

NORTHERN TERRITORY OF AUSTRALIA
MENTAL HEALTH AND RELATED SERVICES AMENDMENT ACT 2007

Act No. 8 of 2007

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

Act No. 8 of 2007

AN ACT

to amend the *Mental Health and Related Services Act*

[Assented to 17 May 2007]

[Second reading 22 February 2007]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Mental Health and Related Services Amendment Act 2007*.

2. Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3. Act amended

This Act amends the *Mental Health and Related Services Act*.

4. Amendment of section 3 (Objects)

Section 3(k)

omit

and to hear appeals

5. Amendment of section 4 (Definitions)

- (1) Section 4, definitions "ambulance officer", "imminent", "primary care provider" and "Secretary"

omit

- (2) Section 4

insert (in alphabetical order)

"adult guardian" means a guardian as defined in section 3(1) of the *Adult Guardianship 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 ambulance service" means an ambulance service approved by the CEO;

"CEO" means the Chief Executive Officer;

"community" includes a prison as defined in section 5 of the *Prisons (Correctional Services) Act*;

"community management order", see section 123(5)(c);

"community visitor", see sections 103(1) and 103B(1);

"community visitors panel", see section 110(1);

"criteria", see:

- (a) for the involuntary admission of a person on the grounds of mental illness – section 14; and
- (b) for the involuntary admission of a person on the grounds of mental disturbance – section 15; and
- (c) for the involuntary treatment or care of a person in the community – section 16;

"financial protection order", see section 168(2);

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

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

"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);

"primary carer", see section 7A;

"principal community visitor", see section 101(1);

"psychiatric case manager", see section 51(1);

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

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

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

(3) Section 4, definition "approved"

omit

Secretary

substitute

CEO

(4) Section 4, definition "approved treatment agency"

omit

20(1)(b)

substitute

20(1)(c)

6. Amendment of section 6 (Mental illness)

Section 6(2)

omit

all the words after "standards"

7. New section 7A

After section 7

insert

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. Amendment of section 9 (Principles relating to provision of treatment and care)

Section 9(n)

omit

all the words from "where" to "background,"

9. Amendment of section 12 (Principles relating to rights of carers)

(1) Section 12, heading, after "**carers**"

insert

and families

(2) After section 12(b)

insert

- (c) as far as practicable and appropriate, family members should be consulted and involved in the person's treatment and care.

10. Amendment of section 13 (Principles relating to rights and conditions in approved treatment facilities)

Section 13(e)

omit

this Act

substitute

section 92

11. Amendment of Part 3 heading

Part 3, heading, after "ADMISSION"

insert

AND TREATMENT

12. Amendment of section 14 (Involuntary admission on grounds of mental illness)

Section 14(b)(ii)

omit, substitute

(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

13. Amendment of section 15 (Involuntary admission on grounds of mental disturbance)

Section 15(c)(i)

omit, substitute

(i) is likely to cause serious harm to himself or herself or to someone else; or

14. Amendment of section 16 (Involuntary treatment in community)

Section 16(b)(i) and (ii)

omit, substitute

- (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

15. Amendment of section 17 (Powers and functions of Secretary)

- (1) Section 17, heading

omit

Secretary

substitute

CEO

- (2) Section 17(1)

omit

Secretary

substitute

CEO

- (3) Section 17(1)(a)

omit

oversight

substitute

oversee

- (4) Section 17(2) and (3)

omit

Secretary

substitute

CEO

- (5) After section 17(3)

insert

(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.

16. Amendment of section 18 (Approved procedures)

- (1) Section 18(1)

omit

Secretary

substitute

CEO

- (2) After section 18(1)

insert

(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.

17. Repeal and substitution of section 19

Section 19

repeal, substitute

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 Director of Correctional Services.
- (2) The delegation must be in writing.

18. Amendment of section 21 (Persons-in-charge of approved treatment facilities and agencies)

(1) Section 21(1)

omit

Secretary

substitute

CEO

(2) Section 21(2)

omit, substitute

(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.

19. Amendment of section 22 (Authorised psychiatric practitioners)

(1) Section 22(1)

omit

Secretary

substitute

CEO

(2) Section 22(2)

omit, substitute

(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 entitled under a law of a State or Territory to practise as a specialist in the medical 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.

20. Amendment of section 23 (Designated mental health practitioners)

- (1) Section 23(1) and (2)

omit

Secretary

substitute

CEO

- (2) After section 23(2)

insert

(2A) The CEO may appoint an employee of the Agency to be a designated mental health practitioner.

- (3) Section 23(4)

omit, substitute

(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 (as the case may be).

(5) An appointment of a person under subsection (2A) remains in force only while the person is an employee of the Agency.

21. Amendment of section 25 (Voluntary admission)

- (1) Section 25(4)

omit

24

substitute

72

- (2) After section 25(4)

insert

(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.

- (3) Section 25(9)(a)

omit

appeal to the Tribunal

substitute

apply to the Tribunal for a review of the decision

- (4) Section 25(9)(b)

omit

appeal

substitute

review

22. Repeal and substitution of section 26

Section 26

repeal, substitute

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 person 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 person under subsection (6).

(8) In this section:

"authorised person", see section 4(1) of the *Community Welfare 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.

23. Amendment of section 27 (Admission of persons under guardianship as voluntary patients)

(1) Section 27(3)(a)

omit

appeal to the Tribunal

substitute

apply to the Tribunal for a review of the decision

- (2) Section 27(3)(b)

omit

appeal

substitute

review

24. Amendment of section 28 (Notification of admission)

- (1) Section 28

omit

3

substitute

6

- (2) Section 28(a)

omit

Secretary

substitute

CEO

25. Amendment of section 30 (Detention for 6 hours)

- (1) Section 30, heading

omit, substitute

Detention by medical practitioner or nurse

- (2) Section 30(3) and (4)

omit, substitute

(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.

26. Amendment of section 31 (Powers of ambulance officers to detain for 6 hours)

(1) Section 31, heading

omit, substitute

Detention by ambulance officer

(2) Section 31(2)(a) and (b)

omit, substitute

(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

(3) Section 31(3)(b)

omit

deliver

substitute

send

(4) After section 31(3)

insert

(4) For subsection (3)(b), the form may be sent by fax or email.

27. Amendment of section 32 (Request for assessment)

(1) Section 32(2), before "welfare"

insert

health or

(2) Section 32(5)

omit

all the words after "a person"

substitute

if the practitioner is otherwise satisfied the person is not in need of treatment under this Act.

28. New section 32A

After section 32

insert

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.

29. Amendment of section 34 (Recommendation for psychiatric examination)

(1) Section 34(1)

omit

he or she

substitute

the practitioner

(2) Section 34(2) to (4)

omit, substitute

(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 an assessment 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 pursuant to 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.

30. Repeal and substitution of section 37

Section 37

repeal, substitute

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.

31. Amendment of section 39 (Involuntary admission on grounds of mental illness)

- (1) Section 39(1)(b)

omit, substitute

- (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) Section 39(3)(a)

omit

7 days

substitute

14 days after the examination

(3) Section 39(5)

omit, substitute

(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.

32. Amendment of section 40 (On-going examinations)

(1) Section 40(1)

omit

involuntarily

substitute

involuntary

(2) Section 40(3)

omit, substitute

(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.

(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).

33. Repeal and substitution of section 41

Section 41

repeal, substitute

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;
- (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.

34. Repeal and substitution of sections 42 and 43

Sections 42 and 43

repeal, substitute

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;
- (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.

35. Amendment of section 44 (Review of admission)

(1) Section 44(2)(a)

omit

(2) Section 44(3)

omit, substitute

(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.

(3) Section 44(4)

omit

imminent harm to other persons on his or her release

substitute

serious harm to someone else on release

36. Amendment of section 45 (Interim community management order)

(1) Section 45(3)

omit

7

substitute

14

(2) Section 45(4)

omit, substitute

(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.

37. Amendment of section 46 (Form of interim community management order)

(1) Section 46

omit

is to be the approved form and is to specify –

substitute

must be in the approved form and must specify the following:

(2) Section 46(e)

omit, substitute

- (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);

(3) Section 46(g)

omit

order; and

substitute

order;

38. Repeal and substitution of section 47

Section 47

repeal, substitute

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;
 - (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.

39. Amendment of section 49 (Form of community management order)

(1) Section 49

omit

is to be in writing and is to specify –

substitute

must be in writing and must specify the following:

(2) Section 49(e)

omit, substitute

- (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);
- (3) Section 49(g)
- omit*
- order; and
- substitute*
- order;

40. Repeal and substitution of sections 50 and 51

Sections 50 and 51

repeal, substitute

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 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;
 - (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.

41. Amendment of section 52 (Discharge report and consideration of report by Tribunal)

Section 52(1)

omit

The person-in-charge of an approved treatment agency

substitute

An authorised psychiatric practitioner

42. Amendment of section 53 (Suspension of community management order)

(1) Section 53(1) and (2)(a)

omit (all references)

authority

substitute

order

(2) Section 53(2)(b)

omit, substitute

(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) Section 53(3) to (5)

omit, substitute

(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;

(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) 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.

43. Amendment of section 54 (Treatment after voluntary admission)

Section 54(5)

omit, substitute

- (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.

44. Amendment of section 55 (Treatment after involuntary admission)

Section 55(2)

omit, substitute

(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.

45. Amendment of section 61 (Mechanical means of bodily restraint)

(1) Section 61, heading

omit, substitute

Mechanical restraint

(2) Section 61(2)

omit, substitute

(2) A person must not apply mechanical restraint to a person other than:

- (a) to a person who is being assessed, or receiving treatment, under this Act; and
- (b) in accordance with this section.

Maximum penalty: \$5 000.

(3) Section 61(3)(c)

omit, substitute

(c) to prevent the person from persistently destroying property;

(d) to prevent the person from absconding from the facility.

(4) Section 61(6)

omit, substitute

(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.

(5) Section 61(8)(c)

omit

subject to subsection (9),

(6) Section 61(8)(d) and (9)

omit

(7) Section 61(10)

omit

12 hours

substitute

a continuous period of 6 hours

(8) Section 61(12)(a) to (d), at the end

insert

and

- (9) Section 61(12)(e)

omit

applied; and

substitute

applied.

- (10) Section 61(12)(f)

omit

- (11) After section 61(14)

(15) The person-in-charge of the approved treatment facility must ensure that the adult guardian of a person to whom mechanical restraint has been applied is notified of the following as soon as practicable after the application of the restraint:

- (a) that mechanical restraint was applied to the person;
- (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.

46. Amendment of section 62 (Seclusion of patients)

- (1) Section 62(1)

omit

- (2) Section 62(2)

omit, substitute

(2) A person must not keep someone in seclusion other than someone who is being assessed, or receiving treatment, under this Act and only in accordance with this section and approved procedures.

Maximum penalty: \$5 000.

- (3) Section 62(3), after "necessary for"

insert

one or more of

(4) Section 62(3)(c)

omit, substitute

(c) to prevent the person from persistently destroying property;

(d) to prevent the person from absconding from the facility.

(5) Section 62(6)

omit, substitute

(6) The period the person is to be kept in seclusion must be:

(a) determined and noted in the person'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 person's case notes.

(6) Section 62(8)(b)

omit

not longer than 4 hours

substitute

specified in approved procedures

(7) Section 62(8)(c)

omit

, if the person is kept in seclusion for more than 6 hours

substitute

in accordance with approved procedures

(8) Section 62(9)

omit

- (9) Section 62(10)

omit

12 hours

substitute

a continuous period of 6 hours

- (10) Section 62(12)(a) to (c), at the end

insert

and

- (11) Section 62(12)(d)

omit

seclusion; and

substitute

seclusion.

- (12) Section 62(12)(e)

omit

- (13) After section 62(14)

insert

(15) The person-in-charge of the approved treatment facility must ensure that the adult guardian of a person kept in seclusion is notified of the following as soon as practicable after the seclusion:

- (a) that the person was kept in seclusion;
- (b) the reasons why the person was kept in seclusion;
- (c) the length of time the person was kept in seclusion.

- (16) In this section:

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

47. Amendment of section 63 (Non-psychiatric treatment)

Section 63(6)

omit

Public Guardian, within the meaning of the *Adult Guardianship Act*,

substitute

adult guardian of the person on whom the treatment was performed

48. Amendment of section 64 (Major medical procedure)

Section 64(4)

omit, substitute

(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.

49. Amendment of section 66 (Electro convulsive therapy)

(1) Section 66(1)(b)

omit, substitute

- (b) the person's adult guardian consents to the treatment; or
- (c) the treatment is performed in accordance with this section and approved procedures.

(2) Section 66(2)(c)(i)

omit, substitute

- (i) all reasonable efforts have been made to consult the person's primary carer; or

50. Repeal and substitution of Parts 10 and 11

Parts 10 and 11

repeal, substitute

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 court is exercising summary jurisdiction in the proceedings; 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) The 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.

(7) If the practitioner is satisfied the person fulfils the criteria for involuntary admission, 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, 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) The 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 prison.
- (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 court is exercising summary jurisdiction in the proceedings.

(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 court is exercising summary jurisdiction in the proceedings.

(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 visiting medical officer, the Director 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 prison where the prisoner is held; or

- (b) with the approval of the Director of Correctional Services after consulting with the person-in-charge of the facility – at an approved treatment facility.

- (5) In this section:

"visiting medical officer", see section 5 of the *Prisons (Correctional Services) Act*.

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 prison; or
- (b) if an examination at the prison 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 Director 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) a guardian of the prisoner who has power under the *Adult Guardianship Act* to consent to any health care that is in the best interest of the prisoner has consented to the admission and 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 prison, 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 Director 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 Director 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 Director 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 Director of Correctional Services as soon as practicable after:

- (a) the prisoner requests to be returned to the prison; 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 admission as an involuntary patient; 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 admission as an involuntary patient.

(2) The person-in-charge of the approved treatment facility to which a prisoner has been admitted as an involuntary patient must notify the Director 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 prison officer 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 prison.

86. Arrangements

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

51. Amendment of section 87 (Information to be provided to patients)

(1) Section 87, heading

omit

provided

substitute

given

(2) Section 87(1)

omit, substitute

(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
- (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.

52. Repeal and substitution of sections 88 and 89

Sections 88 and 89

repeal, substitute

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;
- (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;
- (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.

53. Amendment of section 90 (Information on discharge)

Section 90(1)(b)

omit

care provider

substitute

carer

54. Amendment of section 91 (Disclosure of information)

(1) Section 91(2)(b) and (c)

omit, substitute

(b) with the consent of:

- (i) the person to whom the information relates; or
- (ii) the person's adult guardian; 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

(2) Section 91(2)(e) and (f)

omit, substitute

(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
- (3) After section 91(2)(g)
insert
(ga) to a police officer for section 166B(2); or
- (4) Section 91(2)(a), (d), (g) and (h) to (k), at the end
insert
or
- (5) Section 91(2)(m) and (3)
omit
Secretary
substitute
CEO

55. Repeal and substitution of section 92

Section 92

repeal, substitute

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;
- (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.

56. Amendment of section 93 (Disclosure to representative)

(1) Section 93, heading, before "**representative**"

insert

adult guardian or

(2) Section 93(1)

omit

section 92(3) may permit a representative

substitute

section 92(4) may permit an adult guardian or representative

(3) Section 93(2)

omit, substitute

(2) As a condition for the access, the practitioner may require the adult guardian or representative to give an undertaking not to disclose specified information.

57. Amendment of section 94 (Inclusion of written comments into records)

Section 94

omit

his or her

substitute

the person's adult guardian or

58. Amendment of section 98 (Restriction or denial of entitlement)

Section 98(5)(a) and (b)

omit, substitute

(a) notify the following of the order being made:

(i) the Tribunal;

(ii) the person's adult guardian; and

(b) inform the person of the person's right to apply to the Tribunal for a review of the order.

59. Amendment of section 99 (Withholding of certain correspondence)

(1) Section 99(2)

omit

are –

substitute

are the following:

(2) Section 99(2)(b)

omit

Secretary

substitute

CEO

(3) Section 99(2)(j)

omit, substitute

(ha) the person's adult guardian;

(j) the Anti-Discrimination Commissioner;

60. Amendment of section 100 (Internal complaints procedures)

(1) Section 100(5)

omit

all the words after "regularly"

substitute

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;

(c) the person's representative;

(d) the person's primary carer.

- (2) Section 100(9), (10) and (11)

omit

Secretary

substitute

CEO

61. Amendment of section 101 (Principal community visitor)

After section 101(2)

insert

(3) The principal community visitor must have the qualifications determined by the Minister.

62. New section 101A

After section 101

insert

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.

63. Repeal and substitution of section 103

Section 103

repeal, substitute

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.

64. Amendment of section 108 (Requests to see community visitors)

Section 108(4)

omit

visits the person not later than 48 hours

substitute

contacts (including by telephone or email), or attempts to contact, the person before the end of the next working day

65. Amendment of section 110 (Community visitors panels)

(1) Section 110(1)

omit

and each approved treatment agency

(2) Section 110(2) and (3)

omit

principal community visitor

substitute

Minister

(3) Section 110(3)

omit

organisations that represent

(4) After section 110(5)

insert

(6) A member of a community visitors panel holds office for 3 years and is eligible for re-appointment.

66. New sections 110A and 110B

After section 110

insert

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.

67. Amendment of section 111 (Duties of community visitors panels)

(1) Section 111(1)

omit

an approved treatment facility or the premises occupied by an approved treatment agency

substitute

the approved treatment facility

(2) Section 111(2)

omit

an approved treatment facility or premises occupied by an approved treatment agency

substitute

the facility

(3) Section 111(2)(a) and (b)

omit

or from the agency

(4) Section 111(2)(c)

omit

or by the agency

(5) Section 111(2)(d)

omit

or from the agency

(6) Section 111(2)(e) to (g)

omit

or agency

- (7) Section 111(2)(a) to (g), at the end

insert

and

- (8) Section 111(3)

omit

facility or premises occupied by an approved treatment agency –

substitute

facility:

- (9) Section 111(3)(a)

omit

or the premises

- (10) Section 111(3)(b) to (e)

omit

or by the agency

- (11) Section 111(3)(a) to (c), at the end

insert

and

68. Amendment of section 112 (Reports by community visitors panels)

- (1) Section 112(1)

omit

or the premises occupied by an approved treatment agency

- (2) Section 112(3) and (5)

omit

or approved treatment agency

- (3) Section 112(5)

omit

Secretary

substitute

CEO

69. New section 112A

After section 112, in Part 14, Division 3

insert

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.

70. Repeal and substitution of section 113

Section 113

repeal, substitute

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.

71. Repeal and substitution of section 116

Section 116

repeal, substitute

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.

72. Amendment of section 117 (Confidentiality)

(1) Section 117(1)

omit, substitute

(1) A person who is or has been any of the following must not, either directly or indirectly, make a record of, or divulge or communicate to any person, or make use of, information obtained by the person under this Act:

- (a) the principal community visitor;
- (b) a community visitor;
- (c) a member of a community visitors panel;
- (d) an employee of the Agency.

Maximum penalty: \$5 000.

(2) Section 117(2)

omit

Subsection (1)

substitute

However, subsection (1)

73. Amendment of section 118 (Mental Health Review Tribunal)

(1) Section 118(3)

omit, substitute

(3) For subsection (2), one or more of each of the following persons must be appointed:

- (a) a person who is:
 - (i) a magistrate; or
 - (ii) a person appointed to be a Judicial Registrar under section 9(1) of the *Local Court Act*; 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 or mental disturbance.

(2) Section 118(5)

omit

A person cannot be appointed to the Tribunal if he or she is –

substitute

The following persons cannot be appointed to the Tribunal:

(3) After section 118(5)(c)

insert

- (ca) a member of a community visitors panel;
- (cb) a member of a special community visitors panel;

(4) Section 118(5)(g)

omit

Secretary

substitute

CEO

- (5) Section 118(5)(h)

omit

agency; or

substitute

agency;

74. Amendment of section 120 (Constitution of Tribunal)

- (1) Section 120, heading

omit

Constitution

substitute

Composition

- (2) After section 120(3)

insert

(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).

75. Amendment of section 121 (Registrar of Tribunal)

Section 121(1)(a) and (b)

omit

an employee, within the meaning of the *Public Sector Employment and Management Act*,

substitute

a public sector employee

76. Amendment of Part 15, Division 2 heading

Part 15, Division 2, heading

omit

, Appeals

77. Amendment of section 122 (Review of long term voluntary admissions)

(1) Section 122(2)(a)

omit

, it may

substitute

– may

(2) After section 122(2)(a)

insert

(aa) that the person is someone in respect of whom an adult guardianship order is in force, is willing to be admitted and does not fulfil the criteria for admission as an involuntary patient – may confirm the admission of the person as a voluntary patient; or

(3) Section 122(2)(a) and (b), at the end

insert

or

(4) Section 122(2)(b) to (d)

omit

, it may

substitute

– may

- (5) After section 122(4)

insert

(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).

78. Amendment of section 123 (Review of involuntary admissions and community management orders)

- (1) Section 123(1)

omit, substitute

(1) The Tribunal must review the admission of a person as an involuntary patient not later than 14 days after the admission.

- (2) Section 123(2)

omit

7

substitute

14

- (3) Section 123(4)

omit, substitute

(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.

- (4) After section 123(6)

insert

(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).

- (5) Section 123(7)

omit

order admitting

substitute

admission of

- (6) Section 123(8)

omit

an order admitting

substitute

the admission of

79. Repeal of section 124

Section 124

repeal

80. Amendment of section 127 (Appeals)

- (1) Section 127, heading

omit, substitute

Application for review

- (2) Section 127(1) to (3)

omit, substitute

- (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) section 27(2) to 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 14 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;
 - (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) Section 127(5)
- omit*
- an appeal under subsection (1)

substitute

a review in relation to an application made under subsection (1)

- (5) Section 127(5)(b) and (c), before "authorised psychiatric practitioner"

insert

medical practitioner or

- (6) Section 127(6)

omit

an appeal made under subsection (2)

substitute

a review in relation to an application made under subsection (2)

- (7) Section 127(7)

omit

he or she was transferred where

substitute

the person was transferred if

81. Repeal and substitution of section 128

Section 128

repeal, substitute

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.

82. Amendment of section 129 (Hearings)

- (1) Section 129(1) and (2)

omit, substitute

- (1) The Tribunal may undertake a review by conducting a hearing.

(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.

(2) After section 129(5)

insert

(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.

83. Repeal and substitution of section 131

Section 131

repeal, substitute

131. Right of appearance and representation

(1) A person who is the subject of a review:

- (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 a person who is unrepresented at a review if the Tribunal thinks the representation is necessary.

(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 review.

(5) The Tribunal may conduct the review in the absence of the person or the person's representative if all of the following apply:

- (a) reasonable notice of the review was given to the person or representative;
- (b) the person or representative had a reasonable opportunity to attend the review;
- (c) the person or representative refuses to attend the review.

(6) The Tribunal may conduct the review 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 review and has a reasonable opportunity to attend the review.

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

84. Amendment of section 132 (Access to medical records)

(1) Section 132(1)

omit, substitute

(1) Subject to subsections (2), (3) and (4), a person who is the subject of a review 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;
- (b) the person's representative.

(2) Section 132(2)

omit

or appeal

(3) Section 132(3)

omit

representative of a person who is the subject of a review or appeal

substitute

adult guardian or representative of a person who is the subject of a review

(4) Section 132(4), before "representative" (all references)

insert

adult guardian or

85. New section 135A

After section 135

insert

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: \$2 500 or imprisonment for 6 months.

86. Amendment of section 136 (Record of proceedings)

- (1) Section 136(1) and (2)

omit, substitute

- (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 requests a copy of the record made under subsection (1), the Tribunal must give the person a copy of the record at no cost.

- (2) Section 136(3) and (4)

omit

or appeal

- (3) Section 136(4) and (5), before "representative" (all references)

insert

adult guardian or

87. Amendment of section 139 (Secrecy provision)

(1) Section 139(1)

omit, substitute

(1) Each of the following persons must not, either directly or indirectly, make a record of, divulge or communicate to someone else, or make use of, information obtained under this Act:

- (a) a person who is or has been a member of the Tribunal;
- (b) a person who is or has been a staff member of the Tribunal.

Maximum penalty: \$5 000.

(2) After section 139(2)

insert

(3) In this section:

"staff member", of the Tribunal, means any of the following:

- (a) the Registrar appointed under section 121(1)(a);
- (b) the Deputy Registrar appointed under section 121(1)(b);
- (c) a person employed to provide administrative support to the Tribunal.

88. Amendment of section 144 (Right of appearance and representation)

Section 144(3)

omit, substitute

(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.

89. Amendment of section 150 (Interstate mental health orders)

- (1) Section 150(2), before "welfare"

insert

health or

- (2) Section 150(4)(b)

omit

Secretary

substitute

CEO

90. Amendment of section 151 (Definitions)

Section 151, definition "corresponding law"

omit, substitute

"corresponding law" means a law prescribed by regulation for this definition;

91. Repeal of section 152

Section 152

repeal

92. Amendment of section 154 (Interstate transfer orders)

- (1) Section 154(1), before "welfare"

insert

health or

- (2) Section 154(2)(b)

omit

care provider

substitute

carer

- (3) Section 154(2)(d)

omit

Secretary

substitute

CEO

93. Amendment of section 156 (Secretary may consent to transfer)

- (1) Section 156, heading

omit

Secretary

substitute

CEO

- (2) Section 156

omit

Secretary

substitute

CEO

94. Amendment of section 160 (Recommendation or certificate not to be signed without examination)

Section 160(1)

omit, substitute

(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 relating to the treatment of a person under this Act unless:

- (a) the person has seen, and personally examined, the person to whom the recommendation or document relates; or
- (b) the signing of the recommendation or document is:
 - (i) in accordance with approved procedures; or
 - (ii) otherwise permitted under this Act.

95. Amendment of section 161 (Persons prohibited from signing recommendation or certificate)

Section 161, after "admission of a person"

insert

as an involuntary patient

96. Repeal of section 163

Section 163

repeal

97. Repeal and substitution of section 166

Section 166

repeal, substitute

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 this Part 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;
- (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.

98. Amendment of section 167 (Transfer of involuntary patients)

Section 167(2)

omit, substitute

(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.

99. Repeal and substitution of section 168

Section 168

repeal, substitute

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
- (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;
 - (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.

100. New Part 20 heading

After section 170

insert

PART 20 – REPEALS AND TRANSITIONAL MATTERS FOR MENTAL HEALTH AND RELATED SERVICES ACT 1998

101. New Part 21

After section 172

insert

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.

102. Further amendments

The Schedule has effect.

SCHEDULE

Section 102

FURTHER AMENDMENTS OF ACT

Provision	Amendment	
	omit	substitute
Sections 67(3), (5) and (6), 68(1), (3) and (4), 69(b), 70, 71(1) and (2), 72, 73(1), 109(3) and 125(2)(a)	Secretary	CEO
Part 9 heading	FORMS OF TREATMENT	TREATMENTS AND MEASURES
Section 130(1)	or hearing an appeal	
Sections 133(1) and (2), 134(1), 135(2)(a) to (c) and (3), 138(1) and (2) and 141(3)(a) and (b)	or appeal	
Section 159(2) and (2)(b)	Secretary (all references)	CEO