

Note

In order to give effect to the Cross-border Justice Act, this law must be applied with the modifications mentioned in section 13 of the Cross-border Justice Act as if this law had been altered in that way.

For modifications of this law prescribed by regulation, see Part 3, Division 10 of the Cross-border Justice Regulations.

NORTHERN TERRITORY OF AUSTRALIA
MENTAL HEALTH AND RELATED SERVICES ACT

As in force at 1 May 2016

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ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 May 2016

MENTAL HEALTH AND RELATED SERVICES ACT

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

Part 1 Preliminary

1 Short title

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

2 Commencement

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

3 Objects

The objects of this Act are as follows:

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

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

4 Definitions

In this Act:

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

adult 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 consent to any health care that is in the best interests of the represented person.

advance consent decision, see section 3 of the *Advance Personal Planning Act*.

ambulance officer means a person:

- (a) employed as an ambulance officer, or engaged as a volunteer ambulance officer, by an approved ambulance service at the level of qualified ambulance officer or above; or
- (b) appointed under section 24.

approved means approved by the CEO in writing.

approved ambulance service means an ambulance service approved by the CEO.

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

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

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

authorised officer means a person holding an appointment as an authorised officer under section 23A.

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

behavioural disturbance, see section 6A(3).

CEO means the Chief Executive Officer.

cognitive impairment, see section 6A(2).

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

community includes a custodial correctional facility.

community management order, see section 123(5)(c).

community visitor, see sections 103(1) and 103B(1).

community visitors panel, see section 110(1).

complex cognitive impairment, see section 6A(1).

corresponding law, for Part 18, Division 2, see section 151.

criteria, for:

- (a) the involuntary admission of a person on the grounds of:
 - (i) mental illness – see section 14; or
 - (ii) mental disturbance – see section 15; or
 - (iii) complex cognitive impairment – see section 15A; or
- (b) the involuntary treatment or care of a person in the community – see section 16.

custodial correctional facility, see section 11(1)(a) of the *Correctional Services Act*.

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 treatment and care of the person under this Act.

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

existing involuntary patient, for Part 6, Division 4, see section 44C(2).

financial protection order, see section 168(2).

harm includes financial harm and loss of reputation.

informed consent, see section 7.

interim community management order, see sections 38(2)(c), 44(2)(c) and 45(1).

interstate transfer order, for Part 18, Division 2, see section 151.

involuntary detention application, see section 129(1A).

involuntary patient, means a person admitted to an approved treatment facility under Part 6.

mental health order, for Part 18, Division 2, see section 151.

mental illness, see section 6.

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

nominated next of kin, for a person, means someone nominated in the person's medical records as the person's next of kin.

participating State or Territory, for Part 18, Division 2, see section 151.

person-in-charge, of an approved treatment facility or approved treatment agency, means a person appointed as the person-in-charge of the facility or agency under section 21(1).

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

primary carer, see section 7A.

principal community visitor, see section 101(1).

prisoner, see section 6 of the *Correctional Services Act*.

psychiatric case manager, see section 51(1).

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

recommendation for psychiatric examination means a recommendation made under section 34.

registered nurse means a person registered under the Health Practitioner Regulation National Law:

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and
- (b) in the registered nurses division of that profession.

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

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

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

special community visitors panel, see section 112A(1).

treatment, in relation to mental illness, mental disturbance or complex cognitive impairment, means things done in the course of the exercise of professional skills:

- (a) to remedy the illness, disturbance or impairment; or
- (b) to lessen the effects or the pain and suffering caused by the illness, disturbance or impairment.

treatment management plan, for Part 6, Division 4, see section 44A.

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

voluntary treatment plan means a treatment plan for a person requested from the Chief Health Officer by the court under section 78(2).

5 Act binds Crown

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

6 Mental illness

- (1) A **mental illness** is a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person in one or more of the areas of thought, mood, volition, perception, orientation or memory and is characterised:
 - (a) by the presence of at least one of the following symptoms:
 - (i) delusions;
 - (ii) hallucinations;
 - (iii) serious disorders of the stream of thought;

- (iv) serious disorders of thought form;
 - (v) serious disturbances of mood; or
 - (b) by sustained or repeated irrational behaviour that may be taken to indicate the presence of at least one of the symptoms referred to in paragraph (a).
- (2) A determination that a person has a mental illness is only to be made in accordance with internationally accepted clinical standards.
- (3) A person is not to be considered to have a mental illness merely because he or she:
- (a) expresses or refuses or fails to express a particular political or religious opinion or belief, a particular philosophy or a particular sexual preference or sexual orientation; or
 - (b) engages, or refuses or fails to engage, in a particular political, religious or cultural activity; or
 - (c) engages, or has engaged, in sexual promiscuity, immoral or illegal conduct or anti-social behaviour; or
 - (d) has a sexual disorder; or
 - (e) is intellectually disabled; or
 - (f) uses alcohol or other drugs; or
 - (g) has a personality disorder or a habit or impulse disorder; or
 - (h) has, or has not, a particular political, economic or social status; or
 - (j) communicates, or refuses or fails to communicate, or behaves or refuses or fails to behave, in a manner consistent with his or her cultural beliefs, practices or mores; or
 - (k) is, or is not, a member of a particular cultural, racial or religious group; or
 - (m) is involved, or has been involved, in family or professional conflict; or
 - (n) has been treated for mental illness or has been detained in a hospital that provides treatment of mental illness; or
 - (p) has been admitted as an involuntary patient on the grounds of mental disturbance or complex cognitive impairment; or

(q) has acquired brain damage.

6A Complex cognitive impairment and related terms

- (1) A person has a **complex cognitive impairment** if the person has a cognitive impairment with a behavioural disturbance.
- (2) A person has a **cognitive impairment** if the person has an intellectual impairment, neurological impairment or acquired brain injury (or any combination of these) that:
 - (a) is, or is likely to be, permanent; and
 - (b) results in substantially reduced capacity in at least one of the following:
 - (i) self-care or management;
 - (ii) decision making or problem solving;
 - (iii) communication or social functioning.
- (3) A person has a **behavioural disturbance** if the person's mental condition has deteriorated to the extent the person is behaving in an aggressive manner or is engaging in seriously irresponsible conduct.

7 Informed consent

- (1) A person cannot give informed consent under this Act unless this section is complied with, and any attempt to waive or circumvent the requirements of this section is of no effect.
- (2) A person gives informed consent under this Act:
 - (a) when the person's consent is freely and voluntarily given without any inducement being offered; and
 - (b) the person is capable of understanding the effects of giving consent; and
 - (c) the person communicates his or her consent on the approved form.

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

- (5) A person who is unable to communicate adequately in English but who is able to communicate adequately in another language is to be assisted, as far as is practicable, by a competent interpreter.
- (6) A person whose informed consent is being sought may request that another person be present while the informed consent is obtained.
- (7) The person-in-charge of the approved treatment facility or approved treatment agency at which treatment is proposed to be performed on a person must ensure that this section is complied with.

7A Primary carer

- (1) A primary carer for a person is:
 - (a) someone providing care and support to the person because of his or her sense of responsibility as a relative of, or someone close to, the person; or
 - (b) if the person does not have anyone providing care and support as mentioned in paragraph (a) – someone most closely involved in the treatment or care of, or support to, the person.
- (2) For this section, a relative of the person includes anyone related to the person through a relationship that arises through common ancestry, adoption, marriage, de facto relationship or any customary law or tradition (including Aboriginal customary law or tradition).

8 Interpretation of Act

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

- (a) a person who has a mental illness receives the best possible care and treatment in the least restrictive and least intrusive environment enabling the care and treatment to be effectively given; and
- (b) in providing for the care and treatment of a person who has a mental illness and the protection of members of the public, any restriction on the liberty of the person and any other person who has a mental illness, and any interference with their rights, dignity, privacy and self respect is kept to the minimum necessary in the circumstances; and
- (c) the objective of treatment is directed towards the purpose of preserving and enhancing personal autonomy; and

- (d) the administration of medication to a person serves the best interests and health needs of the person and is administered only for therapeutic or diagnostic purposes and not as punishment or for the convenience of others; and
- (e) medication to be administered to a person is prescribed only by persons who are authorised by law to do so; and
- (f) a person who has a mental illness who needs language, interpreter, advocacy, legal or other services to assist him or her in communicating has access to those services; and
- (g) the assessment, care, treatment and protection of an Aboriginal person or a person from a non-English speaking background who has a mental illness is appropriate to, and consistent with, the person's cultural beliefs, practices and mores.

8AA Relationship with *Disability Services Act*

- (1) A person with a disability for whom a treatment order under the *Disability Services Act* is in force may be admitted as an involuntary patient.

Note for subsection (1)

If a person with a disability for whom a treatment order under the Disability Services Act is in force is admitted as an involuntary patient, the treatment order for the person is suspended while the person is detained in an approved treatment facility – see section 14(3) of that Act.

- (2) A treatment order under the *Disability Services Act* may be made for a person under an order for the person's involuntary admission on the grounds of complex cognitive impairment under Part 6, Division 4.

Note for subsection (2)

The order under this Act for the person is revoked on the making of the treatment order under the Disability Services Act – see section 14(2) of that Act.

8A Application of Criminal Code

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

Note for section 8A

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 Fundamental principles

9 Principles relating to provision of treatment and care

When providing treatment and care to a person who has a mental illness, mental disturbance or complex cognitive impairment the following principles apply:

- (a) the person is to be provided with timely and high quality treatment and care in accordance with professionally accepted standards;
- (b) where possible, the person is to be treated in the community;
- (c) as far as possible, the person's treatment and care is to be designed to assist the person to live, work and participate in the community and to promote and assist self-reliance;
- (d) the person is to be provided with appropriate and comprehensive information about:
 - (i) the person's mental illness, mental disturbance or complex cognitive impairment; and
 - (ii) proposed and alternative treatment and services available to meet the person's needs;
- (e) where possible, the person is to be treated near where he or she ordinarily resides or where relatives or friends of the person reside;
- (f) as far as possible, the person's treatment and any service to be developed for the person is appropriate having regard to the age and gender of the person;
- (g) as far as possible, the person is to be involved in the development of any ongoing treatment plan or any discharge planning;
- (h) the person is to be given medication only for therapeutic or diagnostic purposes and not as a punishment or for the convenience of others;
- (j) except as provided by this Act, the person is not to be given treatment without his or her consent;
- (k) the person's treatment is to be carried out, wherever practicable, within a multi-disciplinary framework;

- (m) the person's treatment and care is to be based on an individually developed plan that is discussed with the person, reviewed regularly and revised, as necessary, and is provided by qualified professional persons;
- (n) the person's treatment and care is, as far as possible, to be appropriate to and consistent with the person's cultural beliefs, practices and mores, taking into account the views of the person's family and community;
- (p) any assessment of the person to determine whether he or she needs to be admitted to an approved treatment facility is to be conducted in the least restrictive manner and environment possible.

10 Principles relating to involuntary admission and treatment

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

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

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

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

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

12 Principles relating to rights of carers and families

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

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

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

When a person who has a mental illness, mental disturbance or complex cognitive impairment is being treated in an approved treatment facility the following principles apply:

- (a) the person's legal rights and his or her right to privacy and to religious freedom are to be respected;
- (b) the confidentiality of information relating to the person is to be respected;

- (c) subject to this Act, the person's freedom of lawful communication (which includes the freedom to communicate with other persons in the approved treatment facility, to send and receive uncensored private communications, to receive visits from his or her counsel or representative in private, to receive visits from other people at all reasonable times and to have access to postal and telephone services and to newspapers, radio and television) is to be ensured;
- (d) the person's living conditions are to be as close as practicable to those usually experienced by people of a similar age living in the general community;
- (e) subject to section 92, the person is to have access to his or her personal records;
- (f) the person's right to make a complaint under an Act in respect of his or her treatment under this Act is not affected.

Part 3 Criteria for involuntary admission and treatment

14 Involuntary admission on grounds of mental illness

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

- (a) the person has a mental illness; and
- (b) as a result of the mental illness:
 - (i) the person requires treatment that is available at an approved treatment facility; and
 - (ii) without the treatment, the person is likely to:
 - (A) cause serious harm to himself or herself or to someone else; or
 - (B) suffer serious mental or physical deterioration; and
 - (iii) the person is not capable of giving informed consent to the treatment or has unreasonably refused to consent to the treatment; and
- (c) there is no less restrictive means of ensuring that the person receives the treatment.

15 Involuntary admission on grounds of mental disturbance

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

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

15A Involuntary admission on grounds of complex cognitive impairment

The **criteria** for the involuntary admission of a person on the grounds of complex cognitive impairment are:

- (a) the person is an adult who does not fulfil the criteria for involuntary admission on the grounds of mental illness or mental disturbance; and
- (b) the person has significant cognitive impairment; and
- (c) unless the person receives treatment and care at an approved treatment facility, the person:
 - (i) is likely to cause serious harm to himself or herself or to someone else; or
 - (ii) will represent a substantial danger to the general community; or
 - (iii) is likely to suffer serious mental or physical deterioration; and
- (d) the person is likely to benefit from the treatment and care; and
- (e) the person is not capable of giving informed consent to the treatment and care; and
- (f) there is no less restrictive way of ensuring the person receives the treatment and care.

16 Involuntary treatment in community

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

- (a) the person has a mental illness; and
- (b) as a result of the mental illness:
 - (i) the person requires treatment or care; and
 - (ii) without the treatment or care, the person is likely to:
 - (A) cause serious harm to himself or herself or to someone else; or
 - (B) suffer serious mental or physical deterioration; and

- (iii) the person is not capable of giving informed consent to the treatment or care or has unreasonably refused to consent to the treatment or care; and
- (c) the treatment or care is able to be provided by a community management plan that has been prepared and is capable of being implemented.

Part 4 Administration

17 Powers and functions of CEO

- (1) The functions of the CEO, in addition to the functions specified by or under this Act, are:
 - (a) to oversee the operations of this Act; and
 - (b) to ensure that people receiving treatment from the Agency are treated and cared for in accordance with this Act.
- (2) The CEO has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of his or her functions.
- (3) The CEO may, by written notice to a person, direct that a practice under, or interpretation of, this Act be observed or carried out.
- (3A) However, the CEO must not give directions under subsection (3) to any of the following:
 - (a) a community visitor;
 - (b) the principal community visitor;
 - (c) a member of:
 - (i) a community visitors panel; or
 - (ii) a special community visitors panel; or
 - (iii) the Tribunal.
- (4) A person given a direction under subsection (3) must not engage in conduct that results in a contravention of the direction.

Maximum penalty for subsection (4): 40 penalty units.

18 Approved procedures

- (1) The CEO may approve procedures, not inconsistent with this Act, to be used in the administration of this Act.
- (1A) However, the CEO must not approve procedures under subsection (1) for any of the following:
 - (a) Part 14, except the procedures under that Part relating to the Agency;
 - (b) the Tribunal.
- (2) A person must not contravene the procedures approved under subsection (1).

19 Delegation

- (1) The following may delegate to a person any of his or her powers or functions under this Act:
 - (a) the Minister;
 - (b) the CEO;
 - (c) the Chief Health Officer;
 - (d) the principal community visitor;
 - (e) the Commissioner of Correctional Services.
- (2) The delegation must be in writing.

20 Approved treatment facilities and approved treatment agencies

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

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

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

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

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

22 Authorised psychiatric practitioners

- (1) The CEO may, in writing, appoint a person to be an authorised psychiatric practitioner.
- (2) A person must not be appointed as an authorised psychiatric practitioner unless:
 - (a) the person:
 - (i) has the qualifications specified in subsection (3); or
 - (ii) is a person to whom subsection (4) applies; and
 - (b) the person has successfully completed an approved training and orientation course.
- (3) The person has the qualifications for subsection (2)(a)(i) if the person:
 - (a) is a medical practitioner who holds specialist registration under the Health Practitioner Regulation National Law in the recognised specialty of psychiatry; or

- (b) has qualifications entitling the person to fellowship of the Royal Australian and New Zealand College of Psychiatrists; or
 - (c) is employed as a specialist or consultant in the medical specialty of psychiatry by the Commonwealth, a State or Territory, or an agency or authority of the Commonwealth, a State or Territory; or
 - (d) is employed as a psychiatrist by the Commonwealth, a State or Territory, or an agency or authority of the Commonwealth, a State or Territory.
- (4) This subsection applies to a person for subsection (2)(a)(ii) if:
- (a) the person is employed as:
 - (i) a medical practitioner by an approved treatment facility or approved treatment agency; or
 - (ii) a psychiatric registrar by the Commonwealth, a State or Territory, or an agency or authority of the Commonwealth, a State or Territory; and
 - (b) the appointment complies with approved procedures.

23 Designated mental health practitioners

- (1) The person-in-charge of an approved treatment agency or approved treatment facility may apply to the CEO to have a person employed by the agency or at the facility appointed as a designated mental health practitioner.
- (2) On receiving an application under subsection (1) the CEO may appoint or refuse to appoint the person.
- (2A) The CEO may appoint an employee of the Agency to be a designated mental health practitioner.
- (3) A person cannot be appointed as a designated mental health practitioner unless he or she:
 - (a) is:
 - (i) a psychologist; or
 - (ii) a registered nurse; or
 - (iii) a person registered under the Health Practitioner Regulation National Law to practise in the occupational therapy profession (other than as a student); or

- (iv) an Aboriginal and Torres Strait Islander health practitioner; or
 - (v) a social worker; or
 - (vi) an ambulance officer; and
- (b) has not less than 2 years approved clinical experience; and
- (c) has successfully completed an approved training and orientation course.
- (4) An appointment of a person under subsection (2) remains in force only while the person continues to be employed at the facility or agency.
- (5) An appointment of a person under subsection (2A) remains in force only while the person is an employee of the Agency.

23A Authorised officers

- (1) The CEO may, in accordance with approved procedures, appoint a public sector employee employed in the Agency to be an authorised officer.
- (2) An authorised officer has the functions and powers conferred by this Act.

24 Ambulance officers

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

Part 5 Voluntary admissions

25 Voluntary admission

- (1) A person who is 14 or over may apply to be admitted to an approved treatment facility as a voluntary patient.
- (2) A parent or guardian of a person who is under 18 may apply to have the person admitted to an approved treatment facility as a voluntary patient.

- (3) A medical practitioner employed by an approved treatment agency or at an approved treatment facility must examine the person and may admit the person as a voluntary patient if satisfied, following the examination, that the person has given informed consent to his or her admission.
- (4) An authorised psychiatric practitioner must examine a person admitted under subsection (3) not later than 72 hours after the person is admitted.
- (4A) If it is not practicable for the practitioner to conduct a face-to-face examination under subsection (4), the practitioner may conduct the examination:
 - (a) by interactive video conferencing; or
 - (b) if interactive video conferencing is not available – by telephone.
- (5) If the medical practitioner who examines a person under subsection (3) is an authorised psychiatric practitioner, he or she cannot examine the person under subsection (4).
- (6) The authorised psychiatric practitioner may confirm the admission of the person as a voluntary patient if satisfied, following the examination under subsection (3), that the person has given informed consent to his or her admission.
- (7) An authorised psychiatric practitioner who is not able to form a view as to whether a person is capable of giving informed consent to his or her admission:
 - (a) may confirm the admission of the person; and
 - (b) must apply to the Tribunal for it to determine the person's capacity to give informed consent as soon as practicable after confirming the admission.
- (8) A medical practitioner must refuse to admit a person as a voluntary patient and an authorised psychiatric practitioner must refuse to confirm the admission of a person unless the medical practitioner or authorised psychiatric practitioner is satisfied that the person is likely to benefit from being admitted.

- (9) On refusing to admit a person or to confirm the admission of a person under this section, the medical practitioner or authorised psychiatric practitioner:
- (a) must inform the person of the grounds of the decision and that the person has a right to apply to the Tribunal for a review of the decision; and
 - (b) must explain the review procedure to the person.
- (10) An adult guardian or decision maker for a person cannot make an application under this section for the person.

Note for subsection (10)

An adult guardian or decision maker may be able to make an application under section 27.

26 Admission of persons under 18 as voluntary patients

- (1) A person under 18 must not be admitted to an approved treatment facility as a voluntary patient unless the person can be cared for and treated:
- (a) in a way that gives due regard to the person's age, culture, gender and maturity; and
 - (b) if appropriate and possible – separately from persons who are 18 or over.
- (2) As soon as practicable after a person under 18 is admitted to an approved treatment facility as a voluntary patient, a practitioner must notify a parent or guardian of the person that the person has been so admitted.
- (3) However, the practitioner may decide not to notify a parent or guardian of the person if the practitioner is of the opinion that giving the notification is not in the person's best interests.
- (4) If the practitioner decides not to notify a parent or guardian of the person because of subsection (3), the practitioner must give to the Tribunal a written report of the decision and the reason for it in the approved form.
- (5) A notification under subsection (2) may be given orally or in writing but must be in a language that can be understood by the receiver of the notification.
- (6) If a practitioner believes, on reasonable grounds, the person has suffered or is suffering maltreatment, the practitioner must notify an authorised officer not later than 48 hours after the admission.

- (7) A practitioner must make a record of each of the following in accordance with approved procedures:
- (a) a notification under subsection (2);
 - (b) a decision under subsection (3) not to notify a parent or guardian of the person and the reasons for it;
 - (c) a notification to an authorised officer under subsection (6).

- (8) In this section:

authorised officer, see section 304(1) of the *Care and Protection of Children Act*.

practitioner means an authorised psychiatric practitioner, a medical practitioner, or the senior nurse on duty at the approved treatment facility to which the person is admitted.

27 Admission as voluntary patients of persons with adult guardians or decision makers

- (1) An adult guardian or decision maker for a person may apply to have the person admitted to an approved treatment facility as a voluntary patient.
- (2) Not later than 24 hours after the application is made, an authorised psychiatric practitioner must examine the person and must not admit the person unless satisfied that the person:
- (a) is willing to be admitted; and
 - (b) does not fulfil the criteria for admission on the grounds of mental illness or mental disturbance; and
 - (c) is likely to benefit from being admitted.
- (3) On refusing to admit the person, the authorised psychiatric practitioner:
- (a) must inform the adult guardian or decision maker of the grounds of the decision and that the person has a right to apply to the Tribunal for a review of the decision; and
 - (b) must explain the review procedure to the adult guardian or decision maker.

28 Notification of admission

Where a person remains as a voluntary patient in an approved treatment facility for a continuous period of 6 months, the person-in-charge of the approved treatment facility must notify:

- (a) the CEO; and
- (b) the Tribunal,

of the length of time the person has been admitted.

29 Discharge of voluntary patients

- (1) Subject to section 30, a person admitted as a voluntary patient in an approved treatment facility may discharge himself or herself from the facility at any time.

Note for subsection (1)

Sections 89 and 90 provide for appropriate information and arrangements relating to follow-up care to be given to persons being discharged.

- (2) A person must be informed of his or her right to leave the approved treatment facility on being admitted as a voluntary patient.
- (3) An authorised psychiatric practitioner must discharge a person admitted as a voluntary patient if of the opinion that:
 - (a) it is in the person's best interest to do so; or
 - (b) the person will not obtain any benefit by prolonging his or her admission.
- (4) A person who is discharged under subsection (3) must leave the approved treatment facility as soon as practicable after being informed of his or her discharge.
- (5) If the person is admitted under section 27, the authorised psychiatric practitioner must, as soon as practicable after the person is discharged, inform the person's adult guardian or decision maker about the discharge.

30 Detention by medical practitioner or nurse

- (1) A medical practitioner or the senior registered nurse on duty at an approved treatment facility may detain a person admitted as a voluntary patient for up to 6 hours if he or she believes, due to the condition of the person deteriorating since his or her admission or from information obtained, that the person may fulfil the criteria for admission on the grounds of mental illness or mental disturbance.

- (2) As soon as practicable after detaining a person under subsection (1), the medical practitioner or senior registered nurse must:
 - (a) notify an authorised psychiatric practitioner for the purposes of the person being examined under section 38; and
 - (b) enter the reasons for detaining the person in the person's clinical file.
- (3) Reasonable force may be used to detain a person under this section.
- (4) While the person is detained under this section:
 - (a) mechanical restraint may be applied to the person under section 61; and
 - (b) the person may be kept in seclusion under section 62.

31 Detention by ambulance officer

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

- (b) on arriving at the approved treatment facility or hospital, must complete the approved form and send it to an authorised psychiatric practitioner.
- (4) For subsection (3)(b), the form may be sent by fax or email.

Part 6 Involuntary admissions

Division 1 Assessment

32 Request for assessment

- (1) A person may request that he or she be assessed to determine whether he or she is in need of treatment under this Act.
- (2) A person with a genuine interest in or with a real and immediate concern for the health or welfare of another person may request that that person be assessed to determine whether the person is in need of treatment under this Act.
- (3) A request under this section may be made to a medical practitioner, an authorised psychiatric practitioner or a designated mental health practitioner.
- (4) Subject to subsection (5), the medical practitioner, an authorised psychiatric practitioner or designated mental health practitioner must assess the person and determine whether the person is in need of treatment under this Act.
- (5) The medical practitioner, an authorised psychiatric practitioner or designated mental health practitioner may decline to assess a person if the practitioner is otherwise satisfied the person is not in need of treatment under this Act.

32A Apprehension by police

- (1) This section applies if a police officer believes, on reasonable grounds:
 - (a) a person may require treatment or care under this Act having regard to the appearance and behaviour of the person; and
 - (b) the person is likely to cause serious harm to himself or herself or to someone else unless apprehended immediately; and
 - (c) it is not practicable in the circumstances to seek the assistance of an authorised psychiatric practitioner, a medical practitioner or a designated mental health practitioner.

- (2) The police officer may apprehend the person and bring the person to an authorised psychiatric practitioner, a medical practitioner or a designated mental health practitioner for an assessment under section 33.
- (3) The person must be brought to the practitioner as soon as practicable.
- (4) However, before the person is brought to the practitioner, the police officer must inform the person that he or she has been apprehended for the purposes of an assessment by a practitioner under this Act.
- (5) The police officer must give the practitioner details of:
 - (a) the reasons for apprehending the person; and
 - (b) any force used to apprehend the person and bring the person to the practitioner.
- (6) For subsection (1)(a), the police officer is not required to exercise any clinical judgment in forming a belief that the person requires treatment or care under this Act.
- (7) For subsection (2), the police officer may:
 - (a) use any reasonable force and assistance; and
 - (b) enter private premises or any other private place where the police officer reasonably believes the person may be found.

33 Assessment to be conducted

- (1) A medical practitioner, an authorised psychiatric practitioner or designated mental health practitioner must assess and determine whether a person is in need of treatment under this Act as soon as practicable after:
 - (a) a request for assessment of the person is made under section 32; or
 - (b) the person is brought to the medical practitioner, authorised psychiatric practitioner or designated mental health practitioner in accordance with this Act, to be assessed.
- (2) An assessment under subsection (1) does not have to be conducted at an approved treatment facility or approved treatment agency.

34 Recommendation for psychiatric examination

- (1) A medical practitioner, an authorised psychiatric practitioner or designated mental health practitioner must make a recommendation for psychiatric examination of a person if, after assessing the person, the practitioner is satisfied that the person fulfils the criteria for involuntary admission on the grounds of mental illness or mental disturbance.
- (2) The recommendation for psychiatric examination must be in the approved form.
- (3) The recommendation authorises the practitioner, an ambulance officer or anyone else specified in the recommendation to do any of the following:
 - (a) to control the person and bring the person to an approved treatment facility for psychiatric examination of the person;
 - (b) if the person cannot be brought immediately to an approved treatment facility – to hold the person at a hospital (or other place where the person can be safely held) until it becomes practicable to do so;
 - (c) without the approval of the Tribunal – to administer treatment immediately necessary:
 - (i) to prevent the person causing serious harm to himself or herself or to someone else; or
 - (ii) to prevent behaviour of the person likely to cause serious harm to the person or to someone else; or
 - (iii) to prevent further physical or mental deterioration of the person; or
 - (iv) to relieve acute symptomatology;
 - (d) to detain the person at an approved treatment facility for up to 24 hours.
- (4) The recommendation may authorise a police officer to exercise, or to assist someone else exercising, the powers under subsection (3)(a) if the practitioner considers there is no other alternative in the circumstances.
- (5) The practitioner must revoke the recommendation if, after a further assessment of the person, the practitioner is no longer satisfied the person fulfils the criteria for involuntary admission on the grounds of mental illness or mental disturbance.

- (6) On revoking the recommendation, the practitioner must:
- (a) release the person; and
 - (b) give to the Tribunal a written report of the revocation and the reasons for the revocation in the approved form.
- (7) The recommendation remains in force for 14 days from the date it is made unless, in the meantime:
- (a) the practitioner revokes the recommendation under subsection (5); or
 - (b) an examination of the person has been conducted as required by the recommendation.
- (8) For subsection (3), the practitioner, ambulance officer or anyone specified in the recommendation (the **authorised officer**) may:
- (a) use reasonable force and assistance; and
 - (b) enter private premises or any other private place where the authorised officer reasonably believes the person may be found.
- (9) If the practitioner does not make a recommendation for psychiatric examination of a person in relation to whom a request for assessment was made by a senior assessment clinician in accordance with Part 2 of the *Alcohol Mandatory Treatment Act*, the practitioner must:
- (a) refer the person back to the senior assessment clinician for another assessment under the *Alcohol Mandatory Treatment Act* and notify the senior assessment clinician accordingly; and
 - (b) if the person was not assessed at an assessment facility – arrange for the person to be taken to an assessment facility in accordance with the *Alcohol Mandatory Treatment Act*.
- (10) In this section:
- assessment facility**, see section 5 of the *Alcohol Mandatory Treatment Act*.
- senior assessment clinician**, see section 5 of the *Alcohol Mandatory Treatment Act*.

35 Emergency treatment

- (1) Treatment is not to be administered under section 34(3)(c) unless:
 - (a) to delay the treatment to obtain the approval of the Tribunal will cause a deleterious effect on the person's health; and
 - (b) the treatment is approved by a medical practitioner; and
 - (c) the treatment is administered by a medical practitioner, registered nurse, ambulance officer or Aboriginal and Torres Strait Islander health practitioner.
- (2) An approval under subsection (1)(b) may be given by telephone.
- (3) A person who administers treatment under subsection (1)(c) must make a report containing details of the treatment and the reasons why the approval of the Tribunal was not obtained.
- (4) A copy of the report must be forwarded as soon as practicable:
 - (a) to the person-in-charge of the approved treatment facility at which the person is detained; and
 - (b) to the authorised psychiatric practitioner who examined the person at the approved treatment facility; and
 - (c) to the Tribunal.

36 Notification of delay in taking person to approved treatment facility

- (1) Where a person who is being held under section 34(3)(b) has not been taken to an approved treatment facility after a reasonable period after the recommendation is made or is taken to an approved temporary treatment facility, the person in whose custody the person is must notify the person-in-charge of the approved treatment facility to which the person is to be taken of:
 - (a) the place where the person is being held; and
 - (b) the reasons why the person has not been taken to the approved treatment facility.
- (2) When requested by the person-in-charge of the approved treatment facility, the person in whose custody the person is must:
 - (a) notify the authorised psychiatric practitioner nominated by the person-in-charge; and
 - (b) provide an assessment of the person; and

- (c) if necessary, obtain approval to treat the person from the authorised psychiatric practitioner nominated under paragraph (a).
- (3) The person-in-charge of the approved treatment facility notified under subsection (1) must forward a report to the Tribunal not later than 24 hours after being notified.
- (4) A report under subsection (3) is:
 - (a) to be in the approved form; and
 - (b) to state where the person was held and the reasons why the person was not taken to the approved treatment facility; and
 - (c) to give details of the treatment, if any, administered to the person and the reasons why it was necessary to administer the treatment.
- (5) A person who is admitted to an approved temporary treatment facility under subsection (1) must be transferred immediately to an approved treatment facility where:
 - (a) the person's conditions deteriorates; or
 - (b) 72 hours has elapsed since the person was admitted.

37 Assessment warrant

- (1) A practitioner or police officer may apply to the Tribunal for a warrant to apprehend a person.
- (2) The application may be made in writing or by telephone, fax or other form of electronic communication.
- (3) The Tribunal may issue the warrant if satisfied:
 - (a) the person may be unable to care for himself or herself; and
 - (b) the person may fulfil the criteria for involuntary admission on the grounds of mental illness or mental disturbance; and
 - (c) all other reasonable avenues to assess the person have been exhausted.
- (4) The warrant remains in force for 14 days from its date of issue unless, in the meantime:
 - (a) the Tribunal revokes the warrant; or
 - (b) an assessment of the person has been conducted.

- (5) If the warrant is issued, a copy of the warrant may be sent by fax or email to the applicant or anyone else who may apply for the warrant (the **recipient**).
- (6) The Tribunal must send the warrant to the recipient within 7 days after the warrant is issued.
- (7) A copy of the warrant has effect as if it were the warrant.
- (8) The warrant authorises a practitioner:
 - (a) to apprehend and control the person; and
 - (b) to conduct an assessment of the person.
- (9) The warrant authorises a police officer:
 - (a) to apprehend and control the person; and
 - (b) to bring the person to a practitioner for an assessment of the person.
- (10) If a practitioner or police officer believes, on reasonable grounds, a warrant has been issued under this section for a person, the practitioner or police officer may apprehend and control the person.
- (11) As soon as possible after a person is apprehended under subsection (10), the practitioner or police officer:
 - (a) must inform the person that the practitioner or police officer, as the case may be:
 - (i) believes a warrant has been issued for the person under this section; and
 - (ii) is authorised to apprehend the person and, subject to verification of the warrant, make arrangements for an assessment of the person by a practitioner; and
 - (b) must take steps to verify that a warrant has been issued for the person; and
 - (c) must:
 - (i) if a warrant has been issued – contact the practitioner or police officer to whom the warrant was issued and make arrangements for an assessment of the person by a practitioner; or
 - (ii) otherwise – release the person.

- (12) For this section, the Tribunal may be constituted by the President.
- (13) For subsection (8), (9) or (10), the practitioner or police officer may:
- (a) use reasonable force and assistance; and
 - (b) enter private premises or any other private place where the practitioner or police officer reasonably believes the person may be found.
- (14) In this section:

practitioner means an authorised psychiatric practitioner, a medical practitioner or a designated mental health practitioner.

38 Examination at approved treatment facility

- (1) A person detained at an approved treatment facility under section 30 or 34(3)(d) must be examined and assessed by an authorised psychiatric practitioner.
- (2) Following the assessment, if the authorised psychiatric practitioner is satisfied the person:
- (a) fulfils the criteria for involuntary admission on the grounds of mental illness, the authorised psychiatric practitioner must admit the person as an involuntary patient; or
 - (b) fulfils the criteria for involuntary admission on the grounds of mental disturbance, the authorised psychiatric practitioner must admit the person as an involuntary patient; or
 - (c) fulfils the criteria for involuntary treatment in the community, the authorised psychiatric practitioner must make an interim community management order in relation to the person; or
 - (d) does not fulfil the criteria for involuntary admission on the grounds of mental illness or mental disturbance, or for involuntary treatment in the community, the authorised psychiatric practitioner must release the person.
- (3) An authorised psychiatric practitioner must not examine a person and make an assessment of the person under this section if the authorised psychiatric practitioner made the recommendation for psychiatric examination of the person.

Division 2 Involuntary admission on grounds of mental illness

39 Involuntary admission on grounds of mental illness

- (1) A person admitted as an involuntary patient on the grounds of mental illness may be detained at the approved treatment facility:
 - (a) for up to 24 hours; or
 - (b) if an authorised psychiatric practitioner makes the recommendation for psychiatric examination of the person before the admission – for up to 14 days after the examination.
- (2) An authorised psychiatric practitioner must examine a person detained under subsection (1)(a).
- (3) Following the examination, if the authorised psychiatric practitioner is satisfied that the person:
 - (a) fulfils the criteria for involuntary admission, the authorised psychiatric practitioner may detain the person at the approved treatment facility for a further period of up to 14 days after the examination; or
 - (b) does not fulfil the criteria for involuntary admission, the authorised psychiatric practitioner must discharge the person as an involuntary patient.
- (4) An authorised psychiatric practitioner must not rely exclusively on any other assessment that may have been made of a person when assessing the person under this section.
- (5) If it is not practicable for the authorised psychiatric practitioner to conduct a face-to-face examination under subsection (2), the practitioner may conduct the examination:
 - (a) by interactive video conferencing; or
 - (b) if interactive video conferencing is not available – by telephone.

40 On-going examinations

- (1) An authorised psychiatric practitioner must examine a person admitted as an involuntary patient not less than once every 72 hours.

- (2) A record of each examination is to be entered in the person's case notes.
- (3) An authorised psychiatric practitioner must discharge the person if, after examining the person, the practitioner is satisfied the person no longer meets the criteria for involuntary admission on the grounds of mental illness.
- (4) The practitioner must discharge the person under subsection (3) despite any order made for the person by the Tribunal under section 122(2)(b) or 123(5)(a).

41 Notification of admission on grounds of mental illness

- (1) No later than one day after a person is detained at an approved treatment facility under section 39(1)(a) or (b) or (3)(a), a practitioner must notify the following:
 - (a) the person;
 - (b) the person's adult guardian;
 - (ba) if the person has a decision maker – the decision maker;
 - (c) a legal practitioner acting or prepared to act for the person;
 - (d) subject to subsection (2) – the person's primary carer;
 - (e) if the person is detained under section 39(1)(b) or (3)(a):
 - (i) the principal community visitor; and
 - (ii) the Tribunal.
- (2) The practitioner may decide not to notify the person's primary carer if the practitioner is of the opinion that giving the notification is not in the person's best interests.
- (3) If the practitioner decides not to notify the primary carer because of subsection (2), the practitioner must give to the Tribunal a written report of the decision and the reason for it in the approved form.
- (4) A notification under subsection (1) must state:
 - (a) the person is detained at the approved treatment facility following the admission of the person as an involuntary patient on the grounds of mental illness; and
 - (b) whether the person is detained under section 39(1)(a) or (b) or (3)(a); and

- (c) if the person is detained under section 39(3)(a) – the person's right to apply to the Tribunal for a review of the decision to detain the person for the further period.
- (5) The notification may be given orally or in writing but must be in a language that can be understood by the receiver of the notification.
- (6) A practitioner must make a record of each of the following in accordance with approved procedures:
 - (a) a notification under subsection (1);
 - (b) a decision under subsection (2) not to notify the primary carer and the reasons for it.
- (7) In this section:

practitioner means an authorised psychiatric practitioner, a medical practitioner, or the senior nurse on duty at the approved treatment facility.

Division 3 Involuntary admission on grounds of mental disturbance

42 Detention following involuntary admission on grounds of mental disturbance

- (1) A person admitted to an approved treatment facility as an involuntary patient on the grounds of mental disturbance may be detained for up to 72 hours on those grounds.
- (2) The person may be detained for a further period of up to 7 days if, after examining the person, 2 authorised psychiatric practitioners are satisfied:
 - (a) if the person is released and does not receive treatment or care under this Act, the person:
 - (i) is likely to cause serious harm to himself or herself or to someone else; or
 - (ii) will represent a substantial danger to the general community; or
 - (iii) is likely to suffer serious mental or physical deterioration; and
 - (b) the person is not capable of giving informed consent to the treatment or care or has unreasonably refused to consent to the treatment or care; and

- (c) there is not a less restrictive way of ensuring the person receives the treatment or care.

Note for subsections (1) and (2)

Before the expiry of the period mentioned in subsection (1) or (2), any of the following may occur:

- (a) *the person may be admitted as a voluntary patient under Part 5;*
 - (b) *following an examination under section 44(1) or a review of the person's admission under section 123:*
 - (i) *the person may be admitted as an involuntary patient on the grounds of mental illness; or*
 - (ii) *an interim community management order may be made for the person; or*
 - (iii) *the person may be released.*
- (3) For subsection (2), the examination by the 2 practitioners may consist of an examination conducted under section 44(1)(a) and a separate examination conducted by another practitioner.
- (4) If it is not practicable for a practitioner to conduct a face-to-face examination for subsection (2), the practitioner may conduct the examination:
- (a) by interactive video conferencing; or
 - (b) if interactive video conferencing is not available – by telephone.

43 Notification of admission on grounds of mental disturbance

- (1) No later than one day after a person is detained at an approved treatment facility under section 42(1) or (2), a practitioner must notify the following:
- (a) the person;
 - (b) the person's adult guardian;
 - (ba) if the person has a decision maker – the decision maker;
 - (c) a legal practitioner acting or prepared to act for the person;
 - (d) subject to subsection (2) – the person's primary carer;
 - (e) if the person is detained under section 42(2):
 - (i) the principal community visitor; and
 - (ii) the Tribunal.

- (2) The practitioner may decide not to notify the person's primary carer if the practitioner is of the opinion that giving the notification is not in the person's best interests.
- (3) If the practitioner decides not to notify the primary carer because of subsection (2), the practitioner must give to the Tribunal a written report of the decision and the reason for it in the approved form.
- (4) A notification under subsection (1) must state:
 - (a) the person is detained at the approved treatment facility following the admission of the person as an involuntary patient on the grounds of mental disturbance; and
 - (b) whether the person is detained under section 42(1) or (2); and
 - (c) if the person is detained under section 42(2) – the person's right to apply to the Tribunal for a review of the decision to detain the person for the further period.
- (5) The notification may be given orally or in writing but must be in a language that can be understood by the receiver of the notification.
- (6) A practitioner must make a record of each of the following in accordance with approved procedures:
 - (a) a notification under subsection (1);
 - (b) a decision under subsection (2) not to notify the primary carer and the reasons for it.
- (7) In this section:

practitioner means an authorised psychiatric practitioner, a medical practitioner, or the senior nurse on duty at the approved treatment facility.

44 Review of admission

- (1) An authorised psychiatric practitioner must examine a person admitted as an involuntary patient on the grounds of mental disturbance:
 - (a) not less than once every 24 hours, if the person is detained under section 42(1); or
 - (b) not less than once every 72 hours, if the person is detained under section 42(2) or 123(5)(b).

- (2) Following the examination, if the authorised psychiatric practitioner is satisfied that the person:
- (a) fulfils the criteria for involuntary admission on the grounds of mental illness, the authorised psychiatric practitioner must admit the person as an involuntary patient on those grounds; or
 - (b) fulfils the criteria for involuntary admission on the grounds of complex cognitive impairment, the authorised psychiatric practitioner must:
 - (i) continue to detain the person under section 42(1); and
 - (ii) notify an authorised officer within one day after the examination; or
 - (c) fulfils the criteria for involuntary treatment in the community, the authorised psychiatric practitioner must make an interim community management order in relation to the person; or
 - (d) does not fulfil the criteria for involuntary admission on the grounds of mental illness or mental disturbance, or for involuntary treatment in the community, the authorised psychiatric practitioner must release the person.

Note for subsection (2)(b)

Under Part 6, Division 4, an application may be made by an authorised psychiatric practitioner and authorised officer for involuntary admission on the grounds of complex cognitive impairment.

- (2A) Following an examination under subsection (1)(a), if the authorised psychiatric practitioner is satisfied the person fulfils the criteria for involuntary admission on the grounds of mental disturbance, the practitioner must continue to detain the person under section 42(1).
- (2B) Following an examination under subsection (1)(b), if the authorised psychiatric practitioner is satisfied section 42(2)(a) to (c) applies to the person, the practitioner must continue to detain the person under section 42(2).
- (3) An authorised psychiatric practitioner who took an action under subsection (2), (2A) or (2B) must make a note in the person's case notes of the reason for taking the action.

- (4) If an authorised psychiatric practitioner considers a person to be released under subsection (2)(d) may cause serious harm to someone else on release, the practitioner must, at least 12 hours before the person's release, notify:
- (a) the Commissioner of Police or a police officer nominated by the Commissioner for this subsection; and
 - (b) if practicable – the persons who may be in danger.

Division 4 Involuntary admission on grounds of complex cognitive impairment

Subdivision 1 Interpretation

44A Meaning of *treatment management plan*

- (1) A ***treatment management plan*** for a person is a document prepared by an authorised psychiatric practitioner and authorised officer stating the following:
- (a) the person's name and residential address (if any);
 - (b) the complex cognitive impairment the person has;
 - (c) details of the proposed assessment of the person sought to be undertaken;
 - (d) the approved treatment facility where the assessment is to be undertaken and entities involved in the assessment;
 - (e) the approved treatment facility and entities involved in implementing the plan, including those treating or caring for the person under the plan;
 - (f) the proposed or expected medication or treatment and care the person is to receive under the plan;
 - (g) the rehabilitation, support and other services the person is to receive under the plan, including arrangements for the person's support and supervision at the end of the person's admission;
 - (h) other matters the authorised psychiatric practitioner and authorised officer consider appropriate.

- (2) In this section:

entities includes the Agency and units of the Agency.

Subdivision 2 Tribunal authorised planned admissions

44B Application of Subdivision

This Subdivision applies if an authorised psychiatric practitioner and authorised officer form the opinion a person fulfils the criteria for involuntary admission on the grounds of complex cognitive impairment.

44C Application for order for involuntary admission

- (1) As soon as practicable after forming the opinion, the authorised psychiatric practitioner and authorised officer must apply for a Tribunal order for the person's involuntary admission and detention on the grounds of complex cognitive impairment.
- (2) However, if the person is an involuntary patient admitted on the grounds of mental disturbance (an **existing involuntary patient**), the application must be made before the date the Tribunal is required to review the patient's admission on those grounds (the **review date**).
- (3) The application must:
 - (a) be made in the approved form; and
 - (b) unless the person is an existing involuntary patient, be accompanied by a treatment management plan for the person prepared by the applicants.
- (4) If the person is an existing involuntary patient:
 - (a) the applicants must, before the hearing, prepare and lodge with the Tribunal a treatment management plan for the person; and
 - (b) the Tribunal must hear the application on or before the review date.

Note for section 44C

Practice directions issued by the Tribunal under section 129(2A) apply to the lodgement of the treatment management plan. In addition, the approved procedures may make further provision in relation to the application process.

44D Notice of application

- (1) Within one day after making the application the applicants must give written notice of it in the approved form to the following persons:
 - (a) the person for whom the order is sought;
 - (b) if the person has a guardian – the guardian;
 - (ba) if the person has a decision maker – the decision maker;
 - (c) a primary carer of the person;
 - (d) a legal practitioner acting or prepared to act for the person;
 - (e) the principal community visitor.
- (2) However, the applicants need not give notice to a primary carer of the person if they:
 - (a) are satisfied it is not in the person's best interests to do so; and
 - (b) specify the reasons for not doing so in the application.

44E Decision on application

- (1) If, on hearing the application, the Tribunal decides the person fulfils the criteria for involuntary admission on the grounds of complex cognitive impairment, the Tribunal must order:
 - (a) the person be admitted to, and detained in, an approved treatment facility as an involuntary patient on those grounds; and
 - (b) the treatment management plan for the person (as prepared by the applicants or as modified by the Tribunal in the way it considers appropriate) be implemented.
- (2) Otherwise, the Tribunal must dismiss the application.
- (3) If:
 - (a) the person is an existing involuntary patient; and
 - (b) the Tribunal dismisses the application; and
 - (c) the Tribunal does not order the person be detained as an involuntary patient on the grounds of mental illness or mental disturbance;

the person-in-charge of the approved treatment facility where the person is detained must discharge the person from the facility as soon as practicable, but not later than 48 hours, after the application is dismissed.

Note for section 44E

Part 15, Division 3 deals with the hearing procedures for the application. In addition, practice directions issued by the Tribunal under section 129(2A) apply to the application.

44F Content of order

- (1) The Tribunal order for the person's admission and detention as an involuntary patient on the grounds of complex cognitive impairment must state:
 - (a) the date for review of the order; and
 - (b) if the person is not an existing involuntary patient – the date by which the person is to be admitted to an approved treatment facility.

Note for subsection (1)

Part 15, Division 2 deals with the Tribunal's review of the order. Under section 123(5)(ba), the Tribunal may order that the person continue to be detained as an involuntary patient on the grounds of complex cognitive impairment for not longer than 14 days.

- (2) Also, the order may provide for the person's transport to the approved treatment facility, including, for example:
 - (a) who is to be responsible for transporting the person to the treatment facility; and
 - (b) the time within which the person is to be transported to the treatment facility.
- (3) The person specified in the order as responsible for transporting the person to the approved treatment facility may use reasonable force and assistance to do so, including, for example, assistance by a police officer.
- (4) In addition, the order may provide for other matters the Tribunal considers appropriate.
- (5) The order ceases to have effect 14 days after the person's admission to an approved treatment facility.

44G Regular examinations

An authorised psychiatric practitioner must examine the person not less than once every 72 hours after the Tribunal makes the order for the person's admission and detention on the grounds of complex cognitive impairment.

44H Discharge

- (1) The person-in-charge of the approved treatment facility where the person is detained under the Tribunal order as an involuntary patient must discharge the person from the facility on the earliest of the following:
 - (a) the date specified for discharge in the person's treatment management plan prepared for the application for an order under this Subdivision;
 - (b) the date an authorised psychiatric practitioner and authorised officer form the opinion the person no longer satisfies the criteria for involuntary admission on the grounds of complex cognitive impairment;
 - (c) the date the order ceases to have effect.
- (2) However, subsection (1) applies subject to Divisions 2 and 3.

Note for subsection (2)

The person may be admitted as an involuntary patient on the grounds of mental illness or mental disturbance under Division 2 or 3.

Also, the Tribunal may make various orders under Part 15, Division 3 on a review under that Division.

Part 7 Community management orders

Division 1 Interim community management orders

45 Interim community management order

- (1) An authorised psychiatric practitioner may make an interim community management order in respect of a person where the authorised psychiatric practitioner is satisfied that the person fulfils the criteria for involuntary treatment or care in the community.

- (2) An authorised psychiatric practitioner must not make an interim community management order unless:
 - (a) the person-in-charge of an approved treatment agency agrees that the treatment proposed for the person is appropriate and able to be implemented by the agency; and
 - (b) where the person is a prisoner, the Commissioner of Correctional Services agrees that the treatment proposed for the person is able to be implemented in the custodial correctional facility where the person is in custody.
- (3) Subject to this Part, an interim community management order remains in force for 14 days.
- (4) Treatment must not be administered under an interim community management order except for the following purposes:
 - (a) to prevent the person causing serious harm to himself or herself or to someone else;
 - (b) to prevent behaviour of the person likely to cause serious harm to the person or to someone else;
 - (c) to prevent further physical or mental deterioration of the person;
 - (d) to relieve acute symptomatology.
- (5) Treatment must not be administered under an interim community management order unless it is authorised by an authorised psychiatric practitioner.

46 Form of interim community management order

An interim community management order must be in the approved form and must specify the following:

- (a) the name and residential address of the person to whom it relates;
- (b) the name of the approved treatment agency that is to supervise and review the community management order;
- (c) the name of the approved treatment agency that is to implement the community management order;
- (d) the organisations or persons (other than the approved treatment agency) treating or caring for the person under the community management order;

- (da) whether or not the treatment and care is to occur at the person's residence;
- (db) if the treatment and care is not to occur at the person's residence – the place the person must attend to receive the treatment or care;
- (e) the frequency at which a person treating or caring for the person must attend the person's residence or at which the person must attend the place specified under paragraph (db);
- (f) the medication or treatment the person is to receive under the community management order;
- (g) the rehabilitation, support and other services the person is to receive under the community management order;
- (h) any other information that the authorised psychiatric practitioner thinks fit.

47 Notification of interim community management order

- (1) No later than one day after making an interim community management order for a person under section 45(1), an authorised psychiatric practitioner must:
 - (a) notify the Tribunal that the order has been made; and
 - (b) notify the following:
 - (i) the person;
 - (ii) the person's adult guardian;
 - (iia) if the person has a decision maker – the decision maker;
 - (iii) a legal practitioner acting or prepared to act for the person;
 - (iv) subject to subsection (2) – the person's primary carer;
 - (v) the principal community visitor.
- (2) The practitioner may decide not to notify the person's primary carer if the practitioner is of the opinion that giving the notification is not in the person's best interests.

- (3) If the practitioner decides not to notify the primary carer because of subsection (2), the practitioner must:
 - (a) give to the Tribunal a written report of the decision and the reason for it in the approved form; and
 - (b) inform the primary carer of his or her right to apply to the Tribunal for a review of the decision.
- (4) A notification under subsection (1)(b) must state:
 - (a) the grounds for the order; and
 - (b) the order has been made under section 45(1).
- (5) The notification may be given orally or in writing but must be in a language that can be understood by the receiver of the notification.
- (6) The practitioner must make a record of each of the following in accordance with approved procedures:
 - (a) a notification under subsection (1);
 - (b) a decision under subsection (2) not to notify the primary carer and the reasons for it.

Division 2 Community management order

48 Community management order

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

49 Form of community management order

A community management order must be in writing and must specify the following:

- (a) the name and residential address of the person to whom it relates;
- (b) the name of the approved treatment agency that is to supervise and review the community management order;
- (c) the name of the approved treatment agency that is to implement the community management order;

- (d) the organisations or persons (other than the approved treatment agency) treating or caring for the person under the community management order;
- (da) whether or not the treatment and care is to occur at the person's residence;
- (db) if the treatment and care is not to occur at the person's residence – the place the person must attend to receive the treatment or care;
- (e) the frequency at which a person treating or caring for the person must attend the person's residence or at which the person must attend the place specified under paragraph (db);
- (f) the medication or treatment the person is to receive under the community management order;
- (g) the rehabilitation, support and other services the person is to receive under the community management order;
- (h) any other information that the Tribunal thinks fit.

50 Review of community management order by authorised psychiatric practitioner

- (1) An authorised psychiatric practitioner must:
 - (a) examine a person who is subject to a community management order no less frequently than as specified in the order; and
 - (b) regularly review the order while it is in force.
- (2) If it is not practicable for the practitioner to conduct a face-to-face examination under subsection (1)(a), the practitioner may conduct the examination:
 - (a) by interactive video conferencing; or
 - (b) if interactive video conferencing is not available – by telephone.
- (3) An authorised psychiatric practitioner must revoke the order if satisfied, after examining the person, the person no longer fulfils the criteria for involuntary treatment or care in the community.
- (4) An authorised psychiatric practitioner may apply to the Tribunal for a review of the order under section 123.

50A Notification of revocation of community management order

- (1) No later than one day after revoking a community management order for a person under section 50(3), an authorised psychiatric practitioner must:
 - (a) notify the Tribunal that the order has been revoked; and
 - (b) notify the following:
 - (i) the person;
 - (ii) the person's adult guardian;
 - (iia) if the person has a decision maker – the decision maker;
 - (iii) a legal practitioner acting or prepared to act for the person;
 - (iv) subject to subsection (2) – the person's primary carer;
 - (v) the principal community visitor.
- (2) The practitioner may decide not to notify the person's primary carer if the practitioner is of the opinion that giving the notification is not in the person's best interests.
- (3) If the practitioner decides not to notify the primary carer because of subsection (2), the practitioner must:
 - (a) give to the Tribunal a written report of the decision and the reason for it in the approved form; and
 - (b) inform the primary carer of his or her right to apply to the Tribunal for a review of the decision.
- (4) A notification under subsection (1)(b) must state the order has been revoked under section 50(3).
- (5) The notification may be given orally or in writing but must be in a language that can be understood by the receiver of the notification.
- (6) The practitioner must make a record of each of the following in accordance with approved procedures:
 - (a) a notification under subsection (1);
 - (b) a decision under subsection (2) not to notify the primary carer and the reasons for it.

51 Appointment of psychiatric case manager

- (1) The authorised psychiatric practitioner who is responsible under section 50(1)(b) for reviewing a community management order must appoint a psychiatric case manager for the person for whom the order is made.
- (2) The person appointed must be:
 - (a) a medical practitioner or a designated mental health practitioner who is:
 - (i) an employee of the approved treatment agency supervising the order; or
 - (ii) if it is not practicable to appoint an employee of the approved treatment agency – an employee of the Agency; or
 - (b) if it is not practicable to appoint a practitioner mentioned in paragraph (a) – any other medical practitioner.
- (3) However, a practitioner must not be appointed to be a psychiatric case manager under subsection (2)(a)(ii) or (b) unless:
 - (a) the practitioner consents to the appointment; and
 - (b) the appointment complies with approved procedures.
- (4) The psychiatric case manager must:
 - (a) monitor the progress of the treatment, care and rehabilitation of the person for whom the order is made; and
 - (b) provide a report, orally or in writing, on the progress of the person to the authorised psychiatric practitioner at least once every 6 weeks.

52 Discharge report and consideration of report by Tribunal

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

53 Suspension of community management order

- (1) An authorised psychiatric practitioner may suspend a community management order where the authorised psychiatric practitioner and the psychiatric case manager are satisfied that the person who is subject to the order has failed to comply with the order.
- (2) In determining whether to suspend a community management order, the authorised psychiatric practitioner and psychiatric case manager are to be satisfied that:
 - (a) all reasonable steps have been taken to implement the order and to obtain the person's co-operation; and
 - (b) because of the person's failure to comply with the order, the person is likely to:
 - (i) cause serious harm to himself or herself or to someone else; or
 - (ii) suffer serious mental or physical deterioration.
- (3) The practitioner who suspends the community management order under subsection (1) must take reasonable steps:
 - (a) to inform the following that the order has been suspended and the reasons for the suspension:
 - (i) the person;
 - (ia) if the person has a decision maker – the decision maker;
 - (ii) the person's adult guardian or representative; and
 - (b) to conduct an assessment of the person.
- (4) If it is not practicable for the practitioner to conduct a face-to-face assessment under subsection (3)(b), the practitioner may conduct the assessment:
 - (a) by interactive video conferencing; or
 - (b) if an assessment through interactive video conferencing is not practicable – by telephone; or
 - (c) if an assessment through interactive video conferencing or telephone is not practicable – on the basis of:
 - (i) information provided to the practitioner by the person's psychiatric case manager; or

- (ii) if the case manager is unable to provide relevant information – any other relevant information.
- (5) After conducting the assessment, the practitioner may:
- (a) admit the person to an approved treatment facility as an involuntary patient; or
 - (b) treat the person and re-activate the community management order.
- (6) If the practitioner does not re-activate the community management order within 24 hours after it was suspended, the practitioner must give to the Tribunal a written report of the suspension and the reasons for the suspension in the approved form.
- (7) The community management order is taken to be re-activated if the person is discharged from the approved treatment facility after being admitted under subsection (5)(a), unless the Tribunal has:
- (a) varied the order under section 123(12); or
 - (b) made a new community management order for the person under section 123(5)(c).
- (8) For an admission of a person under subsection (5)(a), section 34(3) and (4) has effect as if a recommendation for psychiatric examination had been made under section 34(1) for the person.
- (9) In this section:

re-activate, for the community management order, means to bring the order back into force by revoking the suspension of the order.

Part 8 Treatment

Division 1 Treatment after voluntary admission

54 Treatment after voluntary admission

- (1) A person who is admitted to an approved treatment facility as a voluntary patient may only be treated under this Act where:
- (a) the person gives his or her informed consent to the treatment; or

- (b) informed consent for the treatment is obtained from an adult guardian or decision maker for the person, or from the Local Court, in accordance with Part 4 of the *Advance Personal Planning Act*.
- (4) An authorised psychiatric practitioner who is not able to form a view as to whether a person is capable of giving informed consent to treatment must apply to the Tribunal for it to determine the person's capacity.
- (5) Treatment must not be administered to the person while the decision of the Tribunal is pending except for treatment necessary:
 - (a) to prevent the person causing serious harm to himself or herself or to someone else; or
 - (b) to prevent behaviour of the person likely to cause serious harm to the person or to someone else; or
 - (c) to prevent further physical or mental deterioration of the person; or
 - (d) to relieve acute symptomatology.
- (6) Treatment is not to be administered under subsection (5) unless it is authorised by an authorised psychiatric practitioner.
- (7) A report of treatment administered under subsection (5) must be made to the Tribunal at intervals determined by the Tribunal.

Division 2 Treatment after involuntary admission

55 Treatment after involuntary admission

- (1) Subject to subsection (2), treatment under this Act must not be administered to a person who is admitted to an approved treatment facility as an involuntary patient unless it is authorised by the Tribunal.
- (2) Treatment not authorised by the Tribunal must not be administered to the person except for treatment necessary:
 - (a) to prevent the person causing serious harm to himself or herself or to someone else; or
 - (b) to prevent behaviour of the person likely to cause serious harm to the person or to someone else; or
 - (c) to prevent further physical or mental deterioration of the person; or

- (d) to relieve acute symptomatology.
- (3) Treatment is not to be administered under subsection (2) unless it is authorised by an authorised psychiatric practitioner.
- (4) When administering treatment to a person who is an involuntary patient, every practicable effort must be made to involve the person in considering the nature and effect of the treatment and any alternatives that are reasonably available.

56 Factors to be considered before treatment is authorised

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

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

57 Records of treatment to be maintained

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

Part 9 Regulation of certain treatments and measures

Division 1 General

58 Psychosurgery

- (1) In this section:

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

psychosurgery means:

- (a) the use of a technique or procedure (including a surgical technique or procedure), or of intracerebral electrodes, to

create in a person's brain a lesion that, by itself or together with any other lesion created at the same time or any other time, is intended to permanently alter the thoughts, emotions or behaviour of the person; or

- (b) the use of intracerebral electrodes to stimulate a person's brain, without creating a lesion, with the intent that, by itself or together with any other stimulation at the same time or any other time, the stimulation will, temporarily, influence or alter the thoughts, emotions or behaviour of the person.

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

Maximum penalty: 85 penalty units.

59 Coma therapy

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

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

Maximum penalty: 85 penalty units.

60 Sterilisation

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

Maximum penalty: 85 penalty units.

61 Mechanical restraint

- (1) In this section:

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

patient means a person who is being assessed or receiving treatment under this Act.

- (2) A person must not apply mechanical restraint to a patient.

Maximum penalty: 40 penalty units.

- (2A) Subsection (2) does not apply if the mechanical restraint is applied in accordance with this section.
- (3) Mechanical restraint of a patient in an approved treatment facility may only be applied where no other less restrictive method of control is applicable or appropriate and it is necessary for one or more of the following:
- (a) for the purpose of medical treatment of the patient;
 - (b) to prevent the patient from causing injury to himself or herself or any other person;
 - (c) to prevent the patient from persistently destroying property;
 - (d) to prevent the patient from absconding from the facility.
- (4) Mechanical restraint of a patient must not be applied unless it is approved:
- (a) by an authorised psychiatric practitioner; or
 - (b) in the case of an emergency, by the senior registered nurse on duty.
- (5) The senior registered nurse on duty must notify the person-in-charge of the approved treatment facility and an authorised psychiatric practitioner as soon as practicable after approving the mechanical restraint of a patient.
- (6) The form of mechanical restraint and its duration must be:
- (a) determined by the authorised psychiatric practitioner or senior registered nurse who approves it; and
 - (b) if the mechanical restraint has been approved by the senior registered nurse on duty – reviewed and, if necessary, re-determined by an authorised psychiatric practitioner as soon as practicable after it has been approved.
- (7) Mechanical restraint may be applied to a patient without the patient's consent.
- (8) A patient to whom mechanical restraint is applied:
- (a) must be kept under continuous observation by a registered nurse or medical practitioner; and

- (b) must be reviewed, as clinically appropriate to his or her condition, by a registered nurse at intervals not longer than 15 minutes; and
 - (c) must be examined by a medical practitioner at intervals not longer than 4 hours; and
 - (e) must be supplied with bedding and clothing that is appropriate in the circumstances; and
 - (f) must be provided with food and drink at appropriate times; and
 - (g) must have access to adequate toilet facilities; and
 - (h) must be provided with any other psychological and physical care appropriate to the patient's needs.
- (10) Mechanical restraint must not be applied to a patient who is admitted as a voluntary patient for longer than a continuous period of 6 hours.
- (11) If a medical practitioner, senior registered nurse on duty or an authorised psychiatric practitioner is satisfied, having regard to the criteria specified in subsection (3), that the continued application of mechanical restraint to a patient is not necessary, he or she must, without delay, release the patient from the restraint.
- (12) The person-in-charge of an approved treatment facility must ensure that a record is kept of:
- (a) the form of mechanical restraint applied; and
 - (b) the reasons why mechanical restraint was applied; and
 - (c) the name of the person who approved the mechanical restraint being applied; and
 - (d) the name of the person who applied the mechanical restraint; and
 - (e) the period of time the mechanical restraint was applied.
- (13) The person-in-charge of an approved treatment facility must ensure that a copy of the record kept under subsection (12) is placed on the patient's medical records.
- (14) The principal community visitor must ensure that the record kept under subsection (12) is inspected by a community visitor at intervals not longer than 6 months.

- (15) If a patient to whom mechanical restraint has been applied has an adult guardian or decision maker, the person-in-charge of the approved treatment facility must ensure that the adult guardian or decision maker notified of the following as soon as practicable after the application of the restraint:
- (a) that mechanical restraint was applied to the patient;
 - (b) the form of mechanical restraint applied;
 - (c) the reasons why mechanical restraint was applied;
 - (d) the period of time the mechanical restraint was applied.

62 Seclusion of patients

- (1) A person must not keep a patient in seclusion.
- Maximum penalty: 40 penalty units.
- (2) Subsection (1) does not apply if the patient is kept in seclusion:
- (a) in accordance with this section; and
 - (b) approved procedures.
- (3) A patient may be kept in seclusion in an approved treatment facility where no other less restrictive method of control is applicable or appropriate and it is necessary for one or more of the following:
- (a) for the purpose of the medical treatment of the patient;
 - (b) to prevent the patient from causing injury to himself or herself or any other person;
 - (c) to prevent the patient from persistently destroying property;
 - (d) to prevent the patient from absconding from the facility.
- (4) A patient may be kept in seclusion only where it is approved:
- (a) by an authorised psychiatric practitioner; or
 - (b) in the case of an emergency, by the senior registered nurse on duty.
- (5) The senior registered nurse on duty must notify an authorised psychiatric practitioner as soon as practicable after approving a patient being kept in seclusion.

- (6) The period the patient is to be kept in seclusion must be:
- (a) determined and noted in the patient's case notes by the authorised psychiatric practitioner or senior registered nurse who approves it; and
 - (b) if the seclusion has been approved by the senior registered nurse on duty:
 - (i) reviewed by an authorised psychiatric practitioner as soon as practicable after it has been approved; and
 - (ii) if necessary, re-determined by the practitioner and noted in the patient's case notes.
- (7) A patient may be kept in seclusion without his or her consent.
- (8) A patient kept in seclusion:
- (a) must be visited by a registered nurse at intervals not longer than 15 minutes;
 - (b) must be examined by a medical practitioner at intervals specified in approved procedures;
 - (c) must be reviewed by an authorised psychiatric practitioner in accordance with approved procedures;
 - (d) must be supplied with bedding and clothing that is appropriate in the circumstances;
 - (e) must be provided with food and drink at appropriate times;
 - (f) must have access to adequate toilet facilities; and
 - (g) must be provided with any other psychological and physical care appropriate to the patient's needs.
- (10) A patient admitted as a voluntary patient must not be kept in seclusion for longer than a continuous period of 6 hours.
- (11) If a medical practitioner, senior registered nurse on duty or an authorised psychiatric practitioner is satisfied, having regard to the criteria specified in subsection (3), that it is not necessary to continue to keep the patient in seclusion, he or she must without delay release the patient from seclusion.
- (12) The person-in-charge of an approved treatment facility must ensure that a record is kept of:
- (a) the reasons why a patient was kept in seclusion; and

- (b) the name of the person who approved the patient being kept in seclusion; and
 - (c) the name of the person who kept the patient in seclusion; and
 - (d) the length of time the patient was kept in seclusion.
- (13) The person-in-charge of an approved treatment facility must ensure that a copy of the record kept under subsection (12) is placed on the patient's medical records.
- (14) The principal community visitor must ensure that a record kept under subsection (12) is inspected by a community visitor at intervals not longer than 6 months.
- (15) If a patient who is kept in seclusion has an adult guardian or decision maker, the person-in-charge of the approved treatment facility must ensure that the adult guardian or decision maker is notified of the following as soon as practicable after the seclusion:
- (a) that the patient was kept in seclusion;
 - (b) the reasons why the patient was kept in seclusion;
 - (c) the length of time the patient was kept in seclusion.
- (16) In this section:

patient means a person who is being assessed or receiving treatment under this Act.

seclusion, of a patient, means the confinement of the patient at any time of the day or night alone in a room or area from which free exit is prevented.

63 Non-psychiatric treatment

- (1) In this section:

non-psychiatric treatment means any of the following treatment if its primary purpose is not directed at treating a mental illness, mental disturbance or complex cognitive impairment or its effects:

- (a) a surgical operation or procedure or a series of related surgical operations or procedures;
- (b) the administration of an anaesthetic for the purposes of medical investigation;
- (c) the administration of a course of treatment or medication requiring a prescription or medical supervision.

- (2) A person must not perform non-psychiatric treatment on another person who is:
- (a) an involuntary patient or subject to a community management order; and
 - (b) being assessed or receiving treatment under this Act.

Maximum penalty: 40 penalty units.

- (2A) Subsection (2) does not apply if the treatment is performed in accordance with this section.

- (3) Non-psychiatric treatment must not be performed unless:
- (a) the informed consent of the person is obtained; or
 - (b) the treatment is approved by the Tribunal or an authorised psychiatric practitioner as determined under subsection (7); or
 - (c) informed consent for the treatment is obtained from an adult guardian or decision maker for the person, or from the Local Court, in accordance with Part 4 of the *Advance Personal Planning Act*.
- (4) Non-psychiatric treatment may be performed without being approved under subsection (3)(b) or the consent being obtained under subsection (3)(c) where it is immediately necessary for any of the following:
- (a) to save the life of the person or to prevent irreparable harm to the person;
 - (b) to remove a threat of permanent disability to the person;
 - (c) to remove a life threatening risk to, or to relieve acute pain of, the person.
- (5) A person who performs non-psychiatric treatment without it being approved under subsection (3)(b) must report the fact to the Tribunal as soon as possible after the treatment is performed.
- (6) A person who performs non-psychiatric treatment on a person who has an adult guardian or decision maker without consent being obtained under subsection (3)(c) must report the fact to the adult guardian or decision maker as soon as possible after the treatment is performed.

- (7) The Tribunal may determine which non-psychiatric treatment requires the approval of the Tribunal and that which may be approved by an authorised psychiatric practitioner.
- (8) The purpose of this section is to protect the interests of a person by ensuring the person is not unnecessarily subjected to certain medical procedures.

64 Major medical procedure

- (1) A person must not perform a major medical procedure on a person who is an involuntary patient or subject to a community management order.

Maximum penalty: 40 penalty units.

- (1A) Subsection (1) does not apply if the procedure is performed in accordance with this section.
- (2) Subject to subsection (3), a major medical procedure must not be performed on a person unless:
 - (a) it is approved by the Tribunal; or
 - (b) informed consent for the major medical procedure is obtained from a decision maker for the person, or from the Local Court, in accordance with Part 4 of the *Advance Personal Planning Act*.
- (3) An authorised psychiatric practitioner may authorise the performance of a major medical procedure on a person where it is immediately necessary:
 - (a) to save the life of the person; or
 - (b) to prevent irreparable harm to the person.
- (4) No later than one day after authorising the performance of a major medical procedure under subsection (3), the practitioner must notify:
 - (a) the Tribunal; and
 - (b) the person's adult guardian; and
 - (c) if the person has a decision maker – the decision maker.
- (5) The Chief Health Officer is, from time to time, to specify those medical procedures that are major medical procedures for the purposes of this section.

- (6) The purpose of this section is to protect the interests of a person by ensuring the person is not unnecessarily subjected to certain medical procedures.

65 Clinical trials and experimental treatments

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

- (a) the trial or treatment is approved by an ethics committee nominated by the Chief Health Officer; and
- (b) either:
- (i) the person, or a decision maker for the person, gives informed consent to the trial or treatment; or
 - (ii) the Tribunal gives approval to the trial or treatment.

Maximum penalty: 40 penalty units.

Division 2 Electroconvulsive therapy

66 Electroconvulsive therapy

- (1) A person must not perform electroconvulsive therapy on another person unless:
- (a) the other person gives informed consent to the treatment; or
- (b) informed consent for the treatment is obtained from an adult guardian or decision maker for the person, or from the Local Court, in accordance with Part 4 of the *Advance Personal Planning Act*.

Maximum penalty: 40 penalty units.

- (1A) Subsection (1) does not apply if the treatment is performed in accordance with this section and approved procedures.
- (2) The Tribunal may authorise electroconvulsive therapy to be performed on a person if it:
- (a) is satisfied that the person is unable to give informed consent to the treatment; and
- (b) receives a report from 2 authorised psychiatric practitioners that they are satisfied, after considering the person's clinical condition, history of treatment and other appropriate

alternative treatments, that electroconvulsive therapy is a reasonable and proper treatment to be administered and that without the treatment the person is likely to suffer serious mental or physical deterioration; and

- (c) is satisfied that:
 - (i) all reasonable efforts have been made to consult the person's primary carer; or
 - (ii) there is a valid reason for not complying with subparagraph (i).
- (3) Electroconvulsive therapy may be performed on a person who is an involuntary patient where 2 authorised psychiatric practitioners are satisfied that it is immediately necessary:
 - (a) to save the person's life; or
 - (b) to prevent the person suffering serious mental or physical deterioration; or
 - (c) to relieve severe distress.
- (4) Where electroconvulsive therapy is performed under subsection (3), the authorised psychiatric practitioners must make a report to the Tribunal of the therapy performed as soon as practicable after it is performed.
- (5) The report is to contain:
 - (a) the reasons why the authorisation of the Tribunal was not obtained; and
 - (b) the number of treatments performed; and
 - (c) the person's response to the treatment; and
 - (d) details of any significant side effects of the treatment on the person.
- (6) At least 2 medical practitioners are to be present when electroconvulsive therapy is performed, of whom:
 - (a) one is to be experienced and trained in accordance with approved procedures in performing electroconvulsive therapy; and
 - (b) one is to be experienced in administering anaesthesia.

- (7) Electroconvulsive therapy must be performed only in an approved treatment facility or premises licensed under this Division.

Note for section 66

Proceedings for professional misconduct, unsatisfactory professional performance or unprofessional conduct may be taken against a medical practitioner under the Health Practitioner Regulation National Law because of a contravention of this section. Under section 243 of that Law, disciplinary proceedings may be taken under the Law irrespective of whether proceedings for the offence have been taken.

67 Licensing of premises

- (1) In this section:

occupier of premises includes a person who occupies or has control of the premises, whether or not the person is the owner of the premises.

- (2) The occupier of premises must not permit electroconvulsive therapy to be performed on the premises unless the premises are licensed under this Division.

Maximum penalty: 40 penalty units.

- (3) The occupier of premises may apply to the CEO for a licence to permit electroconvulsive therapy to be performed on the premises.

- (4) An application for a licence is to be:

- (a) in the approved form; and
- (b) accompanied by the specified fee.

- (5) The CEO must consider an application and may grant, or refuse to grant, the licence.

- (6) In determining an application under this section, the CEO is to take into account the recommendations of the Chief Health Officer regarding:

- (a) the suitability of the applicant to hold a licence; and
- (b) the suitability of the premises; and
- (c) whether the equipment to be used in performing electroconvulsive therapy complies with the prescribed standards and conditions; and
- (d) the qualifications of persons who are to perform electroconvulsive therapy on the premises; and

- (e) any conditions to be specified in the licence; and
- (f) how long the licence should remain in force.

68 Renewal of licence

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

69 Form of licence

A licence:

- (a) is to be in the approved form; and
- (b) is subject to the conditions that are determined by the CEO and specified in the licence; and
- (c) is valid only in respect of the electroconvulsive therapy specified in the licence; and
- (d) remains in force for the period, not longer than 3 years, specified in the licence.

70 Cancellation of licence

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

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

71 Amendment of licence

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

72 Review of certain decision

A person aggrieved by a decision of the CEO under this Division may apply to the Ombudsman for an investigation of the decision to be conducted under the *Ombudsman Act*.

73 Returns

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

Part 10 Powers of court

Division 1 Assessment and admission of person

73A Application of Division

- (1) This Division applies to a person who:
 - (a) is charged with an offence in proceedings before a court; and
 - (b) in the opinion of the court, may require treatment or care under this Act.
- (2) The court may:
 - (a) make one or more orders under this Division for the person; or
 - (b) dismiss the charge at any time if:
 - (i) the charge is being dealt with summarily; and
 - (ii) the proceedings are not proceedings for a committal or preliminary hearing; and
 - (iii) the court is of the opinion that, if the person were found guilty, under the *Sentencing Act* the court would dismiss the charge unconditionally or otherwise decline to record a conviction.
- (3) Subsection (4) applies if:
 - (a) the offence is one to which section 121A(1)(b) of the *Justices Act* applies; and
 - (b) the court is of the opinion that the person lacks the capacity to consent to the charge being heard and determined summarily.
- (4) For section 121A(1)(d) of the *Justices Act*, consent is taken to be have been given by the person if the person's legal representative consents to the charge being heard and determined summarily.
- (5) For subsections (1)(b) and (3)(b), the court may have regard to the following in forming its opinion:
 - (a) the appearance and behaviour of the person when brought before the court;
 - (b) information given to the court during the proceedings.

74 Pre-assessment advice

- (1) The court may request from the Chief Health Officer advice regarding the availability of resources to assess the person in order to determine whether the person is in need of treatment under this Act.
- (2) The court may adjourn the proceedings to allow the preparation of the advice.
- (3) As soon as practicable after receiving the request, the Chief Health Officer must give the court written advice that includes:
 - (a) whether or not it is practicable to conduct an outpatient assessment of the person; and
 - (b) if an outpatient assessment is practicable – the most appropriate place, time and conditions for the assessment; and
 - (c) if an outpatient assessment is not practicable:
 - (i) the approved treatment facility or approved temporary treatment facility that is available for the assessment of the person; and
 - (ii) an estimate of the time required for the assessment.

- (4) In this section:

outpatient assessment means an assessment that is not carried out at an approved treatment facility or approved temporary treatment facility.

74A Assessment order and report

- (1) If the court receives written advice from the Chief Health Officer under section 74(3)(b) that it is practicable to conduct an outpatient assessment of the person as specified in the advice, the court may:
 - (a) adjourn the proceedings; and
 - (b) order the person be so assessed by a practitioner and a report of the assessment be prepared for the court.

- (2) If the court receives written advice from the Chief Health Officer under section 74(3)(c) that it is not practicable to conduct an outpatient assessment of the person but an approved treatment facility or approved temporary treatment facility is available for the assessment of the person, the court may:
 - (a) adjourn the proceedings; and
 - (b) order the person be conveyed to and detained in the facility for the assessment and a report of the assessment be prepared for the court.
- (3) For subsections (1)(a) and (2)(a), the period of adjournment must not exceed the estimate of the time required for the assessment that is specified in the advice.
- (4) An order under subsection (2)(b) must specify who is responsible for conveying the person from the court to the facility and back to the court after the person has been assessed.
- (5) A registrar of the Local Court must send a copy of the order to the person-in-charge of the facility:
 - (a) as soon as practicable after the order is made; and
 - (b) before the person is conveyed to the facility.
- (6) A report of the assessment of the person prepared for subsection (1)(b) or (2)(b) must state whether or not the practitioner who assessed the person is satisfied the person fulfils the criteria for involuntary admission on the grounds of mental illness or mental disturbance.
- (7) If the practitioner is satisfied the person fulfils the criteria for involuntary admission on the grounds of mental illness or mental disturbance, the report must state:
 - (a) whether the admission should be on the grounds of mental illness or mental disturbance; and
 - (b) whether an approved treatment facility is available for the admission; and
 - (c) the recommended duration of the admission; and
 - (d) any recommendations for the conveyance of the person to and from the facility and the security of the person while at the facility.

- (8) If the practitioner is not satisfied the person fulfils the criteria for involuntary admission on the grounds of mental illness or mental disturbance, the report must state:
- (a) whether the person requires:
 - (i) involuntary treatment in the community; or
 - (ii) other treatment under this Act; and
 - (b) if so – the form of the treatment.

- (9) In this section:

outpatient assessment, see section 74(4).

practitioner means an authorised psychiatric practitioner, medical practitioner or designated mental health practitioner.

75 Admission order

- (1) This section applies if, after receiving a report prepared for section 74A, the court is satisfied:
- (a) the person fulfils the criteria for involuntary admission on the grounds of mental illness or mental disturbance; and
 - (b) resources are available at a specified approved treatment facility to diagnose and treat the person.
- (2) The court may:
- (a) adjourn the proceedings for a period specified by the court; and
 - (b) order the person be detained in the approved treatment facility for:
 - (i) an examination and assessment of the person under section 38(1); and
 - (ii) if the person is admitted to the facility – diagnosis and treatment under this Act.
- (3) For subsection (2), the period specified must not exceed the shorter of the following:
- (a) the duration of the admission recommended in the report;
 - (b) 15 days.

- (4) An order under subsection (2)(b) must specify who is responsible for conveying the person from the court to the facility and, if section 75B(2)(a) applies, returning the person to lawful custody.
- (5) A registrar of the Local Court must:
 - (a) send a copy of the order to the person-in-charge of the facility:
 - (i) as soon as practicable after the order is made; and
 - (ii) before the person is conveyed to the facility; and
 - (b) if the order is cancelled, varied or extended – send notification that the order has been cancelled or a copy of the order as varied or extended (as the case may be) to the person-in-charge of the facility as soon as practicable after the order has been cancelled, varied or extended.
- (6) The court may impose conditions for the order under subsection (2)(b).
- (7) The conditions may include, but are not limited to, any of the following:
 - (a) a condition requiring the person to be detained in a particular part of the facility;
 - (b) a condition requiring the person to be kept under guard at the facility;
 - (c) a condition for the granting to the person of leave of absence from the facility;
 - (d) if the person is a prisoner – a condition requiring the person to be subject to the restrictions that would apply if the person were in a custodial correctional facility.
- (8) The court may grant the person bail to enable the person to be released from the facility while the proceedings are adjourned if section 75B applies.
- (9) The prosecutor, Chief Health Officer or the person may apply to the court at any time to cancel, vary or extend the order.

75A Determination that person not required to be admitted

- (1) If the person is admitted as an involuntary patient at the approved treatment facility because of section 75, an authorised psychiatric practitioner or the Tribunal may determine the person is no longer required to be so admitted at the facility.

- (2) The practitioner or Tribunal may do so only if satisfied the person does not fulfil the criteria for involuntary admission on the grounds of mental illness or mental disturbance, after:
 - (a) an examination of the person by the practitioner under section 39(2); or
 - (b) the review of the person's admission by the Tribunal under section 123.
- (3) If a determination is made under subsection (1), the Chief Health Officer must inform the court that the determination has been made on the resumption of the proceedings.

75B Person not required to be detained at approved treatment facility during adjournment

- (1) This section applies if the court has adjourned the proceedings under section 75(2) and one of the following applies:
 - (a) the person is not admitted to the approved treatment facility as an involuntary patient following the examination and assessment of the person under section 38(1);
 - (b) a determination is made under section 75A(1) for the person.
- (2) The person must, as soon as practicable:
 - (a) if the person was in lawful custody when the order under section 75(2) was made and the person is not granted bail under section 75(8) – be returned to lawful custody; or
 - (b) otherwise – be released from the facility.

76 Warrant of arrest

- (1) This section applies to a person who is required to be detained at an approved treatment facility because of an order made under section 74A(2)(b) or 75(2)(b).
- (2) A court may issue a warrant to arrest the person if the person:
 - (a) absconds from the approved treatment facility; or
 - (b) fails to attend the facility under the order.

Division 2 Dismissal of charge following certificate from Chief Health Officer

77 Dismissal of charge

- (1) This section applies to a person if:
 - (a) the person is charged with an offence in proceedings before a court (other than proceedings for a committal or preliminary hearing); and
 - (b) the charge is being dealt with summarily.
- (2) The court may request from the Chief Health Officer a certificate in the approved form stating:
 - (a) whether at the time of carrying out the conduct constituting the alleged offence, the person was suffering from a mental illness or mental disturbance; and
 - (b) if the person was suffering from a mental illness or mental disturbance – whether the mental illness or disturbance is likely to have materially contributed to the conduct.
- (3) The Chief Health Officer must not give the court the certificate unless the Chief Health Officer has received and considered advice on the person from an authorised psychiatric practitioner or designated mental health practitioner.
- (4) After receiving the certificate, the court must dismiss the charge if satisfied that at the time of carrying out the conduct constituting the alleged offence:
 - (a) the person was suffering from a mental illness or mental disturbance; and
 - (b) as a consequence of the mental illness or disturbance, the person:
 - (i) did not know the nature and quality of the conduct; or
 - (ii) did not know the conduct was wrong; or
 - (iii) was not able to control his or her actions.

Division 3 Voluntary treatment plan

78 Request for voluntary treatment plan

- (1) This Division applies to a person if:
 - (a) in proceedings before a court (other than proceedings for a committal or preliminary hearing) the person:
 - (i) has pleaded guilty to an offence; or
 - (ii) has been found guilty of an offence; and
 - (b) the charge is being dealt with summarily.
- (2) The court may request from the Chief Health Officer an assessment of, and if appropriate a voluntary treatment plan for, the person if:
 - (a) the court is of the opinion the person suffers from a mental illness or mental disturbance that is likely to have contributed to the conduct constituting the offence; and
 - (b) the court is satisfied the person:
 - (i) recognises that he or she suffers from a mental illness or mental disturbance; and
 - (ii) has made, or is willing to make, a conscientious effort to address problems associated with the mental illness or mental disturbance; and
 - (c) the court considers it appropriate for the offence to be dealt with under this Division having regard to the nature and seriousness of the offence; and
 - (d) the prosecution and the person consent to the offence being dealt with under this Division.
- (3) To enable the assessment of the person and, if required, the preparation of the voluntary treatment plan, the court may:
 - (a) adjourn the proceedings; and
 - (b) grant bail to the person on the condition that the person undergoes the assessment.

78A Voluntary treatment plan

- (1) A report of the assessment of the person prepared for section 78 must state:
 - (a) whether or not, having regard to subsection (2) or any other matter, it is appropriate to treat the person under a voluntary treatment plan; and
 - (b) if so – the nature and duration of the treatment plan.
- (2) A person must not be treated under a voluntary treatment plan if by doing so, the person would pose a serious risk to himself or herself or someone else.
- (3) If it is appropriate to treat the person under a voluntary treatment plan, the court may:
 - (a) adjourn the proceedings for a period not exceeding 6 months; and
 - (b) grant bail to the person on the condition that the person enters into an agreement to participate in the treatment plan.
- (4) If it is not appropriate to treat the person under a voluntary treatment plan, the court must deal with the person under the *Sentencing Act*.

78B Review of voluntary treatment plan

- (1) If the proceedings have been adjourned under section 78A(3), the court must review the person's participation in the voluntary treatment plan on the resumption of the proceedings.
- (2) If the person has not completed the treatment plan, the court may:
 - (a) adjourn the proceedings for a further period, not exceeding 6 months and grant bail to the person on the condition that the person enter into an agreement to complete the treatment plan; or
 - (b) deal with the person under the *Sentencing Act*.
- (3) If the person has completed the treatment plan, the court may:
 - (a) dismiss the charge; or
 - (b) deal with the person under the *Sentencing Act*.

- (4) If the treatment plan has been extended under subsection (2)(a), at the expiry of the further period the court may:
- (a) if the person has not completed the treatment plan – deal with the person under the *Sentencing Act*, or
 - (b) if the person has completed the treatment plan:
 - (i) dismiss the charge; or
 - (ii) deal with the person under the *Sentencing Act*.

78C Failure to comply with condition

- (1) This section applies if a practitioner who is involved in the assessment or treatment of the person believes on reasonable grounds that the person:
- (a) has failed to attend the assessment mentioned in section 78(3)(b); or
 - (b) has failed to comply with a voluntary treatment plan.
- (2) The practitioner must report the failure to the court in accordance with approved procedures.
- (3) On receipt of a report given under subsection (2), the court may:
- (a) issue a warrant for the arrest of the person; and
 - (b) if satisfied that the person has failed to comply with a condition of bail – deal with the person under the *Sentencing Act*.

78D Orders under Part 4 of *Sentencing Act*

The court must not make an order for the person under Part 4 of the *Sentencing Act* while the person is released on bail for the purpose of:

- (a) undergoing an assessment mentioned in section 78(3)(b); or
- (b) participating in, or completing, a voluntary treatment plan.

78E Bail

- (1) To avoid doubt, the granting of bail to the person under this Division does not affect the application of the *Bail Act* to the grant of bail.
- (2) The granting of bail to the person on the condition that the person undergo assessment and treatment under this Division does not constitute an inducement for section 7(2)(a).

Part 11 Prisoners

Division 1 Referral, assessment and admission

79 Assessment of prisoner

- (1) A designated mental health practitioner or authorised psychiatric practitioner may examine and assess a prisoner to determine if section 45, 80A or 81 applies to the prisoner.
- (2) If requested to do so by a medical practitioner, the Commissioner of Correctional Services must arrange for a prisoner to be examined and assessed by a practitioner under subsection (1) within 24 hours after receiving the request.
- (3) However, the practitioner may refuse to examine or assess the prisoner if the practitioner is otherwise satisfied none of the provisions mentioned in subsection (1) applies to the prisoner.
- (4) The examination and assessment under subsection (1) may take place:
 - (a) at the custodial correctional facility where the prisoner is held;
or
 - (b) with the approval of the Commissioner of Correctional Services after consulting with the person-in-charge of the facility – at an approved treatment facility.

80 Recommendation for voluntary admission

- (1) This section applies if, following an examination and assessment of a prisoner under section 79(1), a designated mental health practitioner is satisfied the prisoner:
 - (a) is likely to benefit from being admitted as a voluntary patient;
and
 - (b) has given informed consent to the admission.
- (2) The practitioner may recommend the admission of the prisoner as a voluntary patient and arrange for the prisoner to be examined by an authorised psychiatric practitioner:
 - (a) at the custodial correctional facility; or
 - (b) if an examination at the custodial correctional facility would result in an unreasonable delay – at an approved treatment facility.

- (3) An authorised psychiatric practitioner must examine the prisoner not later than 24 hours after a recommendation for the prisoner's admission is made under subsection (2).
- (4) The Commissioner of Correctional Services must permit the transfer of the prisoner to an approved treatment facility for an examination under subsection (2)(b).

80A Voluntary admission of prisoner

- (1) This section applies if, following an examination and assessment of a prisoner under section 79(1) or an examination under section 80(3), an authorised psychiatric practitioner is satisfied:
 - (a) the prisoner is likely to benefit from being admitted as a voluntary patient; and
 - (b) either:
 - (i) the prisoner has given informed consent to the admission; or
 - (ii) both:
 - (A) informed consent to the admission has been obtained from an adult guardian or decision maker for the prisoner, or from the Local Court, in accordance with Part 4 of the *Advance Personal Planning Act*; and
 - (B) the prisoner is willing to be admitted.
- (2) If the examination and assessment was conducted at an approved treatment facility, the practitioner may admit the prisoner to the facility as a voluntary patient.
- (3) If the examination and assessment was conducted at the custodial correctional facility, the practitioner may arrange for the prisoner to be transferred to an approved treatment facility and admitted to the facility as a voluntary patient.
- (4) An authorised psychiatric practitioner, other than the practitioner who admitted the prisoner, must examine the prisoner not later than 24 hours after the prisoner is admitted under subsection (2) or (3).
- (5) Part 5 applies to the prisoner as if the examination under subsection (4) were an examination under section 25(4).

- (6) The Commissioner of Correctional Services must permit the transfer of the prisoner to an approved treatment facility for the admission of the prisoner as a voluntary patient under this section.

81 Involuntary admission of prisoner

- (1) This section applies if the practitioner who carried out the examination and assessment under section 79(1) or 80(3) is satisfied the prisoner fulfils the criteria for involuntary admission on the grounds of mental illness or mental disturbance.
- (2) The practitioner must make a recommendation for the psychiatric examination of the prisoner.
- (3) Part 6 applies to the prisoner as if the recommendation were a recommendation under section 34(1).
- (4) If the prisoner is not already at an approved treatment facility, the Commissioner of Correctional Services must permit the transfer of the prisoner to an approved treatment facility for the following:
- (a) an examination and assessment of the prisoner under section 38(1);
 - (b) the admission of the prisoner as an involuntary patient.

82 Person-in-charge to notify Commissioner of Correctional Services

- (1) The person-in-charge of the approved treatment facility to which a prisoner has been admitted as a voluntary patient must notify the Commissioner of Correctional Services as soon as practicable after:
- (a) the prisoner requests to be returned to the custodial correctional facility; or
 - (b) the prisoner no longer consents to his or her admission or treatment; or
 - (c) an authorised psychiatric practitioner determines the prisoner meets the criteria for involuntary admission on the grounds of mental illness or mental disturbance; or
 - (d) an authorised psychiatric practitioner determines the prisoner will no longer benefit from continuing to be admitted as a voluntary patient; or

- (e) the Tribunal, after reviewing the prisoner's admission, determines:
 - (i) the prisoner will no longer benefit from continuing to be admitted as a voluntary patient; or
 - (ii) the prisoner meets the criteria for involuntary admission on the grounds of mental illness or mental disturbance.
- (2) The person-in-charge of the approved treatment facility to which a prisoner has been admitted as an involuntary patient must notify the Commissioner of Correctional Services as soon as practicable after:
 - (a) a decision has been made to discharge the prisoner from the facility; or
 - (b) the prisoner is transferred to another facility under section 167.

Division 2 Leave of absence and apprehension of prisoner

83 Leave of absence

- (1) An authorised psychiatric practitioner may grant a prisoner admitted to an approved treatment facility leave of absence from the facility to receive medical or psychological assessment or treatment.
- (2) The leave:
 - (a) must not be granted except in accordance with arrangements made under section 86; and
 - (b) must be recorded in the approved form; and
 - (c) is subject to the conditions determined by the practitioner.
- (3) An authorised psychiatric practitioner may cancel the leave if satisfied, on reasonable grounds:
 - (a) the prisoner is likely to suffer from serious mental or physical deterioration as a result of a change in the prisoner's mental state; or
 - (b) the prisoner is likely to cause harm to himself or herself or to someone else; or
 - (c) the prisoner has failed to comply with a condition of the leave.

- (4) The practitioner who cancels the leave must take all reasonable steps to inform the prisoner or the prisoner's representative that the leave has been cancelled.

83A Apprehension of prisoner

- (1) This section applies to a prisoner admitted to an approved treatment facility under this Part if:
- (a) the prisoner is absent from the facility without leave granted under section 83(1); or
 - (b) the prisoner has been granted leave under section 83(1) and any of the following occurs:
 - (i) the prisoner fails to return to the facility by the end of the leave;
 - (ii) the leave is cancelled;
 - (iii) the prisoner fails to comply with a condition of the leave.
- (2) A police officer, a correctional officer (as defined in section 4 of the *Correctional Services Act*) or a person authorised by an authorised psychiatric practitioner may:
- (a) apprehend the prisoner; and
 - (b) return the prisoner to the facility.
- (3) Reasonable force and assistance may be used for subsection (2).
- (4) For subsection (2)(a), a police officer may enter private premises or any other private place where the police officer reasonably believes the prisoner may be found.

Division 3 General matters

84 Prisoner to remain in lawful custody

- (1) A prisoner admitted to an approved treatment facility as a voluntary patient or involuntary patient is taken to be in lawful custody while the prisoner remains in the facility.
- (2) The period spent in the facility is taken to be a period of imprisonment under the sentence imposed on the prisoner.

85 Discharge of prisoners

- (1) A prisoner must not be detained in an approved treatment facility after the prisoner's sentence of imprisonment expires unless the prisoner is otherwise detained in the facility under this Act.
- (2) A prisoner who is in an approved treatment facility as a voluntary patient or involuntary patient must not be discharged from the facility before the prisoner's sentence of imprisonment expires unless it is for the purpose of returning the prisoner to the custody of the Commissioner of Correctional Services.

86 Arrangements

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

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

- (1) This section applies if:
 - (a) a person is admitted to an approved treatment facility; or
 - (b) a community management order is made for a person.
- (1A) No later than one day after the person is admitted or the order is made, an authorised psychiatric practitioner must give the information specified in subsection (1B) to:
 - (a) the person; and
 - (b) the person's adult guardian; and
 - (ba) if the person has a decision maker – the decision maker; and
 - (c) the person's representative.
- (1B) For subsection (1A), the following information is specified:
 - (a) the person's rights and entitlements under this Act;
 - (b) how those rights and entitlements may be exercised;
 - (c) the advocacy and legal services that are available to the person;

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

88 Information concerning medication or treatment

- (1) This section applies if:
 - (a) a person is admitted to an approved treatment facility; or
 - (b) a community management order is made for a person.
- (2) An authorised psychiatric practitioner must ensure information concerning the treatment (including medication) administered to the person is given to the following:
 - (a) the person;
 - (b) the person's adult guardian;
 - (ba) if the person has a decision maker – the decision maker;
 - (c) subject to subsection (3):
 - (i) the person's representative; and
 - (ii) the person's primary carer.

- (3) The practitioner may decide not to allow the giving of the information to the person's representative or primary carer if the practitioner is of the opinion that giving the information is not in the person's best interests.
- (4) If the practitioner decides not to allow the giving of the information to the representative or primary carer because of subsection (3), the practitioner must:
 - (a) give to the Tribunal a written report of the decision and the reason for it in the approved form; and
 - (b) inform the representative or primary carer of his or her right to apply to the Tribunal for a review of the decision; and
 - (c) make a record of the decision in accordance with approved procedures.
- (5) The information:
 - (a) may be given by the authorised psychiatric practitioner, a medical practitioner or the senior nurse on duty at the facility; and
 - (b) must include details of the type, dosage, expected benefits and side effects of the treatment.
- (6) A person who gives information under this section must make a record of the giving of the information in accordance with approved procedures.

89 Discharge plan

- (1) The person-in-charge of an approved treatment facility must ensure a discharge plan is prepared by an authorised psychiatric practitioner before the person is discharged from the facility.
- (2) The discharge plan:
 - (a) must contain arrangements for the accommodation, psychosocial well-being and ongoing psychiatric treatment of the person; and
 - (b) must be capable of being implemented.
- (3) The authorised psychiatric practitioner must:
 - (a) ensure the persons specified in subsection (4) are consulted in relation to the arrangements mentioned in subsection (2)(a) when preparing the plan; and

- (b) after the plan is prepared – inform the persons specified in subsection (4) of the details of the plan.
- (4) For subsection (3), the following are specified:
 - (a) the person;
 - (b) the person's adult guardian;
 - (ba) if the person has a decision maker – the decision maker;
 - (c) subject to subsection (5):
 - (i) the person's representative; and
 - (ii) the person's primary carer.
- (5) The practitioner may decide not to allow consultation with, or the giving of information to, the person's representative or primary carer if the practitioner is of the opinion that the consultation or giving of the information is not in the person's best interests.
- (6) If the practitioner decides not to allow consultation with, or the giving of information to, the representative or primary carer because of subsection (5), the practitioner must:
 - (a) give to the Tribunal a written report of the decision and the reason for it in the approved form; and
 - (b) inform the representative or primary carer of his or her right to apply to the Tribunal for a review of the decision; and
 - (c) make a record of the decision in accordance with approved procedures.
- (7) The consultation may be conducted by any of the following:
 - (a) the authorised psychiatric practitioner;
 - (b) a medical practitioner;
 - (c) the senior nurse on duty at the facility;
 - (d) the person's primary nurse;
 - (e) the person's psychiatric case manager;
 - (f) a staff member of the facility responsible for discharge planning.

- (8) The authorised psychiatric practitioner must make a record of information given by the practitioner under this section in accordance with approved procedures.
- (9) A person who conducts a consultation under this section must make a record of the consultation in accordance with approved procedures.

90 Information on discharge

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

91 Disclosure of information

- (1) Subject to subsection (2), a person must not engage in conduct that results in the disclosure of information contained in a record kept by an approved treatment facility or approved treatment agency that:
 - (a) identifies the fact that a person has been admitted to the facility or received treatment from the agency; or
 - (b) relates to the nature of, or other details relating to, the person's admission, treatment or management.

Maximum penalty: 40 penalty units.

- (2) Information referred to in subsection (1) may be disclosed:
 - (a) where it is necessary:
 - (i) to exercise a power or perform a function under an Act; or

- (ii) to give information expressly authorised to be disclosed under an Act; or
- (b) with the consent of:
 - (i) the person to whom the information relates; or
 - (ii) the person's adult guardian; or
 - (iia) if the person has a decision maker – the decision maker; or
 - (iii) if the person has died – the person's nominated next of kin, senior next of kin or the executor or administrator of the person's estate; or
- (c) if it is required in the course of criminal investigations or criminal proceedings; or
- (d) when it is required in the course of proceedings:
 - (i) relating to the guardianship of the person to whom the information relates; or
 - (ii) relating to the administration of property of the person to whom the information relates; or
 - (iii) under the *Advance Personal Planning Act* in relation to the person to whom the information relates; or
- (e) to the representative or primary carer of the person to whom the information relates if the disclosure:
 - (i) is relevant to the ongoing care, treatment or rehabilitation of the person; and
 - (ii) is considered to be in the person's best interests; or
- (f) to a police officer if:
 - (i) the person to whom the information relates is in a situation requiring immediate intervention; and
 - (ii) the person:
 - (A) is likely to cause serious harm to himself or herself or to someone else; or
 - (B) represents a substantial danger to the general community; and

- (iii) the information is relevant to the safe resolution of the situation; or
 - (g) to the Commissioner of Police , or a police officer nominated by the Commissioner for this paragraph, where the person disclosing the information reasonably believes that the person to whom the information relates may harm himself or herself or represents a danger to the general community; or
 - (ga) to a police officer for section 166B(2); or
 - (h) when it is required to prevent or lessen a serious or imminent threat to the life or health of the person, another person or the general community; or
 - (j) for the purposes of medical or social research where:
 - (i) the ethics committee nominated by the Chief Health Officer approves the methodology of the research; and
 - (ii) the disclosure is not likely to be detrimental to the interest of the person to whom the information relates; and
 - (iii) the identity of the person will be protected and not published; or
 - (k) in connection with the further treatment of a person with a mental illness; or
 - (m) to the Minister or the CEO; or
 - (n) if the Minister considers that disclosing the information is in the public interest or necessary to ensure the safety of the general community or a section of the general community.
- (3) The Minister must not disclose information under subsection (2)(n) unless he or she has received a recommendation from the CEO, the Chief Health Officer, the President of the Tribunal, the principal community visitor, the Ombudsman or the Commissioner for Health and Community Services Complaints to disclose the information.
- (4) Where a person is notified by an authorised psychiatric practitioner that the authorised psychiatric practitioner believes that the disclosure of information relating to another person could cause:
- (a) the person's health to deteriorate; or
 - (b) the person to become a danger to himself or herself or to other persons; or

- (c) a person referred to in the information may be adversely affected or endangered;

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

Maximum penalty for subsection (4): 40 penalty units.

92 Access to records

- (1) Each of the following may apply for access to information contained in records about a person that are kept by an approved treatment facility or approved treatment agency:
- (a) the person;
 - (b) the person's adult guardian;
 - (ba) if the person has a decision maker – the decision maker;
 - (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 application must be made in writing to an authorised psychiatric practitioner employed at the facility or agency.
- (3) The practitioner may give the applicant access to the information:
- (a) without conditions; or
 - (b) on the condition that the practitioner, or someone who is able to interpret the information, is present during the access.
- (4) The practitioner may refuse the application if the practitioner 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.

- (5) If the practitioner refuses the application because of subsection (4), the practitioner must as soon as possible:
 - (a) notify the following in writing of the decision:
 - (i) the applicant;
 - (ii) if the information relates to the applicant and the applicant has a representative – the representative; and
 - (b) inform the applicant of the applicant's right to apply to the Tribunal for a review of the decision.
- (6) If the applicant is not given access to the information or notified under subsection (5)(a) within 30 days after making the application, the practitioner is taken to have refused access to the information.

93 Disclosure to adult guardian, decision maker or representative

- (1) An authorised psychiatric practitioner who refuses a person access to information under section 92(4) may permit an adult guardian, decision maker or representative of the person to have access to the information where the disclosure is considered by the authorised psychiatric practitioner to be in the person's best interest and the information is disclosed in confidence.
- (2) As a condition for the access, the practitioner may require the adult guardian, decision maker or representative to give an undertaking not to disclose specified information.
- (3) A person who gives an undertaking under subsection (2) must not disclose to the person to whom the information relates, or to any other person, any information to which the undertaking relates.

Maximum penalty: 40 penalty units.

94 Inclusion of written comments into records

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

95 Letters and postal articles

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

- (a) that a person at the approved treatment facility is permitted to correspond, by post or otherwise, with persons outside the facility without interference or restriction; or
- (b) that a letter or other postal article that a person at the approved treatment facility wants posted is posted without being opened; or
- (c) that a letter or other postal article addressed to a person at the approved treatment facility is delivered to the person without being opened and is delivered as soon as reasonably practicable after it is received.

96 Access to telephone

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

97 Visitors

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

98 Restriction or denial of entitlement

- (1) An authorised psychiatric practitioner may order that a right of a person under section 95, 96 or 97 be restricted or denied if the authorised psychiatric practitioner reasonably believes that unless the right of the person is restricted or denied there is a serious likelihood of the person suffering serious physical or mental deterioration or that the safety or well-being of other persons, another person or the general community is at risk.
- (2) An authorised psychiatric practitioner must review an order made under this section at least once a day and may vary or revoke the order.
- (3) An order under this section lapses at the end of the day on which it is not reviewed.

- (4) An authorised psychiatric practitioner must make a record in the clinical record of the person when an order under this section is made and when the order is reviewed.
- (5) If a person in respect of whom an order under this section is made is an involuntary patient, the authorised psychiatric practitioner must:
 - (a) notify the following of the order being made:
 - (i) the Tribunal;
 - (ii) the person's adult guardian;
 - (iii) if the person has a decision maker – the decision maker;
and
 - (b) inform the person of the person's right to apply to the Tribunal for a review of the order.

99 Withholding of certain correspondence

- (1) Section 98 does not apply to a letter or other postal article:
 - (a) addressed to a person at an approved treatment facility from a person referred to in subsection (2); or
 - (b) addressed to a person referred to in subsection (2) from a person at an approved treatment facility.
- (2) The persons referred to are the following:
 - (a) the Minister;
 - (b) the CEO;
 - (c) a member of Parliament;
 - (d) the principal community visitor or a community visitor;
 - (e) the person-in-charge of the approved treatment facility;
 - (f) an authorised psychiatric practitioner;
 - (g) the Registrar or a Deputy Registrar of the Tribunal;
 - (h) a representative of the person;
 - (ha) the person's adult guardian;
 - (hb) if the person has a decision maker – the decision maker;

- (j) the Anti-Discrimination Commissioner;
- (k) the Commissioner for Health and Community Services Complaints.

Part 13 Internal complaints procedure

100 Internal complaints procedures

- (1) A person being treated at an approved treatment facility or by an approved treatment agency or his or her decision maker or representative, or a person with a genuine interest in that person, may make a complaint to the person-in-charge:
 - (a) relating to the failure of the approved treatment facility or approved treatment agency to recognise any right of the person under this Act; or
 - (b) relating to the administration of this Act that relates directly to the health interests and needs of the person.
- (2) The person-in-charge of an approved treatment facility or approved treatment agency must establish procedures, that are accessible, just and fair, to deal with complaints made under subsection (1).
- (3) The procedures referred to in subsection (2) are to aim:
 - (a) to investigate and, wherever possible, resolve complaints by a process within the approved treatment facility or approved treatment agency; and
 - (b) to promote improvements in the quality of the policies, procedures and services of the approved treatment facility or approved treatment agency.
- (4) The person-in-charge of an approved treatment facility or approved treatment agency must ensure that adequate information is included in the information given to a person under section 87 about:
 - (a) the complaints procedures of the facility or agency; and
 - (b) all other available complaints procedures that apply to the facility or agency.

- (5) The person-in-charge of an approved treatment facility or approved treatment agency must ensure that information, both oral and written, of the complaints procedures under this Act and advocacy services that are available is regularly given to each of the following:
- (a) a person being treated at the approved treatment facility or by the approved treatment agency;
 - (b) the person's adult guardian;
 - (ba) if the person has a decision maker – the decision maker;
 - (c) the person's representative;
 - (d) the person's primary carer.
- (6) The person-in-charge of an approved treatment facility or approved treatment agency must ensure that:
- (a) a person who makes a complaint:
 - (i) receives a written acknowledgment as soon as reasonably practicable after the complaint is made; and
 - (ii) is kept informed of the progress of any investigation or other action on the complaint at regular intervals; and
 - (b) if the person who made the complaint is not the person being treated, that person is also kept informed of the progress of any investigation or other action on the complaint at regular intervals.
- (7) The person-in-charge of an approved treatment facility or approved treatment agency must ensure that a full and accurate record of the nature of a complaint made under this section and any investigation or other action taken in relation to it is kept.
- (8) The person-in-charge of an approved treatment facility or approved treatment agency must:
- (a) maintain a register containing a brief record of all complaints made under this section; and
 - (b) ensure that the register is made available to a community visitor when requested.

- (8A) If, in the opinion of the person-in-charge of an approved treatment facility or approved treatment agency, a complaint made under this section is about a matter that could be the subject of a complaint under the *Children's Commissioner Act*, the person-in-charge:
- (a) may refer the complaint to the Children's Commissioner; or
 - (b) if the complaint is to be dealt with under this Act – must, as soon as practicable, give written notice about the complaint to the Children's Commissioner.
- (9) The person-in-charge of an approved treatment facility or approved treatment agency must forward to the CEO and the principal community visitor, at 6 monthly intervals, a report detailing the pattern of complaints made under this section during the period of the report and the changes, if any, made to prevent a recurrence of the activities that led to the complaints.
- (10) Where the person-in-charge of an approved treatment facility or an approved health care agency considers, after an investigation of a complaint under this section, that a person:
- (a) may have committed a criminal offence; or
 - (b) may have committed a breach of discipline, as defined in section 3(1) of the *Public Sector Employment and Management Act*, or
 - (c) may be guilty of professional misconduct;
- the person-in-charge must inform the CEO.
- (11) The CEO must immediately, on being informed:
- (a) under subsection (10)(a), notify a police officer; or
 - (b) under subsection (10)(b), take appropriate action under Part 8 of the *Public Sector Employment and Management Act*, or
 - (c) under subsection (10)(c), notify the relevant professional body.

Part 14 Community visitors

Division 1 Principal Community Visitor

101 Principal community visitor

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

- (2) The principal community visitor holds office for 3 years and is eligible to be reappointed.
- (3) The principal community visitor must have the qualifications determined by the Minister.

101A Resignation and termination of appointment – principal community visitor

- (1) A person appointed to be the principal community visitor may resign by written notice given to the Minister.
- (2) The Minister may terminate the appointment of the principal community visitor for inability, inefficiency, misbehaviour or physical or mental incapacity.
- (3) The Minister must terminate the appointment of the principal community visitor if the person appointed:
 - (a) ceases to hold a qualification that was a prerequisite for the appointment; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

102 Functions of principal community visitor

The functions of the principal community visitor are:

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

- (e) to ensure that each approved treatment facility and approved treatment agency is inspected by a community visitors panel at least once each 6 months.

Division 2 Community visitors

103 Community visitors

- (1) The Minister may appoint a person to be a community visitor.
- (2) A community visitor holds office for 3 years and is eligible for re-appointment.
- (3) A community visitor must have the qualifications determined by the Minister.

103A Resignation and termination of appointment – community visitor

- (1) A person appointed to be a community visitor may resign by written notice given to the Minister.
- (2) The Minister may terminate the appointment of a community visitor for inability, inefficiency, misbehaviour or physical or mental incapacity.
- (3) The Minister must terminate the appointment of a community visitor if the person appointed:
 - (a) ceases to hold a qualification that was a prerequisite for the appointment; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

103B Interim appointment of community visitor

- (1) The principal community visitor may make an interim appointment of a person as a community visitor for a period of 60 days.
- (2) The appointment ceases at the earliest of the following:
 - (a) when the period of 60 days ends;
 - (b) when the appointment is terminated under subsection (3);
 - (c) when the person is appointed to be a community visitor under section 103(1).

- (3) The principal community visitor may terminate the appointment before the period of 60 days ends.

104 Inquiry functions

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

105 Complaint functions

A community visitor is:

- (a) to be accessible to persons receiving treatment under this Act to hear any complaints that they may have and to resolve those complaints; and

- (b) to assist persons receiving treatment under this Act to make applications under this Act relating to complaints, reviews or appeals and, where appropriate, to present those applications.

106 Visiting duties

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

107 Powers of inspection

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

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

108 Requests to see community visitors

- (1) The person-in-charge of an approved treatment facility or approved treatment agency must ensure that a person receiving treatment or care at the facility or from the agency (and the person's representative and any decision maker or other person with a genuine interest in the person) is:
 - (a) informed of the person's right to be visited by a community visitor; and
 - (b) given written information, in a language appropriate to the person, on how to contact a community visitor.
- (2) A person who is receiving treatment or care at an approved treatment facility or from an approved treatment agency may request that he or she be visited by a community visitor.

- (3) The person-in-charge of an approved treatment facility or approved treatment agency must forward a request made under subsection (2) to the principal community visitor as soon as possible and, in any event, not later than 24 hours after it is made.
- (4) The principal community visitor must ensure that a community visitor contacts (including by telephone or email), or attempts to contact, the person before the end of the next working day after the request under subsection (3) is received by the principal community visitor.

109 Reports by community visitors

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

Division 3 Community visitors panels

110 Community visitors panels

- (1) A community visitors panel is to be established for each approved treatment facility.
- (2) A community visitors panel consists of:
 - (a) a legal practitioner; and
 - (b) a medical practitioner; and
 - (c) one other person;

appointed by the Minister.

- (3) A person appointed under subsection (2)(c) is to be a person who, in the opinion of the Minister, represents the interest of consumers of mental health services and has a special interest or expertise in mental illness or mental disturbance.
- (4) A community visitors panel is, so far as is practicable, to include persons of both sexes and of diverse ethnic backgrounds (including Aboriginal and Torres Strait Islander backgrounds).
- (5) The principal community visitor must appoint one member of the community visitors panel to be the Chairperson of the panel.
- (6) A member of a community visitors panel holds office for 3 years and is eligible for re-appointment.

110A Resignation and termination of appointment – member of community visitors panel

- (1) A person appointed to be a member of a community visitors panel may resign by written notice given to the Minister.
- (2) The Minister may terminate the appointment of a member of a community visitors panel for inability, inefficiency, misbehaviour or physical or mental incapacity.
- (3) The Minister must terminate the appointment of a member of a community visitors panel if the person appointed:
 - (a) ceases to hold a qualification that was a prerequisite for the appointment; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

110B Interim appointment of member of community visitors panel

- (1) The principal community visitor may make an interim appointment of a person as a member of a community visitors panel for a period of 60 days.
- (2) The appointment ceases at the earliest of the following:
 - (a) when the period of 60 days ends;
 - (b) when the appointment is terminated under subsection (3);

- (c) when the person is appointed to be a member of a community visitors panel under section 110(2).
- (3) The principal community visitor may terminate the appointment before the period of 60 days ends.

111 Duties of community visitors panels

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

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

112 Reports by community visitors panels

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

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

112A Special community visitors panels

- (1) The principal community visitor may establish a special community visitors panel to investigate and report on the overall operation of an approved treatment agency.
- (2) The members of the panel may visit places and make inquiries they believe are necessary to conduct the investigation.
- (3) The Chairperson of the panel must give the principal community visitor a report of the panel's investigation within the time specified by the principal community visitor.
- (4) The report must be in writing and include:
 - (a) details of the actions and inquiries taken by the panel; and
 - (b) the findings of the panel; and
 - (c) the recommendations of the panel.
- (5) The principal community visitor must:
 - (a) give a copy of the report to the person-in-charge of the approved treatment agency that is the subject of the investigation; and
 - (b) invite the person-in-charge to make any comments in response to the report within 28 days of receiving the report.
- (6) The principal community visitor may forward the report to the CEO if the principal community visitor believes the person-in-charge of the agency has not taken action to address, or provided reasonable responses to, matters raised in the report.
- (7) The principal community visitor may re-establish the panel if the principal community visitor believes further investigation of the agency is required.
- (8) Division 4 and section 110(2) to (5) apply to a special community visitors panel as if it were a community visitors panel.

Division 4 Miscellaneous

113 Assistance to be provided

- (1) The person-in-charge and each employee of an approved treatment facility must give reasonable assistance and cooperation to:
 - (a) a community visitor; and
 - (b) a member of the community visitors panel established for the facility.
- (2) The person-in-charge and each employee of an approved treatment agency must give reasonable assistance and cooperation to:
 - (a) a community visitor; and
 - (b) a member of a special community visitors panel established to investigate the agency.
- (3) In this section, a reference to reasonable assistance and cooperation to be given to a person is a reference to assistance and cooperation required to enable the person to perform the person's functions under this Act, and includes answering questions and responding to enquiries.

114 Eligibility

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

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

115 Annual report

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

116 Detection of offences

- (1) This section applies if a community visitor or member of a community visitors panel reasonably believes, in the course of an investigation or inspection under this Act, a person might have committed an offence against this Act or another Act.
- (2) The community visitor or member must:
 - (a) report the circumstances of the alleged offence to the principal community visitor; and
 - (b) take reasonable steps to preserve the evidence relating to the alleged offence; and
 - (c) not undertake any further investigation of the circumstances of the alleged offence.
- (3) If, after receiving the report, the principal community visitor considers the person might have committed an offence against this Act or another Act, the principal community visitor must:
 - (a) inform the CEO of the circumstances of the alleged offence; and
 - (b) inform the Chief Executive Officer of another agency as the principal community visitor considers appropriate.

117 Confidentiality

- (1) This section applies to each of the following persons who obtains information in the course of carrying out functions connected with the administration of this Act:
 - (a) the principal community visitor;
 - (b) a community visitor;
 - (c) a member of a community visitors panel;
 - (d) an employee of the Agency.
- (1A) A person to whom this section applies commits an offence if the person:
 - (a) makes a record of, or uses, the information; or
 - (b) engages in conduct that results in the disclosure of the information to someone else.

Maximum penalty: 40 penalty units.

- (2) However, subsection (1A) does not apply if the person makes the record, uses the information or engages in the conduct in accordance with a direction of the principal community visitor.

Part 15 Mental Health Review Tribunal

Division 1 Establishment of Tribunal

118 Mental Health Review Tribunal

- (1) The Mental Health Review Tribunal is established.
- (2) The Tribunal consists of persons appointed by the Administrator.
- (3) For subsection (2), one or more of each of the following persons must be appointed:
- (a) a person who is:
 - (i) a Local Court Judge; or
 - (ii) a judicial registrar of the Local Court; or
 - (iii) a lawyer with at least 5 years' experience as a legal practitioner;
 - (b) a medical practitioner;
 - (c) a person who has a special interest or expertise in mental illness, mental disturbance or complex cognitive impairment.
- (4) As far as is practicable, the Tribunal is to consist of persons of both sexes and from diverse backgrounds (including Aboriginal and Torres Strait Islander background).
- (5) The following persons cannot be appointed to the Tribunal:
- (a) a medical practitioner in charge of, or having principal responsibility for providing medical services at, the hospital;
 - (b) the principal community visitor;
 - (c) a community visitor;
 - (ca) a member of a community visitors panel;
 - (cb) a member of a special community visitors panel;
 - (d) a designated mental health practitioner;

- (e) an authorised psychiatric practitioner;
 - (f) the Chief Health Officer;
 - (g) the CEO;
 - (ga) an authorised officer;
 - (h) the person-in-charge of an approved mental health facility or approved treatment agency;
 - (j) an employee of the Health and Community Services Complaints Commission.
- (6) A member of the Tribunal holds office for 3 years and is eligible to be reappointed.
- (7) The Administrator must appoint a member of the Tribunal appointed in accordance with subsection (3)(a) to be the President of the Tribunal.
- (8) A member of the Tribunal appointed in accordance with subsection (3)(a) may exercise the powers or perform the functions of the President as and when directed by the President.
- (9) A reference to the President of the Tribunal includes a member of the Tribunal who is exercising a power or performing a function of the President in accordance with a direction under subsection (8).

119 Resignation and removal from office

- (1) A person appointed as a member of the Tribunal may resign by written notice to the Administrator.
- (2) The Administrator may terminate the appointment of a person as a member of the Tribunal for inability, inefficiency, misbehaviour or physical or mental incapacity.
- (3) The Administrator must terminate the appointment of a person as a member of the Tribunal if the person:
- (a) ceases to hold a qualification or status that was a pre requisite for his or her being appointed; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

120 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 is to be the President or a member appointed under section 118(3)(a); and
 - (b) one is to be a member appointed under section 118(3)(b); and
 - (c) one is to be a member appointed under section 118(3)(c).
- (3) The President may nominate more than one series of members under subsection (1) at any one time and the members nominated may exercise the powers and perform the functions of the Tribunal in respect of different matters at the same time.
- (4) Despite subsection (1), if the President is satisfied exceptional circumstances exist, the President may nominate 2 members of the Tribunal to exercise the powers and perform the functions of the Tribunal.
- (5) One of the persons nominated under subsection (4), must be the President or a member appointed under section 118(3)(a).

121 Registrar 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 are to be lodged with the Registrar or a Deputy Registrar.

Division 2 Reviews and other functions of Tribunal

122 Review of long term voluntary admissions

(1) The Tribunal must review the admission of a person as a voluntary patient where the person remains in the approved treatment facility for longer than 6 months and must continue to review the admission at intervals not longer than 6 months as long as the person remains admitted as a voluntary patient.

(1A) In addition, the Tribunal must review the admission of a person under section 27 as a voluntary patient on the application of an authorised psychiatric practitioner.

(2) Following a review, the Tribunal if it is satisfied:

(a) that the person is able to give informed consent – may confirm the admission of the person as a voluntary patient; or

(aa) that the person has an adult guardian or a decision maker, is willing to be admitted and does not fulfil the criteria for admission on the grounds of mental illness or mental disturbance – may confirm the admission of the person as a voluntary patient; or

(b) that the person fulfils the criteria for involuntary admission on the grounds of mental illness – may order that the person be detained as an involuntary patient on those grounds for not longer than 3 months and, where it does so, it must fix a date for the order to be again reviewed; or

(c) that the person fulfils the criteria for involuntary admission on the grounds of mental disturbance – may order that the person be detained as an involuntary patient on those grounds for not longer than 14 days and, where it does so, it must fix a date for the order to be again reviewed; or

(d) that the person fulfils the criteria for involuntary treatment or care in the community – may make a community management order in relation to the person.

(3) Following the review, if the Tribunal is not satisfied that the person:

(a) will benefit from continuing to be admitted as a voluntary patient; or

(b) fulfils a criteria referred to in subsection (2);

it must order that the person be discharged from the approved treatment facility.

- (4) Where the Tribunal makes an order under subsection (2)(b) or (c), it must authorise the treatment that may be administered to the person under the order.
- (5) An order under subsection (2)(b) ceases to have effect if the person for whom the order is made is discharged from the approved treatment facility under section 40(3).

123 Review of involuntary admissions and community management orders

- (1) The Tribunal must review a person's admission as an involuntary patient:
 - (a) for a patient other than one mentioned in paragraph (b) – within 14 days after the person's admission; or
 - (b) for a patient under a Tribunal order made on an application under Part 6, Division 4 – on the date stated in the order.
- (2) The Tribunal must review an interim community management order not later than 14 days after it is made.
- (3) The Tribunal must review an order made under subsection (5) by the date fixed under that subsection.
- (4) The Tribunal may review the admission of a person as an involuntary patient or an order made under this Act (other than under Part 10 or 16) for a person on being requested to do so by:
 - (a) the person; or
 - (b) someone who has a genuine interest in, or with a real and immediate concern for the health or welfare of, the person.
- (5) Following a review, the Tribunal if it is satisfied that:
 - (a) the person fulfils the criteria for admission on the grounds of mental illness, it may order that the person be detained as an involuntary patient on those grounds for not longer than 3 months and, where it does so, it must fix a date for the order to be again reviewed; or
 - (b) the person fulfils the criteria for admission on the grounds of mental disturbance, it may order that the person be detained as an involuntary patient on those grounds for not longer than 14 days and, where it does so, it must fix a date for the order to be again reviewed; or

- (ba) the person fulfils the criteria for involuntary admission on the grounds of complex cognitive impairment, it may order that the person continue to be detained as an involuntary patient on those grounds for not longer than 14 days; or
 - (c) the person fulfils the criteria for involuntary treatment or care in the community, it may make a community management order in relation to the person for not longer than 6 months and, where it does so, it must fix a date for the order to be reviewed again.
- (6) Where the Tribunal makes an order under subsection (5)(a), (b) or (ba), it must authorise the treatment that may be administered to the person under the order.
- (6A) An order under subsection (5)(a) ceases to have effect if the person for whom the order is made is discharged from the approved treatment facility under section 40(3).
- (6B) If the Tribunal makes an order under subsection (5)(ba):
- (a) the order ceases to have effect at the end of the period stated in it; and
 - (b) the Tribunal cannot further review the person's detention on the grounds of complex cognitive impairment.
- Note for subsection (6B)*
- However, the person may be detained as an involuntary patient on the grounds of mental illness or mental disturbance following assessment under Part 6, Division 2 or 3 if the person fulfils the criteria for involuntary admission on those grounds.*
- (7) Following the review, if the Tribunal is not satisfied that the person fulfils a criteria referred to in subsection (5), it must revoke the admission of the person as an involuntary patient or revoke the interim community management order or community management order, as the case may be.
- (8) Where the Tribunal revokes the admission of the person as an involuntary patient it must order that the person:
- (a) be immediately discharged from the approved treatment facility; or
 - (b) be discharged when arrangements are made for the care of the person on his or her discharge.
- (9) A person must be discharged from an approved treatment facility not later than 7 days after an order under subsection (8)(b) is made.

- (10) A review is not required to be conducted where the admission of the person is revoked under section 40.
- (11) A community management order made under subsection (5)(c):
 - (a) remains in force for the period, not longer than 6 months, as determined by the Tribunal; and
 - (b) may be extended for periods of not longer than 6 months after considering an application made by an authorised psychiatric practitioner before the order expires.
- (12) Following a review, the Tribunal may vary a community management order where it is satisfied that there is a significant change in the condition of the person who is subject to the order.

125 Review of reports

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

126 Determination as to whether person able to give informed consent

The Tribunal:

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

127 Application for review

- (1) An application may be made to the Tribunal for a review of:
 - (a) a decision of a medical practitioner under section 25(8) to refuse to admit a person as a voluntary patient; or

- (b) a decision of an authorised psychiatric practitioner under:
 - (i) section 25(8) to refuse to confirm the admission of a person as a voluntary patient; or
 - (ii) under section 27 to admit or refuse to admit a person as a voluntary patient; or
 - (iii) section 39(3)(a) to detain a person at an approved treatment facility for a further period of up to 14 days; or
 - (iv) section 42(2) to detain a person at an approved treatment facility for a further period of up to 7 days; or
 - (v) section 47(2) not to notify a person's primary carer that an interim community management order has been made for the person; or
 - (vi) section 88(3) not to allow the giving of information concerning treatment of a person to the person's representative or primary carer; or
 - (vii) section 89(5) not to allow consultation with, or the giving of information concerning the details of a discharge plan to, a person's representative or primary carer; or
 - (viii) section 92(4) to refuse an application for access to information in a person's records kept by an approved treatment facility or approved treatment agency; or
 - (c) an order of an authorised psychiatric practitioner under section 98(1) restricting or denying a person's right.
- (2) An application may be made to the Tribunal for a review of the decision of the person-in-charge of an approved treatment facility under section 167(1) to transfer a person to another facility.
- (3) An application under subsection (1) may be made:
- (a) by the person who is the subject of the decision or order; or
 - (b) on the person's behalf, by any of the following:
 - (i) the person's adult guardian;
 - (ia) if the person has a decision maker – the decision maker;
 - (ii) the person's representative;
 - (iii) a legal practitioner;

- (iv) a person with a genuine interest in, or with a real and immediate concern for the health or welfare of, the person.
- (4) An application under this section is to be in the approved form and lodged with the Tribunal.
- (5) Following a review in relation to an application made under subsection (1), the Tribunal may:
 - (a) affirm, vary or set aside the decision or order; or
 - (b) make any decision or order that the medical practitioner or authorised psychiatric practitioner may have made; or
 - (c) refer the matter back to the medical practitioner or authorised psychiatric practitioner for further consideration; or
 - (d) make any other order it thinks fit.
- (6) Following review in relation to an application made under subsection (2), the Tribunal may:
 - (a) affirm, vary or set aside the decision; or
 - (b) make any other order it thinks fit.
- (7) If a person had been transferred to another approved treatment facility, the person must be returned to the approved treatment facility from which the person was transferred if the Tribunal sets aside a decision under subsection (6).

128 Limitation of further reviews

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

Division 3 Proceedings before Tribunal

129 Hearings

- (1) The Tribunal may undertake a review by conducting a hearing.
- (1A) In addition, the Tribunal must conduct a hearing to decide an application under Part 6, Division 4, for an order for a person's admission and detention as an involuntary patient on the grounds of complex cognitive impairment (an ***involuntary detention application***).

- (2) The hearing must be conducted in the manner decided by the Tribunal.
- (2A) The Tribunal may issue practice directions, not inconsistent with this Act, for regulating its practices and procedures.
- (3) All questions of laws arising at a hearing are to be determined by the President.
- (4) The Tribunal may:
 - (a) summon a person to appear before it; and
 - (b) order reports to be prepared and presented to it; and
 - (c) appoint persons to assist it so that it may inform itself on any matter it thinks fit.
- (5) The Tribunal may adjourn a hearing.
- (5A) An order that is in force at the adjournment of a hearing remains in force during the adjournment despite any earlier date that was fixed for its expiry.
- (6) The person-in-charge of an approved treatment facility must ensure, as far as is reasonably practicable, that a person who is admitted as an involuntary patient at the facility is dressed in a manner that maintains his or her inherent dignity as a human being when the person appears at a hearing of the Tribunal.

130 Matters to be considered by Tribunal

- (1) In undertaking a review or deciding an involuntary detention application for a person, the Tribunal must consider the person's:
 - (a) current state in relation to the criteria for involuntary admission on the grounds of mental illness, mental disturbance or complex cognitive impairment; and
 - (b) medical and psychiatric history and current social circumstances.
- (2) In determining whether a person has a mental illness, mental disturbance or complex cognitive impairment, the Tribunal must give due regard to:
 - (a) any cultural factors relating to the person that may be relevant to the determination; and

- (b) any evidence given to the Tribunal by an expert witness concerning the person's cultural background and its relevance to any question of mental illness, mental disturbance or complex cognitive impairment.

131 Right of appearance and representation

- (1) A person who is the subject of a review or involuntary detention application:
 - (a) may represent himself or herself; or
 - (b) may be represented by a legal practitioner or other person.
- (2) The Tribunal must appoint a legal practitioner to represent the person if:
 - (a) the person is unrepresented at the hearing; and
 - (b) the Tribunal considers the person should be represented at the hearing.
- (3) Subsection (2) has effect despite any objections of the person.
- (4) If the Tribunal appoints a legal practitioner under subsection (2), the Tribunal may order the Territory to pay all or part of the reasonable costs and disbursements of the legal practitioner in representing the person at the hearing.
- (5) The Tribunal may conduct the hearing in the absence of the person or the person's representative if all of the following apply:
 - (a) reasonable notice of the hearing was given to the person or representative;
 - (b) the person or representative had a reasonable opportunity to attend the hearing;
 - (c) the person or representative refuses to attend the hearing.
- (6) The Tribunal may conduct the hearing in the absence of the person if:
 - (a) in the opinion of the Tribunal, there are exceptional circumstances that make the attendance of the person inappropriate; and
 - (b) the person's representative is given notice of the hearing and has a reasonable opportunity to attend the hearing.

- (7) The Tribunal must notify a person who is the subject of a review or involuntary detention application of its decision as soon as practicable after the decision is made if the hearing was conducted in the absence of the person or the person's representative.

132 Access to medical records

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

Maximum penalty for subsection (5): 40 penalty units.

133 Evidence

- (1) A person who is the subject of a review or involuntary detention application, or his or her representative, may at a hearing:
 - (a) call and produce evidence, including reports from medical practitioners, psychologists and persons having particular expertise considered by the Tribunal to be relevant to the issues to be determined by it; and
 - (b) request that a person attend the hearing to give evidence.
- (2) The Tribunal may refuse a request under subsection (1)(b) if satisfied that the attendance of the person may cause serious harm to the health of the person who is the subject of the review or application or that the safety of other persons may be placed at risk.
- (3) The Tribunal is not required to comply with the rules of evidence and may inform itself of any relevant matter in any way it considers appropriate.

134 Interpreter

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

135 Hearing not open to public

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

- (3) A direction under subsection (1) may be made on the Tribunal's own initiative or on the application of the person who is the subject of the review or involuntary detention application.

135A Contempt of Tribunal

A person must not:

- (a) threaten, intimidate or insult 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 the member; or
- (b) interrupt, obstruct or hinder a proceeding of the Tribunal; or
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting.

Maximum penalty: 20 penalty units or imprisonment for
6 months.

136 Record of proceedings

- (1) The Tribunal must:
- (a) make a record of all its proceedings in the form of a recording of sound, or sound and pictures, by electronic means; and
 - (b) retain the record for 12 months.
- (2) Subject to subsection (3), if a person who is the subject of a review by the Tribunal or involuntary detention application requests a copy of the record made under subsection (1), the Tribunal must give the person a copy of the record at no cost.
- (3) The Tribunal may refuse to provide a person who is the subject of a review by the Tribunal or involuntary detention application with a copy of the record, or a part of the record, made under subsection (1) where it is satisfied that to do so may cause serious harm to the health of the person or may put at risk the safety of other persons.
- (4) A Tribunal may order that only the adult guardian, decision maker or representative of a person who is the subject of a review by the Tribunal or involuntary detention application be provided with a copy of the record, or a part of the record, made under subsection (1).

- (5) The Tribunal may require that the adult guardian, decision maker or representative give an undertaking that he or she will not disclose specified information in the record before providing the adult guardian, decision maker or representative with a copy of the record or a part of the record.
- (6) A person who gives an undertaking under subsection (5) must not disclose to the person to whom the information relates, or to any other person, any information to which the undertaking relates.

Maximum penalty for subsection (6): 40 penalty units.

Division 4 Miscellaneous

137 Evidence not admissible in other proceedings

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

138 Publication of identifying information

- (1) A person commits an offence if:
- (a) the person publishes:
 - (i) the name of another person; or
 - (ii) information that results in the identification of another person; and
 - (b) the other person is the subject of a review or involuntary detention application.

Maximum penalty: 40 penalty units.

- (2) Subsection (1) does not apply if the publication is made:
- (a) in an official report made for this Act; or
 - (b) with the approval of the Tribunal or other person.
- (3) In this section:

publish includes broadcast.

139 Confidentiality of information – Tribunal members, staff and authorised officers

- (1) This section applies to a person who is or has been:
- (a) a member of the Tribunal; or

- (b) the Registrar or a Deputy Registrar of the Tribunal; or
 - (c) a person employed to provide administrative support to the Tribunal; or
 - (d) an authorised officer.
- (2) A person to whom this section applies commits an offence if:
- (a) the person obtains information in the course of carrying out functions connected with the administration of this Act; and
 - (b) the person:
 - (i) makes a record of, or uses, the information; or
 - (ii) engages in conduct that results in the disclosure of the information to someone else.

Maximum penalty: 40 penalty units.

Note for section 139

Under section 43BE of the Criminal Code, a person is not criminally responsible for an offence if the conduct constituting the offence is justified or excused by or under a law.

140 Annual report

- (1) The President of the Tribunal must provide the Minister with a report on the exercise of the Tribunal's powers and the performance of the Tribunal's functions during each financial year not later than 3 months after the end of the financial year.
- (2) The Minister must lay a copy of the report before the Legislative Assembly not later than 6 sitting days after receiving it.

141 Reports of reasons given by Tribunal for its decisions

- (1) The President of the Tribunal may prepare and publish reports of the reasons for its decisions.
- (2) A report under subsection (1) must not include the name of the person who is the subject of the decision or any other material that may disclose the identity of the person.
- (3) The President of the Tribunal must only publish a report of the reasons for its decision after giving due consideration to the wishes of the person who is the subject of the decision and if satisfied that:
 - (a) the privacy of the parties to the review or involuntary detention application will not be adversely affected; and

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

Part 16 Appeal to Supreme Court

142 Appeal to Supreme Court

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

143 Determination of appeal

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

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

144 Right of appearance and representation

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

- (2) The Supreme Court may:
 - (a) appoint a legal practitioner to represent a person at the appeal where the person is not represented; and
 - (b) order that the Territory pay all or part of the reasonable costs and disbursements of the legal practitioner in representing the person at the appeal.
- (3) The Supreme Court may hear an appeal in the absence of the person or the person's representative if all of the following apply:
 - (a) reasonable notice of the appeal was given to the person or representative;
 - (b) the person or representative had a reasonable opportunity to attend the appeal;
 - (c) the person or representative refuses to attend the appeal.
- (3A) The Court may hear the appeal in the absence of the person if:
 - (a) in the opinion of the Court, there are exceptional circumstances that make the attendance of the person inappropriate; and
 - (b) the person's representative is given notice of the appeal and has a reasonable opportunity to attend the appeal.
- (4) The Supreme Court must notify a person who is the subject of an appeal of its decision as soon as practicable after the appeal is concluded where it is conducted in the absence of the person or his or her representative.

Part 17 Approved Procedures and Quality Assurance Committee

145 Approved Procedures and Quality Assurance Committee

- (1) The Minister may, by *Gazette* notice, declare a committee established by the Agency to be the Approved Procedures and Quality Assurance Committee.
- (2) The functions of the Committee are:
 - (a) to monitor and review the approved procedures and forms and, where appropriate, recommend amendments to them; and

- (b) to assess and evaluate the quality of mental health services, including clinical practices and privileges, and, where appropriate, recommend changes to them.

146 Restrictions on Committee

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

147 Confidentiality of information – Committee members

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

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

Maximum penalty: 40 penalty units.

148 Finding not evidence of certain matters

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

149 Information not to be given in evidence

- (1) A person who is, or has been, a member of the Committee is neither competent nor compellable:
 - (a) to produce to a court, tribunal, board or person any document in the person's possession or under the person's control that was created by, at the request of or solely for the purpose of the Committee; or
 - (b) disclose or communicate to a court, tribunal, board or person any matter or thing that comes to the person's notice as a member of the Committee.

- (2) Subsection (1) does not apply to a requirement made in proceedings in respect of an act or omission by:
- (a) the Committee; or
 - (b) a member of the Committee as a member.

Part 18 Interstate orders

Division 1 Interstate mental health orders

150 Interstate mental health orders

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

- (6) On being satisfied as to the matters referred to in subsection (4) the Tribunal may:
- (a) in respect of an interstate mental health order referred to in subsection (1)(a), order that the person be detained in an approved treatment facility and, where it does so, it must fix a period within which the order is to be reviewed; or
 - (b) in respect of an interstate mental health order referred to in subsection (1)(b), make a community management order in respect of the person.
- (7) For this section, the Tribunal may be constituted by the President.
- (8) Subject to this Act, an order under this section remains in force for the period the interstate mental health order remains in force.

Division 2 Interstate transfer orders

151 Definitions

In this Division:

corresponding law means a law prescribed by regulation for this definition.

interstate transfer order means an order made under section 154.

mental health order means:

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

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

153 Intergovernmental agreements

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

154 Interstate transfer orders

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

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

155 Powers of person responsible for transfer

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

156 CEO may consent to transfer

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

157 Transfer through Territory

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

158 Registration of corresponding interstate transfer orders

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

Part 19 Miscellaneous**159 Amendment of documents**

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

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- (4) The Tribunal or Supreme Court may amend a document relating to the admission of a person to an approved treatment facility as an involuntary patient where, in proceedings before the Tribunal or Supreme Court, it appears that the document is incorrect or defective in any respect.
 - (5) A document amended by the Tribunal or Supreme Court is as valid and effective as if it had been made in its amended form on the date it was signed.

160 Documents relating to examination, admission and treatment

- (1) A person must not sign a relevant document relating to another person unless:
 - (a) the person has seen, and personally examined, the other person; or
 - (b) the signing of the document is:
 - (i) in accordance with approved procedures; or
 - (ii) otherwise permitted under this Act.

Maximum penalty: 40 penalty units.

- (2) A person must not sign a relevant document relating to another person unless the document:
 - (a) specifies the facts on which the opinion is based that the other person has a mental illness, mental disturbance or complex cognitive impairment; and
 - (b) distinguishes the facts that were observed by the person from the facts communicated to the person.

Maximum penalty: 40 penalty units.

- (3) A person must not make a statement in a relevant document relating to another person knowing the statement is misleading.

Maximum penalty: 40 penalty units.

- (4) In this section:

misleading, in relation to a statement, means the statement is misleading in a material particular or is misleading because of the omission of a material particular.

relevant document, for a person, means:

- (a) a recommendation for psychiatric examination of the person;
or
- (b) another document relating to the person's admission to an approved treatment facility or treatment under this Act.

161 Persons prohibited from signing recommendation or certificate

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

162 Offences in relation to recommendations or certificates

- (1) A person must not sign a recommendation for psychiatric examination or a document relating to the admission of a person to an approved treatment facility or the treatment of a person under this Act unless that person is permitted by this Act to sign it.

Maximum penalty: 40 penalty units.

- (2) A person commits an offence if the person:
 - (a) does anything with the intention that another person:
 - (i) is admitted to an approved treatment facility; or
 - (ii) is treated at an approved treatment facility or by an approved treatment agency; and
 - (b) knows the other person does not have a mental illness, mental disturbance or complex cognitive impairment.

Maximum penalty: 40 penalty units.

164 Immunity from suit

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

165 Reasonable force may be used

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

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

166 Leave of absence

(1) This section applies to a person who:

- (a) is admitted to an approved treatment facility as an involuntary patient; and
- (b) is not a prisoner.

Note for subsection (1)

Section 83 provides for the granting of leave of absence to a prisoner.

- (2) An authorised psychiatric practitioner may grant the person leave of absence from the facility.
- (3) Leave of absence:
 - (a) must not be granted except in accordance with approved procedures; and
 - (b) must be recorded in the approved form; and
 - (c) is subject to the conditions determined by the practitioner.
- (4) An authorised psychiatric practitioner may cancel the leave if satisfied, on reasonable grounds:
 - (a) the person is likely to suffer from serious mental or physical deterioration as a result of a change in the person's mental state; or
 - (b) the person is likely to cause harm to himself or herself or to someone else; or
 - (c) the person has failed to comply with a condition of the leave.
- (5) The practitioner who cancels the leave must take all reasonable steps to inform the person or the person's representative that the leave has been cancelled.

166A Person absent without approval

- (1) This section applies to a person who is admitted to an approved treatment facility under Part 5 or 6 if:
- (a) the person is absent from the facility without leave granted under section 166(1); or
 - (b) the person has been granted leave under section 166(1) and any of the following occurs:
 - (i) the person fails to return to the facility by the end of the leave;
 - (ii) the leave is cancelled;
 - (iii) the person fails to comply with a condition of the leave.

Note for subsection (1)

Section 83A applies to a prisoner who is absent from an approved treatment facility.

- (2) A police officer or person authorised by an authorised psychiatric practitioner may:
- (a) apprehend the person; and
 - (b) return the person to the facility.
- (3) Reasonable force and assistance may be used for subsection (2).
- (4) For subsection (2), a police officer may enter private premises or any other private place where the police officer reasonably believes the person may be found.
- (5) The person-in-charge of the approved treatment facility must ensure the following are notified of the person's absence:
- (a) the person's adult guardian;
 - (aa) if the person has a decision maker – the decision maker;
 - (b) the person's representative;
 - (c) the person's primary carer;
 - (d) the Tribunal.
- (6) As soon as practicable after the person is found, the person-in-charge must ensure anyone notified under subsection (5) is notified that the person has been found.

- (7) A notification under this section may be given by the person-in-charge, an authorised psychiatric practitioner, a medical practitioner, the senior nurse on duty at the facility, the person's primary nurse or psychiatric case manager.
- (8) A person who gives a notification under subsection (5) must make a record of the notification in accordance with approved procedures.

166B Missing patients

- (1) This section applies if:
 - (a) a person admitted to an approved treatment facility is missing; or
 - (b) a person for whom a community management order has been made is missing.
- (2) The person-in-charge of the approved treatment facility mentioned in subsection (1)(a) or the approved treatment agency administering the order mentioned in subsection (1)(b) must report the person as missing to a police officer as soon as possible.
- (3) The report must be:
 - (a) accompanied by sufficient information about the person's history to enable an assessment of the risk posed by the person and the person's vulnerability to be made; and
 - (b) in the approved form.

167 Transfer of involuntary patients

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

- (2) If the person is transferred to another approved treatment facility, the person-in-charge of the facility from which the person is transferred must ensure:
 - (a) all documents relating to the admission and future treatment of the person are forwarded to the other facility at the time of the transfer; and
 - (b) the person is advised of the person's right to apply to the Tribunal for a review of the decision to transfer the person to the other facility.

168 Financial protection order

- (1) This section applies if the person-in-charge of an approved treatment agency is satisfied, after receiving a report from a designated mental health practitioner and an authorised psychiatric practitioner:
 - (a) a person admitted as an involuntary patient to an approved treatment facility for which the agency is responsible is unable to exercise effective control over the person's financial affairs; and
 - (b) there is an imminent danger to the person's financial affairs if a financial order is not made for the person.
- (2) The person-in-charge must make a financial protection order for the person.
- (3) The order authorises the person-in-charge to take any necessary action to protect the person from any neglect, abuse or exploitation of the person's financial affairs.
- (4) The order remains in force for the period, not longer than 14 days, specified in the order.
- (5) However, before the expiry of the order, the person-in-charge may extend the order once by a further period of not longer than 14 days.
- (6) The person-in-charge must:
 - (a) maintain records of all actions taken under the financial protection order (including the order as extended under subsection (5)); and
 - (b) ensure the records are in the approved form and comply with approved procedures; and

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- (c) make the records available for inspection by the Tribunal or a community visitor.
- (7) Before the expiry of the order, or the order as extended, the person-in-charge must:
- (a) if satisfied the person no longer fulfils the criteria specified in subsection (1) – revoke the order; or
 - (b) otherwise – instigate ongoing arrangements for the financial protection of the person in accordance with approved procedures.

168A Notification of financial protection order

- (1) No later than one day after making a financial protection order for a person, the person-in-charge of an approved treatment agency must:
- (a) notify the Tribunal that the order has been made; and
 - (b) ensure the following are notified:
 - (i) the person;
 - (ia) if the person has a decision maker – the decision maker;
 - (ii) a legal practitioner acting or prepared to act for the person;
 - (iii) subject to subsection (2) – the person's primary carer;
 - (iv) the principal community visitor.
- (2) The person-in-charge, after consulting with an authorised psychiatric practitioner, may decide not to notify the person's primary carer if the person-in-charge is of the opinion that giving the notification is not in the person's best interests.
- (3) If the person-in-charge decides not to notify the primary carer because of subsection (2), the person-in-charge must give to the Tribunal a written report of the decision and the reason for it in the approved form.
- (4) A notification under subsection (1)(b):
- (a) may be given by an authorised psychiatric practitioner, a medical practitioner or the senior nurse on duty at the approved treatment facility to which the person has been admitted; and

- (b) must:
 - (i) state the grounds for the order; and
 - (ii) specify that the order has been made under section 168(2).
- (5) The notification may be given orally or in writing but must be in a language that can be understood by the receiver of the notification.
- (6) A person must make a record of each of the following in accordance with approved procedures:
 - (a) a notification under subsection (1);
 - (b) a decision under subsection (2) not to notify the primary carer and the reasons for it.

168B Requirement to ascertain if patient has decision maker

- (1) This section applies if an authorised psychiatric practitioner treating a person who is a patient in an approved treatment facility or who is subject to a community management order is of the opinion that the person has impaired decision-making capacity for matters relating to his or her treatment and care under this Act.
- (2) The authorised psychiatric practitioner must take reasonable steps to ascertain:
 - (a) whether the patient has made any advance consent decisions that are relevant to his or her treatment under this Act; and
 - (b) whether the patient has a decision maker and, if so, his or her contact details.
- (3) It is sufficient compliance with subsection (2) if the authorised psychiatric practitioner informs the person-in-charge of the approved treatment facility or approved treatment agency at which the patient is being treated of the practitioner's opinion and that person takes the steps required by subsection (2).

168C Notifying decision makers

- (1) If a person (**person A**) is required by a provision of this Act to notify or inform a patient's decision maker about a matter, it is sufficient compliance with the provision if person A takes reasonable steps to notify or inform each known decision maker for the patient.

- (2) For subsection (1), a decision-maker for a patient is **known** if either of the following is aware that the person is a decision maker for the patient:
- (a) person A;
 - (b) the person-in-charge of the approved treatment facility or approved treatment agency at which the patient is being treated.

169 Private patients

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

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

170 Regulations

The Administrator may make regulations under this Act.

Part 20 Repeals and transitional matters for Mental Health and Related Services Act 1998

171 Repeal

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

172 Savings and transitional

- (1) In this section, **repealed Act** means the Act repealed by section 171.

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

Part 21 Transitional matters for Mental Health and Related Services Amendment Act 2007

173 Definitions

In this Part:

commencement means the commencement of *Mental Health and Related Services Amendment Act 2007*.

former Act means the *Mental Health and Related Services Act* as in force immediately before the commencement.

174 Reviews and appeals

- (1) The former Act continues to apply in relation to a review undertaken, or an appeal heard, by the Tribunal that commenced before the commencement.
- (2) Subsection (1) does not limit section 12 of the *Interpretation Act*.

175 Actions taken under former Act

Each of the following has effect as if it had been done under this Act as in force on the commencement:

- (a) a detention in force immediately before the commencement under section 34(3)(d), 39(1)(a) or (b) or (3)(a) or 42(1) or (2);

- (b) an interim community management order in force immediately before the commencement under section 45(1);
- (c) an appointment of a community visitor in force immediately before the commencement under section 103(1);
- (d) an appointment of a member of a community visitors panel in force immediately before the commencement under section 110(2);
- (e) an order of the Tribunal in force immediately before the commencement under section 122(2) or 123(5).

176 Transitional provisions for Part 10

- (1) A report prepared for the court under section 74(1) of the former Act is taken to have been prepared for the court under section 74A.
- (2) An order of the court under section 74(1)(d) of the former Act in force immediately before the commencement has effect as if it were an order under section 74A(2)(b).
- (3) An order of the court under section 75(1)(d) of the former Act in force immediately before the commencement has effect as if it were an order under section 75(2)(b).

177 Admission of prisoners

- (1) A prisoner detained at an approved treatment facility following admission as a voluntary patient under section 81(1) of the former Act is taken to have been admitted under section 80.
- (2) A prisoner detained at an approved treatment facility following admission as an involuntary patient under section 82(1) of the former Act is taken to have been admitted under section 81.

178 Transfer of prisoners

- (1) The transfer of a prisoner to an approved treatment facility under section 81(1) of the former Act is taken to be a transfer permitted by the Director of Correctional Services under section 80(9).
- (2) The transfer of a prisoner to an approved treatment facility under section 82(1) of the former Act is taken to be a transfer permitted by the Director of Correctional Services under section 81(4).

179 Corresponding laws

A law declared to be a corresponding law under section 152(1) of the former Act is taken to have been prescribed by regulation as a corresponding law.

ENDNOTES

1

KEY

Key to abbreviations

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

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

2

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

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

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

Assent date 22 March 2001
 Commenced 22 March 2001

Statute Law Revision Act 2002 (Act No. 18, 2002)

Assent date 7 June 2002
 Commenced 7 June 2002

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)

Assent date 7 January 2004
 Commenced 17 March 2004 (*Gaz G11*, 17 March 2004, p 8)

Statute Law Revision Act 2004 (Act No. 18, 2004)

Assent date 15 March 2004
 Commenced 15 March 2004 (s 2(3))

Statute Law Revision Act 2005 (Act No. 44, 2005)

Assent date 14 December 2005
 Commenced 14 December 2005

Mental Health and Related Services Amendment Act 2007 (Act No. 8, 2007)

Assent date 17 May 2007
 Commenced 2 March 2009 (*Gaz S7*, 24 February 2009)

Care and Protection of Children Act 2007 (Act No. 37, 2007)

Assent date 12 December 2007
Commenced Ch 1 and pts 3.3 and 5.1: 7 May 2008 (Gaz G18, 7 May 2008, p 4); Ch 2 (exc pt 2.1, div 6 and s 127), Ch 3, pts 3.1 and 3.2 (exc s 187) and Ch 5, pts 5.2 to 5.6: 8 December 2008 (Gaz G47, 26 November 2008, p 6); Ch 4: 9 June 2009 (Gaz S27, 1 June 2009); Ch 2, pt 2.1, div 6: 18 August 2010 (Gaz S43, 18 August 2010); s 187: 1 July 2011 (Gaz S32, 20 June 2011); s 127: nc

Ombudsman Act 2009 (Act No. 5, 2009)

Assent date 12 March 2009
Commenced 1 July 2009 (Gaz G21, 27 May 2009, p 5)

Hospital Boards Act 2009 (Act No. 30, 2009)

Assent date 11 November 2009
Commenced 1 February 2010 (Gaz G3, 20 January 2010, p 4)

Health Practitioner (National Uniform Legislation) Implementation Act 2010 (Act No. 18, 2010)

Assent date 20 May 2010
Commenced 1 July 2010 (s 2)

Public and Environmental Health Act 2011 (Act No. 7, 2011)

Assent date 16 March 2011
Commenced 1 July 2011 (Gaz S28, 3 June 2011)

Care and Protection of Children (Children's Commissioner) Amendment Act 2011 (Act No. 9, 2011)

Assent date 18 April 2011
Commenced 1 July 2011 (Gaz S32, 20 June 2011)

Public Sector Employment and Management Amendment Act 2011 (Act No. 29, 2011)

Assent date 31 August 2011
Commenced 1 January 2012 (Gaz S73, 20 December 2011, p 2)

Mental Health and Related Services Amendment Act 2012 (Act No. 3, 2012)

Assent date 21 March 2012
Commenced 22 October 2012 (Gaz S62, 19 October 2012)

Disability Services Amendment Act 2012 (Act No. 11, 2012)

Assent date 27 April 2012
Commenced 20 August 2012 (Gaz G31, 1 August 2012, p 4)

Health Practitioner (National Uniform Legislation) Implementation Act 2012 (Act No. 17, 2012)

Assent date 22 May 2012
Commenced 1 July 2012 (s 2)

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

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

Children's Commissioner Act 2013 (Act No. 33, 2013)

Assent date 18 December 2013
Commenced 1 January 2014 (Gaz S72, 23 December 2013)

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)

Mental Health and Related Services Amendment Act 2014 (Act No. 5, 2014)

Assent date 20 March 2014
 Commenced 20 March 2014

Correctional Services (Related and Consequential Amendments) Act 2014 (Act No. 27, 2014)

Assent date 4 September 2014
 Commenced 9 September 2014 (*Gaz S80*, 9 September 2014, p 2)

Statute Law Revision Act 2014 (Act No. 38, 2014)

Assent date 13 November 2014
 Commenced 13 November 2014

Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)

Assent date 6 April 2016
 Commenced 1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz S34*, 29 April 2016)

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- s 3 amd No. 8, 2007, s 4; No. 3, 2012, s 43
- s 4 amd No. 1, 2004, s 62; No. 44, 2005, ss 22 and 35; No. 8, 2007, s 5; No. 5, 2009, s 179; No. 18, 2010, s 52; No. 7, 2011, s 140; No. 17, 2012, s 55; No. 3, 2012, s 4; No. 36, 2013, s 82; No. 27, 2014, s 57
- s 6 amd No. 8, 2007, s 6; No. 3, 2012, s 43
- s 6A ins No. 3, 2012, s 5
- s 7 amd No. 3, 2012, s 43
- s 7A ins No. 8, 2007, s 7
- s 8 amd No. 3, 2012, s 43
- s 8AA ins No. 11, 2012, s 10
- s 8A ins No. 3, 2012, s 6
- s 9 amd No. 8, 2007, s 8; No. 3, 2012, s 43
- s 10 amd No. 3, 2012, s 43
- s 11 amd No. 17, 2012, s 55
- s 12 amd No. 8, 2007, s 9
- s 13 amd No. 8, 2007, s 10; No. 3, 2012, s 43
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- s 14 amd No. 8, 2007, s 12; No. 3, 2012, s 43
- s 15 amd No. 3, 2001, s 8; No. 8, 2007, s 13; No. 3, 2012, s 43
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- s 20 amd No. 3, 2012, s 43
- s 21 amd No. 8, 2007, s 18
- s 22 amd No. 8, 2007, s 19; No. 3, 2012, s 9
- s 23 amd No. 18, 2002, s 6; No. 44, 2005, s 22; No. 8, 2007, s 20; No. 18, 2010, s 53; No. 17, 2012, s 55; No. 3, 2012, s 43
- s 23A ins No. 3, 2012, s 10

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