - (a) the person is secluded under the oral authorisation; or
  - (b) the person was secluded under the oral authorisation but has since been released from seclusion.
- (6) A mental health practitioner or the person in charge of a ward who informs a medical practitioner under subsection (5) must, as soon as practicable —
  - (a) record in the approved form —
    - (i) the medical practitioner's name and qualifications; and
    - (ii) the date and time when the medical practitioner was informed;
  - and
  - (b) file the record and give a copy to the person.
- (7) If a seclusion order confirming the oral authorisation is not made (either by the person who gave the oral authorisation or, if that person is not reasonably available, another person who is authorised to make a seclusion order) as soon as practicable and, in any event, within 2 hours after the time when the person is secluded under the authorisation —
  - (a) the person cannot continue to be secluded and must be released from seclusion; and
  - (b) the person who gave the oral authorisation or, if that person is not reasonably available, another person who is authorised to make a seclusion order must ensure that

the person is informed of that fact and released from seclusion.

**215. Making seclusion order**

- (1) A medical practitioner or mental health practitioner at an authorised hospital or the person in charge of a ward at an authorised hospital may make a seclusion order authorising the seclusion of any of these people —
  - (a) a person who is a patient admitted by the authorised hospital;
  - (b) a person who is referred under section 26(2) or 36(2) for an examination to be conducted by a psychiatrist at the authorised hospital;
  - (c) a person who is under an order made under section 55(1)(c) or 61(1)(c) to enable an examination to be conducted by a psychiatrist at the authorised hospital.
- (2) A person cannot make a seclusion order in respect of a person unless satisfied of the matters specified in section 216.
- (3) A seclusion order must be in the approved form and must include the following —
  - (a) the name and date of birth of the person being secluded under the order;
  - (b) the date and time when the order is made;
  - (c) the date and time when any oral authorisation being confirmed by the order was given;
  - (d) the period for which the person can be secluded under the order, which cannot exceed 2 hours including the period for which the person was secluded under any oral authorisation being confirmed by the order;
  - (e) the room or area where the person can be secluded;
  - (f) with reference to the criteria specified in section 216(1), the reasons for authorising the seclusion;

- (g) if a mental health practitioner or the person in charge of a ward makes the order — with reference to the criteria specified in section 216(2), the reasons for the urgency;
    - (h) particulars of any observations made about the person —
      - (i) if the order is confirming an oral authorisation — when the person was secluded under the oral authorisation; or
      - (ii) otherwise — when the person is secluded under the order;
    - (i) particulars of any directions given by a medical practitioner or mental health practitioner about the treatment and care to be provided to the person while secluded;
    - (j) the name, qualifications and signature of the person making the order.
  - (4) A mental health practitioner or the person in charge of a ward who makes a seclusion order in respect of a person must, as soon as practicable and, in any event, within sufficient time to enable the person to be examined as required by section 222(4) or 223(2), inform a medical practitioner as to whether —
    - (a) the person is secluded under the seclusion order; or
    - (b) the person was secluded under the seclusion order but has since been released from seclusion.
  - (5) A mental health practitioner or the person in charge of a ward who informs a medical practitioner under subsection (4) must, as soon as practicable —
    - (a) record in the approved form —
      - (i) the medical practitioner's name and qualifications; and
      - (ii) the date and time when the medical practitioner was informed;
- and

(b) file the record and give a copy to the person.

- (6) The person who makes a seclusion order in respect of a person must, as soon as practicable after the person is secluded under the order, file it and give a copy to the person.

## **216. Criteria for authorising seclusion**

- (1) A person cannot give an oral authorisation or make a seclusion order in respect of a person unless satisfied of these things —
- (a) the person needs to be secluded to prevent the person from —
    - (i) physically injuring himself or herself or another person; or
    - (ii) persistently causing serious damage to property;
  - and
  - (b) there is no less restrictive way of preventing the injury or damage.
- (2) A mental health practitioner or the person in charge of a ward cannot give an oral authorisation or make a seclusion order in respect of a person unless also satisfied that —
- (a) the person needs to be secluded urgently; and
  - (b) a medical practitioner is not reasonably available to give an oral authorisation or make a seclusion order in respect of the person.

## **217. Treating psychiatrist (if any) to be informed**

- (1) This section applies if —
- (a) a person secluded under an oral authorisation or seclusion order has a treating psychiatrist; and
  - (b) the treating psychiatrist did not give the oral authorisation or make the seclusion order; and
  - (c) the medical practitioner informed under section 214(5) or 215(4) of the person's seclusion is not the treating psychiatrist.

- (2) The person who gave the oral authorisation or made the seclusion order must, as soon as practicable and, in any event, within 2 hours after the time when the person is secluded under the authorisation or order, inform the treating psychiatrist as to whether —
  - (a) the person is secluded under the authorisation or order; or
  - (b) the person was secluded under the authorisation or order but has since been released from seclusion.
- (3) A person who informs the treating psychiatrist under subsection (2) must, as soon as practicable —
  - (a) record in the approved form —
    - (i) the treating psychiatrist's name and qualifications; and
    - (ii) the date and time when the treating psychiatrist was informed;
  - and
  - (b) file the record and give a copy to the person.

**218. Extending seclusion order**

- (1) A medical practitioner may make an order extending a seclusion order in force in respect of a person from the end of the period of seclusion under the seclusion order for the further period (not exceeding 2 hours) specified in the order.
- (2) The medical practitioner cannot extend the seclusion order unless, immediately before doing so, the medical practitioner examines the person in accordance with section 222(4).
- (3) The medical practitioner must, as soon as practicable, file the order and give a copy to the person.

**219. Revoking seclusion order**

- (1) A medical practitioner or mental health practitioner or the person in charge of a ward at an authorised hospital may make



an order revoking a seclusion order in force in respect of a person.

- (2) The order must be in the approved form and must include the following —
  - (a) the date and time when the seclusion order is revoked;
  - (b) the name, qualifications and signature of the person making it.
- (3) The person who makes the order must, as soon as practicable, file it and give a copy to the person.

**220. Release of person on revocation or expiry of seclusion order**

A medical practitioner or mental health practitioner must, as soon as practicable after the time when a person cannot continue to be secluded under a seclusion order —

- (a) inform the person of that fact; and
- (b) ensure that the person is released from seclusion.

**221. Record of seclusion order expiring**

A medical practitioner or mental health practitioner must, as soon as practicable after a seclusion order expires, file a record in the approved form of the date and time of the expiry.

**222. Requirements relating to seclusion**

- (1) This section applies while a person is secluded under an oral authorisation or a seclusion order.
- (2) The person in charge of the ward where the person is secluded must ensure that the requirements specified in this section, and any other requirements prescribed by the regulations for this section, are complied with.
- (3) A mental health practitioner or a nurse must observe the person every 15 minutes and, as soon as practicable, file a record in the approved form of those observations and give a copy to the person.

- (4) A medical practitioner must examine the person at least every 2 hours and, as soon as practicable —
- (a) record in the approved form these things —
    - (i) the medical practitioner's name and qualifications;
    - (ii) the date and time of the examination;
    - (iii) the results of the examination, including whether or not the medical practitioner considers that, having regard to the criteria specified in section 216(1), the person should continue to be secluded;
  - and
  - (b) file the record and give a copy to the person.
- (5) The person must be provided with these things —
- (a) the bedding and clothing appropriate in the circumstances;
  - (b) sufficient food and drink;
  - (c) access to toilet facilities;
  - (d) any other care appropriate to the person's needs.

**223. Examination of person released from seclusion**

- (1) This section applies whenever a person is released from seclusion under an oral authorisation or a seclusion order.
- (2) The person in charge of the ward where the person was secluded must ensure —
- (a) that the person is examined by a medical practitioner within 6 hours after the time when the person is released from the seclusion; or
  - (b) if the person is to be released or discharged by, or against medical advice wants to leave, the authorised hospital where the person was secluded before being examined under paragraph (a) — that the person is

offered an examination by a medical practitioner to be conducted before the person is released, discharged or leaves.

- (3) A medical practitioner who examines a person for the purposes of subsection (2) must, as soon as practicable —
- (a) record in the approved form these things —
    - (i) the medical practitioner's name and qualifications;
    - (ii) the date and time of the examination;
    - (iii) the results of the examination, including any complication of or deterioration in the person's mental or physical condition that is a result of, or may be the result of, the person being secluded;
  - and
  - (b) file the record and give a copy to the person.

**224. Report to Chief Psychiatrist and Mentally Impaired Accused Review Board**

- (1) This section applies whenever a person is released from seclusion under an oral authorisation or a seclusion order.
- (2) The treating psychiatrist or, if the person does not have a treating psychiatrist, the person in charge of the authorised hospital where the person was secluded must, as soon as practicable, give the documents specified in subsection (3) relating to the seclusion to —
  - (a) the Chief Psychiatrist; and
  - (b) if the person is a mentally impaired accused — the Mentally Impaired Accused Review Board.
- (3) For subsection (2), these documents are specified —
  - (a) a copy of the record of the oral authorisation (if any) made under section 214(4)(a);

- (b) a copy of the seclusion order (if any) made under section 215(1);
  - (c) a copy of any order extending the seclusion order made under section 218(1);
  - (d) a copy of any order revoking the seclusion order made under section 219(1) or any record of the expiry of the seclusion order under section 221;
  - (e) a copy of each of the records made under section 214(6)(a), 215(5)(a), 217(3)(a), 222(3) and (4)(a) and 223(3)(a).
- (4) The treating psychiatrist or person in charge must, as soon as practicable, file a record of having complied with subsection (2).

**225. Reasonable assistance and force authorised**

A person prescribed by the regulations for this section is authorised to exercise the powers under section 172 for the purpose of secluding a person under an oral authorisation or a seclusion order.

**Division 6 — Bodily restraint**

**226. Terms used**

In this Division —

***bodily restraint order*** —

- (a) means a bodily restraint order made under section 231(1); and
- (b) includes a bodily restraint order as varied under section 234(1) or (3);

***oral authorisation*** means an authorisation given orally under section 230(1).

**227. Bodily restraint: meaning**

- (1) Bodily restraint is the physical or mechanical restraint of a person who is being provided with treatment or care at an authorised hospital.
- (2) Physical restraint is the restraint of a person by the application of bodily force to the person's body to restrict the person's movement.
- (3) A person is not being physically restrained merely because the person is being provided with the physical support or assistance reasonably necessary —
  - (a) to enable the person to carry out daily living activities; or
  - (b) to redirect the person because the person is disoriented.
- (4) Mechanical restraint is the restraint of a person by the application of a device (for example, a belt, harness, manacle, sheet or strap) to a person's body to restrict the person's movement.
- (5) Mechanical restraint does not include either of these forms of restraint —
  - (a) the appropriate use of a medical or surgical appliance in the treatment of a physical illness or injury;
  - (b) the appropriate use of furniture that restricts a person's capacity to get off the furniture (for example, a bed fitted with cot sides or a chair fitted with a table across the arms).
- (6) Bodily restraint does not include —
  - (a) physical or mechanical restraint by a police officer acting in the course of duty; or
  - (b) physical restraint by a person exercising a power under section 172(2).

**228. Principles relating to use of bodily restraint**

These principles apply in relation to the use of bodily restraint on a person under this Division —

- (a) the degree of force used to restrain the person must be the minimum that is required in the circumstances;
- (b) while the person is restrained —
  - (i) there must be the least possible restriction on the person's freedom of movement consistent with the person's restraint; and
  - (ii) the person must be treated with dignity and respect.

**229. Bodily restraint must be authorised**

A person must not use bodily restraint on another person except in accordance with an oral authorisation or a bodily restraint order.

Penalty: a fine of \$6 000.

**230. Giving oral authorisation**

- (1) A medical practitioner or mental health practitioner at an authorised hospital or the person in charge of a ward at an authorised hospital may orally authorise the bodily restraint of any of these people —
  - (a) a person who is a patient admitted by the authorised hospital;
  - (b) a person who is referred under section 26(2) or 36(2) for an examination to be conducted by a psychiatrist at the authorised hospital;
  - (c) a person who is under an order made under section 55(1)(c) or 61(1)(c) to enable an examination to be conducted by a psychiatrist at the authorised hospital.

- (2) A person cannot give an oral authorisation in respect of a person unless satisfied of the matters specified in section 232.
- (3) A person giving an oral authorisation in respect of a person must specify —
  - (a) whether physical or mechanical restraint can be used to restrain the person; and
  - (b) if mechanical restraint can be used —
    - (i) the device that can be used to restrain the person; and
    - (ii) the way in which the device can be applied to the person's body.
- (4) A person who gives an oral authorisation in respect of a person must, as soon as practicable after the person is restrained under the authorisation —
  - (a) record the oral authorisation in the approved form, specifying the following —
    - (i) the date and time when it was given;
    - (ii) the matters specified under subsection (3);
    - (iii) the reasons for giving it;and
  - (b) file the record and give a copy to the person.
- (5) A mental health practitioner or the person in charge of a ward who gives an oral authorisation in respect of a person must, as soon as practicable and, in any event, within sufficient time to enable the person to be examined as required by section 238(4) or 239(2)(a), inform a medical practitioner as to whether —
  - (a) the person is restrained under the oral authorisation; or
  - (b) the person was restrained under the oral authorisation but has since been released from bodily restraint.

- (6) A mental health practitioner or the person in charge of a ward who informs a medical practitioner under subsection (5) must, as soon as practicable —
  - (a) record in the approved form —
    - (i) the medical practitioner's name and qualifications; and
    - (ii) the date and time when the medical practitioner was informed;
  - and
  - (b) file the record and give a copy to the person.
- (7) If a bodily restraint order confirming the oral authorisation is not made (either by the person who gave the oral authorisation or, if that person is not reasonably available, another person who is authorised to make a bodily restraint order) as soon as practicable and, in any event, within 30 minutes after the time when the person is restrained under the authorisation —
  - (a) the person cannot continue to be restrained and must be released from bodily restraint; and
  - (b) the person who gave the oral authorisation or, if that person is not reasonably available, another person who is authorised to make a bodily restraint order must ensure that the person is informed of that fact and released from bodily restraint.

**231. Making bodily restraint order**

- (1) A medical practitioner or mental health practitioner at an authorised hospital or the person in charge of a ward at an authorised hospital may make a bodily restraint order authorising the bodily restraint of any of these people —
  - (a) a person who is a patient admitted by the authorised hospital;
  - (b) a person who is referred under section 26(2) or 36(2) for an examination to be conducted by a psychiatrist at the authorised hospital;



- (c) a person who is under an order made under section 55(1)(c) or 61(1)(c) to enable an examination to be conducted by a psychiatrist at the authorised hospital.
- (2) A person cannot make a bodily restraint order in respect of a person unless satisfied of the matters specified in section 232.
- (3) A bodily restraint order must be in the approved form and must include the following —
  - (a) the name and date of birth of the person being restrained under the order;
  - (b) the date and time when the order is made;
  - (c) the date and time when any oral authorisation being confirmed by the order was given;
  - (d) the period for which the person can be restrained under the order, which cannot exceed 30 minutes including the period for which the person was restrained under any oral authorisation being confirmed by the order;
  - (e) whether physical or mechanical restraint can be used to restrain the person;
  - (f) if mechanical restraint can be used —
    - (i) the device that can be used to restrain the person; and
    - (ii) the way in which the device can be applied to the person's body;
  - (g) with reference to the criteria specified in section 232(1) —
    - (i) the reasons for authorising the use of bodily restraint on the person; and
    - (ii) if mechanical restraint is authorised — the reasons for authorising the use and application of the device specified under paragraph (f);
  - (h) if a mental health practitioner or the person in charge of a ward makes the order — with reference to the criteria specified in section 232(2), the reasons for the urgency;

- (i) particulars of any observations made about the person —
    - (i) if the order is confirming an oral authorisation — when the person was restrained under the oral authorisation; or
    - (ii) otherwise — when the person is restrained under the order;
  - (j) particulars of any directions given by a medical practitioner or mental health practitioner about the treatment and care to be provided to the person while restrained;
  - (k) the name, qualifications and signature of the person making the order.
- (4) A mental health practitioner or the person in charge of a ward who makes a bodily restraint order in respect of a person must, as soon as practicable and, in any event, within sufficient time to enable the person to be examined as required by section 238(4) or 239(2)(a), inform a medical practitioner as to whether —
  - (a) the person is restrained under the bodily restraint order; or
  - (b) the person was restrained under the bodily restraint order but has since been released from bodily restraint.
- (5) A mental health practitioner or the person in charge of a ward who informs a medical practitioner under subsection (4) must, as soon as practicable —
  - (a) record in the approved form —
    - (i) the medical practitioner's name and qualifications; and
    - (ii) the date and time when the medical practitioner was informed;
  - and
  - (b) file the record and give a copy to the person.

- (6) The person who makes a bodily restraint order in respect of a person must, as soon as practicable after the person is restrained under the order, file it and give a copy to the person.

**232. Criteria for authorising bodily restraint**

- (1) A person cannot give an oral authorisation or make a bodily restraint order in respect of a person unless satisfied of these things —
- (a) the person needs to be restrained to —
    - (i) provide the person with treatment; or
    - (ii) prevent the person from physically injuring himself or herself or another person; or
    - (iii) prevent the person from persistently causing serious damage to property;
  - and
  - (b) there is no less restrictive way of providing the treatment or preventing the injury or damage; and
  - (c) the use of bodily restraint on the person is unlikely to pose a significant risk to the person's physical health.
- (2) A mental health practitioner or the person in charge of a ward cannot give an oral authorisation or make a bodily restraint order in respect of a person unless also satisfied that —
- (a) the person needs to be restrained urgently; and
  - (b) a medical practitioner is not reasonably available to give an oral authorisation or make a bodily restraint order in respect of the person.

**233. Treating psychiatrist (if any) must be informed**

- (1) This section applies if —
- (a) a person restrained under an oral authorisation or a bodily restraint order has a treating psychiatrist; and
  - (b) the treating psychiatrist did not give the oral authorisation or make the bodily restraint order; and

- (c) the medical practitioner informed of the restraint under section 230(5) or 231(4) is not the treating psychiatrist.
- (2) The person who gave the oral authorisation or made the bodily restraint order must, as soon as practicable and, in any event, within 30 minutes after the time when the person is restrained under the authorisation or order, inform the treating psychiatrist as to whether —
  - (a) the person is restrained under the authorisation or order; or
  - (b) the person was restrained under the authorisation or order but has since been released from bodily restraint.
- (3) A person who informs the treating psychiatrist under subsection (2) must, as soon as practicable —
  - (a) record in the approved form —
    - (i) the treating psychiatrist's name and qualifications; and
    - (ii) the date and time when the treating psychiatrist was informed;
  - and
  - (b) file the record and give a copy to the person.

**234. Varying bodily restraint order**

- (1) A medical practitioner may make an order extending a bodily restraint order in force in respect of a person from the end of the period of restraint under the bodily restraint order for the further period (not exceeding 30 minutes) specified in the order.
- (2) A medical practitioner cannot extend a bodily restraint order under subsection (1) unless, immediately before doing so, the medical practitioner examines the person in accordance with section 238(4).

- (3) A medical practitioner or mental health practitioner may make an order varying a bodily restraint order in force in respect of a person by —
  - (a) shortening the bodily restraint order by the period specified in the order; or
  - (b) varying the device that is authorised for use to restrict the person's movement or the way in which the device is authorised to be applied to the person's body.
- (4) An order made under subsection (1) or (3) must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the variation of the bodily restraint order;
  - (c) the reasons for the variation;
  - (d) the name, qualifications and signature of the practitioner making it.
- (5) A person who makes an order under subsection (1) or (3) must, as soon as practicable, file it and give a copy to the person.

**235. Revoking bodily restraint order**

- (1) A medical practitioner or mental health practitioner or the person in charge of a ward at an authorised hospital may make an order revoking a bodily restraint order in force in respect of a person.
- (2) The order must be in the approved form and must include the following —
  - (a) the date and time when the bodily restraint order is revoked;
  - (b) the name, qualifications and signature of the practitioner making it.
- (3) The person who makes the order must, as soon as practicable, file it and give a copy to the person.

**236. Release of person on revocation or expiry of bodily restraint order**

A medical practitioner or mental health practitioner must, as soon as practicable after the time when a person cannot continue to be restrained under a bodily restraint order —

- (a) inform the person of that fact; and
- (b) ensure that the person is released from bodily restraint.

**237. Record of bodily restraint order expiring**

A medical practitioner or mental health practitioner must, as soon as practicable after a bodily restraint order expires, file a record in the approved form of the date and time of the expiry.

**238. Requirements relating to bodily restraint**

- (1) This section applies while a person is restrained under an oral authorisation or a bodily restraint order.
- (2) The person in charge of the ward where the person is restrained must ensure that the requirements specified in this section, and any other requirements prescribed by the regulations for this section, are complied with.
- (3) A mental health practitioner or a nurse must be in physical attendance on the person at all times and, as soon as practicable, must file a record in the approved form of any observations he or she makes about the person and give a copy to the person.
- (4) A medical practitioner must examine the person at least every 30 minutes and, as soon as practicable —
  - (a) record in the approved form these things —
    - (i) the medical practitioner's name and qualifications;
    - (ii) the date and time of the examination;
    - (iii) the results of the examination, including whether or not the medical practitioner considers that,

having regard to the criteria specified in section 232(1), the person should continue to be restrained;

and

(b) file the record and give a copy to the person.

(5) If the person remains restrained for more than 6 hours, a psychiatrist must review the use of bodily restraint on the person and, as soon as practicable —

(a) record in the approved form —

(i) the psychiatrist's name and qualifications; and

(ii) the date, time and results of the review;

and

(b) file the record and give a copy to the person.

(6) The person must be provided with these things —

(a) the bedding and clothing appropriate in the circumstances;

(b) sufficient food and drink;

(c) access to toilet facilities;

(d) any other care appropriate to the person's needs.

### **239. Examination of person when released**

(1) This section applies whenever a person is released from bodily restraint under an oral authorisation or a bodily restraint order.

(2) The person in charge of the ward where the person was restrained must ensure —

(a) that the person is examined by a medical practitioner as soon as practicable and, in any event, within 6 hours after the time when the person is released from the bodily restraint; or

(b) if the person is to be released or discharged by, or against medical advice wants to leave, the authorised

hospital where the person was restrained before being examined under paragraph (a) — that the person is offered an examination by a medical practitioner to be conducted before the person is released, discharged or leaves.

- (3) A medical practitioner who examines a person for the purposes of subsection (2) must, as soon as practicable —
- (a) record in the approved form these things —
    - (i) the medical practitioner's name and qualifications;
    - (ii) the date and time of the examination;
    - (iii) the results of the examination, including any complication of or deterioration in the person's mental or physical condition that is a result of, or may be the result of, the person being restrained;
  - and
  - (b) file the record and give a copy to the person.

**240. Report to Chief Psychiatrist and Mentally Impaired Accused Review Board**

- (1) This section applies whenever a person is released from restraint under an oral authorisation or a bodily restraint order.
- (2) The treating psychiatrist or, if the person does not have a treating psychiatrist, the person in charge of the authorised hospital where the person was restrained must, as soon as practicable, give the documents specified in subsection (3) relating to the restraint to —
  - (a) the Chief Psychiatrist; and
  - (b) if the person is a mentally impaired accused — the Mentally Impaired Accused Review Board.



- (3) For subsection (2), these documents are specified —
- (a) a copy of the record of the oral authorisation (if any) made under section 230(4)(a);
  - (b) a copy of the bodily restraint order (if any) made under section 231(1);
  - (c) a copy of any order varying the bodily restraint order made under section 234(1) or (3);
  - (d) a copy of any order revoking the bodily restraint order made under section 235(1) or any record of the expiry of the bodily restraint order made under section 237;
  - (e) a copy of each of the records made under section 230(6)(a), 231(5)(a), 233(3)(a), 238(3), (4)(a) and (5)(a) and 239(3)(a).
- (4) The treating psychiatrist or person in charge must, as soon as practicable, file a record of having complied with subsection (2).

## **Part 15 — Health care of people in hospitals**

### **Division 1 — Examination to assess person's physical condition**

#### **241. Physical examination on arrival at hospital**

- (1) This section applies when —
  - (a) a person is admitted —
    - (i) by a hospital as a voluntary inpatient; or
    - (ii) by a hospital as an involuntary patient whose detention at the hospital is authorised under an inpatient treatment order; or
    - (iii) by an authorised hospital as a mentally impaired accused required under the MIA Act to be detained at the authorised hospital;
  - or
  - (b) a person is received into an authorised hospital under section 52(1)(a) or 70(1)(a).
- (2) The person in charge of the hospital must ensure that a medical practitioner physically attends on the person, for the purpose of examining the person to assess the person's physical condition, as soon as practicable and, in any event, within 12 hours after the time when the person is admitted or received, and at reasonable intervals after that initial attendance, until the first of these things occurs —
  - (a) the person is examined by a medical practitioner;
  - (b) if the person is a voluntary inpatient —
    - (i) the person refuses to consent to being examined by a medical practitioner; or
    - (ii) if the person does not have the capacity to consent to being examined by a medical practitioner — the person who is authorised by law to consent to the provision of treatment to

- the person refuses to consent to the person being  
examined by a medical practitioner;
- (c) the person is released or discharged by or otherwise  
leaves the hospital.
- (3) For the purpose of assessing under this section the physical  
condition of a person referred to in subsection (1)(a)(ii) or (iii)  
or (b), these things may be done without consent —
- (a) the person may be examined;
- (b) samples of the person's blood, saliva, tissue and excreta  
may be taken.
- (4) A medical practitioner who examines a person for the purpose  
of assessing under this section the person's physical condition  
must, as soon as practicable, file a record of these things —
- (a) the practitioner's name and qualifications;
- (b) the date and time when the examination was conducted;
- (c) the results of the examination.

**Division 2 — Urgent non-psychiatric treatment for involuntary  
inpatients and mentally impaired accused**

**242. Provision of urgent non-psychiatric treatment: report to  
Chief Psychiatrist**

- (1) This section applies if urgent non-psychiatric treatment is  
provided to a patient who is —
- (a) an involuntary patient who is under an inpatient  
treatment order authorising the patient's detention at an  
authorised hospital; or
- (b) a mentally impaired accused required under the  
MIA Act to be detained at an authorised hospital.
- (2) In this section —
- urgent non-psychiatric treatment*** means urgent treatment as  
defined in the GAA Act section 110ZH.

- (3) The person in charge of the authorised hospital must, as soon as practicable, report the provision of the urgent non-psychiatric treatment to —
- (a) the Chief Psychiatrist; and
  - (b) if the patient is a mentally impaired accused — the Mentally Impaired Accused Review Board.
- (4) The report must be in the approved form and must include these things about the urgent non-psychiatric treatment —
- (a) the name of the patient provided with the treatment;
  - (b) the name and qualifications of the practitioner who provided the treatment;
  - (c) the names of any other people involved in providing the treatment;
  - (d) the date, time and place the treatment was provided;
  - (e) particulars of the circumstances in which the treatment was provided;
  - (f) particulars of the treatment provided.
- (5) The provision of urgent non-psychiatric treatment is an event to which Part 9 applies and the person in charge of the authorised hospital is the person responsible under that Part for notification of that event.

Note for this section:

The GAA Act section 110ZI or 110ZIA may apply in relation to the provision of urgent non-psychiatric treatment to a patient referred to in section 242.

## **Part 16 — Protection of patients' rights**

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

#### **Subdivision 1 — Explanation of rights**

#### **243. Application of this Subdivision**

This Subdivision applies when —

- (a) a patient is being admitted —
  - (i) by a hospital as a voluntary inpatient; or
  - (ii) by a hospital as an involuntary patient whose detention at the hospital is authorised under an inpatient treatment order; or
  - (iii) by an authorised hospital as a mentally impaired accused required under the MIA Act to be detained at the authorised hospital;
- or
- (b) an inpatient treatment order is made in respect of a patient; or
- (c) a patient who is under an inpatient treatment order is granted leave of absence from a hospital under section 105(1); or
- (d) a community treatment order is made in respect of a patient; or
- (e) a person is referred under section 26(2) or 36(2) for an examination to be conducted by a psychiatrist at an authorised hospital; or
- (f) a person is referred under section 26(3)(a) for an examination to be conducted by a psychiatrist at a place that is not an authorised hospital.

**244. Rights to be explained to person**

The person responsible under section 246 must ensure that the person is provided with an explanation, as described in the regulations, of the person's rights under this Act.

Note for this section:

Any explanation provided under section 244 must be provided in accordance with section 9(2).

**245. Person's rights to be explained to another person**

- (1) The person responsible under section 246 must ensure that a carer, close family member or other personal support person of the person is provided with an explanation, as described in the regulations, of the person's rights under this Act.
- (2) This section applies despite any requirement under section 286(2) or 288(2) relating to the person's consent or refusal to consent.

Note for this section:

Any explanation provided under section 245(1) must be provided in accordance with section 9(2).

**246. Person responsible for ensuring explanation is provided**

For sections 244 and 245, the person responsible is —

- (a) when section 243(a) applies — the person in charge of the authorised hospital; or
- (b) when section 243(b) applies — the psychiatrist who makes the inpatient treatment order; or
- (c) when section 243(c) applies — the psychiatrist who grants the leave of absence; or
- (d) when section 243(d) applies — the psychiatrist who makes the community treatment order; or
- (e) when section 243(e) or (f) applies — the medical practitioner or authorised mental health practitioner who makes the referral.

**Subdivision 2 — Access to records about patients and former patients**

**247.      Term used: relevant document**

In this Subdivision —

***relevant document***, in relation to a person, means the whole or any part of the person's medical record or any other document about the person.

**248.      Right to access medical record and other documents**

- (1) Unless section 249(1)(a) or (b) or (3) applies, a person who is or was provided with treatment or care by a mental health service is entitled to inspect, and to be given a copy of, any relevant document relating to the person that is in the possession or control of —
  - (a) the person in charge of the mental health service; or
  - (b) a staff member of the mental health service.
- (2) Subsection (1) does not affect any other right that the person has under this Act or another law to be given access to a document.
- (3) The person in charge of the mental health service must ensure —
  - (a) that any request by the person to inspect, or to be given a copy of, a relevant document relating to the person is dealt with as soon as practicable after the request is received by the person who has possession or control of the relevant document; and
  - (b) if the request is refused — that, as soon as practicable after the refusal, a record in the approved form of the reasons for the refusal is filed and a copy given to the person.

**249. Restrictions on access**

- (1) A person is not entitled to have access under section 248(1) to a relevant document relating to the person —
  - (a) if a psychiatrist reasonably believes that disclosure of the information in the document to the person —
    - (i) poses a significant risk to the health or safety of the person or to the safety of another person; or
    - (ii) poses a significant risk of serious harm to the person or to another person;
  - or
  - (b) if disclosure of the information in the document to the person would reveal —
    - (i) personal information about an individual who is not the person; or
    - (ii) information of a confidential nature that was obtained in confidence.
- (2) Subsection (1)(b) does not apply if the personal information is about an individual who consents to the disclosure of the information.
- (3) A person is not entitled to have access under section 248(1) to a relevant document relating to the person if the person —
  - (a) is or was a mentally impaired accused required under the MIA Act to be detained at an authorised hospital; and
  - (b) the relevant document came into existence under, or for the purposes of, the *Prisons Act 1981*.

**250. Providing access to medical practitioner or legal practitioner**

- (1) This section applies if a person has been refused access under section 248(1) to a relevant document relating to the person for a reason referred to in section 249(1)(a).



- (2) The person may nominate a medical practitioner or a legal practitioner or both to inspect, and to be given a copy of, the relevant document.
- (3) A practitioner nominated under subsection (2) is entitled to inspect, and to be given a copy of, the relevant document as soon as practicable.

**251. Disclosure by medical practitioner or legal practitioner**

A person who inspects, or is given a copy of, a relevant document in the exercise or purported exercise of a right under section 250(3) must not disclose any information in the document to the person who has been refused access under section 248(1) to the document.

Penalty: a fine of \$5 000.

**Subdivision 3 — Duties of staff of mental health services  
toward patients**

**252. Term used: mental health service**

In this Subdivision —

*mental health service* includes a private psychiatric hostel.

**253. Duty not to ill-treat or wilfully neglect patients**

A staff member of a mental health service must not ill-treat or wilfully neglect a person for whom the Chief Psychiatrist is responsible under section 515(1) who is being provided with treatment or care by the mental health service.

Penalty: a fine of \$24 000 and imprisonment for 2 years.

**254. Duty to report certain incidents**

- (1) In this section —

*reportable incident*, in relation to a person, means —

- (a) unlawful sexual contact with the person by a staff member of a mental health service; or

- (b) unlawful sexual contact with the person by a person who is not a staff member of a mental health service that occurs at a hospital; or
  - (c) the unreasonable use of force on the person by a staff member of a mental health service.
- (2) A staff member of a mental health service who reasonably suspects that a reportable incident has occurred in relation to a person for whom the Chief Psychiatrist is responsible under section 515(1) who is being provided with treatment or care by the mental health service must report the suspicion to —
  - (a) the person in charge of the mental health service; or
  - (b) the Chief Psychiatrist.

Penalty: a fine of \$6 000.

## **Division 2 — Additional rights of inpatients in hospitals**

### **Subdivision 1 — Admission of voluntary inpatients by authorised hospitals**

#### **255. Admission by medical practitioner**

A voluntary patient can only be admitted as an inpatient of an authorised hospital by a medical practitioner.

#### **256. Confirmation of admission by psychiatrist**

- (1) The admission of a voluntary patient as an inpatient of an authorised hospital must be confirmed by a psychiatrist.
- (2) Subsection (1) does not apply if the voluntary patient is admitted by a psychiatrist.

**257. Reasons for refusing to admit or confirm admission**

- (1) A medical practitioner who refuses to admit, or a psychiatrist who refuses to confirm the admission of, a voluntary patient as an inpatient of an authorised hospital must —
  - (a) inform the voluntary patient of the reasons for refusing; and
  - (b) advise the voluntary patient that a complaint about the refusal can be made —
    - (i) under Part 19 to either the person in charge of the authorised hospital or the Director of the Complaints Office; or
    - (ii) to the Chief Psychiatrist;and
  - (c) if that information or advice is provided orally — advise the voluntary patient that the medical practitioner or psychiatrist may be requested to confirm it in writing.
- (2) The medical practitioner or psychiatrist must, as soon as practicable, comply with a request to confirm in writing information or advice provided orally under subsection (1).

Note for this section:

Any information or advice provided under section 257(1) or (2) must be provided in accordance with section 9(2).

**Subdivision 2 — Rights of inpatients generally**

**258. Application of this Subdivision**

This Subdivision applies in relation to any of these patients —

- (a) a voluntary inpatient who is admitted by an authorised hospital;
- (b) an involuntary inpatient whose detention at a hospital is authorised under an inpatient treatment order;
- (c) a mentally impaired accused required under the MIA Act to be detained at an authorised hospital.

**259. Personal possessions**

- (1) This section applies only in relation to a patient who is admitted by an authorised hospital.
- (2) In this section —  
*personal possessions*, of a patient, means any of these items —
  - (a) articles of clothing, jewellery or footwear belonging to the patient;
  - (b) articles for personal use by the patient;
  - (c) aids for daily living, or medical prostheses, that are usually used by the patient as means of assistance or to maintain the patient's dignity.
- (3) The person in charge of an authorised hospital must ensure that each patient —
  - (a) is provided with a secure facility in which to store the patient's personal possessions; and
  - (b) is allowed to use those possessions.
- (4) Subsection (3) does not apply in relation to an item (including an aid for daily living or medical prosthesis) that, in the opinion of the person in charge, may pose a risk of harm to the patient or to another person.
- (5) Subsection (3) does not apply in relation to an item that is not an aid for daily living or medical prosthesis that, in the opinion of the person in charge, is not an appropriate item to store at the authorised hospital.
- (6) Any personal possessions of a patient left at an authorised hospital for more than 6 months after the day on which the patient is discharged by the hospital may be sold or otherwise disposed of by the person in charge of the hospital, but only —
  - (a) after the person in charge gives at least one month's notice of the proposed disposal to a carer, close family member or other personal support person of the person; and

- (b) if no carer, close family member or other personal support person of the person claims those possessions within that 6-month period.

**260. Interview with psychiatrist**

- (1) A patient may, at any time while admitted by a hospital, request an interview with a psychiatrist.
- (2) The person in charge of the hospital must ensure —
  - (a) that, unless subsection (4) applies, the request is complied with within a reasonable time after the request is made; and
  - (b) that a record of the request having been made is filed.
- (3) The psychiatrist who interviews a patient in compliance with a request made under subsection (1) must file a record of —
  - (a) the date and time when the interview occurred; and
  - (b) the matters discussed during the interview.
- (4) A psychiatrist may refuse a patient's request for an interview under subsection (1) if —
  - (a) the patient has a history of making repeated requests under subsection (1); and
  - (b) the psychiatrist is satisfied that the patient is acting unreasonably in making the request.
- (5) A psychiatrist who refuses a patient's request under subsection (4) must file a record of the reasons for refusing and give a copy to the patient.

**261. Freedom of lawful communication**

- (1) This section applies subject to section 262.
- (2) A patient has the right of freedom of lawful communication.

- (3) A patient's freedom of lawful communication includes the freedom to do any of these things in reasonable privacy —
- (a) see and speak with other people in the hospital to the extent that is reasonable;
  - (b) have uncensored communications with people, including by receiving visits, sending and receiving telephone calls, and sending and receiving mail and electronic communications;
  - (c) receive visits from, and otherwise have contact with, the patient's legal practitioner at all reasonable times;
  - (d) receive visits from, and otherwise have contact with, a mental health advocate at any time;
  - (e) receive visits from, and be otherwise contacted by, other people at all reasonable times.

**262. Restrictions on freedom of communication**

- (1) A psychiatrist may make an order —
- (a) prohibiting a patient from exercising a right under section 261; or
  - (b) limiting the extent to which a patient can exercise a right under section 261.
- (2) A psychiatrist cannot make an order under subsection (1) prohibiting, or limiting the extent of, a patient's right under section 261(3)(a), (b) or (e) unless satisfied that making the order is in the best interests of the patient.
- (3) A psychiatrist cannot make an order under subsection (1) prohibiting, or limiting the extent of, a patient's right under section 261(3)(c) or (d) to receive visits from the person's legal practitioner or a mental health advocate unless satisfied that —
- (a) there is a serious risk to the safety of the legal practitioner or mental health advocate if the order is not made; and
  - (b) there are no other steps that could reasonably be taken to reduce that risk.

- (4) A psychiatrist cannot make an order under subsection (1) prohibiting, or limiting the extent of, a patient's right under section 261(3)(c) or (d) to be otherwise contacted by the person's legal practitioner or a mental health advocate.
- (5) The order must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the reasons for making it;
  - (c) the name, qualifications and signature of the psychiatrist.
- (6) A psychiatrist who makes an order under subsection (1) must, as soon as practicable —
  - (a) file it and give a copy to the patient; and
  - (b) give a copy to any carer, close family member or other personal support person of the patient.
- (7) A psychiatrist must, before the end of each 24-hour period that an order made under subsection (1) is in force, review the order and confirm, amend or revoke it.
- (8) A psychiatrist who confirms, amends or revokes an order made under subsection (1) must —
  - (a) file a record of the confirmation, amendment or revocation and the reasons for it; and
  - (b) advise the patient of the confirmation, amendment or revocation and those reasons.
- (9) An order made under subsection (1) ceases to be in force if it is not reviewed before the end of any 24-hour period referred to in subsection (7).
- (10) A psychiatrist who makes an order under subsection (1) in respect of a patient must, within 24 hours after the time when

the order is made, advise the Chief Mental Health Advocate that the order has been made.

Note for this section:

For the purpose of deciding under section 262(2) what is or is not in the best interests of a patient, Part 2 Division 3 applies.

### **Division 3 — Nominated persons**

#### **Subdivision 1 — Purpose and effect of nomination**

##### **263. Role of nominated person**

The role of a nominated person is to assist the person who made the nomination by ensuring that, in performing a function under this Act in relation to that person, a person or body —

- (a) observes that person's rights under this Act; and
- (b) takes that person's interests and wishes into account.

##### **264. Effect of nomination**

- (1) This section does not limit the role of a nominated person under section 263.
- (2) A patient is entitled to have uncensored communications with the patient's nominated person, including by any of these means —
  - (a) receiving visits;
  - (b) making and receiving telephone calls;
  - (c) sending and receiving electronic communications;
  - (d) sending and receiving mail.
- (3) A right of a patient under subsection (2) is subject to any order in force under section 262(1) prohibiting the patient from exercising, or limiting the extent to which the patient can exercise, a right in respect of the patient's nominated person.



- (4) To the extent provided by section 266, a patient's nominated person is entitled to be provided with information, and to be involved in matters, relating to the patient's treatment and care.
- (5) A patient's nominated person may exercise, on behalf of the patient, the rights conferred under this Act on the patient.
- (6) To avoid doubt, a nomination does not authorise a patient's nominated person to apply on the patient's behalf for admission or discharge by a mental health service, or make a treatment decision about the provision of treatment to the patient, unless the nominated person is authorised to do so in another capacity.

Note for this section:

For section 264(6), a patient's nominated person could for example also be the patient's enduring guardian or guardian or the person responsible for the patient under the GAA Act section 110ZD.

### **Subdivision 2 — Right to information, and to be involved in matters, relating to patient's treatment and care**

#### **265. Application of this Subdivision**

This Subdivision does not apply in relation to the notification of an event to which Part 9 applies.

#### **266. Rights of nominated person**

- (1) A patient's nominated person is entitled —
  - (a) subject to section 269, to be provided with information relating to the patient's treatment and care, including information about these matters —
    - (i) the mental illness for which the patient is being provided with treatment or care;
    - (ii) if the patient is an involuntary patient — the grounds on which, and the provision of this Act under which, the involuntary treatment order was made;

- (iii) the treatment and care proposed to be provided to the patient and any other options for the patient's treatment and care that are reasonably available;
    - (iv) the treatment provided to the patient and the patient's response to that treatment;
    - (v) the seclusion of, or use of bodily restraint on, the patient;
    - (vi) the services available to meet the patient's needs;
  - and
  - (b) subject to section 269, to be involved in matters relating to the patient's treatment and care, including these matters —
    - (i) the consideration of the options that are reasonably available for the patient's treatment and care;
    - (ii) the provision of support to the patient;
    - (iii) the preparation and review of any treatment, support and discharge plan for the patient;
  - and
  - (c) to be provided with information about the patient's rights under this Act and how those rights can be accessed and exercised; and
  - (d) to be provided with information about the rights of the nominated person under this Act and how those rights can be accessed and exercised.
- (2) A patient's nominated person may indicate the extent to which the nominated person wants to be provided with the information referred to in subsection (1)(a) or (c) or to be involved in the matters referred to in subsection (1)(b).
- (3) To avoid doubt, a patient's nominated person is not authorised to apply on the patient's behalf for admission or discharge by a mental health service, or make a treatment decision about the

provision of treatment to the patient, unless the nominated person is authorised to do so in another capacity.

Notes for this section:

1. Any information provided under section 266(1)(a), (c) or (d) must be provided in accordance with section 9(2).
2. For section 266(3), a patient's nominated person could for example also be the patient's enduring guardian or guardian or the person responsible for the patient under the GAA Act section 110ZD.

**267. Responsibility of patient's psychiatrist**

A patient's psychiatrist must ensure that the patient's nominated person is provided with information referred to in section 266(1)(a) or (c), or involved in a matter referred to in section 266(1)(b), if no other provision is made under this Act about who must ensure that the nominated person is provided with that information or involved in that matter.

**268. Contacting nominated person**

- (1) This section applies in relation to a requirement under this Act to provide a patient's nominated person with information referred to in section 266(1)(a) or (c) or involve a patient's nominated person in a matter referred to in section 266(1)(b).
- (2) Without limiting a requirement referred to in subsection (1), the requirement is taken to have been complied with if the person responsible for ensuring the requirement is complied with ensures that reasonable efforts to provide the nominated person with the information or involve the nominated person in the matter continue to be made until the first of these things occurs —
  - (a) the nominated person is provided with the information or involved in the matter;
  - (b) it is reasonable for the person responsible to conclude that the nominated person cannot be provided with the information or involved in the matter.

- (3) The person responsible must ensure that one of the following is filed —
  - (a) a record of when and how the nominated person was provided with the information or involved in the matter;
  - (b) if the nominated person could not be provided with the information or involved in the matter — a record of the efforts made to do so.

**269. Provision of information or involvement not in patient's best interests**

- (1) A patient's nominated person is not entitled to be provided with particular information or involved in a particular matter if the patient's psychiatrist reasonably believes that it is not in the best interests of the patient for the nominated person to be provided with that information or involved in that matter.
- (2) A patient's psychiatrist who decides under subsection (1) that the patient's nominated person is not entitled to be provided with particular information or involved in a particular matter must, as soon as practicable —
  - (a) file a record of the decision and the reasons for it; and
  - (b) give a copy to each of —
    - (i) the patient; and
    - (ii) the Chief Mental Health Advocate.

Note for this section:

For the purpose of deciding under section 269(1) what is or is not in the best interests of a patient, Part 2 Division 3 applies.

**270. Advising nominated person of decision**

- (1) A patient's psychiatrist who decides under section 269(1) that the patient's nominated person is not entitled to be provided with information or involved in a matter must, if the nominated

person requests to be provided with the information or involved in the matter —

- (a) advise the nominated person of the decision and the reasons for it; and
  - (b) file a record of the advice and give a copy to the patient.
- (2) A patient's nominated person to whom advice is provided orally under subsection (1)(a) may request the patient's psychiatrist to confirm the advice in writing.
- (3) The patient's psychiatrist must —
  - (a) comply with the request; and
  - (b) file a copy of the confirmation and give another copy to the patient.

Note for this section:

Any advice provided under section 270(1)(a) or (3)(a) must be provided in accordance with section 9(2).

## **271. Revocation of decision**

- (1) A patient's psychiatrist may revoke a decision made under section 269(1) that the patient's nominated person is not entitled to be provided with information or involved in a matter if satisfied that the reasons for making the decision no longer apply.
- (2) The patient's psychiatrist must, as soon as practicable, file a record of the decision and the reasons for it and give a copy to the patient.
- (3) If the nominated person previously requested to be provided with the information or involved in the matter, the patient's psychiatrist must ensure that, as soon as practicable —
  - (a) the nominated person is provided with the information or involved in the matter; and
  - (b) a record of when and how the nominated person was provided with the information or involved in the matter is filed and a copy given to the patient.

- (4) However, there is no requirement to involve the nominated person in a matter if the time for doing so has passed.

**272. Rights in another capacity not affected**

This Subdivision does not affect any right that a patient's nominated person has (whether under this Act or otherwise) to be provided with information or involved in a matter in another capacity.

Note for this section:

A child's nominated person could for example also be the child's parent or guardian.

**Subdivision 3 — Making and ending nomination**

**273. Who can make nomination**

- (1) A person, including a child, may nominate another person to be the person's nominated person.
- (2) A person cannot make a nomination under subsection (1) unless the person understands the effect of making the nomination.

**274. Who can be nominated**

Only an adult is eligible to be nominated under section 273(1).

**275. Formal requirements**

- (1) A nomination is not valid unless —
- (a) it is in the approved form; and
  - (b) it states the name and contact details of the person being nominated; and
  - (c) it states the date on which it takes effect; and
  - (d) it is signed by the person making the nomination or by another person in the presence of, and at the direction of, the person making the nomination; and
  - (e) the signature referred to in paragraph (d) is witnessed by a person referred to in subsection (2); and

- (f) it is signed by the person being nominated to indicate that the person accepts the nomination; and
  - (g) the signature referred to in paragraph (f) is witnessed by a person referred to in subsection (2).
- (2) For the purposes of subsection (1)(e) and (g), the witness must be authorised by law to take declarations but cannot be a person referred to in subsection (1)(d) or (f).

**276. Only one nominated person**

A person cannot have more than one nominated person at any time.

**277. Revocation of nomination**

- (1) A nomination may be revoked by the person who made it at any time by any means whatsoever.
- (2) A nomination is revoked if the person who made it makes another nomination.

**278. Resignation of nominated person**

- (1) A nominated person may resign the nomination by writing signed and given to the person who made the nomination.
- (2) The resignation takes effect on the later of the following —
  - (a) receipt by the person who made the nomination;
  - (b) the day specified in the resignation.

**279. Notification of revocation or resignation**

- (1) Subsection (2) applies if a patient's nominated person —
  - (a) resigns the nomination; or
  - (b) becomes aware that the patient has revoked the nomination.
- (2) The nominated person must take all reasonable steps to notify any medical practitioner, mental health practitioner or mental health service that the nominated person is aware is providing

treatment or care to the patient that the nomination no longer has effect.

- (3) Subsection (4) applies if a medical practitioner, mental health practitioner or mental health service who is providing treatment or care to a patient becomes aware that the patient has revoked a nomination.
- (4) The practitioner or the person in charge of the mental health service must ensure that all reasonable steps are taken to notify the nominated person of the revocation.

Note for this Division:

Part 21 Division 10 confers jurisdiction on the Mental Health Tribunal to hear and determine applications relating to nominated persons.



## **Part 17 — Recognition of rights of carers and families**

### **Division 1 — Role of carers and families**

#### **280. Carers**

- (1) For this Act, a carer of a person is a person who is that person's carer under the *Carers Recognition Act 2004* section 5.
- (2) It is recognised that very often, although not invariably, a person's carer is a family member.
- (3) It is also recognised that, even though a family member is a person's carer —
  - (a) the person may not identify the family member as his or her carer; or
  - (b) the family member may not identify himself or herself as the person's carer.

#### **281. Close family members**

- (1) For this Act, a close family member of a person is a family member referred to in subsection (2) —
  - (a) who is not also the person's carer or the person's nominated person; but
  - (b) who provides ongoing care or assistance to the person.
- (2) For subsection (1), a family member of a person is any member of the person's family, including —
  - (a) any of these people, whether the relationship is established by or traced through consanguinity, marriage, a de facto relationship, a written law or a natural relationship —
    - (i) a spouse or de facto partner;
    - (ii) a child;
    - (iii) a step child;
    - (iv) a parent;

- (v) a step parent;
- (vi) a foster parent;
- (vii) a sibling;
- (viii) a grandparent;
- (ix) an aunt or uncle;
- (x) a niece or nephew;
- (xi) a cousin;

and

- (b) if the person is of Aboriginal or Torres Strait Islander descent — any person regarded under the customary law, tradition or kinship of that person's community as the equivalent of a person described in paragraph (a).

**282. Acknowledgment of and respect for role of carers and close family members**

The role of carers and close family members in the provision of treatment, care and support to a person who has a mental illness should be acknowledged and respected.

**283. More than one carer or close family member**

- (1) Without limiting a requirement under this Act relating to any carer of a person, it is sufficient for compliance with the requirement if there is compliance in respect of at least one carer.
- (2) Without limiting a requirement under this Act relating to any close family member of a person, it is sufficient for compliance with the requirement if there is compliance in respect of at least one close family member.
- (3) This section does not apply in relation to a requirement under Part 9 Division 2 or section 446 or 447 in respect of a carer or close family member.

Note for this section:

Under Part 9 Division 2, it is sufficient if at least one personal support person is notified if a notifiable event occurs. Under sections 446

and 447, it is sufficient if at least one personal support person is notified of an application made to, or a hearing in a proceeding of, the Mental Health Tribunal. In both cases, that personal support person can (but need not) be a carer or close family member.

## **Division 2 — Information about and involvement in patient's treatment and care**

### **284. Application of this Division**

This Division does not apply in relation to the notification of an event to which Part 9 applies.

### **285. Rights of carers and close family members**

- (1) Any carer or close family member of a patient is entitled —
    - (a) subject to this Division, to be provided with information relating to the patient's treatment and care, including information about these matters —
      - (i) the mental illness for which the patient is being provided with treatment or care;
      - (ii) if the patient is an involuntary patient — the grounds on which, and the provision of this Act under which, the involuntary treatment order was made;
      - (iii) the treatment and care proposed to be provided to the patient and any other options for the patient's treatment and care that are reasonably available;
      - (iv) the treatment provided to the patient and the patient's response to that treatment;
      - (v) the seclusion of, or use of bodily restraint on, the patient;
      - (vi) the services available to meet the patient's needs;
- and

- (b) subject to this Division, to be involved in matters relating to the patient's treatment and care, including these matters —
    - (i) the consideration of the options that are reasonably available for the patient's treatment and care; and
    - (ii) the provision of support to the patient; and
    - (iii) the preparation and review of any treatment, support and discharge plan for the patient;and
  - (c) to be provided with information about the patient's rights under this Act and how those rights can be accessed and exercised; and
  - (d) to be provided with information about the rights of the carer or close family member under this Act and how those rights can be accessed and exercised.
- (2) A carer or close family member of a patient may indicate the extent to which the carer or close family member wants to be provided with the information referred to in subsection (1)(a), (c) or (d) or to be involved in the matters referred to in subsection (1)(b).
- (3) To avoid doubt, a carer or close family member of a patient is not authorised to apply on the patient's behalf for admission or discharge by a mental health service, or make a treatment decision about the provision of treatment to the patient, unless the carer or close family member is authorised to do so in another capacity.

Notes for this section:

1. Any information provided under section 285(1)(a), (c) or (d) must be provided in accordance with section 9(2).
2. For section 285(3), a carer of a patient could for example also be the patient's enduring guardian or guardian or a close family member of a patient could for example also be the person responsible for the patient under the GAA Act section 110ZD.

**286. Voluntary patient with capacity to consent**

- (1) This section applies in relation to a voluntary patient who has the capacity to consent to a carer or close family member of the patient being provided with the information referred to in section 285(1)(a), or being involved in the matters referred to in section 285(1)(b), relating to his or her treatment and care.
- (2) The carer or close family member is entitled to be provided with that information, or to be involved in those matters, with the voluntary patient's consent.

**287. Voluntary patient with no capacity to consent**

- (1) This section applies in relation to a voluntary patient who does not have the capacity to consent to a carer or close family member of the patient being provided with the information referred to in section 285(1)(a), or being involved in the matters referred to in section 285(1)(b), relating to his or her treatment and care.
- (2) The carer or close family member is entitled, subject to section 292, to be provided with that information, or to be involved in those matters.

**288. Involuntary patient or mentally impaired accused with capacity to consent**

- (1) This section applies in relation to a patient —
  - (a) who is —
    - (i) an involuntary patient; or
    - (ii) a mentally impaired accused required under the MIA Act to be detained at an authorised hospital;
  - and
  - (b) who has the capacity to consent to a carer or close family member of the patient being provided with the information referred to in section 285(1)(a), or being involved in the matters referred to in section 285(1)(b), relating to his or her treatment and care.

- (2) The carer or close family member is entitled to be provided with that information, or to be involved in those matters, unless —
  - (a) the patient has refused to consent to the carer or close family member being provided with that information or being involved in those matters; and
  - (b) the patient's psychiatrist considers that the refusal is reasonable.

**289. Involuntary patient or mentally impaired accused with no capacity to consent**

- (1) This section applies in relation to a patient —
  - (a) who is —
    - (i) an involuntary patient; or
    - (ii) a mentally impaired accused required under the MIA Act to be detained at an authorised hospital;
  - and
  - (b) who does not have the capacity to consent to a carer or close family member of the patient being provided with the information referred to in section 285(1)(a), or being involved in the matters referred to in section 285(1)(b), relating to his or her treatment and care.
- (2) The carer or close family member is entitled, subject to section 292, to be provided with that information, or to be involved in those matters.

**290. Responsibility of patient's psychiatrist**

A patient's psychiatrist must ensure that any carer or close family member of the patient is provided with information referred to in section 285(1)(a), (c) or (d), or involved in a matter referred to in section 285(1)(b), if no other provision is made under this Act about who must ensure that any carer or close family member is provided with that information or involved in that matter.

**291. Contacting carer or close family member**

- (1) This section applies in relation to each of these requirements —
  - (a) a requirement under this Act to provide any carer of a patient with information referred to in section 285(1)(a), (c) or (d) or involve any carer of a patient in a matter referred to in section 285(1)(b);
  - (b) a requirement under this Act to provide any close family member of a patient with information referred to in section 285(1)(a), (c) or (d) or involve any close family member of a patient in a matter referred to in section 285(1)(b).
- (2) Without limiting a requirement referred to in subsection (1)(a) or (b), the requirement is taken to have been complied with if the person responsible for ensuring that the requirement is complied with ensures that reasonable efforts to provide any carer or any close family member with the information or involve any carer or any close family member in the matter continue to be made until the first of these things occurs —
  - (a) at least one carer or one close family member is provided with the information or involved in the matter;
  - (b) it is reasonable for the person responsible to conclude that no carer or no close family member can be provided with the information or involved in the matter.
- (3) The person responsible must ensure that one of the following is filed —
  - (a) a record of when and how any carer or any close family member was provided with the information or involved in the matter;
  - (b) if no carer or no close family member could be provided with the information or involved in the matter — a record of the efforts made to do so.

- (4) Sections 296 and 297 do not limit —
  - (a) the requirement under subsection (1)(a) to make reasonable efforts to provide a carer of a patient with information or involve a carer of a patient in a matter; or
  - (b) the requirement under subsection (1)(b) to make reasonable efforts to provide a close family member of a patient with information or involve a close family member of a patient in a matter.

**292. Provision of information or involvement not in patient's best interests**

- (1) A carer or close family member of a patient is not entitled under section 287(2) or 289(2) to be provided with particular information or involved in a particular matter if the patient's psychiatrist reasonably believes that it is not in the best interests of the patient for the carer or close family member to be provided with that information or involved in that matter.
- (2) A patient's psychiatrist who decides under subsection (1) that a carer or close family member of the patient is not entitled to be provided with particular information or involved in a particular matter must —
  - (a) file a record of the decision and the reasons for it; and
  - (b) give a copy to each of —
    - (i) the patient; and
    - (ii) the Chief Mental Health Advocate.

Note for this section:

For the purpose of deciding under section 292(1) what is or is not in the best interests of a patient, Part 2 Division 3 applies.

**293. Advising carer or close family member of decision**

- (1) A patient's psychiatrist who decides under section 292(1) that a carer or close family member of the patient is not entitled to be provided with particular information or involved in a particular



matter must, if the carer or close family member requests to be provided with the information or involved in the matter —

- (a) advise the carer or close family member of the decision and the reasons for it; and
  - (b) file a record of the advice and give a copy to the patient.
- (2) A carer or close family member of a patient to whom advice is provided orally under subsection (1)(a) may request the patient's psychiatrist to confirm the advice in writing.
- (3) The patient's psychiatrist must —
- (a) comply with the request; and
  - (b) file a copy of the confirmation and give another copy to the patient.

Note for this section:

Any information or advice provided under section 293(1)(a) or (3)(a) must be provided in accordance with section 9(2).

#### **294. Revocation of decision**

- (1) A patient's psychiatrist may revoke a decision under section 292(1) that a carer or close family member of the patient is not entitled to be provided with particular information or involved in a particular matter if satisfied that the reasons for making the decision no longer apply.
- (2) The patient's psychiatrist must, as soon as practicable, file a record of the decision and the reasons for it and give a copy to the patient.
- (3) If the carer or close family member previously requested to be provided with the information or involved in the matter, the patient's psychiatrist must ensure that, as soon as practicable —
- (a) the carer or close family member is provided with the information or involved in the matter; and
  - (b) a record of when and how the carer or close family member was provided with the information or involved in the matter is filed and given to the patient.

- (4) However, there is no requirement to involve the carer or close family member in a matter if the time for doing so has passed.

**295. Rights in another capacity not affected**

This Division does not affect any right that a carer or close family member of a patient has (whether under this Act or otherwise) to be provided with information or involved in a matter in another capacity.

Note for this section:

A carer of a patient who is a child could for example also be the child's parent or guardian or a close family member of a patient could also be the person responsible for the patient under the GAA Act section 110ZD.

**Division 3 — Identifying carer or close family member**

**296. When being admitted or received**

- (1) This section applies when a person is being admitted by, or is being received into, a mental health service for the purpose of providing the person with treatment or care.
- (2) The person in charge of the mental health service must ensure that the person is asked —
- (a) whether or not the person has a carer; and
  - (b) whether or not the person has a close family member; and
  - (c) if the person has a carer or close family member, whether or not the person consents to the carer or close family member being —
    - (i) provided with the information referred to in section 285(1)(a) in connection with the provision of that treatment or care; and
    - (ii) involved in the matters referred to in section 285(1)(b) while the person is being provided with that treatment or care.

- (3) The person in charge of the mental health service must ensure that a record of the person's answers to the questions asked under subsection (2) is filed.

**297. While being provided with treatment or care**

- (1) This section applies in relation to a person —
- (a) who is being provided with treatment or care by a mental health service; and
  - (b) who —
    - (i) has refused to consent when asked under section 296(2)(c)(i) or (ii); or
    - (ii) has refused to consent when asked under subsection (2); or
    - (iii) consented when asked under section 296(2)(c)(i) or (ii) or subsection (2) but has since then withdrawn the consent.
- (2) The person in charge of the mental health service must ensure that the person is asked periodically whether or not the person consents to a matter referred to in section 296(2)(c)(i) or (ii) in respect of which the patient has refused to consent or has withdrawn consent.
- (3) The person in charge of the mental health service must ensure that a record of the following is filed —
- (a) each time when the person is asked under subsection (2); and
  - (b) the person's answers at that time to the questions asked under subsection (2).

**298. Person can withdraw consent, or can consent, at any time**

To avoid doubt —

- (a) a person who consents when asked under section 296(2)(c)(i) or (ii) can withdraw consent at any time; and

- (b) a person who refuses to consent when asked under section 296(2)(c)(i) or (ii) can consent at any time.

## **Part 18 — Children who have a mental illness**

### **299. Best interests of child is a primary consideration**

In performing a function under this Act in relation to a child, a person or body must have regard to what is in the best interests of the child as a primary consideration.

Note for this section:

For the purpose of deciding under section 299 what is or is not in the best interests of a child, Part 2 Division 3 applies.

### **300. Child's wishes**

In performing a function under this Act in relation to a child, a person or body must have regard to the child's wishes, to the extent that it is practicable to ascertain those wishes.

### **301. Views of child's parent or guardian**

In performing a function under this Act in relation to a child, a person or body must have regard to the views of the child's parent or guardian.

### **302. Child who is a voluntary patient**

- (1) This section applies in relation to a child who is a voluntary patient.
- (2) An application for the admission or discharge of the child by a mental health service may be made by the child's parent or guardian unless it is shown that the child has the capacity to make the application himself or herself.
- (3) A treatment decision about the provision of treatment to the child may be made by the child's parent or guardian unless it is shown that the child has the capacity to make the treatment decision himself or herself.

Note for this section:

Part 5 Division 1 sets out what is required to show that a child has the capacity to make a decision, including a treatment decision, about himself or herself.

**303. Segregation of children from adult inpatients**

- (1) This section applies in relation to a mental health service that does not ordinarily provide treatment or care to children who have a mental illness.
- (2) A child cannot be admitted by a mental health service as an inpatient unless the person in charge of the mental health service is satisfied that —
  - (a) the mental health service can provide the child with treatment, care and support that is appropriate having regard to the child's age, maturity, gender, culture and spiritual beliefs; and
  - (b) the treatment, care and support can be provided to the child in a part of the mental health service that is separate from any part of the mental health service in which adults are provided with treatment and care if, having regard to the child's age and maturity, it would be appropriate to do so.
- (3) When a child is being admitted by a mental health service as an inpatient, the person in charge of the mental health service must —
  - (a) give to the child's parent or guardian a written report setting out —
    - (i) the reasons why the person in charge is satisfied of the matters referred to in subsection (2)(a) and (b); and
    - (ii) the measures that the mental health service will take to ensure that, while the child is admitted as an inpatient, the child is protected and the child's individual needs in relation to treatment and care are met;and
  - (b) file a copy of the report and give another copy to the Chief Psychiatrist.

**304. Off-label treatment provided to child who is involuntary patient**

- (1) This section applies if off-label treatment is provided to a child who is an involuntary patient.

- (2) In this section —

***approved product information***, for registered therapeutic goods, means the product information approved under the *Therapeutic Goods Act 1989* (Commonwealth) in relation to the registered therapeutic goods;

***off-label treatment*** means the use of registered therapeutic goods other than in accordance with the approved product information for the registered therapeutic goods;

***product information*** has the meaning given in the *Therapeutic Goods Act 1989* (Commonwealth) section 3(1);

***registered therapeutic goods*** means registered goods as defined in the *Therapeutic Goods Act 1989* (Commonwealth) section 3(1).

- (3) The patient's psychiatrist must ensure that, as soon as practicable —
- (a) a record of these things is filed —
    - (i) the decision to provide the off-label treatment, including a description of the off-label treatment;
    - (ii) the reasons for the decision;and
  - (b) a copy of the record is given to the Chief Psychiatrist.

Note for this Part:

Part 17 applies in relation to a child's carer who is not also the child's parent or guardian.

## **Part 19 — Complaints about mental health services**

### **Division 1 — Preliminary matters**

#### **305. Terms used**

In this Part —

***Carers Charter*** has the meaning given in the *Carers Recognition Act 2004* section 4;

***complainant***, in relation to a complaint made to the Director under Division 3 Subdivision 3, means the person or persons in respect of whom the complaint alleges the respondent acted, or failed to act, in a manner referred to in section 320(2);

***complaint***, for the purposes of Division 3 Subdivision 3, includes a part of a complaint;

***Complaints Office*** means the Health and Disability Services Complaints Office continued by the *Health and Disability Services (Complaints) Act 1995* section 6(1);

***Complaints Office staff*** means the staff of the Complaints Office referred to in the *Health and Disability Services (Complaints) Act 1995* section 14, 15 or 16;

***Director*** means the Director of the Health and Disability Services Complaints Office appointed under the *Health and Disability Services (Complaints) Act 1995* section 7(1);

***investigation*** means —

- (a) an investigation of a complaint made to the Director under Division 3 Subdivision 3; or
- (b) an investigation conducted under section 341;

***mental health service*** —

- (a) means —
  - (i) a service provided specifically for people who have or may have a mental illness; or
  - (ii) a service provided specifically for carers of people who have or may have a mental illness; or



- (iii) the carrying out of medical or epidemiological research relating to mental illness;

but

- (b) does not include a service referred to in paragraph (a)(i), (ii) or (iii) if it is —
  - (i) provided wholly from funds paid to a service provider by the Commonwealth; or
  - (ii) provided to a person who has or may have a mental illness by the person's carer; or
  - (iii) prescribed by the regulations for this paragraph;

***provide***, in relation to a mental health service, includes to carry out;

***respondent***, in relation to a complaint made to the Director under Division 3 Subdivision 3, means the service provider who the complaint alleges acted, or failed to act, in a manner referred to in section 320(2);

***service provider*** —

- (a) means an individual, group of individuals or body (whether corporate or unincorporate) that renders or provides mental health services; but
- (b) does not include —
  - (i) the Chief Psychiatrist; or
  - (ii) a mental health advocate; or
  - (iii) the Mental Health Tribunal.

### **306. Making complaint to service provider or Director of Complaints Office**

- (1) A complaint about a mental health service may be made —
  - (a) to a service provider in accordance with the service provider's complaints procedure referred to in section 308; or
  - (b) to the Director under Division 3 Subdivision 3.

- (2) It is irrelevant for the purposes of this Part that a person in respect of whom a complaint made under subsection (1) alleges a service provider acted, or failed to act, does not identify himself or herself as a person who has or may have a mental illness or as a carer of a person who has or may have a mental illness.

**307. Divisions 3 and 4 to be read with *Health and Disability Services (Complaints) Act 1995***

Divisions 3 and 4 are to be read with the *Health and Disability Services (Complaints) Act 1995*.

**Division 2 — Complaints to service providers**

**308. Service provider must have complaints procedure**

- (1) The person in charge of a service provider must ensure —
- (a) that there is a procedure (a ***complaints procedure***) for investigating any complaint made to the person in charge about any mental health service provided by the service provider; and
  - (b) that the complaints procedure is reviewed regularly and revised as necessary.
- (2) The person in charge of a service provider must ensure —
- (a) that copies of the most up-to-date version of the service provider's complaints procedure are freely available at the service provider's premises; and
  - (b) that a person who requests a copy of the service provider's complaints procedure is provided with a copy of that version.

**309. Prescribed service providers must provide Director with information about complaints**

- (1) In this section —
- prescribed*** means prescribed by the regulations for this section.

- (2) Within the prescribed period after 30 June in each year a prescribed service provider, or a service provider in a class of prescribed service provider, must give to the Director a report in the form prescribed for the service provider or class of service provider relating to —
- (a) complaints received by the service provider during the year that ended on that day; and
  - (b) action taken by the service provider during the year that ended on that day in relation to complaints whenever received by the service provider.

Penalty: a fine of \$1 000.

### **Division 3 — Complaints to Director of Complaints Office**

#### **Subdivision 1 — Preliminary matters**

#### **310. Parties themselves may resolve complaint**

- (1) This Division does not prevent the complainant and the respondent resolving a complaint by agreement at any time, whether or not with the help of the Complaints Office, but if that occurs the complainant must notify the Director without delay that the complaint has been resolved.
- (2) The Director must stop dealing with a complaint under this Division if the Director is satisfied that it has been resolved.

#### **311. Things done by or in relation to complainant**

- (1) Except as provided by this Division, a thing required to be done under this Division by or in relation to a complainant may be done by or in relation to —
- (a) another complainant who made the complaint on the complainant's behalf under section 315(1)(a) and (3); or
  - (b) the person, service provider or registration board who made the complaint on the complainant's behalf under section 315(1)(b) or (2)(b).

- (2) For the purposes of this Division, a thing done under subsection (1) is taken to have been done by or in relation to the complainant who is required to do the thing or in respect of whom the thing is required to be done under this Division.

**Subdivision 2 — Director of Complaints Office**

**312. Functions of Director**

- (1) The functions of the Director under this Division are —
- (a) dealing with complaints made to the Director in accordance with this Division; and
  - (b) in collaboration with groups of service providers or groups of persons to whom mental health services are provided or both, reviewing and identifying the causes of complaints and suggesting ways of removing and minimising those causes and bringing them to the notice of the public; and
  - (c) taking steps to bring to the notice of people who have or may have a mental illness, the carers of people who have or may have a mental illness and service providers details of procedures for making complaints under this Division; and
  - (d) assisting service providers in developing and improving procedures for making complaints made to the service providers and the training of their staff in handling such complaints; and
  - (e) with the approval of the Minister, inquiring into broader issues about the care of people who have or may have a mental illness arising out of complaints, whether made to service providers or to the Director in accordance with this Division; and
  - (f) preparing and publishing information about, and promoting, the role of the Complaints Office and how to make a complaint to the Director in accordance with this Division; and

- (g) providing advice generally on any matter relating to complaints made to the Director in accordance with this Division, and in particular —
    - (i) advice to people who have or may have a mental illness and the carers of people who have or may have a mental illness on the making of complaints; and
    - (ii) advice to people who have or may have a mental illness and the carers of people who have or may have a mental illness as to other avenues available for dealing with complaints; and
    - (iii) advice about removing or minimising the causes of complaints;and
  - (h) any other functions conferred on the Director by this Division.
- (2) The function of the Director under subsection (1)(f) does not include the publication of personal information about a person who has or may have a mental illness, but this subsection does not affect the operation of section 343.

**313. Directions by Minister**

- (1) The Minister may, after consultation with the Director, issue written directions about the general policy to be followed by the Director in performing functions under this Act.
- (2) The Director may request the Minister to issue a direction under subsection (1).
- (3) A direction cannot be issued under this section in respect of —
  - (a) a particular complaint; or
  - (b) a particular person who has or may have a mental illness; or

- (c) a particular carer of a person who has or may have a mental illness; or
  - (d) a particular service provider; or
  - (e) any other particular person or body.
- (4) The Director must comply with a direction issued under this section.
- (5) The Minister must cause the text of a direction issued under this section to be laid before each House of Parliament on or within 14 sitting days of the House after the day on which the direction is issued.
- (6) The text of a direction issued under this section must be included in the annual report submitted by the accountable authority in respect of the Complaints Office under the *Financial Management Act 2006* Part 5.

**314. Minister to have access to specified information about Director's functions**

- (1) In this section —  
*specified information* means information specified, or of a description specified, by the Minister that relates to the functions of the Director under this Division.
- (2) The Minister is entitled —
  - (a) to have specified information in the possession of the Director; and
  - (b) if the specified information is in or on a document — to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2), the Minister may —
  - (a) request the Director to give specified information to the Minister; and
  - (b) request the Director to give to the Minister access to specified information; and

- (c) for the purpose of accessing specified information requested under paragraph (b), be assisted by members of the Complaints Office staff.
- (4) The Director must —
  - (a) comply with a request made under subsection (3)(a) or (b); and
  - (b) make members of the Complaints Office staff and facilities of the Complaints Office available to the Minister for the purpose of subsection (3)(c).
- (5) This section does not entitle the Minister to have personal information unless the information is about an individual who consents to the Minister having the information.

### **Subdivision 3 — Right to complain**

#### **315. Who may complain**

- (1) A complaint about a service provider referred to in section 320(1) alleging that the service provider acted, or failed to act, in a manner referred to in section 320(2) in respect of a person who has or may have a mental illness, or in respect of a carer of a person who has or may have a mental illness, may be made to the Director —
  - (a) personally by the person who has or may have a mental illness; or
  - (b) on behalf of the person who has or may have a mental illness by —
    - (i) the person's representative recognised under section 316(2); or
    - (ii) a service provider if section 318 applies; or
    - (iii) a registration board if section 319 applies.
- (2) A complaint about a service provider referred to in section 320(1) that is an applicable organisation (as defined in the *Carers Recognition Act 2004* section 4) alleging that the service provider acted, or failed to act, in a manner referred to in

section 320(2)(g) in respect of a carer of a person who has or may have a mental illness may be made to the Director —

- (a) personally by the carer; or
- (b) on behalf of the carer by a registration board if section 319 applies.

(3) A complaint made under subsection (1)(a) may be made by —

- (a) one person —
  - (i) on his or her own behalf; or
  - (ii) on behalf of himself or herself and another person or other persons;
- or
- (b) 2 or more persons —
  - (i) on their own behalf; or
  - (ii) on behalf of themselves and another person or other persons.

**316. Representative of person with mental illness or carer**

(1) In this section —

*relative*, of a complainant, means a family member of the complainant referred to in section 281(2).

(2) The Director may, for the purposes of this Division, recognise as the representative for a complainant —

- (a) a person chosen by the complainant; or
- (b) a person not chosen by the complainant if, in the Director's opinion —
  - (i) the complainant is unable to complain himself or herself and is unable to choose a person to be his or her representative himself or herself; and
  - (ii) the prospective representative is a person who has a sufficient interest in the subject matter of the complaint;

or



- (c) a person not chosen by the complainant if —
  - (i) the complainant has died; and
  - (ii) in the Director’s opinion, the prospective representative is a person who has a sufficient interest in the subject matter of the complaint.
- (3) The Director cannot recognise a person as the representative of a complainant unless satisfied that the prospective representative —
  - (a) is acting without remuneration or is a prescribed person as defined in section 317(1); and
  - (b) if the prospective representative is not a relative of the complainant — has no financial interest in the outcome of the complaint.

**317. Representative must not be paid**

- (1) In this section —  
*prescribed person* means —
  - (a) a mental health advocate; or
  - (b) a person designated under subsection (3) as a prescribed person; or
  - (c) a person, or a person in a class of person, prescribed by the regulations for this definition; or
  - (d) a legal practitioner who is being paid through a funding arrangement with government to provide free legal advice and is representing a person who has, or may have, a mental illness or a carer of a person who has, or may have, a mental illness; or
  - (e) a person who is being paid through a funding arrangement with government to provide free advocacy services and is representing a person who has, or may have, a mental illness or a carer of a person who has, or may have, a mental illness.

- (2) A person who is not a prescribed person must not demand or receive any remuneration for acting, for the purposes of this Division, as the representative of a person who has or may have a mental illness or a carer of a person who has or may have a mental illness.

Penalty:

- (a) for a first offence, a fine of \$1 000;
  - (b) for a second or subsequent offence, a fine of \$10 000.
- (3) The Director may designate in writing a person to be a prescribed person if satisfied that it is appropriate to do so.

**318. Service provider may complain on behalf of person with mental illness or carer**

- (1) A complaint about a service provider referred to in section 320(1) may be made by another service provider on behalf of a person who has or may have a mental illness or if the Director is satisfied that —
- (a) the person has died; or
  - (b) because of the person's state of health or general situation, it would be difficult or impossible for the person to make a complaint.
- (2) A complaint about a service provider referred to in section 320(1) may be made by another service provider on behalf of a carer of a person who has or may have a mental illness or if the Director is satisfied that —
- (a) the carer has died; or
  - (b) because of the carer's state of health or general situation, it would be difficult or impossible for the carer to make a complaint.

**319. Registration board may complain on behalf of person with mental illness or carer**

A complaint about a service provider referred to in section 320(1) may be made by a registration board on behalf of

a person who has or may have a mental illness or a carer of a person who has or may have a mental illness if —

- (a) the service provider is a health professional or other person for whose professional or occupational registration the registration board is responsible; and
- (b) the registration board becomes aware that the health professional or other person has acted, or failed to act, in a manner referred to in section 320(2) in relation to the person who has or may have a mental illness or the carer.

**320. Who and what can be complained about**

- (1) A complaint can only be about a service provider that, at the time the subject matter of the complaint arose, was providing a mental health service.
- (2) A complaint can only allege that, after the date on which this section comes into operation, a service provider —
  - (a) acted unreasonably by not providing a mental health service; or
  - (b) acted unreasonably by providing a mental health service; or
  - (c) acted unreasonably in the manner of providing a mental health service; or
  - (d) acted unreasonably by delaying, denying or restricting access to records kept by the service provider; or
  - (e) acted unreasonably in disclosing records or confidential information; or
  - (f) failed to comply with the Charter of Mental Health Care Principles; or
  - (g) failed to comply with the Carers Charter; or
  - (h) in respect of a complaint about a matter mentioned in paragraphs (a) to (e) made to the service provider by a

person who has or may have a mental illness, acted unreasonably by —

- (i) not properly investigating the complaint or not causing it to be properly investigated; or
- (ii) not taking, or not causing to be taken, proper action in relation to the complaint;

or

- (i) acted unreasonably by charging an excessive fee; or
- (j) acted unreasonably with respect to a fee.

**321. Time for complaining**

The Director must reject a complaint the subject matter of which occurred more than 24 months before the day on which the complaint is made unless, in the Director's opinion, the complainant has shown good reason for the delay.

**Subdivision 4 — Initial procedures**

**322. How to complain**

- (1) A complaint may be made to the Director orally (including by telephone) or in writing.
- (2) The Director must require a complainant who makes a complaint orally to confirm it in writing unless the complainant satisfies the Director that there is good reason why it should not be confirmed in writing.
- (3) The Director —
  - (a) must require a complainant to provide his or her name; and
  - (b) may require the complainant to provide other information relating to the complainant's identity.
- (4) The Director may require a complainant to provide more information about the complaint within a time fixed by the Director.

- (5) The Director may reject a complaint if the complainant does not comply with a requirement of the Director under subsection (2), (3)(a) or (b) or (4).

**323. Referral of complaint about excluded mental health service**

- (1) In this section —  
*excluded mental health service* means a mental health service that is provided without fee in a rescue or emergency situation.
- (2) The Director may, with the written consent of the complainant, refer a complaint relating to an excluded mental health service to an appropriate person or body.

**324. Withdrawal of complaint**

- (1) A complainant may withdraw the complaint at any time by notifying the Director.
- (2) If satisfied that the complainant has withdrawn the complaint, the Director must stop dealing with the complaint under this Division and must notify —
- (a) if details of the complaint have been given to the respondent under section 328(6)(b) — the respondent of the withdrawal; and
  - (b) if the complaint has been referred to another person or body under section 323(2) or 329(4) — that person or body of the withdrawal.

**325. Complainant should try to resolve matter**

The Director may reject a complaint if the Director is not satisfied that —

- (a) if the complaint is made under section 315(1)(a) or (2)(a), whether only on the complainant's own behalf or also on behalf of one or more other complainants — the complainant has taken reasonable steps himself or herself to resolve the matter with the respondent; or

- (b) if the complaint is made under section 315(1)(b) or (2)(b) — the person, service provider or registration board who made the complaint on the complainant's behalf has taken all reasonable steps to resolve the matter with the respondent.

**326. Complaint that is not to be dealt with by National Board under *Health Practitioner Regulation National Law (Western Australia)***

- (1) In this section —  
*registered service provider* means a registered provider as defined in the *Health and Disability Services (Complaints) Act 1995* section 3(1).
- (2) The Director may deal with a complaint relating to a registered service provider under this Division if, because of the *Health Practitioner Regulation National Law (Western Australia)* section 150, the complaint is not to be dealt with by a National Board under that Act.

**327. Complaint that is being dealt with by National Board under *Health Practitioner Regulation National Law (Western Australia)***

- (1) This section applies if, because of the *Health Practitioner Regulation National Law (Western Australia)* section 150, a complaint is being dealt with by a National Board under that Act.
- (2) The Director must, on or within 28 days after the day on which the National Board begins dealing with the complaint, notify the complainant that the National Board is dealing with it.

**328. Preliminary decision by Director**

- (1) This section applies in relation to a complaint other than a complaint that, because of the *Health Practitioner Regulation*

*National Law (Western Australia)* section 150, is to be dealt with by a National Board under that Act.

- (2) The Director must, on or within 28 days after the day on which the Director receives the complaint or by the end of any extension of that period under subsection (3), decide whether and to what extent —
  - (a) to accept it; or
  - (b) to reject, defer or refer it under section 329.
- (3) The Director may extend the period for making a decision under subsection (2) from the end of the 28-day period referred to in subsection (2) for a further period (not exceeding 28 days) if it is for the benefit of the complainant to do so.
- (4) To enable the Director to make a decision under subsection (2), the Director may make such inquiries as the Director considers appropriate.
- (5) The Director must, on or within 14 days after the day on which the Director makes a decision under subsection (2), take the action required under subsection (6), (7) or (8).
- (6) If the Director accepts the complaint, the Director must —
  - (a) give to the complainant written details of —
    - (i) the decision; and
    - (ii) if the Director decides under subsection (10)(a) or (b) that the complaint is suitable to be dealt with under section 331 or 332 — the arrangements made for negotiated settlement or conciliation discussions between the complainant and the respondent;
  - and
  - (b) give to the respondent written details of —
    - (i) the complaint; and
    - (ii) the decision; and

- (iii) if the Director decides under subsection (10)(a) or (b) that the complaint is suitable to be dealt with under section 331 or 332 — the arrangements made for negotiated settlement or conciliation discussions between the complainant and the respondent; and
  - (iv) a written statement that the respondent may make submissions to the Director.
- (7) If the Director rejects the complaint, the Director must give to the complainant written details of the decision.
- (8) If the Director defers or refers the complaint, the Director must —
  - (a) give to the complainant written details of the decision; and
  - (b) give to the respondent written details of —
    - (i) the complaint; and
    - (ii) the decision.
- (9) If a complaint is accepted, the Director may give to the respondent a written notice requiring the respondent to give to the Director a written response to the complaint in accordance with section 330.
- (10) If a complaint is accepted, the Director must —
  - (a) attempt to negotiate a settlement of the complaint in accordance with section 331; or
  - (b) refer the complaint for conciliation under section 332 if, in the Director's opinion, it is suitable to be dealt with under that provision; or
  - (c) investigate the complaint if, in the Director's opinion —
    - (i) it is not suitable to be dealt with under section 331 or 332; and
    - (ii) an investigation is warranted, having regard to the likely costs and benefits of the investigation.



- (11) In giving details to the respondent under subsection (6)(b) or (8)(b), the Director cannot disclose personal information about the complainant if the Director considers that, because of particular circumstances, the disclosure of the complainant's identity —
  - (a) may result in the health, safety or welfare of the complainant being put at risk; or
  - (b) would prejudice the proper investigation of the complaint.
- (12) If later the Director becomes satisfied that the circumstances described under subsection (11) no longer apply, the Director must disclose the identity of the complainant to the respondent.
- (13) If the Director decides that a complaint is not suitable to be dealt with under section 331 or 332 and does not warrant investigating, the Director must advise the complainant in writing —
  - (a) of the decision; and
  - (b) that the Director will take no further action on the complaint.

**329. Rejection, deferral or referral of complaints**

- (1) The Director must reject a complaint that, in the Director's opinion —
  - (a) is vexatious, trivial or without substance; or
  - (b) does not warrant any further action; or
  - (c) does not comply with this Division.
- (2) The Director must reject a complaint to the extent that it relates to an issue that has already been dealt with —
  - (a) under another provision of this Act; or
  - (b) under another written law; or
  - (c) under a law of the Commonwealth; or
  - (d) by a court.

- (3) The Director must defer dealing with a complaint to the extent that it relates to an issue that is being dealt with —
- (a) under another provision of this Act; or
  - (b) under another written law; or
  - (c) under a law of the Commonwealth; or
  - (d) by a court.
- (4) If a complaint raises issues that, in the Director's opinion, would be better dealt with under —
- (a) another provision of this Act; or
  - (b) another written law,
- the Director may, with the written consent of the complainant, refer the complaint to the appropriate person or body to be dealt with under that other provision or written law.
- (5) The Director cannot refer a complaint under subsection (4) to —
- (a) a National Board under the *Health Practitioner Regulation National Law (Western Australia)*; or
  - (b) a court.

Note for this section:

Sections 326 and 327 set out what happens in relation to a complaint that could be dealt with by a National Board under the *Health Practitioner Regulation National Law (Western Australia)*.

**330. Response by respondent**

- (1) A respondent who is given details under section 328(6)(b) may give the Director a written response to the complaint.
- (2) A respondent who is given a notice under section 328(9) must give the Director a written response to the complaint.
- (3) Any response given under subsection (1) or (2) must be given to the Director —
- (a) on or within 28 days after the day on which the respondent receives —
    - (i) the details given under section 328(6)(b); or

- (ii) the notice given under section 328(9);
  - or
  - (b) by the end of any extension of that period under subsection (4).
- (4) The Director may extend the period within which a response must be given under subsection (1) or (2) for good reason.
- (5) The Director may deal with a complaint under this Division even if the respondent does not comply with subsection (3).
- (6) Details of any breach of subsection (3) that, in the Director's opinion, was committed without a reasonable excuse must be included in the annual report submitted by the accountable authority in respect of the Complaints Office under the *Financial Management Act 2006* Part 5.
- (7) Evidence of anything said in a response given by a respondent under this section is not admissible in proceedings before a court or tribunal.
- (8) Despite the *Parliamentary Commissioner Act 1971* section 20(3), evidence referred to in subsection (7) may be disclosed to the Parliamentary Commissioner for the purposes of an investigation under that Act.

#### **Subdivision 5 — Negotiated settlements and conciliation**

##### **331. Resolving complaints by negotiation**

- (1) Having accepted a complaint and complied with section 328(6), the Director may, by negotiating with the complainant and the respondent, attempt to bring about a settlement of the complaint that is acceptable to the parties to it.
- (2) For the purposes of subsection (1), the Director may make any inquiries the Director considers appropriate.
- (3) If the complaint is not settled under subsection (1) on or within 56 days after the day on which the Director complies with

section 328(6) or by the end of any extension of that period under subsection (4), the Director must —

- (a) refer it for conciliation under section 332 if, in the Director's opinion, it is suitable to be dealt with under that provision; or
  - (b) investigate it if, in the Director's opinion —
    - (i) it is not suitable to be dealt with under section 332; and
    - (ii) an investigation is warranted, having regard to the likely costs and benefits of the investigation.
- (4) The Director may extend the period for attempting to bring about a negotiated settlement if it is for the benefit of the complainant to do so.
- (5) If the Director decides a complaint is not suitable to be dealt with under section 332 and does not warrant investigating, the Director must advise the complainant in writing —
- (a) of the decision; and
  - (b) that the Director will take no further action on the complaint.
- (6) Evidence of anything said or admitted during any negotiation conducted under subsection (1) is not admissible in proceedings before a court or tribunal.
- (7) Despite the *Parliamentary Commissioner Act 1971* section 20(3), evidence referred to in subsection (6) may be disclosed to the Parliamentary Commissioner for the purposes of an investigation under that Act.

### **332. Conciliation of complaints**

- (1) On referring a complaint for conciliation, the Director must assign the task of conciliating the complaint to a member of the Complaints Office staff whose duties consist of or include the conciliation of complaints.

- (2) A conciliator's function is to encourage the settlement of the complaint by —
  - (a) arranging for the complainant and the respondent to hold informal discussions about the complaint; and
  - (b) helping in the conduct of those discussions; and
  - (c) if possible, assisting the complainant and the respondent to reach agreement.
- (3) Except as provided by subsections (4) and (5), neither the complainant nor the respondent may be represented by another person during the conciliation process.
- (4) The complainant may be represented by the complainant's representative recognised under section 316(2).
- (5) The Director may allow either or both the complainant and the respondent to be represented if the Director is satisfied that the process will not work effectively otherwise.
- (6) Subsections (3), (4) and (5) do not prevent the personal attendance of any other person who may, in the opinion of the conciliator, help in the conciliation.
- (7) Evidence of anything said or admitted during the conciliation process is not admissible in proceedings before a court or tribunal.
- (8) Despite the *Parliamentary Commissioner Act 1971* section 20(3), evidence referred to in subsection (7) may be disclosed to the Parliamentary Commissioner for the purposes of an investigation under that Act.
- (9) If the conciliation process results in the settlement of a complaint between the complainant and the respondent, the conciliator must make a final report to the Director about the result of that process.
- (10) A report made under subsection (9) must include details of any agreement reached.

- (11) If the conciliation process fails to result in the settlement of a complaint between the complainant and the respondent, the Director may investigate the complaint if, in the Director's opinion, an investigation is warranted, having regard to the likely costs and benefits of the investigation.

### **Subdivision 6 — Investigations**

#### **333. Conduct generally**

- (1) The Director may at any time during an investigation encourage the settlement of a complaint.
- (2) The purpose of an investigation is to enable the Director to decide whether or not a service provider has acted, or failed to act, in a manner referred to in section 320(2).
- (3) In making a decision under subsection (2), the Director must have regard to the following —
- (a) any treatment, support and discharge plan that is relevant to the investigation;
  - (b) the generally accepted quality of service delivery expected of a service provider;
  - (c) any standards for the provision of mental health services that are prescribed by the regulations for this subsection;
  - (d) the Charter of Mental Health Care Principles;
  - (e) the Carers Charter.
- (4) In conducting an investigation, the Director —
- (a) must proceed with as little formality and technicality, and as speedily, as the requirements of this Part and proper investigation of the matter permits; and
  - (b) is not bound by the rules of evidence but may inform himself or herself of any matter in such manner as he or she considers appropriate; and

- (c) may, subject to this Part and the rules of natural justice, determine his or her own procedures.
- (5) In conducting an investigation, the Director may be assisted by members of the Complaints Office staff.

**334. Power to require information and records**

- (1) In this section —

***person's representative*** means —

- (a) the person's representative recognised under section 316(2); or
- (b) the person's enduring guardian or guardian; or
- (c) if the person is a child — the child's parent or guardian;

***relevant information*** means information that, in the Director's opinion, is or is likely to be relevant to an investigation;

***relevant record*** means a record of information (however compiled, recorded or stored) that is relevant to an investigation.

- (2) The Director may, by written notice given to a person, require the person to do one or both of the following —
  - (a) provide the Director with a statement signed by the person or, if the person is a body corporate, by an officer of the body corporate, containing the relevant information specified in the notice;
  - (b) produce to the Director the relevant records specified in the notice.
- (3) The Director cannot give a notice to a person under subsection (2) unless the Director reasonably believes that the person is capable of providing the relevant information or producing the relevant records.
- (4) A notice under subsection (2) must specify the time and place for providing the relevant information or producing the relevant records.

- (5) The Director may do any of these things in relation to a relevant record that is produced in accordance with a notice under subsection (2) —
  - (a) take possession of and retain the record for the period that is reasonably necessary for the purposes of the investigation;
  - (b) inspect, and take a copy of the whole or any part of, the record.
- (6) While the Director retains possession of a relevant record, the Director must permit a person who would be entitled to inspect the record if it were not in the Director's possession to inspect the record at any reasonable time and to take a copy of the whole or any part of the record.
- (7) This section does not prevent a person from —
  - (a) refusing to provide relevant information, or to produce a relevant record, because it contains information in respect of which there is legal professional privilege; or
  - (b) refusing to produce a medical record unless —
    - (i) the medical record relates to the subject matter of the complaint; and
    - (ii) the person to whom the medical record relates, or the person's representative, has consented to the disclosure of information in the medical record.
- (8) A person who is given a notice under subsection (2) commits an offence if the person —
  - (a) without reasonable excuse, proof of which is on the person, does not provide relevant information or produce a relevant record in accordance with the notice; or
  - (b) in purporting to comply with a requirement under subsection (2)(a) in the notice, provides relevant information that the person knows is false or misleading in a material particular; or



- (c) in purporting to comply with a requirement under subsection (2)(b) in the notice, makes available a relevant record that the person knows is false or misleading in a material particular —
  - (i) without indicating that the record is false or misleading and, to the extent the person can, how the record is false or misleading; and
  - (ii) if the person has or can reasonably obtain the correct information — without providing the correct information.

Penalty: a fine of \$6 000.

- (9) It is enough for a prosecution notice lodged against a person for an offence under subsection (8)(b) or (c) to state that the relevant information or relevant record was false or misleading to the person's knowledge without stating which.

**335. Warrant to enter and inspect premises**

- (1) The Director may apply for a warrant under the *Health and Disability Services (Complaints) Act 1995* section 63 in respect of premises if the Director reasonably believes that the entry and inspection of those premises is necessary for the purposes of an investigation.
- (2) The *Health and Disability Services (Complaints) Act 1995* Part 4 applies (with the necessary changes) in relation to —
  - (a) an application made under subsection (1) for a warrant; and
  - (b) the execution of any warrant issued in respect of such an application.
- (3) An offence under the *Health and Disability Services (Complaints) Act 1995* section 66 as applied by subsection (2)(b) is punishable by a fine not exceeding \$6 000.

**336. Conciliator cannot investigate**

A person who under section 332 has conciliated, or attempted to conciliate, a complaint cannot investigate that complaint.

**Subdivision 7 — Consequences of investigation**

**337. What Director must do on completing investigation**

- (1) On completing an investigation, the Director must —
  - (a) decide whether or not a service provider has acted, or failed to act, in a manner referred to in section 320(2); and
  - (b) give written notice of the decision to —
    - (i) if a complaint was investigated — the complainant and the respondent; or
    - (ii) if the investigation was conducted under section 341 — the Minister and any person affected by the decision.
- (2) The written notice must be given on or within 14 days after the day on which the Director makes the decision.
- (3) The written notice must specify —
  - (a) the reasons for the decision; and
  - (b) if the Director has decided that a service provider has acted, or failed to act, in a manner referred to in section 320(2) — any action that the Director recommends ought to be taken to remedy the matter by the respondent or any other person.
- (4) Before recommending action that ought to be taken to remedy the matter by the respondent or another person, the Director must consult —
  - (a) the respondent or that other person; and
  - (b) if any action that the Director considers ought to be taken to remedy the matter is likely to have an impact on

people other than the respondent or that other person —  
so many of those people as the Director considers  
appropriate.

**338. Respondent or other person to report on remedial action**

- (1) This section applies if the respondent or other person receives written notice of the decision under section 337(1)(b) recommending remedial action be taken by the respondent or other person.
- (2) The respondent or other person must give a written report about what remedial action the respondent or other person has taken to the Director —
  - (a) on or within 45 days after the day on which the respondent or other person receives the notice; or
  - (b) by the end of any extension of that period under subsection (4).

Penalty: a fine of \$2 500.

- (3) The respondent or other person may, before the expiry of the 45-day period, request the Director to extend the period within which the respondent or other person must report under subsection (2).
- (4) The Director may, if requested by the respondent or other person under subsection (3), extend the period within which the respondent or other person must report under subsection (2) from the end of the 45-day period for a further period (not exceeding 15 days) if the Director considers it appropriate to do so.

**339. Report not provided or remedial action not taken: report to Parliament**

- (1) The Director must, if the respondent or other person does not report in accordance with section 338 about what remedial action has been taken, give to the Minister —
  - (a) a copy of the decision; and

- (b) a written report about the refusal or failure by the respondent or other person to so report.
- (2) The Director must, if the respondent or other person does not take the remedial action recommended within a time that, in the Director's opinion, is reasonable, give to the Minister —
  - (a) a copy of the decision; and
  - (b) a written report about the refusal or failure by the respondent or other person to take the remedial action.
- (3) The Director cannot include in a document given to the Minister under subsection (1) or (2) personal information about a complainant except with the consent of the complainant.
- (4) The Minister may cause a copy of each of the documents given to the Minister under subsection (1) or (2) to be laid before each House of Parliament.

**Subdivision 8 — Other matters relating to investigations**

**340. Director to stop if other proceedings begun**

- (1) The Director must stop investigating or otherwise dealing with a complaint to the extent that it relates to an issue that the Director becomes aware is being dealt with —
  - (a) under another provision of this Act; or
  - (b) under another written law; or
  - (c) under a law of the Commonwealth; or
  - (d) in a court.
- (2) The Director must, on or within 14 days after the day on which the Director stops dealing with an issue under subsection (1), give written notice of that fact to —
  - (a) the complainant; and
  - (b) the respondent.

- (3) The Director may resume dealing with an issue that the Director stopped dealing with under subsection (1) if the Director becomes aware that the issue —
- (a) is no longer being dealt with under that other provision or law or by that court; but
  - (b) has not been resolved.

**341. Minister may refer matters for investigation**

The Minister may direct the Director to conduct an investigation under Subdivision 6 in accordance with a reference specified by the Minister if, in the Minister's opinion —

- (a) circumstances exist in relation to a person who has or may have a mental illness that would justify a complaint being made under this Division; or
- (b) it is in the public interest on a matter of general importance relating to mental health that an investigation be carried out.

**342. Confidentiality**

- (1) A person must not (whether directly or indirectly) record, disclose or use any information obtained by the person because the person is or was —
- (a) a person to whom —
    - (i) details are or were given under section 328(6), (7) or (8); or
    - (ii) a disclosure is or was made under section 328(12);
- or
- (b) a person, or a member, officer, employee or agent, of a body, to whom a complaint is or was referred under section 329(4); or
  - (c) a participant in a conciliation under section 332; or
  - (d) a participant in an investigation; or

- (e) a person to whom the information is or was provided by a complainant or respondent for the purpose of providing the complainant or respondent with a report for use by the complainant or respondent in pursuing or responding to a complaint; or
- (f) a person who is or was given notice of a decision under section 337(1)(b).

Penalty: a fine of \$5 000.

- (2) Subsection (1) does not apply in relation to the recording, disclosure or use of statistical or other information that is not personal information.
- (3) A person does not commit an offence under subsection (1) if the recording, disclosure or use of the information is authorised under section 577(1).

#### **Division 4 — Miscellaneous matters**

##### **343. Reports to Parliament**

- (1) The Director may at any time lay a report before each House of Parliament on any matter that the Director considers necessary —
  - (a) arising from an individual complaint made to the Director under Division 3 Subdivision 3 or an investigation; or
  - (b) in relation to the performance of the Director's functions under this Part.
- (2) The Director cannot include in a report prepared under subsection (1) personal information about a person who has or may have a mental illness except with the consent of the person.
- (3) This section does not limit the *Financial Management Act 2006* Part 5.

**344. False or misleading information or documents**

- (1) A person commits an offence if the person —
- (a) gives to the Director or a member of the Complaints Office staff information that the person knows is false or misleading in a material particular; or
  - (b) makes available to the Director or a member of the Complaints Office staff a document that the person knows is false or misleading in a material particular —
    - (i) without indicating that the document is false or misleading and, to the extent the person can, how the document is false or misleading; and
    - (ii) if the person has or can reasonably obtain the correct information — without providing the correct information.

Penalty: a fine of \$6 000.

- (2) It is enough for a prosecution notice lodged against a person for an offence under subsection (1)(a) or (b) to state that the information or document was false or misleading to the person's knowledge without stating which.

**345. Person must not be penalised because of complaint or investigation**

- (1) In this section —
- complaint*** means a complaint made —
- (a) to a service provider in accordance with the service provider's complaints procedure referred to in section 308; or
  - (b) to the Director under Division 3 Subdivision 3;
- prejudicial conduct***, in relation to a person, means —
- (a) refusing to employ the person; or
  - (b) dismissing the person from employment; or
  - (c) subjecting the person to any detriment.

- (2) A person must not, by threats or intimidation, persuade or attempt to persuade another person —
- (a) not to make a complaint; or
  - (b) to withdraw a complaint; or
  - (c) not to continue proceedings under Division 3 in respect of a complaint; or
  - (d) not to provide information to, or not to otherwise assist, the Director or a member of the Complaints Office staff in performing functions under this Part.

Penalty: a fine of \$2 500.

- (3) A person must not engage in prejudicial conduct in relation to another person because the other person —
- (a) intends to make a complaint; or
  - (b) has made a complaint; or
  - (c) intends to take part in, is taking part in or has taken part in proceedings under Division 3 in respect of a complaint or an investigation.

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

**346. Registers: complaints, matters directed to be investigated**

- (1) The Director must establish and maintain —
- (a) a register of complaints reported to the Director under section 309(2); and
  - (b) a register of complaints made to the Director under Division 3 Subdivision 3; and
  - (c) a register of matters the subject of a direction to conduct an investigation under section 341.
- (2) Each register must be established and maintained in the manner determined by the Director.
- (3) The form and contents of each register must be determined by the Director.



**347.      Delegation by Director**

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

## **Part 20 — Mental health advocacy services**

### **Division 1 — Preliminary matters**

#### **348. Terms used**

In this Part —

***identified person*** means any of these people —

- (a) a person who is referred under section 26(2) or (3)(a) or 36(2) for an examination to be conducted by a psychiatrist;
- (b) a voluntary inpatient who is under an order made under section 34(1) for the assessment of the voluntary patient;
- (c) a person who is under an order made under section 55(1)(c) or 61(1)(c) to enable an examination to be conducted by a psychiatrist;
- (d) an involuntary patient;
- (e) a person who is under a hospital order made under the MIA Act section 5(2);
- (f) a mentally impaired accused required under the MIA Act to be detained at an authorised hospital;
- (g) a mentally impaired accused who has been released under a release order made under the MIA Act section 35(1) on a condition imposed under section 35(4)(a) of that Act that the mentally impaired accused undergo treatment as defined in section 4 of this Act;
- (h) a person who is, for the purposes of the *Private Hospitals and Health Services Act 1927* Part IIIB, a resident of a private psychiatric hostel;
- (i) a person who —
  - (i) has or may have a mental illness; and
  - (ii) is being provided with treatment or care by a body or organisation that is prescribed by the regulations for this paragraph;

- (j) a voluntary patient who is not a person referred to in paragraphs (a) to (e) or paragraph (h) or (i), but only if the voluntary patient is in a class that the Minister directs under section 354 is a class of identified person for the purposes of this paragraph;

*mental health service* includes a private psychiatric hostel.

*[Section 348 amended: No. 11 of 2016 s. 296(5).]*

## **Division 2 — Mental health advocates: appointment or engagement, functions and powers**

### **Subdivision 1 — Appointment or engagement, functions and powers**

#### **349. Chief Mental Health Advocate**

There is to be a Chief Mental Health Advocate who is appointed by the Minister.

#### **350. Other mental health advocates**

- (1) The Chief Mental Health Advocate must engage under a contract for services one or more persons to be mental health advocates.
- (2) At least one mental health advocate (a *youth advocate*) engaged under subsection (1) must have qualifications, training or experience relevant to children and young people.
- (3) A mental health advocate engaged under subsection (1) may have qualifications, training or experience relevant to a particular group in the community.
- (4) Otherwise, any person can be engaged under subsection (1).

#### **351. Functions of Chief Mental Health Advocate**

- (1) The functions of the Chief Mental Health Advocate are —
  - (a) ensuring that identified persons are visited or otherwise contacted in accordance with section 357; and

- (b) promoting compliance with the Charter of Mental Health Care Principles by mental health services; and
  - (c) preparing and publishing information about, and promoting, the role of mental health advocates and how to contact the Chief Mental Health Advocate; and
  - (d) developing standards and protocols for the performance by mental health advocates of their functions under this Act; and
  - (e) ensuring that mental health advocates receive adequate training in relation to the performance of their functions under this Act; and
  - (f) providing advice, assistance, control and direction to mental health advocates engaged under section 350(1) in relation to the performance of their functions under this Act; and
  - (g) ensuring compliance with any directions given by the Minister under section 354(1) or the Chief Mental Health Advocate under paragraph (f); and
  - (h) any other functions conferred on the Chief Mental Health Advocate by this Act or another written law.
- (2) The function of the Chief Mental Health Advocate under subsection (1)(c) does not include the publication of personal information about a person who has or may have a mental illness.

**352. Functions of mental health advocates**

- (1) The functions of a mental health advocate are —
- (a) visiting or otherwise contacting identified persons in accordance with section 357; and
  - (b) inquiring into or investigating any matter relating to the conditions of mental health services that is adversely affecting, or is likely to adversely affect, the health, safety or wellbeing of identified persons; and

- (c) inquiring into or investigating the extent to which identified persons have been informed by mental health services of their rights under this Act and the extent to which those rights have been observed; and
  - (d) inquiring into and seeking to resolve complaints made to mental health advocates about the detention of identified persons at, or the treatment or care that is being provided to identified persons by, mental health services; and
  - (e) referring any issues arising out of the performance of a function under paragraph (b), (c) or (d) to the appropriate persons or bodies to deal with those issues, including to the Chief Mental Health Advocate under section 363(2); and
  - (f) assisting identified persons to protect and enforce their rights under this Act; and
  - (g) assisting identified persons to access legal services; and
  - (h) in consultation with the medical practitioners and mental health practitioners responsible for their treatment and care, advocating for and facilitating access by identified persons to other services; and
  - (i) any other functions conferred on a mental health advocate by this Act or another written law.
- (2) For the purposes of subsection (1)(d), a complaint may be made to a mental health advocate by a person who has a sufficient interest in the identified person concerned.
- (3) The performance by a mental health advocate of the function under subsection (1)(e) includes —
- (a) assisting an identified person to make a complaint under Part 19 to —
    - (i) the person in charge of a mental health service;  
or

- (ii) the Director of the Complaints Office;
  - and
  - (b) being an identified person's representative in respect of a complaint referred to in paragraph (a)(ii) if recognised as the identified person's representative under section 316(2).
- (4) The performance by a mental health advocate of the function under subsection (1)(f) includes —
  - (a) assisting an identified person in relation to any application made under this Act in respect of the identified person to, and in relation to any proceedings under this Act in respect of the identified person before, the Mental Health Tribunal or the State Administrative Tribunal; and
  - (b) if authorised under this Act — representing an identified person in any proceedings under this Act in respect of the identified person before the Mental Health Tribunal or the State Administrative Tribunal.
- (5) In performing a function under this section, a mental health advocate engaged under section 350(1) is subject to the general direction and control of the Chief Mental Health Advocate.

**353. Powers generally**

In addition to the specific powers conferred on a mental health advocate by this Act or another written law, a mental health advocate may do anything necessary or convenient for the performance of the functions conferred on the mental health advocate by this Act or another written law.

**354. Directions to Chief Mental Health Advocate about general matters**

- (1) The Minister may, after consultation with the Chief Mental Health Advocate, issue written directions about the general

policy to be followed by the Chief Mental Health Advocate in performing functions under this Act.

- (2) The Chief Mental Health Advocate may request the Minister to issue a direction under subsection (1).
- (3) A direction cannot be issued under this section in respect of —
  - (a) a particular identified person; or
  - (b) a particular mental health service; or
  - (c) any other particular person or body.
- (4) The Chief Mental Health Advocate must comply with a direction issued under this section.
- (5) The power to issue a direction under this section includes the power to amend, replace or revoke the direction and that power is exercisable in the same manner, and is subject to the same conditions, as the power to issue the direction.
- (6) The Minister must cause the text of a direction issued under this section to be laid before each House of Parliament on or within 14 sitting days of the House after the day on which the direction is issued.
- (7) The text of a direction issued under this section must be included in the Chief Mental Health Advocate's annual report prepared under section 377.

**355. Directions to Chief Mental Health Advocate to report on particular issues**

- (1) The Minister may issue a written direction requiring the Chief Mental Health Advocate —
  - (a) to report to the Minister about the provision of treatment or care by a particular mental health service to a particular person; or
  - (b) to ensure that a particular mental health service is visited by a mental health advocate and to report to the Minister on the visit.

- (2) The Chief Mental Health Advocate must comply with a direction issued under this section.
- (3) The power to issue a direction under this section includes the power to amend, replace or revoke the direction and that power is exercisable in the same manner, and is subject to the same conditions, as the power to issue the direction.
- (4) The Minister must cause the text of a direction issued under this section to be laid before each House of Parliament on or within 14 sitting days of the House after the day on which the direction is issued.
- (5) The text of a direction issued under this section must be included in the Chief Mental Health Advocate's annual report prepared under section 377.
- (6) The Minister must cause the text of a report provided by the Chief Mental Health Advocate in response to a direction issued under this section to be laid before each House of Parliament on or within 14 sitting days of the House after the day on which the report is provided.
- (7) The text of a report provided by the Chief Mental Health Advocate in response to a direction issued under this section must be included in the Chief Mental Health Advocate's annual report prepared under section 377.
- (8) Subsections (4) to (7) do not authorise the publication of personal information about a person.

**Subdivision 2 — Contacting identified person or person with  
sufficient interest**

**356. Request to contact identified person**

- (1) A request for an identified person to be contacted by a mental health advocate may be made by —
  - (a) the identified person; or
  - (b) the identified person's psychiatrist; or



- (c) a person who has a sufficient interest in the identified person.
- (2) The request may be made to —
  - (a) the mental health service where the identified person is being detained or that is providing treatment or care to the identified person; or
  - (b) the Chief Mental Health Advocate.
- (3) If the request is made to the mental health service, the person in charge of the mental health service must ensure that the Chief Mental Health Advocate is notified of the request as soon as practicable and, in any event, within 24 hours after the time when the request was made.

**357. Duty to contact identified person**

- (1) An identified person under paragraph (a), (b) or (c) of the definition of *identified person* in section 348 who is detained under section 28(1) or (2), 34(1), 52(1)(b), 53(1), 58(1)(b), 59(2), 62(1) or (2) or 70(1)(b) must be visited or otherwise contacted by a mental health advocate as soon as practicable and, in any event, on or within 3 days after the day on which the Chief Mental Health Advocate receives a request under section 356(2)(b), or is notified of a request under section 356(3), for the person to be contacted.
- (2) An identified person under paragraph (d) of the definition of *identified person* in section 348 who is under an involuntary treatment order made on or after the day on which this section commences must be visited or otherwise contacted by a mental health advocate —
  - (a) if, when the order is made, the person is an adult — on or within 7 days after the day on which the involuntary treatment order is made; or
  - (b) if, when the order is made, the person is a child — within 24 hours after the time when the involuntary treatment order is made.

- (3) An identified person under paragraph (d) of the definition of ***identified person*** in section 348 who is under an involuntary treatment order made —
- (a) before the day on which this section commences; or
  - (b) on or after the day on which this section commences that has been in force for more than 7 days from the day on which the order is made,

must be visited or otherwise contacted by a mental health advocate on or as soon as practicable after the day on which the Chief Mental Health Advocate receives a request under section 356(2)(b), or is notified of a request under section 356(3), for the person to be contacted.

- (4) An identified person under paragraph (f) of the definition of ***identified person*** in section 348 who is detained at an authorised hospital under the MIA Act on or after the day on which this section commences must be visited or otherwise contacted by a mental health advocate —
- (a) if, when detained, the person is an adult — on or within 7 days after the day on which the person is detained; or
  - (b) if, when detained, the person is a child — within 24 hours after the time when the person is detained.
- (5) An identified person under paragraph (f) of the definition of ***identified person*** in section 348 —
- (a) who was detained at an authorised hospital under the MIA Act before the day on which this section commences; or
  - (b) who is detained at an authorised hospital under the MIA Act on or after the day on which this section commences for more than 7 days,

must be visited or otherwise contacted by a mental health advocate on or as soon as practicable after the day on which the Chief Mental Health Advocate receives a request under section 356(2)(b), or is notified of a request under section 356(3), for the person to be contacted.

- (6) An identified person under paragraph (e), (g), (h) or (i) of the definition of *identified person* in section 348 must be visited or otherwise contacted by a mental health advocate on or as soon as practicable after the day on which the Chief Mental Health Advocate receives a request under section 356(2)(b), or is notified of a request under section 356(3), for the person to be contacted and, in any event, within 7 days after that day.
- (7) An identified person under paragraph (j) of the definition of *identified person* in section 348 must be visited or otherwise contacted by a mental health advocate on or within a reasonable time after the day on which the Chief Mental Health Advocate receives a request under section 356(2)(b), or is notified of a request under section 356(3), for the person to be contacted.
- (8) Despite subsections (6) and (7), an identified person under paragraph (e), (g), (h), (i) or (j) of the definition of *identified person* in section 348 who is a child must be visited or otherwise contacted by a mental health advocate on or within 24 hours after the day on which the Chief Mental Health Advocate receives a request under section 356(2)(b), or is notified of a request under section 356(3), for the person to be contacted.

**358. Contact on mental health advocate's own initiative**

In addition to any requirement under section 357 to contact an identified person, a mental health advocate may, subject to any direction of the Chief Mental Health Advocate under section 359(3), visit or otherwise contact an identified person at any time.

**Subdivision 3 — Specific powers of mental health advocates**

**359. Specific powers of mental health advocates**

- (1) The powers of a mental health advocate include these powers —
  - (a) visiting, at any time and for as long as the mental health advocate considers appropriate, a mental health service

- at which one or more identified persons are being detained or that is providing treatment or care to one or more identified persons;
- (b) inspecting any part of a mental health service that the mental health advocate visits;
  - (c) seeing and speaking with an identified person unless the identified person objects to the mental health advocate doing so;
  - (d) making inquiries about any of these things —
    - (i) the admission or reception of an identified person by a mental health service or other place;
    - (ii) the referral of an identified person for an examination to be conducted by a psychiatrist at a mental health service or other place;
    - (iii) the detention of an identified person at a mental health service or other place;
    - (iv) the provision of treatment or care to an identified person by a mental health service or other place;
  - (e) requiring a staff member of a mental health service or other place to do any of these things —
    - (i) answer questions or provide information in response to any inquiry made about a matter referred to in paragraph (d)(i) to (iv);
    - (ii) make available any document that the mental health advocate may inspect, or take a copy of, under paragraph (f) or (g);
    - (iii) give reasonable assistance to the mental health advocate in the exercise of a power under this subsection;
  - (f) inspecting and taking a copy of the whole or any part of the medical record of, or any other document about, an identified person that is held by the mental health service unless the identified person objects to the mental health advocate doing so;

- (g) inspecting and taking a copy of the whole or any part of any document, or any document in a class of document, that is held by the mental health service and is prescribed by the regulations.
- (2) A mental health advocate cannot exercise a power under subsection (1)(c) or (f) in relation to an identified person who is a voluntary patient without the consent of —
  - (a) the identified person; or
  - (b) if the identified person does not have the capacity to consent to the power being exercised in relation to him or her — the person who is authorised by law to consent to the provision of treatment or care to the identified person.
- (3) The exercise by a mental health advocate of any power under subsection (1) is subject to the direction of the Chief Mental Health Advocate.

**360. Documents to which access is restricted**

- (1) This section applies if an identified person is not entitled under section 248(1) to have access to a document because the identified person has been refused access to the document for a reason referred to in section 249(1)(a) or (b) or (3).
- (2) The person in charge of a mental health service must ensure that, before a staff member of the mental health service complies with any requirement of a mental health advocate under section 359(1)(e)(ii) to make available the document, the mental health advocate is advised —
  - (a) that the identified person has been refused access to the document for a reason referred to in section 249(1)(a) or (b) or (3), as the case requires; and
  - (b) that it is an offence under section 361 for the mental health advocate to disclose any information in the relevant document to the identified person.

- (3) The person in charge of a mental health service must record on an identified person's medical record or other file any advice given to a mental health advocate under subsection (2) about the matters referred to in subsection (2)(a) and (b).

**361. Disclosure by mental health advocate**

A mental health advocate who under section 359(1)(f) inspects, or takes a copy of the whole or any part of, a document must not disclose any information in the document if —

- (a) the identified person to whom the document relates has been refused access to the document for a reason referred to in section 249(1)(a) or (b) or (3); and
- (b) before the document was made available to the mental health advocate in compliance with a requirement by the mental health advocate under section 359(1)(e)(ii), the mental health advocate was advised of the matters referred to in section 360(2)(a) and (b).

Penalty: a fine of \$5 000.

**362. Interfering with exercise of powers**

- (1) A person commits an offence if the person —
- (a) without reasonable excuse, proof of which is on the person, does not answer a question or provide information when required under section 359(1)(e)(i); or
  - (b) in purporting to comply with a requirement under section 359(1)(e)(i), gives an answer or provides information that the person knows is false or misleading in a material particular; or
  - (c) in purporting to comply with a requirement under section 359(1)(e)(ii), makes available a document that the person knows is false or misleading in a material particular —
    - (i) without indicating that the document is false or misleading and, to the extent the person can, how the document is false or misleading; and

- (ii) if the person has or can reasonably obtain the correct information — without providing the correct information;

or

- (d) without reasonable excuse, proof of which is on the person, does not give reasonable assistance when required under section 359(1)(e)(iii); or
- (e) without reasonable excuse, proof of which is on the person, obstructs or hinders —
  - (i) a mental health advocate in the exercise of a power under section 359(1); or
  - (ii) a person assisting a mental health advocate under section 359(1)(e)(iii).

Penalty: a fine of \$6 000.

- (2) It is enough for a prosecution notice lodged against a person for an offence under subsection (1) alleged to have been committed in the circumstances referred to in subsection (1)(b) or (c) to state that the answer, information or document was false or misleading to the person's knowledge without stating which.

### **363. Issues arising out of inquiries and investigations**

- (1) A mental health advocate may attempt to resolve any issue that arises in the course of an inquiry into or investigation of a matter under section 352(1)(b), (c) or (d) by dealing directly with the relevant staff members of the mental health service concerned.
- (2) A mental health advocate must refer an issue to the Chief Mental Health Advocate if the mental health advocate cannot resolve the issue or considers it appropriate to do so.
- (3) The Chief Mental Health Advocate may provide a report about an issue referred to the Chief Mental Health Advocate under subsection (2) to the person in charge of the mental health service concerned.

- (4) The Chief Mental Health Advocate may also provide a copy of any report provided to a person in charge of a mental health service under subsection (3) to one or more of the following —
  - (a) the Minister;
  - (b) the CEO;
  - (c) the CEO of the Health Department;
  - (d) the Chief Psychiatrist.
- (5) A person to whom a copy of a report about an issue is provided under subsection (4) must advise the Chief Mental Health Advocate —
  - (a) whether or not the person considers further inquiry into or investigation of the issue is warranted; and
  - (b) if it is warranted — the outcome of the further inquiry or investigation, including any recommendations made, directions given or other action taken under this Act or another written law.
- (6) This section does not limit the powers that a mental health advocate has for dealing with any issue that arises in the course of an inquiry into or investigation of a matter under section 352(1)(b), (c) or (d).

**Division 3 — Terms and conditions of appointment or engagement**

**Subdivision 1 — Chief Mental Health Advocate**

**364. Terms and conditions of appointment**

- (1) The Chief Mental Health Advocate —
  - (a) holds office for the period (not exceeding 5 years) specified in the instrument of appointment; and
  - (b) is eligible for reappointment.
- (2) Subject to this Subdivision, the Chief Mental Health Advocate holds office on the terms and conditions of appointment determined by the Minister.



**365. Remuneration**

The Chief Mental Health Advocate is entitled to the remuneration determined by the Minister on the recommendation of the Public Sector Commissioner.

**366. Resignation**

- (1) The Chief Mental Health Advocate may resign from office by writing signed and given to the Minister.
- (2) The resignation takes effect on the later of the following —
  - (a) receipt by the Minister;
  - (b) the day specified in the resignation.

**367. Removal from office**

The Minister may remove a person from the office of Chief Mental Health Advocate on any of these grounds —

- (a) mental or physical incapacity;
- (b) incompetence;
- (c) neglect of duty;
- (d) misconduct.

**368. Acting Chief Mental Health Advocate**

- (1) The Minister may appoint a person to act in the office of the Chief Mental Health Advocate referred to in section 349 —
  - (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
  - (b) during a period, or during all periods, when the person holding the office or a person acting in the office under an appointment under this subsection is on leave or is otherwise unable to perform the functions of the office.
- (2) An appointment under subsection (1) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

- (3) The Minister may —
  - (a) determine the terms and conditions of an appointment under subsection (1), including as to remuneration; and
  - (b) terminate an appointment under subsection (1) at any time.
- (4) The validity of anything done by or in relation to a person purporting to act under an appointment under subsection (1) is not to be called into question on any of these grounds —
  - (a) the occasion for the appointment had not arisen;
  - (b) there is a defect or irregularity in the appointment;
  - (c) the appointment had ceased to have effect;
  - (d) the occasion for the person to act had not arisen or had ceased.
- (5) A person cannot act under an appointment under subsection (1) for a continuous period exceeding 12 months.

**Subdivision 2 — Other mental health advocates**

**369. Terms and conditions of engagement**

- (1) A mental health advocate engaged under section 350(1) —
  - (a) holds office for the period (not exceeding 3 years) specified in the contract for services; and
  - (b) is eligible for re-engagement.
- (2) Subject to this Subdivision, a mental health advocate engaged under section 350(1) holds office on the terms and conditions of engagement determined by the Minister.

**370. Remuneration**

A mental health advocate engaged under section 350(1) is entitled to the remuneration determined by the Minister.

**371. Resignation**

- (1) A mental health advocate engaged under section 350(1) may resign from office by writing signed and given to the Chief Mental Health Advocate.
- (2) The resignation takes effect on the later of the following —
  - (a) receipt by the Chief Mental Health Advocate;
  - (b) the day specified in the resignation.

**372. Removal from office**

The Chief Mental Health Advocate may remove a person from the office of mental health advocate referred to in section 350(1) on any of these grounds —

- (a) mental or physical incapacity;
- (b) incompetence;
- (c) neglect of duty;
- (d) misconduct.

**Division 4 — Other matters relating to mental health advocates**

**373. Conflict of interest**

- (1) A mental health advocate may be employed by, or have a disqualifying interest under subsection (3) in, a body or organisation that provides treatment or care for identified persons.
- (2) However, the mental health advocate cannot perform any functions under this Act as a mental health advocate in relation to an identified person who is being provided with treatment or care by the body or organisation.
- (3) For subsection (1), a mental health advocate has a disqualifying interest in a body or organisation if —
  - (a) the mental health advocate; or

- (b) another person with whom the mental health advocate is closely associated,

has a financial interest in the body or organisation other than a financial interest prescribed by the regulations for this subsection.

- (4) For subsection (3)(b), a person is closely associated with a mental health advocate if the person —
  - (a) is the spouse, de facto partner or child of the mental health advocate; or
  - (b) is in partnership with the mental health advocate; or
  - (c) is an employer of the mental health advocate; or
  - (d) is a beneficiary under a trust, or an object of a discretionary trust, of which the mental health advocate is a trustee; or
  - (e) is a body corporate of which the mental health advocate is an officer; or
  - (f) is a body corporate in which the mental health advocate holds shares that have a total nominal value exceeding —
    - (i) the amount prescribed by the regulations for this paragraph; or
    - (ii) the percentage prescribed by the regulations for this paragraph of the total nominal value of the issued share capital of the body corporate;or
  - (g) has a relationship specified in paragraphs (a) to (f) with the mental health advocate's spouse or de facto partner.

**374. Delegation by Chief Mental Health Advocate**

- (1) In this section —

***advocacy services officer*** means —

  - (a) a public service officer who is appointed or made available to assist the Chief Mental Health Advocate as required by section 375; or

- (b) an officer or employee whose services are being used by the Chief Mental Health Advocate by arrangement under section 376(1).
- (2) The Chief Mental Health Advocate may delegate to another mental health advocate or an advocacy services officer any power or duty of the Chief Mental Health Advocate under another provision of this Act.
- (3) The delegation must be in writing signed by the Chief Mental Health Advocate.
- (4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (5) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary intention is shown.
- (6) This section does not limit the ability of the Chief Mental Health Advocate to perform a function through an officer or agent.

### **Division 5 — Staff and facilities**

#### **375. Advocacy services staff**

Public service officers must be appointed under, or made available under, the *Public Sector Management Act 1994* Part 3 to assist the Chief Mental Health Advocate in performing his or her functions under this Act or another written law.

#### **376. Use of government staff and facilities**

- (1) The Chief Mental Health Advocate may, by arrangement, use (either full-time or part-time) the services of any officer or employee employed in the Public Service or a State agency or instrumentality or employed otherwise in the service of the State.

- (2) The Chief Mental Health Advocate may, by arrangement, use any facilities of a department of the Public Service or a State agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) must be made on terms agreed to by the parties.

### **Division 6 — Annual reports**

#### **377. Annual report: preparation**

Within 3 months after 30 June in each year, the Chief Mental Health Advocate must prepare and give to the Minister a report as to the general activities of mental health advocates during the financial year ending on that day.

#### **378. Annual report: tabling**

- (1) The Minister must cause a copy of a report referred to in section 377 to be laid before each House of Parliament, or dealt with under subsection (2), on or within 21 days after the day on which the Minister receives the report.
- (2) The Minister must transmit a copy of the report to the Clerk of a House of Parliament if —
  - (a) at the beginning of the 21-day period referred to in subsection (1), the House is not sitting; and
  - (b) in the Minister's opinion, the House will not sit during that period.
- (3) A copy of a report transmitted under subsection (2) to the Clerk of a House is taken to have been laid before that House.
- (4) The laying of a copy of a report that is taken to have occurred under subsection (3) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

## Part 21 — Mental Health Tribunal

### Division 1 — Preliminary matters

#### 379. Terms used

In this Part —

**application** means an application made to the Tribunal under this Part;

**decision**, of the Tribunal, includes an order, direction or declaration made by the Tribunal;

**hearing** means a hearing in a proceeding;

~~**lawyer** means an Australian lawyer as defined in the *Legal Profession Act 2008* section 3;~~

**member** means —

- (a) the President of the Tribunal; or
- (b) a member of the Mental Health Tribunal appointed under section 476(1);

**party** means a party to a proceeding;

**person concerned**, in an application or proceeding, means the patient or other person whom the application or proceeding concerns;

**President of the Tribunal** means President of the Mental Health Tribunal appointed under section 475;

**presiding member**, in a proceeding, has the meaning given in section 440;

**proceeding** means a proceeding of the Tribunal under this Part and includes part of a proceeding;

**registrar** means the registrar of the Mental Health Tribunal referred to in section 483;

**registry officer** means a public service officer appointed or made available to assist the registrar as required by section 486;

***Tribunal*** means the Mental Health Tribunal established by section 380;

***witness*** means a witness in a proceeding.

[\[Section 379 amended: No. 9 of 2022 s. 424.\]](#)

## **Division 2 — Establishment, jurisdiction and constitution**

### **380. Establishment**

The Mental Health Tribunal is established.

### **381. Jurisdiction**

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

### **382. Constitution specified by President**

When exercising its jurisdiction, subject to sections 383 and 384, the Tribunal must be constituted by the members specified by the President of the Tribunal.

### **383. Constitution generally**

For the purpose of a proceeding, except as provided by section 384, the Tribunal must be constituted by 3 members as follows —

- (a) a member who is a lawyer;
- (b) if the patient is an adult — a member who is a psychiatrist;
- (c) if the patient is a child —
  - (i) a member who is a child and adolescent psychiatrist; or
  - (ii) if a member referred to in subparagraph (i) is not available — a member who is a psychiatrist;
- (d) a member who is not —
  - (i) a lawyer; or
  - (ii) a medical practitioner; or



- (iii) a mental health practitioner who is a staff member of a mental health service or private psychiatric hostel.

**384. Constitution for psychosurgical matters**

For a proceeding in relation to an application made under section 417(1) for approval for psychosurgery to be performed, the Tribunal must be constituted by 5 members as follows —

- (a) a member who is a lawyer;
- (b) a neurosurgeon who is appointed as a member after consultation by the Minister with the Health Minister held after consultation by the Health Minister with the Royal Australasian College of Surgeons;
- (c) if the patient is an adult — 2 members who are psychiatrists;
- (d) if the patient is a child —
  - (i) a member who is a child and adolescent psychiatrist; and
  - (ii) another member who is a psychiatrist who can (but need not) be a child and adolescent psychiatrist;
- (e) a member who is not —
  - (i) a lawyer; or
  - (ii) a medical practitioner; or
  - (iii) a mental health practitioner who is a staff member of a mental health service or private psychiatric hostel.

**385. Contemporaneous exercise of jurisdiction**

The Tribunal constituted in accordance with this Part may exercise its jurisdiction even if the Tribunal differently constituted under this Part is exercising its jurisdiction at the same time.

**Division 3 — Involuntary treatment orders: review**

**386. Initial review after order made**

- (1) In this section —  
*initial review period*, for an involuntary treatment order, means —
  - (a) if, when the order is made, the involuntary patient is an adult — the period of 35 days from the day on which the order is made; or
  - (b) if, when the order is made, the involuntary patient is a child — the period of 10 days from the day on which the order is made.
- (2) Unless subsection (4) or (5) applies, as soon as practicable after an involuntary treatment order is made and, in any event, by the end of the initial review period, the Tribunal must review the order to decide whether or not the involuntary patient is still in need of the involuntary treatment order having regard to the criteria specified in section 25.
- (3) It is sufficient for compliance with subsection (2) if the review is commenced in accordance with that provision and is completed as soon as practicable.
- (4) The Tribunal is not required to review the order under subsection (2) if the involuntary patient has not, under section 388, been an involuntary patient continuously since the order was made.
- (5) The Tribunal is not required to review the order under subsection (2) if —
  - (a) the Tribunal has —
    - (i) previously reviewed under this Division an involuntary treatment order made in respect of the involuntary patient; or
    - (ii) previously reviewed under this Division the terms of a community treatment order that a

psychiatrist has been directed under section 395(2)(b) to make in respect of the involuntary patient;

and

- (b) the involuntary patient has, under section 388, been an involuntary patient continuously since the previous review.

**387. Periodic reviews while order in force**

- (1) In this section —

***last review***, of an involuntary treatment order, means —

- (a) the last review of the order under section 386(2) or subsection (2); or
- (b) if the order has not been reviewed under either of those provisions because it was made after another involuntary treatment order was last reviewed under one or other of those provisions — the last review of that other order;

***last review day***, for an involuntary treatment order, means the day on which the decision on the last review of the order is made;

***periodic review period*** means —

- (a) for an inpatient treatment order or for a community treatment order in respect of a patient who, on the last review day, has been an involuntary community patient continuously for not more than 12 months —
  - (i) if, on the last review day, the involuntary patient is an adult — the period of 3 months from that day; or
  - (ii) if, on the last review day, the involuntary patient is a child — the period of 28 days from that day;

or

- (b) for a community treatment order in respect of a patient who, on the last review day, has been an involuntary community patient continuously for more than 12 months — the period of 6 months from that day;

***prescribed number of days***, before the end of a periodic review period, means —

- (a) if, when the involuntary treatment order that is the subject of the proceeding was made, the involuntary patient is an adult — 21 days before the day on which that period ends; or
  - (b) if, when the involuntary treatment order that is the subject of the proceeding was made, the involuntary patient was a child — 7 days before the day on which that period ends.
- (2) Unless subsection (4) applies, the Tribunal must, on or within the prescribed number of days before the day on which a periodic review period for an involuntary treatment order ends, review the order to decide whether or not the involuntary patient is still in need of the involuntary treatment order having regard to the criteria specified in section 25.
  - (3) It is sufficient for compliance with subsection (2) if a review is commenced in accordance with that provision and is completed as soon as practicable.
  - (4) The Tribunal is not required to review the order under subsection (2) if the involuntary patient has not, under section 388, been an involuntary patient continuously since the last review day.

**388. Involuntary patient for continuous period**

For sections 386(4) and (5)(b) and 387(4), a person has been an involuntary patient continuously for a period if —

- (a) one, or a series of 2 or more, involuntary treatment orders were in force in respect of the person for the whole period; or

- (b) during the period, an involuntary treatment order ceased to be in force in respect of the person and another involuntary treatment order came into force in respect of the person on or within 7 days after the day of the cessation.

**389. Review period may be extended**

- (1) In this section —

***maximum extension period*** means —

- (a) if, on the day on which the relevant decision is made, the involuntary patient is an adult — the period of 21 days; or
- (b) if, on the day on which the relevant decision is made, the involuntary patient is a child — the period of 7 days;

***prescribed period*** means —

- (a) if, on the day on which the relevant decision is made, the involuntary patient is an adult — the period of 28 days; or
- (b) if, on the day on which the relevant decision is made, the involuntary patient is a child — the period of 7 days;

***relevant decision***, in relation to the review of an involuntary treatment order under section 386(2) or 387(2), means a decision of the Tribunal the making of which involves a consideration of substantially the same issues as would be raised in the review;

***review period***, for an involuntary treatment order, means —

- (a) the initial review period under section 386(1) for the involuntary treatment order; or
- (b) a periodic review period under section 387(1) for the involuntary treatment order.

- (2) If the Tribunal makes a relevant decision within the prescribed period before the day on which a review period for an involuntary treatment order ends, the Tribunal may make an

order extending the review period from the day on which it would otherwise have ended for the further period (not exceeding the maximum extension period) specified in the order.

**390. Application for review**

- (1) A person specified in subsection (2) may apply to the Tribunal for a review of any of these things —
- (a) an involuntary treatment order, to decide whether or not the involuntary patient is still in need of an involuntary treatment order having regard to the criteria specified in section 25;
  - (b) an inpatient treatment order, to decide whether or not the involuntary inpatient is still in need of an inpatient treatment order having regard to the criteria specified in section 25(1);
  - (c) a community treatment order, to decide whether or not the terms of the order are appropriate;
  - (d) a transfer order made under section 66(1) or 91(2) in respect of an involuntary inpatient, or a refusal to make such an order, to decide whether or not the making of the order or the refusal to do so is appropriate;
  - (e) the transfer under section 135(1)(a) of a psychiatrist's responsibility as the supervising psychiatrist under a community treatment order, or a refusal to transfer that responsibility, to decide whether or not the transfer of responsibility or the refusal to do so is appropriate;
  - (f) the transfer under section 137(a) of a practitioner's responsibility as the treating practitioner under a community treatment order, or a refusal to transfer that responsibility, to decide whether or not the transfer of responsibility or the refusal to do so is appropriate;
  - (g) a transfer order made under section 555(1) in respect of a State inpatient, or a refusal to make such an order, to

decide whether or not the making of the order or the refusal to do so is appropriate.

- (2) An application may be made under subsection (1) by any of these people —
  - (a) the involuntary patient;
  - (b) a carer, close family member or other personal support person of the involuntary patient;
  - (c) a mental health advocate;
  - (d) any other person who, in the Tribunal's opinion, has a sufficient interest in the matter.
- (3) The application must be in writing and, unless subsection (4) applies, may be made at any time.
- (4) The application cannot be made within the prescribed period after the day on which the Tribunal makes a decision that involves a consideration of substantially the same issues as would be raised by the application unless there has been a material change in the involuntary patient's circumstances since that day.
- (5) For subsection (4), the prescribed period is —
  - (a) if, on the day on which the decision is made, the involuntary patient is an adult — the period of 28 days;  
or
  - (b) if, on the day on which the decision is made, the involuntary patient is a child — the period of 7 days.

**391. Review on Tribunal's own initiative**

The Tribunal may, on its own initiative whenever it considers it appropriate, review —

- (a) an involuntary treatment order referred to in section 390(1)(a) to (c) to decide the matter referred in that provision; or

- (b) a transfer order referred to in section 390(1)(d) or (g) to decide the matter referred in that provision; or
- (c) a transfer of responsibility under section 390(1)(e) or (f) to decide the matter referred to in that provision.

**392. Suspending order pending review**

- (1) For the purposes of a proceeding for a review under this Division, the Tribunal may make an order —
  - (a) suspending the operation of the involuntary treatment order that is the subject of the proceeding until the Tribunal makes a decision on the review; or
  - (b) restraining the taking of any action, or any further action, under the involuntary treatment order that is the subject of the proceeding until then.
- (2) The Tribunal may make an order under subsection (1) on the application of a party or on its own initiative.

**393. Parties to proceeding**

The parties to a proceeding under this Division are —

- (a) the involuntary patient; and
- (b) if the proceeding relates to an application made under section 390 and the applicant is not the involuntary patient — the applicant; and
- (c) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

**394. Things to which Tribunal must have regard**

- (1) In making a decision on a review under this Division in respect of an involuntary patient, the Tribunal must have regard to these things —
  - (a) if the involuntary patient is a child and the Tribunal is not constituted with a child and adolescent psychiatrist — the views of a medical practitioner or mental health practitioner specified in subsection (2);



- (b) the involuntary patient's psychiatric condition;
  - (c) the involuntary patient's medical and psychiatric history;
  - (d) the involuntary patient's treatment, support and discharge plan;
  - (e) the involuntary patient's wishes, to the extent that it is practicable to ascertain those wishes;
  - (f) the views of any carer, close family member or other personal support person of the involuntary patient;
  - (g) any other things that the Tribunal considers relevant to making the decision.
- (2) For subsection (1)(a), a medical practitioner or mental health practitioner must —
- (a) have qualifications, training or experience relevant to children who have a mental illness; and
  - (b) be authorised by the Chief Psychiatrist for this paragraph.

Note for this section:

For the purpose of ascertaining the involuntary patient's wishes under section 394(1)(e), Part 2 Division 4 applies.

### **395. What Tribunal may do on completing review**

- (1) On completing a review under this Division, the Tribunal may make any orders, and give any directions, the Tribunal considers appropriate.
- (2) Those orders and directions include the following —
  - (a) an order revoking an involuntary treatment order;
  - (b) a direction to the psychiatrist named in the order to make, within a reasonable period specified in the direction, a community treatment order in terms that are consistent with section 115 and specified in the direction;

- (c) an order varying the terms of a community treatment order in any way that is consistent with section 115.
- (3) The Tribunal cannot make an order or give a direction under subsection (1) in relation to an involuntary patient's treatment, support or discharge plan, but may make —
  - (a) a recommendation that the patient's psychiatrist review the treatment, support or discharge plan; and
  - (b) if such a recommendation is made — a recommendation about the amendments that could be made to the treatment, support and discharge plan.
- (4) The Tribunal may give a copy of any recommendation made under subsection (3) to the Chief Psychiatrist.

**396. Review of direction given to psychiatrist**

- (1) A psychiatrist who is directed under section 395(2)(b) to make a community treatment order may, during the period within which the order must be made, apply to the Tribunal for a review of the direction.
- (2) Sections 392 to 394 and section 395(1) and (2)(a) and (c) apply (with the necessary changes) in relation to an application made under subsection (1) as if it were an application made under section 390(1)(c).

**Division 4 — Involuntary treatment orders: validity**

**397. Application of this Division**

This Division applies in relation to any of these orders (a *treatment order*) that is or was in force —

- (a) an involuntary treatment order;
- (b) a continuation order made under section 89(2)(a) or 121(1) in respect of an involuntary treatment order;
- (c) an order made under section 122(1) varying a community treatment order.

**398. Declaration about validity of treatment order**

- (1) The Tribunal may, on the application of a person specified in section 400(1) or on its own initiative, declare that a treatment order is or was valid or invalid.
- (2) If the Tribunal declares that a treatment order is invalid, section 399 applies.
- (3) Instead of declaring that a treatment order is invalid, the Tribunal —
  - (a) may declare the treatment order to be valid; and
  - (b) may make an order varying the terms of the treatment order in the manner the Tribunal considers most likely to give effect to the intention of the psychiatrist who made the treatment order.
- (4) The Tribunal cannot make a declaration under subsection (3)(a) in respect of a treatment order if the Tribunal is satisfied that the treatment order is invalid on the ground referred to in section 402.
- (5) A declaration made under subsection (1) or (3)(a) has effect according to its terms.

**399. Consequences of declaring treatment order in force to be invalid**

- (1) If the Tribunal declares that an inpatient treatment order is invalid —
  - (a) the inpatient treatment order ceases to be in force; but
  - (b) if the Tribunal reasonably suspects that the person who was subject to the involuntary inpatient order is in need of an involuntary treatment order —
    - (i) the Tribunal may make an order for the assessment of the person by a medical practitioner or authorised mental health practitioner at the hospital where the person was

detained under the inpatient treatment order and authorising the person's detention there for up to the period specified in the order to enable the assessment to be conducted; and

- (ii) this Act applies (with any changes that are necessary or convenient to give effect to the Tribunal's order) as if the Tribunal's order were an order made under section 34(1).
- (2) If the Tribunal declares that a community treatment order is invalid, the community treatment order ceases to be in force.
  - (3) If the Tribunal declares that a continuation order made under section 89(2)(a) or 121(1) is invalid, the continuation order ceases to be in force and the involuntary treatment order expires when it would have expired had the continuation order not been made.
  - (4) If the Tribunal declares that an order made under section 122(1) is invalid, the community treatment order as in force immediately before the order was made under section 122(1) continues in force.

**400. Application for declaration**

- (1) An application may be made under section 398(1) by any of these people —
  - (a) the involuntary patient or the person who was the subject of the treatment order;
  - (b) the psychiatrist who made the treatment order;
  - (c) a carer, close family member or other personal support person of the involuntary patient or the person who was the subject of the treatment order;
  - (d) a mental health advocate;
  - (e) any other person who, in the Tribunal's opinion, has a sufficient interest in the matter.
- (2) An application cannot be made under section 398(1) in respect of a treatment order that ceased to be in force more than

6 months ago unless, in the Tribunal's opinion, the applicant shows good reason for the delay.

**401. Parties to proceeding**

The parties to a proceeding under this Division are —

- (a) the involuntary patient or the person who was the subject of the treatment order; and
- (b) if the proceeding relates to an application made under section 398(1) and the applicant is not the involuntary patient or the person who was the subject of the treatment order — the applicant.

**402. Failure to comply with this Act**

Without limiting the grounds on which a treatment order can be declared under section 398(1) to be or to have been invalid, the Tribunal may declare that a treatment order is or was invalid if satisfied that —

- (a) there has been or was a failure to comply with the requirements of this Act in relation to —
    - (i) the making of the treatment order; or
    - (ii) the conduct of any assessment or examination, or the making of any referral or order, that led to the making of the treatment order;
- and
- (b) because of that failure, whether alone or in combination with one or more other such failures, the rights or interests of the involuntary patient have been or were substantially prejudiced.

**403. Discretion not to decide on validity of treatment order no longer in force**

- (1) In this section —  
*question of law* includes a question of mixed fact and law.

- (2) The Tribunal is not required to decide whether a treatment order that was in force was valid or invalid, but may do so if satisfied that the matter raises —
- (a) a question of law; or
  - (b) a matter of public interest.

**Division 5 — Review of admission of long-term  
voluntary inpatients**

**404. Application of this Division**

This Division applies in relation to a person (a *long-term voluntary inpatient*) who —

- (a) is a voluntary inpatient at an authorised hospital; and
- (b) has been a voluntary inpatient at the authorised hospital for —
  - (i) if the inpatient is an adult — a continuous period of more than 6 months; or
  - (ii) if the inpatient is a child — a continuous period of more than 3 months.

**405. Application for review**

- (1) A person specified in subsection (2) may apply to the Tribunal for a review of the long-term voluntary inpatient's admission by the authorised hospital to decide whether or not there is still a need for the admission.
- (2) An application may be made under subsection (1) by any of these people —
  - (a) the long-term voluntary inpatient;
  - (b) a carer, close family member or other personal support person of the long-term voluntary inpatient;
  - (c) a mental health advocate;
  - (d) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

**406. Parties to proceeding**

The parties to a proceeding in relation to the application are —

- (a) the long-term voluntary inpatient; and
- (b) if the applicant is not the long-term voluntary inpatient — the applicant; and
- (c) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

**407. Things to which Tribunal must have regard**

- (1) In making a decision on a review under this Division in respect of a long-term voluntary inpatient, the Tribunal must have regard to these things —
  - (a) if the inpatient is a child and the Tribunal is not constituted with a child and adolescent psychiatrist — the views of a medical practitioner or mental health practitioner specified in subsection (2);
  - (b) the inpatient's psychiatric condition;
  - (c) the inpatient's medical and psychiatric history;
  - (d) the inpatient's wishes, to the extent that it is practicable to ascertain those wishes;
  - (e) the views of any carer, close family member or other personal support person of the inpatient;
  - (f) any other things that the Tribunal considers relevant to making the decision.
- (2) For subsection (1)(a), a medical practitioner or mental health practitioner must —
  - (a) have qualifications, training or experience relevant to children who have a mental illness; and
  - (b) be authorised by the Chief Psychiatrist for this paragraph.

Note for this section:

For the purpose of the Tribunal ascertaining the patient's wishes under section 407(1)(d), Part 2 Division 4 applies.

**408. What Tribunal may do on completing review**

On completing a review under this Division in respect of a long-term voluntary inpatient, the Tribunal may make any of these recommendations —

- (a) the treating psychiatrist consider whether or not there is still a need for the admission;
- (b) a treatment, support and discharge plan for the inpatient be prepared and be reviewed regularly;
- (c) the inpatient be discharged.

**Division 6 — Electroconvulsive therapy approvals**

**409. Application of this Division**

This Division relates to obtaining the Tribunal's approval to electroconvulsive therapy being performed on —

- (a) a child who has reached 14 years of age but is under 18 years of age and is a voluntary patient, as required by section 195(2)(b); or
- (b) a child who has reached 14 years of age but is under 18 years of age and is an involuntary patient or mentally impaired accused required under the MIA Act to be detained at an authorised hospital, as required by section 196(2); or
- (c) an adult who is an involuntary patient or mentally impaired accused required under the MIA Act to be detained at an authorised hospital, as required by section 198(2).

**410. Application for approval**

- (1) The patient's psychiatrist may apply for approval to perform electroconvulsive therapy on the patient.
- (2) The application must be in writing and must set out —
  - (a) the reasons why the patient's psychiatrist is recommending that the electroconvulsive therapy be performed; and



- (b) a treatment plan in relation to the electroconvulsive therapy, including —
  - (i) the mental health service at which it is proposed to perform the electroconvulsive therapy; and
  - (ii) the maximum number of treatments with electroconvulsive therapy that it is proposed will be performed; and
  - (iii) the maximum period over which it is proposed to perform that number of treatments; and
  - (iv) the minimum period that it is proposed will elapse between any 2 treatments.

**411. Parties to proceeding**

The parties to a proceeding in relation to the application are —

- (a) the patient; and
- (b) the applicant; and
- (c) any other person who, in the Tribunal’s opinion, has a sufficient interest in the matter.

**412. Things Tribunal must be satisfied of**

- (1) The Tribunal cannot approve electroconvulsive therapy being performed on a patient unless satisfied that the mental health service at which it is proposed to perform the electroconvulsive therapy is approved under section 544 for that purpose.
- (2) The Tribunal cannot approve electroconvulsive therapy being performed on a patient to whom section 195 applies unless satisfied that informed consent to it being performed on the patient is given as required by section 195(2)(a).

**413. Tribunal must have regard to Chief Psychiatrist’s guidelines**

In deciding whether or not to approve electroconvulsive therapy being performed on a patient, the Tribunal must have regard to the guidelines published under section 547(1)(f) about the performance of electroconvulsive therapy.

**414. Other things to which Tribunal must have regard**

- (1) In deciding whether or not to approve electroconvulsive therapy being performed on a patient, the Tribunal must also have regard to these things —
- (a) if the patient is a child and the Tribunal is not constituted with a child and adolescent psychiatrist — the views of a medical practitioner or mental health practitioner specified in subsection (2);
  - (b) the patient's wishes, to the extent that it is practicable to ascertain those wishes;
  - (c) if the patient is an adult — the views of the person who is authorised by law to give informed consent to the electroconvulsive therapy being performed on the patient were that consent required;
  - (d) if the patient is a child — the views of the child's parent or guardian;
  - (e) if the patient has a nominated person — the views of the nominated person;
  - (f) if the patient has a carer — the views of the carer;
  - (g) if the patient has a close family member — the views of the close family member;
  - (h) the reasons why the patient's psychiatrist is recommending that the electroconvulsive therapy be performed;
  - (i) the consequences for the treatment and care of the patient of not performing the electroconvulsive therapy;
  - (j) the nature and degree of any significant risk of performing the electroconvulsive therapy;
  - (k) whether the electroconvulsive therapy is likely to promote and maintain the health and wellbeing of the patient;
  - (l) whether any alternative treatment is available;

- (m) the nature and degree of any significant risk of providing any alternative treatment that is available;
  - (n) any other things that the Tribunal considers relevant to making the decision.
- (2) For subsection (1)(a), a medical practitioner or mental health practitioner must —
- (a) have qualifications, training or experience relevant to children who have a mental illness; and
  - (b) be authorised by the Chief Psychiatrist for this paragraph.

Note for this section:

For the purpose of the Tribunal ascertaining the patient's wishes under section 414(1)(b), Part 2 Division 4 applies.

#### **415. Decision on application**

The Tribunal may decide the application by —

- (a) approving the electroconvulsive therapy being performed in accordance with the treatment plan set out in the application; or
- (b) approving the electroconvulsive therapy being performed in accordance with the treatment plan set out in the application subject to the maximum number of treatments with electroconvulsive therapy to be performed being reduced to the number specified by the Tribunal; or
- (c) refusing to approve the electroconvulsive therapy being performed.

### **Division 7 — Psychosurgery approvals**

#### **416. Application of this Division**

This Division relates to obtaining the Tribunal's approval to psychosurgery being performed on a patient as required by section 208(2)(b).

**417.      Application for approval**

- (1) The patient's psychiatrist may apply to the Tribunal for approval for psychosurgery to be performed on a patient.
- (2) The application must be in writing and must set out —
  - (a) the reasons why the patient's psychiatrist is recommending that the psychosurgery be performed; and
  - (b) a treatment plan in relation to the psychosurgery, including —
    - (i) a detailed description of the psychosurgery proposed to be performed; and
    - (ii) the name, qualifications and experience of the neurosurgeon who it is proposed will perform the psychosurgery; and
    - (iii) the name and address of the place where it is proposed to perform the psychosurgery.

**418.      Parties to proceeding**

The parties to a proceeding in relation to the application are —

- (a) the patient; and
- (b) the applicant; and
- (c) any other person who, in the Tribunal's opinion, has a sufficient interest in the matter.

**419.      Things Tribunal must be satisfied of**

The Tribunal cannot approve the psychosurgery being performed on the patient unless satisfied of these things —

- (a) the patient gives informed consent to the psychosurgery being performed on himself or herself as required by section 208(2)(a);
- (b) performing the psychosurgery has clinical merit and is appropriate in the circumstances;

- (c) all alternatives to performing psychosurgery that are reasonably available and likely to be of a sufficient and lasting benefit to the patient have been appropriately trialled with the patient but have not resulted in a sufficient and lasting benefit to the patient;
- (d) the neurosurgeon who it is proposed will perform the psychosurgery is suitably qualified and experienced;
- (e) the place where it is proposed to perform the psychosurgery is a suitable place.

**420. Things to which Tribunal must have regard**

In deciding whether or not to approve the psychosurgery being performed on the patient, the Tribunal must have regard to these things —

- (a) the views of any carer, close family member or other personal support person of the patient;
- (b) the consequences for the treatment and care of the patient of not performing the psychosurgery;
- (c) the nature and degree of any significant risk of performing the psychosurgery;
- (d) whether the psychosurgery is likely to promote and maintain the health and wellbeing of the patient;
- (e) any other things that the Tribunal considers relevant to making the decision.

*[Section 420 amended: No. 36 of 2015 s. 6.]*

**421. Decision on application**

The Tribunal may decide the application by —

- (a) approving the psychosurgery being performed in accordance with the application; or
- (b) refusing to approve the psychosurgery being performed.

## **Division 8 — Compliance notices for non-clinical matters**

### **422. Terms used**

In this Division —

***prescribed requirement*** means a requirement under this Act —

- (a) to do any of these things —
  - (i) give a document, or provide other information, to a patient or another person;
  - (ii) include a document or other information on a patient's medical record;
  - (iii) comply with a request made by a patient or other person;
- or
- (b) to ensure that a thing referred to in paragraph (a) is done; or
- (c) to ensure that a treatment, support and discharge plan for a patient is prepared, reviewed or revised;

***service provider***, in relation to a prescribed requirement, means the person in charge of a mental health service, the medical practitioner or the mental health practitioner required under this Act to comply with, or to ensure compliance with, the requirement.

### **423. Tribunal may issue service provider with compliance notice**

- (1) The Tribunal may, on the application of a person referred to in section 424 or on its own initiative, issue a service provider with a compliance notice if it appears to the Tribunal that the service provider has not complied with a prescribed requirement.
- (2) The compliance notice may direct the service provider —
  - (a) to take specified action within the specified period for the purpose of complying with the prescribed requirement; and

- (b) to report to the Tribunal in the specified manner within the specified period that —
  - (i) the service provider has taken the action specified under paragraph (a) within the period specified under paragraph (a); or
  - (ii) if the service provider has not taken the specified action or has not taken that action within the specified period — the reasons for not doing so.
- (3) Before deciding whether or not to issue a compliance notice with a service provider, the Tribunal must consider whether it would be appropriate to refer the matter to one or more of the following —
  - (a) the CEO;
  - (b) the CEO of the Health Department;
  - (c) the Chief Psychiatrist;
  - (d) a registration board.
- (4) If the Tribunal decides that it would be appropriate to refer the matter to a person or body referred to in subsection (3), the Tribunal may refer the matter instead of, or in addition to, issuing the service provider with a compliance notice.

**424. Application for service of compliance notice**

An application for the Tribunal to issue a service provider with a compliance notice may be made under section 423(1) by any of these people —

- (a) the patient or other person to whom the prescribed requirement relates;
- (b) a carer, close family member or other personal support person of the patient or other person;
- (c) a mental health advocate;
- (d) any other person who, in the Tribunal's opinion, has a sufficient interest in the matter.

**425. Parties to proceeding**

The parties to a proceeding under section 423 are —

- (a) the patient or other person to whom the prescribed requirement relates; and
- (b) the service provider on whom the prescribed requirement is imposed; and
- (c) if the proceeding relates to an application made under section 424 and the applicant is not the patient or other person to whom the prescribed requirement relates — the applicant; and
- (d) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

**426. Compliance notices to be reported on in annual report**

The President of the Tribunal must include in the report prepared under section 488 in respect of a financial year —

- (a) the name of each service provider issued with a compliance notice during that year; and
- (b) the number of compliance notices with which each of those service providers was issued during that year.

**Division 9 — Review of orders restricting freedom of communication**

**427. Application for review**

- (1) A person specified in subsection (2) may apply to the Tribunal for a review of an order made under section 262 prohibiting a patient from exercising, or limiting the extent to which a patient can exercise, a right under section 261.
- (2) An application may be made under subsection (1) by any of these people —
  - (a) the patient;
  - (b) a carer, close family member or other personal support person of the patient;



- (c) a mental health advocate;
- (d) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

**428. Parties to proceeding**

The parties to a proceeding in relation to the application are —

- (a) the patient; and
- (b) if the applicant is not the patient — the applicant; and
- (c) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

**429. Decision on application**

The Tribunal may decide the application by —

- (a) confirming the order as made or amended; or
- (b) amending, or further amending, the order as made or amended; or
- (c) revoking the order.

**Division 10 — Jurisdiction in relation to nominated persons**

**430. Application for decision**

- (1) A person specified in subsection (2) may apply to the Tribunal for a decision under this Division about a nomination.
- (2) An application may be made under subsection (1) by any of these people —
  - (a) the person who made the nomination;
  - (b) the nominated person;
  - (c) a carer, close family member or other personal support person of the person who made the nomination;
  - (d) a mental health advocate;
  - (e) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

**431. Declaration about validity of nomination**

- (1) The Tribunal may declare that a nomination is valid or invalid.
- (2) Instead of declaring that a nomination is invalid because of a failure to comply with section 275, the Tribunal —
  - (a) may declare the nomination to be valid; and
  - (b) may make an order varying the terms of the nomination in the manner the Tribunal considers most likely to give effect to the intention of the person who made the nomination.
- (3) A declaration made under subsection (1) or (2)(a) has effect according to its terms.

**432. Revocation of nomination**

The Tribunal may revoke a nomination if satisfied that the nominated person is not an appropriate person to perform the role of the nominated person because —

- (a) the person is likely, in performing that role, to adversely affect to a significant degree the interests of the person who made the nomination; or
- (b) the person is not capable of performing that role because of mental or physical incapacity; or
- (c) the person is not willing, or is not reasonably able, to perform that role.

**433. Parties to proceeding**

The parties to a proceeding in relation to an application under this Division are —

- (a) the person who made the nomination; and
- (b) if the applicant is not the person who made the nomination — the applicant; and
- (c) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

## **Division 11 — Review of decisions affecting rights**

### **434. Application for review**

- (1) A person specified in subsection (2) may apply to the Tribunal for a review of a decision made under this Act affecting a person's rights under this Act.
- (2) An application may be made under subsection (1) by any of these people —
  - (a) the person whose right is affected;
  - (b) a carer, close family member or other personal support person of the person whose right is affected;
  - (c) a mental health advocate;
  - (d) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.
- (3) The Tribunal can only review a decision under subsection (1) if satisfied that the matter cannot be heard and determined by the Tribunal under another Division of this Part.

### **435. Parties to proceeding**

The parties to a proceeding in relation to the application are —

- (a) the person whose rights it is alleged are affected; and
- (b) if the applicant is not the person whose rights it is alleged are affected — the applicant; and
- (c) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

### **436. What Tribunal may do on completing review**

On completing the review, the Tribunal may make any orders, and give any directions, the Tribunal considers appropriate.

## **Division 12 — Procedural matters**

### **Subdivision 1 — Proceedings generally**

#### **437. Lodgment of documents**

An application or other document required to be made or given to the Tribunal must be lodged at the office of the Tribunal.

#### **438. Sittings**

The Tribunal sits at the times, and in the places in the State, determined by the President of the Tribunal.

#### **439. Conduct of proceedings**

- (1) A proceeding must be conducted with as little formality and technicality, and as speedily, as a proper consideration of the matter before the Tribunal permits.
- (2) In a proceeding, the Tribunal is bound by the rules of natural justice.
- (3) Subject to this Part, the practice and procedure of the Tribunal in a proceeding is —
  - (a) as provided for in the rules made under section 472; or
  - (b) if no provision is made in the rules — as determined by the Tribunal.

#### **440. Presiding member**

The presiding member of the Tribunal as constituted for a proceeding is the member of the Tribunal as so constituted who is a lawyer.

#### **441. Deciding questions in proceedings**

- (1) In this section —  
*question of law* includes a question of mixed law and fact.

- (2) A question in a proceeding (other than a question of law) must be resolved according to the opinion of the majority of the members constituting the Tribunal for the proceeding.
- (3) A question of law in a proceeding before the Tribunal must be resolved according to the opinion of the presiding member.

**442. Assistance from persons with relevant knowledge or experience**

The Tribunal may engage or appoint one or more persons with knowledge or experience that the Tribunal considers relevant to a proceeding to assist the Tribunal in the proceeding.

**443. No fees payable**

No fees are payable in relation to —

- (a) any application made under this Part; or
- (b) any proceeding of the Tribunal under this Part.

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

Subject to section 445(1)(b), each party must bear the party's own costs.

**445. Frivolous, vexatious or improper proceedings**

- (1) The Tribunal may, if satisfied that a proceeding is frivolous or vexatious or has been brought for an improper purpose —
  - (a) dismiss the proceeding; and
  - (b) make any order as to costs that the Tribunal considers appropriate; and
  - (c) on the application of a party, order that the party who instituted the proceeding cannot institute a proceeding of a kind specified in the order without the leave of the Tribunal.
- (2) An order made under subsection (1)(c) has effect despite any other provision of this Part.

- (3) The Tribunal may amend or revoke an order made under subsection (1)(c).

### **Subdivision 2 — Notice of proceedings**

#### **446. Notice of applications**

- (1) If the person concerned in an application is an adult, the Tribunal must give a copy of the application to —
- (a) if the person concerned is not the applicant — the person concerned and the person concerned's representative under section 449(1)(b) or (c); and
  - (b) each of the other parties; and
  - (c) any carer, close family member or other personal support person of the person concerned —
    - (i) who is not the person concerned's representative under section 449(1)(b) or (c) or a party; and
    - (ii) whose name and contact details are provided to the Tribunal.
- (2) If the person concerned in an application is a child, the Tribunal must give a copy of the application to —
- (a) if the child is not the applicant and —
    - (i) section 450(1) applies in respect of the child — the child and the child's representative under section 450(1)(b) or (c); or
    - (ii) section 451(1) applies in respect of the child — the child's representative under that provision;and
  - (b) if the child's parent or guardian is not the child's representative under section 450(1)(b) or (c) or 451(1) or a party — the child's parent or guardian; and
  - (c) each of the other parties who is not the applicant; and

- (d) any carer, close family member or other personal support person of the child —
    - (i) who is not the child's representative under section 450(1)(b) or (c) or 451(1) or a party; and
    - (ii) whose name and contact details are provided to the Tribunal;and
  - (e) if a mental health advocate is not also a party — the Chief Mental Health Advocate.
- (3) Without limiting the requirement under subsection (1)(c) or (2)(d), the requirement is taken to have been complied with if the Tribunal ensures that reasonable efforts to give to any carer, close family member or other personal support person a copy of the application continue to be made until the first of these things occurs —
- (a) at least one carer, close family member or other personal support person is given a copy of the application;
  - (b) it is reasonable for the Tribunal to conclude that no carer, close family member or other personal support person can be given a copy of the application.

**447. Notice of hearings**

- (1) If the person concerned in a proceeding is an adult, the Tribunal must give notice of the date, time and place of any hearing to —
- (a) the person concerned or the person concerned's representative under section 449(1)(b) or (c); and
  - (b) each of the other parties; and
  - (c) any carer, close family member or other personal support person of the person concerned —
    - (i) who is not the person concerned's representative under section 449(1)(b) or (c) or a party; and

- (ii) whose name and contact details are provided to the Tribunal.
- (2) If the person concerned in a proceeding is a child, the Tribunal must give notice of the date, time and place of any hearing to —
  - (a) if —
    - (i) section 450(1) applies in respect of the child — the child or the child’s representative under section 450(1)(b) or (c); or
    - (ii) section 451(1) applies in respect of the child — the child’s representative under that provision;
  - and
  - (b) if the child’s parent or guardian is not the child’s representative under section 450(1)(b) or (c) or 451(1) or a party — the child’s parent or guardian; and
  - (c) each of the other parties; and
  - (d) any carer, close family member or other personal support person of the child —
    - (i) who is not the child’s representative under section 450(1)(b) or (c) or 451(1) or a party; and
    - (ii) whose name and contact details are provided to the Tribunal;
  - and
  - (e) if a mental health advocate is not also a party — the Chief Mental Health Advocate.
- (3) Without limiting the requirement under subsection (1)(c) or (2)(d), the requirement is taken to have been complied with if the Tribunal ensures that reasonable efforts to give any carer, close family member or other personal support person notice of the hearing continue to be made until the first of these things occurs —
  - (a) at least one carer, close family member or other personal support person is notified of the hearing;



- (b) it is reasonable for the Tribunal to conclude that no carer, close family member or other personal support person can be notified of the application.

**448. Tribunal may request information from SAT about person's guardian**

- (1) For the purpose of giving under section 446 or 447 a copy of an application or notice of a hearing to the guardian of an adult, the Tribunal may request the State Administrative Tribunal for the name and contact details of the adult's guardian.
- (2) The State Administrative Tribunal may comply with any request made under subsection (1).

**Subdivision 3 — Appearance and representation**

**449. Party is an adult**

- (1) In a proceeding, a party who is an adult —
  - (a) may appear in person; or
  - (b) may be represented by any of these people —
    - (i) a legal practitioner;
    - (ii) a mental health advocate;
    - (iii) any person who, in the Tribunal's opinion, is willing and able to represent the adult's interests;or
  - (c) must be represented by a person listed in paragraph (b) if the Tribunal makes an order under subsection (2) in respect of the party.
- (2) The Tribunal must in the case of the party who is the person concerned in the proceeding, and may in the case of any other party, make an order that the party must be represented in the proceeding if, in the Tribunal's opinion, it is not in the best interests of the party for the party to appear in person in the proceeding.

- (3) Even though a party who is an adult is represented in the proceeding, the party is entitled to express in person his or her views about any matter arising in the course of the proceeding that may affect the party.

Note for this section:

For the purpose of deciding under section 449(2) what is or is not in the best interests of a party, Part 2 Division 3 applies.

[\*\[Section 449 amended: No. 9 of 2022 s. 424.\]\*](#)

**450. Party is a child with capacity to consent**

- (1) In a proceeding, a party who is a child with sufficient maturity and understanding to make reasonable decisions about matters relating to himself or herself —
- (a) may appear in person; or
  - (b) may be represented by any of these people —
    - (i) a legal practitioner;
    - (ii) a mental health advocate;
    - (iii) the child's parent or guardian;
    - (iv) any other person who, in the Tribunal's opinion, is willing and able to represent the child's interests;
- or
- (c) must be represented by a person listed in paragraph (b) if the Tribunal makes an order under subsection (2) in respect of the party.
- (2) The Tribunal must in the case of the party who is the person concerned in the proceeding, and may in the case of any other party, make an order that the party must be represented in the proceeding if, in the Tribunal's opinion, it is not in the best interests of the party for the party to appear in person in the proceeding.
- (3) Even though a party who is a child referred to in subsection (1) is represented in the proceeding, the child is entitled to express

in person his or her views about any matter arising in the course of the proceeding that may affect the child.

Note for this section:

For the purpose of deciding under section 450(2) what is or is not in the best interests of a party, Part 2 Division 3 applies.

**451. Party is a child with no capacity to consent**

- (1) In a proceeding, a party who is a child who does not have sufficient maturity or understanding to make reasonable decisions about matters relating to himself or herself must be represented by one of these people —
  - (a) a legal practitioner;
  - (b) a mental health advocate;
  - (c) the child's parent or guardian;
  - (d) any other person who, in the Tribunal's opinion, can represent the child's interests.
- (2) Even though a party who is a child referred to in subsection (1) is represented in a proceeding and the child does not have the maturity or understanding referred to in subsection (1), the child is entitled to express in person his or her views about any matter arising in the course of the proceeding that may affect the child.

**452. Tribunal may make arrangements for representation**

The Tribunal may make arrangements for a party to be represented in a proceeding if the party wants the Tribunal to make such an arrangement on the party's behalf.

**453. Legal representation of person with mental illness**

The fact that a person has a mental illness, or is being provided with treatment for a mental illness, is presumed not to be an impediment to the representation of the person by a legal practitioner before the Tribunal or to the person giving instructions to a legal practitioner for the purpose of that representation.

**454. Representative must not be paid**

- (1) In this section —

***prescribed person*** means —

- (a) a legal practitioner; or
- (b) a mental health advocate; or
- (c) a person prescribed by the regulations for this definition.

- (2) A person who is not a prescribed person must not demand or receive any remuneration for representing a party in a proceeding.

Penalty:

- (a) for a first offence, a fine of \$1 000;
- (b) for a second or subsequent offence, a fine of \$10 000.

**Subdivision 4 — Hearings and evidence**

**455. Nature of review proceedings**

- (1) In this section —

***decision-maker***, in relation to a review proceeding, means —

- (a) the psychiatrist who made the involuntary treatment order; or
- (b) the medical practitioner who admitted the long-term voluntary patient; or
- (c) the psychiatrist who made the decision under section 262 to make, confirm or amend the order prohibiting, or limiting the extent of, the exercise of the right;

***reviewable decision***, in relation to a review proceeding, means —

- (a) the decision to make the involuntary treatment order; or
- (b) the decision to admit the long-term voluntary patient; or

- (c) the decision under section 262 to make, confirm or amend the order prohibiting, or limiting the extent of, the exercise of the right;

***review proceeding*** means —

- (a) a review under Division 3 of an involuntary treatment order; or
  - (b) a review under Division 5 of a long-term voluntary inpatient's admission; or
  - (c) a review under Division 9 of an order made under section 262 prohibiting a patient from exercising, or limiting the extent to which a patient can exercise, a right under section 261.
- (2) A review proceeding is a hearing de novo and is not confined to material that was before the decision-maker but may involve the consideration of new material whether or not it existed when the reviewable decision was made.
  - (3) The purpose of a review proceeding is to produce the correct and preferable decision at the time of the Tribunal's decision on the review proceeding.

**456. Closed hearings**

- (1) A hearing is not open to the public unless the Tribunal orders that the hearing or a part of the hearing is open to the public.
- (2) The Tribunal may, on the application of any person or on its own initiative, make an order —
  - (a) permitting a specified person to be present at a hearing or part of a hearing; or
  - (b) excluding a specified person (including a witness) from a hearing or part of a hearing.
- (3) Despite section 469, the Tribunal must provide reasons for making an order under this section at the time when the Tribunal makes the order.

- (4) The Tribunal must make arrangements for the person concerned in a proceeding to be represented at a hearing or a part of a hearing if —
- (a) the person concerned is excluded by an order made under subsection (2)(b) from the hearing or part of the hearing and is appearing in person in the proceeding; or
  - (b) the person concerned's representative in the proceeding is excluded by an order made under subsection (2)(b) from the hearing or part of the hearing.

Note for this section:

Any reasons provided under section 456(3) must be provided in accordance with section 9(2).

**457. Conduct of hearing in absence of party**

- (1) The Tribunal may conduct a hearing in the absence of a party if satisfied that —
- (a) the party has been given notice of the hearing; and
  - (b) it is in the best interests of the person concerned in the proceeding for the hearing not to be adjourned.

**458. Person chosen by person concerned may be present**

- (1) A person chosen by the person concerned in a proceeding may be present at a hearing unless the Tribunal makes an order under section 456(2)(b) excluding the person from the hearing or a part of the hearing.
- (2) The Tribunal may make an order referred to in subsection (1) on the application of any person if satisfied that it is not in the best interests of the person concerned for the person chosen to be present at the hearing or the part of the hearing.

Note for this section:

For the purpose of deciding under section 458(2) what is or is not in the best interests of the person concerned in a proceeding, Part 2 Division 3 applies.

**459. Right to be heard**

The Tribunal must give each party a reasonable opportunity —

- (a) to call or give evidence; and
- (b) to examine or cross-examine witnesses; and
- (c) to make submissions.

**460. Evidence generally**

- (1) The Tribunal is not bound by the rules of evidence but may inform itself of a matter relevant to a proceeding in any manner the Tribunal considers appropriate.
- (2) Evidence in a proceeding may be given orally or in writing.
- (3) The Tribunal may require evidence in a proceeding to be given on oath or by affidavit.
- (4) The presiding member in a proceeding may direct a person appearing as a witness —
  - (a) to answer a question relevant to the proceeding; or
  - (b) to produce a document relevant to the proceeding.
- (5) A person appearing as a witness has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

**461. Oral evidence about restricted information**

- (1) In this section —  
***restricted information*** means information in a document to which a person is not entitled to have access because of section 249(1)(a) or (b) or (3).
- (2) At a hearing —
  - (a) oral evidence about restricted information cannot be given in the presence of the person who is not entitled to have access to the document containing the restricted information; and

- (b) a witness cannot be examined or cross-examined about restricted information in the presence of that person; and
  - (c) an oral submission about restricted information cannot be made in the presence of that person.
- (3) The Tribunal must request the person to leave the hearing while the evidence is given, the examination or cross-examination is conducted or the submission is made.
- (4) If the person refuses to comply with the Tribunal's request, the Tribunal must make an order excluding the person from the hearing while the evidence is given, the examination or cross-examination is conducted or the submission is made.

**462. Summons to give evidence or produce documents**

The Tribunal may, by issuing a summons signed on behalf of the Tribunal by a member or the registrar and serving the summons on the person to whom it is addressed, require the person to attend before the Tribunal at the time and place specified in the summons —

- (a) to give evidence in a proceeding; or
- (b) to produce a document relevant to a proceeding that is in the person's custody or control and is specified in the summons; or
- (c) to do both of those things.

**463. Self-incrimination**

- (1) A person is not excused from complying with a direction given to the person under section 460(4), or a summons served on the person under section 462, on the ground that the answer to a question or the production of a document might tend to incriminate the person or expose the person to a criminal penalty.
- (2) However, any answer given or document produced by a person in compliance with a direction given to the person under section 460(4), or a summons served on the person under



section 462, is not admissible in evidence in any criminal proceedings against the person other than proceedings for an offence under section 465(1)(d) or (e).

**464. Powers in relation to documents produced**

In relation to a document produced to the Tribunal in a proceeding, the Tribunal may do any of these things —

- (a) inspect the document;
- (b) retain the document for a reasonable period;
- (c) take a copy of the whole or any part of the document.

**465. Offences relating to evidence and documents**

- (1) A person commits an offence if the person —
  - (a) without reasonable excuse, proof of which is on the person, does not swear an oath or make an affirmation when required under section 460(3); or
  - (b) without reasonable excuse, proof of which is on the person, does not answer a question or produce a document when directed to do so under section 460(4); or
  - (c) without reasonable excuse, proof of which is on the person, does not attend before the Tribunal as required by a summons served on the person under section 462; or
  - (d) gives an answer to the Tribunal in a proceeding that the person knows is false or misleading in a material particular; or
  - (e) produces a document or provides any other information to the Tribunal in a proceeding that the person knows is false or misleading in a material particular —
    - (i) without indicating that the document or other information is false or misleading and, to the extent the person can, how the document or other information is false or misleading; and

- (ii) if the person has or can reasonably obtain the correct information — without providing the correct information.

Penalty: a fine of \$5 000.

- (2) It is enough for a prosecution notice lodged against a person for an offence under subsection (1)(d) or (e) to state that the answer, document or information was false or misleading to the person's knowledge without stating which.

**466. Evidence and findings in other proceedings**

In a proceeding, the Tribunal —

- (a) may receive in evidence the transcript of evidence in a proceeding before a court or other person or body acting judicially and may draw any conclusion of fact from that evidence that the Tribunal considers appropriate; and
- (b) may adopt a finding, decision or judgment of a court or other person or body acting judicially that is relevant to the proceeding.

**467. Hearings to be recorded**

The registrar must ensure that each hearing is recorded and the recording is kept in a form from which a transcript of the hearing can be prepared if required.

**468. Publication of information about proceedings**

- (1) In this section —

*information about a proceeding* means —

- (a) an account of a proceeding; or
- (b) any evidence in a proceeding; or
- (c) the contents of a document, or of a part of a document, produced in a proceeding; or
- (d) any other information about a proceeding;

***publish*** means to disseminate to the public or a section of the public by any means, including —

- (a) in a newspaper or periodical publication; or
  - (b) by radio broadcast, television or other electronic means.
- (2) A person must not publish information about a proceeding that identifies —
  - (a) a party; or
  - (b) a person who is related to or associated with a party; or
  - (c) a witness; or
  - (d) a person who is or is alleged to be concerned in any other way in a matter to which the proceeding relates.
- (3) A person must not publish a list of proceedings identified by reference to the names of the parties except —
  - (a) by displaying in the Tribunal's premises a notice listing the proceedings; or
  - (b) as permitted by rules made under section 472.
- (4) A person who contravenes subsection (2) or (3) commits a crime.

Penalty:

  - (a) for an individual, a fine of \$5 000 and imprisonment for 12 months;
  - (b) for a body corporate, a fine of \$10 000.

Summary conviction penalty:

  - (a) for an individual, a fine of \$2 500;
  - (b) for a body corporate, a fine of \$5 000.
- (5) A prosecution for an offence under subsection (4) cannot be commenced except with the written consent of the Minister.
- (6) Without limiting subsection (2), information about a proceeding identifies a person if —
  - (a) it contains particulars that are sufficient to identify the person to a member of the public or a member of the

section of the public to which the information is disseminated, being any of these particulars —

- (i) the name, title, pseudonym or alias of the person;
- (ii) the address of any premises where the person resides or works or the locality where those premises are situated;
- (iii) the physical description or the style of dress of the person;
- (iv) any employment or occupation engaged in, or any profession practised or calling pursued by, the person or any official or honorary position held by the person;
- (v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;
- (vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person;
- (vii) any real or personal property in which the person has an interest or with which the person is otherwise associated;

or

- (b) it is accompanied by a picture of the person; or
- (c) it is spoken in whole or in part by the person and the person's voice is sufficient to identify the person to a member of the public or a member of the section of the public to which the account is disseminated.

(7) Subsections (2) and (3) do not apply in relation to any of these publications —

- (a) the communication of a transcript of evidence or other document to a person concerned in a proceeding in a

- court or tribunal for use in connection with the proceeding;
- (b) the communication of a transcript of evidence or other document to —
    - (i) a body that is responsible for disciplining members of a profession or occupation; or
    - (ii) a person concerned in a proceeding before such a body;
  - (c) the communication of a transcript of evidence or other document to a body that grants assistance by way of legal aid for the purpose of making a decision as to whether such assistance should be granted or continued in a particular case;
  - (d) the publication of a notice or report at the direction of the Tribunal, the State Administrative Tribunal or a court;
  - (e) a publication genuinely intended primarily for the use of members of a profession or occupation, being —
    - (i) a separate volume of, or a volume in a part of a series of, law reports; or
    - (ii) a decision of a court or tribunal published from information stored electronically or otherwise; or
    - (iii) any other publication of a technical character;
  - (f) the publication or other dissemination —
    - (i) to a person who is a member of a profession or occupation in connection with the practice by the person of that profession or occupation or in the course of any form of professional or occupational training in which the person is involved; or
    - (ii) to a person who is a student in connection with the person's studies.

- (8) Subsection (7)(e) does not authorise the publication of the name of a party in a law report or other publication referred to in that provision.
- (9) Without limiting subsection (2) or (3), the Tribunal may make an order in relation to a particular proceeding that information about the proceeding that is specified in the order —
  - (a) must not be published; or
  - (b) must not be published except in the manner specified, or to a person specified, in the order.
- (10) A person who contravenes an order made under subsection (9) commits an offence.  
Penalty for an offence under this subsection: a fine of \$5 000.

#### **Subdivision 5 — Decisions in proceedings**

##### **469. Reasons for decision**

- (1) A party may request the Tribunal to provide the party with reasons for the Tribunal's decision in the proceeding.
- (2) The request must be made —
  - (a) on or within 28 days after the day on which the Tribunal makes a decision in the proceeding; or
  - (b) by the end of any extension of that period under section 470(2).
- (3) The Tribunal must comply with the request.

Note for this section:

Any reasons provided under section 469(3) must be provided in accordance with section 9(2).

##### **470. Extension of time to request reasons**

- (1) A party may, whether before or after the expiry of the 28-day period referred to in section 469(2)(a), request the President of the Tribunal to extend the period within which the party may

request the Tribunal to provide the party with reasons for a decision in the proceeding.

- (2) The President of the Tribunal may extend the period within which a party may request reasons for a decision in the proceeding from the end of the 28-day period referred to in section 469(2)(a) for the further period that the President specifies if the President considers that it is in the interests of justice to do so.

**471. Giving effect to Tribunal's decisions**

- (1) In this section —  
*decision*, of the Tribunal, does not include —
- (a) a recommendation made by the Tribunal under section 395(3) about an involuntary patient's treatment support and discharge plan; or
  - (b) a recommendation made by the Tribunal under section 408 about a long-term voluntary inpatient's admission as an inpatient.
- (2) A person who does not give effect to a decision of the Tribunal according to its terms commits an offence.  
Penalty for an offence under this subsection: a fine of \$10 000.

**Division 13 — Rules**

**472. Power to make**

The President of the Tribunal may make rules for the Tribunal, but only after consultation with the members appointed under section 476(1).

**473. Content**

- (1) Rules made under section 472 may make provision for any matter that is —
- (a) required or permitted by this Act to be provided for in the rules; or

- (b) necessary or convenient for the Tribunal to operate efficiently, economically and expeditiously.
- (2) Without limiting subsection (1), the rules may provide for any of these things —
  - (a) the organisation and management of the business of the Tribunal;
  - (b) custody and use of the Tribunal's seal;
  - (c) the practice and procedure of the Tribunal in a proceeding, including —
    - (i) the participation by a party, a party's representative or a witness in a hearing by telephone, video link or other means of communication; and
    - (ii) the conduct of all or part of a proceeding entirely on the basis of documents and without the parties, their representatives or any witnesses appearing at or participating in a hearing;
  - (d) the form in which documents are to be lodged with or issued by the Tribunal or to be served, which may be an electronic form;
  - (e) the Tribunal's records.

**474. Publication and tabling**

- (1) Rules made under section 472 —
  - (a) must be published in the *Gazette*; and
  - (b) take effect on or from the date of publication or on or from any later date or dates that are specified in the rules; and
  - (c) must be laid before each House of Parliament within 6 sitting days of the House after the day on which the rules were published.



- (2) A rule or a part of a rule ceases to have effect if either House of Parliament passes a resolution, of which notice is given at any time on or within 6 sitting days of the House after the day on which the rule was laid before it, disallowing the rule or the part of the rule.
- (3) However, the validity of any proceedings taken or of anything done in the meantime under the rule or the part of the rule is not affected by the disallowance.
- (4) Notice of the passage of disallowing a rule or any part of a rule must be published in the *Gazette* as soon as practicable.

### **Division 14 — Tribunal members**

#### **475. President of Tribunal**

There is to be a President of the Mental Health Tribunal who is appointed by the Governor on the recommendation of the Minister.

#### **476. Other members**

- (1) There are to be 2 or more members of the Mental Health Tribunal in addition to the President, each of whom is appointed by the Governor on the recommendation of the Minister.
- (2) Any number of persons may be appointed under subsection (1) provided that the membership of the Tribunal (including the President of the Tribunal) includes —
  - (a) at least one lawyer; and
  - (b) at least one psychiatrist; and
  - (c) at least one person who is not —
    - (i) a lawyer; or
    - (ii) a medical practitioner; or
    - (iii) a mental health practitioner who is a staff member of a mental health service or private psychiatric hostel.

**477. Terms and conditions of appointment**

- (1) The President of the Tribunal may be appointed on a full-time or part-time basis.
- (2) A member appointed under section 476(1) may be appointed on a full-time, part-time or sessional basis.
- (3) A member —
  - (a) holds office for the period (not exceeding 5 years) specified in the instrument of appointment; and
  - (b) is eligible for reappointment.
- (4) Subject to this Division, a member holds office on the terms and conditions of appointment determined by the Minister.

**478. Remuneration**

- (1) The President of the Tribunal is entitled to the remuneration determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* and, for the purposes of that Act and any other written law, the office of President of the Mental Health Tribunal is taken to be prescribed under section 6(1)(e) of that Act for the purposes of section 6 of that Act.
- (2) A member appointed under section 476(1) is entitled to the remuneration determined by the Minister on the recommendation of the Public Sector Commissioner.

**479. Resignation**

- (1) A member may resign from office by writing signed and given to the Minister.
- (2) The resignation takes effect on the later of the following —
  - (a) receipt by the Minister;
  - (b) the day specified in the resignation.

**480.      Removal from office**

The Governor may remove a person from the office of member on any of these grounds —

- (a) mental or physical incapacity;
- (b) incompetence;
- (c) neglect of duty;
- (d) misconduct;
- (e) ceasing to have a particular status if the person was appointed to that office on the basis of having that status;
- (f) attaining a particular status if the person was appointed to that office on the basis of not having that status.

**481.      Acting members**

- (1) The Minister may appoint a person to act in —
  - (a) the office of President of the Mental Health Tribunal referred to in section 475; or
  - (b) the office of member of the Mental Health Tribunal referred to in section 476(1).
- (2) A person may be appointed under subsection (1) to act in an office —
  - (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
  - (b) during a period, or during all periods, when the person holding the office or a person acting in the office under an appointment under subsection (1) is on leave or is otherwise unable to perform the functions of the office.
- (3) An appointment under subsection (1) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

- (4) The Minister may —
  - (a) determine the terms and conditions of an appointment under subsection (1), including as to remuneration; and
  - (b) terminate an appointment under subsection (1) at any time.
- (5) The validity of anything done by or in relation to a person purporting to act under an appointment under subsection (1) is not to be called into question on any of these grounds —
  - (a) the occasion for the appointment had not arisen;
  - (b) there is a defect or irregularity in the appointment;
  - (c) the appointment had ceased to have effect;
  - (d) the occasion for the person to act had not arisen or had ceased.
- (6) A person cannot act under an appointment under subsection (1) for a continuous period exceeding 12 months.

**482. Delegation by President**

- (1) The President of the Tribunal may delegate to another member or the registrar any power or duty of the President of the Tribunal under another provision of this Act that is of an administrative nature.
- (2) The President of the Tribunal may delegate the power or duty under section 382 to a member who is a lawyer.
- (3) A delegation under this section must be in writing signed by the President of the Tribunal.
- (4) A member to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (5) A delegation under this section to the registrar may expressly authorise the registrar to further delegate the power or duty to a registry officer.

- (6) A person exercising or performing a power or duty that has been delegated to the person as authorised under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) This section does not limit the ability of the President of the Tribunal to perform a function through an officer or agent.

### **Division 15 — Registrar and other staff**

#### **483. Registrar**

There is to be a registrar of the Mental Health Tribunal who is appointed under the *Public Sector Management Act 1994* Part 3.

#### **484. Functions of registrar**

The functions of the registrar are —

- (a) keeping, in accordance with the regulations, particulars of each involuntary patient; and
- (b) ensuring that a proceeding for a review under Division 3 of an involuntary treatment order is brought before the Tribunal within the period specified under that Division or, if no period is specified, as soon as practicable; and
- (c) ensuring that any other proceeding is brought before the Tribunal as soon as practicable; and
- (d) receiving any document that must be given under this Act to the Tribunal and arranging for it to be dealt with as soon as practicable; and
- (e) ensuring that any document that must be given under this Act by the Tribunal is given in accordance with this Act and as soon as practicable; and
- (f) generally being the executive officer of the Tribunal; and
- (g) any other functions conferred on, or delegated to, the registrar by or under this Act or another written law.

**485. President may give registrar directions**

- (1) The President of the Tribunal may give to the registrar directions with respect to the performance of the registrar's functions under this Act, either generally or in relation to a particular matter.
- (2) The registrar must comply with a direction given under subsection (1).

**486. Registry staff**

Public service officers must be appointed under, or made available under, the *Public Sector Management Act 1994* Part 3 to assist the registrar in performing his or her functions under this Act or another written law.

**487. Delegation by registrar**

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

**Division 16 — Annual reports**

**488. Annual report: preparation**

Within 3 months after 30 June in each year, the President of the Tribunal must prepare and give to the Minister a report as to the

general activities of the Tribunal during the financial year ending on that day.

**489. Annual report: tabling**

- (1) The Minister must cause a copy of a report referred to in section 488 to be laid before each House of Parliament, or dealt with under subsection (2), on or within 21 days after the day on which the Minister receives the report.
- (2) The Minister must transmit a copy of the report to the Clerk of a House of Parliament if —
  - (a) at the beginning of the 21-day period referred to in subsection (1), the House is not sitting; and
  - (b) in the Minister's opinion, the House will not sit during that period.
- (3) A copy of a report transmitted under subsection (2) to the Clerk of a House is taken to have been laid before that House.
- (4) The laying of a copy of a report that is taken to have occurred under subsection (3) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

**Division 17 — Miscellaneous matters**

**490. Seal**

The Tribunal must have a seal.

**491. Judicial notice of certain matters**

- (1) A court or other person or body acting judicially must take judicial notice of the following —
  - (a) the fact that a person is or was a member or the registrar;
  - (b) the official signature of a person who is or was a member or the registrar;
  - (c) a seal of the Tribunal affixed to a document.

- (2) A court or other person acting judicially must presume that the seal of the Tribunal affixed to a document was properly affixed unless the contrary is proved.

**492. Meetings of members**

- (1) The members of the Tribunal must meet as often as necessary for the effective and efficient operation of the Tribunal.
- (2) The President —
  - (a) may convene a meeting at any time; and
  - (b) must convene a meeting if requested in writing by 2 or more other members.
- (3) The quorum for a meeting is at least one-half of the members.
- (4) The presiding member at a meeting is —
  - (a) the President; or
  - (b) if the President is not present — a member chosen by the members present.
- (5) At a meeting —
  - (a) each member has a deliberative vote; and
  - (b) a question is decided by a majority of the members present and voting; and
  - (c) if the votes on a question are equal — the question must be decided in the negative.
- (6) The registrar must ensure that minutes of each meeting are kept.
- (7) Except as provided by this section, the members can decide the procedure for meetings.



## **Part 22 — Review by State Administrative Tribunal**

### **Division 1 — Preliminary matters**

#### **493.      Terms used**

In this Part —

***application*** means an application made to the State Administrative Tribunal under this Part;

***decision***, of the Mental Health Tribunal, includes an order, direction or declaration made by the Mental Health Tribunal;

***hearing*** means a hearing in a proceeding;

***party*** means a party to a proceeding;

***person concerned***, in an application or proceeding, means the patient or other person whom the application or proceeding concerns;

***proceeding*** means a proceeding of the State Administrative Tribunal under this Part and includes part of a proceeding.

### **Division 2 — Jurisdiction**

#### **494.      Review of decisions of Mental Health Tribunal**

- (1) A person in respect of whom the Mental Health Tribunal makes a decision who is dissatisfied with the decision may apply to the State Administrative Tribunal for a review of the decision.
- (2) Any other person who, in the State Administrative Tribunal's opinion, has a sufficient interest in the matter may, with the leave of the State Administrative Tribunal, apply to the State Administrative Tribunal for a review of a decision of the Mental Health Tribunal.

**495.      Determination of questions of law before Mental Health Tribunal**

- (1) In this section —  
*question of law* does not include a question of mixed law and fact.
- (2) The Mental Health Tribunal may apply to the State Administrative Tribunal for a determination on a question of law that arises in a proceeding before the Mental Health Tribunal.

**Division 3 — Constitution**

**496.      Constitution generally**

For the purpose of a proceeding, except as provided by sections 497 and 498, the State Administrative Tribunal must be constituted by 3 members as follows —

- (a) a judicial member, a senior member or a legally qualified member;
- (b) if the person concerned in the proceeding is an adult — a member who is a psychiatrist;
- (c) if the person concerned in the proceeding is a child — a member who is a child and adolescent psychiatrist;
- (d) a member who is not —
  - (i) a legally qualified member; or
  - (ii) a medical practitioner; or
  - (iii) a mental health practitioner who is a staff member of a mental health service or private psychiatric hostel.

**497.      Constitution for psychosurgical matters**

For the purpose of a proceeding under section 494 on an application for review of a decision under Part 21 Division 7,

the State Administrative Tribunal must be constituted by these 5 members —

- (a) a judicial member, a senior member or a legally qualified member;
- (b) a neurosurgeon appointed as a member after consultation by the Minister responsible for administering the *State Administrative Tribunal Act 2004* with the Health Minister held after consultation by the Health Minister with the Royal Australasian College of Surgeons;
- (c) if the patient is an adult — a member who is a psychiatrist;
- (d) if the patient is a child — a child and adolescent psychiatrist;
- (e) 2 members, neither of whom is —
  - (i) a legally qualified member; or
  - (ii) a medical practitioner; or
  - (iii) a mental health practitioner who is a staff member of a mental health service or private psychiatric hostel.

**498. Constitution for determining questions of law**

For the purpose of a proceeding under section 495 to determine a question of law, the State Administrative Tribunal must be constituted by a judicial member.

**Division 4 — Procedural matters**

**499. No fees payable**

No fees are payable in relation to an application or proceeding.

**500. Appearance and representation**

- (1) At a hearing, a party —
  - (a) may appear before the State Administrative Tribunal in person or be represented by another person; or
  - (b) must be represented by another person if the State Administrative Tribunal makes an order under subsection (2) in respect of the party.
- (2) The State Administrative Tribunal may make an order that the party must be represented at the hearing if, in the State Administrative Tribunal's opinion, it is not in the best interests of the party for the party to appear in person at the hearing.
- (3) The State Administrative Tribunal may make arrangements for a party to a proceeding under this Part to be represented at a hearing if the party wants the State Administrative Tribunal to make such an arrangement on the party's behalf.
- (4) The fact that a person has a mental illness, or is being provided with treatment for a mental illness, is presumed not to be an impediment to the representation of the person by a legal practitioner before the State Administrative Tribunal or to the person giving instructions to a legal practitioner for the purpose of that representation.
- (5) Despite the *State Administrative Tribunal Act 2004* section 39(1), a party to a proceeding under this Part may be represented by a person who is not a legal practitioner or a person referred to in section 39(1)(a) to (f) of that Act.

Note for this section:

For the purpose of deciding under section 500(2) what is or is not in the best interests of a party, Part 2 Division 3 applies.

**501. Closed hearings**

- (1) A hearing is not open to the public unless the State Administrative Tribunal orders that the hearing or a part of the hearing is open to the public.

- (2) The State Administrative Tribunal may make an order —
- (a) permitting a specified person to be present at a hearing or part of a hearing; or
  - (b) excluding a specified person (including a witness) from a hearing or part of a hearing.

**502. Publication of information about proceedings**

- (1) In this section —
- information about a proceeding*** means —
- (a) an account of a proceeding; or
  - (b) any evidence in a proceeding; or
  - (c) the contents of a document, or of a part of a document, produced in a proceeding; or
  - (d) any other information about a proceeding;
- publish*** means to disseminate to the public or a section of the public by any means, including —
- (a) in a newspaper or periodical publication; or
  - (b) by radio broadcast, television or other electronic means.
- (2) A person must not publish information about a proceeding that identifies —
- (a) a party; or
  - (b) a person who is related to or associated with a party; or
  - (c) a witness; or
  - (d) a person who is or is alleged to be concerned in any other way in a matter to which the proceeding relates.
- (3) A person must not publish a list of proceedings identified by reference to the names of the parties except —
- (a) by displaying in the State Administrative Tribunal's premises a notice listing the proceedings; or
  - (b) as permitted by rules made under the *State Administrative Tribunal Act 2004* section 170(1).

- (4) A person who contravenes subsection (2) or (3) commits a crime.

Penalty:

- (a) for an individual, a fine of \$5 000 and imprisonment for 12 months;
- (b) for a body corporate, a fine of \$10 000.

Summary conviction penalty:

- (a) for an individual, a fine of \$2 500;
- (b) for a body corporate, a fine of \$5 000.

- (5) A prosecution for an offence under subsection (4) cannot be commenced except with the written consent of the Minister.
- (6) Without limiting subsection (2), information about a proceeding identifies a person if —
- (a) it contains particulars that are sufficient to identify the person to a member of the public or a member of the section of the public to which the information is disseminated, being any of these particulars —
    - (i) the name, title, pseudonym or alias of the person;
    - (ii) the address of any premises where the person resides or works or the locality where those premises are situated;
    - (iii) the physical description or the style of dress of the person;
    - (iv) any employment or occupation engaged in, or any profession practised or calling pursued by, the person or any official or honorary position held by the person;
    - (v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;

- (vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person;
  - (vii) any real or personal property in which the person has an interest or with which the person is otherwise associated;
- or
- (b) it is accompanied by a picture of the person; or
  - (c) it is spoken in whole or in part by the person and the person's voice is sufficient to identify the person to a member of the public or a member of the section of the public to which the account is disseminated.
- (7) Subsections (2) and (3) do not apply in relation to any of these publications —
- (a) the communication of a transcript of evidence or other document to a person concerned in a proceeding in a court or tribunal for use in connection with the proceeding;
  - (b) the communication of a transcript of evidence or other document to —
    - (i) a body that is responsible for disciplining members of a profession or occupation; or
    - (ii) a person concerned in a proceeding before such a body;
  - (c) the communication of a transcript of evidence or other document to a body that grants assistance by way of legal aid for the purpose of making a decision as to whether such assistance should be granted or continued in a particular case;
  - (d) the publication of a notice or report at the direction of the State Administrative Tribunal or a court;

- (e) a publication genuinely intended primarily for the use of members of a profession or occupation, being —
  - (i) a separate volume of, or a volume in a part of a series of, law reports; or
  - (ii) a decision of a court or tribunal published from information stored electronically or otherwise; or
  - (iii) any other publication of a technical character;
- (f) the publication or other dissemination —
  - (i) to a person who is a member of a profession or occupation in connection with the practice by the person of that profession or occupation or in the course of any form of professional or occupational training in which the person is involved; or
  - (ii) to a person who is a student in connection with the person's studies.
- (8) Subsection (7)(e) does not authorise the publication of the name of a party to a proceeding in a law report or other publication referred to in that provision.
- (9) Without limiting subsection (2) or (3), the State Administrative Tribunal may make an order in relation to a particular proceeding that information about the proceeding that is specified in the order —
  - (a) must not be published; or
  - (b) must not be published except in the manner specified, or to a person specified, in the order.
- (10) A person who contravenes an order made under subsection (9) commits an offence.  
Penalty for an offence under this subsection: a fine of \$5 000.



## **Division 5 — Appeals to Supreme Court**

### **503. Appeals against SAT's decisions**

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

### **504. Grounds of appeal**

The grounds of an appeal under section 503 can be —

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

### **505. Time for appeal or leave to appeal**

- (1) An appeal under section 503(2) or an application for leave to appeal under section 503(3) must be made within 28 days after the decision or order is made.

- (2) However, the State Administrative Tribunal or the Supreme Court may, if satisfied that it is just and reasonable to do so, extend the period within which the appeal or application for leave may be made even though the 28-day period referred to in subsection (1) has expired.

**506. Certain parties must be represented**

The Supreme Court may make an order that a party to a proceeding under this Part must be represented in the proceeding if, in the Court's opinion, it is not in the best interests of the party for the party to appear in person in the proceeding.

## **Part 23 — Administration**

### **Division 1 — Preliminary matters**

**507. Term used: mental health service**

In this Part —

*mental health service* includes a private psychiatric hostel.

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

#### **Subdivision 1 — Appointment, terms and conditions**

**508. Appointment**

- (1) There is to be a Chief Psychiatrist who is appointed by the Governor on the recommendation of the Minister.
- (2) Only a psychiatrist is eligible to be appointed as the Chief Psychiatrist.

**509. Terms and conditions of appointment**

- (1) The Chief Psychiatrist —
  - (a) holds office for the period (not exceeding 5 years) specified in the instrument of appointment; and
  - (b) is eligible for reappointment.
- (2) Subject to this Subdivision, the Chief Psychiatrist holds office on the terms and conditions of appointment determined by the Minister.

**510. Remuneration**

The Chief Psychiatrist is entitled to the remuneration determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* and, for the purposes of that Act and any other written law, the office of Chief Psychiatrist is taken to be prescribed under section 6(1)(e) of that Act for the purposes of section 6 of that Act.

**511. Resignation**

- (1) The Chief Psychiatrist may resign from office by writing signed and given to the Minister.
- (2) The resignation takes effect on the later of the following —
  - (a) receipt by the Minister;
  - (b) the day specified in the resignation.

**512. Removal from office**

The Governor may remove a person from the office of Chief Psychiatrist on any of these grounds —

- (a) mental or physical incapacity;
- (b) incompetence;
- (c) neglect of duty;
- (d) misconduct.

**513. Acting Chief Psychiatrist**

- (1) The Minister may appoint a psychiatrist to act in the office of the Chief Psychiatrist referred to in section 508(1) —
  - (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
  - (b) during a period, or during all periods, when the person holding the office or a person acting in the office under an appointment under this subsection is on leave or is otherwise unable to perform the functions of the office.
- (2) An appointment under subsection (1) may be expressed to have effect only in the circumstances specified in the instrument of appointment.
- (3) The Minister may —
  - (a) determine the terms and conditions of an appointment under subsection (1), including as to remuneration; and

- (b) terminate an appointment under subsection (1) at any time.
- (4) The validity of anything done by or in relation to a person purporting to act under an appointment under subsection (1) is not to be called into question on any of these grounds —
  - (a) the occasion for the appointment had not arisen;
  - (b) there is a defect or irregularity in the appointment;
  - (c) the appointment had ceased to have effect;
  - (d) the occasion for the person to act had not arisen or had ceased.
- (5) A person cannot act under an appointment under subsection (1) for a continuous period exceeding 12 months.

#### **Subdivision 2 — Functions and powers generally**

##### **514. Functions generally**

The functions of the Chief Psychiatrist are the functions conferred on the Chief Psychiatrist by this Act or another written law.

##### **515. Responsibility for treatment and care**

- (1) The Chief Psychiatrist is responsible for overseeing the treatment and care of these people —
  - (a) all voluntary patients being provided with treatment or care by a mental health service;
  - (b) all involuntary patients;
  - (c) all mentally impaired accused required under the MIA Act to be detained at an authorised hospital;
  - (d) all persons referred under section 26(2) or (3)(a) or 36(2) for an examination to be conducted by a psychiatrist at an authorised hospital or other place;

- (e) all persons under an order made under section 55(1)(c) or 61(1)(c) to enable an examination to be conducted by a psychiatrist at an authorised hospital.
- (2) The Chief Psychiatrist must discharge that responsibility by —
  - (a) publishing under section 547(2) standards for the treatment and care to be provided by mental health services to the persons referred to in subsection (1); and
  - (b) overseeing compliance with those standards.

**516. Directions by Minister**

- (1) The Minister may, after consultation with the Chief Psychiatrist, issue written directions about the general policy to be followed by the Chief Psychiatrist in performing functions under this Act.
- (2) The Chief Psychiatrist may request the Minister to issue a direction under subsection (1).
- (3) A direction cannot be issued under this section in respect of —
  - (a) a particular person referred to in section 515(1); or
  - (b) a particular medical practitioner or mental health practitioner; or
  - (c) a particular mental health service; or
  - (d) any other particular person or body.
- (4) The Chief Psychiatrist must comply with a direction issued under this section.
- (5) The power to issue a direction under this section includes the power to amend, replace or revoke the direction and that power is exercisable in the same manner, and is subject to the same conditions, as the power to issue the direction.
- (6) The Minister must cause the text of a direction issued under this section to be laid before each House of Parliament on or within 14 sitting days of the House after the day on which the direction is issued.

- (7) The text of a direction issued under this section must be included in the Chief Psychiatrist's annual report prepared under section 533(1).

**517. Minister may request report about any matter**

- (1) The Minister may request the Chief Psychiatrist to report to the Minister on a particular matter, or on matters generally, relating to the Chief Psychiatrist's functions.
- (2) The Chief Psychiatrist must comply with a request made under subsection (1) unless, in the Chief Psychiatrist's opinion, there are reasonable grounds for not doing so.

**518. CEO of Health Department may request report about treatment and care of patients**

- (1) The CEO of the Health Department may request the Chief Psychiatrist to report to the CEO of the Health Department on a particular matter, or on matters generally, relating to the Chief Psychiatrist's functions in respect of the treatment and care of patients if the matter or matters are within the remit of the CEO of the Health Department.
- (2) The Chief Psychiatrist must comply with a request made under subsection (1) unless, in the Chief Psychiatrist's opinion, there are reasonable grounds for not doing so.

**519. Powers generally**

In addition to the specific powers conferred on the Chief Psychiatrist by this Act or another written law, the Chief Psychiatrist may do anything necessary or convenient for the performance of the functions conferred on the Chief Psychiatrist by this Act or another written law.

**Subdivision 3 — Specific powers relating to treatment and care**

**520. Review of treatment**

- (1) The Chief Psychiatrist may review any decision of a psychiatrist about the provision of treatment to —
  - (a) an involuntary patient; or
  - (b) a patient who is a mentally impaired accused required under the MIA Act to be detained at an authorised hospital.
- (2) Before reviewing the decision, the Chief Psychiatrist must give the psychiatrist written notice of the review.
- (3) On the review, the Chief Psychiatrist may decide to —
  - (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) revoke the decision; or
  - (d) substitute another decision.
- (4) The Chief Psychiatrist —
  - (a) must advise the psychiatrist in writing of the decision under subsection (3) and the reasons for it; and
  - (b) may give to the psychiatrist written directions about implementing the decision.
- (5) The Chief Psychiatrist cannot give the psychiatrist a direction under subsection (4)(b) to provide the patient with specified treatment unless the Chief Psychiatrist gives the psychiatrist a reasonable opportunity to withdraw from being the patient's psychiatrist.
- (6) The psychiatrist must comply with any directions given under subsection (4)(b).  
Penalty: a fine of \$10 000.



- (7) This section does not affect the operation of Part 13 Division 2 or 3 in relation to the provision of treatment to —
- (a) an involuntary patient; or
  - (b) a patient who is a mentally impaired accused required under the MIA Act to be detained at an authorised hospital.

**521. Visits to mental health services**

- (1) The Chief Psychiatrist may visit —
- (a) an authorised hospital whenever the Chief Psychiatrist considers it appropriate to do so; and
  - (b) a mental health service that is not an authorised hospital whenever the Chief Psychiatrist reasonably suspects that proper standards of treatment and care have not been, or are not being, maintained by the mental health service.
- (2) The Chief Psychiatrist may visit a mental health service under subsection (1) at any time without notice.
- (3) While visiting a mental health service under subsection (1), the Chief Psychiatrist may do any of these things —
- (a) inspect any part of the mental health service;
  - (b) interview any person referred to in section 515(1) who is being provided with treatment or care by the mental health service;
  - (c) require a staff member of the mental health service to do any of these things —
    - (i) answer questions or provide information about the provision of treatment or care by the mental health service to any person referred to in section 515(1);
    - (ii) produce any medical record or other document that is held by the mental health service and relates to the treatment or care that has been or is

being provided by the mental health service to any person referred to in section 515(1);

(iii) give reasonable assistance to the Chief Psychiatrist in the exercise of a power under this section;

(d) inspect, or take a copy of the whole or any part of any medical record or other document produced under paragraph (c)(ii).

**522. Offence to interfere with visit to mental health service**

(1) A person commits an offence if the person —

(a) without reasonable excuse, proof of which is on the person, does not answer a question or provide information when required under section 521(3)(c)(i); or

(b) in purporting to comply with a requirement under section 521(3)(c)(i), gives an answer or provides information that the person knows is false or misleading in a material particular; or

(c) in purporting to comply with a requirement under section 521(3)(c)(ii), makes available a document that the person knows is false or misleading in a material particular —

(i) without indicating that the document is false or misleading and, to the extent the person can, how the document is false or misleading; and

(ii) if the person has or can reasonably obtain the correct information — without providing the correct information;

or

(d) without reasonable excuse, proof of which is on the person, does not give reasonable assistance when required under section 521(3)(c)(iii); or

- (e) without reasonable excuse, proof of which is on the person, obstructs or hinders —
  - (i) the Chief Psychiatrist in the exercise of a power under section 521; or
  - (ii) a person assisting the Chief Psychiatrist under section 521(3)(c)(iii).

Penalty: a fine of \$6 000.

- (2) It is enough for a prosecution notice lodged against a person for an offence under subsection (1)(b) or (c) to state that the answer, information or document was false or misleading to the person's knowledge without stating which.

**523. Directions to mental health services to disclose information**

- (1) In this section —  
**relevant information** means information that, in the Chief Psychiatrist's opinion, is or is likely to be relevant to the treatment or care that has been or is being provided to a person, or the persons in a class of person, specified in section 515(1).
- (2) The Chief Psychiatrist may issue a written direction to the person in charge of a mental health service that holds relevant information requiring the person in charge to disclose the information to the Chief Psychiatrist.
- (3) The person in charge of a mental health service to whom a direction is issued under subsection (2) must comply with the direction.

Penalty for an offence under this subsection: a fine of \$5 000.

**Subdivision 4 — Notifiable incidents**

**524. Application of this Subdivision**

This Subdivision applies in relation to —

- (a) a person referred to in section 515(1); or

- (b) a person who is, for the purposes of the *Hospitals and Health Services Act 1927* Part IIIB, a resident of a private psychiatric hostel.

**525. Term used: notifiable incident**

In this Subdivision —

**notifiable incident**, in respect of a person referred to in section 524(a) or (b), means any of these events —

- (a) the death of the person, wherever it occurs;
- (b) an error in any medication prescribed for, or administered or supplied to, the person that has had, or is likely to have, an adverse effect on the person;
- (c) any other incident in connection with the provision of treatment or care to the person that has had, or is likely to have, an adverse effect on the person;
- (d) a reportable incident (as defined in section 254(1)) in relation to the person;
- (e) any other event that the Chief Psychiatrist declares, by notice published in the *Gazette*, to be a notifiable incident for the purposes of this definition.

**526. Reporting notifiable incidents**

- (1) This section applies if the person in charge of a mental health service becomes aware of the occurrence of a notifiable incident in respect of a person referred to in section 524(a) or (b) who is being provided with treatment or care by the mental health service.
- (2) The person in charge must, as soon as practicable, report the occurrence to the Chief Psychiatrist in accordance with subsection (3).

Penalty: a fine of \$6 000.

- (3) The report must be in the approved form and must include these things in relation to the notifiable incident —
- (a) the date and time when the incident occurred;
  - (b) the location where the incident occurred;
  - (c) the name, and status under section 515(1) or 524(b), of the person in relation to whom the incident occurred;
  - (d) the names of any staff members of the mental health service who were involved in the incident;
  - (e) the names of any other people who were involved in the incident;
  - (f) the names of any staff members of the mental health service who witnessed the incident;
  - (g) the names of any other people who witnessed the incident;
  - (h) a description of the incident and the circumstances in which it occurred;
  - (i) any other information about the incident that the person in charge considers relevant to include.

**527. Action that Chief Psychiatrist may take**

- (1) On receipt of a report under section 526 in relation to a notifiable incident, the Chief Psychiatrist may do one of the following —
- (a) investigate the incident;
  - (b) refer the incident to all or any of the following —
    - (i) the CEO;
    - (ii) the CEO of the Health Department;
    - (iii) a registration board;
  - (c) take no action in relation to the incident.

- (2) Despite having decided to investigate a notifiable incident under subsection (1)(a), the Chief Psychiatrist may decide at any time during the investigation to instead refer the incident to a person or body under subsection (1)(b).

**528. Notification of decision to take action**

The Chief Psychiatrist must advise the person in charge of the mental health service in connection with which a notifiable incident was reported under section 526(2) in writing of any decision that the Chief Psychiatrist makes under section 527 in respect of the incident.

**529. Chief Psychiatrist's powers of investigation**

- (1) For the purpose of conducting an investigation under section 527(1)(a), the Chief Psychiatrist may —
  - (a) make any inquiries the Chief Psychiatrist considers appropriate; and
  - (b) exercise any of the powers that the Chief Psychiatrist has under sections 521 and 523.
- (2) For the purpose of subsection (1)(b), sections 521, 522 and 523 apply with the necessary changes.

**530. Notification of outcome of investigation**

On completing the investigation of a notifiable incident under section 527(1)(a), the Chief Psychiatrist —

- (a) must give the person in charge of the mental health service in connection with which the incident was reported under section 526(2) a written report about the outcome of the investigation; and
- (b) may include in the report recommendations about that outcome.

### **Subdivision 5 — Staff and facilities**

**531. Chief Psychiatrist's staff**

Public service officers must be appointed under, or made available under, the *Public Sector Management Act 1994* Part 3 to assist the Chief Psychiatrist in performing his or her functions under this Act or another written law.

**532. Use of government staff and facilities**

- (1) The Chief Psychiatrist may, by arrangement, use (either full-time or part-time) the services of any officer or employee employed in the Public Service or a State agency or instrumentality or employed otherwise in the service of the State.
- (2) The Chief Psychiatrist may, by arrangement, use any facilities of a department of the Public Service or a State agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) must be made on terms agreed to by the parties.

### **Subdivision 6 — Annual reports**

**533. Annual report: preparation**

- (1) Within 3 months after 30 June in each year, the Chief Psychiatrist must prepare and give to the Minister a report about the performance during the financial year ending on that day of the functions conferred on the Chief Psychiatrist by this Act or another written law.
- (2) The report must include statistics about these matters —
  - (a) emergency electroconvulsive therapy approved during the year by the Chief Psychiatrist under section 199(2)(c);
  - (b) electroconvulsive therapy performed during the year and reported on under section 201(3);

- (c) emergency psychiatric treatment provided during the year and reported on under section 204(1)(b);
- (d) psychosurgery performed during the year and reported on under section 209(1)(a);
- (e) seclusion imposed during the year and reported on under section 224(2)(a);
- (f) bodily restraint applied during the year and reported on under section 240(2)(a);
- (g) urgent non-psychiatric treatment provided during the year and reported on under section 242(3)(a);
- (h) off-label treatment provided during the year and reported under section 304(3)(b);
- (i) notifiable incidents occurring during the year and reported on under section 526(2) and the action taken under section 527 in relation to those incidents.

**534. Annual report: tabling**

- (1) The Minister must cause a copy of a report referred to in section 533(1) to be laid before each House of Parliament, or dealt with under subsection (2), on or within 21 days after the day on which the Minister receives the report.
- (2) The Minister must transmit a copy of the report to the Clerk of a House of Parliament if —
  - (a) at the beginning of the 21-day period referred to in subsection (1), the House is not sitting; and
  - (b) in the Minister's opinion, the House will not sit during that period.
- (3) A copy of a report transmitted under subsection (2) to the Clerk of a House is taken to have been laid before that House.
- (4) The laying of a copy of a report that is taken to have occurred under subsection (3) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.



**Subdivision 7 — Miscellaneous matters**

**535. Request for information about patient or person detained**

- (1) A person may request the Chief Psychiatrist to advise the person whether or not a particular individual —
  - (a) is admitted by a mental health service as an inpatient; or
  - (b) is detained at a mental health service.
- (2) If, in the Chief Psychiatrist's opinion, the person making the request has a sufficient interest in the matter, the Chief Psychiatrist may provide the person with the following information (as applicable) in relation to that admission or detention —
  - (a) the date of the admission or detention;
  - (b) the date of the individual's discharge or release from the admission or detention;
  - (c) if the individual died while so admitted or detained — the date of death.

**536. Request for list of mentally impaired accused**

- (1) The Chief Psychiatrist may request the Mentally Impaired Accused Review Board in writing to give to the Chief Psychiatrist a list of all mentally impaired accused required under the MIA Act to be detained at an authorised hospital.
- (2) The Mentally Impaired Accused Review Board must comply with any request made under subsection (1).

**537. Delegation by Chief Psychiatrist**

- (1) The Chief Psychiatrist may delegate to another psychiatrist any power or duty of the Chief Psychiatrist under another provision of this Act or under another written law.
- (2) The delegation must be in writing signed by the Chief Psychiatrist.

- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) This section does not limit the ability of the Chief Psychiatrist to perform a function through an officer or agent.

### **Division 3 — Mental health practitioners and authorised mental health practitioners**

#### **538. Mental health practitioners**

A mental health practitioner is a person who, as one of the following, has at least 3 years' experience in the management of people who have a mental illness —

- (a) a psychologist;
- (b) a nurse whose name is entered on Division 1 of the Register of Nurses kept under the *Health Practitioner Regulation National Law (Western Australia)* as a registered nurse;
- (c) an occupational therapist;
- (d) a social worker.

#### **539. Authorised mental health practitioners**

- (1) The Chief Psychiatrist may, by order published in the *Gazette*, designate a mental health practitioner as an authorised mental health practitioner if satisfied that the practitioner has the qualifications, training and experience appropriate for performing the functions of an authorised mental health practitioner under this Act.
- (2) The order may specify any limits within which, or any conditions subject to which, those functions can be performed

by the authorised mental health practitioner designated as such by the order.

- (3) The Chief Psychiatrist may, by order published in the *Gazette*, amend or revoke an order published under subsection (1).
- (4) The regulations may provide for matters relating to authorised mental health practitioners, including the following —
  - (a) the qualifications, training and experience to which the Chief Psychiatrist must have regard when deciding whether to make, amend or revoke an order under this section;
  - (b) the performance by authorised mental health practitioners of their functions under this Act;
  - (c) any matter about which an authorised mental health practitioner must notify the Chief Psychiatrist;
  - (d) the grounds on which the designation of an authorised mental health practitioner must or may be revoked.
- (5) For subsection (4)(a), training includes training approved by the Chief Psychiatrist.

**540. Register of authorised mental health practitioners**

- (1) The Chief Psychiatrist must keep a register of persons who are, or have been, designated under section 539 as authorised mental health practitioners.
- (2) The register must be kept in the manner and form determined by the Chief Psychiatrist.
- (3) The register must include the following particulars of each person registered under subsection (1) —
  - (a) the person's name;
  - (b) the date on which the order designating the person as an authorised mental health practitioner was published in the *Gazette*;

- (c) any limits within which, or any conditions subject to which, the person can perform the functions of an authorised mental health practitioner that were specified in the order referred to in paragraph (b);
  - (d) the date on which any order amending the order referred to in paragraph (b) was published in the *Gazette* and details of the amendments;
  - (e) the date on which any order revoking the order referred to in paragraph (b) was published in the *Gazette*.
- (4) The Chief Psychiatrist must ensure that the register is available free of charge for inspection by members of the public —
  - (a) from the office of the Chief Psychiatrist during the business hours of that office; and
  - (b) on the Agency's website.

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

##### **541. Authorised hospital: meaning**

An authorised hospital is —

- (a) a public hospital, or part of a public hospital, in respect of which an order is in force under section 542; or
- (b) a private hospital the licence of which is endorsed under the *Hospitals and Health Services Act 1927* section 26DA(2).

Note for this section:

The licence of a private hospital cannot be endorsed unless the Chief Psychiatrist recommends the endorsement (see the *Hospitals and Health Services Act 1927* section 26DA(3A)).

##### **542. Authorisation of public hospitals**

- (1) The Governor may, by order published in the *Gazette*, authorise a public hospital, or a part of a public hospital, for —
  - (a) the reception of persons under this Act; and
  - (b) the admission of involuntary patients.

- (2) The Governor may, by order published in the *Gazette*, amend or revoke an order made under subsection (1).
- (3) The Governor cannot make, amend or revoke an order under this section unless the Chief Psychiatrist recommends that the order be made, amended or revoked.

**543. Patients to be transferred if hospital no longer authorised**

- (1) This section applies if —
  - (a) an authorisation of a public hospital or a part of a public hospital is revoked under section 542(2); or
  - (b) the endorsement on the licence of a private hospital is cancelled under the *Hospitals and Health Services Act 1927* section 26FA(1).
- (2) Every person received into, and every involuntary patient admitted by, the hospital or that part of the hospital must be transferred in accordance with the regulations to an authorised hospital or other place.

Note for this section:

The endorsement on the licence of a private hospital cannot be cancelled unless the Chief Psychiatrist is consulted (see the *Hospitals and Health Services Act 1927* section 26FA(2A)).

**Division 5 — Mental health services approved for  
electroconvulsive therapy**

**544. Chief Psychiatrist to approve mental health services**

- (1) The Chief Psychiatrist may, by order published in the *Gazette*, approve a mental health service as a mental health service at which electroconvulsive therapy can be performed.
- (2) The order may specify any conditions subject to which electroconvulsive therapy can be performed at the mental health service specified in the order.
- (3) The Chief Psychiatrist may, by order published in the *Gazette*, amend or revoke an order published under subsection (1).

## **Division 6 — Approved forms**

### **545. Chief Psychiatrist to approve forms**

- (1) The Chief Psychiatrist may approve forms for use under this Act other than forms for use by police officers under Part 11 Division 2.
- (2) An approved form may be or include a statutory declaration.

Note for this section:

The Commissioner of Police approves forms for use by police officers under Part 11 Division 2 (see section 169).

### **546. Publication of approved forms and related guidelines**

- (1) The Chief Psychiatrist —
  - (a) must publish all approved forms; and
  - (b) may publish guidelines about how to complete any of the approved forms.
- (2) It is sufficient for compliance with subsection (1) if copies of the forms and guidelines are published on a website maintained by the Agency.

## **Division 7 — Guidelines and standards**

### **547. Publication of guidelines and standards**

- (1) The Chief Psychiatrist must publish guidelines for each of these purposes —
  - (a) making decisions about whether or not a person is in need of an inpatient treatment order or a community treatment order;
  - (b) making decisions under section 26(3)(a) about whether or not a place that is not an authorised hospital is an appropriate place to conduct an examination;

- (c) ensuring as far as practicable the independence of psychiatrists from whom further opinions referred to in section 121(5) or 182(2) are obtained;
  - (d) making decisions under section 183(2) about whether or not to comply with requests made under section 182 for additional opinions;
  - (e) the preparation, review and revision of treatment, support and discharge plans;
  - (f) the performance of electroconvulsive therapy;
  - (g) compliance with approved forms;
  - (h) ensuring compliance with this Act by mental health services.
- (2) The Chief Psychiatrist must publish standards for the treatment and care to be provided by mental health services to the persons specified in section 515(1).
- (3) The Chief Psychiatrist may publish guidelines for such other purposes relating to the treatment and care of persons who have a mental illness as the Chief Psychiatrist considers appropriate.

**548. Application, adoption or incorporation of other documents**

Guidelines or standards published under section 547 may apply, adopt or incorporate (with or without changes) the whole or any part of a document that is in force or existing at a particular time or from time to time.

**549. Publication on Agency's website**

It is sufficient for compliance with section 547 if a copy of the guidelines or standards is published on a website maintained by the Agency.

**Division 8 — Miscellaneous matters**

**550. Delegation by Minister or CEO**

- (1) The Minister may delegate to the CEO any power or duty of the Minister under another provision of this Act.
- (2) The CEO may delegate to a public service officer who is employed in, or seconded to, the Agency any power or duty of the CEO under another provision of this Act.
- (3) A delegation under this section must be in writing signed by the Minister or the CEO, as the case requires.
- (4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (5) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) This section does not limit the ability of the Minister or the CEO to perform a function through an officer or agent.



## Part 24 — Interstate arrangements

### Division 1 — Preliminary matters

#### 551. Terms used

(1) In this Part —

***corresponding law*** means a law of another State or a Territory that is declared by the regulations to be a corresponding law for the purposes of this Part;

***intergovernmental agreement*** means —

- (a) an agreement entered into under section 552(1); or
- (b) an agreement in respect of which a declaration under section 552(2) is in force;

***interstate community patient*** means a person who is under an interstate community treatment order;

***interstate community treatment order*** means an order made under a corresponding law under which a person can be provided with treatment in the community;

***interstate inpatient*** means a person who is under an interstate inpatient treatment order;

***interstate inpatient treatment order*** means an order made under a corresponding law under which a person can be admitted by a hospital, and detained there, to enable the person to be provided with treatment;

***interstate mental health service*** means —

- (a) a hospital or other place in another State or a Territory where a person can be detained, and provided with treatment, under an interstate inpatient treatment order; or
- (b) a place in another State or a Territory where a person can be provided with treatment under an interstate community treatment order;

**State inpatient** means a person who is under an inpatient treatment order.

- (2) For section 555(1), a State inpatient is absent without leave from a hospital if the inpatient is absent without leave from the hospital as described in section 97(2).
- (3) For section 557(1), an interstate inpatient is absent without leave from an interstate mental health service if the inpatient leaves the interstate mental health service without lawful authority.

## **Division 2 — Intergovernmental agreements**

### **552. Agreements with other States and Territories**

- (1) The Minister may enter into an agreement with a Minister responsible for administering a corresponding law about any matter in connection with the administration of this Part or the corresponding law.
- (2) The Minister may, by notice published in the *Gazette*, declare that an agreement entered into before the commencement of this Part has effect for the purposes of this Part.
- (3) The Minister may, by notice published in the *Gazette*, revoke a declaration made under subsection (2).

### **553. Agreement must be in place**

A person cannot perform a function under this Part in connection with an interstate mental health service in, or an interstate inpatient or interstate community patient in or from, another State or a Territory unless there is an intergovernmental agreement in relation to that State or Territory.

### **554. Performance of functions under corresponding laws or intergovernmental agreements**

A person who is authorised to perform a function under this Act may perform in the State or another State or a Territory any

similar function conferred on the person under a corresponding law of, or an intergovernmental agreement in relation to, that State or Territory.

### **Division 3 — Transfer to or from interstate mental health service**

#### **555. Transfer from hospital to interstate mental health service**

- (1) The person in charge of a hospital may, with the written approval of the Chief Psychiatrist, make an order (a ***transfer order***) authorising the transfer of a State inpatient who is detained at, or who is absent without leave as described in section 551(2) from, the hospital to the interstate mental health service specified in the order.
- (2) The transfer order must be in the approved form and must include the following —
  - (a) the State inpatient's name;
  - (b) the hospital from which the State inpatient is to be transferred;
  - (c) the interstate mental health service to which the State inpatient is to be transferred;
  - (d) the date and time when the order is made;
  - (e) the reasons for the transfer;
  - (f) the name, qualifications and signature of the person in charge of the hospital.
- (3) The person in charge of the hospital must, as soon as practicable —
  - (a) file the approval and the transfer order and give a copy of each to the State inpatient; and
  - (b) transmit a copy of each to the person in charge of the interstate mental health service.
- (4) The making of a transfer order under subsection (1) is an event to which Part 9 applies and the person in charge of the hospital

is the person responsible under that Part for notification of that event.

**556. Making transport order**

- (1) The person in charge of the hospital may make a transport order in respect of the State inpatient.
- (2) The person in charge of the hospital cannot make the transport order unless satisfied that no other safe means of taking the State inpatient to the interstate mental health service is reasonably available.
- (3) Part 10 applies in relation to the transport order as if —
  - (a) the transport order were made under section 92(1); and
  - (b) a reference in section 92(2) to an authorised hospital were a reference to the interstate mental health service; and
  - (c) a reference in Part 10 to a police officer included a reference to a police officer of the State or Territory in which the interstate mental health service is located; and
  - (d) a reference in Part 10 to a transport officer included a reference to a person who is authorised under a corresponding law of, or an intergovernmental agreement in relation to, that State or Territory to perform functions similar to those of a transport officer.

**557. Transfer from interstate mental health service to hospital**

- (1) The person in charge of a hospital may, with the written consent of the Chief Psychiatrist, make an order (a ***transfer approval order***) approving the transfer of an interstate inpatient who is detained at, or who is absent without leave as described in section 551(3) from, an interstate mental health service to the hospital.

- (2) The transfer approval order must be in the approved form and must include the following —
  - (a) the interstate patient's name;
  - (b) the interstate mental health service from which the interstate inpatient is to be transferred;
  - (c) the hospital to which the interstate inpatient is to be transferred;
  - (d) the date and time when the order is made;
  - (e) the reasons for the approval;
  - (f) the name, qualifications and signature of the person in charge of the hospital.
- (3) The person in charge of the hospital must, as soon as practicable, transmit a copy of each of the consent and the transfer approval order to the person in charge of the interstate mental health service.
- (4) On the interstate inpatient's admission by the hospital as an inpatient, the interstate inpatient treatment order is taken to be an inpatient treatment order made under this Act.
- (5) The person in charge of the hospital must, as soon as practicable after the interstate inpatient is admitted as an inpatient, file the consent and the transfer approval order and give a copy of each to the interstate inpatient.
- (6) The making of a transfer approval order under subsection (1) is an event to which Part 9 applies and the person in charge of the hospital is the person responsible under that Part for notification of that event.

**558. Transport of interstate inpatient to hospital**

- (1) This section applies in relation to an interstate inpatient under a transfer approval order made under section 557(1).
- (2) A person who is authorised under a corresponding law or an interstate agreement to transport the interstate inpatient from an

interstate mental health service to a hospital may exercise in the State any of the powers the person has under the corresponding law or interstate agreement for that purpose.

#### **Division 4 — Community treatment orders**

##### **559. Treatment interstate under State order**

The terms of a community treatment order may include a requirement that the involuntary community patient attend an interstate mental health service to be provided with treatment.

##### **560. Making transport order**

- (1) A medical practitioner or mental health practitioner may make a transport order in respect of an involuntary community patient who fails to comply with the requirement referred to in section 559.
- (2) The practitioner cannot make the transport order unless satisfied that no other safe means of ensuring the involuntary community patient attends the interstate mental health service is reasonably available.
- (3) Part 10 applies in relation to the transport order as if —
  - (a) the transport order were made under section 129(2); and
  - (b) a reference in section 129(3) to a place were a reference to an interstate mental health service; and
  - (c) a reference in Part 10 to a police officer included a reference to a police officer of the State or Territory in which the interstate mental health service is located; and
  - (d) a reference in Part 10 to a transport officer included a reference to a person who is authorised under a corresponding law of, or an intergovernmental agreement in relation to, that State or Territory to perform functions similar to those of a transport officer.

**561. Treatment in State under interstate order**

An interstate community treatment order that includes a requirement that the interstate community patient be provided with treatment by a mental health service in the State is taken to be a community treatment order that, despite any other provision of this Act, has the same terms as and is in force for the same period as the interstate community treatment order.

**562. Supervision in State under interstate order**

A person who is authorised under a corresponding law of another State or a Territory to perform a function in relation to an interstate community treatment order made under the corresponding law may perform that function in relation to the order in the State.

## **Part 25 — Ministerial inquiries**

### **563. Appointment of person to conduct inquiry**

The Minister may appoint a person to inquire into, and report to the Minister on, any matter relating to —

- (a) the treatment, care or other services provided (whether under this Act or otherwise) to a person, or the persons in a class of person, who has or may have a mental illness; or
- (b) the administration or enforcement of this Act.

### **564. Powers of investigation**

The person appointed under section 563 to conduct an inquiry may, for the purpose of the inquiry —

- (a) enter —
  - (i) a mental health service at any time without notice; or
  - (ii) any other premises at any reasonable time and at any other time with the owner's consent;and
- (b) on entering any premises under paragraph (a), do any of these things —
  - (i) inspect the premises and anything on the premises;
  - (ii) require a person on the premises to answer questions, or provide information, that the person appointed under section 563 considers relevant to the inquiry;
  - (iii) require a person on the premises to produce any documents that the person appointed under section 563 considers relevant to the inquiry;
  - (iv) inspect, or take a copy of the whole or any part of any document produced under subparagraph (iii);



- (v) require a person on the premises to give reasonable assistance to the person appointed under section 563 in the exercise of a power under this section.

**565. Interfering with investigation**

- (1) A person commits an offence if the person —
  - (a) without reasonable excuse, proof of which is on the person, does not answer a question or provide information when required under section 564(b)(ii); or
  - (b) in purporting to comply with a requirement under section 564(b)(ii), gives an answer or provides information that the person knows is false or misleading in a material particular; or
  - (c) in purporting to comply with a requirement under section 564(b)(iii), makes available a document that the person knows is false or misleading in a material particular —
    - (i) without indicating that the document is false or misleading and, to the extent the person can, how the document is false or misleading; and
    - (ii) if the person has or can reasonably obtain the correct information — without providing the correct information;or
  - (d) without reasonable excuse, proof of which is on the person, does not give reasonable assistance when required under section 564(b)(v); or
  - (e) without reasonable excuse, proof of which is on the person, obstructs or hinders —
    - (i) a person appointed under section 563 in the exercise of a power under section 564; or

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- (ii) a person assisting such a person under section 564(b)(v).

Penalty: a fine of \$6 000.

- (2) It is enough for a prosecution notice lodged against a person for an offence under subsection (1)(b) or (c) to state that the answer, information or document was false or misleading to the person's knowledge without stating which.

**566. Conduct of inquiry generally**

- (1) An inquiry must be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the subject matter of the inquiry permits.
- (2) In conducting an inquiry, the person appointed under section 563 to conduct the inquiry is bound by the rules of natural justice.
- (3) Subject to this Part, the practice and procedure for conducting an inquiry is as determined by the person appointed under section 563 to conduct the inquiry.

**567. Evidence generally**

- (1) A person appointed under section 563 to conduct an inquiry is not bound by the rules of evidence but may inform himself or herself of a matter relevant to the inquiry in any manner the person considers appropriate.
- (2) Evidence in an inquiry may be given orally or in writing.
- (3) The person appointed under section 563 to conduct an inquiry may require evidence in the inquiry to be given on oath or by affidavit.
- (4) The person appointed under section 563 to conduct an inquiry may direct a person appearing as a witness in the inquiry —
  - (a) to answer a question relevant to the inquiry; or
  - (b) to produce a document relevant to the inquiry.

- (5) A person appearing as a witness in an inquiry has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

**568. Summons to give evidence or produce documents**

The person appointed under section 563 to conduct an inquiry may, by issuing a signed summons and having the summons served on the person to whom it is addressed, require the person to attend at the time and place specified in the summons —

- (a) to give evidence in the inquiry; or
- (b) to produce a document relevant to the inquiry that is in the person's custody or control and is specified in the summons; or
- (c) to do both of those things.

**569. Self-incrimination**

- (1) A person is not excused from complying with a direction given to the person under section 567(4), or a summons served on the person under section 568, on the ground that the answer to a question or the production of a document might tend to incriminate the person or expose the person to a criminal penalty.
- (2) However, any answer given or document produced by a person in compliance with a direction given to the person under section 567(4), or a summons served on the person under section 568, is not admissible in evidence in any criminal proceedings against the person other than proceedings for an offence under section 571(1)(d) or (e).

**570. Powers in relation to documents produced**

In relation to a document produced in an inquiry, the person appointed under section 563 to conduct the inquiry may do any of these things —

- (a) inspect the document;

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- (b) retain the document for a reasonable period;
- (c) take a copy of the whole or any part of the document.

**571. Offences relating to evidence and documents**

- (1) A person commits an offence if the person —
  - (a) without reasonable excuse, proof of which is on the person, does not swear an oath or make an affirmation when required under section 567(3); or
  - (b) without reasonable excuse, proof of which is on the person, does not answer a question or produce a document when directed to do so under section 567(4); or
  - (c) without reasonable excuse, proof of which is on the person, does not attend as required by a summons served on the person under section 568; or
  - (d) gives an answer in an inquiry that the person knows is false or misleading in a material particular; or
  - (e) produces a document or provides any other information in an inquiry that the person knows is false or misleading in a material particular —
    - (i) without indicating that the document or other information is false or misleading and, to the extent the person can, how the document or other information is false or misleading; and
    - (ii) if the person has or can reasonably obtain the correct information — without providing the correct information.

Penalty: a fine of \$5 000.

- (2) It is enough for a prosecution notice lodged against a person for an offence under subsection (1)(d) or (e) to state that the answer, document or information was false or misleading to the person's knowledge without stating which.

## Part 26 — Information

### Division 1 — Voluntary disclosure of information by public authorities and mental health services

#### 572. Powers of Agency's CEO

(1) In this section —

*corresponding overseas authority* means a person in another country who has functions corresponding to the CEO's functions under this Act;

*interstate authority* means —

- (a) a department of the Public Service of the Commonwealth, another State or a Territory; or
- (b) an agency or instrumentality of the Commonwealth, another State or a Territory; or
- (c) a body (whether corporate or unincorporate), or the holder of an office, post or position, established or continued in existence for a public purpose under a law of the Commonwealth, another State or a Territory;

*mental health service* —

(a) includes —

- (i) a private psychiatric hostel; and
- (ii) an individual, a group of individuals or a body (whether corporate or unincorporate) that provides a service specifically for people who have or may have a mental illness, or the carers of people who have or may have a mental illness, wholly or partly from funds paid to the individual, group or body by the Agency;

but

- (b) does not include the carer of a person who has or may have a mental illness;

**relevant information** means information (including personal information) that, in the CEO's opinion, is or is likely to be relevant to any of the following —

- (a) the treatment or care of a person, or the persons in a class of person, who has or may have a mental illness;
- (b) the health, safety or wellbeing of a person who has or may have a mental illness;
- (c) the safety of another person with respect to which there is a serious risk because of a person who has or may have a mental illness;
- (d) the administration or enforcement of this Act;
- (e) the implementation and evaluation of programmes managed by the Agency for the purpose of coordinating the care and support of people who have a mental illness;
- (f) the planning for, and evaluation of, mental health services;
- (g) epidemiological analysis of mental illness and mental health research;

**State authority** means any of these persons or bodies —

- (a) the Minister;
  - (b) a department of the Public Service;
  - (c) a State agency or instrumentality;
  - (d) a local government, regional local government or regional subsidiary;
  - (e) a body (whether corporate or unincorporate), or the holder of an office, post or position, established or continued for a public purpose under a written law.
- (2) The CEO may disclose relevant information to any of these persons or bodies —
- (a) a State authority;
  - (b) an interstate authority;
  - (c) a corresponding overseas authority;

- (d) a mental health service.
- (3) The CEO may request any of these persons or bodies to disclose relevant information to the CEO —
  - (a) a State authority;
  - (b) an interstate authority;
  - (c) a corresponding overseas authority;
  - (d) a mental health service.

*[Section 572 amended: No. 26 of 2016 s. 74.]*

**573. Powers of CEOs of prescribed State authorities**

- (1) In this section —

**CEO**, of a prescribed State authority, means —

- (a) if the prescribed State authority is a body referred to in paragraph (a) of the definition of **prescribed State authority** — the chief executive officer (however described) of that body; or
- (b) if the prescribed State authority is a person referred to in paragraph (b) of the definition of **prescribed State authority** — that person;

**prescribed State authority** means —

- (a) a body (whether corporate or unincorporate) established or continued for a public purpose under a written law and prescribed by the regulations for this paragraph; or
- (b) a person lawfully holding, acting in or performing the functions of an office, post or position established or continued for a public purpose under a written law and prescribed by the regulations for this paragraph;

**relevant information** means information (including personal information) that, in the opinion of the disclosing CEO under

subsection (2) or the requesting CEO under subsection (3), is or is likely to be relevant to —

- (a) the treatment or care of a person, or the persons in a class of person, who has or may have a mental illness; or
  - (b) the health, safety or wellbeing of a person who has or may have a mental illness; or
  - (c) the safety of another person with respect to which there is a risk because of a person who has or may have a mental illness; or
  - (d) the performance of a function under this Act by the CEO's prescribed State authority.
- (2) The CEO of a prescribed State authority (the *disclosing CEO*) may disclose relevant information to the CEO of another prescribed State authority.
- (3) The CEO of a prescribed State authority (the *requesting CEO*) may request the CEO of another prescribed State authority to disclose relevant information to the requesting CEO.

**574. Powers of CEOs of mental health services**

- (1) In this section —
- CEO**, of a mental health service, means the person in charge of the mental health service;
- mental health service** —
- (a) includes —
    - (i) a private psychiatric hostel; and
    - (ii) an individual, a group of individuals or a body (whether corporate or unincorporate) that provides a service specifically for people who have or may have a mental illness;
  - but
  - (b) does not include the carer of a person who has or may have a mental illness;



**relevant information** means information (including personal information) that, in the opinion of the disclosing CEO under subsection (2) or the requesting CEO under subsection (3), is or is likely to be relevant to any of the following —

- (a) the treatment or care of a person who has been, is being, or will or may be, provided with treatment or care by the CEO's mental health service;
  - (b) the health, safety or wellbeing of a person who has been, is being, or will or may be, provided with treatment or care by the CEO's mental health service;
  - (c) the safety of another person with respect to which there is a serious risk because of a person who has been, is being, or will or may be, provided with treatment or care by the CEO's mental health service.
- (2) The CEO of a mental health service (the **disclosing CEO**) may disclose relevant information to the CEO of another mental health service.
- (3) The CEO of a mental health service (the **requesting CEO**) may request the CEO of another mental health service to disclose relevant information to the requesting CEO.

**575. Delegation by CEO of prescribed State authority**

- (1) This section applies to the CEO of a prescribed State authority (as defined in section 573(1)) if the CEO does not have the power under another provision of this Act to delegate any power or duty of the CEO under section 573.
- (2) The CEO of a prescribed State authority may delegate to a member of the prescribed State authority's staff any power or duty of the CEO under section 573.
- (3) The delegation must be in writing signed by the CEO of the prescribed State authority.
- (4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

- (5) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) This section does not limit the ability of the CEO of a prescribed State authority to perform a function through an officer or agent.

### **Division 2 — Miscellaneous matters**

#### **576. Confidentiality**

- (1) In this section —  
*relevant written law* means any of these written laws —
  - (a) this Act;
  - (b) the *Mental Health Act 1996*;
  - (c) the *Mental Health Act 1962*.
- (2) A person must not (whether directly or indirectly) record, disclose or use any information obtained by the person because of —
  - (a) the person's office, position, employment or engagement under or for the purposes of a relevant written law; or
  - (b) any disclosure made to the person under this Act, including in response to a request made under section 448(1), 572(3), 573(3) or 574(3).

Penalty: a fine of \$5 000.
- (3) Subsection (2) does not apply in relation to the recording, disclosure or use of statistical or other information that is not personal information.
- (4) A person does not commit an offence under subsection (2) if the recording, disclosure or use of the information is authorised under section 577(1).

**577. Authorised recording, disclosure or use of information**

- (1) For the purposes of this Act, the recording, disclosure or use of information is authorised if the information is recorded, disclosed or used in good faith in any of these circumstances —
  - (a) in the course of duty, whether under this Act or otherwise;
  - (b) under this Act, including in response to a request made under section 448(1), 572(3), 573(3) or 574(3);
  - (c) under another law;
  - (d) to a court or other person or body acting judicially in the course of proceedings before the court or other person or body;
  - (e) under an order of a court or other person or body acting judicially;
  - (f) for the purposes of the investigation of a suspected offence or disciplinary matter or the conduct of proceedings against a person for an offence or disciplinary matter;
  - (g) if the information recorded, disclosed or used is personal information — with the consent of the individual, or each individual, to whom the personal information relates;
  - (h) any other circumstances prescribed by the regulations for this subsection.
- (2) Subsection (1)(d) and (e) apply subject to sections 330(7) and (8), 331(6) and (7), 332(7) and (8), 463(2) and 569(2).
- (3) If the recording, disclosure or use of information is authorised under subsection (1) —
  - (a) no civil or criminal liability is incurred in respect of the recording, disclosure or use; and

- (b) the recording, disclosure or use is not to be regarded as —
  - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
  - (ii) a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or
  - (iii) unprofessional conduct.

**578. Receipt and storage of, and access to, information disclosed**

- (1) This section applies in relation to information disclosed in any of these circumstances —
  - (a) in compliance with a direction issued by the Chief Psychiatrist under section 523(2);
  - (b) by the CEO under section 572(2) or in response to a request made by the CEO under section 572(3);
  - (c) by the CEO of a public authority under section 573(2) or in response to a request made by the CEO of a public authority under section 573(3);
  - (d) by the CEO of a mental health service under section 574(2) or in response to a request made by the CEO of a mental health service under section 574(3).
- (2) The regulations may provide for —
  - (a) the receipt and storage of information to which this section applies; or
  - (b) access to such information.

## **Part 27 — Miscellaneous matters**

### **579.      Restrictions on powers of medical practitioners and mental health practitioners**

(1)      In this section —

**company** means a company registered under the *Corporations Act 2001* (Commonwealth);

**prescribed financial market** has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

**related person**, in relation to a medical practitioner or mental health practitioner, means —

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

**relative**, of a person, means a family member of the person referred to in section 281(2);

**relevant interest**, in relation to a share, has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

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*substantial holding* has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

- (2) A medical practitioner or mental health practitioner cannot exercise a power under this Act in respect of a person if the practitioner is —
  - (a) a relative of the person; or
  - (b) the person's enduring guardian or guardian; or
  - (c) in partnership with the person; or
  - (d) the employer or employee of the person; or
  - (e) the person's supervisor or subordinate.
- (3) A person in charge of a ward at an authorised hospital cannot exercise a power under this Act in respect of a patient in the ward if the person in charge is —
  - (a) a relative of the patient; or
  - (b) the patient's enduring guardian or guardian; or
  - (c) in partnership with the patient; or
  - (d) the employer or employee of the patient; or
  - (e) the patient's supervisor or subordinate.
- (4) A medical practitioner or mental health practitioner cannot refer a person under section 26(2) or (3)(a) for an examination to be conducted by a psychiatrist at a private hospital the licence for which is held by the practitioner or a related person.

**580. Obstructing or hindering person performing functions**

A person who, without reasonable excuse (proof of which is on the person) obstructs or hinders a person in the performance of, or a person assisting another person in the performance of, a function under this Act commits an offence.

Penalty: a fine of \$6 000.

**581. Amendment of referrals and orders**

- (1) For this section, a referral or order made under this Act contains a formal defect if it contains —
  - (a) a clerical error or an error because of an accidental omission; or
  - (b) an evident material error in the description of a person.
- (2) If a referral or order made under this Act contains a formal defect —
  - (a) the validity of anything done or omitted to be done in reliance on the referral or order is not affected; but
  - (b) the person who does an act or makes an omission in reliance on the referral or order may request the person who made the referral or order to rectify the defect.
- (3) A person who makes a request under subsection (2)(b) to rectify a referral or order may, by order (a **revocation order**), revoke any involuntary treatment order made as a consequence of the referral or order if the request is not complied with.
- (4) A revocation order has effect on and from the time specified in the revocation order.
- (5) A revocation order does not prevent another referral or order being made under this Act in respect of the person to whom the revocation order relates, whether that referral or order is made before or after the revocation order comes into effect.

**582. Medical record to be kept by mental health services**

- (1) The person in charge of a mental health service must ensure that a medical record is kept in respect of —
  - (a) each person who is admitted by the mental health service; and
  - (b) each person who is otherwise provided with treatment or care by the mental health service.

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- (2) The medical record must be in the approved form and must include the following information —
- (a) the name, address and date of birth of the person;
  - (b) the nature of any illness, or mental or physical disability, from which the person suffers;
  - (c) particulars of —
    - (i) any treatment provided to the person by the mental health service; and
    - (ii) the authority for providing the treatment, including details of any order made under this Act under which the treatment was provided;
  - (d) if the person dies at the mental health service — the date of death and, if known, the cause of death;
  - (e) any other information prescribed by the regulations for this subsection.

**583. Protection from liability when performing functions**

- (1) An action in tort does not lie against a person other than the State for anything that the person has done in good faith —
- (a) in the performance or purported performance of a function under this Act; or
  - (b) in assisting another person in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that provision may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved 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.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.



**584. Protection from liability when detaining person with mental illness**

- (1) This section applies if —
  - (a) a person has lawful charge of a person who has, or is reasonably suspected of having, a mental illness while that person is at a particular place; and
  - (b) the person who has, or is reasonably suspected of having, a mental illness does not have the capacity to decide whether or not to withdraw himself or herself from that lawful charge.
- (2) No civil or criminal liability is incurred because the person who has that lawful charge in good faith detains, or continues the detention of, the person who has, or is reasonably suspected of having, a mental illness in order to prevent that person from leaving the particular place.
- (3) The protection given by subsection (2) does not apply if the person who has lawful charge of the person who has, or is reasonably suspected of having, a mental illness uses bodily restraint to prevent that person from leaving the particular place.
- (4) For subsection (3), the bodily restraint of a person is the physical restraint or mechanical restraint, within the meaning of those terms in section 227(2) to (6), of the person.

**585. Relationship with *Freedom of Information Act 1992***

This Act has effect despite the *Freedom of Information Act 1992*.

**586. Regulations**

The Governor may make regulations prescribing matters —

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient to be prescribed for giving effect to this Act.

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**587.      Review of this Act after 5 years**

- (1) The Minister must review the operation and effectiveness of this Act as soon as practicable after the expiry of 5 years from the commencement of section 10.
- (2) The Minister must, as soon as practicable —
  - (a) prepare a report about the outcome of the review; and
  - (b) cause a copy of the report to be laid before each House of Parliament.

## **Part 28 — Repeals**

*[Heading inserted: No. 25 of 2014 s. 9.]*

### **588. Acts repealed**

These Acts are repealed:

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

*[Section 588 inserted: No. 25 of 2014 s. 9.]*

### **589. Regulations repealed**

These regulations are repealed:

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

*[Section 589 inserted: No. 25 of 2014 s. 9.]*

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

*[Heading inserted: No. 25 of 2014 s. 9.]*

### **Division 1 — Preliminary matters**

*[Heading inserted: No. 25 of 2014 s. 9.]*

#### **590. Terms used**

In this Part —

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

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

**continued community treatment order** —

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

**continued inpatient treatment order** means —

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

**continued involuntary treatment order** means —

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

*[Section 590 inserted: No. 25 of 2014 s. 9.]*

## **Division 2 — Administrative provisions**

*[Heading inserted: No. 25 of 2014 s. 9.]*

### **Subdivision 1 — Chief Psychiatrist**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

- (1) The person who, immediately before commencement day, held under the *Public Sector Management Act 1994* Part 3 the office of the Chief Psychiatrist referred to in the 1996 Act section 8 is taken to be appointed under section 508(1) as the Chief Psychiatrist.
- (2) The person holds office for the period, beginning on commencement day, that is equal to the balance of the person's term of office that remained under the *Public Sector Management Act 1994* Part 3 immediately before commencement day.
- (3) Except as otherwise agreed by the person, the operation of subsection (1) does not —
  - (a) affect the person's pay, as that term is defined in the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* regulation 3(1); or
  - (b) affect the person's existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
  - (c) affect any rights under a superannuation scheme.
- (4) If the person ceases to be the Chief Psychiatrist and becomes a public service officer, the person's service as the Chief Psychiatrist is to be regarded as service in the Public Service for the purposes of determining the person's rights as a public service officer and, if applicable, for the purposes of the *Superannuation and Family Benefits Act 1938*.

*[Section 591 inserted: No. 25 of 2014 s. 9; amended: No. 36 of 2015 s. 7.]*

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

- (1) An instruction that was in force under the 1996 Act section 12(2) immediately before commencement day is taken to be a direction given under section 520(4)(b), but a psychiatrist who does not comply with an instruction to which this subsection applies does not commit an offence under section 520(6).
- (2) A review under the 1996 Act section 12(1) that was started but not completed before commencement day must be dealt with as if the 1996 Act section 12 were still in force, but an instruction given under the 1996 Act section 12(2) as a result of the review is taken to be a direction given under section 520(4)(b).

*[Section 592 inserted: No. 25 of 2014 s. 9; amended: No. 36 of 2015 s. 8.]*

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

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

*[Section 593 inserted: No. 25 of 2014 s. 9.]*

**594. Records of Chief Psychiatrist**

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

*[Section 594 inserted: No. 25 of 2014 s. 9.]*

**Subdivision 2 — Authorised practitioners**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 595 inserted: No. 25 of 2014 s. 9.]*

**Subdivision 3 — Authorised hospitals**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

- (1) This section applies in relation to a public hospital, or part of a public hospital, in respect of which an order under the 1996 Act section 21 was in force immediately before commencement day.

- (2) The hospital or part of the hospital is taken to be an authorised hospital as defined in section 4 that is authorised by the order to which subsection (3) applies.
- (3) The order referred to in subsection (1) is taken to be an order made under section 542.

*[Section 596 inserted: No. 25 of 2014 s. 9.]*

**Subdivision 4 — Registrar and staff of Mental Health Review Board**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 597 inserted: No. 25 of 2014 s. 9.]*

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

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



written law on the terms and conditions that were applicable to the appointment referred to in subsection (1) immediately before commencement day.

*[Section 598 inserted: No. 25 of 2014 s. 9.]*

### **Division 3 — Involuntary patients**

*[Heading inserted: No. 25 of 2014 s. 9.]*

#### **Subdivision 1 — Referral for examination**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 599 inserted: No. 25 of 2014 s. 9.]*

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

- (1) A referral that was in force under the 1996 Act section 29(1), as applied by section 30(1) of that Act, immediately before commencement day is taken to be a referral made under section 36(2).
- (2) The voluntary inpatient who is under the referral is taken to be a person who is referred under section 36(2).
- (3) An order made under the 1996 Act section 30(3) that was in force immediately before commencement day is taken to be an order made under section 34(1).
- (4) The voluntary inpatient who is under the order is taken to be detained at the authorised hospital under the order.
- (5) The period for which the voluntary inpatient who is under the order can be detained under the order expires 6 hours after the time when the order was made under the 1996 Act section 30(3).

*[Section 600 inserted: No. 25 of 2014 s. 9.]*

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

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

than 48 hours after the time when the examination was completed under the 1996 Act section 31.

*[Section 601 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 602 inserted: No. 25 of 2014 s. 9.]*

**Subdivision 2 — Examination at authorised hospital**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 603 inserted: No. 25 of 2014 s. 9.]*

**604. Detention of voluntary inpatient admitted to authorised hospital**

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

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

*[Section 604 inserted: No. 25 of 2014 s. 9.]*

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

- (1) This section applies if, immediately before commencement day, a psychiatrist had completed an examination for the purposes of the 1996 Act section 37, or that section as applied by section 30(5) of that Act, but had not done anything under that section as a result of the examination.
- (2) The examination is taken to be an examination conducted in accordance with Part 6 Division 3 Subdivision 6 for the purposes of section 54.
- (3) If the psychiatrist makes an order under section 55(1)(c), for the purposes of section 55(3), the maximum period that the person who is under the order can be detained under the order expires at —
  - (a) if the person is under a referral to which section 599(1) applies — the end of 72 hours after the person was received into the authorised hospital under the 1996 Act section 36(1)(a); or
  - (b) if the person is a voluntary inpatient who is under a referral to which section 600(1) applies — the end of 72 hours after the referral was made under the 1996 Act section 29(1) as applied by section 30(1) of that Act.

*[Section 605 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 606 inserted: No. 25 of 2014 s. 9.]*

**Subdivision 3 — Examination at place other than authorised hospital**

*[Heading inserted: No. 25 of 2014 s. 9.]*

**607. Receival of person at place other than authorised hospital**

- (1) This section applies in relation to a person who is under a referral to which section 599(3) applies.
- (2) Subject to this section, Part 6 Division 3 Subdivision 2 applies in relation to the person.

- (3) The person cannot be received into the place on or after commencement day if the referral has expired because of section 599(5)(a).
- (4) If the person was received at the place before commencement day, the person is taken to be detained at the place under section 58(1)(b).
- (5) The period for which the person can be detained under section 58(1)(b) expires at the end of 72 hours after the time when the person was received at the place under the 1996 Act.  
*[Section 607 inserted: No. 25 of 2014 s. 9.]*

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

- (1) This section applies if, immediately before commencement day, a psychiatrist had completed an examination for the purposes of a referral made under the 1996 Act section 29(2)(b) but had not done anything under section 39(1) of that Act as a result of the examination.
- (2) The examination is taken to be an examination conducted in accordance with Part 6 Division 3 Subdivision 6 for the purposes of section 60.
- (3) The psychiatrist can make an order under section 61(1)(c) on the basis of the examination, but the order cannot be made more than 72 hours after the time when the person who was examined was received at the place where the examination was conducted.  
*[Section 608 inserted: No. 25 of 2014 s. 9.]*

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

- (1) This section applies in relation to a person —
  - (a) who is under a referral to which section 599(3) applies; and

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

*[Section 609 inserted: No. 25 of 2014 s. 9.]*

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

- (1) This section applies if, immediately before commencement day, a psychiatrist had completed an assessment conducted because of an order made under the 1996 Act section 39(1) but had not done anything under the 1996 Act as a result of the assessment.
- (2) The assessment is taken to be an examination conducted in accordance with Part 6 Division 3 Subdivision 6 for the purposes of section 71.
- (3) The psychiatrist can make an order under section 72(1) on the basis of the assessment, but the order cannot be made more than 72 hours after the time when the person was received into the authorised hospital under the 1996 Act section 40(1).

*[Section 610 inserted: No. 25 of 2014 s. 9.]*



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

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

*[Section 611 inserted: No. 25 of 2014 s. 9.]*

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

- (1) A transport order made under the 1996 Act section 41(1) in respect of a person who is under an order to which section 609(2) applies that was in force immediately before commencement day is taken to be a transport order made under section 63(1).
- (2) Despite sections 150 and 152 —
  - (a) the period for which the transport order can remain in force expires at the end of 72 hours after the time when the transport order was made under the 1996 Act section 41(1); and
  - (b) the transport order cannot be extended.

*[Section 612 inserted: No. 25 of 2014 s. 9.]*

**Subdivision 4 — Detention in authorised hospital**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 613 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 614 inserted: No. 25 of 2014 s. 9.]*

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

- (1) This section applies if, immediately before commencement day, a psychiatrist had completed, for the purposes of the 1996 Act section 49(1) or 50(1), an examination of an involuntary inpatient who is under a continued inpatient treatment order but had not done anything under section 49(2) or (3) of that Act, or under section 49(2) or (3) of that Act as applied by section 50(2) of that Act, as a result of the examination.
- (2) The examination is taken to be an examination under section 89(1) if the examination was completed within 7 days before the continued involuntary treatment order expires under section 614.

*[Section 615 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 616 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 617 inserted: No. 25 of 2014 s. 9.]*

**Subdivision 5 — Absence without leave and leave of absence**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 618 inserted: No. 25 of 2014 s. 9.]*

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

- (1) This section applies if, immediately before commencement day, a person who had been apprehended under the 1996 Act section 58(1) had not been returned in accordance with section 58(2) of that Act to the authorised hospital from which the person is absent.
- (2) The police officer or other person who is detaining the person apprehended must ensure that that person is taken, as soon as practicable and, in any event, on or within 14 days after commencement day to —
  - (a) the authorised hospital from which the person is absent without leave; or
  - (b) another authorised hospital or another place by arrangement with a medical practitioner or authorised

mental health practitioner at that other authorised hospital or place.

- (3) Anything seized under the 1996 Act section 58(3)(b) from the person apprehended that had not been dealt with under section 199 of that Act before commencement day must be dealt with under section 166 as if it had been seized under section 159(2)(c).

*[Section 619 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 620 inserted: No. 25 of 2014 s. 9.]*

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

- (1) Subsection (2) applies in relation to an involuntary inpatient who is away from an authorised hospital on leave of absence because of section 620.
- (2) For the purposes of section 108, the period for which the involuntary inpatient is away from the authorised hospital on leave of absence includes the period for which the involuntary inpatient was away from the authorised hospital on leave of absence immediately before commencement day.
- (3) A community treatment order made under the 1996 Act section 62(2)(b) that was in force immediately before commencement day is taken to be a community treatment order made under section 90(1)(a).
- (4) The person who is under the community treatment order is taken to be an involuntary community patient.

*[Section 621 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 622 inserted: No. 25 of 2014 s. 9.]*

**Subdivision 6 — Treatment of involuntary patient in community**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 623 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 624 inserted: No. 25 of 2014 s. 9.]*

**625. Order made on revocation of community treatment order (1996 Act s. 70)**

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

*[Section 625 inserted: No. 25 of 2014 s. 9.]*

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

- (1) A transport order made under the 1996 Act section 71(1) in respect of a person who is under a continued inpatient treatment order to which section 625(1) applies that was in force immediately before commencement day is taken to be a transport order made under section 133(1).
- (2) Despite sections 150 and 152 —
  - (a) the period for which the transport order can remain in force expires at the end of 72 hours after the time when

the transport order was made under the 1996 Act section 71(1); and

- (b) the transport order cannot be extended.

*[Section 626 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 627 inserted: No. 25 of 2014 s. 9.]*

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

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



made under section 121(5) on the day on which it was made under the 1996 Act section 76(3).

*[Section 628 inserted: No. 25 of 2014 s. 9.]*

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

- (1) For the purposes of section 627(2), an examination conducted for the purposes of the 1996 Act section 75 includes an examination taken to have been conducted for those purposes because of section 77 of that Act.
- (2) If, immediately before commencement day, the supervising psychiatrist under a continued community treatment order had, for the purposes of the 1996 Act section 75, requested under the 1996 Act section 77(1) the examination of, and a report about, the involuntary community patient under the order but had not been provided with the report, the request is taken to be a request made under section 119(1).
- (3) If, immediately before commencement day, the supervising psychiatrist under a continued community treatment order had, for the purposes of the 1996 Act section 75, been provided by an authorised medical practitioner with a report requested under the 1996 Act section 77(1) about the involuntary community patient under the order but had not as a result of the authorised medical practitioner's report prepared a report about the patient under section 77(3) of that Act —
  - (a) the examination on which the authorised medical practitioner's report is based is taken to be an examination conducted under section 118(2)(b)(ii); and
  - (b) the authorised medical practitioner's report is taken to have been provided to the supervising psychiatrist under section 118(5).

*[Section 629 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 630 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 631 inserted: No. 25 of 2014 s. 9.]*

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

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

community treatment order before commencement day, a copy of the order is taken to have been given to the patient under section 128(5).

*[Section 632 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 633 inserted: No. 25 of 2014 s. 9.]*

**Division 4 — Treatment of patients**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 634 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 635 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 636 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 637 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 638 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 639 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 640 inserted: No. 25 of 2014 s. 9.]*

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

- (1) This section applies if, before commencement day —
  - (a) an opinion to the effect described in the 1996 Act section 112(1)(a) had been obtained under section 111 of that Act in respect of a patient to whom Part 13 Division 2 applies; and

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

*[Section 641 inserted: No. 25 of 2014 s. 9.]*

**642. Seclusion (1996 Act s. 119)**

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

*[Section 642 inserted: No. 25 of 2014 s. 9.]*

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

- (1) An authorisation to use mechanical bodily restraint that was in force under the 1996 Act section 123 immediately before commencement day is taken to be a bodily restraint order made under section 231(1).

- (2) Notification of a medical practitioner under the 1996 Act section 123(3) of an authorisation to which subsection (1) applies is taken to be notification of a medical practitioner under section 231(4).

*[Section 643 inserted: No. 25 of 2014 s. 9.]*

### **Division 5 — Mental Health Review Board**

*[Heading inserted: No. 25 of 2014 s. 9.]*

#### **Subdivision 1 — President and other members of Board**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

- (1) The person who, immediately before commencement day, held office under the 1996 Act section 126(1)(a) as the President of the Mental Health Review Board is taken to be appointed under section 475 as the President of the Mental Health Tribunal.
- (2) A person who, immediately before commencement day, held office under the 1996 Act section 126(1)(b) as a member of the Mental Health Review Board is taken to be appointed under section 476(1) as a member of the Mental Health Tribunal.
- (3) A person to whom subsection (1) or (2) applies holds office under this Act —
- (a) for the period, beginning on commencement day, that is equal to the balance of the person's term of office under the 1996 Act that remained immediately before commencement day; and
  - (b) otherwise on the same terms and conditions (including as to remuneration) as those on which the person held office under the 1996 Act immediately before commencement day.

*[Section 644 inserted: No. 25 of 2014 s. 9.]*

**Subdivision 2 — Reviews and inquiries**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

- (1) In this section —

***initial order*** means —

- (a) a continued inpatient treatment order to which section 606(1), 611(1) or 625(1) applies; or
  - (b) a continued community treatment order to which section 606(3), 611(3), 616(3), 617(1), 621(3), 622(3) or 623(1) applies.
- (2) This section applies to an initial order that, immediately before commencement day, had not been reviewed under the 1996 Act section 138.
- (3) If, on the day on which the initial order was made, the involuntary patient under the order was an adult, the initial review period under section 386 is taken to be —
- (a) if, immediately before commencement day, the initial order had been in force under the 1996 Act for not more than 7 days — the period of 35 days from commencement day; or
  - (b) if, immediately before commencement day, the initial order had been in force under the 1996 Act for more than 7 days but not more than 21 days — the period of 28 days from commencement day; or
  - (c) if, immediately before commencement day, the initial order had been in force under the 1996 Act for more than 21 days — the period of 14 days from commencement day.
- (4) If, on the day on which the initial order was made, the involuntary patient under the order was a child, the initial review period under section 386 is taken to be —
- (a) if, immediately before commencement day, the initial order had been in force under the 1996 Act for not more



than 7 days — the period of 21 days from commencement day; or

- (b) if, immediately before commencement day, the initial order had been in force under the 1996 Act for more than 7 days but not more than 21 days — the period of 14 days from commencement day; or
- (c) if, immediately before commencement day, the initial order had been in force under the 1996 Act for more than 21 days — the period of 5 days from commencement day.

*[Section 645 inserted: No. 25 of 2014 s. 9.]*

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

- (1) This section applies in relation to a continued involuntary treatment order that had been reviewed under the 1996 Act section 138 or 139 before commencement day.
- (2) In this section —  
***last review day***, for the continued involuntary treatment order, means the day on which the last review of the order was completed under the 1996 Act section 138 or 139.
- (3) If, on the last review day, the involuntary patient under the continued involuntary treatment order was an adult, the first periodic review period under section 387 is taken to be —
  - (a) if the last review day was not more than one month before commencement day — the period of 3 months from commencement day; or
  - (b) if the last review day was more than one month but not more than 3 months before commencement day — the period of 2 months from commencement day; or
  - (c) if the last review day was more than 3 months before commencement day — the period of one month from commencement day.

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

*[Section 646 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 647 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 648 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 649 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 650 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 651 inserted: No. 25 of 2014 s. 9.]*

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

- (1) This section applies if, immediately before commencement day, the Minister had directed the Mental Health Review Board to enquire into a matter under the 1996 Act section 147 but the enquiry had not been completed.
- (2) Despite the repeal of the 1996 Act —
  - (a) the enquiry must be completed as soon as practicable;  
and

- (b) the responsible former Board member under subsection (3) must complete the enquiry.
- (3) For subsection (2)(b), the responsible former Board member is —
  - (a) a person —
    - (i) to whom section 644(2) applies; and
    - (ii) who is nominated by the person referred to in paragraph (b) to complete the enquiry;
  - or
  - (b) if no-one is nominated under paragraph (a)(ii) — the person to whom section 644(1) applies.

*[Section 652 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 653 inserted: No. 25 of 2014 s. 9.]*

**654. Records and proceedings of Mental Health Review Board**

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

*[Section 654 inserted: No. 25 of 2014 s. 9.]*

**Subdivision 3 — Applications to State Administrative Tribunal**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

- (1) This section applies in relation to —
  - (a) an application for a review or leave to apply for a review that, immediately before commencement day, had been made under the 1996 Act section 148A but had not been disposed of; or
  - (b) an application for a determination of a question of law that, immediately before commencement day, had been made under the 1996 Act section 148E but had not been disposed of.
- (2) Despite the repeal of the 1996 Act, an application can be dealt with as if the 1996 Act Part 6 Division 2A and Schedule 2A were still in force.
- (3) In dealing with an application under subsection (2), the State Administrative Tribunal can make any order in relation to the operation of this Act that the Tribunal considers appropriate.

*[Section 655 inserted: No. 25 of 2014 s. 9.]*

**Subdivision 4 — Appeals from State Administrative Tribunal**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

- (1) Despite the repeal of the 1996 Act, an appeal or an application for leave to appeal that, immediately before commencement day, had been made under the 1996 Act section 149 but had not been disposed of can be dealt with as if the 1996 Act Part 6 Division 3 were still in force.

- (2) In dealing with an appeal or application under subsection (1), the Supreme Court can make any order in relation to the operation of this Act that the Court considers appropriate.

*[Section 656 inserted: No. 25 of 2014 s. 9.]*

**Division 6 — Protection of patient's rights**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 657 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 658 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 659 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 660 inserted: No. 25 of 2014 s. 9.]*

**Division 7 — Community support services**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 661 inserted: No. 25 of 2014 s. 9.]*

**Division 8 — Council of Official Visitors**

*[Heading inserted: No. 25 of 2014 s. 9.]*

**662. Matters generally**

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

- (b) a mental health advocate or a member of the advocacy services staff referred to in section 375, as directed by the Chief Mental Health Advocate.

*[Section 662 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 663 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 664 inserted: No. 25 of 2014 s. 9.]*

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

- (1) This section applies if, immediately before commencement day, the Minister had requested a report about a matter under the 1996 Act section 192(2) but no report about the matter had been made to the Minister.



- (2) Despite the repeal of the 1996 Act —
- (a) the report must be made to the Minister under the 1996 Act section 192(2) as soon as practicable; and
  - (b) the responsible COV office holder under subsection (3) continues to hold office, and is entitled to receive from the Chief Mental Health Advocate such assistance as the responsible COV office holder reasonably requires, for the purpose of making the report.
- (3) For subsection (2)(b), the responsible COV office holder is —
- (a) a person —
    - (i) who, immediately before commencement day, held office under the 1996 Act as an official visitor or a person on a panel; and
    - (ii) who is nominated by the person referred to in paragraph (b) to make the report;
  - or
  - (b) if no-one is nominated under paragraph (a)(ii) — the person who, immediately before commencement day, held office under the 1996 Act as the Head of the Council of Official Visitors.

*[Section 665 inserted: No. 25 of 2014 s. 9.]*

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

Despite the repeal of the 1996 Act —

- (a) the person who, immediately before commencement day, held office as the Head of the Council of Official Visitors must make a report under section 192(3) of that Act for the period beginning on 1 July before commencement day and ending on the day before commencement day; and
- (b) that person continues to hold office, and is entitled to receive from the Chief Mental Health Advocate such

assistance as that person reasonably requires, for the purpose of making the report; and

- (c) the Minister must cause a copy of the report to be laid before each House of Parliament under the 1996 Act section 192(4).

*[Section 666 inserted: No. 25 of 2014 s. 9.]*

**667. Records of Council of Official Visitors**

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

*[Section 667 inserted: No. 25 of 2014 s. 9.]*

**Division 9 — Other matters under 1996 Act**

*[Heading inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 668 inserted: No. 25 of 2014 s. 9.]*

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

If, immediately before commencement day, an arrangement to have a person examined had been made under the 1996 Act section 196(1) but the person had not been examined in

accordance with that arrangement, the arrangement is taken to be an arrangement to have the person assessed under section 157(2).

*[Section 669 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 670 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 671 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 672 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 673 inserted: No. 25 of 2014 s. 9.]*

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

Despite the repeal of the 1996 Act —

- (a) the 1996 Act Part 10 Division 5 continues to apply in relation to an inquiry that, immediately before commencement day, had not been completed and reported on to the Minister under the 1996 Act section 207 until the inquiry is completed and reported on under that section; and
- (b) the person appointed under the 1996 Act section 207 to conduct an inquiry to which paragraph (a) applies continues to hold office for the purpose of completing and reporting on the inquiry; and
- (c) the Minister must ensure that the person to whom paragraph (b) applies receives such assistance as that person reasonably requires for the purpose of completing and reporting on the inquiry.

*[Section 674 inserted: No. 25 of 2014 s. 9.]*

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

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

*[Section 675 inserted: No. 25 of 2014 s. 9.]*

**Division 10 — Miscellaneous matters**

*[Heading inserted: No. 25 of 2014 s. 9.]*

**676. Transitional regulations**

- (1) In this section —
  - publication day***, for regulations made under subsection (2), means the day on which those regulations are published in the *Gazette*;
  - specified*** means specified or described in regulations made under subsection (2);

***transitional matter*** —

- (a) means a matter that needs to be dealt with for the purpose of effecting the transition from the provisions of the written laws repealed by Part 28 to the provisions of this Act; and
  - (b) includes a saving or application matter.
- (2) If there is no sufficient provision in this Part for dealing with a transitional matter, the Governor may make regulations prescribing matters —
  - (a) required to be prescribed for the purpose of dealing with the transitional matter; or
  - (b) necessary or convenient to be prescribed for the purpose of dealing with the transitional matter.
- (3) Regulations made under subsection (2) may provide that specified provisions of this Act —
  - (a) do not apply to or in relation to a specified matter; or
  - (b) apply with specified modifications to or in relation to a specified matter.
- (4) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the publication day for those regulations but not earlier than commencement day, the regulations have effect according to their terms.
- (5) If regulations made under subsection (2) contain a provision referred to in subsection (4), the provision does not operate so as —
  - (a) to affect in a manner prejudicial to a person other than the State or an authority of the State the rights of that person existing before the publication day for those regulations; or
  - (b) to impose liabilities on a person other than the State or an authority of the State in respect of an act done or

omission made before the publication day for those regulations.

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

*[Section 676 inserted: No. 25 of 2014 s. 9.]*

**677. Interpretation Act 1984 not affected**

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

*[Section 677 inserted: No. 25 of 2014 s. 9.]*

## **Schedule 1 — Charter of Mental Health Care Principles**

[s. 11, 12, 320(2)(f), 333(3)(d) and 351(1)(b)]

### **Purpose**

- A. The Charter of Mental Health Care Principles is a rights-based set of principles that mental health services must make every effort to comply with in providing treatment, care and support to people experiencing mental illness.
- B. The Charter is intended to influence the interconnected factors that facilitate recovery from mental illness.

### **Principle 1: Attitude towards people experiencing mental illness**

A mental health service must treat people experiencing mental illness with dignity, equality, courtesy and compassion and must not discriminate against or stigmatise them.

### **Principle 2: Human rights**

A mental health service must protect and uphold the fundamental human rights of people experiencing mental illness and act in accordance with the national and international standards that apply to mental health services.

### **Principle 3: Person-centred approach**

- 3.1 A mental health service must uphold a person-centred focus with a view to obtaining the best possible outcomes for people experiencing mental illness, including by recognising life experiences, needs, preferences, aspirations, values and skills, while delivering goal-oriented treatment, care and support.
- 3.2 A mental health service must promote positive and encouraging recovery focused attitudes towards mental illness, including that people can and do recover, lead full and productive lives and make meaningful contributions to the community.

### **Principle 4: Delivery of treatment, care and support**

A mental health service must be easily accessible and safe and provide people experiencing mental illness with timely treatment, care and

support of high quality based on contemporary best practice to promote recovery in the least restrictive manner that is consistent with their needs.

**Principle 5: Choice and self-determination**

A mental health service must involve people in decision-making and encourage self-determination, cooperation and choice, including by recognising people's capacity to make their own decisions.

**Principle 6: Diversity**

A mental health service must recognise, and be sensitive and responsive to, diverse individual circumstances, including those relating to gender, sexuality, age, family, disability, lifestyle choices and cultural and spiritual beliefs and practices.

**Principle 7: People of Aboriginal or Torres Strait Islander descent**

A mental health service must provide treatment and care to people of Aboriginal or Torres Strait Islander descent that is appropriate to, and consistent with, their cultural and spiritual beliefs and practices and having regard to the views of their families and, to the extent that it is practicable and appropriate to do so, the views of significant members of their communities, including elders and traditional healers, and Aboriginal or Torres Strait Islander mental health workers.

**Principle 8: Co-occurring needs**

A mental health service must address physical, medical and dental health needs of people experiencing mental illness and other co-occurring health issues, including physical and intellectual disability and alcohol and other drug problems.

**Principle 9: Factors influencing mental health and wellbeing**

A mental health service must recognise the range of circumstances, both positive and negative, that influence mental health and wellbeing, including relationships, accommodation, recreation, education, financial circumstances and employment.

**Principle 10: Privacy and confidentiality**

A mental health service must respect and maintain privacy and confidentiality.



**Principle 11: Responsibilities and dependants**

A mental health service must acknowledge the responsibilities and commitments of people experiencing mental illness, particularly the needs of their children and other dependants.

**Principle 12: Provision of information about mental illness and treatment**

A mental health service must provide, and clearly explain, information about the nature of the mental illness and about treatment (including any risks, side effects and alternatives) to people experiencing mental illness in a way that will help them to understand and to express views or make decisions.

**Principle 13: Provision of information about rights**

A mental health service must provide, and clearly explain, information about legal rights, including those relating to representation, advocacy, complaints procedures, services and access to personal information, in a way that will help people experiencing mental illness to understand, obtain assistance and uphold their rights.

**Principle 14: Involvement of other people**

A mental health service must take a collaborative approach to decision making, including respecting and facilitating the right of people experiencing mental illness to involve their family members, carers and other personal support persons in planning, undertaking, evaluating and improving their treatment, care and support.

**Principle 15: Accountability and improvement**

A mental health service must be accountable, committed to continuous improvement and open to solving problems in partnership with all people involved in the treatment, care and support of people experiencing mental illness, including their family members, carers and other personal and professional support persons.

## **Schedule 2 — Notifiable events**

[s. 138(2)]

**Table**

<b>Provision</b>	<b>Description of event</b>	<b>Person responsible</b>
s. 28(8)	The making of an order under s. 28	The practitioner who makes the order
s. 28(12)	The release of a person because of s. 28(10) or (11)	A medical practitioner or authorised mental health practitioner
s. 29(4)	The making of a transport order under s. 29(1)	The practitioner who makes the order
s. 31(7)	The release of a person because of s. 31(6)	The practitioner who revokes the referral
s. 55(6)	The making of an order under s. 55(1)	The person in charge of the authorised hospital
s. 61(5)	The making of an order under s. 61(1)	The psychiatrist who makes the order
s. 66(5)	The making of a transfer order under s. 66(1)	The treating psychiatrist
s. 68(7)	The release of a person because of s. 68(6)	The person in charge of the authorised hospital
s. 89(6)	The release of a person because of an order made under s. 89(2)(b) or (c)	The person in charge of the hospital
s. 90(5)	The making of an order under s. 90(1)	The psychiatrist who makes the order

<b>Provision</b>	<b>Description of event</b>	<b>Person responsible</b>
s. 91(5)	The making of a transfer order under s. 91(2)	The psychiatrist who makes the order
s. 93(4)	The expiry of an inpatient treatment order	The person in charge of the hospital at which the involuntary inpatient was being detained
s. 97(3)	The absence of a person without leave from a hospital or other place	The person in charge of the hospital or other place
s. 105(13)	The making of an order under s. 105(1)	The psychiatrist who makes the order
s. 106(4)	The making of an order under s. 106(1)	The psychiatrist who makes the order
s. 110(5)	The making of an order under s. 110(2)	The psychiatrist who makes the order
s. 120(7)	The making of an order under s. 120(2)	The supervising psychiatrist
s. 123(8)	The making of an order under s. 123(1)	The supervising psychiatrist
s. 124(7)	The release of a person because of s. 124(6)	The person in charge of the authorised hospital
s. 129(5)	The making of a transport order under s. 129(2)	The practitioner who makes the order
s. 130(5)	The release of a person because of s. 130(4)	The person in charge of the place

<b>Provision</b>	<b>Description of event</b>	<b>Person responsible</b>
s. 131(8)	The making of an order under s. 131(2)	The supervising psychiatrist
s. 242(5)	The provision of urgent non-psychiatric treatment	The person in charge of the authorised hospital
s. 555(4)	The making of a transfer order under s. 555(1)	The person in charge of the hospital
s. 557(6)	The making of a transfer approval order under s. 557(1)	The person in charge of the hospital

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## Notes

This is a compilation of the *Mental Health Act 2014* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. ~~For provisions that have not yet come into operation see the uncommenced provisions table.~~

## Compilation table

Short title	Number and year	Assent	Commencement
<i>Mental Health Act 2014</i>	24 of 2014	3 Nov 2014	s. 1 and 2: 3 Nov 2014 (see s. 2(a)); Act other than s. 1 and 2: 30 Nov 2015 (see s. 2(b) and <i>Gazette</i> 13 Nov 2015 p. 4632)
<i>Mental Health Legislation Amendment Act 2014 Pt. 3</i>	25 of 2014	3 Nov 2014	30 Nov 2015 (see s. 2(b) and <i>Gazette</i> 13 Nov 2015 p. 4632)
<i>Mental Health Amendment Act 2015</i>	36 of 2015	23 Nov 2015	s. 1 and 2: 23 Nov 2015 (see s. 2(a)); s. 3-8: 30 Nov 2015 (see s. 2(b) and (c) and <i>Gazette</i> 13 Nov 2015 p. 4632)
<b>Reprint 1: The <i>Mental Health Act 2014</i> as at 15 Apr 2016</b> (includes amendments listed above)			
<i>Health Services Act 2016</i> s. 296	11 of 2016	26 May 2016	1 Jul 2016 (see s. 2(b) and <i>Gazette</i> 24 Jun 2016 p. 2291)
<i>Local Government Legislation Amendment Act 2016 Pt. 3 Div. 24</i>	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and <i>Gazette</i> 20 Jan 2017 p. 648)
<i>Health Practitioner Regulation National Law (WA) Amendment Act 2018</i> s. 114	4 of 2018	19 Apr 2018	1 Dec 2018 (see s. 2(d) and <i>Gazette</i> 13 Nov 2018 p. 4427-8)

**Uncommenced provisions table**

To view the text of the uncommenced provisions see *Acts as passed on the WA Legislation website*.

Short title	Number and year	Assent	Commencement
<i>Legal Profession Uniform Law Application Act 2022</i> s. 424	9- of- 2022	14 Apr 2022	<del>To be proclaimed</del> <a href="#">1 Jul 2022</a> (see s. 2(c)) <del>and SL 2022/113</del> <a href="#">cl. 2</a>

**Other notes**

<sup>1M</sup> ~~The COVID-19 Response and Economic Recovery Omnibus Act 2020 Part 4 Division 2 modifies sections 48 and 79 of the Act. The modified sections are identified by the superscript 1M appearing after the section number. The modifications have effect while the Mental Health Infection Control Directions, or any replacement directions, have effect.~~