NORTHERN TERRITORY OF AUSTRALIA

ALCOHOL MANDATORY TREATMENT ACT

As in force at 1 May 2016

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 May 2016

ALCOHOL MANDATORY TREATMENT ACT

An Act to provide for the mandatory assessment, treatment and management of persons who are misusing alcohol

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Alcohol Mandatory Treatment Act*.

2 Commencement

This Act commences on 1 July 2013.

3 Objects

The objects of this Act are to assist and protect from harm misusers of alcohol, and other persons, by providing for the mandatory assessment, treatment and management of those misusers with the aim of:

(a) stabilising and improving their health; and

(b) improving their social functioning through appropriate therapeutic and other life and work skills interventions; and

(c) restoring their capacity to make decisions about their alcohol use and personal welfare; and

(d) improving their access to ongoing treatment to reduce the risk of relapse.

4 Application of Act

This Act does not affect the operation or application of the Mental Health Act or *Sentencing Act*.

5 Definitions

In this Act:

advocate means a person appointed under section 113(2).

affected person:

(a) for a hearing or proceeding in relation to an application made under section 22 – means the person to whom the application relates; or

(b) for a mandatory treatment order or income management order – means the person to whom the order applies.

assessable person, see section 8.

assessment, see section 19(1).

assessment facility means premises declared to be an assessment facility under section 127.

authorised officer, see section 135(1).

CEO means the Chief Executive Officer.

clinical director means the person holding an appointment as the clinical director under section 130(1).

community treatment provider means:

(a) a person holding an authorisation to be a community treatment provider under section 134(1); or

(b) if the Agency provides treatment under a mandatory community treatment order – the Agency.

community visitor means:

(a) a person holding an appointment as a community visitor under section 83(2); or

(b) the principal community visitor; or

(c) an interim community visitor.

community visitors panel means a community visitors panel established under section 94.

criteria for a mandatory treatment order, see section 10.

decision maker, for a person, means a decision maker (as defined in section 3 of the *Advance Personal Planning Act*) for the person who has authority for matters relating to the assessment, treatment and management of the person under this Act.

Deputy President means the Deputy President of the Tribunal.

eligible welfare payment recipient, see section 119.

frisk search, see section 78(1).

guardian, for a person, means a guardian (as defined in section 3(1) of the *Adult Guardianship Act*) for the person who has power under that Act to make decisions relating to the assessment, treatment and management of the person under this Act.

health practitioner means a person registered under the Health Practitioner Regulation National Law to practise in a health profession (other than as a student).

income management means the income management regime under Part 3B of the *Social Security (Administration) Act 1999* (Cth).

income management order, see section 13.

information notice, for a Tribunal decision, means a written notice stating the following:

(a) the decision and the reasons for it;

(b) that the person who is given the notice may appeal against the decision on a question of law only;

(c) the period allowed for starting an appeal;

(d) how to start an appeal.

interim community visitor, see section 84(1).

involuntary managed person means a person in relation to whom an interim community management order, or community management order, under the Mental Health Act is in force.

mandatory community treatment order, see section 11.

mandatory residential treatment order, see section 12.

mandatory treatment order means an order of one of the following types:

(a) mandatory residential treatment order;

(b) mandatory community treatment order.

Mental Health Act means *Mental Health and Related Services Act*.

ordinary search, see section 78(2).

President means the President of the Tribunal.

primary contact, for a person, means:

(a) if the person has nominated a primary contact under section 30 or 71 – the nominated person; or

(b) if the person has not nominated a primary contact under section 30 or 71 but the person has a guardian or decision maker – the guardian or decision maker; or

(c) if paragraphs (a) and (b) do not apply:

(i) the spouse of the person, if any, if the relationship between the person and the spouse is close and continuing; or

(ii) the de facto partner of the person, if any, if the relationship between the person and the de facto partner is close and continuing; or

(iii) any person who is primarily responsible for providing support or care to the person (other than wholly or substantially on a commercial basis); or

(iv) a friend or another relative (including someone who, according to Aboriginal tradition or contemporary social practice, is a relative) of the person who:

(A) maintains both a close personal relationship with the person through frequent personal contact and a personal interest in the person's welfare; and

(B) does not provide support or care to the person wholly or substantially on a commercial basis.

principal community visitor means the person holding an appointment as the principal community visitor under section 83(1).

proceeding means any process of the Tribunal relating to:

(a) the consideration of, or a decision about, an application made to the Tribunal; or

(b) a mandatory treatment order or income management order.

representative, for a person, means a legal practitioner holding an appointment from the person under section 113(1)(b).

residential treatment provider means:

(a) a person holding an authorisation to be a residential treatment provider under section 132(1); or

(b) if the Agency operates a treatment centre – the Agency.

rights statement, for a person, means a written statement in the form approved by the CEO:

(a) setting out details of the person's legal rights and other entitlements under this Act (including rights of appeal); and

(b) advising that information about the person and the person's assessment or treatment (as applicable) will be collected by, and may be disclosed by, the Agency; and

(c) advising of the type of information the person's primary contact will be given or have access to.

Secretary means the Secretary under the *Social Security (Administration) Act 1999* (Cth).

senior assessment clinician means a person holding an appointment as a senior assessment clinician under section 131(1).

senior treatment clinician means a person holding an appointment as a senior treatment clinician for a treatment centre under section 133(1).

testing officer means a person authorised to take samples under section 126.

transport officer means:

(a) a police officer; or

(b) an authorised officer; or

(c) an ambulance officer as defined in section 4 of the Mental Health Act; or

(d) a person of a class approved by the CEO.

treatment means therapeutic, health, diversionary, educational or other intervention or treatment aimed at remedying or reducing a person's misuse of alcohol.

treatment centre means premises declared to be a secure residential treatment centre under section 128.

treatment provider means a community treatment provider or residential treatment provider.

Tribunal means:

(a) generally – the Alcohol Mandatory Treatment Tribunal established by section 102; or

(b) in relation to a particular proceeding – the Alcohol Mandatory Treatment Tribunal as composed under section 109.

6 Principles

The following general principles must be applied by a person when exercising a power or performing a function under this Act:

(a) involuntary detention and involuntary treatment of a person are to be used only as a last resort when less restrictive interventions are not likely to be effective or sufficient to remediate the risks presented by the person;

(b) the least restrictive interventions are to be used when a person is being treated or dealt with under this Act;

(c) any interference with the rights and dignity of a person are to be kept to the minimum necessary.

7 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 7

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Assessment of assessable persons

Division 1 Key concepts

8 Assessable person

(1) A person is an ***assessable person*** if the person:

(a) is taken to an assessment facility under section 128A(5) of the *Police Administration Act*; or

(b) is, under section 34(9) of the Mental Health Act, referred back to a senior assessment clinician for another assessment; or

(c) is taken to an assessment facility under section 128B(4) of the *Police Administration Act*; or

(d) is, in accordance with procedures prescribed by regulation:

(i) referred by a health practitioner to a senior assessment clinician for an assessment; and

(ii) taken to an assessment facility.

*Notes for definition **assessable person***

1 Section 128A of the Police Administration Act requires that a person who is taken into protective custody under section 128 of that Act must be taken to an assessment facility in certain circumstances.

2 Section 128B of the Police Administration Act requires that a person to whom a mandatory community treatment order applies who is taken into protective custody under section 128 of that Act must be taken to an assessment facility in certain circumstances.

(2) A person ceases to be an assessable person:

(a) on being released from an assessment facility under section 18, 25 or 26; or

(b) immediately after one of the actions mentioned in section 20 is taken in relation to the person following an assessment of the person.

9 When mandatory treatment order may be made

(1) A mandatory treatment order may be made in relation to a person if the person meets all the criteria for a mandatory treatment order.

(2) However, a mandatory treatment order must not be made in relation to a person if the person:

(a) is charged with committing a relevant offence; or

(b) is a reportable offender under the *Child Protection (Offender Reporting and Registration) Act*; or

(c) is subject to a continuing detention order or supervision order under the *Serious Sex Offenders Act*; or

(d) is an involuntary patient under the Mental Health Act or an involuntary managed person.

(3) In this section:

relevant offence means one of the following:

(a) an offence against a law in force in the Territory for which the maximum penalty is imprisonment for a period of more than 7 years;

(b) any other offence that is prescribed by regulation.

10 Criteria for a mandatory treatment order

The following are the ***criteria for a mandatory treatment order*** in relation to a person:

(a) the person is an adult;

(b) the person is misusing alcohol;

(c) as a result of the person's alcohol misuse, the person has lost the capacity to make appropriate decisions about his or her alcohol use or personal welfare;

(d) the person's alcohol misuse is a risk to the health, safety or welfare of the person or others (including children and other dependants);

(e) the person would benefit from a mandatory treatment order;

(f) there are no less restrictive interventions reasonably available for dealing with the risk mentioned in paragraph (d).

11 Mandatory community treatment order

(1) A ***mandatory community treatment order*** is an order in relation to a person that:

(a) requires the person to participate in treatment from a specified community treatment provider; and

(b) bans the person from possessing, consuming or purchasing alcohol.

(2) A mandatory community treatment order may also do one or more of the following:

(a) require the person to undergo alcohol testing;

(b) ban the person from being in company with one or more specified persons;

(c) ban the person from being at a specified place;

(d) require the person to reside with a specified person or at a specified place;

(e) impose on the person another form of management that is consistent with the objects of this Act.

12 Mandatory residential treatment order

A ***mandatory residential treatment order*** is an order in relation to a person that:

(a) authorises the admission of the person to, and the detention of the person at, a specified treatment centre; and

(b) requires the person to participate in treatment at the treatment centre; and

(c) bans the person from possessing, consuming or purchasing alcohol.

13 Income management order

(1) An ***income management order*** is an order in relation to a person who is an eligible welfare payment recipient that the person is required to be subject to income management.

(2) An income management order is related to a mandatory treatment order if the income management order is made as a result of the making of the mandatory treatment order.

Note for section 13

If the Tribunal makes a mandatory treatment order in relation to a person who is an eligible welfare payment recipient, it must also make an income management order in relation to the person – see section 34.

Division 2 Admission to assessment facility and assessment

14 Admission and detention

When an assessable person is taken to an assessment facility, a senior assessment clinician must admit the assessable person to the facility and detain the assessable person for the purpose of an assessment.

15 Information to be given to person

(1) A senior assessment clinician must give the assessable person:

(a) a rights statement; and

(b) an oral explanation of the content of the rights statement.

(2) The statement and explanation must be given as soon as practicable after the assessable person is admitted to the assessment facility.

(3) If the assessable person is unable to communicate adequately in English but is able to communicate adequately in another language, the senior assessment clinician must, if practicable, arrange for the oral explanation to be given in the other language.

16 Notifying primary contact and others

A senior assessment clinician must ensure each of the following occur as soon as practicable after the assessable person is admitted:

(a) the following persons are notified that the assessable person has been admitted to the assessment facility:

(i) the assessable person's primary contact;

(ii) the assessable person's guardian (if any);

(iii) the assessable person's decision maker (if any);

(b) the assessable person is given the opportunity to speak to:

(i) his or her primary contact; and

(ia) his or her guardian (if any); and

(ib) his or her decision maker (if any); and

(ii) at least one other person of his or her choice.

17 Timing of assessment

(1) Subject to this section, a senior assessment clinician must conduct an assessment of the assessable person as soon as practicable after the assessable person is, in the clinician's opinion, able to be properly assessed.

(2) The assessment must be conducted not later than 96 hours after the assessable person is admitted to the assessment facility.

(3) In calculating the period under subsection (2), any period of time during which the assessable person is absent from the assessment facility for any reason (or is being assessed under the Mental Health Act as mentioned in section 21) must be disregarded.

18 Release if assessment not conducted within time allowed

If, on the expiry of the time allowed under section 17(2), an assessment of the assessable person has not been conducted, the assessable person must be released from the assessment facility.

19 Assessment

(1) An ***assessment*** is a clinical assessment of the assessable person by a senior assessment clinician.

(2) In making an assessment a senior assessment clinician must form an opinion as to whether:

(a) the assessable person is likely to fulfill the criteria for involuntary admission or involuntary treatment or care in the community under the Mental Health Act; or

(b) the assessable person is likely to meet the criteria for a mandatory treatment order.

(3) In conducting the assessment, the senior assessment clinician may examine the assessable person but, before doing so, must explain the purpose of the examination to the person to the extent that is reasonably practicable.

20 Action following assessment

Within 24 hours after completing the assessment, the senior assessment clinician must take one of the following actions:

(a) make a request in relation to the assessable person in accordance with section 21 (unless the assessment is being made immediately after the person has been referred back for assessment after a request made under that section);

(b) make an application in relation to the assessable person under section 22.

21 Request under Mental Health Act

(1) If, in the senior assessment clinician's opinion, the assessable person is likely to fulfil the criteria mentioned in section 19(2)(a) (and the opinion is formed as part of an assessment other than one made after a referral back under the Mental Health Act after a previous request under this section), the clinician must request that the assessable person be assessed under the Mental Health Act to determine whether the assessable person is in need of treatment under that Act.

(2) The request must be made under section 32(2) of the Mental Health Act.

(3) In addition, if the assessable person will be assessed under the Mental Health Act at a place other than the assessment facility, the senior assessment clinician must:

(a) arrange for the assessable person to be taken to the place at which the person will be assessed; and

(b) release the assessable person from the facility for that purpose.

22 Application to Tribunal

(1) If, in the senior assessment clinician's opinion, the assessable person is not likely to fulfil the criteria mentioned in section 19(2)(a), the senior assessment clinician must make an application to the Tribunal in relation to the assessable person.

(2) The application must be accompanied by an assessment report.

(3) The assessment report must be in the form approved by the CEO and include the following:

(a) a statement as to whether, in the senior assessment clinician's opinion, the assessable person meets all the criteria for a mandatory treatment order, and the basis for that opinion;

(b) demographic information about the assessable person, including:

(i) whether he or she is an adult; and

(ii) whether he or she is a member of a particular cultural group; and

(iii) all other information that, in the clinician's opinion, would be relevant to the Tribunal in deciding what order (if any) to make in relation to the person;

(c) if, in the clinician's opinion, the assessable person meets all the criteria for a mandatory treatment order – details of the treatment in which, in the clinician's opinion, it would be appropriate and practicable for the assessable person to participate.

23 Notice of action taken

(1) As soon as practicable after taking one of the actions mentioned in section 20, the senior assessment clinician must take reasonable steps to ensure the following persons are given notice of that action:

(a) the assessable person;

(b) the assessable person's primary contact;

(ba) the assessable person's guardian (if any);

(bb) the assessable person's decision maker (if any);

(c) the assessable person's representative (if any);

(d) any other person nominated by the assessable person.

(2) In addition, if the action taken by the senior assessment clinician is an action taken under section 20(b) the clinician must give a copy of the application and assessment report to the assessable person and any person nominated by the assessable person.

Division 3 Other matters

24 Continued detention of person after assessment

A senior assessment clinician at an assessment facility at which a person is detained must ensure the person continues to be detained following assessment until the person is required to be released from the facility or transferred to a treatment centre in accordance with this Act.

25 Release if person not adult

(1) If, while detained at an assessment facility, a person is found not to be an adult, a senior assessment clinician at the facility must, as soon as practicable, release the person from the facility.

(2) To avoid doubt, subsection (1) applies whether or not an application has been made in relation to the person under section 22.

26 Release if person subject to order under Mental Health Act

(1) If, while detained at an assessment facility, a person is found to be an involuntary patient under the Mental Health Act, a senior assessment clinician at the facility must, as soon as practicable:

(a) advise the person-in-charge of the approved treatment facility to which the person has been admitted under the Mental Health Act of the person's whereabouts; and

(b) ensure that the person is released from the facility into the care of the person-in-charge.

(2) If, while detained at an assessment facility, a person is found to be an involuntary managed person, a senior assessment clinician at the facility must, as soon as practicable:

(a) if the person is the subject of:

(i) a community management order – advise the psychiatric case manager for the person under the Mental Health Act of the person's whereabouts; or

(ii) an interim community management order – advise the person-in-charge of an approved treatment agency named in the order of the person's whereabouts; and

(b) ensure that the person is released from the facility in accordance with the directions of an authorised psychiatric practitioner or psychiatric case manager under the Mental Health Act.

(3) To avoid doubt, subsections (1) and (2) apply whether or not an application has been made in relation to the person under section 22.

27 Release if treatment needed under Mental Health Act

(1) This section applies if:

(a) in accordance with section 21, a request is made for a person to be assessed under the Mental Health Act; and

(b) the person is assessed under that Act at an assessment facility; and

(c) a recommendation for psychiatric examination of the person is made under that Act.

(2) A senior assessment clinician at the assessment facility must, as soon as practicable, release the person from the facility in accordance with the recommendation.

28 Release on order of Tribunal

If the Tribunal gives a senior assessment clinician notice of an order for a person to be released, the senior assessment clinician must, as soon as practicable, release the person from the facility.

29 Transport on release

If a person is to be released from an assessment facility under section 18, 25 or 28, a senior assessment clinician at the facility may arrange for the person:

(a) to be taken to the person's usual place of residence; or

(b) to be taken to another place that the senior assessment clinician reasonably believes to be safe.

30 Nomination of primary contact

(1) A person who is detained at an assessment facility may nominate a person to be the person's primary contact under this Act and may revoke or vary the nomination at any time.

(2) A nomination, variation or revocation by the person may be made orally to a senior assessment clinician at the assessment facility and the clinician must:

(a) record the nomination, variation or revocation; and

(b) notify each other senior assessment clinician of the nomination, variation or revocation.

(3) A senior assessment clinician must, in performing his or her functions under this Act, ensure that effect is given to a nomination, or a variation or revocation of a nomination, if the clinician is given notice of it.

Part 3 Mandatory treatment orders

Division 1 Hearing of application made following assessment

Subdivision 1 General matters

31 Timing and notice of hearing

(1) The Tribunal must hear and decide an application made under section 22 as soon as practicable but not later than 96 hours after receiving the application.

(2) The Tribunal must take reasonable steps to give notice stating the date, time and place fixed for the hearing to the applicant and each person who is required or entitled to attend the hearing.

(3) The applicant, or a person nominated by the applicant, is required to attend the hearing.

(4) Each of the following persons is entitled to attend the hearing but is not required to do so unless ordered by the Tribunal:

(a) the affected person;

(b) the affected person's primary contact;

(ba) the affected person's guardian (if any);

(bb) the affected person's decision maker (if any);

(c) the affected person's representative (if any) or, if the President has appointed an advocate for the affected person, the advocate.

Subdivision 2 Application in relation to person to whom mandatory community treatment order does not apply

32 Application

This Subdivision applies to an application made under section 22 that relates to a person to whom a mandatory community treatment order does not apply.

33 Orders that can be made by Tribunal

Following the hearing of the application, the Tribunal may:

(a) make a mandatory treatment order in relation to the affected person if the Tribunal is satisfied that the affected person:

(i) meets the criteria for a mandatory treatment order; and

(ii) is not, under section 9(2), a person in relation to whom a mandatory treatment order must not be made; or

(b) otherwise, make an order for the affected person to be released.

34 Income management order must be made for eligible welfare payment recipient

If the Tribunal makes a mandatory treatment order in relation to the affected person, it must also make an income management order in relation to the affected person if the affected person is an eligible welfare payment recipient.

35 Exemption from further assessment

If the Tribunal makes an order for the affected person to be released and is satisfied that the affected person should not be further assessed or treated under this Act, it may also make an order exempting the affected person, for a specified period, from any further assessments under this Act.

36 Order for release taken to be made after 96 hours

The Tribunal is taken to have made an order for the affected person to be released if it has not made a mandatory treatment order within 96 hours of receiving the application.

37 Notice of order and information notice

(1) If the Tribunal decides to make a mandatory treatment order or income management order it must:

(a) give a copy of the order and an information notice for the decision to the affected person; and

(b) give a copy of the order to the applicant; and

(c) take reasonable steps to give a copy of the order to each of the following persons:

(i) each other person who was entitled to attend the hearing;

(ii) if the order is a mandatory treatment order:

(A) the senior treatment clinician for the treatment centre specified in the order or the community treatment provider specified in the order; and

(B) any other person named in the order.

Note for subsection (1)

Under section 120 the Tribunal is also required to give the Secretary a notice if an income management order is made.

(2) If the Tribunal makes, or is taken to have made, an order for the affected person to be released or makes an order under section 35 it must:

(a) give notice of the order to the affected person and the applicant; and

(b) take reasonable steps to give notice of the order to each other person who was entitled to attend the hearing.

Subdivision 3 Application in relation to person to whom mandatory community treatment order applies

38 Application

This Subdivision applies to an application made under section 22 that relates to a person to whom a mandatory community treatment order applies.

39 Orders that can be made by Tribunal

(1) Following the hearing of the application, the Tribunal may do any of the following:

(a) revoke the mandatory community treatment order and make a mandatory residential treatment order in relation to the affected person;

(b) vary the mandatory community treatment order and make an order for the affected person to be released;

(c) make no change to the mandatory community treatment order and make an order for the affected person to be released;

(d) revoke the mandatory community treatment order and make an order for the affected person to be released.

(2) The Tribunal must not make an order under subsection (1)(a), (b) or (c) unless satisfied, on the balance of probabilities, that the affected person:

(a) meets all the criteria for a mandatory treatment order; and

(b) is not, under section 9(2), a person in relation to whom a mandatory treatment order must not be made.

(3) In addition, the Tribunal must not:

(a) vary the mandatory community treatment order unless satisfied there are grounds for doing so taking into consideration the criteria for a mandatory treatment order; or

(b) vary the mandatory community treatment order so that the total period it remains in force would exceed 6 months.

40 Additional power to vary or revoke income management order

(1) If an income management order applies to the affected person, the Tribunal may, in addition to making an order mentioned in section 39, make an order varying or revoking the income management order.

(2) However, the Tribunal must not vary the income management order so that the total period it remains in force would exceed 12 months.

41 Exemption from further assessment

If the Tribunal revokes the mandatory community treatment order and is satisfied that the affected person should not be further assessed or treated under this Act, it may also make an order exempting the affected person, for a specified period, from any further assessments under this Act.

42 Order for release taken to be made after 96 hours

The Tribunal is taken to have made an order for the affected person to be released if it has not made a mandatory residential treatment order in relation to the person within 96 hours of receiving the application.

43 Notice of order and information notice

(1) If the Tribunal decides to make an order under section 39(1)(a), (b) or (c) or 40 it must:

(a) give a copy of the order and an information notice for the decision to the affected person; and

(b) give a copy of the order to the applicant; and

(c) take reasonable steps to give a copy of the order to each of the following persons:

(i) each other person who was entitled to attend the hearing;

(ii) if the order is a mandatory residential treatment order – the senior treatment clinician for the treatment centre specified in the order;

(iii) if the order varies or revokes the mandatory community treatment order – the community treatment provider specified in the mandatory community treatment order and any other person named in the order.

Note for subsection (1)

Under sections 120 and 121 the Tribunal is also required to give the Secretary a notice if an income management order is varied or revoked.

(2) If the Tribunal makes an order under section 39(1)(d), is taken to have made an order for the affected person to be released or makes an order under section 41 it must:

(a) give notice of the order to the affected person and the applicant; and

(b) take reasonable steps to give notice of the order to each other person who was entitled to attend the hearing.

Division 2 Variation, revocation or replacement of order

44 Application for variation, revocation or replacement of order

(1) An affected person, a senior assessment clinician or a senior treatment clinician may apply to the Tribunal for the following:

(a) a variation or revocation of a mandatory treatment order;

(b) a mandatory treatment order to be replaced with a different type of mandatory treatment order;

(c) a variation or revocation of an income management order.

(2) The application must:

(a) state the reasons for the application; and

(b) include all the information necessary to support the application.

(3) The Tribunal may refuse to consider the application without taking further action if an application has been made in the previous 30 days and there are no new grounds to support the application.

45 Timing and notice of hearing

(1) If the Tribunal does not refuse to consider an application made under section 44 in relation to a mandatory treatment order or income management order, the Tribunal must conduct a hearing of the application as soon as practicable.

(2) The Tribunal must take reasonable steps to give notice stating the date, time and place fixed for the hearing to:

(a) the applicant; and

(b) each person who is required or entitled to attend the hearing; and

(c) if the application relates to:

(i) a mandatory residential treatment order or related income management order – the senior treatment clinician for the treatment centre specified in the mandatory residential treatment order; or

(ii) a mandatory community treatment order or related income management order – a senior assessment clinician.

(3) The applicant or, if the applicant is a senior assessment clinician, a person nominated by the applicant, is required to attend the hearing.

(4) Each of the following persons is entitled to attend the hearing but is not required to do so unless ordered by the Tribunal:

(a) the affected person;

(b) the affected person's primary contact;

(ba) the affected person's guardian (if any);

(bb) the affected person's decision maker (if any);

(c) the affected person's representative (if any) or, if the President has appointed an advocate for the affected person, the advocate.

46 Orders that can be made by Tribunal

(1) Following the hearing of an application made under section 44 in relation to a mandatory treatment order, the Tribunal may do any of the following:

(a) vary the mandatory treatment order;

(b) revoke the mandatory treatment order;

(c) revoke the mandatory treatment order and make a mandatory treatment order of a different type;

(d) dismiss the application.

(2) Following the hearing of an application under section 44 in relation to an income management order, the Tribunal may do any of the following:

(a) vary the income management order;

(b) revoke the income management order;

(c) dismiss the application.

(3) However, the Tribunal must not:

(a) vary a mandatory treatment order unless satisfied there are grounds for doing so taking into consideration the criteria for a mandatory treatment order; or

(b) vary a mandatory treatment order so that the total period it remains in force would exceed 6 months; or

(c) revoke a mandatory treatment order unless satisfied, on the balance of probabilities, that the affected person:

(i) no longer meets one or more of the criteria for a mandatory treatment order; or

(ii) is, under section 9(2), a person in relation to whom a mandatory treatment order must not be made.

(4) In addition, the Tribunal must not vary an income management order so that the total period it remains in force would exceed 12 months.

(5) In considering an application relating to a mandatory residential treatment order, the Tribunal must take into account any extension of the duration of the order that has effect because of section 49(3).

47 Additional power to vary or revoke income management order

(1) This section applies if, under section 46, the Tribunal:

(a) makes an order varying or revoking a mandatory treatment order that applies to a person; or

(b) makes a mandatory treatment order that applies to a person.

(2) Subject to section 46(4), the Tribunal may also make an order varying or revoking an income management order that applies to the person, whether or not an application for a variation or revocation of the income management order has been made.

48 Notice of order and information notice

If the Tribunal decides to make an order under section 46 or 47 in relation to a mandatory treatment order or income management order it must:

(a) give a copy of the order and an information notice for the decision to the affected person; and

(b) give a copy of the order to the applicant; and

(c) take reasonable steps to give a copy of the order to each of the following persons:

(i) each other person who was entitled to attend the hearing;

(ii) if the order is a mandatory community treatment order or an order varying or revoking a mandatory community treatment order – the community treatment provider specified in the order and any other person named in the order.

Note for section 48

Under sections 120 and 121 the Tribunal is also required to give the Secretary a notice if an income management order is varied or revoked.

Division 3 Content of orders

49 Mandatory treatment orders

(1) This section applies if the Tribunal makes a mandatory treatment order.

(2) The following must be specified in the mandatory treatment order:

(a) the date on which the order comes into force;

(b) the period, not exceeding 3 months, during which the order will remain in force.

(3) A mandatory residential treatment order must also specify that if the affected person is absent from the treatment centre after the expiry of any leave of absence granted under section 76, or otherwise than in accordance with this Act, the duration of the order is automatically extended by a period equal to the period of unauthorised absence.

Notes for section 49

1 Although a mandatory treatment order can be in force only for an initial period not exceeding 3 months, that period may be extended by a variation of the order.

2 No variation of a mandatory residential treatment order is necessary if the duration of the order is automatically extended because of subsection (3).

3 The senior treatment clinician must keep a record under section 67 of any automatic extension that has effect because of subsection (3) and give notice of the extension under section 76A.

50 Income management orders

(1) This section applies if the Tribunal makes an income management order.

(2) The following must be specified in the income management order:

(a) the date on which the order comes into force, which must be the same date the mandatory treatment order to which the income management order is related comes into force;

(b) the period, not exceeding 12 months, during which the order will remain in force.

Division 4 Appeals

51 Appeals to Local Court

(1) A person who is entitled to be given an information notice may appeal to the Local Court against the decision stated in the notice.

(2) The appeal may be made in relation to a question of law only.

(3) The appeal must:

(a) be started within 30 days after:

(i) if the person receives an information notice for the decision – the day the person receives the notice; or

(ii) otherwise – the day the person becomes aware of the decision; and

(b) state fully the grounds on which it is made.

(4) The decision remains in force until the Local Court decides the appeal.

(5) The appeal must be decided on the evidence that was before the Tribunal when the decision being appealed was made.

(6) However, the Local Court may admit evidence that was not given to the Tribunal if the Court is satisfied there were special reasons for the evidence not being given.

(7) In deciding the appeal, the Local Court may:

(a) confirm the Tribunal's decision; or

(b) vary the Tribunal's decision; or

(c) set aside the Tribunal's decision and substitute another decision that the Tribunal could have made.

Division 5 Suspension of mandatory treatment order

52 Mandatory treatment order suspended while person subject to order under Mental Health Act

(1) A mandatory treatment order is automatically suspended for any period during which the affected person is:

(a) an involuntary patient under the Mental Health Act; or

(b) an involuntary managed person.

(2) A mandatory treatment order is of no effect while suspended.

Part 4 Mandatory treatment

Division 1 Treatment under mandatory residential treatment order

53 Transfer to treatment centre

(1) This section applies if the Tribunal makes a mandatory residential treatment order in relation to a person.

(2) As soon as practicable after receiving a copy of the mandatory residential treatment order, a senior assessment clinician at the assessment facility at which the person is detained must arrange for:

(a) the person to be taken to the treatment centre specified in the order; and

(b) copies of any documents relevant to the admission and future treatment of the person, including the following, to accompany the person to the treatment centre:

(i) a copy of the assessment report relating to the person prepared under section 22;

(ii) the name and contact details of:

(A) the person's primary contact; and

(B) the person's guardian (if any); and

(C) the person's decision maker (if any).

54 Admission and detention

(1) The senior treatment clinician for the treatment centre must admit the person to the centre and detain the person at the centre for the purpose of treatment while the mandatory residential treatment order is in force.

(2) While the mandatory residential treatment order is in force, the person must remain at the treatment centre unless he or she is permitted to absent himself or herself from the treatment centre in accordance with this Act.

55 Information to be given to person

(1) The senior treatment clinician must give the person:

(a) a rights statement; and

(b) an oral explanation of the content of the rights statement.

(2) The statement and explanation must be given as soon as practicable after the person is admitted to the treatment centre.

(3) If the person is unable to communicate adequately in English but is able to communicate adequately in another language, the senior treatment clinician must, if practicable, arrange for the oral explanation to be given in the other language.

56 Treatment

(1) The person must be given treatment in accordance with the principles set out in section 6 and the treatment plan prepared under this section as revised from time to time.

(2) As soon as practicable after the person is admitted to the treatment centre, the senior treatment clinician must prepare a treatment plan for the person.

(3) The senior treatment clinician must review the treatment plan on a regular basis and revise the plan as required.

57 Alcohol testing

The senior treatment clinician may direct that tests be carried out under section 125 to determine whether there is any alcohol present in the person's body.

58 Release from treatment centre

The senior treatment clinician must release the person from the treatment centre immediately:

(a) on the expiry of the period during which the mandatory residential treatment order remains in force; or

(b) on the revocation or suspension of the mandatory residential treatment order.

Division 2 Treatment under mandatory community treatment order

59 Information to be given to community treatment provider

(1) This section applies if the Tribunal makes a mandatory community treatment order in relation to a person.

(2) As soon as practicable after receiving a copy of the mandatory community treatment order, a senior assessment clinician at the assessment facility at which the person is detained must arrange for:

(a) the person to be released from the facility and, if appropriate, taken to premises at which the community treatment provider specified in the order provides treatment; and

(b) copies of any documents relevant to the future treatment of the person, including the following, to be given to the community treatment provider:

(i) a copy of the assessment report relating to the person prepared under section 22;

(ii) the name and contact details of:

(A) the person's primary contact; and

(B) the person's guardian (if any); and

(C) the person's decision maker (if any).

60 Information to be given to person

(1) The community treatment provider must ensure the person is given:

(a) a rights statement; and

(b) an oral explanation of the content of the rights statement.

(2) The statement and explanation must be given as soon as practicable after the person first attends for treatment.

(3) If the person is unable to communicate adequately in English but is able to communicate adequately in another language, the community treatment provider must, if practicable, arrange for the oral explanation to be given in the other language.

61 Treatment

(1) The person must be given treatment in accordance with the principles set out in section 6 and the treatment plan prepared under this section as revised from time to time.

(2) As soon as practicable after the person first attends for treatment, the community treatment provider must prepare a treatment plan for the person.

(3) The community treatment provider must review the treatment plan on a regular basis and revise the plan as required.

62 Notice to be given if person no longer meets criteria

The community treatment provider must notify the person and a senior assessment clinician if, at any time, the community treatment provider is of the opinion that the person no longer meets one or more of the criteria for a mandatory treatment order.

Note for section 62

The person or the senior assessment clinician may then decide to apply for the revocation of the person's mandatory community treatment order under section 44.

63 Notice to be given of contravention

If the community treatment provider reasonably believes the person has contravened, or is likely to contravene, the mandatory community treatment order, the treatment provider must notify a senior assessment clinician of the contravention, or likely contravention.

Note for section 63

Following receipt of notice under this section, the senior assessment clinician may decide to apply for the mandatory community treatment order to be varied, revoked or replaced under section 44.

64 Person need not comply with mandatory community treatment order while detained

If the person is detained at an assessment facility for the purpose of an assessment while the mandatory community treatment order is in force, the person need not comply with the order while detained.

Division 3 Aftercare plans

65 Preparation of aftercare plan

(1) An aftercare plan must be prepared for a person who receives treatment under a mandatory treatment order:

(a) for a person receiving treatment at a treatment centre – by the senior clinician for the centre; or

(b) for a person receiving treatment from a community treatment provider – by the community treatment provider.

(2) The aftercare plan must:

(a) specify the follow-up treatment the person is required to receive after the expiry of the period specified in, or the revocation of, the mandatory treatment order; and

(b) specify the period during which the treatment is to be received which must end not less than 3 months or more than 6 months after the expiry of the period specified in, or the revocation of, the mandatory treatment order; and

(c) be in the form approved by the CEO.

(3) The senior treatment clinician or community treatment provider must take reasonable steps to ensure the following persons are consulted in the preparation of the aftercare plan and receive a copy of the final aftercare plan:

(a) the person to whom the plan relates;

(b) the person's guardian (if any);

(ba) the person's decision maker (if any);

(c) any person who would, under the aftercare plan, be involved in providing treatment or support to the person.

66 Lodgment with Tribunal

(1) An aftercare plan for a person must be lodged with the Tribunal:

(a) as soon as practicable after an application for the revocation of the mandatory treatment order that applies to the person is made; or

(b) if no such application is made – at least 7 days before the mandatory treatment order expires.

(2) The aftercare plan must be lodged by the person who prepared it.

Division 4 Administrative matters

67 Records to be maintained at treatment centre

(1) The senior treatment clinician for a treatment centre must keep records of the following in relation to each person who is, from time to time, detained at the centre:

(a) details of all treatment given to the person in the treatment centre, and whether the treatment was given with or without the person's consent;

(b) any use of force against the person;

(c) details of any complaint made by the person in accordance with the complaint procedures;

(d) any leave of absence granted to the person;

(e) any automatic extension of the duration of the mandatory residential treatment order to which the person is subject that has effect because of section 49(3);

(f) any notices of the person's unauthorised absence given under section 76A;

(g) any other information as directed by the CEO.

(2) The records must be kept in the manner directed by the CEO.

(3) The senior treatment clinician must make the records available to the CEO on request.

68 Records to be maintained by community treatment provider

(1) A community treatment provider must keep records of the following in relation to each person who, from time to time, participates in treatment provided by the community treatment provider:

(a) details of all treatment given to the person by the community treatment provider;

(b) any other information as directed by the CEO.

(2) The records must be kept in the manner directed by the CEO.

(3) The community treatment provider must make the records available to the CEO on request.

69 Access to records

(1) Each of the following persons may apply for access to information contained in records about the person that are kept under section 67 or 68:

(a) the person;

(b) the person's guardian (if any);

(ba) the person's decision maker (if any);

(c) if the person has died:

(i) the person's nominated next of kin; or

(ii) the person's senior next of kin; or

(iii) the executor or administrator of the person's estate.

(2) The treatment provider may refuse the application if the treatment provider believes, on reasonable grounds, if the person is given access to the information:

(a) the person's health is likely to deteriorate; or

(b) the person may become a danger to himself or herself or to someone else; or

(c) someone mentioned in the information may be adversely affected or endangered.

(3) If the treatment provider refuses the application, the treatment provider must as soon as practicable:

(a) notify the applicant in writing of the decision; and

(b) inform the applicant of the applicant's right to apply to the CEO for a review of the decision.

(4) In this section:

senior next of kin, see section 3 of the *Coroners Act*.

70 Charge for consumables

A treatment provider may charge a person who participates in treatment provided by the treatment provider under this Act for items used by or for the person, including food, medication and other consumables.

71 Nomination of primary contact

(1) A person to whom a mandatory treatment order applies may nominate a person to be the person's primary contact under this Act or revoke or vary the nomination at any time.

(2) A nomination, variation or revocation by the person may be made orally to any of the following persons, who must record the nomination, variation or revocation:

(a) the senior treatment clinician for the treatment centre specified in the person's mandatory treatment order;

(b) an employee of the community treatment provider specified in the person's mandatory treatment order.

(3) If a nomination, variation or revocation is made to an employee of a community treatment provider, the employee must also notify each other employee of the community treatment provider.

(4) A senior treatment clinician or employee of a community treatment provider must, in performing his or her functions under this Act, ensure that effect is given to a nomination, or a variation or revocation of a nomination, if the clinician or employee is given notice of it.

Division 5 Offence

73 Offence to permit contravention of mandatory treatment order

A person commits an offence if the person:

(a) intentionally supplies alcohol to another person; and

(b) knows the other person is a person to whom a mandatory treatment order applies.

Maximum penalty: 5 penalty units or imprisonment for 1 month.

Part 5 Provisions relating to persons detained at assessment facilities and treatment centres

Division 1 General matters

74 Administration of medication

(1) A medical practitioner, or a qualified person acting on the direction of a medical practitioner, may administer medication to a person who is detained at an assessment facility or treatment centre under this Act.

(2) However, medication must not be administered except:

(a) with the consent of the person; or

(b) if the administration is:

(i) necessary to prevent a risk of imminent harm to the person or any other person; and

(ii) the least restrictive intervention available to address the risk.

(3) In exercising a power under subsection (1), a person must comply with any clinical or program guidelines issued by the CEO.

75 Use of reasonable force

(1) An authorised person may use reasonable force to restrain a person who is detained at an assessment facility or treatment centre if necessary to:

(a) enable a senior assessment clinician to conduct an assessment of the person; or

(b) enable the person to be detained at the facility or centre; or

(c) prevent a risk of imminent harm to the person or any other person; or

(d) maintain the good order and security of the facility or centre.

(2) In exercising a power under subsection (1), an authorised person must comply with any clinical or program guidelines issued by the CEO.

(3) To avoid doubt, this section does not authorise the administration of medication.

(4) In this section:

authorised person means a police officer or an authorised officer.

76 Leave of absence

(1) This section applies to a person who is detained at an assessment facility or treatment centre.

(2) A senior assessment clinician at the assessment facility or the senior treatment clinician for the treatment centre may permit the person to be absent from the facility or centre on any conditions considered appropriate by the clinician.

76A Giving notice of unauthorised absence from treatment centre

(1) This section applies if an affected person is absent from a treatment centre:

(a) after the expiry of a period of leave of absence granted under section 76; or

(b) otherwise than in accordance with this Act.

(2) The senior treatment clinician must give the Tribunal a notice of the extension of the duration of the mandatory residential treatment order for the affected person that has effect because of section 49(3).

(3) The senior treatment clinician must also take reasonable steps to give a notice of the matter mentioned in subsection (2) to each person who was given a copy of the mandatory residential treatment order under section 37 or 48.

77 Power to search persons

(1) This section applies to a person who is detained at an assessment facility or treatment centre.

(2) A police officer or an authorised officer (each a ***search officer***) may carry out a frisk search or ordinary search of the person if the search officer reasonably believes it is necessary to do so to prevent a risk of imminent harm to the person or any other person.

(3) The search officer may seize anything found on or with the person in the course of carrying out the frisk search or ordinary search if the officer reasonably believes it is necessary to do so to prevent a risk of imminent harm to the person or any other person.

(4) As soon as practicable after exercising a power under this section, a search officer must:

(a) make a record of the exercise of the power in the form approved by the CEO; and

(b) place the record with records kept at the assessment facility or treatment centre in relation to the person.

78 Search and seizure generally

(1) A ***frisk search*** is:

(a) a search of a person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal detection device over or in close proximity to the person's outer clothing; or

(b) an examination of a thing worn or carried by the person that is conveniently and voluntarily removed by the person, including an examination conducted by passing an electronic metal detection device over or in close proximity to the thing.

(2) An ***ordinary search*** is a search of a person or of things in the possession of the person that may include:

(a) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat; and

(b) an examination of those things.

(3) A frisk search or ordinary search carried out under this Act must be carried out by a person who is of the same sex as the person being searched.

(4) If a person seizes any of the following things in the course of carrying out a frisk search or ordinary search under this Act, the person must, as soon as practicable after seizing the thing, give it to a police officer:

(a) a firearm as defined in section 3(1) of the *Firearms Act*;

(b) a controlled weapon, offensive weapon or prohibited weapon as defined in section 3 of the *Weapons Control Act*;

(c) a dangerous drug as defined in section 3(1) of the *Misuse of Drugs Act*.

(5) If the person carrying out the frisk search or ordinary search seizes any other thing, the person may destroy or otherwise dispose of it.

(6) A person may use the force and assistance that is necessary and reasonable to carry out a frisk search or ordinary search under this Act.

79 Power to apprehend persons

(1) A senior assessment clinician must direct a police officer or authorised officer to apprehend a person, and take the person to an assessment facility, if:

(a) the person has been granted leave of absence under section 76 but fails to return to the assessment facility at the expiry of the leave or fails to comply with a condition of the permission; or

(b) the person absents himself or herself from an assessment facility otherwise than in accordance with this Act.

(2) A senior treatment clinician for a treatment centre must direct a police officer or authorised officer to apprehend a person to whom a mandatory residential treatment order applies, and take the person to the treatment centre, if:

(a) the person has been granted leave of absence under section 76 but fails to return to the treatment centre at the expiry of the leave or fails to comply with a condition of the permission; or

(b) the person absents himself or herself from the treatment centre otherwise than in accordance with this Act.

(3) Any of the following persons may apprehend a person mentioned in subsection (1) or (2):

(a) a police officer;

(b) an authorised officer.

(4) A person who is apprehending a person mentioned in subsection (1) or (2) may use the force and assistance that is necessary and reasonable to apprehend and take the person to the assessment facility or treatment centre.

80 Police assistance in apprehending persons

(1) A senior assessment clinician or senior treatment clinician may request that a police officer assist in apprehending a person if the clinician is of the opinion that to do so is necessary for the person to be apprehended safely.

(2) A police officer to whom the request is made may assist, or cause or arrange for another police officer to assist, in apprehending and taking the person to an assessment facility or treatment centre.

(3) A police officer may enter, and use reasonable force to gain entry to, premises to apprehend a person for the purposes of this Act.

81 Records to be maintained at assessment facility

(1) The CEO must keep records of the following in relation to each person who is, from time to time, detained at an assessment facility:

(a) details of all treatment given to the person in the assessment facility, and whether the treatment was given with or without the person's consent;

(b) any use of force against the person;

(c) any leave of absence granted to the person.

(2) The records may be kept in any manner the CEO considers suitable.

82 Complaint procedures for treatment centres

(1) The senior treatment clinician for a treatment centre must establish fair procedures to deal with complaints relating to persons detained at the centre and ensure those procedures are accessible to the following persons:

(a) persons detained at the centre;

(b) the primary contacts, guardians (if any) and decision makers (if any) of those persons.

(2) The senior treatment clinician must comply with any direction of the CEO in relation to the complaints procedures.

Division 2 Community visitors program

Subdivision 1 Principal community visitor and community visitors

83 Appointment

(1) The Minister must appoint a person to be the principal community visitor.

(2) The Minister may appoint a person to be a community visitor.

(3) A person must not be appointed to be a community visitor if:

(a) the person does not have the qualifications determined by the Minister; or

(b) the person is employed by the Agency or a treatment provider; or

(c) the person has a direct interest in any contract with the Agency or a treatment provider.

(4) An appointee holds office for 3 years and is eligible for reappointment.

(5) To avoid doubt, this section does not prevent an appointee concurrently holding office as the principal community visitor or a community visitor under the *Disability Services Act* or Mental Health Act.

84 Interim community visitor

(1) The principal community visitor may appoint a person to be a community visitor (an ***interim community visitor***) for the period of not more than 60 days stated in the instrument of appointment.

(2) A person must not be appointed to be an interim community visitor unless the person could be appointed under section 83 as a community visitor.

(3) The appointment of an interim community visitor ceases at the earliest of the following:

(a) when the period of appointment ends;

(b) when the appointment is terminated;

(c) when the person resigns office;

(d) when the Minister appoints the person to be a community visitor.

(4) The Minister may terminate the appointment before the period of appointment ends.

85 Vacation of office

A person who is a community visitor ceases to be a community visitor if:

(a) the person resigns by giving written notice to the Minister; or

(b) the person's term of office comes to an end and the person is not reappointed; or

(c) the person's appointment is terminated under section 86(1) or (2).

86 Termination of appointment

(1) The Minister may terminate the appointment of a person as a community visitor for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) The Minister must terminate the appointment of a person as a community visitor if:

(a) the person ceases to hold a qualification or status that was a prerequisite for his or her being appointed; or

(b) the person is found guilty of an offence of such a nature that it would be inappropriate for the person to continue to be a community visitor; or

(c) the person:

(i) becomes bankrupt; or

(ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with creditors or makes an assignment of the person's remuneration for their benefit.

(3) A termination of appointment must be made in writing.

Subdivision 2 Powers and functions of community visitors

87 Functions of principal community visitor

The functions of the principal community visitor are as follows:

(a) to establish standards, principles and protocols for community visitors to exercise their powers and perform their functions;

(b) to oversee the preparation and circulation of publications to persons detained in assessment facilities or treatment centres, treatment providers and the public generally explaining the role of community visitors and how they may be contacted;

(c) to ensure community visitors exercise their powers and perform their functions in accordance with the established standards, principles and protocols;

(d) to ensure that each treatment centre is inspected by a community visitors panel once every 6 months.

88 Inquiry functions

(1) A community visitor may inquire into and make recommendations relating to the following:

(a) the adequacy of services for assessing and treating persons provided by the Agency and residential treatment providers;

(b) the standard and appropriateness of facilities for the accommodation, physical wellbeing and welfare of persons detained at assessment facilities or treatment centres;

(c) the adequacy of information relating to:

(i) the rights of persons detained at assessment facilities or treatment centres; and

(ii) the complaint procedures mentioned in section 82;

(d) the accessibility and effectiveness of the complaint procedures;

(e) the failure of persons employed in assessment facilities or treatment centres to comply with this Act;

(f) the use of force, or the administration of medication without consent, under this Act;

(g) any matter as directed to the principal community visitor by the Minister.

(2) A community visitor must refer to the principal community visitor any matter the community visitor considers should be investigated by a community visitors panel.

89 Complaint functions

A community visitor must:

(a) be accessible to persons detained at assessment facilities and treatment centres to hear and facilitate the resolution of complaints they may have; and

(b) help those persons make complaints, apply for variations, revocations or replacements of mandatory treatment orders or file notices of appeal under this Act.

90 Visiting duties

(1) A community visitor may, at any time without notice, enter an assessment facility or treatment centre.

(2) When directed by the Minister, the principal community visitor must arrange for a community visitor to visit an assessment facility or treatment centre at the times specified by the Minister.

91 Powers of inspection

A community visitor may, when in an assessment facility or treatment centre:

(a) inspect any part of the facility or centre; and

(b) visit and communicate with persons who are detained at the facility or centre; and

(c) inspect documents or records relating to persons detained at the facility or centre; and

(d) inspect any other records required to be kept under this Act.

92 Requests to be contacted by community visitors

(1) A senior assessment clinician at an assessment facility, and the senior treatment clinician for a treatment centre, must ensure a person detained at the facility or centre and the person's primary contact, guardian (if any) and decision maker (if any) are given oral or written information about the role of the community visitors program under this Part, including the following:

(a) the person's right to be visited by a community visitor;

(b) the person's right, and the right of the person's primary contact, guardian (if any) and decision maker (if any), to contact a community visitor;

(c) how to contact a community visitor.

(2) A person detained at an assessment facility or treatment centre may ask to be contacted by a community visitor.

(3) A senior assessment clinician at the assessment facility, or the senior treatment clinician for the treatment centre, must send the request to the principal community visitor as soon as practicable and, in any event, not later than 24 hours after it is made.

(4) The principal community visitor must ensure a community visitor contacts, or attempts to contact, the person before the end of the next business day after the principal community visitor receives the request.

(5) In this section:

contact includes contact by telephone or email.

93 Reports by community visitors

(1) A community visitor who visits an assessment facility or treatment centre must give a report of his or her visit, including any findings and recommendations, to the principal community visitor.

(2) The principal community visitor must give a copy of the report to:

(a) for a report in relation to an assessment facility – the CEO and a senior assessment clinician at the facility; or

(b) for a report in relation to a treatment centre – the CEO and the senior treatment clinician for the centre.

(3) The principal community visitor may report to the CEO if he or she reasonably believes a senior assessment clinician or senior treatment clinician has not taken adequate or reasonable action to implement a recommendation made by a community visitor in a report under this section.

(4) If the principal community visitor considers a matter mentioned in the report falls within the functions conferred by a law of the Territory, the Commonwealth, a State or another Territory on a person, tribunal or other entity, the principal community visitor may refer the matter to the person, tribunal or entity.

Subdivision 3 Community visitors panel

94 Establishment

A community visitors panel must be established for each treatment centre.

95 Appointment of members

(1) The Minister must appoint 3 persons to be the members of a community visitors panel.

(2) The persons appointed must be persons the Minister considers suitable for appointment and must include:

(a) a person who is a lawyer; and

(b) a person who is a health practitioner.

(3) A community visitors panel must, as far as practicable, include persons of both sexes and from diverse ethnic backgrounds, including persons who are Aboriginal or Torres Strait Islanders or who demonstrate an understanding of Aboriginal or Torres Strait Islander culture.

(4) A person cannot be appointed to be a member of a community visitors panel if:

(a) the person is employed by the Agency or a treatment provider; or

(b) the person has a direct interest in any contract with the Agency or a treatment provider.

(5) To avoid doubt, this section does not prevent a member of a community visitors panel concurrently holding office as a member of another community visitors panel.

(6) The Minister must appoint one member of a community visitors panel to be the chairperson of the panel.

(7) A member of a community visitors panel holds office for 3 years and is eligible for reappointment.

96 Vacation of office

A person who is a member of a community visitors panel ceases to be a member if:

(a) the person resigns by giving written notice to the Minister; or

(b) the person's term of office comes to an end and the person is not reappointed; or

(c) the person's appointment is terminated under section 97(1) or (2).

97 Termination of appointment

(1) The Minister may terminate the appointment of a person as a member of a community visitors panel for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) The Minister must terminate the appointment of a person as a member of a community visitors panel if:

(a) the person ceases to hold a qualification or status that was a prerequisite for his or her being appointed; or

(b) the person is found guilty of an offence of such a nature that it would be inappropriate for the person to continue to be a member of a community visitors panel; or

(c) the person:

(i) becomes bankrupt; or

(ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with creditors or makes an assignment of the person's remuneration for their benefit.

(3) A termination of appointment must be made in writing.

98 Functions of community visitors panel

(1) The members of a community visitors panel must, as a group, visit the treatment centre for which the panel was established once every 6 months.

(2) When visiting the treatment centre, the members of the community visitors panel must enquire into:

(a) the extent to which persons detained at the centre participate in treatment that uses the least restrictive interventions that are likely to be effective or sufficient in treating the person; and

(b) the adequacy of information provided by the senior treatment clinician for the centre about the complaints procedures and other rights under this Act; and

(c) the accessibility and effectiveness of the complaint procedures of the centre; and

(d) any failure of persons employed at the centre to comply with this Act; and

(e) any other matter the panel considers appropriate having regard to the principles set out in section 6; and

(f) any other matter referred to it by the Minister or principal community visitor.

(3) The members of the community visitors panel may, when visiting the treatment centre:

(a) inspect any part of the centre; and

(b) visit a person detained at the centre; and

(c) inquire into the admission, treatment and care of persons detained at the centre; and

(d) inspect records or other documents relating to persons detained at the centre; and

(e) inspect other records required to be kept under this Act.

99 Report by community visitors panel

(1) The chairperson of a community visitors panel must give the principal community visitor a report of the panel's visit to a treatment centre as soon as practicable after the visit.

(2) The report must be in writing and contain details of the following:

(a) the actions and inquiries undertaken by the community visitors 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;

(f) any recommendations of the panel arising out of the visit.

(3) The principal community visitor must give a copy of the report to the CEO and the senior treatment clinician for the treatment centre.

(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 way directed by the Minister.

Subdivision 4 Miscellaneous matters

100 Assistance to be provided

(1) Each of the following persons must give reasonable assistance and cooperation to a community visitor or a member of a community visitors panel in the exercise of their powers and performance of their functions under this Act:

(a) a senior assessment clinician;

(b) a senior treatment clinician;

(c) each person employed:

(i) at an assessment facility or treatment centre; or

(ii) by a treatment provider.

(2) For subsection (1), reasonable assistance and cooperation to be given to a person includes answering questions and responding to enquiries.

101 Annual report

(1) The principal community visitor must give the Minister a report on the activities of community visitors and community visitors panels during each financial year within 3 months after the end of the financial year.

(2) The report may be contained within a report of an Agency or other statutory body.

(3) The Minister must ensure a copy of the report is tabled in the Legislative Assembly within 6 sitting days after receiving it.

Part 6 Alcohol Mandatory Treatment Tribunal

Division 1 Establishment of Tribunal and related matters

102 Establishment of Tribunal

The Alcohol Mandatory Treatment Tribunal is established.

103 Functions and powers

(1) The Tribunal has the following functions:

(a) to consider and decide applications made to it;

(b) to make mandatory treatment orders, income management orders and other orders in relation to its decisions;

(c) to make inquiries in relation to proceedings, as appropriate;

(d) to perform other functions conferred on it under this or any other Act.

(2) The Tribunal has the powers necessary to perform its functions.

104 Membership

(1) The Tribunal is constituted of the persons appointed by the Minister.

(2) For subsection (1), the Minister must appoint the following number of persons from the following classes:

(a) 2 or more persons each of whom is a lawyer with at least 5 years' experience as a legal practitioner;

(b) one or more persons each of whom is a medical practitioner, or other suitably qualified health practitioner, who has a special interest or expertise in the general care, health care, rehabilitation or treatment of persons who are misusing alcohol;

(c) one or more persons each of whom is a community member who has a special interest or expertise in the issues facing persons who might appear before the Tribunal.

(3) The Tribunal must, as far as practicable, be constituted of members of both sexes and from diverse ethnic backgrounds, including members who are Aboriginal or Torres Strait Islanders or who demonstrate an understanding of Aboriginal or Torres Strait Islander culture.

(4) The following people cannot be appointed to the Tribunal:

(a) the CEO;

(b) an employee of the Agency;

(c) a person employed:

(i) at an assessment facility or treatment centre; or

(ii) by a treatment provider;

(d) an authorised officer;

(e) a community visitor or member of a community visitors panel;

(f) a person who works for the Health and Community Services Complaints Commission established under section 7 of the *Health and Community Services Complaints Act*.

105 Term of appointment

(1) A member of the Tribunal holds office for 3 years or the shorter period specified in the appointment.

(2) The member is eligible for reappointment.

(3) However, a person cannot be appointed for more than 2 consecutive terms except in exceptional circumstances.

(4) For this section, terms of appointment are consecutive if less than 6 months elapses between the end of one term and the start of the next term.

106 President and Deputy President

(1) The Minister must appoint:

(a) a member appointed under section 104(2)(a) to be the President of the Tribunal; and

(b) another member appointed under section 104(2)(a) to be the Deputy President of the Tribunal.

(2) The Deputy President may exercise the powers and perform the functions of the President if the President:

(a) vacates office; or

(b) is absent from the Territory; or

(c) is unable for another reason to exercise the powers or perform the functions of the President.

(3) In addition, a member of the Tribunal appointed under section 104(2)(a) may exercise the powers or perform the functions of the President as and when directed by the President.

107 Vacation of office

A person who is a member of the Tribunal ceases to be a member if:

(a) the person resigns by giving written notice to the Minister; or

(b) the person's term of office comes to an end and the person is not reappointed; or

(c) the person's appointment is terminated under section 108(1) or (2).

108 Termination of appointment

(1) The Minister may terminate the appointment of a person as a member of the Tribunal for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) The Minister must terminate the appointment of a person as a member of the Tribunal if:

(a) the person ceases to hold a qualification or status that was a prerequisite for his or her being appointed; or

(b) the person is found guilty of an offence of such a nature that it would be inappropriate for the person to continue to be a member; or

(c) the person:

(i) becomes bankrupt; or

(ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with creditors or makes an assignment of the person's remuneration for their benefit.

(3) A termination of appointment must be made in writing.

109 Composition 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 must be the President, Deputy President or another member appointed under section 104(2)(a); and

(b) one must be a member appointed under section 104(2)(b); and

(c) one must be a member appointed under section 104(2)(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.

110 Replacement of member

(1) This section applies if:

(a) a proceeding is being conducted by the Tribunal; and

(b) one of the members (the ***original member***) constituting the Tribunal vacates office or becomes incapable of continuing to conduct the proceeding.

(2) The President must nominate another member of the Tribunal to replace the original member and the Tribunal must continue to conduct the proceeding.

(3) The member nominated under subsection (2) must be a member appointed from the same class mentioned in section 104(2) as the original member.

111 Registrar and Deputy Registrars of Tribunal

(1) The Minister:

(a) must appoint a public sector employee to be the Registrar of the Tribunal; and

(b) may appoint a public sector employee 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 must be lodged with the Registrar or a Deputy Registrar.

Division 2 General provisions for proceedings

112 Form and lodgment of applications

(1) The President may approve forms for use under this Act relating to a proceeding except the following:

(a) forms approved by the CEO in accordance with this Act;

(b) a notice relating to income management given under Part 6, Division 3.

(2) If the President has approved a form for an application, the applicant must use the approved form and include in the form the information it requires.

113 Right of appearance and representation

(1) An affected person:

(a) may represent himself or herself at a hearing; or

(b) may appoint a legal practitioner to represent the affected person at the proceeding.

(2) If the affected person is unrepresented, the President may appoint an advocate for the affected person:

(a) to represent the best interests of, and assist, the affected person in a proceeding; and

(b) to perform any other functions conferred on the advocate by the Tribunal or under this or any other Act.

(3) The advocate must be:

(a) a legal practitioner; or

(b) a person who is approved by the CEO and has expertise in the general care, health care, rehabilitation or treatment of persons who are misusing alcohol.

(4) The advocate must be provided at no cost to the affected person.

(5) To avoid doubt, the Tribunal may conduct the hearing in the absence of the affected person or the affected person's representative if the affected person or the representative was given reasonable notice of the hearing and refused or failed to attend.

114 Conduct of proceeding generally

(1) In a proceeding, the Tribunal is bound by the rules of natural justice.

(2) The President, Deputy President or member appointed under section 104(2)(a) must decide all questions of law arising in a proceeding.

(3) The Tribunal must keep a record of:

(a) its proceedings, including a record of evidence given to the Tribunal; and

(b) its decisions and reasons for the decisions.

(4) The record may be kept in any manner the Tribunal considers suitable.

(5) The President may issue practice directions relating to the procedure of the Tribunal.

(6) Subject to this Act, the regulations and practice directions issued by the President, the procedure of the Tribunal is to be as decided by the Tribunal.

115 Conduct of hearing

(1) The hearing of an application must not be open to the public.

(2) The hearing of an application must be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the subject matter of the proceeding permits.

(3) The Tribunal may adjourn a hearing of an application if there are exceptional circumstances for doing so.

(4) A Tribunal order that is in force at the adjournment of a hearing remains in force during the adjournment even if, but for this subsection, it would have expired during the adjournment.

116 Interpreter

(1) If an affected person is unable to communicate adequately in English but is able to communicate adequately in another language, the Tribunal must, to the extent that is reasonably practicable, permit the person to have access to an interpreter to assist the person:

(a) to prepare for the hearing; and

(b) when appearing at the hearing.

(2) The interpreter must be provided at no cost to the person.

117 Evidence

(1) The Tribunal is not bound by the rules of evidence but may inform itself of a matter relevant to a proceeding in the way it considers appropriate.

(2) Evidence in a proceeding may be given orally or in writing.

(3) However, the Tribunal may require evidence to be given on oath.

(4) The Tribunal may require a person to appear before it to do one or both of the following:

(a) answer a question relevant to the proceeding;

(b) produce a document relevant to the proceeding.

(5) Evidence given to the Tribunal cannot be used in civil or criminal proceedings.

118 Reports of reasons for decisions

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

(2) However, the reports must not include the name of the affected person for a proceeding or any other material that may disclose the person's identity.

Division 3 Notices relating to income management

119 Eligible welfare payment recipient

A person is an ***eligible welfare payment recipient*** if, under Part 3B of the *Social Security (Administration) Act 1999* (Cth):

(a) the person is an eligible recipient of a category H welfare payment; or

(b) the person's partner is an eligible recipient of a category H welfare payment.

120 Notice to Secretary requiring income management

(1) This section applies if the Tribunal makes:

(a) an income management order; or

(b) an order that varies an income management order by extending or reducing the period the income management order is in force.

(2) The Tribunal must give the Secretary:

(a) a notice requiring that the person be subject to income management; and

(b) a copy of the income management order or variation order.

121 Notice to Secretary revoking requirement for income management

(1) This section applies if the Tribunal makes an order revoking an income management order.

(2) The Tribunal must give the Secretary:

(a) a notice revoking the requirement that the person be subject to income management; and

(b) a copy of the order revoking the income management order.

Division 4 Other matters

122 Contempt

A person must not intentionally engage in any of the following conduct:

(a) threatening, intimidating or insulting the Tribunal, or a member of the Tribunal, in relation to the performance of the functions or the exercise of the powers of the Tribunal by the Tribunal or member;

(b) interrupting, obstructing or hindering a proceeding of the Tribunal;

(c) creating a disturbance, or taking part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting.

Maximum penalty: 20 penalty units.

123 Offence to publish or broadcast name or report

(1) A person commits an offence if the person:

(a) intentionally publishes or broadcasts the name of an affected person for a proceeding; and

(b) is reckless as to whether the person whose name is published or broadcast is an affected person.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(2) A person commits an offence if the person:

(a) intentionally publishes or broadcasts a report (other than an official report) of a hearing that identifies or may identify an affected person; and

(b) is reckless as to whether the report identifies or may identify the affected person.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(3) Subsection (1) or (2) does not apply to an individual:

(a) who, in the course of performing the individual's functions under this or any other Act in connection with an affected person, gives information to a person relevant to the affected person; or

(b) who reasonably believes it is his or her duty to give the information to another person (for example, to inform the other person that someone is a person for whom alcohol should not be purchased).

(4) In addition, subsection (1) or (2) does not apply if the publication or broadcast is made by, or with the consent of, the affected person.

124 Annual report

(1) The President must give the Minister a report on the Tribunal's operations during each financial year within 3 months after the end of the financial year.

(2) The report may be contained within a report of an Agency or other statutory body.

(3) The Minister must ensure a copy of the report is tabled in the Legislative Assembly within 6 sitting days after receiving it.

Part 7 Miscellaneous provisions

Division 1 Alcohol testing

125 Person must submit to testing

(1) This section applies if:

(a) a direction is given under section 57 for a test to be carried out under this section in relation to a person; or

(b) a person is required to undergo alcohol testing under a mandatory community treatment order.

(2) The person must submit to the taking of samples of such quantity of the person's breath by a testing officer as is reasonably necessary for determining whether there is alcohol present in the person's body.

(3) A testing officer, and an authorised officer assisting the testing officer, may use the force and assistance that is necessary and reasonable to ensure the samples are taken under subsection (2).

126 Testing officers

The CEO may authorise a person to take samples of the breath of a person to whom a mandatory treatment order applies for determining whether there is alcohol present in the person's body.

Division 2 Declaration of premises, appointment and functions of officers and authorisation of persons

127 Assessment facilities

The CEO may, by *Gazette* notice, declare premises (including part of a building or place) to be an assessment facility.

128 Treatment centres

The CEO may, by *Gazette* notice, declare premises (including part of a building or place) to be a secure residential treatment centre.

129 Functions of CEO

(1) The CEO has the following functions under this Act:

(a) providing clinical governance for assessment and treatment under this Act;

(b) issuing clinical and program guidelines for assessment facilities, treatment centres and community treatment providers;

(c) conducting investigations into clinical matters;

(d) approving forms for use under this Act;

(e) any other functions specified in this Act.

(2) The CEO may delegate any of the CEO's powers and functions under this Act to a public sector employee.

130 Clinical director

(1) The CEO may appoint a person to be the clinical director for the purposes of this Act.

(2) The person must be a medical practitioner employed by the Agency.

131 Senior assessment clinicians

(1) The CEO may appoint a person to be a senior assessment clinician.

(2) The person must be:

(a) employed by the Agency; and

(b) either:

(i) a medical practitioner; or

(ii) a person who, in the CEO's opinion, holds a qualification and has experience appropriate for the assessment of persons for misuse of alcohol.

(3) A senior assessment clinician has the following functions:

(a) conducting assessments and overseeing the care of persons at assessment facilities;

(b) managing the process for dealing with persons who contravene mandatory community treatment orders;

(c) any other functions specified in this Act.

(4) A senior assessment clinician must comply with any clinical or program guidelines issued by the CEO.

132 Residential treatment providers

(1) The CEO may, by *Gazette* notice, authorise a person to be a residential treatment provider.

(2) The person must:

(a) have appropriate clinical and organisational governance (including quality management); and

(b) be capable of providing treatment to persons that includes the following:

(i) appropriate ongoing assessment, treatment selection and case management;

(ii) therapeutic and evidence-based programs;

(iii) living and life skills development;

(iv) work skills development where appropriate for a person;

(v) management of medical issues and integration of treatment with other services;

(vi) aftercare planning.

(3) The CEO may revoke the authorisation if the CEO is of the opinion that the person is failing to meet any of the requirements mentioned in subsection (2).

(4) A residential treatment provider must comply with any clinical or program guidelines issued by the CEO.

133 Senior treatment clinicians

(1) The CEO must appoint a person to be the senior treatment clinician for a treatment centre.

(2) The person must be:

(a) a medical practitioner; or

(b) a person who, in the CEO's opinion, holds a qualification and has experience appropriate for the treatment of persons who are misusing alcohol.

(3) A senior treatment clinician must comply with any clinical or program guidelines issued by the CEO.

134 Community treatment providers

(1) The CEO may, by *Gazette* notice, authorise a person to be a community treatment provider.

(2) A community treatment provider must comply with any clinical or program guidelines issued by the CEO.

135 Authorised officers

(1) An ***authorised officer*** is

(a) a person holding an appointment as an authorised officer under subsection (2); or

(b) a senior assessment clinician; or

(c) a senior treatment clinician.

(2) The CEO may appoint a person to be an authorised officer.

(3) The person must hold the qualifications specified in the directions made under subsection (5).

(4) An authorised officer:

(a) has the following functions:

(i) supervising and assisting with the management of persons detained in assessment facilities and treatment centres;

(ii) transporting persons to and from assessment facilities and treatment centres;

(iii) searching persons detained at assessment facilities and treatment centres;

(iv) apprehending persons under section 79;

(v) any other function imposed on the officer by this or any other Act; and

(b) has the powers necessary or convenient for performing those functions.

(5) The CEO must issue directions specifying the qualifications required of authorised officers, the training requirements for authorised officers, and any other matter the CEO considers appropriate for the performance of the functions mentioned in subsection (4).

Division 3 Other matters

136 Act does not limit or affect other powers

(1) Powers conferred on a police officer under this Act are in addition to and not in derogation of any other power the police officer may have under any other Act or any other law in force in the Territory.

(2) This Act does not prevent a person from providing emergency health care or taking emergency action to save a person's life.

137 Transport of persons to and from assessment facilities and treatment centres

(1) This section applies if:

(a) a person is, under this or any other Act, required to be taken to an assessment facility for an assessment; or

(b) a person is otherwise to be taken to or from an assessment facility or treatment centre under this Act.

(2) A transport officer is authorised to take the person to or from the assessment facility or treatment centre.

(3) If necessary to enable the person to be taken to or from the assessment facility or treatment centre safely, a transport officer may use reasonable force to restrain the person.

(4) A transport officer may carry out a frisk search or ordinary search of the person if the officer reasonably suspects the person is carrying anything:

(a) that would present a danger to the officer, the person or any other person; or

(b) that could be used to assist the person to escape from the officer's custody.

(5) The transport officer may seize anything found on or with the person in the course of carrying out the frisk search or ordinary search if it is a thing of a type mentioned in subsection (4)(a) or (b).

137A Requirements in relation to decision makers

(1) If a person (***person A***) is required by a provision of this Act to perform a function in relation to a decision maker for a person (***person B***), it is sufficient compliance with that provision if person A:

(a) takes reasonable steps to ascertain whether person B has a decision maker; and

(b) takes reasonable steps to perform the function in relation to any decision maker for person B whom person A is aware of after complying with paragraph (a).

(2) In this section, to ***perform a function*** in relation to a decision maker includes the following:

(a) to notify the decision maker;

(b) to consult the decision maker;

(c) to give person B the opportunity to speak to the decision maker;

(d) to give the decision maker's name and contact details to another person.

138 Misleading information

(1) A person commits an offence if:

(a) the person gives information to another person; and

(b) the person knows the information is misleading; and

(c) the person knows the other person is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person gives a document to another person; and

(b) the person knows the document contains misleading information; and

(c) the person knows the other person is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(3) Subsection (2) does not apply if the person, when giving the document:

(a) draws the misleading aspect of the document to the other person's attention; and

(b) to the extent to which the person can reasonably do so – gives the other person the information necessary to remedy the misleading aspect of the document.

(4) In this section:

acting in an official capacity, in relation to a person, means the person is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

139 Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:

(a) the CEO;

(b) the clinical director;

(c) a senior assessment clinician;

(d) a senior treatment clinician;

(e) an authorised officer;

(f) a transport officer;

(g) a testing officer;

(h) a community visitor;

(i) a member of a community visitors panel.

(2) In addition, a person is not civilly or criminally liable for an act done, or omitted to be done, by the person in good faith and exercising due diligence in the course of providing treatment to a person to whom a mandatory treatment order applies.

(3) Subsections (1) and (2) do not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(4) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

140 Collection and disclosure of information

(1) The Agency may collect information about persons treated under this Act from treatment providers.

(2) A treatment provider must disclose to the Agency information about a person to whom it provides treatment under this Act.

(3) The Agency may disclose information about a person to a treatment provider who is providing, or will provide, treatment to the person under this Act.

(4) The Police Force of the Northern Territory is authorised to disclose information and a unique identifier about an assessable person to the Agency for the purposes of this Act.

(5) In this section:

information includes personal information, and sensitive information, as defined in section 4 of the *Information Act*.

unique identifier, see section 4 of the *Information Act*.

141 Confidentiality of information

(1) A person commits an offence if the person:

(a) obtains information in the course of performing functions connected with the administration of this Act; and

(b) engages in conduct that results in the disclosure of the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply if:

(a) the person discloses the information:

(i) for the administration of this Act; or

(ii) with the consent of the person to whom the information relates; or

(iii) for legal proceedings arising out of the operation of this Act; or

(b) the information is otherwise available to the public.

(3) In addition, subsection (1) does not apply if the information is disclosed:

(a) in accordance with section 140; or

(b) to a health service provider for providing a health service or health program to a person; or

(c) to a health profession body; or

(d) to a law enforcement agency for a criminal investigation; or

(e) to another person if the person who discloses the information reasonably believes the disclosure is necessary:

(i) to prevent the person to whom the information relates from causing harm to himself or herself or others; or

(ii) to prevent the person to whom the information relates from destroying property if that destruction could involve the risk of harm to himself or herself or others.

Note for subsection (3)

In addition to the circumstances mentioned in subsections (2) and (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

(4) In this section:

health profession body means:

(a) a National Health Practitioner Board established under the Health Practitioner Regulation National Law; or

(b) a State or Territory Board established under that Law by a Board mentioned in paragraph (a); or

(c) the Australian Health Practitioner Regulation Agency established under that Law.

health program, see section 5 of the Health Practitioner Regulation National Law.

health service, see section 5 of the Health Practitioner Regulation National Law.

health service provider, see section 5 of the Health Practitioner Regulation National Law.

law enforcement agency, see section 4 of the *Information Act*.

142 Regulations

The Administrator may make regulations under this Act.

Part 8 Repeal and transitional matters

Division 1 Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act

143 Definitions

In this Division:

commencement day means the day on which section 144 commences.

repealed Act means the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act.*

144 Repeal

The *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act 2011* (Act No. 18 of 2011) is repealed.

145 Certain notices given, orders made under repealed Act

(1) Despite the terms of a BAT notice given, or a GAP order or BADT order made, before the repeal of the repealed Act, the notice or order has no effect on or after the commencement day, except that the following continue in force in accordance with their terms:

(a) a condition in a BADT order that requires a person to be subject to income management;

(b) a notice requiring a person to be subject to income management given to the Secretary under the *Social Security (Administration) Act 1999* (Cth).

(2) The Tribunal has all the powers and may perform all the functions that the Alcohol and Drugs Tribunal had immediately before the commencement day in relation to proceedings relating to a BADT order mentioned in subsection (1)(a) or a notice mentioned in subsection (1)(b).

(3) The President has all the powers and may perform all the functions that the Chairperson of the Alcohol and Drugs Tribunal had immediately before the commencement day relating to the proceedings referred to in subsection (2).

146 Clinicians

The following provisions of the repealed Act continue to apply as if they were still in force despite the repeal of the repealed Act:

(a) section 75;

(b) section 77, in so far as it relates to clinicians.

Division 2 Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act

147 Definitions

In this Division:

commencement day means the day on which section 148 commences.

repealed Act means the *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act*.

148 Repeal

The *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (Act No. 19 of 2011) is repealed.

149 SMART orders made under repealed Act

(1) The repealed Act continues to apply as if it were still in force in relation to a SMART order made on or before 31 December 2012 as if a reference in the repealed Act to the Registrar were a reference to a Registrar of the Local Court and a reference to the SMART Court were a reference to:

(a) the Chief Magistrate; or

(b) a person who was, immediately before the commencement day, a magistrate who had been appointed to the SMART Court by the Chief Magistrate under section 7(2) of the repealed Act.

(2) A SMART order made after 31 December 2012 ceases to be in force on the commencement day.

(3) Sections 30 and 31 of the repealed Act continue to apply as if they were still in force in relation to the offender for whom a SMART order has been made after 31 December 2012 as if:

(a) the SMART order had been revoked on the commencement day, but not under Part 5 of the repealed Act; and

(b) references in those sections to the Court were references to the Court of Summary Jurisdiction.

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

***Alcohol Mandatory Treatment Act 2013* (Act No. 17, 2013)**

Assent date	28 June 2013
Commenced	1 July 2013 (s 2)

***Advance Personal Planning (Consequential Amendments) Act 2013* (Act No. 36, 2013)**

Assent date	19 December 2013
Commenced	pt 3: 5 February 2014 (*Gaz* G5, 5 February 2014, p 2); rem: 17 March 2014 (*Gaz* S14, 17 March 2014)

***Alcohol Mandatory Treatment Amendment Act 2014* (Act No. 46, 2014)**

Assent date	8 December 2014
Commenced	pt 2 (other than ss 4 and 5): 15 January 2015 (*Gaz* S2, 15 January 2016, p 1); rem: 27 January 2016 (*Gaz* G4, 27 January 2016, p 2)

***Information Amendment Act (No. 2) 2015* (Act No. 29, 2015)**

Assent date	8 December 2015
Commenced	1 May 2016 (*Gaz* G17, 27 April 2016, p 2)

3 LIST OF AMENDMENTS

s 5	amd No. 36, 2013, s 52
s 8	amd No. 46, 2014, s 4
s 9	amd No. 46, 2014, s 5
s 16	amd No. 36, 2013, s 53
s 23	amd No. 36, 2013, s 54
s 31	amd No. 36, 2013, s 55
s 45	amd No. 36, 2013, s 56
s 46	amd No. 46, 2014, s 6
s 49	amd No. 46, 2014, s 7
s 53	amd No. 36, 2013, s 57
s 58	amd No. 46, 2014, s 8
s 59	amd No. 36, 2013, s 58

s 65	amd No. 36, 2013, s 59
s 67	amd No. 46, 2014, s 9
s 69	amd No. 36, 2013, s 60
pt 4	
div 5 hdg	amd No. 46, 2014, s 10
s 72	rep No. 46, 2014, s 11
s 76A	ins No. 46, 2014, s 12
s 82	amd No. 36, 2013, s 61
s 92	amd No. 36, 2013, s 62
s 137A	ins No. 36, 2013, s 63
s 140	amd No. , 2015, s 51
pt 9 hdg	exp No. 17, 2013, s 181
pt 9	
div 1 hdg	exp No. 17, 2013, s 181
ss 150 – 151	exp No. 17, 2013, s 181
pt 9	
div 2 hdg	exp No. 17, 2013, s 181
ss 152 – 153	exp No. 17, 2013, s 181
pt 9	
div 3 hdg	exp No. 17, 2013, s 181
ss 154 – 155	exp No. 17, 2013, s 181
pt 9	
div 4 hdg	exp No. 17, 2013, s 181
ss 156 – 157	exp No. 17, 2013, s 181
pt 9	
div 5 hdg	exp No. 17, 2013, s 181
ss 158– 160	exp No. 17, 2013, s 181
pt 9	
div 6 hdg	exp No. 17, 2013, s 181
ss 161 – 163	exp No. 17, 2013, s 181
pt 9	
div 7 hdg	exp No. 17, 2013, s 181
ss 164 – 171	exp No. 17, 2013, s 181
pt 9	
div 8 hdg	exp No. 17, 2013, s 181
ss 172 – 173	exp No. 17, 2013, s 181
pt 9	
div 9 hdg	exp No. 17, 2013, s 181
ss 174 – 176	exp No. 17, 2013, s 181
pt 9	
div 10 hdg	exp No. 17, 2013, s 181
ss 177 – 178	exp No. 17, 2013, s 181
pt 9	
div 11 hdg	exp No. 17, 2013, s 181
ss 179 – 180	exp No. 17, 2013, s 181
pt 9	
div 12 hdg	exp No. 17, 2013, s 181
s 181	exp No. 17, 2013, s 181