

**NORTHERN TERRITORY OF AUSTRALIA**

**MENTAL HEALTH AND RELATED SERVICES ACT**

As in force at 22 March 2001

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 22 March 2001

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## MENTAL HEALTH AND RELATED SERVICES ACT

**An Act to provide for the care, treatment and protection of people with mental illness and for related purposes**

### **Part 1            Preliminary**

#### **1            Short title**

This Act may be cited as the *Mental Health and Related Services Act*.

#### **2            Commencement**

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

#### **3            Objects**

The objects of this Act are:

- (a) to provide for the care, treatment and protection of people with mental illness while at the same time protecting their civil rights;
- (b) to establish provisions for the care, treatment and protection of people with mental illness that are consistent with the United Nations' Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, the Australian Health Ministers' Mental Health Statement of Rights and Responsibilities and the National Mental Health Plan;
- (c) to establish provisions for the review of the voluntary and involuntary admission of people into approved treatment facilities and the treatment provided to people in approved treatment facilities;
- (d) to establish provisions for obtaining informed consent and the authorisation of treatment;
- (e) to establish provisions for emergency detention and treatment;

- (f) to provide regulation of specific forms of treatment;
- (g) to establish provisions for the administration of involuntary treatment in the community;
- (h) to mainstream and integrate, as far as possible, provision for the administration and review of admission, hospitalisation and treatment of prisoners;
- (j) to establish the right of people receiving or seeking psychiatric treatment or care to be given oral and written explanations of their legal rights and entitlements under this Act in a form and language that they understand;
- (k) to establish the Mental Health Review Tribunal to conduct reviews and to hear appeals relating to people subject to this Act;
- (m) to establish the right for people who are subject to this Act, their relatives, friends and representatives, and any other people with a genuine interest in particular people who are subject to this Act, to make a complaint;
- (n) to provide for approved treatment facilities and approved treatment agencies to establish accessible internal complaints procedures;
- (p) to affirm the right of people with mental illness to complain to independent complaint bodies established by or under other legislation;
- (q) to provide for a principal community visitor, community visitors and community visitor panels with inquiry, complaints, investigation, visiting, inspection, advocacy and reporting powers and functions;
- (r) to provide for the registration of mental health orders made outside the Territory;
- (s) to provide a procedure for approved treatment facilities and approved treatment agencies to be approved;
- (t) to recognise the continuing appropriate care provided by relatives and friends and other non-professional care givers in the community, and to ensure that therapeutic alliances involving appropriate non-professionals are recognised.

## 4 Definitions

In this Act, unless the contrary intention appears:

**Aboriginal health worker** means a practitioner, within the meaning of the *Health Practitioners and Allied Professionals Registration Act*, registered in the practice of Aboriginal health work under that Act.

**Agency** means the Agency responsible under the Minister for the administration of this Act.

**ambulance officer** means a person:

- (a) employed as an ambulance officer, or engaged as a volunteer ambulance officer, by St John Ambulance Australia (NT) Inc. at the level of qualified ambulance officer or above; or
- (b) appointed under section 24.

**approved** means approved by the Secretary in writing.

**approved treatment agency** means a body or organisation declared under section 20(1)(b).

**approved temporary treatment facility** means a place or premises or a part of a place or premises declared under section 20(1)(b).

**approved treatment facility** means a place or premises or a part of a place or premises declared under section 20(1)(a).

**authorised psychiatric practitioner** means a person appointed as an authorised psychiatric practitioner under section 22.

**Chief Health Officer** means the Chief Health Officer appointed under the *Public Health Act*.

**Committee** means the Approved Procedures and Quality Assurance Committee declared under section 145.

**designated mental health practitioner** means a person appointed to be a designated mental health practitioner under section 23.

**Director of Correctional Services** has the same meaning as in the *Prisons (Correctional Services) Act*.

**harm** includes financial harm and loss of reputation.

**imminent**, in the context of a person causing harm to himself or herself, to a particular person or to any other person, means that because of the person's condition there is a high probability that he or she will, or within the near future will, cause the harm.

**informed consent** has the meaning given in section 7.

**involuntary patient** means a person has been admitted to an approved treatment facility under Part 6.

**mental illness** has the meaning given in section 6.

**mentally disturbed** means behaviour of a person that is so irrational as to justify the person being temporarily detained under this Act.

**Ombudsman** means the Ombudsman appointed under the *Ombudsman (Northern Territory) Act* and includes an acting Ombudsman.

**primary care provider** means a person who because of his or her relationship with a person, whether that is through kinship, familiarity, marriage or a de-facto relationship, has a sense of responsibility for that person and provides care and support for that person, whether or not the person lives with that person.

**President** means the President of the Tribunal appointed under section 118(7).

**prison officer** has the same meaning as in the *Prisons (Correctional Services) Act*.

**prisoner** has the same meaning as in the *Prisons (Correctional Services) Act*.

**psychologist** means a practitioner, within the meaning of the *Health Practitioners and Allied Professionals Registration Act*, registered in the practice of psychology under that Act.

**registered nurse** means a person who is registered as a nurse under the *Nursing Act*.

**representative**, means a person nominated by a person who is subject to this Act to receive information and to represent the person's interests.

**Secretary** means the Chief Executive Officer, within the meaning of the *Public Sector Employment and Management Act*, of the Agency.

**social worker** means a person who is eligible for full membership of the Australian Association of Social Workers.

**treatment**, in relation to a mental illness or mental disturbance, means things done in the course of the exercise of professional skills:

- (a) to remedy the mental illness or mental disturbance; or
- (b) to lessen the effects or the pain and suffering that the mental illness or mental disturbance causes.

**Tribunal** means the Mental Health Review Tribunal established by section 118.

## 5 Act binds Crown

This Act binds the Crown not only in right of the Territory but also, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

## 6 Mental illness

- (1) In this Act, **mental illness** means a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person in one or more of the areas of thought, mood, volition, perception, orientation or memory and is characterised:
  - (a) by the presence of at least one of the following symptoms:
    - (i) delusions;
    - (ii) hallucinations;
    - (iii) serious disorders of the stream of thought;
    - (iv) serious disorders of thought form;
    - (v) serious disturbances of mood; or
  - (b) by sustained or repeated irrational behaviour that may be taken to indicate the presence of at least one of the symptoms referred to in paragraph (a).
- (2) A determination that a person has a mental illness is only to be made in accordance with internationally accepted clinical standards and concordant with the current edition of the World Health Organisation, International Classification of Mental and Behavioural Disorders, Clinical Descriptions and Diagnostic Guidelines or the American Psychiatric Association Diagnostic and Statistical Manual

of Mental Disorders.

- (3) A person is not to be considered to have a mental illness merely because he or she:
- (a) expresses or refuses or fails to express a particular political or religious opinion or belief, a particular philosophy or a particular sexual preference or sexual orientation;
  - (b) engages, or refuses or fails to engage, in a particular political, religious or cultural activity;
  - (c) engages, or has engaged, in sexual promiscuity, immoral or illegal conduct or anti-social behaviour;
  - (d) has a sexual disorder;
  - (e) is intellectually disabled;
  - (f) uses alcohol or other drugs;
  - (g) has a personality disorder or a habit or impulse disorder;
  - (h) has, or has not, a particular political, economic or social status;
  - (j) communicates, or refuses or fails to communicate, or behaves or refuses or fails to behave, in a manner consistent with his or her cultural beliefs, practices or mores;
  - (k) is, or is not, a member of a particular cultural, racial or religious group;
  - (m) is involved, or has been involved, in family or professional conflict;
  - (n) has been treated for mental illness or has been detained in a hospital that provides treatment of mental illness;
  - (p) has been admitted as an involuntary patient on the grounds of mental disturbance; or
  - (q) has acquired brain damage.

## **7 Informed consent**

- (1) A person cannot give informed consent under this Act unless this section is complied with, and any attempt to waive or circumvent the requirements of this section is of no effect.

- (2) A person gives informed consent under this Act:
- (a) when the person's consent is freely and voluntarily given without any inducement being offered;
  - (b) the person is capable of understanding the effects of giving consent; and
  - (c) the person communicates his or her consent on the approved form.
- (3) A person can give informed consent only when he or she has been given:
- (a) a clear explanation of the assessment and possible diagnosis, the nature of the proposed treatment, including sufficient information about the type of treatment, its purpose and likely duration to permit the person to make a balanced judgment regarding undertaking it;
  - (b) an adequate description, without concealment, exaggeration or distortion, of the benefits, discomforts and risks associated with the treatment;
  - (c) an adequate description of any appropriate alternative form of treatment that is reasonably available;
  - (d) a clear answer to all relevant questions asked by the person (and the answer has been understood by the person);
  - (e) advice that the treatment may be refused or consent may be withdrawn at any time while the treatment is being undertaken;
  - (f) advice that independent legal or medical advice may be obtained in relation to the treatment before giving consent (and reasonable assistance is provided to obtain that advice, if requested);
  - (g) advice of all rights of review and appeal under this Act;
  - (h) advice of any relevant financial advantage that may be gained by a medical practitioner proposing the treatment and by the approved treatment facility or approved treatment agency where the treatment is to be undertaken;
  - (j) advice of any relevant research relationship between a medical practitioner proposing the treatment and the approved treatment facility or approved treatment agency where the treatment is to be undertaken; and

- (k) explanations, descriptions and advice in a manner or form that the person is used to communicating in (and due regard is to be given to age, culture, disability, impairment and any other factors that may influence the person understanding the explanation).
- (4) A person must be given adequate time to consider the information provided under subsection (3) before being asked to give his or her informed consent.
- (5) A person who is unable to communicate adequately in English but who is able to communicate adequately in another language is to be assisted, as far as is practicable, by a competent interpreter.
- (6) A person whose informed consent is being sought may request that another person be present while the informed consent is obtained.
- (7) The person-in-charge of the approved treatment facility or approved treatment agency at which treatment is proposed to be performed on a person must ensure that this section is complied with.

## **8 Interpretation of Act**

This Act is to be interpreted and a power or function conferred or imposed by this Act is to be exercised or performed so that:

- (a) a person who has a mental illness receives the best possible care and treatment in the least restrictive and least intrusive environment enabling the care and treatment to be effectively given;
- (b) in providing for the care and treatment of a person who has a mental illness and the protection of members of the public, any restriction on the liberty of the person and any other person who has a mental illness, and any interference with their rights, dignity, privacy and self respect is kept to the minimum necessary in the circumstances;
- (c) the objective of treatment is directed towards the purpose of preserving and enhancing personal autonomy;
- (d) the administration of medication to a person serves the best interests and health needs of the person and is administered only for therapeutic or diagnostic purposes and not as punishment or for the convenience of others;
- (e) medication to be administered to a person is prescribed only by persons who are authorised by law to do so;

- (f) a person who has a mental illness who needs language, interpreter, advocacy, legal or other services to assist him or her in communicating has access to those services; and
- (g) the assessment, care, treatment and protection of an Aboriginal person or a person from a non-English speaking background who has a mental illness is appropriate to, and consistent with, the person's cultural beliefs, practices and mores.

## **Part 2                    Fundamental principles**

### **9                    Principles relating to provision of treatment and care**

When providing treatment and care to a person who has a mental illness the following principles apply:

- (a) the person is to be provided with timely and high quality treatment and care in accordance with professionally accepted standards;
- (b) where possible, the person is to be treated in the community;
- (c) as far as possible, the person's treatment and care is to be designed to assist the person to live, work and participate in the community and to promote and assist self-reliance;
- (d) the person is to be provided with appropriate and comprehensive information about his or her mental illness, proposed and alternative treatment and services available to meet the person's needs;
- (e) where possible, the person is to be treated near where he or she ordinarily resides or where relatives or friends of the person reside;
- (f) as far as possible, the person's treatment and any service to be developed for the person is appropriate having regard to the age and gender of the person;
- (g) as far as possible, the person is to be involved in the development of any ongoing treatment plan or any discharge planning;
- (h) the person is to be given medication only for therapeutic or diagnostic purposes and not as a punishment or for the convenience of others;

- (j) except as provided by this Act, the person is not to be given treatment without his or her consent;
- (k) the person's treatment is to be carried out, wherever practicable, within a multi-disciplinary framework;
- (m) the person's treatment and care is to be based on an individually developed plan that is discussed with the person, reviewed regularly and revised, as necessary, and is provided by qualified professional persons;
- (n) where the person is from a non-English speaking background, the person's treatment and care is, as far as possible, to be appropriate to and consistent with the person's cultural beliefs, practices and mores, taking into account the views of the person's family and community;
- (p) any assessment of the person to determine whether he or she needs to be admitted to an approved treatment facility is to be conducted in the least restrictive manner and environment possible.

## **10 Principles relating to involuntary admission and treatment**

When admitting and treating a person as an involuntary patient the following principles apply:

- (a) the person should only be admitted after every effort to avoid the person being admitted as an involuntary patient has been taken;
- (b) where the person needs to be taken to an approved treatment facility or into custody for assessment, the assistance of a member of the Police Force is to be sought only as a last resort and there is no other means of taking the person to the approved treatment facility or into custody;
- (c) involuntary treatment is to be for a brief period, reviewed regularly and is to cease as soon as the person no longer meets the criteria for involuntary admission;
- (d) where the person is from a non-English speaking background, involuntary treatment is, where possible, to be provided by health service providers who are from the same non-English speaking background.

**11 Principles related to admission, care and treatment of  
Aborigines and Torres Strait Islanders**

When providing treatment and care to a person of Aboriginal or Torres Strait Islander background the following principles apply:

- (a) as far as possible, the person's treatment and care is to be appropriate to and consistent with the person's cultural beliefs, practices and mores, taking into account the views of the person's family and community;
- (b) where the person is an Aborigine, the involuntary treatment is, where possible, to be provided in collaboration with an Aboriginal health worker.

**12 Principles relating to rights of carers**

When treatment and care is provided to a person the following principles apply:

- (a) as far as practicable and appropriate, a carer of the person is to be provided with relevant information about the person's rights and entitlements under this Act, how those rights and entitlements may be accessed and exercised, the grounds for the person's admission, the section under which the person was admitted, any proposed or alternative treatment and the services available to meet the person's needs;
- (b) as far as practicable, a carer of the person must be consulted and involved in the development of any ongoing treatment plan and any discharge planning for the person.

**13 Principles relating to rights and conditions in approved  
treatment facilities**

When a person who has a mental illness is being treated in an approved treatment facility the following principles apply:

- (a) the person's legal rights and his or her right to privacy and to religious freedom are to be respected;
- (b) the confidentiality of information relating to the person is to be respected;
- (c) subject to this Act, the person's freedom of lawful communication (which includes the freedom to communicate with other persons in the approved treatment facility, to send and receive uncensored private communications, to receive visits from his or her counsel or representative in private, to receive visits from other people at all reasonable times and to

have access to postal and telephone services and to newspapers, radio and television) is to be ensured;

- (d) the person's living conditions are to be as close as practicable to those usually experienced by people of a similar age living in the general community;
- (e) subject to this Act, the person is to have access to his or her personal records;
- (f) the person's right to make a complaint under an Act in respect of his or her treatment under this Act is not affected.

### **Part 3                    Criteria for involuntary admission**

#### **14                    Involuntary admission on grounds of mental illness**

The criteria for the involuntary admission of a person on the grounds of mental illness are that:

- (a) the person has a mental illness;
- (b) as a result of the mental illness:
  - (i) the person requires treatment that is available at an approved treatment facility;
  - (ii) the person:
    - (A) is likely to cause imminent harm to himself or herself, a particular person or any other person; or
    - (B) is likely to suffer serious mental or physical deterioration,unless he or she receives the treatment; and
  - (iii) the person is not capable of giving informed consent to the treatment or has unreasonably refused to consent to the treatment; and
- (c) there is no less restrictive means of ensuring that the person receives the treatment.

**15 Involuntary admission on grounds of mental disturbance**

The criteria for the involuntary admission of a person on the grounds of mental disturbance are that:

- (a) the person does not fulfil the criteria for involuntary admission on the grounds of mental illness;
- (b) the person's behaviour is, or within the immediately preceding 48 hours has been, so irrational as to lead to the conclusion that:
  - (i) the person is experiencing or exhibiting a severe impairment of or deviation from his or her customary or everyday ability to reason and function in a socially acceptable and culturally appropriate manner; and
  - (ii) the person is behaving in an abnormally aggressive manner or is engaging in seriously irresponsible conduct that justify a determination that the person requires psychiatric assessment, treatment or therapeutic care that is available at an approved treatment facility;
- (c) unless the person receives treatment or care at an approved treatment facility, he or she:
  - (i) is likely to cause imminent harm to himself or herself, to a particular person or to any other person;
  - (ii) will represent a substantial danger to the general community; or
  - (iii) is likely to suffer serious mental or physical deterioration;
- (d) the person is not capable of giving informed consent to the treatment or care or has unreasonably refused to consent to the treatment or care; and
- (e) there is no less restrictive means of ensuring that the person receives the treatment or care.

**16 Involuntary treatment in community**

The criteria for the involuntary treatment or care of a person in the community are:

- (a) the person has a mental illness;

- (b) as a result of the mental illness:
  - (i) the person requires treatment;
  - (ii) the person:
    - (A) is likely to cause imminent harm to himself or herself, a particular person or any other person; or
    - (B) is likely to suffer serious mental or physical deterioration,unless he or she receives treatment or care; and
  - (iii) the person is not capable of giving informed consent to the treatment or care or has unreasonably refused to consent to the treatment or care; and
- (c) the treatment or care is able to be provided by a community management plan that has been prepared and is capable of being implemented.

## **Part 4 Administration**

### **17 Powers and functions of Secretary**

- (1) The functions of the Secretary, in addition to the functions specified by or under this Act, are:
  - (a) to oversight the operations of this Act; and
  - (b) to ensure that people receiving treatment from the Agency are treated and cared for in accordance with this Act.
- (2) The Secretary has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of his or her functions.
- (3) The Secretary may, by written notice to a person, direct that a practice under, or interpretation of, this Act be observed or carried out.
- (4) A person must not contravene or fail to comply with a direction given under subsection (3).

Penalty: \$5,000.

**18 Approved procedures**

- (1) The Secretary may approve procedures, not inconsistent with this Act, to be used in the administration of this Act.
- (2) A person must not contravene or fail to comply with the procedures approved under subsection (1).

**19 Delegation**

- (1) The Minister, Secretary, Chief Health Officer or the principal community visitor may delegate to a person any of his or her powers and functions under this Act or any other Act, other than this power of delegation.
- (2) A delegation under this section may be to a named person or to a person from time to time holding, acting in or performing the duties of an office, designation or position.
- (3) A power or function delegated under this section, when exercised or performed by the delegate, is to be taken to have been exercised or performed by the Minister, Secretary, Chief Health Officer or principal community visitor, as the case may be.
- (4) A delegation under this section:
  - (a) is to be in writing; and
  - (b) does not prevent the exercise of a power or the performance of a function by the Minister, Secretary, Chief Health Officer or principal community visitor.

**20 Approved treatment facilities and approved treatment agencies**

- (1) The Minister may, by notice in the *Gazette*, declare:
  - (a) a place or premises, or a part of a place or premises, to be an approved treatment facility;
  - (b) a place or premises, or a part of a place or premises, to be an approved temporary treatment facility where persons may be detained as involuntary patients for not longer than 72 hours; or
  - (c) a body or organisation to be an approved treatment agency.
- (2) The Minister must not make a declaration under subsection (1)(a) or (b) unless he or she has received a report from the Chief Health Officer that the place or premises, or the part of the place or premises, has conditions and levels of staff sufficient to provide an

appropriate standard of treatment and care of persons admitted as involuntary patients under this Act.

- (3) The Minister must not make a declaration under subsection (1)(c) unless he or she has received a report from the Chief Health Officer that the body or organisation has conditions and levels of staff sufficient to provide an appropriate standard of treatment and care under this Act.
- (4) A declaration under subsection (1) remains in force for 3 years.

## **21 Persons-in-charge of approved treatment facilities and agencies**

- (1) The Secretary must, in writing, appoint a person to be the person-in-charge of each approved treatment agency and each approved treatment facility.
- (2) The person-in-charge of an approved treatment agency or an approved treatment facility is responsible for the care and welfare of persons receiving treatment and care at the approved treatment facility or from the approved treatment agency.

## **22 Authorised psychiatric practitioners**

- (1) The Secretary may, in writing, appoint a person to be an authorised psychiatric practitioner.
- (2) A person is not to be appointed an authorised psychiatric practitioner unless the person:
  - (a) is entitled under a law of a State or Territory of the Commonwealth to practise as a specialist in the medical specialty of psychiatry;
  - (b) has qualifications that are recognised by the Royal Australian and New Zealand College of Psychiatrists as entitling the person to fellowship of the College;
  - (c) is employed by the Commonwealth, a State or Territory of the Commonwealth, or an agency or authority of the Commonwealth, a State or Territory, as a specialist or consultant in the medical speciality of psychiatry; or
  - (d) is employed by the Commonwealth, a State or Territory of the Commonwealth, or an agency or authority of the Commonwealth, a State or Territory of the Commonwealth, as a psychiatrist or psychiatric registrar.

**23 Designated mental health practitioners**

- (1) The person-in-charge of an approved treatment agency or approved treatment facility may apply to the Secretary to have a person employed by the agency or at the facility appointed as a designated mental health practitioner.
- (2) On receiving an application under subsection (1) the Secretary may appoint or refuse to appoint the person.
- (3) A person cannot to be appointed as a designated mental health practitioner unless he or she:
  - (a) is a social worker, psychologist, registered nurse, an occupational therapist, Aboriginal health worker or ambulance officer;
  - (b) has not less than 2 years approved clinical experience; and
  - (c) has successfully completed an approved training and orientation course.
- (4) The appointment of a person as a designated mental health practitioner remains in force only while the person remains employed by the approved treatment agency or at the approved treatment facility referred to in subsection (1).

**24 Ambulance officers**

The Chief Health Officer may appoint a person who has qualification and experience that the Chief Health Officer considers appropriate to be an ambulance officer.

**Part 5 Voluntary admissions****25 Voluntary admission**

- (1) A person who is 14 or over may apply to be admitted to an approved treatment facility as a voluntary patient.
- (2) A parent or guardian of a person who is under 18 may apply to have the person admitted to an approved treatment facility as a voluntary patient.
- (3) A medical practitioner employed by an approved treatment agency or at an approved treatment facility must examine the person and may admit the person as a voluntary patient if satisfied, following the examination, that the person has given informed consent to his or her admission.

- (4) An authorised psychiatric practitioner must examine a person admitted under subsection (3) not later than 24 hours after the person is admitted.
- (5) If the medical practitioner who examines a person under subsection (3) is an authorised psychiatric practitioner, he or she cannot examine the person under subsection (4).
- (6) The authorised psychiatric practitioner may confirm the admission of the person as a voluntary patient if satisfied, following the examination under subsection (3), that the person has given informed consent to his or her admission.
- (7) An authorised psychiatric practitioner who is not able to form a view as to whether a person is capable of giving informed consent to his or her admission:
  - (a) may confirm the admission of the person; and
  - (b) must apply to the Tribunal for it to determine the person's capacity to give informed consent as soon as practicable after confirming the admission.
- (8) A medical practitioner must refuse to admit a person as a voluntary patient and an authorised psychiatric practitioner must refuse to confirm the admission of a person unless the medical practitioner or authorised psychiatric practitioner is satisfied that the person is likely to benefit from being admitted.
- (9) On refusing to admit a person or to confirm the admission of a person under this section, the medical practitioner or authorised psychiatric practitioner:
  - (a) must inform the person of the grounds of the decision and that the person has a right to appeal to the Tribunal; and
  - (b) must explain the appeal procedure to the person.

## **26 Admission of persons under 18 as voluntary patients**

- (1) A person who is under 18 is not to be admitted as a voluntary patient unless the person can be cared for and treated in a manner that gives due regard to the person's age, culture, gender and maturity and, where appropriate and possible, separately from adults.

- (2) Where a person who is under 18 is admitted as a voluntary patient, the medical practitioner must:
  - (a) take all reasonable steps to inform the person's parents or guardian that the person has been admitted as soon as practicable after the admission; or
  - (b) inform an authorised person not later than 48 hours after the admission, where the medical practitioner believes, on reasonable grounds, that it is not in the best interests of the person to inform his or her parents or guardian.
- (3) In this section, **authorised person** has the meaning it has in the *Community Welfare Act*.

## **27 Admission of persons under guardianship as voluntary patients**

- (1) A guardian of a person who has power under the *Adult Guardianship Act* to consent to any health care that is in the best interest of the person may apply to have the person admitted to an approved treatment facility as a voluntary patient.
- (2) Not later than 24 hours after the application is made, an authorised psychiatric practitioner must examine the person and must not admit the person unless satisfied that the person:
  - (a) is willing to be admitted;
  - (b) does not fulfil the criteria for admission as an involuntary patient; and
  - (c) is likely to benefit from being admitted.
- (3) On refusing to admit the person, the authorised psychiatric practitioner:
  - (a) must inform the guardian of the grounds of the decision and that the person has a right to appeal to the Tribunal; and
  - (b) must explain the appeal procedure to the guardian.

## **28 Notification of admission**

Where a person remains as a voluntary patient in an approved treatment facility for a continuous period of 3 months, the person-in-charge of the approved treatment facility must notify:

- (a) the Secretary; and

- (b) the Tribunal,  
of the length of time the person has been admitted.

## **29 Discharge of voluntary patients**

- (1) Subject to section 30, a person admitted as a voluntary patient may leave the approved treatment facility at any time.
- (2) A person must be informed of his or her right to leave the approved treatment facility on being admitted as a voluntary patient.
- (3) An authorised psychiatric practitioner must discharge a person admitted as a voluntary patient if of the opinion that:
  - (a) it is in the person's best interest to do so; or
  - (b) the person will not obtain any benefit by prolonging his or her admission.
- (4) A person who is discharged under subsection (3) must leave the approved treatment facility as soon as practicable after being informed of his or her discharge.

## **30 Detention for 6 hours**

- (1) A medical practitioner or the senior registered nurse on duty at an approved treatment facility may detain a person admitted as a voluntary patient for up to 6 hours if he or she believes, due to the condition of the person deteriorating since his or her admission or from information obtained, that the person may fulfil the criteria for admission as an involuntary patient.
- (2) As soon as practicable after detaining a person under subsection (1), the medical practitioner or senior registered nurse must:
  - (a) notify an authorised psychiatric practitioner for the purposes of the person being examined under section 38; and
  - (b) enter the reasons for detaining the person in the person's clinical file.
- (3) Reasonable force may be used to detain a person under this section and, when necessary, the person may be kept in seclusion while being detained.
- (4) Section 62 applies in relation to a person kept in seclusion under subsection (3).

**31            Powers of ambulance officers to detain for 6 hours**

- (1) An ambulance officer may detain a person being conveyed in an ambulance for up to 6 hours where the ambulance officer believes, on reasonable grounds, that the person may fulfil the criteria for involuntary admission.
- (2) When detaining a person under subsection (1), an ambulance officer may use reasonable measures, including the use of restraints, on the person:
  - (a) to prevent the person causing imminent harm to himself or herself, a particular person or any other person;
  - (b) to prevent behaviour of the person that is likely to cause imminent harm to himself or herself, a particular person or any other person;
  - (c) to prevent further physical or mental deterioration of the person; or
  - (d) to relieve acute symptomatology.
- (3) An ambulance officer who detains a person under subsection (1):
  - (a) must convey the person to the nearest approved treatment facility or, if that is not practicable, to the nearest hospital, as soon as practicable after the person is detained; and
  - (b) on arriving at the approved treatment facility or hospital, must complete the approved form and deliver it to an authorised psychiatric practitioner.

**Part 6            Involuntary admissions**

**Division 1        Assessment**

**32            Request for assessment**

- (1) A person may request that he or she be assessed to determine whether he or she is in need of treatment under this Act.
- (2) A person with a genuine interest in or with a real and immediate concern for the welfare of another person may request that that person be assessed to determine whether the person is in need of treatment under this Act.

- (3) A request under this section may be made to a medical practitioner, an authorised psychiatric practitioner or a designated mental health practitioner.
- (4) Subject to subsection (5), the medical practitioner, an authorised psychiatric practitioner or designated mental health practitioner must assess the person and determine whether the person is in need of treatment under this Act.
- (5) The medical practitioner, an authorised psychiatric practitioner or designated mental health practitioner may decline to assess a person where he or she is not satisfied that there are sufficient grounds to conclude that the person is in need of treatment under this Act.

### **33            Assessment to be conducted**

- (1) A medical practitioner, an authorised psychiatric practitioner or designated mental health practitioner must assess and determine whether a person is in need of treatment under this Act as soon as practicable after the person is taken to the medical practitioner, authorised psychiatric practitioner or designated mental health practitioner in accordance with this Act to be assessed.
- (2) An assessment under subsection (1) does not have to be conducted at an approved treatment facility or approved treatment agency.

### **34            Recommendation for psychiatric examination**

- (1) A medical practitioner, an authorised psychiatric practitioner or designated mental health practitioner must make a recommendation for psychiatric examination of a person if, after assessing the person, he or she is satisfied that the person fulfils the criteria for involuntary admission on the grounds of mental illness or mental disturbance.
- (2) A recommendation for psychiatric examination is to be in the approved form.
- (3) A recommendation for psychiatric examination authorises the person making the recommendation, an ambulance officer or a person specified in the recommendation to do any of the following:
  - (a) to take reasonable measures to control and take the person named in the recommendation to an approved treatment facility and, for that purpose, to enter land, premises or a private place;

- (b) where the person cannot be taken immediately to an approved treatment facility, to hold the person at a hospital or other place where the person can be safely held until it becomes practicable to take the person to the approved treatment facility;
  - (c) without the approval of the Tribunal, to administer treatment to the person immediately necessary:
    - (i) to prevent the person causing imminent harm to himself or herself, a particular person or any other person;
    - (ii) to prevent behaviour of the person that is likely to cause imminent harm to himself or herself, a particular person or any other person;
    - (iii) to prevent further physical or mental deterioration of the person; or
    - (iv) to relieve acute symptomatology;
  - (d) to detain the person at an approved treatment facility for up to 12 hours.
- (4) A recommendation for psychiatric examination may authorise a member of the Police Force to exercise, or to assist a person exercising, the powers under subsection (3)(a) where the person making the recommendation considers that, under the circumstances, there is no less restrictive alternative.

### **35 Emergency treatment**

- (1) Treatment is not to be administered under section 34(3)(c) unless:
- (a) to delay the treatment to obtain the approval of the Tribunal will cause a deleterious effect on the person's health;
  - (b) the treatment is approved by a medical practitioner; and
  - (c) the treatment is administered by a medical practitioner, registered nurse, ambulance officer or Aboriginal health worker.
- (2) An approval under subsection (1)(b) may be given by telephone.
- (3) A person who administers treatment under subsection (1)(c) must make a report containing details of the treatment and the reasons why the approval of the Tribunal was not obtained.

- (4) A copy of the report must be forwarded as soon as practicable:
- (a) to the person-in-charge of the approved treatment facility at which the person is detained;
  - (b) to the authorised psychiatric practitioner who examined the person at the approved treatment facility; and
  - (c) to the Tribunal.

**36            Notification of delay in taking person to approved treatment facility**

- (1) Where a person who is being held under section 34(3)(b) has not been taken to an approved treatment facility after a reasonable period after the recommendation is made or is taken to an approved temporary treatment facility, the person in whose custody the person is must notify the person-in-charge of the approved treatment facility to which the person is to be taken of:
- (a) the place where the person is being held; and
  - (b) the reasons why the person has not been taken to the approved treatment facility.
- (2) When requested by the person-in-charge of the approved treatment facility, the person in whose custody the person is must:
- (a) notify the authorised psychiatric practitioner nominated by the person-in-charge;
  - (b) provide an assessment of the person; and
  - (c) if necessary, obtain approval to treat the person from the authorised psychiatric practitioner nominated under paragraph (a).
- (3) The person-in-charge of the approved treatment facility notified under subsection (1) must forward a report to the Tribunal not later than 24 hours after being notified.
- (4) A report under subsection (3) is:
- (a) to be in the approved form;
  - (b) to state where the person was held and the reasons why the person was not taken to the approved treatment facility; and

- (c) to give details of the treatment, if any, administered to the person and the reasons why it was necessary to administer the treatment.
- (5) A person who is admitted to an approved temporary treatment facility under subsection (1) must be transferred immediately to an approved treatment facility where:
  - (a) the person's conditions deteriorates; or
  - (b) 72 hours has elapsed since the person was admitted.

### **37            Assessment warrant**

- (1) An authorised psychiatric practitioner, designated mental health practitioner or a member of the Police Force may apply to the Tribunal for a warrant to apprehend a person.
- (2) The Tribunal may issue a warrant where it is satisfied that:
  - (a) the person may be unable to care for himself or herself;
  - (b) the person may meet the criteria for involuntary admission on the grounds of mental illness or mental disturbance; and
  - (c) all other reasonable avenues to assess the person have been exhausted.
- (3) A warrant may be issued after receiving information by telephone or in writing.
- (4) A warrant authorises an authorised psychiatric practitioner, designated mental health practitioner or a member of the Police Force:
  - (a) to apprehend the person named in the warrant; and
  - (b) to assess the person, or convey the person to a medical practitioner, authorised psychiatric practitioner or designated mental health practitioner to be assessed, to determine whether the person is in need of treatment under this Act.
- (5) For the purposes of this section, the Tribunal may be constituted by the President.

### **38            Examination at approved treatment facility**

- (1) A person detained at an approved treatment facility under section 30 or 34(3)(d) must be examined and assessed by an authorised psychiatric practitioner.

- (2) Following the assessment, if the authorised psychiatric practitioner is satisfied the person:
  - (a) fulfils the criteria for involuntary admission on the grounds of mental illness, the authorised psychiatric practitioner must admit the person as an involuntary patient;
  - (b) fulfils the criteria for involuntary admission on the grounds of mental disturbance, the authorised psychiatric practitioner must admit the person as an involuntary patient;
  - (c) fulfils the criteria for involuntary treatment in the community, the authorised psychiatric practitioner must make an interim community management order in relation to the person; or
  - (d) does not fulfil the criteria for involuntary admission on the grounds of mental illness or mental disturbance, or for involuntary treatment in the community, the authorised psychiatric practitioner must release the person.
- (3) An authorised psychiatric practitioner must not examine a person and make an assessment of the person under this section if the authorised psychiatric practitioner made the recommendation for psychiatric examination of the person.

## **Division 2            Involuntary admission on grounds of mental illness**

### **39            Involuntary admission on grounds of mental illness**

- (1) A person admitted as an involuntary patient on the grounds of mental illness may be detained at the approved treatment facility:
  - (a) for up to 24 hours; or
  - (b) for up to 7 days, where the person who made the recommendation for psychiatric examination was an authorised psychiatric practitioner.
- (2) An authorised psychiatric practitioner must examine a person detained under subsection (1)(a).
- (3) Following the examination, if the authorised psychiatric practitioner is satisfied that the person:
  - (a) fulfils the criteria for involuntary admission, the authorised psychiatric practitioner may detain the person at the approved treatment facility for a further period of up to 7 days; or

- (b) does not fulfil the criteria for involuntary admission, the authorised psychiatric practitioner must discharge the person as an involuntary patient.
- (4) An authorised psychiatric practitioner must not rely exclusively on any other assessment that may have been made of a person when assessing the person under this section.
- (5) An examination under this section may be conducted through the use of teleconferencing or other forms of interactive video conferencing.

#### **40 On-going examinations**

- (1) An authorised psychiatric practitioner must examine a person admitted as an involuntarily patient not less than once every 72 hours.
- (2) A record of each examination is to be entered in the person's case notes.
- (3) An authorised psychiatric practitioner must revoke an order admitting a person as an involuntary patient on the grounds of mental illness where the authorised psychiatric practitioner is satisfied, after examining the person, that the person no longer fulfils the criteria for involuntary admission on those grounds.

#### **41 Notification of admission**

- (1) An authorised psychiatric practitioner must, as soon as practicable after a person is detained under section 39(1)(a), notify:
  - (a) the person;
  - (b) a legal practitioner who is prepared to act on behalf of the person; and
  - (c) where the person consents, the person's primary care provider or, if there is no primary care provider, a person who is closely involved in the treatment or care of the person,of the grounds for admitting the person and the section under which the person was admitted.
- (2) An authorised psychiatric practitioner must, as soon as practicable after a person is detained under section 39(1)(b) or (3)(a), notify:
  - (a) the persons referred to in subsection (1)(a), (b) and (c);
  - (b) the principal community visitor; and

(c) the Tribunal,

of the grounds for admitting the person and the section under which the person was admitted.

(3) Despite that, in the opinion of an authorised psychiatric practitioner, a person:

(a) is unable to give his or her consent under subsection (1)(c); or

(b) as a result of his or her mental illness, unreasonably refuses to give his or her consent,

the authorised psychiatric practitioner must notify the person's primary care provider or a person who is closely involved in the treatment or care of the person unless, after considering the case, the authorised psychiatric practitioner believes, on reasonable grounds, that it is not in the best interests of the person.

(4) Notification:

(a) may be given orally or in writing; and

(b) must be in a language in which the person to whom it is given is able to adequately communicate.

(5) An authorised psychiatric practitioner who decides not to notify a person under subsection (3) must inform the Tribunal and, where appropriate, the person's legal representative of the decision and the reason for it.

### **Division 3            Involuntary admission on grounds of mental disturbance**

#### **42            Involuntary admission on grounds of mental disturbance**

(1) A person admitted to an approved treatment facility as an involuntary patient on the grounds of mental disturbance may be detained for 72 hours unless in that period:

(a) the person is admitted as a voluntary patient;

(b) the person is admitted as an involuntary patient on the grounds of mental illness; or

(c) an interim community management order of the person in the community is made.

(2) A person detained under subsection (1) may be detained for a further period of 7 days after the expiration of the period referred to

in that subsection where 2 authorised psychiatric practitioners are satisfied, after examining the person, that while the person does not fulfil the criteria for involuntary admission on the grounds of mental disturbance:

- (a) the person, if discharged, is likely to cause serious physical harm to himself or herself, or is likely to suffer serious mental or physical deterioration, unless he or she receives treatment;
- (b) the person is not capable of giving informed consent to the treatment or care or has unreasonably refused to consent to the treatment or care; and
- (c) there is not less restrictive means of ensuring that the person receives the treatment or care.

### **43 Notification of admission**

(1) An authorised psychiatric practitioner must, as soon as practicable after a person is detained under section 42(1), notify:

- (a) the person;
- (b) a legal practitioner who is prepared to act on behalf of the person; and
- (c) where the person consents, the person's primary care provider or, if there is no primary care provider, a person who is closely involved in the treatment or care of the person,

of the grounds for admitting the person and the section under which the person was admitted.

(2) An authorised psychiatric practitioner must, as soon as practicable after a person is detained under section 42(2), notify:

- (a) the persons referred to in subsection (1)(a), (b) and (c);
- (b) the principal community visitor; and
- (c) the Tribunal,

of the grounds for admitting the person and the section under which the person was admitted.

(3) Despite that, in the opinion of an authorised psychiatric practitioner, a person:

- (a) is unable to give his or her consent under subsection (1)(c); or

- (b) as a result of his or her mental disturbance, unreasonably refuses to give his or her consent,

the authorised psychiatric practitioner must notify the person's primary care provider or a person who is closely involved in the treatment or care of the person unless, after considering the case, the authorised psychiatric practitioner believes, on reasonable grounds, that it is not in the best interests of the person.

- (4) Notification:
  - (a) may be given orally or in writing; and
  - (b) must be in a language in which the person to whom it is given is able to adequately communicate.
- (5) An authorised psychiatric practitioner who decides not to notify a person under subsection (3) must inform the Tribunal and, where appropriate, the person's legal representative of the decision and the reason for it.

#### **44 Review of admission**

- (1) An authorised psychiatric practitioner must examine a person admitted as an involuntary patient on the grounds of mental disturbance:
  - (a) not less than once every 24 hours, if the person is detained under section 42(1); or
  - (b) not less than once every 72 hours, if the person is detained under section 42(2) or 123(5)(b).
- (2) Following the examination, if the authorised psychiatric practitioner is satisfied that the person:
  - (a) continues to fulfil the criteria for involuntary admission on the grounds of mental disturbance, the authorised psychiatric practitioner must continue to detain the person on those grounds;
  - (b) fulfils the criteria for involuntary admission on the grounds of mental illness, the authorised psychiatric practitioner must admit the person as an involuntary patient on the grounds of mental illness;
  - (c) fulfils the criteria for involuntary treatment in the community, the authorised psychiatric practitioner must make an interim community management order in relation to the person; or

- (d) does not fulfil the criteria for involuntary admission on the grounds of mental illness or mental disturbance, or for involuntary treatment in the community, the authorised psychiatric practitioner must release the person.
- (3) Following the examination, the authorised psychiatric practitioner must make a note in the person's case notes of the reason for making the order under subsection (2).
- (4) Where an authorised psychiatric practitioner considers that a person to be released under subsection (2) may cause imminent harm to other persons on his or her release, the authorised psychiatric practitioner must notify:
  - (a) the Commissioner of Police or a member of the Police Force nominated by the Commissioner for the purposes of this subsection; and
  - (b) where practicable, those persons who may be in danger, not later than 12 hours before the person is released.

## **Part 7            Community management orders**

### **Division 1        Interim community management orders**

#### **45            Interim community management order**

- (1) An authorised psychiatric practitioner may make an interim community management order in respect of a person where the authorised psychiatric practitioner is satisfied that the person fulfils the criteria for involuntary treatment in the community.
- (2) An authorised psychiatric practitioner must not make an interim community management order unless:
  - (a) the person-in-charge of an approved treatment agency agrees that the treatment proposed for the person is appropriate and able to be implemented by the agency; and
  - (b) where the person is a prisoner, the Director of Correctional Services agrees that the treatment proposed for the person is able to be implemented in the prison where the person is in custody.
- (3) Subject to this Part, an interim community management order remains in force for 7 days.

- (4) Under an interim community management order only the following treatment may be administered:
  - (a) treatment that will prevent the person causing imminent harm to himself or herself, a particular person or any other person;
  - (b) treatment that will prevent behaviour of the person that is likely to cause imminent harm to himself or herself, a particular person or any other person;
  - (c) treatment that will prevent any further physical or mental deterioration of the person;
  - (d) treatment that will relieve acute symptomatology.
- (5) Treatment must not be administered under an interim community management order unless it is authorised by an authorised psychiatric practitioner.

#### **46 Form of interim community management order**

An interim community management order is to be the approved form and is to specify:

- (a) the name and residential address of the person to whom it relates;
- (b) the name of the approved treatment agency that is to supervise and review the community management order;
- (c) the name of the approved treatment agency that is to implement the community management order;
- (d) the organisations or persons (other than the approved treatment agency) treating or caring for the person under the community management order;
- (e) the time and days of the week when the person is to attend the approved treatment agency or when a person treating or caring for the person will attend the person's residence;
- (f) the medication or treatment the person is to receive under the community management order;
- (g) the rehabilitation, support and other services the person is to receive under the community management order; and
- (h) any other information that the authorised psychiatric practitioner thinks fit.

**47 Notification of interim community management order**

(1) An authorised psychiatric practitioner, as soon as practicable after making an interim community management order, must:

- (a) notify the Tribunal that the order has been made; and
- (b) notify:
  - (i) the person;
  - (ii) a legal practitioner who is prepared to act on behalf of the person;
  - (iii) where the person consents, the person's primary care provider or, if there is no primary care provider, a person who is closely involved in the treatment or care of the person; and
  - (iv) the principal community visitor,

of the grounds for the order and the section under which it was made.

(2) Despite that, in the opinion of an authorised psychiatric practitioner, a person:

- (a) is unable to give his or her consent under subsection (1)(b)(iii); or
- (b) as a result of his or her mental illness, unreasonably refuses to give his or her consent,

the authorised psychiatric practitioner must notify the person's primary care provider or a person who is closely involved in the treatment or care of the person unless, after considering the case, the authorised psychiatric practitioner believes, on reasonable grounds, that it is not in the best interests of the person.

(3) Notification:

- (a) may be given orally or in writing; and
- (b) must be in a language in which the person to whom the notification is given is able to adequately communicate.

(4) An authorised psychiatric practitioner who decides not to notify a person under subsection (2) must inform the Tribunal and, where appropriate, the person's legal representative of the decision and the reason for it.

## **Division 2            Community management order**

### **48            Community management order**

The Tribunal must review an interim community management order as soon as practicable after being notified that it has been made and may, in accordance with section 123, make a community management order under that section.

### **49            Form of community management order**

A community management order is to be in writing and is to specify:

- (a) the name and residential address of the person to whom it relates;
- (b) the name of the approved treatment agency that is to supervise and review the community management order;
- (c) the name of the approved treatment agency that is to implement the community management order;
- (d) the organisations or persons (other than the approved treatment agency) treating or caring for the person under the community management order;
- (e) the time and days of the week when the person is to attend the approved treatment agency or when a person treating or caring for the person will attend the person's residence;
- (f) the medication or treatment the person is to receive under the community management order;
- (g) the rehabilitation, support and other services the person is to receive under the community management order; and
- (h) any other information that the Tribunal thinks fit.

### **50            Review of community management order by authorised psychiatric practitioner**

- (1) An authorised psychiatric practitioner:
  - (a) must examine a person who is subject to a community management order not less than once each 6 weeks; and
  - (b) must regularly review the order while it remains in force.
- (2) An authorised psychiatric practitioner must revoke a community management order if the authorised psychiatric practitioner is satisfied, after examining the person who is subject to the order,

that the person no longer fulfils the criteria for involuntary treatment in the community.

**51            Appointment of psychiatric case managers**

- (1) The person-in-charge of an approved treatment agency must appoint a psychiatric case manager for each person who is to be treated, cared for or rehabilitated by the agency under a community management order.
- (2) A person appointed under subsection (1) must be an employee of the approved treatment agency and:
  - (a) a medical practitioner;
  - (b) a social worker;
  - (c) a psychologist;
  - (d) a registered nurse;
  - (e) an occupational therapist; or
  - (f) an Aboriginal health worker.
- (3) The psychiatric case manager of a person must monitor the progress of the treatment, care and rehabilitation of the person under the community management order.

**52            Discharge report and consideration of report by Tribunal**

- (1) The person-in-charge of an approved treatment agency must make a written report to the Tribunal as to the efficacy, appropriateness and effectiveness of a community management order as soon as practicable after it expires or is revoked.
- (2) The Tribunal must consider a report submitted under subsection (1) in its deliberations regarding any other applications to place the person on a community management order.

**53            Suspension of community management order**

- (1) An authorised psychiatric practitioner may suspend a community management order where the authorised psychiatric practitioner and the psychiatric case manager are satisfied that the person who is subject to the authority has failed to comply with the authority.

- (2) In determining whether to suspend a community management order, the authorised psychiatric practitioner and psychiatric case manager are to be satisfied that:
  - (a) all reasonable steps have been taken to implement the authority and to obtain the person's co-operation; and
  - (b) as a result of the person's failure to comply with the authority there is a significant risk of the person:
    - (i) causing harm to himself or herself or to another person;  
or
    - (ii) suffering serious mental or physical deterioration.
- (3) An authorised psychiatric practitioner who suspends a community management order under subsection (1):
  - (a) must inform the person and his or her representative, if any, that the authority has been suspended and the reasons for the suspension;
  - (b) must assess the person and may:
    - (i) order that the person be admitted to an approved treatment facility as an involuntarily patient; or
    - (ii) treat the person and revoke the suspension of the authority; and
  - (c) where the suspension of the authority is not revoked, must notify the Tribunal, in the approved form, of the suspension not later than 24 hours after it is suspended.
- (4) The suspension of a community management order is revoked if the person who is subject to the authority is discharged from the approved treatment facility within 7 days after being admitted under subsection (3)(b)(i).
- (5) Section 34(3), with the necessary changes, applies to an order made under subsection (3)(b)(i) as if the order were a recommendation for psychiatric examination in respect of the person to whom the order relates.

## **Part 8 Treatment**

### **Division 1 Treatment after voluntary admission**

#### **54 Treatment after voluntary admission**

- (1) A person who is admitted to an approved treatment facility as a voluntary patient may only be treated under this Act where:
  - (a) the person gives his or her informed consent to the treatment;  
or
  - (b) a guardian of the person gives his or her consent to the treatment.
- (2) For the purposes of subsection (1)(b), a guardian must be given sufficient information to make a properly informed decision regarding the treatment.
- (3) A guardian may only give his or her consent to treatment under this section if he or she is authorised by the *Adult Guardianship Act* to make a decision of that nature in respect of the person.
- (4) An authorised psychiatric practitioner who is not able to form a view as to whether a person is capable of giving informed consent to treatment must apply to the Tribunal for it to determine the person's capacity.
- (5) Treatment may be administered to a person while the decision of the Tribunal in relation to an application under subsection (4) is pending, but it must be restricted to that which is necessary:
  - (a) to prevent the person causing imminent harm to himself or herself, a particular person or any other person;
  - (b) to prevent behaviour of the person that is likely to cause imminent harm to himself or herself, a particular person or any other person;
  - (c) to prevent further physical or mental deterioration; and
  - (d) to relieve acute symptomatology.
- (6) Treatment is not to be administered under subsection (5) unless it is authorised by an authorised psychiatric practitioner.
- (7) A report of treatment administered under subsection (5) must be made to the Tribunal at intervals determined by the Tribunal.

## **Division 2 Treatment after involuntary admission**

### **55 Treatment after involuntary admission**

- (1) Subject to subsection (2), treatment under this Act must not be administered to a person who is admitted to an approved treatment facility as an involuntary patient unless it is authorised by the Tribunal.
- (2) Treatment that is not authorised by the Tribunal may be administered to a person but it must be restricted to that which is necessary:
  - (a) to prevent the person causing imminent harm to himself or herself, a particular person or any other person;
  - (b) to prevent behaviour of the person that is likely to cause imminent harm to himself or herself, a particular person or any other person;
  - (c) to prevent further physical or mental deterioration; or
  - (d) to relieve acute symptomatology.
- (3) Treatment is not to be administered under subsection (2) unless it is authorised by an authorised psychiatric practitioner.
- (4) When administering treatment to a person who is an involuntary patient, every practicable effort must be made to involve the person in considering the nature and effect of the treatment and any alternatives that are reasonably available.

### **56 Factors to be considered before treatment is authorised**

In determining whether to authorise treatment under this Act, the Tribunal or authorised psychiatric practitioner must be satisfied that:

- (a) the treatment is in the best interest of the person;
- (b) the anticipated benefits of the treatment outweigh any risk of harm or discomfort to the person;
- (c) alternative treatments that would be likely to produce equivalent benefits and with less risk of harm are not reasonably available; and
- (d) the treatment represents the least restrictive and least intrusive treatment option reasonably available.

**57 Records of treatment to be maintained**

Details of all episodes of treatment administered to a person under this Act, and whether the treatment was administered with or without the person's consent, are to be recorded in the person's medical records.

**Part 9 Regulation of certain forms of treatment**

**Division 1 General**

**58. Psychosurgery**

(1) In this section:

***behaviour*** does not include behaviour that is secondary to a paroxysmal cerebral dysrhythmia;

***psychosurgery*** means:

- (a) the use of a technique or procedure (including a surgical technique or procedure), or of intracerebral electrodes, to create in a person's brain a lesion that, by itself or together with any other lesion created at the same time or any other time, is intended to permanently alter the thoughts, emotions or behaviour of the person; or
- (b) the use of intracerebral electrodes to stimulate a person's brain, without creating a lesion, with the intent that, by itself or together with any other stimulation at the same time or any other time, the stimulation will, temporarily, influence or alter the thoughts, emotions or behaviour of the person.

(2) A person must not perform psychosurgery on another person.

Penalty: \$10,000.

**59 Coma therapy**

A person must not administer to, or perform on, another person:

- (a) deep sleep therapy; or
- (b) insulin coma or sub-coma therapy.

Penalty: \$10,000.

**60 Sterilisation**

A person must not perform on another person, as a treatment for mental illness or mental disturbance, a treatment that is intended, or is reasonably likely, to render the other person permanently infertile.

Penalty: \$10,000.

**61 Mechanical means of bodily restraint**

(1) In this section, ***mechanical restraint*** means the application of a device (including a belt, harness, manacle, sheet and strap) on a person's body to restrict the person's movement but does not include the use of furniture (including a bed with cot sides and a chair with a table fitted on its arms) that restricts the person's capacity to get off the furniture.

(2) A person must not apply mechanical restraint to a person other than in accordance with this section.

Penalty: \$5,000.

(3) Mechanical restraint of a person in an approved treatment facility may only be applied where no other less restrictive method of control is applicable or appropriate and it is necessary for one or more of the following:

- (a) for the purpose of medical treatment of the person;
- (b) to prevent the person from causing injury to himself or herself or any other person;
- (c) to prevent the person from persistently destroying property.

(4) Mechanical restraint of a person must not be applied unless it is approved:

- (a) by an authorised psychiatric practitioner; or
- (b) in the case of an emergency, by the senior registered nurse on duty.

(5) The senior registered nurse on duty must notify the person-in-charge of the approved treatment facility and an authorised psychiatric practitioner as soon as practicable after approving the mechanical restraint of a person.

- (6) The form of mechanical restraint and its duration must be determined by the authorised psychiatric practitioner or senior registered nurse who approves it.
- (7) Mechanical restraint may be applied to a person without the person's consent.
- (8) A person to whom mechanical restraint is applied:
  - (a) must be kept under continuous observation by a registered nurse or medical practitioner;
  - (b) must be reviewed, as clinically appropriate to his or her condition, by a registered nurse at intervals not longer than 15 minutes;
  - (c) subject to subsection (9), must be examined by a medical practitioner at intervals not longer than 4 hours;
  - (d) must be reviewed by an authorised psychiatric practitioner, if the mechanical restraint remains applied for 6 hours;
  - (e) must be supplied with bedding and clothing that is appropriate in the circumstances;
  - (f) must be provided with food and drink at appropriate times;
  - (g) must have access to adequate toilet facilities; and
  - (h) must be provided with any other psychological and physical care appropriate to the person's needs.
- (9) An authorised psychiatric practitioner may vary the interval at which a person is to be examined under subsection (8)(c) if the authorised psychiatric practitioner thinks it is appropriate.
- (10) Mechanical restraint must not be applied to a person who is admitted as a voluntary patient for longer than 12 hours.
- (11) If a medical practitioner, senior registered nurse on duty or an authorised psychiatric practitioner is satisfied, having regard to the criteria specified in subsection (3), that the continued application of mechanical restraint to a person is not necessary, he or she must, without delay, release the person from the restraint.
- (12) The person-in-charge of an approved treatment facility must ensure that a record is kept of:
  - (a) the form of mechanical restraint applied;

- (b) the reasons why mechanical restraint was applied;
  - (c) the name of the person who approved the mechanical restraint being applied;
  - (d) the name of the person who applied the mechanical restraint;
  - (e) the period of time the mechanical restraint was applied; and
  - (f) if the interval at which a person was medically examined was varied under subsection (9), the reason for the variation.
- (13) The person-in-charge of an approved treatment facility must ensure that a copy of the record kept under subsection (12) is placed on the person's medical records.
- (14) The principal community visitor must ensure that the record kept under subsection (12) is inspected by a community visitor at intervals not longer than 6 months.

## **62 Seclusion of patients**

- (1) In this section, **seclusion** means the sole confinement, at any hour of the day or night, of a person:
- (a) in a room of which the doors and windows are locked from the outside; or
  - (b) in an area approved by the Chief Health Officer.
- (2) A person must not keep another person in seclusion other than in accordance with this section.

Penalty: \$5,000.

- (3) A person may be kept in seclusion in an approved treatment facility where no other less restrictive method of control is applicable or appropriate and it is necessary for the following:
- (a) for the purpose of the medical treatment of the person;
  - (b) to prevent the person from causing injury to himself or herself or any other person;
  - (c) to prevent the person from persistently destroying property.
- (4) A person may be kept in seclusion only where it is approved:
- (a) by an authorised psychiatric practitioner; or

- (b) in the case of an emergency, by the senior registered nurse on duty.
- (5) The senior registered nurse on duty must notify an authorised psychiatric practitioner as soon as practicable after approving a person being kept in seclusion.
- (6) The person who approves a person being kept in seclusion must specify the period that a person may be kept in seclusion and must record it in the person's case notes.
- (7) A person may be kept in seclusion without his or her consent.
- (8) A person kept in seclusion:
  - (a) must be visited by a registered nurse at intervals not longer than 15 minutes;
  - (b) must be examined by a medical practitioner at intervals not longer than 4 hours;
  - (c) must be reviewed by an authorised psychiatric practitioner, if the person is kept in seclusion for more than 6 hours;
  - (d) must be supplied with bedding and clothing that is appropriate in the circumstances;
  - (e) must be provided with food and drink at appropriate times;
  - (f) must have access to adequate toilet facilities; and
  - (g) must be provided with any other psychological and physical care appropriate to the person's needs.
- (9) An authorised psychiatric practitioner may vary the interval at which a person is to be examined under subsection (8)(b) if the authorised psychiatric practitioner thinks it is appropriate.
- (10) A person who is admitted as a voluntary patient must not be kept in seclusion for longer than 12 hours.
- (11) If a medical practitioner, senior registered nurse on duty or an authorised psychiatric practitioner is satisfied, having regard to the criteria specified in subsection (3), that it is not necessary to continue to keep the person in seclusion, he or she must without delay release the person from seclusion.

- (12) The person-in-charge of an approved treatment facility must ensure that a record is kept of:
- (a) the reasons why a person was kept in seclusion;
  - (b) the name of the person who approved the person being kept in seclusion;
  - (c) the name of the person who kept the person in seclusion;
  - (d) the length of time the person was kept in seclusion; and
  - (e) if the interval at which the person was medically examined was varied under subsection (9), the reason for the variation.
- (13) The person-in-charge of an approved treatment facility must ensure that a copy of the record kept under subsection (12) is placed on the person's medical records.
- (14) The principal community visitor must ensure that a record kept under subsection (12) is inspected by a community visitor at intervals not longer than 6 months.

### **63 Non-psychiatric treatment**

- (1) In this section, ***non-psychiatric treatment*** means:
- (a) a surgical operation or procedure or a series of related surgical operations or procedures;
  - (b) the administration of an anaesthetic for the purposes of medical investigation; or
  - (c) the administration of a course of treatment or medication requiring a prescription or medical supervision,

the primary purpose of which is not directed at treating a mental illness or mental disturbance or the effects of a mental illness or mental disturbance.

- (2) A person must not perform non-psychiatric treatment on a person who is an involuntary patient or subject to a community management order other than in accordance with this section.

Penalty: \$5,000.

- (3) Non-psychiatric treatment must not be performed unless:
- (a) the informed consent of the person is obtained;

- (b) the treatment is approved by the Tribunal or an authorised psychiatric practitioner as determined under subsection (7); or
  - (c) where the person is a represented person, within the meaning of the *Adult Guardianship Act*, the consent of the guardian or the Local Court to the treatment is obtained under that Act.
- (4) Non-psychiatric treatment may be performed without being approved under subsection (3)(b) or the consent being obtained under subsection (3)(c) where it is immediately necessary for any of the following:
- (a) to save the life of the person or to prevent irreparable harm to the person;
  - (b) to remove a threat of permanent disability to the person;
  - (c) to remove a life threatening risk to, or to relieve acute pain of, the person.
- (5) A person who performs non-psychiatric treatment without it being approved under subsection (3)(b) must report the fact to the Tribunal as soon as possible after the treatment is performed.
- (6) A person who performs non-psychiatric treatment without consent being obtained under subsection (3)(c) must report the fact to the Public Guardian, within the meaning of the *Adult Guardianship Act*, as soon as possible after the treatment is performed.
- (7) The Tribunal may determine which non-psychiatric treatment requires the approval of the Tribunal and that which may be approved by an authorised psychiatric practitioner.
- (8) The purpose of this section is to protect the interests of a person by ensuring the person is not unnecessarily subjected to certain medical procedures.

#### **64 Major medical procedure**

- (1) A person must not perform a major medical procedure on a person who is an involuntary patient or subject to a community management order other than in accordance with this section.

Penalty: \$5,000.

- (2) Subject to subsection (3), a major medical procedure must not be performed on a person unless:
- (a) it is approved by the Tribunal; or

- (b) where the person is a represented person, within the meaning of the *Adult Guardianship Act*, the consent of the Local Court under that Act is obtained to the procedure being performed.
- (3) An authorised psychiatric practitioner may authorise the performance of a major medical procedure on a person where it is immediately necessary:
  - (a) to save the life of the person; or
  - (b) to prevent irreparable harm to the person.
- (4) The authorised psychiatric practitioner must notify the Tribunal as soon as practicable after authorising the performance of a major medical procedure under subsection (3).
- (5) The Chief Health Officer is, from time to time, to specify those medical procedures that are major medical procedures for the purposes of this section.
- (6) The purpose of this section is to protect the interests of a person by ensuring the person is not unnecessarily subjected to certain medical procedures.

## **65 Clinical trials and experimental procedures**

A person must not perform a clinical trial or experimental treatment on a person who is an involuntary patient or subject to a community management order unless:

- (a) the trial or treatment is approved by an ethics committee nominated by the Chief Health Officer; and
- (b) the informed consent of the person, or the approval of the Tribunal, to the trial or treatment is obtained.

Penalty: \$5,000.

## **Division 2 Electro convulsive therapy**

### **66 Electro convulsive therapy**

- (1) A person must not perform electro convulsive therapy on another person unless:
  - (a) that person's informed consent to the treatment is obtained; or
  - (b) the treatment is performed in accordance with this section.

Penalty: \$5,000.

- (2) The Tribunal may authorise electro convulsive therapy to be performed on a person if it:
  - (a) is satisfied that the person is unable to give informed consent to the treatment;
  - (b) receives a report from 2 authorised psychiatric practitioners that they are satisfied, after considering the person's clinical condition, history of treatment and other appropriate alternative treatments, that electro convulsive therapy is a reasonable and proper treatment to be administered and that without the treatment the person is likely to suffer serious mental or physical deterioration; and
  - (c) is satisfied that:
    - (i) all reasonable efforts have been made to consult the person's primary care provider, or if there is no primary care provider, a person who is closely involved in the treatment or care of the person; or
    - (ii) there is a valid reason for not complying with subparagraph (i).
- (3) Electro convulsive therapy may be performed on a person who is an involuntary patient where 2 authorised psychiatric practitioners are satisfied that it is immediately necessary:
  - (a) to save the person's life;
  - (b) to prevent the person suffering serious mental or physical deterioration; or
  - (c) to relieve severe distress.
- (4) Where electro convulsive therapy is performed under subsection (3), the authorised psychiatric practitioners must make a report to the Tribunal of the therapy performed as soon as practicable after it is performed.
- (5) The report is to contain:
  - (a) the reasons why the authorisation of the Tribunal was not obtained;
  - (b) the number of treatments performed;
  - (c) the person's response to the treatment; and

- (d) details of any significant side effects of the treatment on the person.
- (6) At least 2 medical practitioners are to be present when electro convulsive therapy is performed, of whom:
  - (a) one is to be experienced and trained in accordance with approved procedures in performing electro convulsive therapy; and
  - (b) one is to be experienced in administering anaesthesia.
- (7) Electro convulsive therapy must be performed only in an approved treatment facility or premises licensed under this Division.
- (8) A medical practitioner who performs electro convulsive therapy in contravention of this section is guilty of unprofessional conduct for the purposes of section 38(1) of the *Medical Act*.

## **67 Licensing of premises**

- (1) In this section, **occupier of premises** includes a person who occupies or has control of the premises, whether or not the person is the owner of the premises.
- (2) The occupier of premises must not permit electro convulsive therapy to be performed on the premises unless the premises are licensed under this Division.

Penalty: \$5,000.

- (3) The occupier of premises may apply to the Secretary for a licence to permit electro convulsive therapy to be performed on the premises.
- (4) An application for a licence is to be:
  - (a) in the approved form; and
  - (b) accompanied by the specified fee.
- (5) The Secretary must consider an application and may grant, or refuse to grant, the licence.
- (6) In determining an application under this section, the Secretary is to take into account the recommendations of the Chief Health Officer regarding:
  - (a) the suitability of the applicant to hold a licence;
  - (b) the suitability of the premises;

- (c) whether the equipment to be used in performing electro convulsive therapy complies with the prescribed standards and conditions;
- (d) the qualifications of persons who are to perform electro convulsive therapy on the premises;
- (e) any conditions to be specified in the licence; and
- (f) how long the licence should remain in force.

## **68 Renewal of licence**

- (1) The holder of a licence may apply to the Secretary to renew the licence.
- (2) An application to renew a licence is to be:
  - (a) in the approved form; and
  - (b) accompanied by the specified fee.
- (3) The Secretary must grant an application to renew a licence unless satisfied that any of the grounds for cancelling a licence apply.
- (4) The Secretary may before considering an application to renew a licence obtain a report from the Chief Health Officer regarding:
  - (a) the suitability of the applicant to hold a licence;
  - (b) the suitability of the premises;
  - (c) whether equipment to be used in performing electro convulsive therapy complies with the prescribed standards and conditions;
  - (d) the qualifications of persons who are to be permitted to perform electro convulsive therapy on the premises;
  - (e) any conditions to be specified in the licence; and
  - (f) how long the licence should remain in force.

## **69 Form of licence**

A licence:

- (a) is to be in the approved form;
- (b) is subject to the conditions that are determined by the Secretary and specified in the licence;

- (c) is valid only in respect of the electro convulsive therapy specified in the licence; and
- (d) remains in force for the period, not longer than 3 years, specified in the licence.

#### **70 Cancellation of licence**

The Secretary may, by notice in writing to the holder of a licence, cancel the licence where:

- (a) there has been a breach of a condition of the licence;
- (b) an offence against section 66 is committed on the premises;
- (c) the premises are no longer suitable;
- (d) equipment on the premises does not comply with the prescribed standards and conditions; or
- (e) an unqualified or insufficiently qualified person has been performing electro convulsive therapy on the premises.

#### **71 Amendment of licence**

- (1) The Secretary may, by notice in writing to the holder of a licence, revoke or vary a condition to which the licence is subject or impose further conditions on the licence.
- (2) The holder of a licence may apply in the approved form to the Secretary for the licence to be amended as specified in the application.

#### **72 Review of certain decision**

A person aggrieved by a decision of the Secretary under this Division may apply to the Ombudsman for an investigation of the decision to be undertaken in accordance with the *Ombudsman (Northern Territory) Act*.

#### **73 Returns**

- (1) The holder of a licence must submit a return to the Secretary as soon as possible after the end of each month.
- (2) A return is to be:
  - (a) in the approved form; and
  - (b) contain details of electro convulsive therapy performed during the month on the premises to which the licence relates.

**Part 10 Powers of court****74 Assessment order**

- (1) Where a person is before a court charged with an offence and the court:
- (a) is of the opinion that the person:
    - (i) appears to be mentally ill or mentally disturbed; and
    - (ii) may benefit from being admitted to and treated in an approved treatment facility; and
  - (b) receives advice, in writing, from the Chief Health Officer that:
    - (i) an authorised psychiatric practitioner or designated mental health practitioner is available to assess the person; or
    - (ii) facilities are available where the person may be assessed,
- the court may:
- (c) adjourn the proceeding to enable the person to be assessed by an authorised psychiatric practitioner or designated mental health practitioner and a report being prepared for the court; or
  - (d) adjourn the proceedings and order that the person be conveyed to and detained in a place specified in the order for a period not longer than 72 hours for the purposes of being assessed by an authorised psychiatric practitioner or designated mental health practitioner and a report being prepared for the court.
- (2) The court must not specify an approved treatment facility in an order under subsection (1)(d) unless the Chief Health Officer advises that facilities to assess the person are available at the approved treatment facility.
- (3) An order under subsection (1)(d) is to specify the Agency that is to be responsible for conveying the person from the court to the place specified in the order and back to the court after the person has been assessed.
- (4) After receiving a report under subsection (1), the court may:
- (a) discharge the person;

- (b) make an order under section 75; or
- (c) proceed to hear and determine the charge.

## **75 Admission order**

(1) Where a person is before a court charged with an offence and the court:

- (a) is satisfied by the production of a certificate, in the approved form, of the Chief Health Officer or by any other evidence that:
  - (i) the person appears to be mentally ill or mentally disturbed; and
  - (ii) the person may benefit from being treated in an approved treatment facility; and
- (b) receives advice, in writing, from the Chief Health Officer that facilities are available at an approved treatment facility to treat the person,

the court may:

- (c) adjourn the proceedings for:
    - (i) a period not longer than 15 clear days; or
    - (ii) the period that the person and the prosecutor agree; and
  - (d) order that the person be admitted to and detained in an approved treatment facility to enable the person to be diagnosed, assessed and treated during the period.
- (2) The court may, after consulting with the Secretary or an approved person, impose conditions on an order under subsection (1) to ensure the security and good order of the person.
- (3) Conditions under subsection (2) may include:
- (a) whether the person must be detained in a particular part of the approved treatment facility;
  - (b) whether the person must be kept under guard at the approved treatment facility;
  - (c) whether the person may be granted leave of absence from the approved treatment facility; and

- (d) whether the person, if the person is a prisoner, is to be subject to the same restrictions as applying to the person if he or she were in a prison.
- (4) The prosecutor, Chief Health Officer or the person in respect of whom an order under subsection (1) is made may apply to the court at any time to have the order cancelled or varied.
- (5) The Chief Health Officer must apply to have an order under subsection (1) cancelled where:
  - (a) the person is able to give informed consent and refuses to consent to treatment under the order, or withdraws his or her consent to the treatment;
  - (b) in the opinion of the Chief Health Officer, the person no longer requires treatment under the order; or
  - (c) on reviewing the treatment of the person, the Tribunal determines that the person no longer requires treatment under the order.
- (6) The court, on hearing an application made under subsection (4), may cancel, confirm or vary the order.
- (7) The court, on hearing an application made under subsection (5), must cancel the order if satisfied as to a matter referred to in that subsection.
- (8) In addition to ordering the detention and treatment of a person, the court may grant the person bail to enable the person to be discharged from the approved treatment facility should it be determined that the person does not require further treatment under the order during the period the proceedings are adjourned.
- (9) Consent to bail on the condition that treatment under this Act is undertaken does not constitute an inducement for the purposes of section 7(2)(a).
- (10) Where a person in respect of whom an order is made under subsection (1) is a prisoner, the person must be returned to a prison if it is determined that the person no longer requires treatment under the order and the person is still in legal custody.

**76 Act to apply to orders made under this Part**

The provisions of this Act relating to the admission, detention, assessment, diagnosis and treatment of a person apply to a person in respect of whom an order under this Part is made as if:

- (a) in respect of an order under section 74(1), it was a request for an assessment of the person made under section 32(2); or
- (b) in respect of an order under section 75(1), it was a recommendation for psychiatric examination made by an authorised psychiatric practitioner.

**77 Warrant of arrest**

A court may issue a warrant to arrest a person in respect of whom an order under this Part is made, where the person:

- (a) absconds from the approved treatment facility; or
- (b) refuses to attend the approved treatment facility to undertake treatment under the order.

**78 Dismissal of charge**

- (1) Subject to this section, where a person is before a court charged with an offence and the court is of the opinion that the person appears to be suffering from a mental illness or is mentally disturbed, the court may dismiss the charge if:
  - (a) the person is likely to be found not guilty on the basis of lack of capacity at the time of the acts that formed the basis of the offence; or
  - (b) the circumstances are such that, if the person is found guilty, the court would in accordance with the *Sentencing Act* dismiss the charge without recording a conviction.
- (2) A court must not dismiss a charge under subsection (1) unless it has received a certificate from the Chief Health Officer that he or she is satisfied, after receiving reports from 2 authorised psychiatric practitioners, that the person is mentally ill or mentally disturbed.
- (3) A court must not dismiss a charge under subsection (1) if the offence is a regulatory offence or one in respect of which a finding under section 382 of the Criminal Code may be made.

## **Part 11 Admission of prisoners**

### **79 Admission of prisoner**

- (1) The Director of Correctional Services must arrange for a prisoner to be examined and assessed not later than 24 hours after receiving a request from a visiting medical officer, within the meaning of the *Prisons (Correctional Services) Act*.
- (2) An authorised psychiatric practitioner or designated mental health practitioner must carry out an examination and assessment of the prisoner to determine whether the prisoner is in need of treatment under this Act as soon as practicable after being notified by the Director of Correctional Services.
- (3) An authorised medical practitioner or designated mental health practitioner may refuse to carry out an examination or assessment of a prisoner where he or she is not satisfied that there are sufficient grounds to conclude that the prisoner is in need of treatment.
- (4) An examination and assessment of a prisoner is to be carried out:
  - (a) at the prison where the prisoner is in custody; or
  - (b) where the Director of Correctional Services approves, at an approved treatment facility.

### **80 Application of Parts 5 and 6**

Parts 5 and 6, with the necessary changes, apply to and in relation to a prisoner as if the prisoner were a person seeking treatment, or in respect of whom an order for treatment is sought, under those Parts.

### **81 Voluntary admission of prisoners**

- (1) The Director of Correctional Services may permit a prisoner to be admitted to an approved treatment facility as a voluntary patient where the prisoner has given informed consent to his or her admission in accordance with Part 5.
- (2) The person-in-charge of the approved treatment facility in which a prisoner is admitted as a voluntary patient must notify the Director of Correctional Services if:
  - (a) the prisoner requests that he or she be returned to prison;
  - (b) the prisoner no longer consents to his or her admission or treatment;

- (c) the Tribunal, after reviewing the prisoner's admission, determines that the prisoner will no longer benefit from continuing to be admitted as a voluntary patient or that the prisoner meets the criteria for admission as an involuntary patient;
- (d) an authorised psychiatric practitioner determines that the prisoner meets the criteria for admission as an involuntary patient; or
- (e) an authorised psychiatric practitioner determines that the prisoner will no longer benefit from continuing to be admitted as a voluntary patient.

## **82 Involuntary admission of prisoners**

- (1) The Director of Correctional Services may permit a prisoner to be transferred to an approved treatment facility where an order admitting the prisoner as an involuntary patient is made.
- (2) The person-in-charge of the approved treatment facility in which a prisoner is detained as an involuntary patient must notify the Director of Correctional Services as soon as practicable after the order is revoked or the person is transferred to another approved treatment facility under section 167.

## **83 Prisoner to remain in lawful custody**

A prisoner admitted to an approved treatment facility as a voluntary patient or an involuntary patient is to be taken to be in lawful custody while he or she remains in the approved treatment facility and the period spent in the approved treatment facility is to be taken to be a period of imprisonment under the sentence.

## **84 Discharge of prisoners**

- (1) A prisoner must not be detained in an approved treatment facility after his or her sentence of imprisonment expires unless the person is detained under an order made under this Act.
- (2) A prisoner who is in an approved treatment facility as a voluntary patient or an involuntary patient must not be discharged from the approved treatment facility while under sentence of imprisonment unless it is for the purpose of the prisoner being returned to prison.

**85 Leave of absence**

- (1) An authorised psychiatric practitioner may allow a prisoner admitted to an approved treatment facility to be absent from the approved treatment facility to receive medical or psychological assessment or treatment.
- (2) Leave of absence may only be allowed in accordance with arrangements made under section 86.
- (3) An authorised psychiatric practitioner or a person acting with the authority of an authorised psychiatric practitioner, a member of the Police Force or prison officer may apprehend a prisoner who is absent from an approved treatment facility without leave being allowed under subsection (1) and convey the person to the approved treatment facility.
- (4) A person who is apprehended under subsection (3) must be taken back to the approved treatment facility as soon as practicable after being apprehended.

**86 Arrangements**

The Director of Correctional Services and the Chief Health Officer may make arrangements to ensure the security and good order of prisoners receiving treatment under this Act outside of prison.

**Part 12 Rights of patients and carers****87 Information to be provided to patients**

- (1) As soon as practicable after:
  - (a) a person is admitted to an approved treatment facility; or
  - (b) a community management order is made in respect of a person,the person-in-charge of the approved treatment facility or approved treatment agency must ensure that the person and his or her representative is given information detailing:
  - (c) the person's rights and entitlements under this Act and how those rights and entitlements may be accessed and exercised;
  - (d) the advocacy and legal services that are available to the person; and

- (e) any other information relating to the person's admission and treatment as the Secretary considers relevant.
- (2) As far as possible, information given under subsection (1):
    - (a) must be given both orally and in writing, in a language and form in which the person to whom it is given is used to communicating in and in a culturally appropriate manner including, where necessary, through the use of interpreters; or
    - (b) where the person is used to communicating in a form other than orally or in writing, a version that is as close as possible to the content of the written information must be given in the form in which the person is used to communicating.
  - (3) In giving information to a person under this section, regard must be had to the age, culture, disability, impairment and any other factor of the person that may influence the person understanding the information.
  - (4) Where information is provided to a person through the use of an interpreter, that fact must be included in information provided to the Tribunal when it conducts a review in relation to the person.

## **88 Information concerning medication**

- (1) The person-in-charge of an approved treatment facility must ensure that:
  - (a) a person being treated at the approved treatment facility; and
  - (b) where the person consents, the person's representative and primary care provider or, if there is no primary care provider, a person who is closely involved in the care and treatment of the person,is provided, so far as is practicable, with details of the type, dosage, expected benefits and side effects of the medication or treatment being administered to the person at the facility.
- (2) The person-in-charge of an approved treatment agency must ensure that:
  - (a) a person who is subject to a community management order that is being supervised by the agency; and
  - (b) where the person consents, the person's representative and primary care provider or, if there is no primary care provider, a person who is closely involved in the treatment or care of the person,

is provided, so far as is practicable, with details of the type, dosage, expected benefits and side effects of the medication and treatment to be administered to the person by the agency.

- (3) Despite that, in the opinion of the person-in-charge, a person:
- (a) is unable to give his or her consent under subsection (1)(b) or (2)(b); or
  - (b) as a result of his or her mental illness or mental disturbance, unreasonably refuses to give his or her consent,

the person-in-charge must provide the person's representative and primary care provider or a person who is closely involved in the care and treatment of the person with the information referred to in subsection (1) or (2) unless, after considering the case, the authorised psychiatric practitioner believes, on reasonable grounds, that it is not in the best interests of the person.

- (4) The person-in-charge who decides not to provide a person with information under subsection (3) must:
- (a) inform the Tribunal of the decision and the reason for it; and
  - (b) inform the person's primary care provider or, if there is no primary care provider, a person who is closely involved in the treatment or care of the person of the person's right of appeal to the Tribunal against the decision.

## **89 Discharge plan**

- (1) The person-in-charge of an approved treatment facility must ensure that a discharge plan is prepared before a person is discharged from the approved treatment facility.
- (2) A discharge plan is to contain arrangements for the accommodation, psychosocial well-being and ongoing psychiatric treatment of the person and must be capable of being implemented.
- (3) The person-in-charge of an authorised treatment facility must ensure that an authorised psychiatric practitioner:
  - (a) consults with the person and, with the consent of the person, with the person's representative and primary care provider or, if there is no primary care provider, a person who is closely involved in the treatment or care of the person when preparing the discharge plan; and
  - (b) when the discharge plan is prepared, informs the person and, with the consent of the person, the person's representative

and primary care provider or, if there is no primary care provider, a person who is closely involved in the care and treatment of the person of the details of the discharge plan.

- (4) Despite that, in the opinion of the authorised psychiatric practitioner, a person:
- (a) is unable to give his or her consent under subsection (3); or
  - (b) as a result of his or her mental illness, unreasonably refuses to give his or her consent,

the authorised psychiatric practitioner must consult with and inform the person's representative and primary care provider or, if there is no primary care provider, a person who is closely involved in the treatment or care of the person if, after consideration, he or she reasonably believes it is in the best interest of the person.

- (5) An authorised psychiatric practitioner who decides not to consult with or inform a person under subsection (4) must:
- (a) inform the Tribunal of the decision and the reason for it; and
  - (b) inform the person's primary care provider or, if there is no primary care provider, a person who is closely involved in the treatment or care of the person of the person's right of appeal to the Tribunal against the decision.
- (6) The authorised psychiatric practitioner must do all things that are reasonably practicable to ensure that there are appropriate arrangements made for the accommodation and psychosocial well-being of a person who is discharged from an approved treatment facility.
- (7) An authorised psychiatric practitioner who is dissatisfied with arrangements made under subsection (6) may make a report to the Secretary.
- (8) The Secretary must ensure that an investigation is conducted of a report made under subsection (7).
- (9) The person-in-charge of an approved treatment facility must ensure that appropriate information relating to any ongoing treatment under a community management order of a person discharged from the approved treatment facility is provided to the person-in-charge of the approved treatment agency responsible for providing the treatment.

**90 Information on discharge**

- (1) An authorised psychiatric practitioner who refuses to admit a person as a voluntary patient or refuses to continue the person's admission:
  - (a) must provide the person with the reasons for the decision;
  - (b) where the person consents, must provide the person's primary care provider with the reasons for the decision; and
  - (c) must ensure that the person is provided with appropriate information relating to follow-up care, community management services, community support services and advocacy services that are available.
- (2) The person-in-charge of an approved treatment facility must ensure that a person who is discharged from the approved treatment facility is provided with appropriate information relating to follow-up care, community management services and community support services that are available.

**91 Disclosure of information**

- (1) Subject to subsection (2), a person must not, either directly or indirectly, disclose information contained in a record kept by an approved treatment facility or approved treatment agency that:
  - (a) identifies the fact that a person has been admitted to the facility or received treatment from the agency; or
  - (b) relates to the nature of, or other details relating to, the person's admission, treatment or management.
- (2) Information referred to in subsection (1) may be disclosed:
  - (a) where it is necessary:
    - (i) to exercise a power or perform a function under an Act; or
    - (ii) to give information expressly authorised to be disclosed under an Act;
  - (b) with the consent of the person to whom the information relates or, if the person has died, with the consent of his or her next of kin;
  - (c) when it is required in the course of criminal proceedings;

- (d) when it is required in the course of proceedings relating to the guardianship of the person to whom the information relates or relating to the administration of property of that person;
- (e) to the person's representative, or primary care provider or another person who is closely involved in the care and treatment of the person to whom the information relates where the disclosure is relevant to the ongoing care, treatment or rehabilitation of the person and the disclosure is considered to be in the best interests of the person;
- (f) to a member of the Police Force where the person to whom the information relates is in a situation that requires immediate intervention and the person is likely to cause imminent harm to himself or herself, to a particular person or any other person, or represents a substantial danger to the general community, and the information is relevant to the safe resolution of the situation;
- (g) to the Commissioner of Police or a member of the Police Force nominated by the Commissioner for the purposes of this paragraph where the person disclosing the information reasonably believes that the person to whom the information relates may harm himself or herself or represents a danger to the general community;
- (h) when it is required to prevent or lessen a serious or imminent threat to the life or health of the person, another person or the general community;
- (j) for the purposes of medical or social research where:
  - (i) the ethics committee nominated by the Chief Health Officer approves the methodology of the research;
  - (ii) the disclosure is not likely to be detrimental to the interest of the person to whom the information relates; and
  - (iii) the identity of the person will be protected and not published;
- (k) in connection with the further treatment of a person with a mental illness;
- (m) to the Minister or the Secretary; or
- (n) if the Minister considers that disclosing the information is in the public interest or necessary to ensure the safety of the general community or a section of the general community.

- (3) The Minister must not disclose information under subsection (2)(n) unless he or she has received a recommendation from the Secretary, the Chief Health Officer, the President of the Tribunal, the principal community visitor, the Ombudsman or the Commissioner for Health and Community Services Complaints to disclose the information.
- (4) Where a person is notified by an authorised psychiatric practitioner that the authorised psychiatric practitioner believes that the disclosure of information relating to another person could cause:
  - (a) the person's health to deteriorate;
  - (b) the person to become a danger to himself or herself or to other persons; or
  - (c) a person referred to in the information may be adversely affected or endangered,

the person must take reasonable steps to ensure that the information is not disclosed to the person.

Penalty: \$5,000.

## **92 Access to records**

- (1) A person may apply, in writing, to an authorised psychiatric practitioner employed at an approved treatment facility or an approved treatment agency to have access to information contained in the person's records maintained at the facility or by the agency.
- (2) A person is not permitted access to information under subsection (1) unless an authorised psychiatric practitioner or a person who is able to interpret the information for the person is present when the information is provided.
- (3) An authorised psychiatric practitioner may refuse a person access to information sought under subsection (1) where the authorised psychiatric practitioner believes, on reasonable grounds, that, as a result of having access to the information:
  - (a) the person's health is likely to deteriorate;
  - (b) the person may become a danger to himself or herself or to other persons; or
  - (c) a person referred to in the information may be adversely affected or endangered.

- (4) An authorised psychiatric practitioner who refuses a person access to information under subsection (3) must as soon as possible:
  - (a) notify the person and his or her representative, if any, of the decision; and
  - (b) inform the person of his or her right of appeal to the Tribunal against the decision.

### **93 Disclosure to representative**

- (1) An authorised psychiatric practitioner who refuses a person access to information under section 92(3) may permit a representative of the person to have access to the information where the disclosure is considered by the authorised psychiatric practitioner to be in the person's best interest and the information is disclosed in confidence.
- (2) An authorised psychiatric practitioner may require a representative of a person to give an undertaking that he or she will not disclose specified information before permitting the representative access to the information.
- (3) A person who gives an undertaking under subsection (2) must not disclose to the person to whom the information relates, or to any other person, any information to which the undertaking relates.

Penalty: \$5,000.

### **94 Inclusion of written comments into records**

The person-in-charge of an approved treatment facility or an approved treatment agency must ensure that all written comments made by a person in an approved treatment facility or while being treated by an approved treatment agency, or by his or her representative, are included in the person's records maintained at the facility or by the agency.

### **95 Letters and postal articles**

The person-in-charge of an approved treatment facility must ensure:

- (a) that a person at the approved treatment facility is permitted to correspond, by post or otherwise, with persons outside the facility without interference or restriction;
- (b) that a letter or other postal article that a person at the approved treatment facility wants posted is posted without being opened; or

- (c) that a letter or other postal article addressed to a person at the approved treatment facility is delivered to the person without being opened and is delivered as soon as reasonably practicable after it is received.

## **96 Access to telephone**

The person-in-charge of an approved treatment facility must ensure that a person at the approved treatment facility is able, in reasonable privacy, to make and receive telephone calls so far as is reasonably practicable and, at the discretion of the person-in-charge, subject to the person paying the cost of making those calls.

## **97 Visitors**

The person-in-charge of an approved treatment facility must ensure that a person at the approved treatment facility is able to receive visitors in reasonable privacy at the times that are determined.

## **98 Restriction or denial of entitlement**

- (1) An authorised psychiatric practitioner may order that a right of a person under section 95, 96 or 97 be restricted or denied if the authorised psychiatric practitioner reasonably believes that unless the right of the person is restricted or denied there is a serious likelihood of the person suffering serious physical or mental deterioration or that the safety or well-being of other persons, another person or the general community is at risk.
- (2) An authorised psychiatric practitioner must review an order made under this section at least once a day and may vary or revoke the order.
- (3) An order under this section lapses at the end of the day on which it is not reviewed.
- (4) An authorised psychiatric practitioner must make a record in the clinical record of the person when an order under this section is made and when the order is reviewed.
- (5) If a person in respect of whom an order under this section is made is an involuntary patient, the authorised psychiatric practitioner must:
  - (a) notify the Tribunal of the order being made; and
  - (b) inform the person of his or her right of appeal against the order.

**99 Withholding of certain correspondence**

- (1) Section 98 does not apply to a letter or other postal article:
  - (a) addressed to a person at an approved treatment facility from a person referred to in subsection (2); or
  - (b) addressed to a person referred to in subsection (2) from a person at an approved treatment facility.
- (2) The persons referred to are:
  - (a) the Minister;
  - (b) the Secretary;
  - (c) a member of Parliament;
  - (d) the principal community visitor or a community visitor;
  - (e) the person-in-charge of the approved treatment facility;
  - (f) an authorised psychiatric practitioner;
  - (g) the Registrar or a Deputy Registrar of the Tribunal;
  - (h) a representative of the person;
  - (j) the Anti-Discrimination Commissioner; and
  - (k) the Commissioner for Health and Community Services Complaints.

**Part 13 Internal complaints procedure****100 Internal complaints procedures**

- (1) A person being treated at an approved treatment facility or by an approved treatment agency or his or her representative, or a person with a genuine interest in that person, may make a complaint to the person-in-charge:
  - (a) relating to the failure of the approved treatment facility or approved treatment agency to recognise any right of the person under this Act; or
  - (b) relating to the administration of this Act that relates directly to the health interests and needs of the person.

- (2) The person-in-charge of an approved treatment facility or approved treatment agency must establish procedures, that are accessible, just and fair, to deal with complaints made under subsection (1).
- (3) The procedures referred to in subsection (2) are to aim:
  - (a) to investigate and, wherever possible, resolve complaints by a process within the approved treatment facility or approved treatment agency; and
  - (b) to promote improvements in the quality of the policies, procedures and services of the approved treatment facility or approved treatment agency.
- (4) The person-in-charge of an approved treatment facility or approved treatment agency must ensure that adequate information is included in the information given to a person under section 87 about:
  - (a) the complaints procedures of the facility or agency; and
  - (b) all other available complaints procedures that apply to the facility or agency.
- (5) The person-in-charge of an approved treatment facility or approved treatment agency must ensure that information, both oral and written, of the complaints procedures under this Act and advocacy services that are available is regularly given:
  - (a) to a person being treated at the approved treatment facility or by the approved treatment agency;
  - (b) to the person's representative; and
  - (c) to the person's primary care provider or, if there is no primary care provider, to a person who is closely involved in the care and treatment of the person.
- (6) The person-in-charge of an approved treatment facility or approved treatment agency must ensure that:
  - (a) a person who makes a complaint:
    - (i) receives a written acknowledgment as soon as reasonably practicable after the complaint is made; and
    - (ii) is kept informed of the progress of any investigation or other action on the complaint at regular intervals; and

- (b) if the person who made the complaint is not the person being treated, that person is also kept informed of the progress of any investigation or other action on the complaint at regular intervals.
- (7) The person-in-charge of an approved treatment facility or approved treatment agency must ensure that a full and accurate record of the nature of a complaint made under this section and any investigation or other action taken in relation to it is kept.
- (8) The person-in-charge of an approved treatment facility or approved treatment agency must:
  - (a) maintain a register containing a brief record of all complaints made under this section; and
  - (b) ensure that the register is made available to a community visitor when requested.
- (9) The person-in-charge of an approved treatment facility or approved treatment agency must forward to the Secretary and the principal community visitor, at 6 monthly intervals, a report detailing the pattern of complaints made under this section during the period of the report and the changes, if any, made to prevent a recurrence of the activities that led to the complaints.
- (10) Where the person-in-charge of an approved treatment facility or an approved health care agency considers, after an investigation of a complaint under this section, that a person:
  - (a) may have committed a criminal offence;
  - (b) may have committed a breach of discipline, within the meaning of the *Public Sector Employment and Management Act*; or
  - (c) may be guilty of professional misconduct,the person-in-charge must inform the Secretary.
- (11) The Secretary must immediately, on being informed:
  - (a) under subsection (10)(a), notify a member of the Police Force;
  - (b) under subsection (10)(b), commence proceedings against the person under Part 8 of the *Public Sector Employment and Management Act*; or
  - (c) under subsection (10)(c), notify the relevant professional body.

## **Part 14            Community visitors**

### **Division 1        Principal community visitor**

#### **101            Principal community visitor**

- (1) The Minister must appoint a person to be the principal community visitor.
- (2) The principal community visitor holds office for 3 years and is eligible to be reappointed.

#### **102            Functions of principal community visitor**

The functions of the principal community visitor are:

- (a) to establish standards and principles by which community visitors and community visitors panels are to function and the protocols to give effect to this Part;
- (b) to oversee the preparation and circulation of publications to approved treatment facilities and approved treatment agencies, and to the public generally, that explain the role of community visitors and community visitors panels and how they may be contacted;
- (c) to ensure that community visitors and community visitors panels exercise their powers and perform their functions in accordance with the principles, standards and protocols established under paragraph (a);
- (d) to establish community visitors panels as required by this Act or when required by the Minister; and
- (e) to ensure that each approved treatment facility and approved treatment agency is inspected by a community visitors panel at least once each 6 months.

### **Division 2        Community visitors**

#### **103            Community visitors**

- (1) The principal community visitor may appoint a person to be a community visitor.
- (2) A community visitor is to have qualifications that are determined by the principal community visitor.

## **104      Inquiry functions**

- (1) A community visitor may inquire into and make recommendations relating to:
  - (a) the adequacy of services for assessing and treating persons in approved treatment facilities or by approved treatment agencies;
  - (b) the standard and appropriateness of facilities for the accommodation, physical well being and welfare of persons receiving treatment or care at approved treatment facilities or by approved treatment agencies;
  - (c) the adequacy of information relating to rights of persons receiving treatment at approved treatment facilities or by approved treatment agencies and the complaint procedures under this Act;
  - (d) the accessibility and effectiveness of complaint procedures under Part 13;
  - (e) the failure of persons employed in approved treatment facilities or by approved treatment agencies to comply with this Act;
  - (f) any other matter that a community visitor considers appropriate having regard to the principles and objectives of this Act; and
  - (g) any other matter as directed to the principal community visitor by the Minister.
- (2) A community visitor must refer to the principal community visitor any matter that the community visitor considers should be investigated by a community visitors panel.

## **105      Complaint functions**

A community visitor is:

- (a) to be accessible to persons receiving treatment under this Act to hear any complaints that they may have and to resolve those complaints; and
- (b) to assist persons receiving treatment under this Act to make applications under this Act relating to complaints, reviews or appeals and, where appropriate, to present those applications.

**106      Visiting duties**

- (1) A community visitor may, at any time without notice, enter an approved treatment facility or premises occupied by an approved treatment agency.
- (2) When directed by the Minister, the principal community visitor must arrange for a community visitor to visit an approved treatment facility or premises occupied by an approved treatment agency at the times specified by the Minister.

**107      Powers of inspection**

A community visitor may, when in an approved treatment facility or the premises occupied by an approved treatment agency:

- (a) inspect any part of the facility or the premises;
- (b) visit persons who are receiving treatment or care at the facility or from the agency;
- (c) inspect documents or medical records relating to persons receiving treatment or care at the facility or from the agency; and
- (d) inspect any records or registers required to be kept by or under this Act.

**108      Requests to see community visitors**

- (1) The person-in-charge of an approved treatment facility or approved treatment agency must ensure that a person receiving treatment or care at the facility or from the agency (and the person's representative and any person with a genuine interest in the person) is:
  - (a) informed of the person's right to be visited by a community visitor; and
  - (b) given written information, in a language appropriate to the person, on how to contact a community visitor.
- (2) A person who is receiving treatment or care at an approved treatment facility or from an approved treatment agency may request that he or she be visited by a community visitor.
- (3) The person-in-charge of an approved treatment facility or approved treatment agency must forward a request made under subsection (2) to the principal community visitor as soon as possible and, in any event, not later than 24 hours after it is made.

- (4) The principal community visitor must ensure that a community visitor visits the person not later than 48 hours after the request under subsection (3) is received by the principal community visitor.

### **109        Reports by community visitors**

- (1) A community visitor who visits an approved treatment facility or premises occupied by an approved treatment agency must provide a report of his or her visit, including any findings and recommendation, to the principal community visitor.
- (2) The principal community visitor must provide the person-in-charge of the approved treatment facility or approved treatment agency with a copy of a report provided under subsection (1).
- (3) The principal community visitor may make a report to the Secretary where he or she believes that the person-in-charge of an approved treatment facility or approved treatment agency has not taken adequate or reasonable action to implement a recommendation made by a community visitor in a report under this section.
- (4) If, in the opinion of the principal community visitor, a matter referred to in a report provided under subsection (1) falls within the functions conferred by a law of the Territory, the Commonwealth, a State or another Territory of the Commonwealth on a person, tribunal or board, the principal community visitor may refer the matter to the person, tribunal or board, as the case may be.

## **Division 3        Community visitors panels**

### **110        Community visitors panels**

- (1) A community visitors panel is to be established for each approved treatment facility and each approved treatment agency.
- (2) A community visitors panel consists of:
  - (a) a legal practitioner;
  - (b) a medical practitioner; and
  - (c) one other person,appointed by the principal community visitor.
- (3) A person appointed under subsection (2)(c) is to be a person who, in the opinion of the principal community visitor, represents the interest of organisations that represent consumers of mental health services and has a special interest or expertise in mental illness or mental disturbance.

- (4) A community visitors panel is, so far as is practicable, to include persons of both sexes and of diverse ethnic backgrounds (including Aboriginal and Torres Strait Islander backgrounds).
- (5) The principal community visitor must appoint one member of the community visitors panel to be the Chairperson of the panel.

### **111 Duties of community visitors panels**

- (1) The members of a community visitors panel are, as a group, to visit an approved treatment facility or the premises occupied by an approved treatment agency for which the panel is established not less than once each 6 months.
- (2) When visiting an approved treatment facility or premises occupied by an approved treatment agency, the members of the community visitors panel are to enquire into:
  - (a) the adequacy of opportunities and facilities for the recreation, communication with other persons, occupation, education, training and rehabilitation of persons receiving treatment or care at the facility or from the agency;
  - (b) the extent to which persons receive treatment and care at the facility or from the agency in conditions that provide the least restrictive and least intrusive environment enabling the treatment and care to be effectively given;
  - (c) the adequacy of services for assessing, treating and caring for persons at the facility or by the agency;
  - (d) the appropriateness and standards of facilities for the accommodation, physical well being and welfare of persons receiving treatment and care at the facility or from the agency;
  - (e) the adequacy of information provided by the facility or agency about the complaints procedures and other rights under this Act;
  - (f) the accessibility and effectiveness of internal complaints procedures of the facility or agency;
  - (g) any failures of persons employed by the facility or agency to comply with this Act;
  - (h) any other matter that the panel consider appropriate having regard to the principles and objectives of this Act; and
  - (j) any other matter that is referred to it by the Minister or the principal community visitor.

- (3) The members of a community visitors panel may, when visiting an approved treatment facility or premises occupied by an approved treatment agency:
  - (a) inspect any part of the facility or the premises;
  - (b) visit any person who is being treated or cared for at the facility or by the agency;
  - (c) inquire into the admission, detention, care, treatment and control of persons being treated or cared for at the facility or by the agency;
  - (d) inspect documents or medical records relating to persons being treated or cared for at the facility or by the agency; and
  - (e) inspect any other records or registers required to be kept by or under this Act at the facility or by the agency.

#### **112      Reports by community visitors panels**

- (1) The Chairperson of a community visitors panel must forward to the principal community visitor a report of the panel's visit to an approved treatment facility or the premises occupied by an approved treatment agency as soon as practicable after the visit.
- (2) The report is to be in writing and contain details of:
  - (a) the actions and inquiries undertaken by the panel;
  - (b) the results of attempts by the panel to resolve particular matters;
  - (c) those matters not resolved by the panel;
  - (d) those matters that require further attention by the panel;
  - (e) the results of inquiries from previous visits made by the panel; and
  - (f) any recommendations of the panel arising out of the visit.
- (3) The principal community visitor must provide a copy of the report to the person-in-charge of the approved treatment facility or approved treatment agency.
- (4) The Minister may require the principal community visitor to arrange for a community visitors panel to report to the Minister, through the principal community visitor, on a matter and at the times and in the manner as directed by the Minister.

- (5) The principal community visitor may provide the Secretary with a report where he or she believes that the person-in-charge of the approved treatment facility or approved treatment agency has not taken adequate or reasonable action to implement a recommendation contained in a report of a community visitors panel.

## **Division 4      Miscellaneous**

### **113      Assistance to be provided**

The person-in-charge of an approved treatment facility or approved treatment agency, and each person employed at the facility or by the agency, must provide a community visitor and each member of a community visitors panel with reasonable assistance and co operation (including answering questions and responding to enquiries) to enable the community visitor or member to exercise his or her powers or perform his or her functions under this Act.

### **114      Eligibility**

A person cannot be appointed as a community visitor or as a member of a community visitors panel if the person:

- (a) is employed by, or has a direct interest in any contract with, the Agency; or
- (b) derives any financial interest from a private hospital.

### **115      Annual report**

- (1) The principal community visitor must provide the Minister with a report on the activities of community visitors and community visitors panels during each financial year not later than 3 months after the end of the financial year.
- (2) The Minister must lay a copy of the report before the Legislative Assembly not later than 6 sitting day after receiving it.

### **116      Detection of offences**

- (1) Where the principal community visitor considers, after receiving a report from a community visitor or a community visitors panel, that a person may have committed an offence against this Act or any other Act, the community visitor must inform the Secretary and may inform the Chief Executive Officer of an Agency that the principal community visitor considers may need to know.

- (2) Where a community visitor or a member of a community visitors panel believes, in the course of an investigation or inspection under this Act, that a person may have committed an offence against this Act or any other act, the community visitor or member must:
  - (a) report the circumstances of the alleged offence to the principal community visitor;
  - (b) take reasonable steps to preserve the evidence relating to the alleged offence; and
  - (c) not undertake any further investigation of the circumstances of the alleged offence.

**117            Confidentially**

- (1) Subject to subsection (2), a person who is or has been a community visitor or a member of a community visitors panel must not, either directly or indirectly, make a record of, or divulge or communicate to any person, or make use of, information obtained by the person under this Act.
- (2) Subsection (1) does not apply to a person who records, divulges or uses information in accordance with this Act or any other Act, or in accordance with a direction of the principal community visitor.

**Part 15            Mental Health Review Tribunal**

**Division 1        Establishment of Tribunal**

**118            Mental Health Review Tribunal**

- (1) The Mental Health Review Tribunal is established.
- (2) The Tribunal consists of persons appointed by the Administrator.
- (3) For the purposes of subsection (2), the persons appointed are to be:
  - (a) legal practitioners who have had not less than 5 years experience as a solicitor or barrister in the Territory or in a State or another Territory of the Commonwealth;
  - (b) medical practitioners; and
  - (c) persons who have a special interest or expertise in mental illness or mental disturbance.

- (4) As far as is practicable, the Tribunal is to consist of persons of both sexes and from diverse backgrounds (including Aboriginal and Torres Strait Islander background).
- (5) A person cannot be appointed to the Tribunal if he or she is:
  - (a) a medical practitioner referred to in section 6(b) of the *Hospital Management Boards Act*;
  - (b) the principal community visitor;
  - (c) a community visitor;
  - (d) a designated mental health practitioner;
  - (e) an authorised psychiatric practitioner;
  - (f) the Chief Health Officer;
  - (g) the Secretary;
  - (h) the person-in-charge of an approved mental health facility or approved treatment agency; or
  - (j) an employee of the Health and Community Services Complaints Commission.
- (6) A member of the Tribunal holds office for 3 years and is eligible to be reappointed.
- (7) The Administrator must appoint a member of the Tribunal appointed in accordance with subsection (3)(a) to be the President of the Tribunal.
- (8) A member of the Tribunal appointed in accordance with subsection (3)(a) may exercise the powers or perform the functions of the President as and when directed by the President.
- (9) A reference to the President of the Tribunal includes a member of the Tribunal who is exercising a power or performing a function of the President in accordance with a direction under subsection (8).

#### **119 Resignation and removal from office**

- (1) A person appointed as a member of the Tribunal may resign by written notice to the Administrator.
- (2) The Administrator may terminate the appointment of a person as a member of the Tribunal for inability, inefficiency, misbehaviour or physical or mental incapacity.

- (3) The Administrator must terminate the appointment of a person as a member of the Tribunal if the person:
  - (a) ceases to hold a qualification or status that was a pre requisite for his or her being appointed; or
  - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

## **120 Constitution of Tribunal**

- (1) When the Tribunal is to exercise any of its powers or perform any of its functions, the President must, subject to this Act, nominate 3 members of the Tribunal to exercise the power or perform the function.
- (2) Of the persons nominated under subsection (1):
  - (a) one is to be the President or a member appointed under section 118(3)(a);
  - (b) one is to be a member appointed under section 18(3)(b); and
  - (c) one is to be a member appointed under section 118(3)(c).
- (3) The President may nominate more than one series of members under subsection (1) at any one time and the members nominated may exercise the powers and perform the functions of the Tribunal in respect of different matters at the same time.

## **121 Registrar of Tribunal**

- (1) The Minister:
  - (a) must appoint an employee, within the meaning of the *Public Sector Employment and Management Act*, to be the Registrar of the Tribunal; and
  - (b) may appoint an employee, within the meaning of the *Public Sector Employment and Management Act*, to be a Deputy Registrar of the Tribunal.
- (2) The Registrar and a Deputy Registrar of the Tribunal may exercise the powers and perform the functions conferred by the Tribunal.
- (3) All notices, applications and other documents required to be given or made to the Tribunal are to be lodged with the Registrar or a Deputy Registrar.

## **Division 2      Reviews, appeals and other functions of Tribunal**

### **122      Review of long term voluntary admissions**

- (1) The Tribunal must review the admission of a person as a voluntary patient where the person remains in the approved treatment facility for longer than 6 months and must continue to review the admission at intervals not longer than 6 months as long as the person remains admitted as a voluntary patient.
- (2) Following a review, the Tribunal if it is satisfied:
  - (a) that the person is able to give informed consent, it may confirm the admission of the person as a voluntary patient;
  - (b) that the person fulfils the criteria for involuntary admission on the grounds of mental illness, it may order that the person be detained as an involuntary patient on those grounds for not longer than 3 months and, where it does so, it must fix a date for the order to be again reviewed;
  - (c) that the person fulfils the criteria for involuntary admission on the grounds of mental disturbance, it may order that the person be detained as an involuntary patient on those grounds for not longer than 14 days and, where it does so, it must fix a date for the order to be again reviewed; or
  - (d) that the person fulfils the criteria for involuntary treatment in the community, it may make a community management order in relation to the person.
- (3) Following the review, if the Tribunal is not satisfied that the person:
  - (a) will benefit from continuing to be admitted as a voluntary patient; or
  - (b) fulfils a criteria referred to in subsection (2),it must order that the person be discharged from the approved treatment facility.
- (4) Where the Tribunal makes an order under subsection (2)(b) or (c), it must authorise the treatment that may be administered to the person under the order.

**123 Review of involuntary admissions and community management orders**

- (1) The Tribunal must review the admission of a person as an involuntary patient:
  - (a) on the grounds of mental illness not later than 7 days after the person is admitted; or
  - (b) on the grounds of mental disturbance not later than 7 days after the person is admitted, where the person continues to be detained under section 42(2).
- (2) The Tribunal must review an interim community management order not later than 7 days after it is made.
- (3) The Tribunal must review an order made under subsection (5) by the date fixed under that subsection.
- (4) The Tribunal may review an order made under this Act on being requested to do so by the person in respect of whom the order is made or by a person who has a genuine interest in, or with a real and immediate concern for the welfare of, the person.
- (5) Following a review, the Tribunal if it is satisfied that:
  - (a) the person fulfils the criteria for admission on the grounds of mental illness, it may order that the person be detained as an involuntary patient on those grounds for not longer than 3 months and, where it does so, it must fix a date for the order to be again reviewed;
  - (b) the person fulfils the criteria for admission on the grounds of mental disturbance, it may order that the person be detained as an involuntary patient on those grounds for not longer than 14 days and, where it does so, it must fix a date for the order to be again reviewed; or
  - (c) the person fulfils the criteria for involuntary treatment in the community, it may make a community management order in relation to the person for not longer than 6 months and, where it does so, it must fix a date for the order to be reviewed again.
- (6) Where the Tribunal makes an order under subsection (5)(a) or (b), it must authorise the treatment that may be administered to the person under the order.
- (7) Following the review, if the Tribunal is not satisfied that the person fulfils a criteria referred to in subsection (5), it must revoke the order admitting the person as an involuntary patient or revoke the interim

community management order or community management order, as the case may be.

- (8) Where the Tribunal revokes an order admitting the person as an involuntary patient it must order that the person:
  - (a) be immediately discharged from the approved treatment facility; or
  - (b) be discharged when arrangements are made for the care of the person on his or her discharge.
- (9) A person must be discharged from an approved treatment facility not later than 7 days after an order under subsection (8)(b) is made.
- (10) A review is not required to be conducted where the admission of the person is revoked under section 40.
- (11) A community management order made under subsection (5)(c):
  - (a) remains in force for the period, not longer than 6 months, as determined by the Tribunal; and
  - (b) may be extended for periods of not longer than 6 months after considering an application made by an authorised psychiatric practitioner before the order expires.
- (12) Following a review, the Tribunal may vary a community management order where it is satisfied that there is a significant change in the condition of the person who is subject to the order.

#### **124 Review of certain decisions of authorised psychiatric practitioners**

- (1) The Tribunal must review a decision of an authorised psychiatric practitioner of which notice is given under section 41(2), 47(2), 88 or 89 as soon as practicable after being notified.
- (2) Following the review, the Tribunal may:
  - (a) uphold the decision of the authorised psychiatric practitioner; or
  - (b) substitute its own decision for that of the authorised psychiatric practitioner.

#### **125 Review of reports**

- (1) The Tribunal must review a report forwarded to it under this Act as soon as practicable after it is received.

- (2) Following the review, the Tribunal:
- (a) may give a written direction to the Secretary relating to a practice under, or interpretation of, this Act arising out of a matter contained in the report; and
  - (b) where it considers that a person may be guilty of professional misconduct, must notify the relevant professional body.

**126 Determination as to whether person able to give informed consent**

The Tribunal:

- (a) must determine whether a person is capable of giving informed consent as soon as practicable after it receives an application under section 25 or 54; and
- (b) must ensure that the authorised psychiatric practitioner who made the application is notified of its determination.

**127 Appeals**

- (1) An appeal may be made to the Tribunal against:
- (a) a decision of an authorised psychiatric practitioner under section 25(7), 92(3) or 98; or
  - (b) an order authorising a person being detained for 7 days as an involuntary patient on the grounds of mental illness or mental disturbance.
- (2) An appeal may be made to the Tribunal against a decision of the person-in-charge of an approved treatment facility to transfer a person to another approved treatment facility under section 167.
- (3) An appeal under subsection (1) may be made by:
- (a) the person who is the subject of the decision or order;
  - (b) the person's representative or a legal practitioner on the person's behalf; or
  - (c) a person with a genuine interest, or with a real and immediate concern for the welfare of, the person.
- (4) An application under this section is to be in the approved form and lodged with the Tribunal.

- (5) Following an appeal under subsection (1), the Tribunal may:
  - (a) affirm, vary or set aside the decision or order;
  - (b) make any decision or order that the authorised psychiatric practitioner may have made;
  - (c) refer the matter back to the authorised psychiatric practitioner for further consideration; or
  - (d) make any other order it thinks fit.
- (6) Following an appeal made under subsection (2), the Tribunal may:
  - (a) affirm, vary or set aside the decision; or
  - (b) make any other order it thinks fit.
- (7) If a person had been transferred to another approved treatment facility, the person must be returned to the approved treatment facility from which he or she was transferred where the Tribunal sets aside a decision under subsection (6).

## **128 Limitation of further reviews and appeals**

Subject to this Division, after conducting a review or appeal, the Tribunal may order that an application for another review or an appeal in relation to the same matter may not be made before a date determined by the Tribunal.

## **Division 3 Proceedings before Tribunal**

### **129 Hearings**

- (1) The Tribunal may undertake a review or determine an appeal by conducting a hearing.
- (2) Subject to this Division, the conduct of a hearing is at the discretion of the Tribunal and may be conducted through the use of teleconferencing or other forms of interactive video conferencing.
- (3) All questions of laws arising at a hearing are to be determined by the President.
- (4) The Tribunal may:
  - (a) summon a person to appear before it;
  - (b) order reports to be prepared and presented to it; and

- (c) appoint persons to assist it so that it may inform itself on any matter it thinks fit.
- (5) The Tribunal may adjourn a hearing.
- (6) The person-in-charge of an approved treatment facility must ensure, as far as is reasonably practicable, that a person who is admitted as an involuntary patient at the facility is dressed in a manner that maintains his or her inherent dignity as a human being when the person appears at a hearing of the Tribunal.

### **130 Matters to be considered by Tribunal**

- (1) The Tribunal, in undertaking a review or hearing an appeal in respect of a person, must have regard to the person's current state in relation to the criteria for involuntary admission and consider his or her medical and psychiatric history and current social circumstances.
- (2) In determining whether a person is mentally ill, the Tribunal must give due regard to:
  - (a) any cultural factors relating to the person that may be relevant to the determination; and
  - (b) any evidence given to the Tribunal by an expert witness concerning the person's cultural background and its relevance to any question of mental illness.

### **131 Right of appearance and representation**

- (1) A person who is the subject of a review or appeal may represent himself or herself or may be represented by a legal practitioner or other person.
- (2) The Tribunal:
  - (a) must appoint a legal practitioner to represent a person at a review or appeal where the person is not represented unless it is satisfied that, in the circumstances of the case, it is not necessary; and
  - (b) may order that the Territory pay all or part of the reasonable costs and disbursements of the legal practitioner in representing the person at the review or appeal.

- (3) The Tribunal may conduct a review or appeal in the absence of a person or his or her representative where the Tribunal is satisfied that:
  - (a) the person made the decision not to attend of his or her own free will;
  - (b) reasonable notice of the review or appeal was given to the person; and
  - (c) the person had a reasonable opportunity to attend the review or appeal.
- (4) The Tribunal must notify a person who is the subject of a review or appeal of its decision as soon as practicable after the review or appeal is concluded where it was conducted in the absence of the person or his or her representative.

### **132 Access to medical records**

- (1) A person who is the subject of a review or appeal and his or her representative must be given access to the person's medical records and reports that are before the Tribunal.
- (2) The Tribunal may order that a person who is the subject of a review or appeal not be given access to a medical record or report or a part of a medical record or report that is before the Tribunal where it is satisfied that to do so may cause serious harm to the health of the person or may put at risk the safety of other persons.
- (3) A Tribunal may order that only the representative of a person who is the subject of a review or appeal be given access to a medical record or report or a part of the medical record or report that is before the Tribunal.
- (4) The Tribunal may require that the representative give an undertaking that he or she will not disclose specified information in the medical record or report before permitting the representative access to it.
- (5) A person who gives an undertaking under subsection (4) must not disclose to the person to whom the information relates, or to any other person, any information to which the undertaking relates.

Penalty: \$5,000.

### **133 Evidence**

- (1) A person who is the subject of a review or appeal, or his or her representative, may at a hearing:
  - (a) call and produce evidence, including reports from medical practitioners, psychologists and persons having particular expertise considered by the Tribunal to be relevant to the issues to be determined by it; and
  - (b) request that a person attend the hearing to give evidence.
- (2) The Tribunal may refuse a request under subsection (1)(b) if satisfied that the attendance of the person may cause serious harm to the health of the person who is the subject of the review or appeal or that the safety of other persons may be placed at risk.

### **134 Interpreter**

- (1) The Tribunal must, so far as is reasonably practicable, permit a person who is the subject of a review or appeal to have access to an interpreter to assist the person to prepare for the hearing and to assist the person at the hearing where the person does not speak English to a level that will enable the person to understand the proceedings.
- (2) An interpreter is to be provided at no cost to the person.

### **135 Hearing not open to public**

- (1) A hearing of the Tribunal is not to be held in public unless the Tribunal directs otherwise.
- (2) The Tribunal must not make a direction under subsection (1) unless satisfied that:
  - (a) the consent has been obtained of the person who is the subject of the review or appeal;
  - (b) the privacy of the parties to the review or appeal will not be adversely affected; and
  - (c) the public hearing will not result in serious harm to the health of the person who is the subject of the review or appeal or will not place the safety of other persons at risk.
- (3) A direction under subsection (1) may be made on the Tribunal's own initiative or on the application of the person who is the subject of the review or appeal.

**136 Record of proceedings**

- (1) The Tribunal:
  - (a) must make a record of all its proceedings on audio-tape; and
  - (b) must retain the record for a reasonable period as determined by the Tribunal.
- (2) Subject to subsection (3), the Tribunal must provide a person who is the subject of a review or appeal by the Tribunal with a copy of the record made under subsection (1) at no cost.
- (3) The Tribunal may refuse to provide a person who is the subject of a review or appeal by the Tribunal with a copy of the record, or a part of the record, made under subsection (1) where it is satisfied that to do so may cause serious harm to the health of the person or may put at risk the safety of other persons.
- (4) A Tribunal may order that only the representative of a person who is the subject of a review or appeal by the Tribunal be provided with a copy of the record, or a part of the record, made under subsection (1).
- (5) The Tribunal may require that the representative give an undertaking that he or she will not disclose specified information in the record before providing the representative with a copy of the record or a part of the record.
- (6) A person who gives an undertaking under subsection (5) must not disclose to the person to whom the information relates, or to any other person, any information to which the undertaking relates.

Penalty: \$5,000.

**Division 4 Miscellaneous**

**137 Evidence not admissible in other proceedings**

Evidence before the Tribunal cannot be used in civil or criminal proceedings.

**138 Publication of names, &c.**

- (1) A person must not publish or broadcast the name of a person who is the subject of a review or appeal unless the approval to do so is obtained from the Tribunal and the person or his or her representative.

(2) A report (other than an official report) of a review or appeal must not include information that identifies or may identify a person whose name is prohibited by this section from being published or broadcast.

(3) A person must not publish or broadcast a report that contravenes this section.

Penalty:      \$5,000.

**139      Secrecy provision**

(1) Subject to subsection (2), a person who is or has been a member of the Tribunal must not, either directly or indirectly, make a record of, or divulge or communicate to a person, or make use of, information obtained by the person under this Act.

Penalty:      \$5,000.

(2) Subsection (1) does not apply to a person who records, divulges or uses information in accordance with this or any other Act.

**140      Annual report**

(1) The President of the Tribunal must provide the Minister with a report on the exercise of the Tribunal's powers and the performance of the Tribunal's functions during each financial year not later than 3 months after the end of the financial year.

(2) The Minister must lay a copy of the report before the Legislative Assembly not later than 6 sitting days after receiving it.

**141      Reports of reasons given by Tribunal for its decisions**

(1) The President of the Tribunal may prepare and publish reports of the reasons for its decisions.

(2) A report under subsection (1) must not include the name of the person who is the subject of the decision or any other material that may disclose the identity of the person.

(3) The President of the Tribunal must only publish a report of the reasons for its decision after giving due consideration to the wishes of the person who is the subject of the decision and if satisfied that:

(a) the privacy of the parties to the review or appeal will not be adversely affected;

- (b) it will not result in serious harm to the health of the person who is the subject of the review or appeal or will not place at risk the safety of other persons; and
- (c) the publication of the report is in the public interest.

## **Part 16            Appeal to Supreme court**

### **142            Appeal to Supreme Court**

- (1) A person aggrieved by a decision of the Tribunal, or the refusal of the Tribunal within a reasonable time to make a decision, may appeal to the Supreme Court against the decision or refusal.
- (2) A person who, in the opinion of the Supreme Court, has a sufficient interest in a matter the subject of a decision or refusal of the Tribunal may, with the leave of the Court, appeal to the Court against the decision or refusal.
- (3) An appeal is to be by way of a rehearing.
- (4) The Supreme Court may suspend the operation or effect of a decision being appealed against pending the determination of the appeal.
- (5) The Supreme Court may refuse to hear an appeal where it is satisfied that it is frivolous, vexatious or has not been made in good faith.

### **143            Determination of appeal**

On hearing an appeal, the Supreme Court may make any of the following orders:

- (a) affirm, vary or set aside the decision or order of the Tribunal;
- (b) make any decision or order that the Tribunal may have made;
- (c) remit the matter to the Tribunal for further consideration;
- (d) make any other order it thinks fit.

### **144            Right of appearance and representation**

- (1) A person who is the subject of an appeal to the Supreme Court may represent himself or herself or may be represented by a legal practitioner or another person at the appeal.

- (2) The Supreme Court may:
  - (a) appoint a legal practitioner to represent a person at the appeal where the person is not represented; and
  - (b) order that the Territory pay all or part of the reasonable costs and disbursements of the legal practitioner in representing the person at the appeal.
- (3) The Supreme Court may hear an appeal in the absence of a person or his or her representative where it is satisfied that:
  - (a) the person made the decision not to attend of his or her own free will;
  - (b) reasonable notice of the appeal was given to the person; and
  - (c) the person had a reasonable opportunity to attend the appeal.
- (4) The Supreme Court must notify a person who is the subject of an appeal of its decision as soon as practicable after the appeal is concluded where it is conducted in the absence of the person or his or her representative.

## **Part 17                      Approved Procedures and Quality Assurance Committee**

### **145                      Approved Procedures and Quality Assurance Committee**

- (1) The Minister may, by notice in the *Gazette*, declare a committee established by the Agency to be the Approved Procedures and Quality Assurance Committee.
- (2) The functions of the Committee are:
  - (a) to monitor and review the approved procedures and forms and, where appropriate, recommend amendments to them; and
  - (b) to assess and evaluate the quality of mental health services, including clinical practices and privileges, and, where appropriate, recommend changes to them.

### **146                      Restrictions on Committee**

A report or information made available by the Committee must not disclose the identity of a person who is a provider or recipient of services under this Act unless the person consents in writing to the disclosure.

**147 Disclosure, &c., of information**

A person who is or was a member of the Committee must not make a record of, or divulge or communicate to any person, any information obtained by the person as a member except:

- (a) for the purpose of performing the functions or exercising the powers of a member; or
- (b) in accordance with standards that may be established by the Minister for:
  - (i) providing reports to the Agency or a prescribed body; or
  - (ii) making information available to the public.

Penalty: \$5,000.

**148 Finding not evidence of certain matters**

A finding or recommendation by the Committee as to the need for changes or improvements in relation to a procedure or practice is not admissible as evidence in any proceedings that the procedure or practice is, or was, careless or inadequate.

**149 Information not to be given in evidence**

- (1) A person who is, or has been, a member of the Committee is neither competent nor compellable:
  - (a) to produce to a court, tribunal, board or person any document in the person's possession or under the person's control that was created by, at the request of or solely for the purpose of the Committee; or
  - (b) disclose or communicate to a court, tribunal, board or person any matter or thing that comes to the person's notice as a member of the Committee.
- (2) Subsection (1) does not apply to a requirement made in proceedings in respect of an act or omission by:
  - (a) the Committee; or
  - (b) a member of the Committee as a member.

## **Part 18 Interstate orders**

### **Division 1 Interstate mental health orders**

#### **150 Interstate mental health orders**

- (1) In this section, *interstate mental health order* means an order made under an Act of a State or another Territory of the Commonwealth that is the equivalent of:
  - (a) an order admitting a person to an approved treatment facility as an involuntary patient; or
  - (b) a community management order.
- (2) A person who is subject to an interstate mental health order or a person with a genuine interest in, or with a real concern for the welfare of, that person may apply to the Tribunal for an order under subsection (6).
- (3) An application must be in the approved form and accompanied by a copy of the interstate mental health order.
- (4) The Tribunal must not make an order under subsection (6) unless it is satisfied that:
  - (a) the interstate mental health order is in force in the State or Territory in which it purports to have been made; and
  - (b) the Secretary and, depending on the nature of the interstate mental health order, the person-in-charge of an approved treatment facility or approved treatment agency consent to an order under this section being made.
- (5) The Tribunal may make inquiries as it thinks fit to determine if an interstate mental health order is in operation.
- (6) On being satisfied as to the matters referred to in subsection (4) the Tribunal may:
  - (a) in respect of an interstate mental health order referred to in subsection (1)(a), order that the person be detained in an approved treatment facility and, where it does so, it must fix a period within which the order is to be reviewed; or
  - (b) in respect of an interstate mental health order referred to in subsection (1)(b), make a community management order in respect of the person.

- (7) For the purposes of this section, the Tribunal may be constituted by the President.
- (8) Subject to this Act, an order under this section remains in force for the period the interstate mental health order remains in force.

## **Division 2 Interstate transfer orders**

### **151 Definitions**

In this Division:

***corresponding law*** means a law declared under section 152 to be a corresponding law.

***interstate transfer order*** means an order made under section 154.

***mental health order*** means:

- (a) an order detaining a person as an involuntary patient, or
- (b) a community management order.

***participating State or Territory*** means a State or Territory of the Commonwealth that has entered into an agreement with the Territory under section 153.

### **152 Corresponding law**

- (1) The Minister may, by notice in the *Gazette*, declare that a law of a State or another Territory of the Commonwealth is a law that corresponds to this Act.
- (2) A declaration under subsection (1) is not to be made unless the Minister is satisfied that the law of the State or Territory is substantially in the same or similar terms as this Act.

### **153 Intergovernmental agreements**

The Minister may enter into an agreement with the Minister of a State or Territory of the Commonwealth responsible for the administration of a corresponding law providing for the transfer or apprehension of persons who are detained as involuntary patients or who are subject to a community management order.

**154 Interstate transfer orders**

- (1) A person who is subject to a mental health order or a person with a genuine interest in, or with a real concern for the welfare of, that person may apply to the Tribunal for an order that the person be transferred to a participating State or Territory.
- (2) The Tribunal must give notice of the application to:
  - (a) the person to whom the application relates (where that person is not the applicant);
  - (b) the person's primary care provider or the representative of the person;
  - (c) depending on the nature of the mental health order, the person-in-charge of the approved treatment facility or the approved treatment agency; and
  - (d) the person in the participating State or Territory to which it is proposed to transfer the person to whom the application relates who holds the office that is the equivalent of that of the Secretary.
- (3) The Tribunal may order that the person be transferred to a participating State or Territory where it is satisfied that:
  - (a) the transfer will benefit the person;
  - (b) the person referred to in subsection (2)(d) consents to the transfer; and
  - (c) where the person is capable of understanding the consequences of the transfer, the person consents to the transfer.
- (4) An order under this section is to specify:
  - (a) the treatment facility or treatment agency in the participating State or Territory to which the person is to be transferred;
  - (b) the person who is to be responsible for transporting the person to the treatment facility or treatment agency in the participating State or Territory; and
  - (c) the time within which the person is to be transferred to the treatment facility or treatment agency in the participating State or Territory.

- (5) The Registrar of the Tribunal must provide:
- (a) a copy of the order made under this section to his or her equivalent in the participating State or Territory; and
  - (b) a copy of all relevant clinical records to the treatment facility or treatment agency in the participating State or Territory to which the person is to be transferred.

**155 Powers of person responsible for transfer**

- (1) The person specified in an interstate transfer order as responsible for transporting a person to an approved treatment facility or approved treatment agency in a participating State or Territory may:
- (a) take custody of the person to whom the order relates; and
  - (b) detain the person until the person is transferred to the treatment facility or treatment agency in the participating State or Territory.
- (2) The person specified in an interstate transfer order as responsible for transporting a person to the treatment facility or treatment agency in a participating State or Territory may use reasonable force to detain a person and to arrest the person if the person absconds from custody while the order is in force.

**156 Secretary may consent to transfer**

Where the Minister enters into an agreement under section 153, the Secretary may consent to an order being made in a participating State or Territory under the corresponding law of the State or Territory that a person who is subject to an order that corresponds to a mental health order under that law be transferred to an approved treatment facility or approved treatment agency in the Territory.

**157 Transfer through Territory**

Where a person who is subject to an order made under a corresponding law of a participating State or Territory that corresponds to an interstate transfer order is travelling through the Territory, the person specified in the order as responsible for transporting the person may use reasonable force to detain the person in custody while the person is in the Territory or to arrest the person if the person absconds.

**158 Registration of corresponding interstate transfer orders**

- (1) The Tribunal must register a corresponding interstate transfer order ordering a person to be transferred to an approved treatment facility or approved treatment agency in the Territory.
- (2) Before registering an order under subsection (1), the Tribunal may amend the order in so far as it relates to the treatment or care of the person in an approved treatment facility or by an approved treatment agency.
- (3) Where a corresponding interstate transfer order is registered under this section, it is to be taken to be an order admitting the person as an involuntary patient or a community management order, as the case may be, as if made under this Act.

**Part 19 Miscellaneous****159 Amendment of documents**

- (1) A person who signs a document relating to the admission of a person to an approved treatment facility as an involuntary patient may, not later than 21 days after the person is admitted, amend the document if it is found to be incorrect or defective in any respect.
- (2) Where the Secretary considers that a document relating to the admission of a person to an approved treatment facility as an involuntary patient is:
  - (a) incorrect or defective in any respect; and
  - (b) the document is not amended by the person who signed it to the satisfaction of the Secretary within 21 days after a direction in writing by the Secretary requiring the amendment,the Secretary may:
  - (c) order the discharge of the person as an involuntary patient; or
  - (d) do any thing that is necessary to obtain a document in substitution for the incorrect or defective document.
- (3) A document obtained in substitution for an incorrect or defective document has effect as if it was signed on the date on which the incorrect or defective document was signed.
- (4) The Tribunal or Supreme Court may amend a document relating to the admission of a person to an approved treatment facility as an involuntary patient where, in proceedings before the Tribunal or

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Supreme Court, it appears that the document is incorrect or defective in any respect.

- (5) A document amended by the Tribunal or Supreme Court is as valid and effective as if it had been made in its amended form on the date it was signed.

**160 Recommendation or certificate not to be signed without examination**

- (1) Unless approved, a person must not sign a recommendation for psychiatric examination or a document relating to the admission of a person to an approved treatment facility or the treatment of a person under this Act unless the person has seen, and personally examined, the person to whom the recommendation or document relates.
- (2) A person who signs a recommendation for psychiatric examination or any other document relating to the admission of a person to an approved treatment facility or the treatment of a person under this Act:
- (a) must specify the facts on which the opinion that the person to whom the recommendation or document relates is mentally ill was based; and
  - (b) must distinguish those facts that were observed by the person from those that were communicated to the person.
- (3) A person must not certify in a recommendation for psychiatric examination or a document relating to the admission of a person to an approved treatment facility or the treatment of a person under this Act that the person is mentally ill or mentally disturbed unless the person reasonably believes that the person is mentally ill or mentally disturbed.
- (4) A person must not make a statement in a recommendation for psychiatric examination or a document relating to the admission of a person to an approved treatment facility or the treatment of a person under this Act knowing it to be false or misleading.

Penalty: \$5,000.

**161 Persons prohibited from signing recommendation or certificate**

A recommendation for psychiatric examination or a document relating to the admission of a person to an approved treatment facility is not valid if it is signed by a person who is a relative, guardian or business partner of the person to whom it relates.

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**162 Offences in relation to recommendations or certificates**

- (1) A person must not sign a recommendation for psychiatric examination or a document relating to the admission of a person to an approved treatment facility or the treatment of a person under this Act unless that person is permitted by this Act to sign it.
- (2) A person must not, by fraudulent means, have or attempt to have a person who is not mentally ill or mentally disturbed:
  - (a) admitted to an approved treatment facility; or
  - (b) treated at an approved treatment facility or by an approved treatment agency.

Penalty: \$5,000.

**163 Apprehension by police**

- (1) A member of the Police Force may apprehend a person and take the person to a medical practitioner, an authorised psychiatric practitioner or designated mental health practitioner for an assessment under section 33 if the member believes, on reasonable grounds, that:
  - (a) the person may be mentally ill or mentally disturbed;
  - (b) the person:
    - (i) has, within the immediately preceding 48 hours, attempted to commit suicide or to harm himself or herself or another person; or
    - (ii) is about to attempt to commit suicide or to harm himself or herself or another person; and
  - (c) it is:
    - (i) necessary to immediately apprehend the person; or
    - (ii) not practicable to seek the assistance of a medical practitioner, an authorised psychiatric practitioner or designated mental health practitioner.
- (2) For the purposes of subsection (1), a member of the Police Force may enter private premises or any other private place.
- (3) A member of the Police Force is not required to exercise any clinical judgment as to whether a person is mentally ill or mentally disturbed but may exercise his or her powers under subsection (1)

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if, having regard to the behaviour and appearance of the person, the person appears to the member to be mentally ill or mentally disturbed.

- (4) A member of the Police Force may use reasonable force in the exercise of his or her powers under subsection (1).
- (5) A member of the Police Force must give details of:
  - (a) his or her reasons for apprehending a person; and
  - (b) any restraint or other type of force used to apprehend and detain the person,

to the medical practitioner, authorised psychiatric practitioner or designated mental health practitioner to whom he or she takes the person under this section.

#### **164 Immunity from suit**

No proceedings, civil or criminal, may be commenced or continued against a person for anything done in good faith and with reasonable care by the person in reliance on any authority or document apparently given or made in accordance with this Act.

#### **165 Reasonable force may be used**

A person may use reasonable force to restrain a person being treated under this Act:

- (a) to prevent the person harming himself or herself or another person; or
- (b) to maintain the good order and security of an approved treatment facility or the approved treatment agency.

#### **166 Leave of absence**

- (1) An authorised psychiatric practitioner may grant a person who is admitted to an approved treatment facility as an involuntary patient leave of absence from the approved treatment facility.
- (2) Leave of absence:
  - (a) may only be granted in accordance with approved procedures; and
  - (b) must be recorded in the approved form.
- (3) Leave of absence is subject to the conditions determined by the authorised psychiatric practitioner.

- (4) An authorised psychiatric practitioner may cancel a person's leave of absence if satisfied, on reasonable grounds, that:
  - (a) the person's mental state has changed and the person is likely to suffer from serious mental or physical deterioration;
  - (b) the person is likely to cause imminent harm to himself or herself, to a particular person or any other person; or
  - (c) the person has contravened or failed to comply with a condition of the leave of absence.
- (5) The authorised psychiatric practitioner must serve notice that leave of absence has been cancelled on the person or his or her representative.
- (6) A person granted leave of absence is to be taken to be absent without leave if:
  - (a) the person fails to return to the approved treatment facility by the expiry of the leave of absence;
  - (b) the leave of absence is cancelled; or
  - (c) the person fails to comply with a condition to which the leave of absence is subject.
- (7) An authorised psychiatric practitioner or a person acting with the authority of an authorised psychiatric practitioner, or a member of the Police Force, may:
  - (a) detain a person who is absent without leave from an approved treatment facility; and
  - (b) return the person to the approved treatment facility.
- (8) A person may use reasonable force to detain a person under subsection (6) and to return the person to the approved treatment facility.

## **167 Transfer of involuntary patients**

- (1) The person-in-charge of an approved treatment facility, on the recommendation of an authorised psychiatric practitioner, may transfer a person admitted as an involuntary patient at the approved treatment facility to another approved treatment facility if:
  - (a) the person-in-charge is satisfied that the transfer will benefit the person or is necessary for the person's treatment; and

- (b) person-in-charge of the approved treatment facility to which it is proposed to transfer the involuntary patient approves of the transfer.
- (2) Where a person is transferred to another approved treatment facility, all documents relevant to the admission and future treatment of the person must be forwarded to the approved treatment facility at the same time as the person is transferred.

### **168 Financial protection order**

- (1) The Secretary may issue a financial protection order in respect of a person admitted as an involuntary patient if satisfied, after receiving a report from a designated mental health practitioner and an authorised psychiatric practitioner, that:
- (a) the person is unable to exercise effective control over his or her financial affairs; and
  - (b) there is an imminent and immediate danger to the person's financial affairs if intervention does not occur.
- (2) An order under subsection (1) remains in force for the period, not longer than 10 days, as determined by the Secretary.
- (3) The Secretary must ensure that an application for a temporary order under section 19 of the *Adult Guardianship Act* is made as soon as practicable after an order under subsection (1) is made if he or she is of the opinion that a temporary order would be made.
- (4) An order under subsection (1) authorises the person-in-charge of the approved treatment facility to take whatever actions he or she considers necessary in relation to the financial affairs of the person to protect the person from neglect, abuse or exploitation.
- (5) The person-in-charge of the approved treatment facility must lodge a report with the principal community visitor containing details of all actions taken under an order under subsection (1) as soon as possible after the order expires.

### **169 Private patients**

The following applies where a person is admitted to an approved treatment facility as a private patient:

- (a) a private psychiatrist, approved by the person-in-charge of the approved treatment facility, may treat the person and may charge the person for the services provided by the private psychiatrist;

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- (b) the private psychiatrist may only use treatment that is approved by the Agency and that is in accordance with the treatment policies of the approved treatment facility;
  - (c) the private psychiatrist must attend the person at the times specified by the person-in-charge of the approved treatment facility;
  - (d) the person-in-charge of the approved treatment facility may charge for the cost of services provided by the approved treatment facility to the person.

### **170 Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **171 Repeal**

*The Mental Health Act 1980* (No. 5 of 1980) is repealed.

### **172 Savings and transitional**

- (1) In this section, **repealed Act** means the Act repealed by section 171.
- (2) A warrant to take a person into custody in force under the repealed Act immediately before the commencement of this Act remains in force and may be executed as if this Act had not commenced.
- (3) Where immediately before the commencement of this Act an order made under section 13, 15 or 23 of the repealed Act was in force, the order is to be taken to be an order of the Tribunal admitting the person named in the order as an involuntary patient as if made under this Act on that commencement.
- (4) Where immediately before the commencement of this Act an order under section 14 or 24 of the repealed Act was in force, the order is, on that commencement, to be taken to be an order of the Tribunal.
- (5) The Tribunal must review an order referred to in subsection (3) or (4) as soon as practicable after the commencement of this Act and the Tribunal may take any action in respect of the order as if the order had been made under this Act.

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**ENDNOTES****1 KEY**

Key to abbreviations

amd = amended  
app = appendix  
bl = by-law  
ch = Chapter  
cl = clause  
div = Division  
exp = expires/expired  
f = forms  
Gaz = Gazette  
hdg = heading  
ins = inserted  
lt = long title  
nc = not commenced

od = order  
om = omitted  
pt = Part  
r = regulation/rule  
rem = remainder  
renum = renumbered  
rep = repealed  
s = section  
sch = Schedule  
sdiv = Subdivision  
SL = Subordinate Legislation  
sub = substituted

**2 LIST OF LEGISLATION*****Mental Health and Related Services Act 1998 (Act No. 63, 1998)***

Assent date 14 September 1998  
Commenced 1 February 2000 (*Gaz G3*, 26 January 2000, p 2)

***Statute Law Revision Act 2001 (Act No. 3, 2001)***

Assent date 22 March 2001  
Commenced 22 March 2001

**3 LIST OF AMENDMENTS**

s 15 amd No. 3, 2001, s 8  
s 144 amd No. 3, 2001, s 8  
s 147 amd No. 3, 2001, s 8