

Mental Health Bill 2013

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Schedule 1 — Charter of Mental Health Care Principles

Schedule 2 — Notifiable events

Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

Mental Health Bill 2013

A Bill for

An Act —

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

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary matters

1. Short title

This is the *Mental Health Act 2013*.

2. Commencement

This Act comes into operation as follows —

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

3. Act binds Crown

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

- 1 ***Charter of Mental Health Care Principles*** means the Charter of
2 Mental Health Care Principles in Schedule 1;
- 3 ***Chief Mental Health Advocate*** means the Chief Mental Health
4 Advocate appointed under section 348;
- 5 ***Chief Psychiatrist*** means the Chief Psychiatrist appointed under
6 section 505(1);
- 7 ***child*** means a person who is under 18 years of age;
- 8 ***child and adolescent psychiatrist*** means a psychiatrist who has
9 qualifications and clinical training in the treatment of mental
10 illness in children;
- 11 ***close family member***, of a person, has the meaning given in
12 section 281(1);
- 13 ***community mental health service*** means a service that conducts
14 assessments or examinations for the purposes of this Act or
15 provides treatment in the community, but does not include the
16 private practice of a medical practitioner or mental health
17 practitioner;
- 18 ***community treatment order*** has the meaning given in
19 section 23(1);
- 20 ***Director of the Complaints Office*** means the Director as
21 defined in section 304;
- 22 ***discharge***, of a patient, means the discharge of the patient by a
23 mental health service, whether the patient was admitted as an
24 inpatient or otherwise;
- 25 ***document*** has the meaning given in the *Evidence Act 1906*
26 section 79B;
- 27 ***electroconvulsive therapy*** has the meaning given in section 192;
- 28 ***emergency psychiatric treatment*** has the meaning given in
29 section 202;
- 30 ***enduring guardian***, of an adult, means the person's enduring
31 guardian as defined in the GAA Act section 3(1);

- 1 ***inpatient treatment order*** has the meaning given in
2 section 22(1);
- 3 ***involuntary community patient*** means a person who is under a
4 community treatment order;
- 5 ***involuntary inpatient*** means a person who is under an inpatient
6 treatment order;
- 7 ***involuntary patient*** means a person who is under an involuntary
8 treatment order;
- 9 ***involuntary treatment order*** means —
- 10 (a) an inpatient treatment order; or
- 11 (b) a community treatment order;
- 12 ***legal practitioner*** means an Australian legal practitioner as
13 defined in the *Legal Profession Act 2008* section 3;
- 14 ***medical practitioner*** means a person registered under the
15 *Health Practitioner Regulation National Law (Western*
16 *Australia)* in the medical profession;
- 17 ***mental health advocate*** means —
- 18 (a) the Chief Mental Health Advocate; or
- 19 (b) a mental health advocate engaged under section 349(1);
- 20 ***mental health practitioner*** has the meaning given in
21 section 535;
- 22 ***mental health service*** —
- 23 (a) means any of these services —
- 24 (i) a hospital, but only to the extent that the hospital
25 provides treatment or care to people who have or
26 may have a mental illness;
- 27 (ii) a community mental health service;
- 28 (iii) any service, or any service in a class of service,
29 prescribed by the regulations for this definition;
- 30 and

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

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

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

9 **patient** means —

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

14 **patient's psychiatrist** means —

- 15 (a) if the patient is a voluntary patient — the treating
16 psychiatrist; or
17 (b) if the patient is an involuntary patient who is under an
18 inpatient treatment order — the treating psychiatrist; or
19 (c) if the patient is an involuntary patient who is under a
20 community treatment order — the supervising
21 psychiatrist; or
22 (d) if the patient is a mentally impaired accused required
23 under the MIA Act to be detained at an authorised
24 hospital — the treating psychiatrist;

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

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

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

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

- 1 **psychiatrist** means a medical practitioner —
- 2 (a) who is a fellow of the Royal Australian and New
- 3 Zealand College of Psychiatrists; or
- 4 (b) who holds specialist registration under the *Health*
- 5 *Practitioner Regulation National Law (Western*
- 6 *Australia)* in the specialty of psychiatry; or
- 7 (c) who holds limited registration under the *Health*
- 8 *Practitioner Regulation National Law (Western*
- 9 *Australia)* that enables the medical practitioner to
- 10 practise in the specialty of psychiatry;
- 11 **psychologist** means a person registered under the *Health*
- 12 *Practitioner Regulation National Law (Western Australia)* in
- 13 the psychology profession;
- 14 **psychosurgery** has the meaning given in section 205;
- 15 **public hospital** has the meaning given in the *Hospitals and*
- 16 *Health Services Act 1927* section 2(1);
- 17 **registration board** has the meaning given in the *Health and*
- 18 *Disability Services (Complaints) Act 1995* section 3(1);
- 19 **remuneration** has the meaning given in the *Salaries and*
- 20 *Allowances Act 1975* section 4(1);
- 21 **seclusion** has the meaning given in section 212;
- 22 **social worker** means a person who is a member of, or is eligible
- 23 for membership of, the Australian Association of Social
- 24 Workers;
- 25 **staff member**, of a mental health service (however defined in
- 26 this Act) or a private psychiatric hostel, means a person —
- 27 (a) who is employed in the mental health service or private
- 28 psychiatric hostel under a contract of employment or
- 29 contract of training; or
- 30 (b) who provides services to the mental health service or
- 31 private psychiatric hostel under a contract for services;
- 32 **supervising psychiatrist** has the meaning given in section 113;

- 1 **traditional healer**, in relation to an Aboriginal or Torres Strait
2 Islander community, means a person of Aboriginal or Torres
3 Strait Islander descent who —
- 4 (a) uses traditional (including spiritual) methods of healing;
5 and
- 6 (b) is recognised by the community as a traditional healer;
- 7 **transport officer** means a person, or a person in a class of
8 person, authorised under section 147 to carry out a transport
9 order;
- 10 **treating psychiatrist**, in relation to a patient, means the
11 psychiatrist who is in charge of the patient's treatment;
- 12 **treatment** means the provision of a psychiatric, medical,
13 psychological or psychosocial intervention intended (whether
14 alone or in combination with one or more other therapeutic
15 interventions) to alleviate or prevent the deterioration of a
16 mental illness or a condition that is a consequence of a mental
17 illness, and does not include bodily restraint, seclusion or
18 sterilisation;
- 19 **treatment decision**, in relation to a person, means a decision to
20 give consent, or to refuse to give consent, to treatment being
21 provided to the person;
- 22 **treatment in the community** means treatment that can be
23 provided to a patient without detaining the patient at a hospital
24 under an inpatient treatment order;
- 25 **treatment, support and discharge plan** has the meaning given
26 in section 186;
- 27 **voluntary inpatient** means a voluntary patient who is admitted
28 by a mental health service as an inpatient;
- 29 **voluntary patient** means a person to whom treatment is being,
30 or is proposed to be, provided by a mental health service but
31 who is not —
- 32 (a) an involuntary patient; or

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Part 2 Terms and concepts

Division 3 Best interests of a person

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- 1 (d) the person has, or does not have, a particular political,
2 economic or social status;
- 3 (e) the person has a particular sexual preference or
4 orientation;
- 5 (f) the person is sexually promiscuous;
- 6 (g) the person engages in indecent, immoral or illegal
7 conduct;
- 8 (h) the person has an intellectual disability;
- 9 (i) the person uses alcohol or other drugs;
- 10 (j) the person is involved in, or has been involved in,
11 personal or professional conflict;
- 12 (k) the person engages in anti-social behaviour;
- 13 (l) the person has at any time been —
- 14 (i) provided with treatment; or
- 15 (ii) admitted by or detained at a hospital for the
16 purpose of providing the person with treatment.
- 17 (3) Subsection (2)(i) does not prevent the serious or permanent
18 physiological, biochemical or psychological effects of the use of
19 alcohol or other drugs from being regarded as an indication that
20 a person has a mental illness.
- 21 (4) A decision whether or not a person has a mental illness must be
22 made in accordance with internationally accepted standards
23 prescribed by the regulations for this subsection.

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

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

- 26 (1) This section applies whenever a person or body is required
27 under this Act to decide what is or is not in the best interests of
28 a person.

- 1 (d) any other things that the person or body considers
2 relevant to ascertaining those wishes.

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

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

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

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Part 3 — Objects

10. Objects

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

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

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

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

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

7 (1) In this section —

8 *mental health service* includes a private psychiatric hostel.

9 (2) A mental health service must make every effort to comply with
10 the Charter of Mental Health Care Principles when providing
11 treatment, care and support to patients.

1 **Part 5 — Decision making capacity and**
2 **informed consent**

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

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

5 (1) For the purposes of this Act, an adult is presumed to have the
6 capacity to make a decision about a matter relating to himself or
7 herself unless the adult is shown not to have that capacity.

8 (2) For the purposes of this Act, if an adult does not have the
9 capacity to make a decision about a matter relating to himself or
10 himself, the person who is authorised by law to do so may make
11 the decision on the adult's behalf.

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

13 (1) For the purposes of this Act, a child is presumed not to have the
14 capacity to make a decision about a matter relating to himself or
15 herself unless the child is shown to have that capacity.

16 (2) For the purposes of this Act, if a child does not have the
17 capacity to make a decision about a matter relating to himself or
18 himself, the child's parent or guardian may make the decision on
19 the child's behalf.

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

21 (1) For the purposes of this Act, a person has the capacity to make a
22 decision about a matter relating to himself or herself if the
23 person has the capacity to —

24 (a) understand any information or advice about the decision
25 that is required under this Act to be provided to the
26 person; and

27 (b) understand the matters involved in the decision; and

28 (c) understand the effect of the decision; and

29 (d) communicate the decision in some way.

- 1 (2) For the purposes of this Act, a decision made by a person about
2 a matter relating to himself or herself must be made freely and
3 voluntarily.

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

5 **16. Requirements for informed consent**

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

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

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

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

24 Notes for section 17:

- 25 1. An adult can give informed consent by making an advance health
26 directive (see the GAA Act section 110ZJ(2)).
- 27 2. An adult's enduring guardian or guardian, or the person responsible for
28 an adult, can give informed consent on the adult's behalf (see the GAA
29 Act section 110ZJ(3) to (5)).
- 30 3. A child's parent or guardian can give informed consent on the child's
31 behalf unless the child has the capacity to give informed consent (see
32 section 302(3)).

1 **18. Capacity to make treatment decision**

2 A person does not have the capacity to make a treatment
3 decision about the provision of treatment to a patient unless the
4 person has the capacity to —

- 5 (a) understand the things that are required under section 19
6 to be communicated to the person about the treatment;
7 and
8 (b) understand the matters involved in making the treatment
9 decision; and
10 (c) understand the effect of the treatment decision; and
11 (d) communicate the treatment decision in some way.

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

13 (1) Before a person is asked to make a treatment decision about the
14 provision of treatment to a patient, the person must be provided
15 with a clear explanation of the treatment —

- 16 (a) containing sufficient information to enable the person to
17 make a balanced judgment about the treatment; and
18 (b) identifying and explaining any alternative treatment
19 about which there is insufficient knowledge to justify it
20 being recommended or to enable its effect to be
21 predicted reliably; and
22 (c) warning the person of any risks inherent in the
23 treatment.

24 (2) The extent of the information required under subsection (1) to
25 be provided to a person is limited to information that a
26 reasonable person in the person's position would be likely to
27 consider significant to the treatment decision unless the person
28 providing the information knows, or could reasonably have been
29 expected to know, that the person is likely to consider other
30 information to be significant to the treatment decision.

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Part 5 Decision making capacity and informed consent

Division 2 Informed consent to treatment

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1 (3) Subsection (1) applies despite any privilege claimed by a
2 person.

3 Note for section 19:

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

6 **20. Sufficient time for consideration**

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

10 (a) sufficient time to consider the matters involved in the
11 treatment decision; and

12 (b) a reasonable opportunity to discuss those matters with
13 the medical practitioner or other health professional who
14 is proposing the provision of the treatment; and

15 (c) a reasonable opportunity to obtain any other advice or
16 assistance in relation to the treatment decision that the
17 person wishes.

Part 6 — Involuntary patients

Division 1 — When a person will be an involuntary patient

21. Involuntary patient

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

22. Inpatient treatment order

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

23. Community treatment order

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

1 **24. Making involuntary treatment order**

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

23 **25. Criteria for involuntary treatment order**

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

- 1 (ii) a significant risk of serious harm to the person or
2 to another person;
- 3 (c) that —
- 4 (i) the person does not have the capacity required by
5 section 18 to make a treatment decision about the
6 provision of the treatment to himself or herself;
7 or
- 8 (ii) the person has unreasonably refused treatment;
- 9 (d) that treatment in the community cannot reasonably be
10 provided to the person;
- 11 (e) that the person cannot be adequately provided with
12 treatment in a way that would involve less restriction on
13 the person’s freedom of choice and movement than
14 making an inpatient treatment order.
- 15 (2) A person is in need of a community treatment order only if all
16 of these criteria are satisfied —
- 17 (a) that the person has a mental illness for which the person
18 is in need of treatment;
- 19 (b) that, because of the mental illness, there is —
- 20 (i) a significant risk to the health or safety of the
21 person or to the safety of another person; or
- 22 (ii) a significant risk of serious harm to the person or
23 to another person; or
- 24 (iii) a significant risk of the person suffering serious
25 physical or mental deterioration;
- 26 (c) that —
- 27 (i) the person does not have the capacity required by
28 section 18 to make a treatment decision about the
29 provision of the treatment to himself or herself;
30 or
- 31 (ii) the person has unreasonably refused treatment;

- 1 (d) that treatment in the community can reasonably be
2 provided to the person;
- 3 (e) that the person cannot be adequately provided with
4 treatment in a way that would involve less restriction on
5 the person's freedom of choice and movement than
6 making a community treatment order.
- 7 (3) A decision whether or not a person is in need of an inpatient
8 treatment order or a community treatment order must be made
9 having regard to the guidelines published under
10 section 543(1)(a) for that purpose.

11 Note for Division 1:

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

14 **Division 2 — Referrals for examination**

15 **Subdivision 1 — Person suspected of needing involuntary**
16 **treatment order**

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

- 19 (1) A medical practitioner or authorised mental health practitioner
20 may refer a person under subsection (2) or (3)(a) for an
21 examination conducted by a psychiatrist if, having regard to the
22 criteria specified in section 25, the practitioner reasonably
23 suspects that —
- 24 (a) the person is in need of an involuntary treatment order;
25 or
- 26 (b) if the person is under a community treatment order —
27 the person is in need of an inpatient treatment order.
- 28 (2) The practitioner may refer the person for an examination to be
29 conducted by a psychiatrist at an authorised hospital.

- 1 (3) The practitioner —
2 (a) may refer the person for an examination to be conducted
3 by a psychiatrist at a place that is not an authorised
4 hospital if, in the practitioner’s opinion, it is an
5 appropriate place to conduct the examination having
6 regard to the guidelines published under
7 section 543(1)(b) for that purpose; and
8 (b) if the practitioner refers the person under
9 paragraph (a) — must make any arrangements that are
10 necessary to enable the examination to be conducted at
11 that place.

12 (4) Subdivision 3 applies in relation to the referral of a person under
13 subsection (2) or (3)(a).

14 (5) Sections 27 to 30 apply in relation to a person who is referred
15 under subsection (2) or (3)(a).

16 Notes for section 26:

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

27 **27. Person to be taken to authorised hospital or other place as**
28 **soon as practicable**

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

1 **28. Detention to enable person to be taken to authorised**
2 **hospital or other place**

3 (1) A medical practitioner or authorised mental health practitioner
4 may make an order authorising the person's detention for up to
5 24 hours from the time when the referral is made if satisfied
6 that, because of the person's mental or physical condition, the
7 person needs to be detained to enable the person to be taken to
8 the authorised hospital or other place.

9 (2) A medical practitioner or authorised mental health practitioner
10 may, immediately before the end of the period of detention
11 authorised under subsection (1) or any further period of
12 detention authorised under this subsection in respect of the
13 person, make an order authorising the continuation of the
14 person's detention for up to 24 hours from the end of that period
15 to enable the person to be taken to the authorised hospital or
16 other place.

17 (3) The person cannot be detained under orders made under this
18 section for a continuous period of more than 72 hours.

19 (4) A practitioner cannot make an order under subsection (2) in
20 respect of the person unless —

21 (a) immediately before making the order, the practitioner
22 assesses the person; and

23 (b) as a consequence, the practitioner is satisfied that,
24 because of the person's mental or physical condition, the
25 person still needs to be detained to enable the person to
26 be taken to the authorised hospital or other place.

27 (5) Subdivision 4 applies in relation to an assessment required by
28 subsection (4)(a).

29 (6) An order made under this section must be in the approved form
30 and must include the following —

31 (a) the date and time when it is made;

32 (b) the date and time when it expires;

1 (12) The release of a person because of subsection (10) or (11) is an
2 event to which Part 9 applies and a medical practitioner or
3 authorised mental health practitioner is the person responsible
4 under that Part for notification of that event.

5 **29. Making transport order**

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

8 (2) The practitioner cannot make the transport order unless satisfied
9 that —

10 (a) because of the person's mental or physical condition, the
11 person needs to be taken to the authorised hospital or
12 other place; and

13 (b) no other safe means of taking the person is reasonably
14 available.

15 (3) Part 10 applies in relation to the transport order.

16 (4) The making of a transport order under subsection (1) is an event
17 to which Part 9 applies and the practitioner who makes the order
18 is the person responsible under that Part for notification of that
19 event.

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

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

24 (a) beginning when the referral is made; and

25 (b) ending when the first of these things occurs —

26 (i) a psychiatrist makes an order under
27 section 55(1)(a) or (d), 56(1)(a)(i) or (iii),
28 61(1)(a) or (d) or 72(1)(a) or (c) in respect of the
29 person;

30 (ii) the referral is revoked under section 31(1);

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- 1 (d) if the other practitioner could not be contacted — a
2 record of the efforts made to do so;
- 3 (e) the name, qualifications and signature of the
4 practitioner.
- 5 (4) The practitioner must, as soon as practicable, file the order and
6 give a copy to the person.
- 7 (5) The practitioner must, as soon as practicable —
- 8 (a) advise the transport officer or police officer responsible
9 for carrying out any transport order made under
10 section 29(1) in respect of the person that the referral
11 has been revoked under subsection (1) and that therefore
12 the transport order has been revoked under section 153;
13 and
- 14 (b) file a record of that advice.
- 15 (6) The person cannot continue to be detained if the referral is
16 revoked under subsection (1).
- 17 (7) The release of a person because of subsection (6) is an event to
18 which Part 9 applies and the practitioner who revokes the
19 referral is the person responsible under that Part for notification
20 of that event.

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

23 **32. Application of this Subdivision**

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

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

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

- 29 (a) beginning when the voluntary inpatient is admitted as an
30 inpatient by the authorised hospital; and

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

6 Notes for section 33:

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

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

- 14 (1) The person in charge of the voluntary inpatient's ward may
15 make an order for an assessment of the voluntary inpatient by a
16 medical practitioner or authorised mental health practitioner at
17 the authorised hospital if —
18 (a) the voluntary inpatient wants to leave the authorised
19 hospital against medical advice; and
20 (b) having regard to the criteria specified in section 25, the
21 person in charge reasonably suspects that the voluntary
22 inpatient is in need of an involuntary treatment order.
23 (2) The order must be in the approved form and must include the
24 following —
25 (a) the date and time when it is made;
26 (b) the reasons for making it;
27 (c) the name, qualifications and signature of the person in
28 charge.
29 (3) The voluntary inpatient can be detained under the order at the
30 authorised hospital for up to 6 hours from the time when the
31 order was made to enable the assessment to be conducted.

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- 1 (4) The person in charge of the voluntary inpatient's ward must, as
2 soon as practicable, file the order and give a copy to the
3 voluntary patient.
- 4 (5) The person in charge of the voluntary inpatient's ward must
5 ensure that the inpatient has the opportunity and the means to
6 contact any carer, close family member or other personal
7 support person of the inpatient and the Chief Mental Health
8 Advocate —
- 9 (a) as soon as practicable after the order is made; and
10 (b) at all reasonable times while the voluntary inpatient is
11 detained under the order.
- 12 (6) Subdivision 4 applies in relation to an assessment ordered under
13 subsection (1).
- 14 (7) The voluntary inpatient cannot continue to be detained if, by the
15 end of the 6-hour period referred to in subsection (3) —
- 16 (a) the assessment has not been completed; or
17 (b) the assessment has been completed but a referral has not
18 been made under section 36(2) in respect of the
19 voluntary inpatient.

20 **35. Revoking order for assessment**

- 21 (1) The person who makes an order under section 34(1) for an
22 assessment of a voluntary inpatient may, at any time before the
23 assessment is commenced, make an order revoking the order for
24 an assessment if satisfied that the patient is no longer in need of
25 an involuntary treatment order.
- 26 (2) The order must be in the approved form and must include the
27 following —
- 28 (a) the date and time when it is made;
29 (b) the reasons for making it;
30 (c) the name, qualifications and signature of the person.

1 (3) The person who makes the order must, as soon as practicable,
2 file it and give a copy to the voluntary patient.

3 (4) The voluntary inpatient cannot continue to be detained if the
4 order for an assessment is revoked under subsection (1).

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

6 (1) This section applies if the voluntary inpatient is assessed by a
7 medical practitioner or authorised mental health practitioner —

8 (a) because of an order made under section 34(1); or

9 (b) in the course of the voluntary inpatient’s treatment while
10 admitted by the authorised hospital.

11 (2) The practitioner may refer the voluntary inpatient for an
12 examination to be conducted by a psychiatrist at the authorised
13 hospital if, having regard to the criteria specified in section 25,
14 the practitioner reasonably suspects that the inpatient is in need
15 of an involuntary treatment order.

16 (3) Subdivision 3 applies in relation to the referral of a voluntary
17 inpatient under subsection (2).

18 Notes for section 36:

19 1. A voluntary patient who is referred under section 36(2) can be detained
20 at the authorised hospital under section 53(1) to enable the voluntary
21 patient to be examined.

22 2. Part 7 Division 4 applies in relation to the release of a voluntary patient
23 who is detained under section 53(1).

24 3. Part 7 Division 5 applies if a voluntary patient who is detained under
25 section 53(1) is absent without leave from the authorised hospital
26 where the voluntary patient is detained.

27 **37. Revoking referral**

28 (1) A medical practitioner or authorised mental health practitioner
29 may make an order revoking a referral made under section 36(2)
30 if satisfied that the voluntary inpatient who is referred is no
31 longer in need of an involuntary treatment order.

- 1 (2) The practitioner cannot revoke the referral if it was made by
2 another practitioner unless —
- 3 (a) the practitioner has consulted the other practitioner
4 about whether or not to revoke the referral; or
- 5 (b) despite reasonable efforts to do so, the other practitioner
6 could not be contacted.
- 7 (3) The order must be in the approved form and must include the
8 following —
- 9 (a) the date and time when it is made;
- 10 (b) the reasons for the revocation;
- 11 (c) if the other practitioner was consulted — a record of the
12 consultation;
- 13 (d) if the other practitioner could not be contacted — a
14 record of the efforts made to do so;
- 15 (e) the name, qualifications and signature of the practitioner
16 making it.
- 17 (4) The practitioner must, as soon as practicable, file the order and
18 give a copy to the voluntary patient.
- 19 (5) The voluntary inpatient cannot continue to be detained if the
20 referral is revoked under subsection (1).

21 **Subdivision 3 — Requirements for referral**

22 **38. Application of this Subdivision**

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

27 **39. No referral without assessment**

- 28 (1) A practitioner cannot refer a person unless the practitioner has
29 assessed the person.

- 1 (d) in respect of so much of that information as was
2 obtained during the assessment by the practitioner
3 making the referral, distinguish between —
4 (i) the information obtained from the person who is
5 referred, including by observing the person and
6 asking the person questions; and
7 (ii) the information obtained from another person or
8 from the person's medical record;
9 and
10 (e) include the name, qualifications and signature of the
11 practitioner making the referral.

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

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

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

25 The practitioner must file a copy of the referral.

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

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

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

2 (1) This section applies if —

- 3 (a) the place where a referral is made under section 26(2)
4 or (3)(a) is outside a metropolitan area; and
- 5 (b) the person responsible for taking the person who is
6 referred to the place where the examination will be
7 conducted forms the opinion that the referral is likely to
8 expire before the person is received into the hospital or
9 other place.

10 (2) The person responsible —

- 11 (a) may orally request an extension of the referral from —
- 12 (i) the medical practitioner or authorised mental
13 health practitioner who made the referral; or
- 14 (ii) if the practitioner referred to in subparagraph (i)
15 is not reasonably available — another medical
16 practitioner or authorised mental health
17 practitioner who is at the same place as the
18 practitioner referred to in subparagraph (i); or
- 19 (iii) if neither the practitioner referred to in
20 subparagraph (i) nor a practitioner referred to in
21 subparagraph (ii) is reasonably available —
22 another medical practitioner or authorised mental
23 health practitioner;

24 or

- 25 (b) may extend the referral himself or herself if —
- 26 (i) there is no medical practitioner or authorised
27 mental health practitioner reasonably available to
28 whom an application could be made under
29 paragraph (a); and
- 30 (ii) the person responsible is a medical practitioner
31 or authorised mental health practitioner.

- 1 (3) The practitioner or person responsible may extend the referral if
2 satisfied that the referral is likely to expire before the person is
3 received into the authorised hospital or other place.
- 4 (4) The referral may be extended for a further period of 72 hours
5 from the time when the 72-hour period referred to in section 44
6 ends.
- 7 (5) The person who extends the referral must, as soon as
8 practicable —
- 9 (a) record the extension in the approved form, specifying
10 the following —
- 11 (i) the date and time when the referral was
12 extended;
- 13 (ii) the date and time when, because of the extension,
14 the referral will expire;
- 15 (iii) the reasons for the extension;
- 16 and
- 17 (b) file the record and give a copy to the person who is
18 referred.
- 19 (6) The referral cannot be extended more than once.

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

- 21 (1) A medical practitioner or authorised mental health practitioner
22 may make an order changing the place specified in a referral
23 made under section 26(2) or (3)(a) as the place where the
24 examination will be conducted.
- 25 (2) The practitioner cannot change the place specified in the referral
26 unless the practitioner has consulted a medical practitioner or
27 authorised mental health practitioner at the place where, if the
28 change is made, the examination will be conducted.

- 1 **48. How assessment must be conducted**
- 2 (1) In this section —
- 3 *prescribed health professional* means —
- 4 (a) a medical practitioner; or
- 5 (b) a nurse; or
- 6 (c) an occupational therapist; or
- 7 (d) a psychologist; or
- 8 (e) a social worker; or
- 9 (f) if the person being assessed is of Aboriginal or Torres
- 10 Strait Islander descent —
- 11 (i) a health professional listed in paragraphs (a)
- 12 to (e); or
- 13 (ii) an Aboriginal or Torres Strait Islander mental
- 14 health worker.
- 15 (2) The assessment must be conducted in the least restrictive way,
- 16 and the least restrictive environment, practicable.
- 17 (3) Unless subsection (4) applies, the practitioner and the person
- 18 being assessed —
- 19 (a) must be in one another’s physical presence; or
- 20 (b) if that is not practicable — must be able to hear one
- 21 another without using a communication device (for
- 22 example, by being able to hear one another through a
- 23 door).
- 24 (4) The practitioner may conduct the assessment using audiovisual
- 25 communication if —
- 26 (a) the person being assessed is outside a metropolitan area;
- 27 and
- 28 (b) it is not practicable for the practitioner to comply with
- 29 subsection (3)(a) or (b); and

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

3 **Division 3 — Examinations**

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

5 **51. Application of this Subdivision**

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

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

- 10 (1) A person who is referred under section 26(2) —
- 11 (a) must be received into the authorised hospital unless
12 subsection (2) applies; and
- 13 (b) can be detained there, to enable the examination to be
14 conducted, for up to 24 hours from the time when the
15 person is received.
- 16 (2) The person cannot be received into the authorised hospital if the
17 referral has expired.
- 18 (3) The person in charge of the authorised hospital must ensure that
19 the person has the opportunity and the means to contact any
20 carer, close family member or other personal support person of
21 the person and the Chief Mental Health Advocate —
- 22 (a) as soon as practicable after the person is received into
23 the authorised hospital; and
- 24 (b) at all reasonable times while the person is detained there
25 under subsection (1)(b).
- 26 (4) The person cannot continue to be detained if, by the end of the
27 24-hour period referred to in subsection (1)(b) —
- 28 (a) the examination has not been completed; or

1 (b) the examination has been completed but an order has not
2 been made under section 55(1) in respect of the person.

3 (5) Reception at an authorised hospital under this section is not
4 admission by the hospital under this Act.

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

6 (1) A person who is referred under section 36(2) can be detained at
7 the authorised hospital, to enable the examination to be
8 conducted, for up to 24 hours from the time when —

9 (a) if section 36(1)(a) applies — the order for the
10 assessment of the person was made under section 34(1);
11 or

12 (b) if section 36(1)(b) applies — the person was referred
13 under section 36(2).

14 (2) The person in charge of the authorised hospital must ensure that
15 the person has the opportunity and the means to contact any
16 carer, close family member or other personal support person of
17 the person and the Chief Mental Health Advocate —

18 (a) as soon as practicable after the person is detained under
19 subsection (1) at the authorised hospital; and

20 (b) at all reasonable times while the person is detained there
21 under subsection (1).

22 (3) The person cannot continue to be detained if, by the end of the
23 24-hour period referred to in subsection (1)(a) or (b) —

24 (a) the examination has not been completed; or

25 (b) the examination has been completed but an order has not
26 been made under section 55(1) in respect of the person.

27 **54. Conducting examination**

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

- 1 **55. What psychiatrist must do on completing examination**
- 2 (1) On completing the examination referred to in section 52(1)(b)
- 3 or 53(1), the psychiatrist must make one of these orders —
- 4 (a) an inpatient treatment order authorising the person’s
- 5 detention at the authorised hospital for the period
- 6 specified in the order in accordance with section 87(a)
- 7 or (b);
- 8 (b) a community treatment order in respect of the person;
- 9 (c) an order authorising the continuation of the person’s
- 10 detention at the authorised hospital to enable a further
- 11 examination to be conducted by a psychiatrist;
- 12 (d) an order that the person cannot continue to be detained.
- 13 (2) The order must be in the approved form and must include the
- 14 following —
- 15 (a) the date and time when it is made;
- 16 (b) if it is made under subsection (1)(a), (b) or (c) — the
- 17 reasons for making it;
- 18 (c) the name, qualifications and signature of the
- 19 psychiatrist.
- 20 (3) The person can continue to be detained at the authorised
- 21 hospital under an order made under subsection (1)(c) for the
- 22 period specified in the order, which cannot exceed 72 hours
- 23 from the time when the person was —
- 24 (a) received into the authorised hospital under
- 25 section 52(1)(a); or
- 26 (b) detained at the authorised hospital under section 53(1).
- 27 (4) An order made under subsection (1)(c) cannot be extended.
- 28 (5) The psychiatrist must, as soon as practicable, file the order
- 29 made under subsection (1) and give a copy to the person.
- 30 (6) The making of an order under subsection (1) is an event to
- 31 which Part 9 applies and the person in charge of the authorised

- 1 (2) An order made under subsection (1)(a) must be in the approved
2 form and must include the following —
- 3 (a) the date and time when it is made;
- 4 (b) if it is made under subsection (1)(a)(i) or (ii) — the
5 reasons for making it;
- 6 (c) the name, qualifications and signature of the psychiatrist
7 making it.
- 8 (3) A psychiatrist who makes an order under subsection (1)(a)
9 must, as soon as practicable, file it and give a copy to the
10 person.
- 11 Notes for section 56:
- 12 1. A community treatment order in respect of an involuntary community
13 patient who is referred under section 26(2) or 36(2) is automatically
14 revoked under section 116(b) if a psychiatrist makes an inpatient
15 treatment order under section 56(1)(a)(i) in respect of the involuntary
16 community patient.
- 17 2. A community treatment order in respect of an involuntary community
18 patient who is referred under section 26(2) is no longer suspended if a
19 psychiatrist makes an order under section 56(1)(a)(iii) that the
20 involuntary community patient cannot continue to be detained (see
21 section 30(b)(i)).

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

23 **57. Application of this Subdivision**

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

27 **58. Detention for examination**

- 28 (1) The person —
- 29 (a) must be received into the place unless subsection (2)
30 applies; and

- 1 (b) can be detained there, to enable the examination to be
2 conducted, for up to 24 hours from the time when the
3 person is received.
- 4 (2) The person cannot be received into the place if the referral has
5 expired.
- 6 (3) The person in charge of the place must ensure that the person
7 has the opportunity and the means to contact any carer, close
8 family member or other personal support person of the person
9 and the Chief Mental Health Advocate —
- 10 (a) as soon as practicable after the person is received into
11 the place; and
- 12 (b) at all reasonable times while the person is detained there
13 under subsection (1)(b).
- 14 (4) The person cannot continue to be detained if, by the end of the
15 24-hour period referred to in subsection (1)(b) —
- 16 (a) either —
- 17 (i) the examination has not been completed; or
- 18 (ii) the examination has been completed but an order
19 has not been made under section 61(1) in respect
20 of the person;
- 21 and
- 22 (b) if the place is outside a metropolitan area — an order
23 authorising the continuation of the person’s detention
24 from the end of that period has not been made under
25 section 59(2).

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

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

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

27 **60. Conducting examination**

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

- 1 **61. What psychiatrist must do on completing examination**
- 2 (1) On completing the examination, the psychiatrist must make one
3 of these orders —
- 4 (a) an inpatient treatment order authorising the person’s
5 detention at the general hospital specified in the order
6 for the period specified in the order in accordance with
7 section 87(a) or (b);
- 8 (b) a community treatment order in respect of the person;
- 9 (c) an order authorising the person’s reception at an
10 authorised hospital, and the person’s detention there, to
11 enable an examination to be conducted by a psychiatrist;
- 12 (d) an order that the person cannot continue to be detained.
- 13 (2) However, the psychiatrist cannot make an order under
14 subsection (1)(a) unless —
- 15 (a) satisfied that attempting to take the person to, or to
16 detain the person at, an authorised hospital poses a
17 significant risk to the person’s physical health; and
- 18 (b) the Chief Psychiatrist consents to the order being made.
- 19 (3) The order must be in the approved form and must include the
20 following —
- 21 (a) the date and time when it is made;
- 22 (b) if it is made under subsection (1)(a), (b) or (c) — the
23 reasons for making it;
- 24 (c) the name, qualifications and signature of the
25 psychiatrist.
- 26 (4) The psychiatrist must, as soon as practicable, file the order and
27 give a copy to the person.
- 28 (5) The making of an order under subsection (1) is an event to
29 which Part 9 applies and the psychiatrist who makes the order is
30 the person responsible under that Part for notification of that
31 event.

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

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

- 17 (1) A medical practitioner or authorised mental health practitioner
18 may make an order authorising the continuation of the person's
19 detention for up to 24 hours from the time when the order under
20 section 61(1)(a) or (c) is made if satisfied that, because of the
21 person's mental or physical condition, the person needs to be
22 detained to enable the person to be taken to the hospital.
- 23 (2) A medical practitioner or authorised mental health practitioner
24 may, immediately before the end of the period of detention
25 authorised under subsection (1) or any further period of
26 detention authorised under this subsection in respect of the
27 person, make an order authorising the continuation of the
28 person's detention for up to 24 hours from the end of that period
29 to enable the person to be taken to the hospital.
- 30 (3) A person cannot be detained under orders made under this
31 section for a continuous period of more than 72 hours.
- 32 (4) A medical practitioner or authorised mental health practitioner
33 cannot make an order under subsection (2) in respect of the
34 person unless —
- 35 (a) immediately before making the order, the practitioner
36 assesses the person; and

- 1 (b) as a consequence, the practitioner is satisfied that,
2 because of the person’s mental or physical condition, the
3 person still needs to be detained to enable the person to
4 be taken to the hospital.
- 5 (5) Division 2 Subdivision 4 applies in relation to the conduct of an
6 assessment required by subsection (4)(a).
- 7 (6) An order made under this section must be in the approved form
8 and must include the following —
- 9 (a) the date and time when it is made;
- 10 (b) the date and time when it expires;
- 11 (c) the reasons for the continuation;
- 12 (d) the name, qualifications and signature of the practitioner
13 making it.
- 14 (7) A practitioner who makes an order under this section in respect
15 of a person must, as soon as practicable, file it and give a copy
16 to the person.
- 17 (8) A practitioner who makes an order under this section in respect
18 of a person must ensure that the person has the opportunity and
19 the means to contact any carer, close family member or other
20 personal support person of the person and the Chief Mental
21 Health Advocate —
- 22 (a) as soon as practicable after it is made; and
- 23 (b) at all reasonable times while the person is detained
24 under it.
- 25 (9) The person cannot continue to be detained if, by the end of a
26 period of detention authorised under this section in respect of
27 the person —
- 28 (a) the person has not been taken to the hospital; and
- 29 (b) the person has not been apprehended under a transport
30 order made under section 63(1); and
- 31 (c) an order under subsection (2) authorising the
32 continuation of the person’s detention from the end of

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

3 **63. Making transport order**

4 (1) A psychiatrist may make a transport order in respect of a person
5 who is under an order made under section 61(1)(a) or (c).

6 (2) The psychiatrist cannot make the transport order unless satisfied
7 that —

8 (a) because of the person’s mental or physical condition, the
9 person needs to be taken to the hospital specified in the
10 order made under section 61(1)(a) or (c); and

11 (b) no other safe means of taking the person is reasonably
12 available.

13 (3) Part 10 applies in relation to the transport order.

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

16 **64. Application of this Subdivision**

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

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

23 (1) At the end of each successive 7 day period that the involuntary
24 inpatient is detained at the general hospital, the treating
25 psychiatrist must report to the Chief Psychiatrist about these
26 matters —

27 (a) the involuntary inpatient’s mental and physical
28 condition;

29 (b) any treatment (as defined in section 4) being provided to
30 the involuntary inpatient at the general hospital;

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

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

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

5 (1) Once the treating psychiatrist is satisfied that attempting to take
6 the involuntary inpatient to, or to detain the involuntary
7 inpatient at, an authorised hospital no longer poses a significant
8 risk to the inpatient's physical health, then as soon as
9 practicable, the treating psychiatrist must make an order (a
10 ***transfer order***) authorising the inpatient's transfer to the
11 authorised hospital specified in the order.

12 (2) In deciding whether or not there is still a significant risk to the
13 involuntary inpatient's physical health, the treating psychiatrist
14 may consult with any other medical practitioner or health care
15 provider who is responsible for any medical or surgical
16 treatment being provided to the inpatient.

17 (3) The transfer order must be in the approved form and must
18 include the following —

- 19 (a) the involuntary inpatient's name;
- 20 (b) the general hospital from which the involuntary
21 inpatient is to be transferred;
- 22 (c) the authorised hospital to which the involuntary
23 inpatient is to be transferred;
- 24 (d) the date and time when the order is made;
- 25 (e) the reasons for the transfer;
- 26 (f) the name, qualifications and signature of the treating
27 psychiatrist.

28 (4) The treating psychiatrist must, as soon as practicable, file the
29 transfer order and give a copy to the involuntary patient.

- 1 (5) The making of a transfer order under subsection (1) is an event
2 to which Part 9 applies and the treating psychiatrist is the person
3 responsible under that Part for notification of that event.

4 **67. Making transport order**

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

12 **68. Confirmation of inpatient treatment order**

- 13 (1) This section applies if —
- 14 (a) the psychiatrist who conducted the examination for the
15 purpose of making the inpatient treatment order and the
16 involuntary inpatient were not in one another's physical
17 presence when that examination was conducted; and
- 18 (b) since that examination was conducted, there has been no
19 further examination of the involuntary inpatient
20 conducted by a psychiatrist during which the
21 psychiatrist and the inpatient were in one another's
22 physical presence.
- 23 (2) Within 24 hours after the involuntary inpatient is admitted by
24 the authorised hospital in accordance with the transfer order, the
25 inpatient treatment order must be confirmed by a psychiatrist at
26 the authorised hospital.
- 27 (3) The psychiatrist cannot confirm the inpatient treatment order
28 without examining the involuntary inpatient.
- 29 (4) Subdivision 6 applies in relation to the conduct of the
30 examination.

- 1 (5) The confirmation must be in the approved form and must
2 include the following —
- 3 (a) the date and time when it is made;
- 4 (b) the reasons for the confirmation;
- 5 (c) the name, qualifications and signature of the
6 psychiatrist.
- 7 (6) The inpatient treatment order ceases to be in force if it is not
8 confirmed in accordance with subsection (2).
- 9 (7) The release of a person because of subsection (6) is an event to
10 which Part 9 applies and the person in charge of the authorised
11 hospital is the person responsible under that Part for notification
12 of that event.

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

15 **69. Application of this Subdivision**

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

20 **70. Detention at authorised hospital**

- 21 (1) The person —
- 22 (a) must be received into the authorised hospital unless
23 subsection (2) applies; and
- 24 (b) can be detained there, to enable the examination to be
25 conducted, for up to 24 hours from the time when the
26 person is received.
- 27 (2) The person cannot be received into the authorised hospital more
28 than 72 hours after the time when the order under
29 section 61(1)(c) is made.

- 1 (3) The person in charge of the authorised hospital must ensure that
2 the person has the opportunity and the means to contact any
3 carer, close family member or other personal support person of
4 the person and the Chief Mental Health Advocate —
- 5 (a) as soon as practicable after the person is received into
6 the authorised hospital; and
- 7 (b) at all reasonable times while the person is detained there
8 under subsection (1)(b).
- 9 (4) The person cannot continue to be detained if, by the end of the
10 24-hour period referred to in subsection (1)(b) —
- 11 (a) the examination has not been completed; or
12 (b) the examination has been completed but an order has not
13 been made under section 72(1) in respect of the person.
- 14 (5) Reception at an authorised hospital under this section is not
15 admission by the hospital under this Act.

16 **71. Conducting examination at authorised hospital**

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

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

- 20 (1) On completing the examination, the psychiatrist must make one
21 of these orders —
- 22 (a) an inpatient treatment order authorising the person's
23 detention at the authorised hospital for the period
24 specified in the order in accordance with section 87(a)
25 or (b);
- 26 (b) a community treatment order in respect of the person;
27 (c) an order that the person cannot continue to be detained.
- 28 (2) The order must be in the approved form and must include the
29 following —
- 30 (a) the date and time when it is made;

- 1 (b) if it is made under subsection (1)(a) or (b) — the reasons
2 for making it;
- 3 (c) the name, qualifications and signature of the
4 psychiatrist.
- 5 (3) The psychiatrist must, as soon as practicable, file the order and
6 give a copy to the person.

7 Notes for section 72:

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

14 **Subdivision 5 — Examination without referral**

15 **73. Application of this Subdivision**

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

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

23 **74. Conducting examination**

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

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

- 27 (1) On completing the examination, the psychiatrist may make a
28 community treatment order in respect of the person.

- 1 (2) The order must be in the approved form and must include the
2 following —
- 3 (a) the date and time when it is made;
- 4 (b) the reasons for making it;
- 5 (c) the name, qualifications and signature of the
6 psychiatrist.
- 7 (3) The psychiatrist must, as soon as practicable, file the order and
8 give a copy to the person.
- 9 **76. Confirmation of community treatment order**
- 10 (1) Within 72 hours after the time when the community treatment
11 order is made, it must be confirmed by —
- 12 (a) another psychiatrist; or
- 13 (b) if another psychiatrist is not reasonably available —
- 14 (i) another medical practitioner; or
- 15 (ii) an authorised mental health practitioner.
- 16 (2) The confirmation must be in the approved form and must
17 include the following —
- 18 (a) the date and time when it is made;
- 19 (b) the reasons for the confirmation;
- 20 (c) the name, qualifications and signature of the practitioner
21 confirming the community treatment order.
- 22 (3) The supervising psychiatrist —
- 23 (a) must inform the person about whether or not the order
24 has been confirmed; and
- 25 (b) if it has been confirmed — file the confirmation and
26 give a copy to the person.
- 27 (4) The order ceases to be in force if it is not confirmed in
28 accordance with subsection (1).

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Subdivision 6 — Conduct of examination

77. Application of this Subdivision

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

- (a) by a psychiatrist because of a referral made under section 26(2) or (3)(a) or 36(2);
- (b) by a psychiatrist because of an order made under section 55(1)(c) or 61(1)(c) for the detention of a person at an authorised hospital to enable the person to be examined;
- (c) by a psychiatrist for the purpose of confirming an inpatient treatment order, as required by section 68(3) or 124(3);
- (d) by a psychiatrist in circumstances in which Subdivision 5 applies;
- (e) by a supervising psychiatrist before the review period for a community treatment order ends, as required by section 118(2)(a);
- (f) by a medical practitioner or authorised mental health practitioner before the review period for a community treatment order ends, as required by section 118(2)(b);
- (g) by a supervising psychiatrist for the purpose of making an inpatient treatment order, as required by section 120(3), 123(2) or 131(3);
- (h) by a supervising psychiatrist for the purpose of making an order revoking a community treatment order, as permitted by section 120(4)(a), 123(3)(a) or 131(5)(a);
- (i) by a supervising psychiatrist for the purpose of making a continuation order, as required by section 121(2);
- (j) by a psychiatrist for the purpose of giving a further opinion, as required by section 182(6) as applied by section 121(6) or as required by section 182(6).

1 **78. Referring psychiatrist cannot conduct examination**

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

5 **79. How examination must be conducted**

6 (1) In this section —

7 *prescribed health professional* means —

- 8 (a) a medical practitioner; or
9 (b) a nurse; or
10 (c) an occupational therapist; or
11 (d) a psychologist; or
12 (e) a social worker; or
13 (f) if the person being assessed is of Aboriginal or Torres
14 Strait Islander descent —
15 (i) a health professional listed in paragraphs (a)
16 to (e); or
17 (ii) an Aboriginal or Torres Strait Islander mental
18 health worker.

19 (2) An examination must be conducted in the least restrictive way,
20 and the least restrictive environment, practicable.

21 (3) For an examination referred to in section 77(a), (b), (d), (f)
22 or (g), unless subsection (4) applies, the psychiatrist or
23 practitioner and the person being examined must be in one
24 another's physical presence.

25 (4) The psychiatrist or practitioner may conduct the examination
26 using audiovisual communication if —

- 27 (a) the person being examined is outside a metropolitan
28 area; and
29 (b) it is not practicable for the psychiatrist or practitioner to
30 comply with subsection (3); and

- 1 (c) a prescribed health professional and the person being
2 examined are in one another's physical presence.
- 3 (5) For an examination referred to in section 77(c) or in
4 section 77(e) if it is also an examination required by
5 section 120(3), the psychiatrist or practitioner and the person
6 being examined must be in one another's physical presence and
7 the examination cannot be conducted using audiovisual
8 communication.
- 9 (6) For an examination referred to in section 77(e) unless it is also
10 an examination required by section 120(3) or in section 77(i)
11 or (j) —
- 12 (a) the psychiatrist or practitioner and the person being
13 examined need not be in one another's physical
14 presence; but
- 15 (b) if they are not — each of them must be able to see and
16 hear the other while the other is speaking (for example,
17 by being able to see one another through a window and
18 hear one another using a telephone or to see and hear
19 one another using audiovisual communication).
- 20 (7) For the purposes of this Act, an examination conducted using
21 audiovisual communication is taken to be conducted, and any
22 order made as a result is taken to be made, at the place where
23 the person examined is when the examination is conducted.

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

- 25 (1) The psychiatrist or practitioner may have regard to any
26 information about the person being examined that is obtained by
27 the psychiatrist or practitioner from one or more of the
28 following —
- 29 (a) the person, including information obtained by observing
30 the person and asking the person questions;

- 1 (b) if the person is of Aboriginal or Torres Strait Islander
2 descent —
- 3 (i) an Aboriginal or Torres Strait Islander mental
4 health worker; or
- 5 (ii) a significant member of the person’s community,
6 including an elder or traditional healer;
- 7 (c) any other person;
- 8 (d) the person’s medical record.
- 9 (2) The psychiatrist or practitioner cannot conclude that the person
10 being examined is in need of, is still in need of, or is no longer
11 in need of, an involuntary treatment order solely on the basis of
12 information referred to in one or more of subsection (1)(b)(i)
13 or (ii), (c) or (d).

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

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

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

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

2 **Division 1 — Preliminary matters**

3 **82. Application of this Part**

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

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

12 **83. Detention authorised**

13 (1) This section applies in relation to any of these people —

- 14 (a) a person who can be detained at an authorised hospital
15 under section 34(3) because of an order for an
16 assessment made under section 34(1);
- 17 (b) a person who can be detained at an authorised hospital
18 under section 52(1)(b) because of a referral made under
19 section 26(2);
- 20 (c) a person who can be detained at an authorised hospital
21 under section 53(1) because of a referral made under
22 section 36(2);
- 23 (d) a person who is under an order made under
24 section 55(1)(c) authorising the continuation of the
25 person’s detention at an authorised hospital to enable a
26 further examination to be conducted;
- 27 (e) a person who can be detained at a place that is not an
28 authorised hospital under section 58(1)(b) because of a
29 referral made under section 26(3)(a);

- 1 (f) a person who is under an order made under section 59(2)
2 authorising the continuation of the person's detention at
3 a place that is not an authorised hospital to enable an
4 examination to be completed;
- 5 (g) a person who is under an order made under
6 section 61(1)(c) authorising the person's detention at an
7 authorised hospital to enable an examination to be
8 conducted.

9 (2) The referral or order authorises —

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

18 Notes for section 83:

- 19 1. The period for which a person can be detained under section 34(3) is
20 authorised under that provision.
- 21 2. The period for which a person can be detained under section 52(1)(b),
22 53(1) or 58(1)(b), or under an order made under section 55(1)(c), 59(2)
23 or 61(1)(c), is authorised under Part 6 Division 3.

24 **Division 3 — Detention at hospital under inpatient**
25 **treatment order**

26 **84. Application of this Division**

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

1 Notes for section 84:

- 2 1. An inpatient treatment order authorising a person's detention at an
3 authorised hospital can be made under section 55(1)(a), 56(1)(a)(i),
4 72(1)(a), 120(2)(a), 123(1)(a) or 131(2)(a).
- 5 2. An inpatient treatment order authorising a person's detention at a
6 general hospital can be made under section 61(1)(a) or 131(2)(a).

7 **85. Terms used**

8 In this Division —

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

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

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

18 **86. Detention authorised**

19 An inpatient treatment order authorises —

- 20 (a) the involuntary inpatient's admission as an inpatient
21 by —
- 22 (i) the hospital specified in the order; and
23 (ii) any authorised hospital to which the patient is
24 transferred under section 66(1) or 91(2);

25 and

- 26 (b) the involuntary inpatient's detention there for the period
27 authorised by this Act for which the inpatient can be
28 detained under this Act; and
- 29 (c) a person who is prescribed by the regulations for this
30 paragraph to exercise the powers under section 172 for
31 the purpose of detaining the involuntary inpatient there.

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

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

- 5 (a) if, when the order is made, the involuntary inpatient is
6 an adult — 21 days from the day on which the order is
7 made; or
8 (b) if, when the order is made, the involuntary inpatient is a
9 child — 14 days from the day on which the order is
10 made.

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

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

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

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

- 22 (1) The treating psychiatrist must ensure that, on or within 7 days
23 before the day on which the detention period for an inpatient
24 treatment order ends, the involuntary inpatient is examined by a
25 psychiatrist.
26 (2) On completing the examination, the psychiatrist who conducted
27 it must make one of these orders —
28 (a) if satisfied, having regard to the criteria specified in
29 section 25, that the involuntary inpatient is still in need
30 of the inpatient treatment order — a continuation order
31 continuing the inpatient treatment order from the end of

- 1 the detention period for the further detention period that
2 is specified in the continuation order in accordance with
3 subsection (3)(a) or (b);
- 4 (b) if satisfied, having regard to the criteria specified in
5 section 25, that the involuntary inpatient is no longer in
6 need of the inpatient treatment order but is in need of a
7 community treatment order — a community treatment
8 order in respect of the inpatient;
- 9 (c) if satisfied, having regard to the criteria in section 25,
10 that the involuntary inpatient is no longer in need of an
11 involuntary treatment order — an order revoking the
12 inpatient treatment order.
- 13 (3) For subsection (2)(a), the detention period specified in a
14 continuation order cannot exceed —
- 15 (a) if, when the continuation order is made, the involuntary
16 inpatient is an adult — 3 months; or
- 17 (b) if, when the continuation order is made, the involuntary
18 inpatient is a child — 28 days.
- 19 (4) An order made under subsection (2) must be in the approved
20 form and must include the following —
- 21 (a) the date and time when it is made;
- 22 (b) if it is made under subsection (2)(a) or (b) — the reasons
23 for making it;
- 24 (c) the name, qualifications and signature of the psychiatrist
25 making it.
- 26 (5) A psychiatrist who makes an order under subsection (2) must, as
27 soon as practicable, file it and give a copy to the involuntary
28 inpatient.
- 29 (6) The release of a person because of an order made under
30 subsection (2)(b) or (c) is an event to which Part 9 applies and
31 the person in charge of the hospital is the person responsible
32 under that Part for notification of that event.

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

- 2 (1) A psychiatrist may make either of these orders during the
3 detention period —
- 4 (a) if satisfied, having regard to the criteria specified in
5 section 25, that the involuntary inpatient is no longer in
6 need of the inpatient treatment order but is in need of a
7 community treatment order — a community treatment
8 order in respect of the inpatient;
- 9 (b) if satisfied, having regard to the criteria specified in
10 section 25, that the involuntary inpatient is no longer in
11 need of an involuntary treatment order — an order
12 revoking the inpatient treatment order.
- 13 (2) The psychiatrist may make the order without examining the
14 involuntary inpatient.
- 15 (3) The order must be in the approved form and must include the
16 following —
- 17 (a) the date and time when it is made;
- 18 (b) if it is made under subsection (1)(a) — the reasons for
19 making it;
- 20 (c) the name, qualifications and signature of the
21 psychiatrist.
- 22 (4) The psychiatrist must, as soon as practicable, file the order and
23 give a copy to the involuntary inpatient.
- 24 (5) The making of an order under subsection (1) is an event to
25 which Part 9 applies and the psychiatrist who makes the order is
26 the person responsible under that Part for notification of that
27 event.

28 **91. Transfer between authorised hospitals**

- 29 (1) This section applies in relation to an involuntary inpatient who
30 is detained at an authorised hospital.

- 1 (2) The treating psychiatrist or, if the treating psychiatrist is not
2 reasonably available, another psychiatrist at the authorised
3 hospital may make an order (a **transfer order**) authorising the
4 involuntary inpatient's transfer from the authorised hospital to
5 another authorised hospital specified in the order.
- 6 (3) The transfer order must be in the approved form and must
7 include the following —
- 8 (a) the involuntary inpatient's name;
- 9 (b) the authorised hospital from which the involuntary
10 inpatient is to be transferred;
- 11 (c) the authorised hospital to which the involuntary
12 inpatient is to be transferred;
- 13 (d) the date and time when the order is made;
- 14 (e) the reasons for the transfer;
- 15 (f) the name, qualifications and signature of the psychiatrist
16 making it.
- 17 (4) A psychiatrist who makes a transfer order must, as soon as
18 practicable, file it and give a copy to the involuntary inpatient.
- 19 (5) The making of a transfer order under subsection (2) is an event
20 to which Part 9 applies and the psychiatrist who makes the order
21 is the person responsible under that Part for notification of that
22 event.

23 Note for section 91:

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

26 **92. Making transport order**

- 27 (1) A psychiatrist may make a transport order in respect of an
28 inpatient who is under a transfer order made under
29 section 91(2).

1 (2) The psychiatrist cannot make the transport order unless satisfied
2 that no other safe means of taking the involuntary inpatient to
3 the authorised hospital is reasonably available.

4 (3) Part 10 applies in relation to the transport order.

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

6 (1) This section applies if an inpatient treatment order expires.

7 (2) The treating psychiatrist must advise the involuntary inpatient in
8 writing of the expiry and its consequences.

9 (3) The treating psychiatrist must file a copy of the advice.

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

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

15 **94. Application of this Division**

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

19 (a) a person who is detained under Part 6 Division 2 or 3 to
20 enable the person —

21 (i) to be taken to an authorised hospital or other
22 place; or

23 (ii) to be assessed or examined;

24 or

25 (b) a person who is detained under an inpatient treatment
26 order; or

27 (c) an involuntary community patient who is detained under
28 section 130(2)(b).

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

2 (1) This section applies whenever a person cannot continue to be
3 detained at a hospital or other place for a reason referred to in
4 section 94.

5 (2) A person in charge of the hospital or other place must ensure
6 that, as soon as practicable —

7 (a) the person is advised in writing by a medical practitioner
8 or mental health practitioner that the person cannot
9 continue to be detained for that reason; or

10 (b) if the person leaves the hospital or other place before a
11 medical practitioner or mental health practitioner can
12 comply with paragraph (a) — a record of the time when
13 the person left the hospital or other place is filed.

14 (3) The person must be allowed to leave the hospital or other place
15 unless the person’s detention at the hospital or other place is
16 authorised —

17 (a) for another reason referred to in section 94; or

18 (b) under section 96.

19 (4) The practitioner who provides the advice referred to in
20 subsection (2)(a) must file a copy of the advice.

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

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

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

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

4 (1) For the purposes of this Division, a person is absent without
5 leave from a hospital or other place if —

6 (a) in the case of a person who is detained under Part 6
7 Division 2 or 3 to enable the person —

8 (i) to be taken to an authorised hospital or other
9 place; or

10 (ii) to be assessed or examined,
11 the person leaves the hospital or other place where the
12 person is detained; or

13 (b) in the case of a person who is under an inpatient
14 treatment order — the person is absent without leave as
15 described in subsection (2); or

16 (c) in the case of an involuntary community patient who is
17 detained under section 130(2)(b) — the person leaves
18 the place where the patient is detained.

19 (2) For subsection (1)(b), a person who is under an inpatient
20 treatment order is absent without leave —

21 (a) if the person is away from the hospital where the person
22 is detained under the order without being granted leave
23 of absence under section 105(1); or

24 (b) if, on the cancellation under section 110(1) of leave of
25 absence granted to the person under section 105(1) or on
26 the expiry of such leave, the person does not return to
27 either of these hospitals —

28 (i) the hospital from which the person was granted
29 the leave of absence;

30 (ii) the hospital to which the person's transfer has
31 been ordered under section 66(1) or 91(2).

1 (3) The absence of a person without leave from a hospital or other
2 place is an event to which Part 9 applies and the person in
3 charge of the hospital or other place is the person responsible
4 under that Part for notification of that event.

5 **98. Making apprehension and return order**

- 6 (1) The person in charge of a hospital or other place or a medical
7 practitioner may make an order (an ***apprehension and return***
8 ***order***) in respect of a person who is absent without leave from
9 the hospital or other place if satisfied that no other safe means
10 of ensuring that the person returns to the hospital or other place
11 is reasonably available.
- 12 (2) An apprehension and return order must be in the approved form
13 and must include the following —
- 14 (a) the name of the person who is absent without leave;
15 (b) the hospital or other place from which the person is
16 absent without leave;
17 (c) the hospital or other place to which the person must be
18 taken if apprehended;
19 (d) the date when it is made;
20 (e) the date when it will expire;
21 (f) the reasons for making it;
22 (g) the name, qualifications and signature of the person
23 making it.
- 24 (3) A person who makes an apprehension and return order must, as
25 soon as practicable, file it and give a copy to the police officer
26 or person prescribed who will carry out the order.

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

- 28 An apprehension and return order made in respect of a person
29 authorises a police officer or a person prescribed by the
30 regulations for this section to do these things —
- 31 (a) apprehend the person and, for that purpose, exercise the
32 powers under sections 159(2) and 172;

- 1 (b) if the person is apprehended — take the person to the
2 hospital or other place specified in the apprehension and
3 return order under section 98(2)(c) as soon as
4 practicable and, in any event, before the order expires;
- 5 (c) for the purpose of taking the person to that hospital or
6 other place, detain the person until the first of these
7 things occurs —
- 8 (i) the person is received into the hospital or other
9 place;
- 10 (ii) the apprehension and return order expires.

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

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

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

- 16 (1) The person in charge of a hospital or other place from which a
17 person is absent without leave or a medical practitioner may
18 make an order (a *revocation order*) revoking an apprehension
19 and return order made in respect of the person if satisfied that
20 the apprehension and return order is no longer needed.
- 21 (2) The revocation order must be in the approved form and must
22 include the following —
- 23 (a) the date and time when it is made;
- 24 (b) the reasons for the revocation;
- 25 (c) the name, qualifications and signature of the person
26 making it.
- 27 (3) A person who makes a revocation order must, as soon as
28 practicable —
- 29 (a) advise the police officer or person prescribed
30 responsible for carrying out the apprehension and return
31 order of the revocation; and

1 (b) file the order and a record of the advice.

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

3 (1) Subsection (2) applies if, after a person is apprehended under an
4 apprehension and return order but before the person is received
5 into the hospital or other place specified in the order under
6 section 98(2)(c), the order is revoked under section 101(1) or
7 expires.

8 (2) The police officer or person prescribed who was responsible for
9 carrying out the apprehension and return order must take
10 reasonable steps to ensure the person is taken, at the person's
11 election —

12 (a) back to the place where the person was apprehended; or

13 (b) to a place reasonably nominated by the person.

14 (3) Subsection (2) does not require the person to be taken to a place
15 if to do so poses a serious risk to the safety of the person or
16 another person.

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

19 **Subdivision 1 — Preliminary matters**

20 **103. Application of this Division**

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

25 Notes for section 103:

26 1. An inpatient treatment order authorising a person's detention at an
27 authorised hospital can be made under section 55(1)(a), 56(1)(a)(i),
28 72(1)(a), 120(2)(a), 123(1)(a) or 131(2)(a).

29 2. An inpatient treatment order authorising a person's detention at a
30 general hospital can be made under section 61(1)(a) or 131(2)(a).

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

2 In this Division —

3 *leave of absence* —

4 (a) means leave of absence granted under section 105(1);
5 and

6 (b) includes leave of absence as extended or varied under
7 section 106(1).

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

9 **105. Granting leave**

10 (1) A psychiatrist may make an order granting an involuntary
11 inpatient leave of absence from a hospital if satisfied that
12 granting the leave of absence —

13 (a) will —

14 (i) be likely to benefit the involuntary inpatient's
15 recovery from mental illness or to benefit the
16 inpatient's mental health in some other way; or

17 (ii) enable the involuntary inpatient to obtain
18 medical or surgical treatment or be likely to
19 benefit the inpatient's physical health in some
20 other way;

21 and

22 (b) is not inconsistent with the involuntary inpatient's need
23 to be provided with treatment for a reason specified in
24 section 25(1)(b).

25 (2) The psychiatrist cannot make the order unless the psychiatrist
26 has consulted each of these people about the matters specified in
27 subsection (3) —

28 (a) if the involuntary inpatient has an enduring guardian or
29 guardian — the enduring guardian or guardian;

30 (b) if the involuntary inpatient is a child — the child's
31 parent or guardian;

- 1 (c) if the involuntary inpatient has a nominated person —
2 the nominated person unless the nominated person is not
3 entitled, for the reason referred to in section 269(1), to
4 be consulted;
- 5 (d) if the involuntary inpatient has a carer — the carer
6 unless the carer is not entitled, for the reason referred to
7 in section 288(2) or 292(1), to be consulted;
- 8 (e) if the involuntary inpatient has a close family
9 member — the close family member unless the close
10 family member is not entitled, for the reason referred to
11 in section 288(2) or 292(1), to be consulted.
- 12 (3) For subsection (2), these matters are specified —
- 13 (a) whether or not to make the order; and
- 14 (b) what period and conditions would be appropriate to
15 specify in the order if it were to be made.
- 16 (4) Without limiting a requirement under subsection (2)(a) to
17 consult the involuntary inpatient’s enduring guardian or
18 guardian, or under subsection (2)(b) to consult the involuntary
19 inpatient’s parent or guardian, about the matters referred to in
20 subsection (3)(a) and (b), the requirement is taken to be
21 complied with if the psychiatrist ensures that reasonable efforts
22 continue to be made to consult the person about those matters
23 until the first of these things occurs —
- 24 (a) the person is consulted about those matters;
- 25 (b) it is reasonable for the psychiatrist to conclude that the
26 person cannot be consulted about those matters.
- 27 (5) Part 16 Division 3 Subdivision 2 applies in relation to a
28 requirement under subsection (2)(c) to consult the involuntary
29 inpatient’s nominated person about the matters referred to in
30 subsection (3)(a) and (b).
- 31 (6) Part 17 Division 2 applies in relation to a requirement under
32 subsection (2)(d) to consult a carer of the involuntary inpatient,
33 or under subsection (2)(e) to consult a close family member of

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- 1 the involuntary inpatient, about the matters referred to in
2 subsection (3)(a) and (b).
- 3 (7) The psychiatrist must ensure that the following are filed —
4 (a) if a person referred to in subsection (2)(a) to (e) was
5 consulted — a record of the consultation; or
6 (b) if a person referred to in subsection (2)(a) to (e) could
7 not be consulted — a record of the efforts made to do
8 so.
- 9 (8) The psychiatrist cannot make the order unless the psychiatrist
10 has considered whether it would be more appropriate to make
11 an order under section 90(1) in respect of the involuntary
12 inpatient.
- 13 (9) The order authorises the involuntary inpatient's absence from
14 the hospital for the period, and subject to the conditions, the
15 psychiatrist considers appropriate and specifies in the order.
- 16 (10) The conditions imposed under subsection (9) may include
17 conditions about the involuntary inpatient doing any of these
18 things —
19 (a) residing at a specified place;
20 (b) receiving specified treatment;
21 (c) attending at a specified place, and remaining there as
22 specified in the order, to enable the involuntary inpatient
23 to be provided with specified treatment.
- 24 (11) The order must be in the approved form and must include the
25 following —
26 (a) the date and time when it is made;
27 (b) the period and conditions of the leave of absence;
28 (c) the reasons for granting the leave of absence;
29 (d) the name, qualifications and signature of the
30 psychiatrist.

1 (12) The psychiatrist must, as soon as practicable, file the order and
2 give a copy to the involuntary inpatient.

3 (13) The making of an order under subsection (1) is an event to
4 which Part 9 applies and the psychiatrist who makes the order is
5 the person responsible under that Part for notification of that
6 event.

7 **106. Extending or varying leave granted**

8 (1) A psychiatrist may make an order —
9 (a) extending an involuntary inpatient's leave of absence; or
10 (b) varying the conditions subject to which an involuntary
11 inpatient's leave of absence is granted.

12 (2) The order must be in the approved form and must include the
13 following —

- 14 (a) the date and time when it is made;
15 (b) the period of the extension or the variation of the
16 conditions;
17 (c) the reasons for the extension or variation;
18 (d) the name, qualifications and signature of the
19 psychiatrist.

20 (3) The psychiatrist must, as soon as practicable, file the order and
21 give a copy to the involuntary inpatient.

22 (4) The making of an order under subsection (1) is an event to
23 which Part 9 applies and the psychiatrist who makes the order is
24 the person responsible under that Part for notification of that
25 event.

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

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

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s. 108

1 **108. Monitoring involuntary inpatient on leave**

2 (1) This section applies if an involuntary inpatient is away from a
3 hospital on leave of absence for more than 21 consecutive days.

4 (2) The treating psychiatrist must consider whether it would be
5 appropriate to make an order under section 90(1) in respect of
6 the inpatient.

7 (3) For the purpose of subsection (2), the treating psychiatrist may
8 make any inquiries the psychiatrist considers appropriate.

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

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

16 (2) The treating psychiatrist must file the opinion as soon as
17 practicable, whether or not the treating psychiatrist acts under
18 subsection (3) on the basis of the opinion.

19 (3) The treating psychiatrist may make an order under section 90(1)
20 in respect of the involuntary inpatient on the basis of the opinion
21 and without examining the inpatient.

22 **110. Cancelling leave**

23 (1) This section applies if, while an involuntary inpatient is away
24 from a hospital on leave of absence, a psychiatrist forms the
25 reasonable belief that it is inappropriate for the inpatient to
26 continue to be away from the hospital.

27 (2) The psychiatrist may make an order cancelling the leave of
28 absence.

- 1 (3) The order must be in the approved form and must include the
2 following —
- 3 (a) the date and time when it is made;
- 4 (b) the reasons for that belief;
- 5 (c) the name, qualifications and signature of the
6 psychiatrist.
- 7 (4) The psychiatrist must, as soon as practicable —
- 8 (a) orally advise the involuntary patient that the leave of
9 absence has been cancelled; and
- 10 (b) file the order and give a copy to the involuntary
11 inpatient.
- 12 (5) The making of an order under subsection (2) is an event to
13 which Part 9 applies and the psychiatrist who makes the order is
14 the person responsible under that Part for notification of that
15 event.

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

17 **111. Application of this Subdivision**

18 This Subdivision applies in relation to an involuntary
19 inpatient —

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

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Part 7 Detention for examination or treatment

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

s. 112

1 **112. Making transport order**

2 (1) A psychiatrist may make a transport order in respect of the
3 involuntary inpatient.

4 (2) The psychiatrist cannot make the transport order unless satisfied
5 that no other safe means of taking the involuntary inpatient to
6 the hospital is reasonably available.

7 (3) Part 10 applies in relation to the transport order.

Part 8 — Community treatment orders

Division 1 — Preliminary matters

113. Terms used

In this Part —

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

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

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

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

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

treatment period, for a community treatment order, means —

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

Division 2 — Making order

114. Things psychiatrist must be satisfied of before making order

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

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

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

8 Note for section 114:

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

11 **115. Terms of order**

- 12 (1) The terms of a community treatment order must include these
13 things —
- 14 (a) the name of the psychiatrist who is the supervising
15 psychiatrist under the order;
- 16 (b) a requirement that the involuntary community patient
17 comply with all of the supervising psychiatrist's
18 directions to the patient about treatment to be provided
19 to the patient under the order;
- 20 (c) the name of the medical practitioner or mental health
21 practitioner who is the treating practitioner under the
22 order;
- 23 (d) the date and time when the order is made;
- 24 (e) the date and time when the order comes into force,
25 which must be within 7 days after the date and time
26 when the order is made;
- 27 (f) the treatment period for which the order remains in force
28 as specified under subsection (2);
- 29 (g) a requirement that the involuntary community patient
30 notify the supervising psychiatrist or treating
31 practitioner of any change in the patient's residential
32 address;

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

3 Notes for section 116:

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

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

11 (1) The supervising psychiatrist must ensure that the involuntary
12 community patient is advised of when and where treatment is to
13 be provided to the patient under the community treatment order.

14 (2) Without limiting subsection (1), the supervising psychiatrist
15 must ensure that, on or within 14 days after the day on which
16 the community treatment order is made, the involuntary
17 community patient is advised in writing of the date, time and
18 place of the involuntary community patient's first appointment
19 (whether with the treating practitioner or otherwise) for the
20 provision of treatment under the order.

21 **118. Monthly examination of patient**

22 (1) In this section —

23 *first treatment period*, for a community treatment order, means
24 the treatment period for which the order remains in force as
25 specified in the order under section 115(2);

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

- 27 (a) the period of one month beginning on the day on which
28 the first treatment period for the order begins; or
- 29 (b) the period of one month beginning on the day after the
30 day on which the involuntary community patient was
31 last examined under subsection (2) for the purposes of
32 the order.

- 1 (2) The involuntary community patient must be examined, on or
2 within 14 days before the day on which a review period for a
3 community treatment order ends, by —
- 4 (a) the supervising psychiatrist; or
5 (b) another medical practitioner or a mental health
6 practitioner —
- 7 (i) if the supervising psychiatrist is unavailable; or
8 (ii) if requested by the supervising psychiatrist under
9 section 119(1).
- 10 (3) However, the involuntary community patient cannot be
11 examined by a practitioner under subsection (2)(b) if more than
12 2 months has elapsed since the day on which the patient was last
13 examined under subsection (2)(a) by the supervising
14 psychiatrist.
- 15 (4) Part 6 Division 3 Subdivision 6 applies in relation to the
16 conduct of an examination under subsection (2).
- 17 (5) A practitioner who examines the involuntary community patient
18 under subsection (2)(b) must provide the supervising
19 psychiatrist with a written report of the examination that
20 includes a recommendation about whether or not, having regard
21 to the criteria specified in section 25, the patient is still in need
22 of an involuntary treatment order.
- 23 (6) The supervising psychiatrist must file the following —
- 24 (a) a record of each examination of the involuntary
25 community patient that the supervising psychiatrist
26 conducts under subsection (2)(a);
- 27 (b) each report of an examination of the involuntary
28 community patient provided to the supervising
29 psychiatrist under subsection (5).

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

3 (1) For the purpose of section 118(2)(b)(ii), the supervising
4 psychiatrist may request another medical practitioner or a
5 mental health practitioner to examine the involuntary
6 community patient.

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

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

11 (1) This section applies —

12 (a) on completion of the examination of the involuntary
13 community patient by the supervising psychiatrist under
14 section 118(2)(a); or

15 (b) on provision of a report about the involuntary
16 community patient to the supervising psychiatrist under
17 section 118(5).

18 (2) The supervising psychiatrist must consider whether or not the
19 involuntary community patient is still in need of an involuntary
20 treatment order and may make either of these orders —

21 (a) if satisfied, having regard to the criteria specified in
22 section 25, that the involuntary community patient is
23 still in need of an involuntary treatment order but not
24 satisfied of the things referred to in section 114(a)
25 and (b) — an inpatient treatment order authorising the
26 patient's detention at the authorised hospital specified in
27 the order for the period specified in the order in
28 accordance with section 87(a) or (b); or

29 (b) if satisfied, having regard to the criteria specified in
30 section 25, that the involuntary community patient is no
31 longer in need of an involuntary treatment order — an
32 order revoking the community treatment order.

- 1 (3) The supervising psychiatrist cannot make an inpatient treatment
2 order without examining the involuntary community patient in
3 accordance with Part 6 Division 3 Subdivision 6, which
4 examination can be the examination conducted under
5 section 118(2)(a).
- 6 (4) The supervising psychiatrist can make an order revoking the
7 community treatment order —
- 8 (a) after examining the involuntary community patient in
9 accordance with Part 6 Division 3 Subdivision 6; or
- 10 (b) without examining the involuntary community patient
11 but on the basis of a report provided to the psychiatrist
12 under section 118(5).
- 13 (5) An order made under subsection (2) must be in the approved
14 form and must include the following —
- 15 (a) the date and time when it is made;
- 16 (b) if it is made under subsection (2)(a) — the reasons for
17 making it;
- 18 (c) the name, qualifications and signature of the supervising
19 psychiatrist making it.
- 20 (6) The supervising psychiatrist must, as soon as practicable, file
21 the order and give a copy to the involuntary community patient.
- 22 (7) The making of an order under subsection (2) is an event to
23 which Part 9 applies and the supervising psychiatrist is the
24 person responsible under that Part for notification of that event.

25 Note for section 120:

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

1 **121. Continuation order**

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

8 (2) The supervising psychiatrist cannot make the continuation order
9 without examining the involuntary community patient in
10 accordance with Part 6 Division 3 Subdivision 6.

11 (3) The continuation order must be in the approved form and must
12 include the following —

13 (a) the date when it is made;

14 (b) the treatment period for which the community treatment
15 order is continued;

16 (c) the date when, because of the continuation, the
17 community treatment order will expire;

18 (d) the reasons for the continuation;

19 (e) the name, qualifications and signature of the supervising
20 psychiatrist.

21 (4) The supervising psychiatrist must, as soon as practicable, file
22 the continuation order and give a copy to the involuntary
23 community patient.

24 (5) The involuntary community patient may request in writing the
25 supervising psychiatrist to obtain the opinion (a **further**
26 **opinion**) of another psychiatrist about whether it is appropriate
27 to have continued the community treatment order by making the
28 continuation order (but not whether the length of the treatment
29 period specified in the continuation order is appropriate).

30 (6) Sections 182 and 184 apply (with the necessary changes) in
31 relation to the further opinion.

- 1 (7) The continuation order does not come into force or ceases to be
2 in force, as the case requires, if the further opinion —
- 3 (a) is not obtained on or within 14 days after the day on
4 which the involuntary community patient's request is
5 received by the supervising psychiatrist; or
- 6 (b) does not confirm that it is appropriate to have continued
7 the community treatment order.
- 8 (8) Subsection (7) does not apply if the further opinion is not
9 obtained within the 14-day period referred to in
10 subsection (7)(a) because the involuntary community patient did
11 not attend an examination to be conducted by the psychiatrist
12 responsible for giving the further opinion.

13 **122. Varying order**

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

- 1 **123. Making inpatient treatment order or revoking community**
2 **treatment order**
- 3 (1) The supervising psychiatrist may, at any time while a
4 community treatment order is in force, make either of these
5 orders —
- 6 (a) if satisfied, having regard to the criteria specified in
7 section 25(1), that the involuntary community patient is
8 in need of an inpatient treatment order — an inpatient
9 treatment order;
- 10 (b) if satisfied, having regard to the criteria specified in
11 section 25, that the involuntary community patient is no
12 longer in need of an involuntary treatment order — an
13 order revoking the community treatment order.
- 14 (2) The supervising psychiatrist cannot make an inpatient treatment
15 order without examining the involuntary community patient in
16 accordance with Part 6 Division 3 Subdivision 6.
- 17 (3) The supervising psychiatrist can make an order revoking the
18 community treatment order —
- 19 (a) after examining the involuntary community patient in
20 accordance with Part 6 Division 3 Subdivision 6; or
- 21 (b) without examining the involuntary community patient,
22 but in doing so must have regard to the information
23 specified in subsection (4).
- 24 (4) The supervising psychiatrist must have regard to any
25 information about the patient that is obtained by the
26 psychiatrist —
- 27 (a) from either or both of —
- 28 (i) the involuntary community patient, including
29 information obtained by observing the patient
30 and asking the patient questions; and
- 31 (ii) any other person;
- 32 and

- 1 (b) from the involuntary community patient’s medical
2 record.
- 3 (5) The supervising psychiatrist may make an order under
4 subsection (1) without any of these things occurring —
- 5 (a) the involuntary community patient being in breach of
6 the community treatment order under section 126;
- 7 (b) the supervising psychiatrist giving the involuntary
8 community patient notice of a breach of the community
9 treatment order under section 127(2)(b);
- 10 (c) the supervising psychiatrist making an order to attend
11 under section 128(2).
- 12 (6) An order made under subsection (1) must be in the approved
13 form and must include the following —
- 14 (a) the date and time when it is made;
- 15 (b) if it is made under subsection (1)(a) — the reasons for
16 making it;
- 17 (c) the name, qualifications and signature of the supervising
18 psychiatrist.
- 19 (7) The supervising psychiatrist must, as soon as practicable, file
20 the order and give a copy to the involuntary community patient.
- 21 (8) The making of an order under subsection (1) is an event to
22 which Part 9 applies and the supervising psychiatrist is the
23 person responsible under that Part for notification of that event.
- 24 Note for section 123:
- 25 A community treatment order is automatically revoked under section 116(a) if
26 a psychiatrist makes an inpatient treatment order under section 123(1)(a) in
27 respect of the involuntary community patient.

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

2 (1) This section applies if —

3 (a) the supervising psychiatrist makes an inpatient treatment
4 order under section 120(2)(a) or 123(1)(a) in respect of
5 the involuntary community patient; and

6 (b) the supervising psychiatrist and the involuntary
7 community patient were not in one another's physical
8 presence when the examination for the purpose of
9 making the inpatient treatment order was conducted; and

10 (c) since that examination was conducted, there has been no
11 further examination of the involuntary community
12 patient conducted by a psychiatrist during which the
13 psychiatrist and the patient were in one another's
14 physical presence.

15 (2) Within 24 hours after the involuntary community patient is
16 admitted by the authorised hospital in accordance with the
17 inpatient treatment order, the order must be confirmed by a
18 psychiatrist at the authorised hospital.

19 (3) The psychiatrist cannot confirm the inpatient treatment order
20 without examining the involuntary community patient.

21 (4) Subdivision 6 applies in relation to the conduct of the
22 examination.

23 (5) The confirmation must be in the approved form and must
24 include the following —

25 (a) the date and time when it is made;

26 (b) the reasons for the confirmation;

27 (c) the name, qualifications and signature of the
28 psychiatrist.

29 (6) The inpatient treatment order ceases to be in force if it is not
30 confirmed in accordance with subsection (2).

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

2 (1) This section applies if an involuntary community patient
3 breaches a community treatment order.

4 (2) The supervising psychiatrist must —

5 (a) record the breach; and

6 (b) give notice of the breach to the involuntary community
7 patient.

8 (3) The record of breach must be in the approved form and must
9 include these things —

10 (a) details of the involuntary community patient's
11 non-compliance;

12 (b) the steps that have been taken to obtain the involuntary
13 community patient's compliance;

14 (c) a statement that the supervising psychiatrist holds the
15 belief referred to in section 126(c);

16 (d) the facts on which that belief is based;

17 (e) the reasons for that belief.

18 (4) The notice of breach must be in the approved form and must
19 include these things —

20 (a) details of the involuntary community patient's
21 non-compliance;

22 (b) details of what the involuntary community patient must
23 do to comply;

24 (c) a statement that continued non-compliance with the
25 order may result in the involuntary community patient
26 being required to attend a place to enable the patient to
27 be provided with treatment.

28 (5) The supervising psychiatrist must, as soon as practicable, file
29 the record of breach and a copy of the notice of breach.

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

2 (1) This section applies if, having given the involuntary community
3 patient notice of the breach under section 127(2)(b), the
4 supervising psychiatrist is not satisfied that the patient is
5 complying with the community treatment order.

6 (2) The supervising psychiatrist may make an order (an *order to*
7 *attend*) requiring the involuntary community patient to attend at
8 the time and place specified in the order to be provided with
9 treatment.

10 (3) The order to attend must include a warning that, if the
11 involuntary community patient does not comply with the order,
12 a transport order authorising the patient's apprehension and
13 transport to the place specified in the order to attend may be
14 made.

15 (4) The order to attend must be in the approved form and must
16 include the following —

- 17 (a) the date and time when it is made;
- 18 (b) the reasons for making it;
- 19 (c) the time and place referred to in subsection (2);
- 20 (d) the warning referred to in subsection (3);
- 21 (e) the name, qualifications and signature of the supervising
22 psychiatrist.

23 (5) The supervising psychiatrist must, as soon as practicable, file
24 the order to attend and give a copy to the involuntary
25 community patient.

26 **129. Making transport order**

27 (1) This section applies if an involuntary community patient does
28 not comply with an order to attend.

29 (2) A medical practitioner or mental health practitioner may make a
30 transport order in respect of the involuntary community patient.

1 (3) The practitioner cannot make the transport order unless satisfied
2 that no other safe means of ensuring the involuntary community
3 patient attends the place is reasonably available.

4 (4) Part 10 applies in relation to the transport order.

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

6 (1) This section applies in relation to an involuntary community
7 patient who —

- 8 (a) attends a place in compliance with an order to attend; or
9 (b) is transported to a place under a transport order made
10 under section 129(2).

11 (2) The involuntary community patient —

- 12 (a) must be received into the place; and
13 (b) can be detained at the place until the first of these things
14 occurs —
15 (i) treatment is provided to the involuntary
16 community patient;
17 (ii) the supervising psychiatrist makes an order under
18 section 131(2)(a) in respect of the patient;
19 (iii) the expiry of 6 hours from the time when the
20 patient was received.

21 (3) A person prescribed by the regulations for this subsection is
22 authorised to exercise the powers under section 172 for the
23 purpose of detaining the involuntary community patient at the
24 place.

25 (4) The involuntary community patient cannot continue to be
26 detained if, by the end of the 6-hour period referred to in
27 subsection (2)(b)(iii) —

- 28 (a) treatment has not been provided to the involuntary
29 community patient; and

1 (b) the supervising psychiatrist has not made an order under
2 section 131(2)(a) in respect of the involuntary
3 community patient.

4 (5) The release of a person because of subsection (4) is an event to
5 which Part 9 applies and the person in charge of the place is the
6 person responsible under that Part for notification of that event.

7 Notes for section 130:

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

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

14 (1) This section applies in these circumstances —

- 15 (a) an involuntary community patient is in breach of a
16 community treatment order under section 126;
- 17 (b) the supervising psychiatrist has given the involuntary
18 community patient notice of the breach under
19 section 127(2)(b);
- 20 (c) since the involuntary community patient was given the
21 notice —
- 22 (i) the patient’s non-compliance with the
23 community treatment order has continued; or
- 24 (ii) the supervising psychiatrist has made an order to
25 attend under section 128(2) with which the
26 patient has not complied despite being given a
27 copy of the order.

28 (2) The supervising psychiatrist may make either of these orders —

- 29 (a) if satisfied, having regard to the criteria specified in
30 section 25, that the involuntary community patient is
31 still in need of an involuntary treatment order but not
32 satisfied of the things referred to in section 114(a)
33 and (b) — an inpatient treatment order authorising the

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Part 8 Community treatment orders

Division 4 Breach of order

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- 1 patient's detention at the hospital specified in the order
2 for the period specified in the order in accordance with
3 section 87(a) or (b);
- 4 (b) if satisfied, having regard to the criteria specified in
5 section 25, that the involuntary community patient is no
6 longer in need of an involuntary treatment order — an
7 order revoking the community treatment order.
- 8 (3) The supervising psychiatrist cannot make an inpatient treatment
9 order without examining the involuntary community patient in
10 accordance with Part 6 Division 3 Subdivision 6.
- 11 (4) The supervising psychiatrist cannot make an inpatient treatment
12 order authorising the involuntary community patient's detention
13 at a general hospital unless —
- 14 (a) satisfied that attempting to take the involuntary
15 community patient to, or to detain the involuntary
16 community patient at, an authorised hospital poses a
17 significant risk to the patient's physical health; and
- 18 (b) the Chief Psychiatrist consents to the order being made.
- 19 (5) The supervising psychiatrist can make an order revoking the
20 community treatment order —
- 21 (a) after examining the involuntary community patient in
22 accordance with Part 6 Division 3 Subdivision 6; or
- 23 (b) without examining the involuntary community patient,
24 but in doing so must have regard to any information
25 about the patient that is obtained by the psychiatrist
26 from —
- 27 (i) clinical observation of the involuntary
28 community patient; and
- 29 (ii) any person other than the involuntary community
30 patient; and
- 31 (iii) the involuntary community patient's medical
32 record.

- 1 (2) The practitioner cannot make the transport order unless satisfied
2 that —
- 3 (a) because of the involuntary community patient’s mental
4 or physical condition, the patient needs to be taken to
5 the hospital; and
- 6 (b) no other safe means of taking the involuntary
7 community patient is reasonably available.
- 8 (3) Part 10 applies in relation to the transport order.

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

10 **134. Supervising psychiatrist**

- 11 (1) The supervising psychiatrist under a community treatment order
12 is responsible for supervising the carrying out of the order.
- 13 (2) The supervising psychiatrist under a community treatment order
14 must be —
- 15 (a) the psychiatrist who makes the order; or
16 (b) another psychiatrist.

17 **135. Change of supervising psychiatrist**

- 18 (1) The supervising psychiatrist under a community treatment
19 order —
- 20 (a) may, by arrangement, transfer a psychiatrist’s
21 responsibility as the supervising psychiatrist under the
22 order to another psychiatrist; and
- 23 (b) on transferring that responsibility, must inform the
24 patient in writing of the transfer.
- 25 (2) The Chief Psychiatrist or a person authorised under
26 subsection (3) —
- 27 (a) may, by arrangement, transfer a psychiatrist’s
28 responsibility as the supervising psychiatrist under a
29 community treatment order to another psychiatrist; and

- 1 (b) on transferring that responsibility, must inform the
2 involuntary community patient in writing of the transfer.
- 3 (3) The Chief Psychiatrist may authorise a person in writing to
4 exercise the power under subsection (2) in respect of all or any
5 of the involuntary community patients —
- 6 (a) being provided with treatment under community
7 treatment orders by the mental health service specified
8 in the authorisation; or
- 9 (b) who reside in an area of the State specified in the
10 authorisation.
- 11 (4) An authorisation under subsection (3) has effect for the period
12 specified in the authorisation.

13 **136. Treating practitioner**

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

23 **137. Change of treating practitioner**

- 24 The supervising psychiatrist under a community treatment
25 order —
- 26 (a) may, by arrangement, transfer a practitioner's
27 responsibility as the treating practitioner under the order
28 to another practitioner; and
- 29 (b) on transferring that responsibility, must inform the
30 involuntary community patient in writing of the transfer.

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Part 9 — Notifiable events

Division 1 — Preliminary matters

138. Application of this Part

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

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

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

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

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

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

1 member or other personal support person of the person is
2 notified of the event.

3 (2) However, the person responsible is not required to notify a
4 nominated person, carer or close family member of a notifiable
5 event if the nominated person, carer or close family member is
6 not entitled, for a reason referred to in section 142(1) or (2), to
7 be notified of the event.

8 Note for section 140:

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

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

13 (1) Without limiting the requirement under section 140(1), the
14 requirement is taken to have been complied with if the person
15 responsible for notification ensures that reasonable efforts to
16 notify any carer, close family member or other personal support
17 person of the notifiable event continue to be made until the first
18 of these things occurs —

19 (a) at least one carer, close family member or other personal
20 support person is notified of the notifiable event; or

21 (b) it is reasonable for the person responsible to conclude
22 that no carer, close family member or other personal
23 support person can be notified of the notifiable event.

24 (2) The person responsible must ensure that one of the following is
25 filed —

26 (a) a record of when and how any carer, close family
27 member or other personal support person was notified
28 under section 140(1) of the notifiable event;

29 (b) if no carer, close family member or other personal
30 support person has been notified under section 140(1) of
31 the notifiable event — a record of the reasons for that
32 and any efforts made to do so.

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

2 (1) A nominated person, carer or close family member is not
3 entitled to be notified under section 140(1) of the making of an
4 order under section 28(1) or (2) for the detention or further
5 detention of a person, or the making of a transport order under
6 section 29(1) in respect of a person, if the medical practitioner
7 or authorised mental health practitioner who makes the order
8 reasonably believes that it is not in the best interests of the
9 person for the nominated person, carer or close family member
10 to be notified of the making of the order.

11 (2) A nominated person, carer or close family member is not
12 entitled to be notified under section 140(1) of any other
13 notifiable event that occurs in respect of a person if a
14 psychiatrist believes that it is not in the best interests of the
15 person for the nominated person, carer or close family member
16 to be notified of the event.

17 (3) A practitioner or psychiatrist who decides under subsection (1)
18 or (2) that a nominated person, carer or close family member is
19 not entitled to be notified of a notifiable event must, as soon as
20 practicable —

21 (a) file a record of the decision and the reasons for it; and

22 (b) give a copy to the Chief Mental Health Advocate.

23 Note for section 142:

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

26 **143. Advising nominated person, carer or close family member of**
27 **decision**

28 (1) A practitioner or psychiatrist who decides under section 142 that
29 a nominated person, carer or close family member is not entitled
30 to be notified of a notifiable event must, if the nominated
31 person, carer or close family member requests to be notified of
32 the event —

33 (a) advise the nominated person, carer or close family
34 member of the decision and the reasons for it; and

- 1 (b) file a record of the advice and give a copy to the person
2 in respect of whom the notifiable event occurs.
- 3 (2) A nominated person, carer or close family member to whom
4 advice is provided orally under subsection (1)(a) may request
5 the practitioner or psychiatrist who provided the advice to
6 confirm the advice in writing.
- 7 (3) The practitioner or psychiatrist must —
- 8 (a) comply with the request; and
- 9 (b) file a copy of the confirmation and give another copy to
10 the person in respect of whom the notifiable event
11 occurs.

12 Note for section 143:

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

15 **144. Revocation of decision**

- 16 (1) A practitioner or psychiatrist may revoke a decision made under
17 section 142 that a nominated person, carer or close family
18 member is not entitled to be notified of a notifiable event if
19 satisfied that the reasons for making the decision no longer
20 apply.
- 21 (2) The practitioner or psychiatrist must, as soon as practicable, file
22 a record of the revocation and the reasons for it.
- 23 (3) If the nominated person, carer or close family member
24 previously requested to be notified of the event, the practitioner
25 or psychiatrist must ensure that, as soon as practicable —
- 26 (a) the nominated person, carer or close family member is
27 notified of the notifiable event; and
- 28 (b) a record of when and how the nominated person, carer
29 or close family member was notified is filed and a copy
30 given to the person in respect of whom the notifiable
31 event occurred.

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

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

4 (1) The person responsible under this Part for notification of the
5 making of an involuntary treatment order must ensure that, as
6 soon as practicable, each of the persons and bodies specified in
7 subsection (4) is —

8 (a) given a copy of the involuntary treatment order; and

9 (b) either —

10 (i) given the name and contact details of any carer,
11 close family member or other personal support
12 person who has been notified under
13 section 140(1) of the making of the involuntary
14 treatment order, to the extent that information is
15 known to the person responsible; or

16 (ii) if no carer, close family member or other
17 personal support person has been notified under
18 section 140(1) of the making of the involuntary
19 treatment order — advised of that and the
20 reasons for it.

21 (2) The person responsible under this Part for notification of the
22 making of an order revoking an involuntary treatment order
23 must ensure that, as soon as practicable, each of the persons and
24 bodies specified in subsection (4) is given a copy of the order.

25 (3) The person responsible under this Part for notification of the
26 expiry of an involuntary treatment order must ensure that, as
27 soon as practicable, each of the persons and bodies specified in
28 subsection (4) is advised in writing of the expiry.

29 (4) For subsections (1), (2) and (3), each of these persons and
30 bodies is specified —

31 (a) the Chief Mental Health Advocate;

32 (b) the Mental Health Tribunal;

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

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Part 10 — Transport orders

146. Application of this Part

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

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

1 **147. Transport officers**

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

4 **148. Making transport order**

- 5 (1) A transport order must be in the approved form and must
6 include the following —
- 7 (a) the name of the person to be transported;
 - 8 (b) the place from which the person is to be transported;
 - 9 (c) the hospital or other place to which the person must be
10 transported;
 - 11 (d) the reasons why, in order to transport the person to that
12 hospital or other place, it is necessary to make the order;
 - 13 (e) whether the order is to be carried out by a transport
14 officer or, if section 149(2) applies, a police officer;
 - 15 (f) if the order is to be carried out by a police officer,
16 having regard to the matters referred to in
17 section 149(2)(a) and (b) — the reasons why it cannot
18 be carried out by a transport officer;
 - 19 (g) the date and time when the order is made;
 - 20 (h) the date and time when the order will expire under
21 section 150(2)(a), (b) or (c);
 - 22 (i) whether or not the order can be extended because of
23 section 151(2) or under section 152(3) and, if it can, the
24 process for extending it;
 - 25 (j) the name, qualifications and signature of the psychiatrist
26 or practitioner making the order.
- 27 (2) A practitioner or psychiatrist who makes a transport order in
28 respect of a person must, as soon as practicable —
- 29 (a) file it and give a copy to the person; and
 - 30 (b) give a copy to the transport officer or police officer
31 responsible for carrying out the order.

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1 **149. Operation of transport order**

- 2 (1) A transport order made in respect of a person authorises a
3 transport officer or, if subsection (2) applies, a police officer to
4 do these things —
- 5 (a) apprehend the person and, for that purpose, exercise the
6 powers under sections 159(2) and 172;
- 7 (b) if the person is apprehended — transport the person to
8 the hospital or other place specified in the order as soon
9 as practicable and, in any event, before the transport
10 order expires;
- 11 (c) for the purpose of transporting the person, detain the
12 person until the first of these things occurs —
- 13 (i) the person is received into the hospital or other
14 place;
- 15 (ii) the transport order expires.
- 16 (2) A transport order can only authorise a police officer instead of a
17 transport officer to carry out the order if the practitioner or
18 psychiatrist making the order is satisfied —
- 19 (a) that there is a significant risk of serious harm to the
20 person being transported or to another person; or
- 21 (b) that —
- 22 (i) a transport officer will not be available to carry
23 out the order within a reasonable time; and
- 24 (ii) any delay in carrying out the order beyond that
25 time is likely to pose a significant risk of harm to
26 the person being transported or to another
27 person.

28 **150. Period of transport order**

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

- 1 (2) For subsection (1), the period is —
- 2 (a) if the transport order is made under section 29(1), the
- 3 period —
- 4 (i) beginning at the time when the transport order is
- 5 made; and
- 6 (ii) ending at the time when the referral expires
- 7 under section 44 unless the transport order is
- 8 extended because of section 151(2);
- 9 or
- 10 (b) if the transport order is made under section 63(1), the
- 11 period —
- 12 (i) beginning at the time when the transport order is
- 13 made; and
- 14 (ii) ending 72 hours after the time when the inpatient
- 15 treatment order was made under section 61(1)(a)
- 16 or the order for a further examination was made
- 17 under section 61(1)(c), as the case requires,
- 18 unless the transport order is extended under
- 19 section 152(3);
- 20 or
- 21 (c) if the transport order is made under section 67(1), 92(1),
- 22 112(1), 129(2) or 133(1), the period —
- 23 (i) beginning at the time when the transport order is
- 24 made; and
- 25 (ii) ending 72 hours afterwards unless the transport
- 26 order is extended under section 152(3).

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

28 **extended**

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

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1 (b) the place from which the person is being transported is
2 outside a metropolitan area; and

3 (c) the referral is extended under section 45(3).

4 (2) The transport order is, because of this subsection, extended for
5 the same period as the referral.

6 **152. Extension of other transport orders**

7 (1) This section applies if —

8 (a) a transport order is made under section 63(1), 67(1),
9 92(1), 112(1), 129(2) or 133(1) in respect of a person;
10 and

11 (b) the place from which the person is being transported is
12 outside a metropolitan area; and

13 (c) the transport officer or police officer who is transporting
14 the person forms the opinion that the transport order is
15 likely to expire before the person is received into the
16 hospital or other place to which the person is being
17 transported.

18 (2) The transport officer or police officer may orally request an
19 extension of the transport order from a medical practitioner or
20 mental health practitioner.

21 (3) The practitioner may make an order (an *extension order*) orally
22 extending the transport order from the end of the period
23 specified in section 150(2)(b) or (c) in respect of the order for
24 the further period (not exceeding 72 hours) specified in the
25 extension order.

26 (4) The practitioner must, as soon as practicable —

27 (a) record the extension order in the approved form,
28 specifying —

29 (i) the date and time when the order was made; and

30 (ii) the date and time when, because of the extension,
31 the transport order will expire;

32 and

1 (b) file the record and give a copy to the transport officer or
2 police officer.

3 (5) The transport order cannot be extended more than once.

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

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

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

10 (1) A medical practitioner or mental health practitioner may make
11 an order (a *revocation order*) revoking a transport order made in
12 respect of a person if satisfied that the transport order is no
13 longer needed.

14 (2) The revocation order must be in the approved form and must
15 include the following —

- 16 (a) the date and time when it is made;
17 (b) the reasons for the revocation;
18 (c) the name, qualifications and signature of the
19 practitioner.

20 (3) The practitioner must, as soon as practicable —

- 21 (a) file the revocation order and give a copy to the person;
22 and
23 (b) give a copy to the transport officer or police officer
24 responsible for carrying out the transport order.

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

26 (1) Subsection (2) applies if a transport order made in respect of a
27 person is revoked under section 154(1), or expires, before the
28 person is received into the hospital or other place to which the
29 person was to have been transported under the order.

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

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

2 **Division 1 — Apprehension powers**

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

5 (1) A police officer may apprehend a person if the officer
6 reasonably suspects that the person —

- 7 (a) has a mental illness; and
8 (b) because of the mental illness, needs to be apprehended
9 to —
10 (i) protect the health or safety of the person or the
11 safety of another person; or
12 (ii) prevent the person causing, or continuing to
13 cause, serious damage to property.

14 (2) For the purpose of apprehending a person under subsection (1),
15 a police officer may exercise the powers under sections 159(2)
16 and 172.

17 (3) A police officer —

- 18 (a) must, as soon as practicable after apprehending a person
19 under subsection (1), arrange for the person to be
20 assessed by a medical practitioner or authorised mental
21 health practitioner for the purpose of deciding whether
22 or not to refer the person under section 26(2) or (3)(a)
23 for an examination to be conducted by a psychiatrist;
24 and
25 (b) is authorised to detain the person until the first of these
26 things occurs —
27 (i) the person is received into the place where the
28 assessment will be conducted;
29 (ii) the person is delivered into the care of the
30 medical practitioner or authorised mental health
31 practitioner who will assess the person;

1 (iii) the police officer is satisfied that the grounds for
2 suspecting that the person needs to be
3 apprehended no longer exist.

4 (4) This section does not prevent a police officer from charging a
5 person apprehended under subsection (1) with an offence.

6 **157. Assessment of person arrested**

7 (1) This section applies if —

8 (a) a person is arrested by a police officer on suspicion of
9 having committed an offence; and

10 (b) the police officer reasonably suspects that the person has
11 a mental illness for which the person is in need of
12 immediate treatment.

13 (2) The police officer must, as soon as practicable, arrange for the
14 person to be assessed by a medical practitioner or authorised
15 mental health practitioner for the purpose of deciding whether
16 or not to refer the person under section 26(2) or (3)(a) for an
17 examination to be conducted by a psychiatrist.

18 (3) This section does not prevent a police officer from charging the
19 person arrested with an offence.

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

21 (1) This section applies if —

22 (a) the medical practitioner or authorised mental health
23 practitioner referred to in section 156(3)(a) or 157(2)
24 decides not to refer the person under section 26(2)
25 or (3)(a); or

26 (b) the person, having been referred under section 26(2)
27 or (3)(a), cannot continue to be detained under this Act.

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

15 **159. Apprehension of other persons**

- 16 (1) This section applies in relation to the apprehension of a
17 person —
- 18 (a) under section 99(a) by a police officer or person
19 prescribed for the purpose of carrying out an
20 apprehension and return order; or
- 21 (b) under section 149(1)(a) by a transport officer or police
22 officer for the purpose of carrying out a transport order;
23 or
- 24 (c) under section 156(1) by a police officer because the
25 person is suspected of having a mental illness and needs
26 to be apprehended.
- 27 (2) For the purpose of apprehending the person, the police officer,
28 person prescribed or transport officer may do any of these
29 things —
- 30 (a) enter any premises where the person is reasonably
31 suspected to be;

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

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

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

10 In this Division —

11 ***approved form*** means —

- 12 (a) a form approved by the Commissioner of Police under
13 section 169 for use by police officers under this
14 Division; or
- 15 (b) a form approved by the Chief Psychiatrist under
16 section 541(1) for use by other persons under this
17 Division.

18 **161. Authorised persons**

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

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

23 (1) This section applies —

- 24 (a) to any of these people —
- 25 (i) a patient who is admitted by a mental health
26 service;
- 27 (ii) a person who is detained under this Act at a
28 mental health service or other place to enable an
29 examination to be conducted by a psychiatrist;

- 1 (iii) any other person who presents at a mental health
2 service for treatment;
- 3 and
- 4 (b) at these times —
- 5 (i) when the patient or other person is being
6 admitted by, or is being received into, the mental
7 health service or other place;
- 8 (ii) at any time while the patient or other person is
9 being provided with treatment or care at the
10 mental health service or other place.
- 11 (2) A police officer or authorised person who reasonably suspects
12 that there is on or with the patient or other person any article
13 listed in section 164(2) may —
- 14 (a) search, in accordance with sections 163 and 172, the
15 person and any article found on or with the patient or
16 other person; and
- 17 (b) seize, in accordance with sections 164 and 172, any
18 article listed in section 164(2) that is found on or with
19 the patient or other person.

20 **163. Conduct of search**

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

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

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

11 **164. Seizure of articles**

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

25 **165. Record of search and seizure**

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

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- 1 required to be taken under the apprehension and
2 return order or the transport order; or
- 3 (ii) the person in charge of the mental health service
4 or other place at which the person searched is
5 received, or the medical practitioner or
6 authorised mental health practitioner into whose
7 care the person is delivered, under
8 section 156(3)(b)(i) or (ii); or
- 9 (iii) the person searched if the person is released
10 without being taken to a mental health service or
11 other place or delivered into the care of a
12 medical practitioner or authorised mental health
13 practitioner; or
- 14 (iv) the person in charge of the mental health service
15 or other place where the search is conducted
16 under section 162(2)(a).
- 17 (2) The record of the search must be in the approved form and must
18 include the following —
- 19 (a) the date and time the search was conducted;
- 20 (b) the reasons for conducting the search;
- 21 (c) any article seized under section 159(2)(c) or 162(2)(b) in
22 the course of the search;
- 23 (d) the name, sex, qualifications and signature of the person
24 who conducted the search.
- 25 (3) The person to whom the record of the search is given under
26 subsection (1)(b)(i), (ii) or (iv) must ensure that, as soon as
27 practicable, the record is filed and a copy given to the person
28 searched.

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

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

5 (2) The article must be dealt with —
6 (a) under subsection (3)(a) or (b); or
7 (b) otherwise according to law.

8 (3) The article must be —

9 (a) given to, as the case requires —
10 (i) the person in charge of the mental health service
11 or other place referred to in section 165(1)(b)(i),
12 (ii) or (iv) when the person is received there; or
13 (ii) the medical practitioner or authorised mental
14 health practitioner referred to in
15 section 165(1)(b)(ii) when the person is delivered
16 into the practitioner's care;

17 or

18 (b) if the person is released without being taken to a mental
19 health service or other place or delivered into the care of
20 a medical practitioner or authorised mental health
21 practitioner — returned to the person when the person is
22 released.

23 (4) A person who deals with an article under subsection (2)(a)
24 or (b) must, as soon as practicable —

25 (a) record in the approved form details of how the article
26 was dealt with; and

27 (b) give the record of those details to, as the case
28 requires —

29 (i) the person in charge of the mental health service
30 or other place referred to in section 165(1)(b)(i),
31 (ii) or (iv) when the person is received there; or

- 1 (ii) the medical practitioner or authorised mental
2 health practitioner referred to in
3 section 165(1)(b)(ii) when the person is delivered
4 into the practitioner's care; or
- 5 (iii) if the person is released without being taken to a
6 mental health service or other place or delivered
7 into the care of a medical practitioner or
8 authorised mental health practitioner — the
9 person when the person is released.
- 10 (5) A person to whom a record is given under subsection (4)(b)(i)
11 or (ii) must ensure that the record is filed as soon as practicable.
- 12 **167. Return of articles given to or seized by mental health service**
- 13 (1) This section applies in relation to an article that is —
- 14 (a) seized from a patient or other person under
15 section 162(2)(b); or
- 16 (b) given to the person in charge of a mental health service
17 or other place under section 166(3)(a)(i).
- 18 (2) The article must be dealt with —
- 19 (a) under subsection (3), (4), (5) or (6); or
20 (b) otherwise according to law.
- 21 (3) The article must be returned to the person when the person is
22 released or discharged by or otherwise leaves the mental health
23 service or other place unless subsection (4) applies.
- 24 (4) If, in the opinion of the person in charge of the mental health
25 service or other place, the return of the article to the person may
26 pose a serious risk to the health or safety of the person or
27 another person, the article must be given to a carer, close family
28 member or other personal support person of the person when the
29 person is released or discharged by or otherwise leaves the
30 mental health service or other place unless the person in charge
31 considers that it is not appropriate to do so.

- 1 (5) If the article is not dealt with under subsection (3) or (4) when
2 the person is released or discharged by or otherwise leaves the
3 mental health service or other place —
- 4 (a) the article may be returned to the person, or may be
5 given to a carer, close family member or other personal
6 support person of the person, at any time afterwards; and
- 7 (b) subsections (3) and (4) apply (with the necessary
8 changes) in relation to the article.
- 9 (6) If the article is not dealt with under subsection (3), (4) or (5),
10 it —
- 11 (a) must be stored at the mental health service or other
12 place; and
- 13 (b) may be destroyed or otherwise disposed of after
14 6 months.
- 15 (7) The person in charge of the mental health service or other place
16 must ensure that a record of how the article was dealt with
17 under this section is filed.
- 18 (8) The record must be in the approved form and must include these
19 things —
- 20 (a) details of the article;
- 21 (b) if the article was returned to the person — the date when
22 it was returned;
- 23 (c) if the article was not returned to the person — the
24 reasons for not returning it;
- 25 (d) if the article was given to a carer, close family member
26 or other personal support person — the date when it was
27 given to that person;
- 28 (e) if the article was not given to a carer, close family
29 member or other personal support person — the reasons
30 for not giving it to that person;

- 1 (f) if the article was destroyed or otherwise disposed of
2 under subsection (6)(b) —
3 (i) the date when it was destroyed or disposed of;
4 and
5 (ii) the manner in which it was destroyed or disposed
6 of;
7 (g) if the article was dealt with under subsection (2)(b) —
8 any other relevant information.

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

11 (1) This section applies in relation to an article that is given to a
12 medical practitioner or authorised mental health practitioner
13 under section 166(3)(a)(ii) who decides not to refer under
14 section 26(2) or (3)(a) the person from whom the article was
15 seized.

16 (2) The medical practitioner or authorised mental health practitioner
17 must ensure that, as soon as practicable —

- 18 (a) the article is returned to the person or otherwise dealt
19 with according to law; and
20 (b) a record of how the article was dealt with under
21 paragraph (a) is filed and a copy given to the person.

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

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

26 Note for section 169:

27 The Chief Psychiatrist approves forms for use by other persons under this
28 Division (see section 541(1)).

Part 12 — Exercise of certain powers

Division 1 — Detention powers

170. Principles relating to detention

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

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

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

171. Term used: prescribed provision

In this Division —

prescribed provision means a provision listed in the Table.

Table

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

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Part 12 Exercise of certain powers

Division 2 Ancillary powers: reasonable assistance and force and directions

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

2 (1) A person exercising a power under a prescribed provision may
3 request another person to give the person reasonable assistance
4 in exercising that power.

5 (2) A person exercising, or assisting in accordance with a request
6 under subsection (1) another person in exercising, a power
7 under a prescribed provision may use reasonable force in doing
8 so.

9 **173. Duty to obey directions**

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

13 Penalty: a fine of \$6 000.

14 **174. Other written laws not affected**

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

18 Note for Division 2:

19 It is an offence to obstruct or hinder a person exercising, or assisting another
20 person to exercise, a power under a prescribed provision (see section 576).

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

2 **Division 1 — Voluntary patients**

3 **175. Informed consent necessary**

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

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

- 14 (1) The person responsible under subsection (2) must ensure that
15 any informed consent given to the provision of treatment to a
16 voluntary patient is filed.
- 17 (2) For subsection (1), the person responsible is —
- 18 (a) if the treatment is provided at a mental health service —
19 the person in charge of the mental health service; or
- 20 (b) if the treatment is provided at a place other than a
21 mental health service — the medical practitioner or
22 mental health practitioner providing the treatment.
- 23 (3) The record of the informed consent must include —
- 24 (a) the date when the informed consent was given; and
- 25 (b) whether the informed consent was given —
- 26 (i) by the patient himself or herself; or
- 27 (ii) by a person authorised by law to give the
28 informed consent on the patient's behalf;
- 29 and

- 1 (c) if paragraph (b)(ii) applies —
2 (i) the name and contact details of the person who
3 gave the informed consent; and
4 (ii) details of the person’s authority to do so.

5 Notes for section 176:

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

14 **Division 2 — Involuntary patients and mentally**
15 **impaired accused**

16 **177. Application of this Division**

17 This Division applies in relation to —

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

22 **178. Informed consent not necessary**

- 23 (1) The patient can be provided with treatment without informed
24 consent being given to the provision of the treatment.
25 (2) Subsection (1) does not apply in relation to any of these
26 treatments because this Act makes specific provision in respect
27 of each of them —
28 (a) electroconvulsive therapy;
29 (b) emergency psychiatric treatment;
30 (c) psychosurgery;

1 (d) treatment that is prohibited by section 210(1).

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

4 (1) The patient's psychiatrist must ensure that a medical
5 practitioner, in deciding what treatment will be provided to the
6 patient, has regard to the patient's wishes in relation to the
7 provision of treatment, to the extent that it is practicable to
8 ascertain those wishes.

9 (2) The patient's psychiatrist must ensure that a record of the
10 following is filed —

11 (a) the patient's wishes, to the extent they were able to be
12 ascertained by the medical practitioner; and

13 (b) the things to which the medical practitioner had regard
14 in ascertaining the patient's wishes; and

15 (c) if the decision made by the medical practitioner is
16 inconsistent with a treatment decision in an advance
17 health directive, or a term of an enduring power of
18 guardianship, made by the patient — the reasons the
19 decision was made.

20 (3) The patient's psychiatrist must ensure that, as soon as
21 practicable, each of these people is given a copy of the reasons
22 referred to in subsection (2)(c) —

23 (a) the patient;

24 (b) if the patient has an enduring guardian or guardian —
25 the enduring guardian or guardian;

26 (c) if the patient has a nominated person — the nominated
27 person unless the nominated person is not entitled, for
28 the reason referred to in section 269(1), to be given a
29 copy;

30 (d) if the patient has a carer — the carer unless the carer is
31 not entitled, for the reason referred to in section 288(2)
32 or 292(1), to be given a copy;

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Part 13 Provision of treatment generally

Division 2 Involuntary patients and mentally impaired accused

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

14 Notes for section 179:

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

27 **180. Requirements for ascertaining patient’s wishes**

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

- 1 (b) given the same amount of time for consideration of the
2 matters involved in the provision of the treatment; and
3 (c) given the same opportunities to discuss and obtain
4 advice or assistance in relation to the provision of the
5 treatment,
6 as would be required to be provided or given to a person before
7 being asked to make a treatment decision about the provision of
8 the treatment.

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

12 Note for section 180:

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

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

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

18 **182. Further opinion may be requested**

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

- 1 (2) A person to whom this section applies who is dissatisfied with
2 the treatment being provided to the patient may request orally or
3 in writing the patient's psychiatrist or the Chief Psychiatrist to
4 obtain the opinion (a *further opinion*) of a psychiatrist who is
5 not the patient's psychiatrist about whether it is appropriate to
6 provide the treatment to the patient.
- 7 (3) The patient's psychiatrist or the Chief Psychiatrist must file a
8 record of an oral request or a written request.
- 9 (4) The patient's psychiatrist or the Chief Psychiatrist must obtain
10 the further opinion as soon as practicable after receiving the
11 request unless —
- 12 (a) if a person referred to in subsection (1)(b) to (e) requests
13 the further opinion — the patient objects to the further
14 opinion being obtained; or
- 15 (b) under section 183 —
- 16 (i) the patient's psychiatrist or the Chief Psychiatrist
17 decides not to comply with the request; and
- 18 (ii) if the patient's psychiatrist decides not to comply
19 with the request — the Chief Psychiatrist
20 confirms that decision.
- 21 (5) In obtaining the further opinion, the patient's psychiatrist or the
22 Chief Psychiatrist must have regard to the guidelines published
23 under section 543(1)(c) about the independence of psychiatrists
24 from whom further opinions are obtained.
- 25 (6) A psychiatrist cannot give a further opinion without examining
26 the patient in accordance with Part 6 Division 3 Subdivision 6.
- 27 (7) The further opinion must be given in writing and may include
28 recommendations about the provision of treatment to the
29 patient.
- 30 (8) The patient's psychiatrist must, as soon as practicable after
31 obtaining the further opinion —
- 32 (a) file the opinion and give a copy to the patient; and

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

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

- 17 (1) This section applies if —
- 18 (a) a further opinion about the treatment being provided to a
19 patient has been obtained under section 182; and
- 20 (b) a person in relation to whom that provision applies
21 requests that the patient’s psychiatrist or the Chief
22 Psychiatrist obtain an additional opinion under that
23 provision about the treatment being provided to the
24 patient.
- 25 (2) The patient’s psychiatrist or the Chief Psychiatrist may refuse to
26 comply with the request if satisfied that, having regard to the
27 guidelines published under section 543(1)(d) for that purpose,
28 the additional opinion is not warranted.
- 29 (3) The patient’s psychiatrist must, as soon as practicable after
30 deciding under subsection (2) not to comply with the request —
- 31 (a) file a record of the decision and the reasons for it; and

- 1 (b) give a copy to each of these people —
- 2 (i) the patient;
- 3 (ii) if the additional opinion was requested by a
- 4 person other than the patient — that other
- 5 person;
- 6 (iii) the Chief Psychiatrist.
- 7 (4) The Chief Psychiatrist must, as soon as practicable after
- 8 receiving a copy of the record from the patient's psychiatrist —
- 9 (a) confirm or refuse to confirm the decision of the patient's
- 10 psychiatrist; and
- 11 (b) record the confirmation or refusal and the reasons for it;
- 12 and
- 13 (c) give a copy of the record to each of these people —
- 14 (i) the patient;
- 15 (ii) if the additional opinion was requested by a
- 16 person other than the patient — that other
- 17 person;
- 18 (iii) the patient's psychiatrist, who must file the copy
- 19 as soon as practicable.
- 20 (5) The Chief Psychiatrist must, as soon as practicable after
- 21 deciding under subsection (2) not to comply with the request —
- 22 (a) file a record of the decision and the reasons for it; and
- 23 (b) give a copy of the record to each of these people —
- 24 (i) the patient;
- 25 (ii) if the additional opinion was requested by a
- 26 person other than the patient — that other
- 27 person;
- 28 (iii) the patient's psychiatrist, who must file the copy
- 29 as soon as practicable.

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

- 2 (1) This section applies if, after any further opinion in relation to a
3 patient is obtained under section 182, the person who requested
4 that it be obtained remains dissatisfied with the treatment being
5 provided to the patient and advises the Chief Psychiatrist orally
6 or in writing of that dissatisfaction.
- 7 (2) The Chief Psychiatrist must file a record of an oral advice or a
8 written advice.
- 9 (3) The Chief Psychiatrist may request the patient's psychiatrist
10 to —
- 11 (a) reconsider the decision to provide the treatment; and
12 (b) give the Chief Psychiatrist a written report about the
13 outcome of the reconsideration and the reasons for it.
- 14 (4) The patient's psychiatrist must, as soon as practicable —
- 15 (a) give the report to the Chief Psychiatrist and file a copy;
16 and
17 (b) give a copy to each of these people —
- 18 (i) the patient;
19 (ii) if the further opinion was requested by a person
20 other than the patient — that other person.
- 21 (5) Subsection (1) does not limit the powers of the Chief
22 Psychiatrist under section 517.

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

24 **185. Application of this Division**

25 This Division applies in relation to —

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

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

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

- 6 (1) The treatment, care and support provided to a patient must be
7 governed by a treatment, support and discharge plan.
- 8 (2) The treatment, support and discharge plan for a patient referred
9 to in section 185(a) or (b) must outline —
- 10 (a) the treatment and support that will be provided to the
11 patient while admitted by the authorised hospital; and
- 12 (b) the treatment and support that will be offered to the
13 patient after the patient is discharged by the hospital.
- 14 (3) The treatment, support and discharge plan for a patient referred
15 to in section 185(c) must outline —
- 16 (a) the treatment and support that will be provided to the
17 patient under the community treatment order as set out
18 in that order; and
- 19 (b) the treatment and support that will be offered to the
20 patient when the patient is no longer under the
21 community treatment order.

22 **187. Preparation and review of plan**

- 23 (1) A patient's psychiatrist must ensure that a treatment, support
24 and discharge plan for the patient —
- 25 (a) is prepared as soon as practicable after the patient is
26 admitted by the hospital or the community treatment
27 order is made; and
- 28 (b) is reviewed regularly; and
- 29 (c) is revised as necessary.

- 1 (2) The plan must be prepared, reviewed and revised having regard
2 to the guidelines published under section 543(1)(e) for that
3 purpose.
- 4 (3) The patient's psychiatrist must ensure that —
- 5 (a) the plan (as prepared and as revised) is filed; and
- 6 (b) a copy of the plan (as prepared and as revised) is given
7 to each of these people —
- 8 (i) the patient;
- 9 (ii) the person referred to in section 188(1)(b);
- 10 (iii) if the patient is a child — the child's parent or
11 guardian;
- 12 (iv) if the patient has a nominated person — the
13 nominated person unless the nominated person is
14 not entitled, for the reason referred to in
15 section 269(1), to be given a copy;
- 16 (v) if the patient has a carer — the carer unless the
17 carer is not entitled, for the reason referred to in
18 section 288(2) or 292(1), to be given a copy;
- 19 (vi) if the patient has a close family member — the
20 close family member unless the close family
21 member is not entitled, for the reason referred to
22 in section 288(2) or 292(1), to be given a copy.
- 23 (4) The patient's psychiatrist may also ensure that a copy of the
24 plan (as prepared or as revised) is given to any other person or
25 body that the psychiatrist considers appropriate.

26 Note for section 187:

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

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

2 (1) A patient's psychiatrist must ensure that each of these people is
3 involved in the preparation and review of the treatment, support
4 and discharge plan for the patient —

5 (a) the patient —

6 (i) whether or not the patient has the capacity to
7 consent to the plan being implemented in relation
8 to himself or herself; and

9 (ii) whether or not the plan can be implemented
10 without the patient's consent;

11 (b) if the patient does not have the capacity referred to in
12 paragraph (a)(i) —

13 (i) if the plan cannot be implemented without the
14 patient's consent — the person who is authorised
15 by law to consent on the patient's behalf; or

16 (ii) if the plan can be implemented without the
17 patient's consent — the person who would be
18 authorised by law to consent on the patient's
19 behalf if the plan could not have been
20 implemented without consent;

21 (c) if the patient is a child — the child's parent or guardian;

22 (d) if the patient has a nominated person — the nominated
23 person unless the nominated person is not entitled under
24 section 269 to be involved;

25 (e) if the patient has a carer — the carer unless the carer is
26 not entitled under section 288(2) or 292(1) to be
27 involved;

28 (f) if the patient has a close family member — the close
29 family member unless the close family member is not
30 entitled under section 288(2) or 292(1) to be involved.

31 (2) Without limiting a requirement under subsection (1)(b) to
32 involve the person who is or would be required by law to
33 consent on the patient's behalf, or under subsection (1)(c) to

- 1 involve the child's parent or guardian, in the preparation or
2 review of the treatment, support and discharge plan, the
3 requirement is taken to be complied with if the patient's
4 psychiatrist ensures that reasonable efforts continue to be made
5 to involve the person in the preparation or review of the
6 treatment, support and discharge plan until the first of these
7 things occurs —
- 8 (a) the person is involved in that preparation or review;
9 (b) it is reasonable for the patient's psychiatrist to conclude
10 that the person cannot be involved in that preparation or
11 review.
- 12 (3) Part 16 Division 3 Subdivision 2 applies in relation to a
13 requirement under subsection (1)(d) to involve the patient's
14 nominated person in the preparation or review of the treatment,
15 support and discharge plan.
- 16 (4) Part 17 Division 2 applies in relation to a requirement under
17 subsection (1)(e) to consult a carer of the involuntary inpatient,
18 or under subsection (1)(f) to consult a close family member of
19 the patient, in the preparation or review of the treatment,
20 support and discharge plan.
- 21 (5) The patient's psychiatrist may also ensure that any other person
22 or body that the psychiatrist considers appropriate is involved in
23 the preparation or review of the treatment, support and
24 discharge plan for the patient.
- 25 (6) The patient's psychiatrist must ensure that each of the following
26 is filed —
- 27 (a) a record of the involvement of any person referred to in
28 subsection (1)(b) to (f), or any person or body referred
29 to in subsection (5), in the preparation or review of the
30 treatment, support and discharge plan;
- 31 (b) if a person referred to in subsection (1)(b) to (f) could
32 not be involved in the preparation or review of the
33 treatment, support and discharge plan — a record of the
34 efforts made to do so.

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Part 13 Provision of treatment generally

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

s. 189

1 Note for section 188:

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

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

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

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

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

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

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

18 The person in charge of a mental health service must ensure that
19 any standards published under section 543(2) applicable to the
20 mental health service are complied with.

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

22 The person in charge of a mental health service must ensure
23 that, in the provision by the mental health service of treatment
24 and care to persons who have a mental illness, regard is had to
25 any guidelines published under section 543(1) or (3) applicable
26 to that treatment and care.

- 1 (c) in performing the electroconvulsive therapy, the medical
2 practitioner has regard to the guidelines published under
3 section 543(1)(f) for that purpose.

4 Note for section 195:

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

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

- 9 (1) This section applies in relation to a child who has reached
10 14 years of age but is under 18 years of age and is —
11 (a) an involuntary patient; or
12 (b) a patient who is a mentally impaired accused required
13 under the MIA Act to be detained at an authorised
14 hospital.
- 15 (2) A medical practitioner can perform electroconvulsive therapy
16 on the child if —
17 (a) the Mental Health Tribunal approves under Part 21
18 Division 6 the electroconvulsive therapy being
19 performed; and
20 (b) in performing the electroconvulsive therapy, the medical
21 practitioner has regard to the guidelines published under
22 section 543(1)(f) for that purpose.

23 **197. ECT on adult voluntary patient**

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

- 1 (b) the electroconvulsive therapy is performed at a mental
2 health service approved under section 540 for that
3 purpose; and
4 (c) in performing the electroconvulsive therapy, the medical
5 practitioner has regard to the guidelines published under
6 section 543(1)(f) for that purpose.

7 Notes for section 197:

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

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

- 17 (1) This section applies in relation to an adult who is —
18 (a) an involuntary patient; or
19 (b) a patient who is a mentally impaired accused required
20 under the MIA Act to be detained at an authorised
21 hospital.
22 (2) A medical practitioner can perform electroconvulsive therapy
23 on the patient if —
24 (a) the Mental Health Tribunal approves under Part 21
25 Division 6 the electroconvulsive therapy being
26 performed; and
27 (b) in performing the electroconvulsive therapy, the medical
28 practitioner has regard to the guidelines published under
29 section 543(1)(f) for that purpose.

- 1 **199. Emergency ECT on adult involuntary patient or mentally**
2 **impaired accused**
- 3 (1) This section applies in relation to an adult who is —
4 (a) an involuntary patient; or
5 (b) a patient who is a mentally impaired accused required
6 under the MIA Act to be detained at an authorised
7 hospital.
- 8 (2) A medical practitioner can perform electroconvulsive therapy
9 on the patient if —
10 (a) the patient needs to be provided with electroconvulsive
11 therapy —
12 (i) to save the patient’s life; or
13 (ii) because there is an imminent risk of the patient
14 behaving in a way that is likely to result in
15 serious physical injury to the patient or another
16 person;
17 and
18 (b) the electroconvulsive therapy is performed at a mental
19 health service approved under section 540 for that
20 purpose; and
21 (c) the Chief Psychiatrist approves the electroconvulsive
22 therapy being performed; and
23 (d) in performing the electroconvulsive therapy, the medical
24 practitioner has regard to the guidelines published under
25 section 543(1)(f) for that purpose.
- 26 (3) In approving the electroconvulsive therapy being performed, the
27 Chief Psychiatrist must have regard to the guidelines published
28 under section 543(1)(f) for that purpose.

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

- 2 (1) This section applies in relation to a patient who is a mentally
3 impaired accused required under the MIA Act to be detained at
4 an authorised hospital.
- 5 (2) The patient’s psychiatrist must report the performance of a
6 course of electroconvulsive therapy on the patient as soon as
7 practicable to the Mentally Impaired Accused Review Board.
- 8 (3) The report must be accompanied by a copy of the approval of
9 the Mental Health Tribunal or the Chief Psychiatrist, as the case
10 requires.

11 **201. Statistics about ECT**

- 12 (1) This section applies in relation to a mental health service where
13 electroconvulsive therapy is performed.
- 14 (2) In this section —
- 15 *month* means any of the 12 months of the year;
- 16 *serious adverse event*, in relation to a course of treatments with
17 electroconvulsive therapy, includes any of the following —
- 18 (a) premature consciousness during a treatment;
- 19 (b) anaesthetic complications (for example, cardiac
20 arrhythmia) during recovery from a treatment;
- 21 (c) an acute and persistent confused state during recovery
22 from a treatment;
- 23 (d) muscle tears or vertebral column damage;
- 24 (e) severe and persistent headaches;
- 25 (f) persistent memory deficit.
- 26 (3) The person in charge of the mental health service must, as soon
27 as practicable after the end of each month, report to the Chief
28 Psychiatrist on these matters —
- 29 (a) the number of people in respect of whom a course of
30 electroconvulsive therapy at the mental health service

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Part 14 Regulation of certain kinds of treatment and other interventions

Division 1 Electroconvulsive therapy

s. 201

- 1 was completed under subsection (4), or was
2 discontinued under subsection (5), during the month;
- 3 (b) the number of those people who were children;
- 4 (c) the number of those people who were voluntary patients;
- 5 (d) the number of those voluntary patients who were
6 children;
- 7 (e) the number of those people who were involuntary
8 patients;
- 9 (f) the number of those involuntary patients who were
10 children;
- 11 (g) the number of those people who were mentally impaired
12 accused required under the MIA Act to be detained at an
13 authorised hospital;
- 14 (h) the number of those mentally impaired accused who
15 were children;
- 16 (i) the number of treatments with electroconvulsive therapy
17 in each of those courses;
- 18 (j) the number of those courses that were courses of
19 emergency electroconvulsive therapy performed under
20 section 199;
- 21 (k) details of any serious adverse event that occurred, or is
22 suspected of having occurred, during or after any of
23 those courses.
- 24 (4) For the purposes of subsection (3)(a), a course of
25 electroconvulsive therapy is taken to have been completed
26 during a month if the last treatment in the course was performed
27 during the month, whether or not any of the other treatments in
28 the course were performed during the month.
- 29 (5) For the purposes of subsection (3)(a), a course of
30 electroconvulsive therapy is taken to have been discontinued
31 during a month if —
- 32 (a) one or more of the treatments in the course have been
33 performed, whether or not during the month; and

- 1 (b) the decision not to perform any more of the treatments
2 in the course was made (for whatever reason) during the
3 month.
- 4 (6) The report must be in the approved form.

5 **Division 2 — Emergency psychiatric treatment**

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

- 7 (1) Emergency psychiatric treatment is treatment that needs to be
8 provided to a person —
- 9 (a) to save the person’s life; or
- 10 (b) to prevent the person from behaving in a way that is
11 likely to result in serious physical injury to the person or
12 another person.
- 13 (2) Emergency psychiatric treatment does not include any of these
14 treatments —
- 15 (a) electroconvulsive therapy;
- 16 (b) psychosurgery;
- 17 (c) treatment that is prohibited by section 210(1).

18 **203. Informed consent not required**

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

22 Note for section 203:

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

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

- 2 (1) A medical practitioner who provides emergency psychiatric
3 treatment to a person must, as soon as practicable —
- 4 (a) file a record, in accordance with subsection (2), of the
5 provision of the emergency psychiatric treatment to the
6 person; and
- 7 (b) give a copy of the record to each of these people —
- 8 (i) the person;
- 9 (ii) the Chief Psychiatrist;
- 10 (iii) if the person is a mentally impaired accused —
11 the Mentally Impaired Accused Review Board.
- 12 (2) The record of the treatment provided must be in the approved
13 form and must include these things —
- 14 (a) the name of the person provided with the treatment;
- 15 (b) the name and qualifications of the practitioner who
16 provided the treatment;
- 17 (c) the names of any other people involved in providing the
18 treatment;
- 19 (d) the date, time and place the treatment was provided;
- 20 (e) particulars of the circumstances in which the treatment
21 was provided;
- 22 (f) particulars of the treatment provided.

23 **Division 3 — Psychosurgery**

24 **205. Psychosurgery: meaning**

- 25 Psychosurgery is treatment involving —
- 26 (a) the use of a surgical technique or procedure or
27 intracerebral electrodes to create in a person's brain a
28 lesion intended (whether alone or in combination with
29 one or more other lesions created at the same or other
30 times) to alter permanently —
- 31 (i) the person's thoughts or emotions; or

- 1 (ii) the person's behaviour other than behaviour
2 secondary to a paroxysmal cerebral dysrhythmia;
- 3 or
- 4 (b) the use of intracerebral electrodes to stimulate a person's
5 brain without creating a lesion with the intention that the
6 stimulation (whether alone or in combination with other
7 such stimulation at the same or other times) will
8 influence or alter temporarily —
- 9 (i) the person's thoughts or emotions; or
- 10 (ii) the person's behaviour other than behaviour
11 secondary to a paroxysmal cerebral dysrhythmia.

12 **206. Psychosurgery offence**

13 A person must not perform psychosurgery on another person
14 except in accordance with sections 207 and 208.
15 Penalty: imprisonment for 5 years.

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

17 A person cannot perform psychosurgery on a child under
18 16 years of age.

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

- 20 (1) This section applies in relation to a patient who is —
- 21 (a) an adult; or
- 22 (b) a child who has reached 16 years of age but is under
23 18 years of age.
- 24 (2) A neurosurgeon can perform psychosurgery on the patient if —
- 25 (a) the patient gives informed consent to the psychosurgery
26 being performed on himself or herself; and
- 27 (b) the Mental Health Tribunal approves under Part 21
28 Division 7 the psychosurgery being performed.

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Part 14 Regulation of certain kinds of treatment and other interventions

Division 4 Deep sleep and insulin coma therapy

s. 209

1 Notes for section 208:

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

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

- 9 (1) A patient's psychiatrist must report the performance of
10 psychosurgery on the patient as soon as practicable to —
11 (a) the Chief Psychiatrist; and
12 (b) if the patient is a mentally impaired accused — the
13 Mentally Impaired Accused Review Board.
- 14 (2) The report must be accompanied by a copy of the Mental Health
15 Tribunal's approval.

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

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

- 18 (1) A person must not perform any of these things on another
19 person —
20 (a) deep sleep therapy;
21 (b) insulin coma therapy;
22 (c) insulin sub coma therapy.
- 23 Penalty: imprisonment for 5 years.
- 24 (2) An offence under subsection (1) is a crime.

25 **Division 5 — Seclusion**

26 **211. Terms used**

27 In this Division —

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

1 ***seclusion order*** —

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

5 **212. Seclusion: meaning**

6 Seclusion is the confinement of a person who is being provided
7 with treatment or care at an authorised hospital by leaving the
8 person at any time of the day or night alone in a room or area
9 from which it is not within the person’s control to leave.

10 **213. Seclusion must be authorised**

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

13 Penalty: a fine of \$6 000.

14 **214. Giving oral authorisation**

15 (1) A medical practitioner or mental health practitioner at an
16 authorised hospital or the person in charge of a ward at an
17 authorised hospital may orally authorise the seclusion of any of
18 these people —

- 19 (a) a person who is a patient admitted by the authorised
20 hospital;
21 (b) a person who is referred under section 26(2) or 36(2) for
22 an examination to be conducted by a psychiatrist at the
23 authorised hospital;
24 (c) a person who is under an order made under
25 section 55(1)(c) or 61(1)(c) to enable an examination to
26 be conducted by a psychiatrist at the authorised hospital.

27 (2) A person cannot give an oral authorisation in respect of a person
28 unless satisfied of the matters specified in section 216.

29 (3) A person giving an oral authorisation in respect of a person
30 must specify the room or area where the person can be secluded.

- 1 (4) A person who gives an oral authorisation in respect of a person
2 must, as soon as practicable after the person is secluded under
3 the authorisation —
- 4 (a) record the oral authorisation in the approved form,
5 specifying the following —
- 6 (i) the date and time when it was given;
- 7 (ii) the room or area specified under subsection (3);
- 8 (iii) the reasons for giving it;
- 9 and
- 10 (b) file the record and give a copy to the person.
- 11 (5) A mental health practitioner or the person in charge of a ward
12 who gives an oral authorisation in respect of a person must, as
13 soon as practicable and, in any event, within sufficient time to
14 enable the person to be examined as required by section 222(4)
15 or 223(2), inform a medical practitioner as to whether —
- 16 (a) the person is secluded under the oral authorisation; or
- 17 (b) the person was secluded under the oral authorisation but
18 has since been released from seclusion.
- 19 (6) A mental health practitioner or the person in charge of a ward
20 who informs a medical practitioner under subsection (5) must,
21 as soon as practicable —
- 22 (a) record in the approved form —
- 23 (i) the medical practitioner's name and
24 qualifications; and
- 25 (ii) the date and time when the medical practitioner
26 was informed;
- 27 and
- 28 (b) file the record and give a copy to the person.
- 29 (7) If a seclusion order confirming the oral authorisation is not
30 made (either by the person who gave the oral authorisation or, if
31 that person is not reasonably available, another person who is
32 authorised to make a seclusion order) as soon as practicable and,

- 1 in any event, within 2 hours after the time when the person is
2 secluded under the authorisation —
- 3 (a) the person cannot continue to be secluded and must be
4 released from seclusion; and
- 5 (b) the person who gave the oral authorisation or, if that
6 person is not reasonably available, another person who
7 is authorised to make a seclusion order must ensure that
8 the person is informed of that fact and released from
9 seclusion.
- 10 **215. Making seclusion order**
- 11 (1) A medical practitioner or mental health practitioner at an
12 authorised hospital or the person in charge of a ward at an
13 authorised hospital may make a seclusion order authorising the
14 seclusion of any of these people —
- 15 (a) a person who is a patient admitted by the authorised
16 hospital;
- 17 (b) a person who is referred under section 26(2) or 36(2) for
18 an examination to be conducted by a psychiatrist at the
19 authorised hospital;
- 20 (c) a person who is under an order made under
21 section 55(1)(c) or 61(1)(c) to enable an examination to
22 be conducted by a psychiatrist at the authorised hospital.
- 23 (2) A person cannot make a seclusion order in respect of a person
24 unless satisfied of the matters specified in section 216.
- 25 (3) A seclusion order must be in the approved form and must
26 include the following —
- 27 (a) the name and date of birth of the person being secluded
28 under the order;
- 29 (b) the date and time when the order is made;
- 30 (c) the date and time when any oral authorisation being
31 confirmed by the order was given;

- 1 (d) the period for which the person can be secluded under
2 the order, which cannot exceed 2 hours including the
3 period for which the person was secluded under any oral
4 authorisation being confirmed by the order;
- 5 (e) the room or area where the person can be secluded;
- 6 (f) with reference to the criteria specified in section 216(1),
7 the reasons for authorising the seclusion;
- 8 (g) if a mental health practitioner or the person in charge of
9 a ward makes the order — with reference to the criteria
10 specified in section 216(2), the reasons for the urgency;
- 11 (h) particulars of any observations made about the
12 person —
- 13 (i) if the order is confirming an oral authorisation —
14 when the person was secluded under the oral
15 authorisation; or
- 16 (ii) otherwise — when the person is secluded under
17 the order;
- 18 (i) particulars of any directions given by a medical
19 practitioner or mental health practitioner about the
20 treatment and care to be provided to the person while
21 secluded;
- 22 (j) the name, qualifications and signature of the person
23 making the order.
- 24 (4) A mental health practitioner or the person in charge of a ward
25 who makes a seclusion order in respect of a person must, as
26 soon as practicable and, in any event, within sufficient time to
27 enable the person to be examined as required by section 222(4)
28 or 223(2), inform a medical practitioner as to whether —
- 29 (a) the person is secluded under the seclusion order; or
30 (b) the person was secluded under the seclusion order but
31 has since been released from seclusion.

- 1 (5) A mental health practitioner or the person in charge of a ward
2 who informs a medical practitioner under subsection (4) must,
3 as soon as practicable —
4 (a) record in the approved form —
5 (i) the medical practitioner’s name and
6 qualifications; and
7 (ii) the date and time when the medical practitioner
8 was informed;
9 and
10 (b) file the record and give a copy to the person.
11 (6) The person who makes a seclusion order in respect of a person
12 must, as soon as practicable after the person is secluded under
13 the order, file it and give a copy to the person.

14 **216. Criteria for authorising seclusion**

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

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

2 (1) This section applies if —

- 3 (a) a person secluded under an oral authorisation or
4 seclusion order has a treating psychiatrist; and
5 (b) the treating psychiatrist did not give the oral
6 authorisation or make the seclusion order; and
7 (c) the medical practitioner informed under section 214(5)
8 or 215(4) of the person's seclusion is not the treating
9 psychiatrist.

10 (2) The person who gave the oral authorisation or made the
11 seclusion order must, as soon as practicable and, in any event,
12 within 2 hours after the time when the person is secluded under
13 the authorisation or order, inform the treating psychiatrist as to
14 whether —

- 15 (a) the person is secluded under the authorisation or order;
16 or
17 (b) the person was secluded under the authorisation or order
18 but has since been released from seclusion.

19 (3) A person who informs the treating psychiatrist under
20 subsection (2) must, as soon as practicable —

- 21 (a) record in the approved form —
22 (i) the treating psychiatrist's name and
23 qualifications; and
24 (ii) the date and time when the treating psychiatrist
25 was informed;
26 and
27 (b) file the record and give a copy to the person.

28 **218. Extending seclusion order**

29 (1) A medical practitioner may make an order extending a seclusion
30 order in force in respect of a person from the end of the period

1 of seclusion under the seclusion order for the further period (not
2 exceeding 2 hours) specified in the order.

3 (2) The medical practitioner cannot extend the seclusion order
4 unless, immediately before doing so, the medical practitioner
5 examines the person in accordance with section 222(4).

6 (3) The medical practitioner must, as soon as practicable, file the
7 order and give a copy to the person.

8 **219. Revoking seclusion order**

9 (1) A medical practitioner or mental health practitioner or the
10 person in charge of a ward at an authorised hospital may make
11 an order revoking a seclusion order in force in respect of a
12 person.

13 (2) The order must be in the approved form and must include the
14 following —

15 (a) the date and time when the seclusion order is revoked;

16 (b) the name, qualifications and signature of the person
17 making it.

18 (3) The person who makes the order must, as soon as practicable,
19 file it and give a copy to the person.

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

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

24 (a) inform the person of that fact; and

25 (b) ensure that the person is released from seclusion.

26 **221. Record of seclusion order expiring**

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

1 **222. Requirements relating to seclusion**

- 2 (1) This section applies while a person is secluded under an oral
3 authorisation or a seclusion order.
- 4 (2) The person in charge of the ward where the person is secluded
5 must ensure that the requirements specified in this section, and
6 any other requirements prescribed by the regulations for this
7 section, are complied with.
- 8 (3) A mental health practitioner or a nurse must observe the person
9 every 15 minutes and, as soon as practicable, file a record in the
10 approved form of those observations and give a copy to the
11 person.
- 12 (4) A medical practitioner must examine the person at least every
13 2 hours and, as soon as practicable —
- 14 (a) record in the approved form these things —
- 15 (i) the medical practitioner's name and
16 qualifications;
- 17 (ii) the date and time of the examination;
- 18 (iii) the results of the examination, including whether
19 or not the medical practitioner considers that,
20 having regard to the criteria specified in
21 section 216(1), the person should continue to be
22 secluded;
- 23 and
- 24 (b) file the record and give a copy to the person.
- 25 (5) The person must be provided with these things —
- 26 (a) the bedding and clothing appropriate in the
27 circumstances;
- 28 (b) sufficient food and drink;
- 29 (c) access to toilet facilities;
- 30 (d) any other care appropriate to the person's needs.

- 1 **223. Examination of person released from seclusion**
- 2 (1) This section applies whenever a person is released from
3 seclusion under an oral authorisation or a seclusion order.
- 4 (2) The person in charge of the ward where the person was secluded
5 must ensure —
- 6 (a) that the person is examined by a medical practitioner
7 within 6 hours after the time when the person is released
8 from the seclusion; or
- 9 (b) if the person is to be released or discharged by, or
10 against medical advice wants to leave, the authorised
11 hospital where the person was secluded before being
12 examined under paragraph (a) — that the person is
13 offered an examination by a medical practitioner to be
14 conducted before the person is released, discharged or
15 leaves.
- 16 (3) A medical practitioner who examines a person for the purposes
17 of subsection (2) must, as soon as practicable —
- 18 (a) record in the approved form these things —
- 19 (i) the medical practitioner’s name and
20 qualifications;
- 21 (ii) the date and time of the examination;
- 22 (iii) the results of the examination, including any
23 complication of or deterioration in the person’s
24 mental or physical condition that is a result of, or
25 may be the result of, the person being secluded;
- 26 and
- 27 (b) file the record and give a copy to the person.
- 28 **224. Report to Chief Psychiatrist and Mentally Impaired**
29 **Accused Review Board**
- 30 (1) This section applies whenever a person is released from
31 seclusion under an oral authorisation or a seclusion order.

- 1 (2) The treating psychiatrist or, if the person does not have a
2 treating psychiatrist, the person in charge of the authorised
3 hospital where the person was secluded must, as soon as
4 practicable, give the documents specified in subsection (3)
5 relating to the seclusion to —
6 (a) the Chief Psychiatrist; and
7 (b) if the person is a mentally impaired accused — the
8 Mentally Impaired Accused Review Board.
- 9 (3) For subsection (2), these documents are specified —
10 (a) a copy of the record of the oral authorisation (if any)
11 made under section 214(4)(a);
12 (b) a copy of the seclusion order (if any) made under
13 section 215(1);
14 (c) a copy of any order extending the seclusion order made
15 under section 218(1);
16 (d) a copy of any order revoking the seclusion order made
17 under section 219(1) or any record of the expiry of the
18 seclusion order under section 221;
19 (e) a copy of each of the records made under
20 section 214(6)(a), 215(5)(a), 217(3)(a), 222(3) and
21 (4)(a) and 223(3)(a).
- 22 (4) The treating psychiatrist or person in charge must, as soon as
23 practicable, file a record of having complied with
24 subsection (2).

25 **225. Reasonable assistance and force authorised**

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

- 1 (5) Bodily restraint does not include —
- 2 (a) physical or mechanical restraint by a police officer
- 3 acting in the course of duty; or
- 4 (b) physical restraint by a person exercising a power under
- 5 section 172(2).

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

7 These principles apply in relation to the use of bodily restraint

8 on a person under this Division —

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

17 **229. Bodily restraint must be authorised**

18 A person must not use bodily restraint on another person except

19 in accordance with an oral authorisation or a bodily restraint

20 order.

21 Penalty: a fine of \$6 000.

22 **230. Giving oral authorisation**

- 23 (1) A medical practitioner or mental health practitioner at an
- 24 authorised hospital or the person in charge of a ward at an
- 25 authorised hospital may orally authorise the bodily restraint of
- 26 any of these people —
- 27 (a) a person who is a patient admitted by the authorised
- 28 hospital;
- 29 (b) a person who is referred under section 26(2) or 36(2) for
- 30 an examination to be conducted by a psychiatrist at the
- 31 authorised hospital;

- 1 (c) a person who is under an order made under
2 section 55(1)(c) or 61(1)(c) to enable an examination to
3 be conducted by a psychiatrist at the authorised hospital.
- 4 (2) A person cannot give an oral authorisation in respect of a person
5 unless satisfied of the matters specified in section 232.
- 6 (3) A person giving an oral authorisation in respect of a person
7 must specify —
- 8 (a) whether physical or mechanical restraint can be used to
9 restrain the person; and
- 10 (b) if mechanical restraint can be used —
- 11 (i) the device that can be used to restrain the person;
12 and
- 13 (ii) the way in which the device can be applied to the
14 person's body.
- 15 (4) A person who gives an oral authorisation in respect of a person
16 must, as soon as practicable after the person is restrained under
17 the authorisation —
- 18 (a) record the oral authorisation in the approved form,
19 specifying the following —
- 20 (i) the date and time when it was given;
- 21 (ii) the matters specified under subsection (3);
- 22 (iii) the reasons for giving it;
- 23 and
- 24 (b) file the record and give a copy to the person.
- 25 (5) A mental health practitioner or the person in charge of a ward
26 who gives an oral authorisation in respect of a person must, as
27 soon as practicable and, in any event, within sufficient time to
28 enable the person to be examined as required by section 238(4)
29 or 239(2)(a), inform a medical practitioner as to whether —
- 30 (a) the person is restrained under the oral authorisation; or
- 31 (b) the person was restrained under the oral authorisation
32 but has since been released from bodily restraint.

- 1 (6) A mental health practitioner or the person in charge of a ward
2 who informs a medical practitioner under subsection (5) must,
3 as soon as practicable —
- 4 (a) record in the approved form —
- 5 (i) the medical practitioner’s name and
6 qualifications; and
- 7 (ii) the date and time when the medical practitioner
8 was informed;
- 9 and
- 10 (b) file the record and give a copy to the person.
- 11 (7) If a bodily restraint order confirming the oral authorisation is
12 not made (either by the person who gave the oral authorisation
13 or, if that person is not reasonably available, another person
14 who is authorised to make a bodily restraint order) as soon as
15 practicable and, in any event, within 30 minutes after the time
16 when the person is restrained under the authorisation —
- 17 (a) the person cannot continue to be restrained and must be
18 released from bodily restraint; and
- 19 (b) the person who gave the oral authorisation or, if that
20 person is not reasonably available, another person who
21 is authorised to make a bodily restraint order must
22 ensure that the person is informed of that fact and
23 released from bodily restraint.
- 24 **231. Making bodily restraint order**
- 25 (1) A medical practitioner or mental health practitioner at an
26 authorised hospital or the person in charge of a ward at an
27 authorised hospital may make a bodily restraint order
28 authorising the bodily restraint of any of these people —
- 29 (a) a person who is a patient admitted by the authorised
30 hospital;

- 1 (b) a person who is referred under section 26(2) or 36(2) for
2 an examination to be conducted by a psychiatrist at the
3 authorised hospital;
- 4 (c) a person who is under an order made under
5 section 55(1)(c) or 61(1)(c) to enable an examination to
6 be conducted by a psychiatrist at the authorised hospital.
- 7 (2) A person cannot make a bodily restraint order in respect of a
8 person unless satisfied of the matters specified in section 232.
- 9 (3) A bodily restraint order must be in the approved form and must
10 include the following —
- 11 (a) the name and date of birth of the person being restrained
12 under the order;
- 13 (b) the date and time when the order is made;
- 14 (c) the date and time when any oral authorisation being
15 confirmed by the order was given;
- 16 (d) the period for which the person can be restrained under
17 the order, which cannot exceed 30 minutes including the
18 period for which the person was restrained under any
19 oral authorisation being confirmed by the order;
- 20 (e) whether physical or mechanical restraint can be used to
21 restrain the person;
- 22 (f) if mechanical restraint can be used —
- 23 (i) the device that can be used to restrain the person;
24 and
- 25 (ii) the way in which the device can be applied to the
26 person's body;
- 27 (g) with reference to the criteria specified in
28 section 232(1) —
- 29 (i) the reasons for authorising the use of bodily
30 restraint on the person; and
- 31 (ii) if mechanical restraint is authorised — the
32 reasons for authorising the use and application of
33 the device specified under paragraph (f);

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- 1 (h) if a mental health practitioner or the person in charge of
2 a ward makes the order — with reference to the criteria
3 specified in section 232(2), the reasons for the urgency;
- 4 (i) particulars of any observations made about the
5 person —
- 6 (i) if the order is confirming an oral authorisation —
7 when the person was restrained under the oral
8 authorisation; or
- 9 (ii) otherwise — when the person is restrained under
10 the order;
- 11 (j) particulars of any directions given by a medical
12 practitioner or mental health practitioner about the
13 treatment and care to be provided to the person while
14 restrained;
- 15 (k) the name, qualifications and signature of the person
16 making the order.
- 17 (4) A mental health practitioner or the person in charge of a ward
18 who makes a bodily restraint order in respect of a person must,
19 as soon as practicable and, in any event, within sufficient time
20 to enable the person to be examined as required by
21 section 238(4) or 239(2)(a), inform a medical practitioner as to
22 whether —
- 23 (a) the person is restrained under the bodily restraint order;
24 or
- 25 (b) the person was restrained under the bodily restraint
26 order but has since been released from bodily restraint.
- 27 (5) A mental health practitioner or the person in charge of a ward
28 who informs a medical practitioner under subsection (4) must,
29 as soon as practicable —
- 30 (a) record in the approved form —
- 31 (i) the medical practitioner's name and
32 qualifications; and

- 1 (ii) the date and time when the medical practitioner
2 was informed;
- 3 and
- 4 (b) file the record and give a copy to the person.
- 5 (6) The person who makes a bodily restraint order in respect of a
6 person must, as soon as practicable after the person is restrained
7 under the order, file it and give a copy to the person.
- 8 **232. Criteria for authorising bodily restraint**
- 9 (1) A person cannot give an oral authorisation or make a bodily
10 restraint order in respect of a person unless satisfied of these
11 things —
- 12 (a) the person needs to be restrained to —
- 13 (i) provide the person with treatment; or
- 14 (ii) prevent the person from physically injuring
15 himself or herself or another person; or
- 16 (iii) prevent the person from persistently causing
17 serious damage to property;
- 18 and
- 19 (b) there is no less restrictive way of providing the
20 treatment or preventing the injury or damage; and
- 21 (c) the use of bodily restraint on the person is unlikely to
22 pose a significant risk to the person’s physical health.
- 23 (2) A mental health practitioner or the person in charge of a ward
24 cannot give an oral authorisation or make a bodily restraint
25 order in respect of a person unless also satisfied that —
- 26 (a) the person needs to be restrained urgently; and
- 27 (b) a medical practitioner is not reasonably available to give
28 an oral authorisation or make a bodily restraint order in
29 respect of the person.

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

2 (1) This section applies if —

- 3 (a) a person restrained under an oral authorisation or a
4 bodily restraint order has a treating psychiatrist; and
5 (b) the treating psychiatrist did not give the oral
6 authorisation or make the bodily restraint order; and
7 (c) the medical practitioner informed of the restraint under
8 section 230(5) or 231(4) is not the treating psychiatrist.

9 (2) The person who gave the oral authorisation or made the bodily
10 restraint order must, as soon as practicable and, in any event,
11 within 30 minutes after the time when the person is restrained
12 under the authorisation or order, inform the treating psychiatrist
13 as to whether —

- 14 (a) the person is restrained under the authorisation or order;
15 or
16 (b) the person was restrained under the authorisation or
17 order but has since been released from bodily restraint.

18 (3) A person who informs the treating psychiatrist under
19 subsection (2) must, as soon as practicable —

- 20 (a) record in the approved form —
21 (i) the treating psychiatrist's name and
22 qualifications; and
23 (ii) the date and time when the treating psychiatrist
24 was informed;
25 and
26 (b) file the record and give a copy to the person.

27 **234. Varying bodily restraint order**

28 (1) A medical practitioner may make an order extending a bodily
29 restraint order in force in respect of a person from the end of the
30 period of restraint under the bodily restraint order for the further
31 period (not exceeding 30 minutes) specified in the order.

- 1 (2) A medical practitioner cannot extend a bodily restraint order
2 under subsection (1) unless, immediately before doing so, the
3 medical practitioner examines the person in accordance with
4 section 238(4).
- 5 (3) A medical practitioner or mental health practitioner may make
6 an order varying a bodily restraint order in force in respect of a
7 person by —
- 8 (a) shortening the bodily restraint order by the period
9 specified in the order; or
- 10 (b) varying the device that is authorised for use to restrict
11 the person’s movement or the way in which the device is
12 authorised to be applied to the person’s body.
- 13 (4) An order made under subsection (1) or (3) must be in the
14 approved form and must include the following —
- 15 (a) the date and time when it is made;
- 16 (b) the variation of the bodily restraint order;
- 17 (c) the reasons for the variation;
- 18 (d) the name, qualifications and signature of the practitioner
19 making it.
- 20 (5) A person who makes an order under subsection (1) or (3) must,
21 as soon as practicable, file it and give a copy to the person.

22 **235. Revoking bodily restraint order**

- 23 (1) A medical practitioner or mental health practitioner or the
24 person in charge of a ward at an authorised hospital may make
25 an order revoking a bodily restraint order in force in respect of a
26 person.
- 27 (2) The order must be in the approved form and must include the
28 following —
- 29 (a) the date and time when the bodily restraint order is
30 revoked;
- 31 (b) the name, qualifications and signature of the practitioner
32 making it.

- 1 (3) The person who makes the order must, as soon as practicable,
2 file it and give a copy to the person.

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

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

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

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

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

14 **238. Requirements relating to bodily restraint**

- 15 (1) This section applies while a person is restrained under an oral
16 authorisation or a bodily restraint order.
- 17 (2) The person in charge of the ward where the person is restrained
18 must ensure that the requirements specified in this section, and
19 any other requirements prescribed by the regulations for this
20 section, are complied with.
- 21 (3) A mental health practitioner or a nurse must be in physical
22 attendance on the person at all times and, as soon as practicable,
23 must file a record in the approved form of any observations he
24 or she makes about the person and give a copy to the person.
- 25 (4) A medical practitioner must examine the person at least every
26 30 minutes and, as soon as practicable —
- 27 (a) record in the approved form these things —
28 (i) the medical practitioner's name and
29 qualifications;

- 1 (ii) the date and time of the examination;
- 2 (iii) the results of the examination, including whether
- 3 or not the medical practitioner considers that,
- 4 having regard to the criteria specified in
- 5 section 232(1), the person should continue to be
- 6 restrained;
- 7 and
- 8 (b) file the record and give a copy to the person.
- 9 (5) If the person remains restrained for more than 6 hours, a
- 10 psychiatrist must review the use of bodily restraint on the
- 11 person and, as soon as practicable —
- 12 (a) record in the approved form —
- 13 (i) the psychiatrist’s name and qualifications; and
- 14 (ii) the date, time and results of the review;
- 15 and
- 16 (b) file the record and give a copy to the person.
- 17 (6) The person must be provided with these things —
- 18 (a) the bedding and clothing appropriate in the
- 19 circumstances;
- 20 (b) sufficient food and drink;
- 21 (c) access to toilet facilities;
- 22 (d) any other care appropriate to the person’s needs.

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

- 24 (1) This section applies whenever a person is released from bodily
- 25 restraint under an oral authorisation or a bodily restraint order.
- 26 (2) The person in charge of the ward where the person was
- 27 restrained must ensure —
- 28 (a) that the person is examined by a medical practitioner as
- 29 soon as practicable and, in any event, within 6 hours

- 1 after the time when the person is released from the
2 bodily restraint; or
- 3 (b) if the person is to be released or discharged by, or
4 against medical advice wants to leave, the authorised
5 hospital where the person was restrained before being
6 examined under paragraph (a) — that the person is
7 offered an examination by a medical practitioner to be
8 conducted before the person is released, discharged or
9 leaves.
- 10 (3) A medical practitioner who examines a person for the purposes
11 of subsection (2) must, as soon as practicable —
- 12 (a) record in the approved form these things —
- 13 (i) the medical practitioner’s name and
14 qualifications;
- 15 (ii) the date and time of the examination;
- 16 (iii) the results of the examination, including any
17 complication of or deterioration in the person’s
18 mental or physical condition that is a result of, or
19 may be the result of, the person being restrained;
- 20 and
- 21 (b) file the record and give a copy to the person.
- 22 **240. Report to Chief Psychiatrist and Mentally Impaired**
23 **Accused Review Board**
- 24 (1) This section applies whenever a person is released from restraint
25 under an oral authorisation or a bodily restraint order.
- 26 (2) The treating psychiatrist or, if the person does not have a
27 treating psychiatrist, the person in charge of the authorised
28 hospital where the person was restrained must, as soon as
29 practicable, give the documents specified in subsection (3)
30 relating to the restraint to —
- 31 (a) the Chief Psychiatrist; and

- 1 (b) if the person is a mentally impaired accused — the
2 Mentally Impaired Accused Review Board.
- 3 (3) For subsection (2), these documents are specified —
- 4 (a) a copy of the record of the oral authorisation (if any)
5 made under section 230(4)(a);
- 6 (b) a copy of the bodily restraint order (if any) made under
7 section 231(1);
- 8 (c) a copy of any order varying the bodily restraint order
9 made under section 234(1) or (3);
- 10 (d) a copy of any order revoking the bodily restraint order
11 made under section 235(1) or any record of the expiry of
12 the bodily restraint order made under section 237;
- 13 (e) a copy of each of the records made under
14 section 230(6)(a), 231(5)(a), 233(3)(a), 238(3), (4)(a)
15 and (5)(a) and 239(3)(a).
- 16 (4) The treating psychiatrist or person in charge must, as soon as
17 practicable, file a record of having complied with
18 subsection (2).

- 1 **Part 15 — Health care of people in hospitals**
- 2 **Division 1 — Examination to assess person's physical condition**
- 3 **241. Physical examination on arrival at hospital**
- 4 (1) This section applies when —
- 5 (a) a person is admitted —
- 6 (i) by a hospital as a voluntary inpatient; or
- 7 (ii) by a hospital as an involuntary patient whose
- 8 detention at the hospital is authorised under an
- 9 inpatient treatment order; or
- 10 (iii) by an authorised hospital as a mentally impaired
- 11 accused required under the MIA Act to be
- 12 detained at the authorised hospital;
- 13 or
- 14 (b) a person is received into an authorised hospital under
- 15 section 52(1)(a) or 70(1)(a).
- 16 (2) The person in charge of the hospital must ensure that, as soon as
- 17 practicable and, in any event, within 12 hours after the time
- 18 when the person is admitted or received, a medical practitioner
- 19 physically attends on the person for the purpose of examining
- 20 the person to assess the person's physical condition.
- 21 (3) For the purposes of subsection (2), these things may be done in
- 22 relation to a person referred to in subsection (1)(a)(ii) or (iii)
- 23 or (b) without consent —
- 24 (a) the person may be examined;
- 25 (b) samples of the person's blood, saliva, tissue and excreta
- 26 may be taken.
- 27 (4) A medical practitioner who examines a person for the purposes
- 28 of subsection (2) must, as soon as practicable, file a record of
- 29 these things —
- 30 (a) the practitioner's name and qualifications;

- 1 (b) the date and time when the examination was conducted;
2 (c) the results of the examination.

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

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

- 7 (1) This section applies if urgent non-psychiatric treatment is
8 provided to a patient who is —
9 (a) an involuntary patient who is under an inpatient
10 treatment order authorising the patient’s detention at an
11 authorised hospital; or
12 (b) a mentally impaired accused required under the
13 MIA Act to be detained at an authorised hospital.
- 14 (2) In this section —
15 *urgent non-psychiatric treatment* means urgent treatment as
16 defined in the GAA Act section 110ZH.
- 17 (3) The person in charge of the authorised hospital must, as soon as
18 practicable, report the provision of the urgent non-psychiatric
19 treatment to —
20 (a) the Chief Psychiatrist; and
21 (b) if the patient is a mentally impaired accused — the
22 Mentally Impaired Accused Review Board.
- 23 (4) The report must be in the approved form and must include these
24 things about the urgent non-psychiatric treatment —
25 (a) the name of the patient provided with the treatment;
26 (b) the name and qualifications of the practitioner who
27 provided the treatment;
28 (c) the names of any other people involved in providing the
29 treatment;
30 (d) the date, time and place the treatment was provided;

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- 1 (e) particulars of the circumstances in which the treatment
2 was provided;
- 3 (f) particulars of the treatment provided.
- 4 (5) The provision of urgent non-psychiatric treatment is an event to
5 which Part 9 applies and the person in charge of the authorised
6 hospital is the person responsible under that Part for notification
7 of that event.
- 8 Note for section 242:
- 9 The GAA Act section 110ZI or 110ZIA may apply in relation to the provision of
10 urgent non-psychiatric treatment to a patient referred to in section 242.

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

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

3 **Subdivision 1 — Explanation of rights**

4 **243. Application of this Subdivision**

5 This Subdivision applies when —

- 6 (a) a patient is being admitted —
- 7 (i) by a hospital as a voluntary inpatient; or
- 8 (ii) by a hospital as an involuntary patient whose
- 9 detention at the hospital is authorised under an
- 10 inpatient treatment order; or
- 11 (iii) by an authorised hospital as a mentally impaired
- 12 accused required under the MIA Act to be
- 13 detained at the authorised hospital;
- 14 or
- 15 (b) an inpatient treatment order is made in respect of a
- 16 patient; or
- 17 (c) a patient who is under an inpatient treatment order is
- 18 granted leave of absence from a hospital under
- 19 section 105(1); or
- 20 (d) a community treatment order is made in respect of a
- 21 patient; or
- 22 (e) a person is referred under section 26(2) or 36(2) for an
- 23 examination to be conducted by a psychiatrist at an
- 24 authorised hospital; or
- 25 (f) a person is referred under section 26(3)(a) for an
- 26 examination to be conducted by a psychiatrist at a place
- 27 that is not an authorised hospital.

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

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

5 Note for section 244:

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

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

9 (1) The person responsible under section 246 must ensure that a
10 carer, close family member or other personal support person of
11 the person is provided with an explanation, as described in the
12 regulations, of the person's rights under this Act.

13 (2) This section applies despite any requirement under
14 section 286(2) or 288(2) relating to the person's consent or
15 refusal to consent.

16 Note for section 245:

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

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

20 For sections 244 and 245, the person responsible is —

- 21 (a) when section 243(a) applies — the person in charge of
22 the authorised hospital; or
- 23 (b) when section 243(b) applies — the psychiatrist who
24 makes the inpatient treatment order; or
- 25 (c) when section 243(c) applies — the psychiatrist who
26 grants the leave of absence; or
- 27 (d) when section 243(d) applies — the psychiatrist who
28 makes the community treatment order; or
- 29 (e) when section 243(e) or (f) applies — the medical
30 practitioner or authorised mental health practitioner who
31 makes the referral.

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

3 **247. Term used: relevant document**

4 In this Subdivision —
5 *relevant document*, in relation to a person, means the whole or
6 any part of the person's medical record or any other document
7 about the person.

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

9 (1) Unless section 249(1)(a) or (b) or (3) applies, a person who is or
10 was provided with treatment or care by a mental health service
11 is entitled to inspect, and to be given a copy of, any relevant
12 document relating to the person that is in the possession or
13 control of —

- 14 (a) the person in charge of the mental health service; or
15 (b) a staff member of the mental health service.

16 (2) Subsection (1) does not affect any other right that the person has
17 under this Act or another law to be given access to a document.

18 (3) The person in charge of the mental health service must
19 ensure —

- 20 (a) that any request by the person to inspect, or to be given
21 a copy of, a relevant document relating to the person is
22 dealt with as soon as practicable after the request is
23 received by the person who has possession or control of
24 the relevant document; and
25 (b) if the request is refused — that a record in the approved
26 form of the reasons for the refusal is filed and a copy
27 given to the person.

1 **249. Restrictions on access**

2 (1) A person is not entitled to have access under section 248(1) to a
3 relevant document relating to the person —

4 (a) if a psychiatrist reasonably believes that disclosure of
5 the information in the document to the person —

6 (i) poses a significant risk to the health or safety of
7 the person or to the safety of another person; or

8 (ii) poses a significant risk of serious harm to the
9 person or to another person;

10 or

11 (b) if disclosure of the information in the document to the
12 person would reveal —

13 (i) personal information about an individual who is
14 not the person; or

15 (ii) information of a confidential nature that was
16 obtained in confidence.

17 (2) Subsection (1)(b) does not apply if the personal information is
18 about an individual who consents to the disclosure of the
19 information.

20 (3) A person is not entitled to have access under section 248(1) to a
21 relevant document relating to the person if the person —

22 (a) is or was a mentally impaired accused required under
23 the MIA Act to be detained at an authorised hospital;
24 and

25 (b) the relevant document came into existence under, or for
26 the purposes of, the *Prisons Act 1981*.

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

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

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

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

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

13 Penalty: a fine of \$5 000.

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

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

17 In this Subdivision —
18 *mental health service* includes a private psychiatric hostel.

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

20 A staff member of a mental health service must not ill-treat or
21 wilfully neglect a person for whom the Chief Psychiatrist is
22 responsible under section 512(1) who is being provided with
23 treatment or care by the mental health service.

24 Penalty: a fine of \$15 000 and imprisonment for 2 years.

25 **254. Duty to report certain incidents**

- 26 (1) In this section —
27 *reportable incident*, in relation to a person, means —
28 (a) unlawful sexual contact with the person by a staff
29 member of a mental health service; or

- 1 (b) the unreasonable use of force on the person by a staff
2 member of a mental health service.
- 3 (2) A staff member of a mental health service who reasonably
4 suspects that a reportable incident has occurred in relation to a
5 person for whom the Chief Psychiatrist is responsible under
6 section 512(1) who is being provided with treatment or care by
7 the mental health service must report the suspicion to —
- 8 (a) the person in charge of the mental health service; or
9 (b) the Chief Psychiatrist.
- 10 Penalty: a fine of \$6 000.

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

12 **Subdivision 1 — Admission of voluntary inpatients by**
13 **authorised hospitals**

14 **255. Admission by medical practitioner**

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

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

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

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

- 23 (1) A medical practitioner who refuses to admit, or a psychiatrist
24 who refuses to confirm the admission of, a voluntary patient as
25 an inpatient of an authorised hospital must —
- 26 (a) inform the voluntary patient of the reasons for refusing;
27 and

- 1 (b) advise the voluntary patient that a complaint about the
2 refusal can be made —
3 (i) under Part 19 to either the person in charge of the
4 authorised hospital or the Director of the
5 Complaints Office; or
6 (ii) to the Chief Psychiatrist;
7 and
8 (c) if that information or advice is provided orally — advise
9 the voluntary patient that the medical practitioner or
10 psychiatrist may be requested to confirm it in writing.

- 11 (2) The medical practitioner or psychiatrist must, as soon as
12 practicable, comply with a request to confirm in writing
13 information or advice provided orally under subsection (1).

14 Note for section 257:

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

17 **Subdivision 2 — Rights of inpatients generally**

18 **258. Application of this Subdivision**

19 This Subdivision applies in relation to any of these patients —

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

26 **259. Personal possessions**

- 27 (1) This section applies only in relation to a patient who is admitted
28 by an authorised hospital.

- 1 (2) In this section —
2 ***personal possessions***, of a patient, means any of these items —
3 (a) articles of clothing, jewellery or footwear belonging to
4 the patient;
5 (b) articles for personal use by the patient;
6 (c) aids for daily living, or medical prostheses, that are
7 usually used by the patient as means of assistance or to
8 maintain the patient's dignity.
- 9 (3) The person in charge of an authorised hospital must ensure that
10 each patient —
11 (a) is provided with a secure facility in which to store the
12 patient's personal possessions; and
13 (b) is allowed to use those possessions.
- 14 (4) Subsection (3) does not apply in relation to an item (including
15 an aid for daily living or medical prosthesis) that, in the opinion
16 of the person in charge, may pose a risk of harm to the patient or
17 to another person.
- 18 (5) Subsection (3) does not apply in relation to an item that is not an
19 aid for daily living or medical prosthesis that, in the opinion of
20 the person in charge, is not an appropriate item to store at the
21 authorised hospital.
- 22 (6) Any personal possessions of a patient left at an authorised
23 hospital for more than 6 months after the day on which the
24 patient is discharged by the hospital may be sold or otherwise
25 disposed of by the person in charge of the hospital, but only —
26 (a) after the person in charge gives at least one month's
27 notice of the proposed disposal to a carer, close family
28 member or other personal support person of the person;
29 and
30 (b) if no carer, close family member or other personal
31 support person of the person claims those possessions
32 within that 6-month period.

1 **260. Interview with psychiatrist**

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

22 **261. Freedom of lawful communication**

- 23 (1) This section applies subject to section 262.
- 24 (2) A patient has the right of freedom of lawful communication.
- 25 (3) A patient's freedom of lawful communication includes the
26 freedom to do any of these things in reasonable privacy —
27 (a) see and speak with other people in the hospital to the
28 extent that is reasonable;

- 1 (b) have uncensored communications with people, including
2 by receiving visits, sending and receiving telephone
3 calls, and sending and receiving mail and electronic
4 communications;
- 5 (c) receive visits from, and otherwise have contact with, the
6 patient's legal practitioner at all reasonable times;
- 7 (d) receive visits from, and otherwise have contact with, a
8 mental health advocate at any time;
- 9 (e) receive visits from, and be otherwise contacted by, other
10 people at all reasonable times.

11 **262. Restrictions on freedom of communication**

- 12 (1) A psychiatrist may make an order —
- 13 (a) prohibiting a patient from exercising a right under
14 section 261; or
- 15 (b) limiting the extent to which a patient can exercise a right
16 under section 261.
- 17 (2) A psychiatrist cannot make an order under subsection (1)
18 prohibiting, or limiting the extent of, a patient's right under
19 section 261(3)(a), (b) or (e) unless satisfied that making the
20 order is in the best interests of the patient.
- 21 (3) A psychiatrist cannot make an order under subsection (1)
22 prohibiting, or limiting the extent of, a patient's right under
23 section 261(3)(c) or (d) to receive visits from the person's legal
24 practitioner or a mental health advocate unless satisfied that —
- 25 (a) there is a serious risk to the safety of the legal
26 practitioner or mental health advocate if the order is not
27 made; and
- 28 (b) there are no other steps that could reasonably be taken to
29 reduce that risk.
- 30 (4) A psychiatrist cannot make an order under subsection (1)
31 prohibiting, or limiting the extent of, a patient's right under

- 1 section 261(3)(c) or (d) to be otherwise contacted by the
2 person's legal practitioner or a mental health advocate.
- 3 (5) The order must be in the approved form and must include the
4 following —
- 5 (a) the date and time when it is made;
- 6 (b) the reasons for making it;
- 7 (c) the name, qualifications and signature of the
8 psychiatrist.
- 9 (6) A psychiatrist who makes an order under subsection (1) must, as
10 soon as practicable —
- 11 (a) file it and give a copy to the patient; and
- 12 (b) give a copy to any carer, close family member or other
13 personal support person of the patient.
- 14 (7) A psychiatrist must, before the end of each 24-hour period that
15 an order made under subsection (1) is in force, review the order
16 and confirm, amend or revoke it.
- 17 (8) A psychiatrist who confirms, amends or revokes an order made
18 under subsection (1) must —
- 19 (a) file a record of the confirmation, amendment or
20 revocation and the reasons for it; and
- 21 (b) advise the patient of the confirmation, amendment or
22 revocation and those reasons.
- 23 (9) An order made under subsection (1) ceases to be in force if it is
24 not reviewed before the end of any 24-hour period referred to in
25 subsection (7).
- 26 (10) A psychiatrist who makes an order under subsection (1) in
27 respect of a patient must, within 24 hours after the time when
28 the order is made, advise the Chief Mental Health Advocate that
29 the order has been made.

30 Note for section 262:

31 For the purpose of deciding under section 262(2) what is or is not in the best
32 interests of a patient, Part 2 Division 3 applies.

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Division 3 — Nominated persons

Subdivision 1 — Purpose and effect of nomination

263. Role of nominated person

The role of a nominated person is to assist the person who made the nomination by ensuring that, in performing a function under this Act in relation to that person, a person or body —

- (a) observes that person's rights under this Act; and
- (b) takes that person's interests and wishes into account.

264. Effect of nomination

- (1) This section does not limit the role of a nominated person under section 263.
- (2) A patient is entitled to have uncensored communications with the patient's nominated person, including by any of these means —
 - (a) receiving visits;
 - (b) making and receiving telephone calls;
 - (c) sending and receiving electronic communications;
 - (d) sending and receiving mail.
- (3) A right of a patient under subsection (2) is subject to any order in force under section 262(1) prohibiting the patient from exercising, or limiting the extent to which the patient can exercise, a right in respect of the patient's nominated person.
- (4) To the extent provided by section 266, a patient's nominated person is entitled to be provided with information, and to be involved in matters, relating to the patient's treatment and care.
- (5) A patient's nominated person may exercise, on behalf of the patient, the rights conferred under this Act on the patient.

- 1 (6) To avoid doubt, a nomination does not authorise a patient's
2 nominated person to apply on the patient's behalf for admission
3 or discharge by a mental health service, or make a treatment
4 decision about the provision of treatment to the patient, unless
5 the nominated person is authorised to do so in another capacity.

6 Note for section 264:

7 For section 264(6), a patient's nominated person could for example also be
8 the patient's enduring guardian or guardian or the person responsible for the
9 patient under the GAA Act section 110ZD.

10 **Subdivision 2 — Right to information, and to be involved in matters,**
11 **relating to patient's treatment and care**

12 **265. Application of this Subdivision**

13 This Subdivision does not apply in relation to the notification of
14 an event to which Part 9 applies.

15 **266. Rights of nominated person**

16 (1) A patient's nominated person is entitled —

- 17 (a) subject to section 269, to be provided with information
18 relating to the patient's treatment and care, including
19 information about these matters —
- 20 (i) the mental illness for which the patient is being
21 provided with treatment or care;
- 22 (ii) if the patient is an involuntary patient — the
23 grounds on which, and the provision of this Act
24 under which, the involuntary treatment order was
25 made;
- 26 (iii) the treatment and care proposed to be provided to
27 the patient and any other options for the patient's
28 treatment and care that are reasonably available;
- 29 (iv) the treatment provided to the patient and the
30 patient's response to that treatment;
- 31 (v) the seclusion of, or use of bodily restraint on, the
32 patient;

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- 1 (vi) the services available to meet the patient's needs;
2 and
3 (b) subject to section 269, to be involved in matters relating
4 to the patient's treatment and care, including these
5 matters —
6 (i) the consideration of the options that are
7 reasonably available for the patient's treatment
8 and care;
9 (ii) the provision of support to the patient;
10 (iii) the preparation and review of any treatment,
11 support and discharge plan for the patient;
12 and
13 (c) to be provided with information about the patient's
14 rights under this Act and how those rights can be
15 accessed and exercised; and
16 (d) to be provided with information about the rights of the
17 nominated person under this Act and how those rights
18 can be accessed and exercised.
- 19 (2) A patient's nominated person may indicate the extent to which
20 the nominated person wants to be provided with the information
21 referred to in subsection (1)(a) or (c) or to be involved in the
22 matters referred to in subsection (1)(b).
- 23 (3) To avoid doubt, a patient's nominated person is not authorised
24 to apply on the patient's behalf for admission or discharge by a
25 mental health service, or make a treatment decision about the
26 provision of treatment to the patient, unless the nominated
27 person is authorised to do so in another capacity.

28 Notes for section 266:

- 29 1. Any information provided under section 266(1)(a), (c) or (d) must be
30 provided in accordance with section 9(2).
- 31 2. For section 266(3), a patient's nominated person could for example also
32 be the patient's enduring guardian or guardian or the person responsible
33 for the patient under the GAA Act section 110ZD.

1 **267. Responsibility of patient's psychiatrist**

2 A patient's psychiatrist must ensure that the patient's nominated
3 person is provided with information referred to in
4 section 266(1)(a) or (c), or involved in a matter referred to in
5 section 266(1)(b), if no other provision is made under this Act
6 about who must ensure that the nominated person is provided
7 with that information or involved in that matter.

8 **268. Contacting nominated person**

- 9 (1) This section applies in relation to a requirement under this Act
10 to provide a patient's nominated person with information
11 referred to in section 266(1)(a) or (c) or involve a patient's
12 nominated person in a matter referred to in section 266(1)(b).
- 13 (2) Without limiting a requirement referred to in subsection (1), the
14 requirement is taken to have been complied with if the person
15 responsible for ensuring the requirement is complied with
16 ensures that reasonable efforts to provide the nominated person
17 with the information or involve the nominated person in the
18 matter continue to be made until the first of these things
19 occurs —
- 20 (a) the nominated person is provided with the information
21 or involved in the matter;
- 22 (b) it is reasonable for the person responsible to conclude
23 that the nominated person cannot be provided with the
24 information or involved in the matter.
- 25 (3) The person responsible must ensure that one of the following is
26 filed —
- 27 (a) a record of when and how the nominated person was
28 provided with the information or involved in the matter;
- 29 (b) if the nominated person could not be provided with the
30 information or involved in the matter — a record of the
31 efforts made to do so.

1 **269. Provision of information or involvement not in patient's best**
2 **interests**

3 (1) A patient's nominated person is not entitled to be provided with
4 particular information or involved in a particular matter if the
5 patient's psychiatrist reasonably believes that it is not in the best
6 interests of the patient for the nominated person to be provided
7 with that information or involved in that matter.

8 (2) A patient's psychiatrist who decides under subsection (1) that
9 the patient's nominated person is not entitled to be provided
10 with particular information or involved in a particular matter
11 must, as soon as practicable —

12 (a) file a record of the decision and the reasons for it; and

13 (b) give a copy to each of —

14 (i) the patient; and

15 (ii) the Chief Mental Health Advocate.

16 Note for section 269:

17 For the purpose of deciding under section 269(1) what is or is not in the best
18 interests of a patient, Part 2 Division 3 applies.

19 **270. Advising nominated person of decision**

20 (1) A patient's psychiatrist who decides under section 269(1) that
21 the patient's nominated person is not entitled to be provided
22 with information or involved in a matter must, if the nominated
23 person requests to be provided with the information or involved
24 in the matter —

25 (a) advise the nominated person of the decision and the
26 reasons for it; and

27 (b) file a record of the advice and give a copy to the patient.

28 (2) A patient's nominated person to whom advice is provided orally
29 under subsection (1)(a) may request the patient's psychiatrist to
30 confirm the advice in writing.

- 1 (3) The patient's psychiatrist must —
2 (a) comply with the request; and
3 (b) file a copy of the confirmation and give another copy to
4 the patient.

5 Note for section 270:

6 Any advice provided under section 270(1)(a) or (3)(a) must be provided in
7 accordance with section 9(2).

8 **271. Revocation of decision**

- 9 (1) A patient's psychiatrist may revoke a decision made under
10 section 269(1) that the patient's nominated person is not entitled
11 to be provided with information or involved in a matter if
12 satisfied that the reasons for making the decision no longer
13 apply.
- 14 (2) The patient's psychiatrist must, as soon as practicable, file a
15 record of the decision and the reasons for it and give a copy to
16 the patient.
- 17 (3) If the nominated person previously requested to be provided
18 with the information or involved in the matter, the patient's
19 psychiatrist must ensure that, as soon as practicable —
20 (a) the nominated person is provided with the information
21 or involved in the matter; and
22 (b) a record of when and how the nominated person was
23 provided with the information or involved in the matter
24 is filed and a copy given to the patient.
- 25 (4) However, there is no requirement to involve the nominated
26 person in a matter if the time for doing so has passed.

27 **272. Rights in another capacity not affected**

28 This Subdivision does not affect any right that a patient's
29 nominated person has (whether under this Act or otherwise) to
30 be provided with information or involved in a matter in another
31 capacity.

1 Note for section 272:

2 A child's nominated person could for example also be the child's parent or
3 guardian.

4 **Subdivision 3 — Making and ending nomination**

5 **273. Who can make nomination**

6 (1) A person, including a child, may nominate another person to be
7 the person's nominated person.

8 (2) A person cannot make a nomination under subsection (1) unless
9 the person understands the effect of making the nomination.

10 **274. Who can be nominated**

11 Only an adult is eligible to be nominated under section 273(1).

12 **275. Formal requirements**

13 (1) A nomination is not valid unless —

14 (a) it is in the approved form; and

15 (b) it states the name and contact details of the person being
16 nominated; and

17 (c) it states the date on which it takes effect; and

18 (d) it is signed by the person making the nomination or by
19 another person in the presence of, and at the direction of,
20 the person making the nomination; and

21 (e) the signature referred to in paragraph (d) is witnessed by
22 a person referred to in subsection (2); and

23 (f) it is signed by the person being nominated to indicate
24 that the person accepts the nomination; and

25 (g) the signature referred to in paragraph (f) is witnessed by
26 a person referred to in subsection (2).

27 (2) For the purposes of subsection (1)(e) and (g), the witness must
28 be authorised by law to take declarations but cannot be a person
29 referred to in subsection (1)(d) or (f).

1 **276. Only one nominated person**

2 A person cannot have more than one nominated person at any
3 time.

4 **277. Revocation of nomination**

5 (1) A nomination may be revoked by the person who made it at any
6 time by any means whatsoever.

7 (2) A nomination is revoked if the person who made it makes
8 another nomination.

9 **278. Resignation of nominated person**

10 (1) A nominated person may resign the nomination by writing
11 signed and given to the person who made the nomination.

12 (2) The resignation takes effect on the later of the following —
13 (a) receipt by the person who made the nomination;
14 (b) the day specified in the resignation.

15 **279. Notification of revocation or resignation**

16 (1) Subsection (2) applies if a patient's nominated person —
17 (a) resigns the nomination; or
18 (b) becomes aware that the patient has revoked the
19 nomination.

20 (2) The nominated person must take all reasonable steps to notify
21 any medical practitioner, mental health practitioner or mental
22 health service that the nominated person is aware is providing
23 treatment or care to the patient that the nomination no longer
24 has effect.

25 (3) Subsection (4) applies if a medical practitioner, mental health
26 practitioner or mental health service who is providing treatment
27 or care to a patient becomes aware that the patient has revoked a
28 nomination.

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1 (4) The practitioner or the person in charge of the mental health
2 service must ensure that all reasonable steps are taken to notify
3 the nominated person of the revocation.

4 Note for Division 3:

5 Part 21 Division 10 confers jurisdiction on the Mental Health Tribunal to hear
6 and determine applications relating to nominated persons.

1 **Part 17 — Recognition of rights of carers and families**

2 **Division 1 — Role of carers and families**

3 **280. Carers**

4 (1) For this Act, a carer of a person is a person who is that person's
5 carer under the *Carers Recognition Act 2004* section 5.

6 (2) It is recognised that very often, although not invariably, a
7 person's carer is a family member.

8 (3) It is also recognised that, even though a family member is a
9 person's carer —

10 (a) the person may not identify the family member as his or
11 her carer; or

12 (b) the family member may not identify himself or herself
13 as the person's carer.

14 **281. Close family members**

15 (1) For this Act, a close family member of a person is a family
16 member referred to in subsection (2) —

17 (a) who is not also the person's carer or the person's
18 nominated person; but

19 (b) who provides ongoing care or assistance to the person.

20 (2) For subsection (1), a family member of a person is any member
21 of the person's family, including —

22 (a) any of these people, whether the relationship is
23 established by or traced through consanguinity,
24 marriage, a de facto relationship, a written law or a
25 natural relationship —

26 (i) a spouse or de facto partner;

27 (ii) a child;

28 (iii) a step child;

29 (iv) a parent;

- 1 (v) a step parent;
2 (vi) a foster parent;
3 (vii) a sibling;
4 (viii) a grandparent;
5 (ix) an aunt or uncle;
6 (x) a niece or nephew;
7 (xi) a cousin;
8 and
9 (b) if the person is of Aboriginal or Torres Strait Islander
10 descent — any person regarded under the customary
11 law, tradition or kinship of that person’s community as
12 the equivalent of a person described in paragraph (a).

13 **282. Acknowledgment of and respect for role of carers and close**
14 **family members**

15 The role of carers and close family members in the provision of
16 treatment, care and support to a person who has a mental illness
17 should be acknowledged and respected.

18 **283. More than one carer or close family member**

- 19 (1) Without limiting a requirement under this Act relating to any
20 carer of a person, it is sufficient for compliance with the
21 requirement if there is compliance in respect of at least one
22 carer.
- 23 (2) Without limiting a requirement under this Act relating to any
24 close family member of a person, it is sufficient for compliance
25 with the requirement if there is compliance in respect of at least
26 one close family member.
- 27 (3) This section does not apply in relation to a requirement under
28 Part 9 Division 2 or section 443 or 444 in respect of a carer or
29 close family member.

1 Note for section 283:

2 Under Part 9 Division 2, it is sufficient if at least one personal support person
3 is notified if a notifiable event occurs. Under sections 443 and 444, it is
4 sufficient if at least one personal support person is notified of an application
5 made to, or a hearing in a proceeding of, the Mental Health Tribunal. In both
6 cases, that personal support person can (but need not) be a carer or close
7 family member.

8 **Division 2 — Information about and involvement in patient's**
9 **treatment and care**

10 **284. Application of this Division**

11 This Division does not apply in relation to the notification of an
12 event to which Part 9 applies.

13 **285. Rights of carers and close family members**

- 14 (1) Any carer or close family member of a patient is entitled —
- 15 (a) subject to this Division, to be provided with information
16 relating to the patient's treatment and care, including
17 information about these matters —
- 18 (i) the mental illness for which the patient is being
19 provided with treatment or care;
- 20 (ii) if the patient is an involuntary patient — the
21 grounds on which, and the provision of this Act
22 under which, the involuntary treatment order was
23 made;
- 24 (iii) the treatment and care proposed to be provided to
25 the patient and any other options for the patient's
26 treatment and care that are reasonably available;
- 27 (iv) the treatment provided to the patient and the
28 patient's response to that treatment;
- 29 (v) the seclusion of, or use of bodily restraint on, the
30 patient;
- 31 (vi) the services available to meet the patient's needs;
32 and

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Division 2 Information about and involvement in patient's treatment and care

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- 1 (b) subject to this Division, to be involved in matters
2 relating to the patient's treatment and care, including
3 these matters —
- 4 (i) the consideration of the options that are
5 reasonably available for the patient's treatment
6 and care; and
- 7 (ii) the provision of support to the patient; and
8 (iii) the preparation and review of any treatment,
9 support and discharge plan for the patient;
- 10 and
- 11 (c) to be provided with information about the patient's
12 rights under this Act and how those rights can be
13 accessed and exercised; and
- 14 (d) to be provided with information about the rights of the
15 carer or close family member under this Act and how
16 those rights can be accessed and exercised.
- 17 (2) A carer or close family member of a patient may indicate the
18 extent to which the carer or close family member wants to be
19 provided with the information referred to in
20 subsection (1)(a), (c) or (d) or to be involved in the matters
21 referred to in subsection (1)(b).
- 22 (3) To avoid doubt, a carer or close family member of a patient is
23 not authorised to apply on the patient's behalf for admission or
24 discharge by a mental health service, or make a treatment
25 decision about the provision of treatment to the patient, unless
26 the carer or close family member is authorised to do so in
27 another capacity.
- 28 Notes for section 285:
- 29 1. Any information provided under section 285(1)(a), (c) or (d) must be
30 provided in accordance with section 9(2).
- 31 2. For section 285(3), a carer of a patient could for example also be the
32 patient's enduring guardian or guardian or a close family member of a
33 patient could for example also be the person responsible for the patient
34 under the GAA Act section 110ZD.

1 **286. Voluntary patient with capacity to consent**

2 (1) This section applies in relation to a voluntary patient who has
3 the capacity to consent to a carer or close family member of the
4 patient being provided with the information referred to in
5 section 285(1)(a), or being involved in the matters referred to in
6 section 285(1)(b), relating to his or her treatment and care.

7 (2) The carer or close family member is entitled to be provided with
8 that information, or to be involved in those matters, with the
9 voluntary patient's consent.

10 **287. Voluntary patient with no capacity to consent**

11 (1) This section applies in relation to a voluntary patient who does
12 not have the capacity to consent to a carer or close family
13 member of the patient being provided with the information
14 referred to in section 285(1)(a), or being involved in the matters
15 referred to in section 285(1)(b), relating to his or her treatment
16 and care.

17 (2) The carer or close family member is entitled, subject to
18 section 292, to be provided with that information, or to be
19 involved in those matters.

20 **288. Involuntary patient or mentally impaired accused with**
21 **capacity to consent**

22 (1) This section applies in relation to a patient —

23 (a) who is —

24 (i) an involuntary patient; or

25 (ii) a mentally impaired accused required under the
26 MIA Act to be detained at an authorised hospital;

27 and

28 (b) who has the capacity to consent to a carer or close
29 family member of the patient being provided with the
30 information referred to in section 285(1)(a), or being

1 involved in the matters referred to in section 285(1)(b),
2 relating to his or her treatment and care.

3 (2) The carer or close family member is entitled to be provided with
4 that information, or to be involved in those matters, unless —

5 (a) the patient has refused to consent to the carer or close
6 family member being provided with that information or
7 being involved in those matters; and

8 (b) the patient's psychiatrist considers that the refusal is
9 reasonable.

10 **289. Involuntary patient or mentally impaired accused with no**
11 **capacity to consent**

12 (1) This section applies in relation to a patient —

13 (a) who is —

14 (i) an involuntary patient; or

15 (ii) a mentally impaired accused required under the
16 MIA Act to be detained at an authorised hospital;

17 and

18 (b) who does not have the capacity to consent to a carer or
19 close family member of the patient being provided with
20 the information referred to in section 285(1)(a), or being
21 involved in the matters referred to in section 285(1)(b),
22 relating to his or her treatment and care.

23 (2) The carer or close family member is entitled, subject to
24 section 292, to be provided with that information, or to be
25 involved in those matters.

26 **290. Responsibility of patient's psychiatrist**

27 A patient's psychiatrist must ensure that any carer or close
28 family member of the patient is provided with information
29 referred to in section 285(1)(a), (c) or (d), or involved in a
30 matter referred to in section 285(1)(b), if no other provision is
31 made under this Act about who must ensure that any carer or

1 close family member is provide with that information or
2 involved in that matter.

3 **291. Contacting carer or close family member**

4 (1) This section applies in relation to each of these requirements —

5 (a) a requirement under this Act to provide any carer of a
6 patient with information referred to in
7 section 285(1)(a), (c) or (d) or involve any carer of a
8 patient in a matter referred to in section 285(1)(b);

9 (b) a requirement under this Act to provide any close family
10 member of a patient with information referred to in
11 section 285(1)(a), (c) or (d) or involve any close family
12 member of a patient in a matter referred to in
13 section 285(1)(b).

14 (2) Without limiting a requirement referred to in subsection (1)(a)
15 or (b), the requirement is taken to have been complied with if
16 the person responsible for ensuring that the requirement is
17 complied with ensures that reasonable efforts to provide any
18 carer or any close family member with the information or
19 involve any carer or any close family member in the matter
20 continue to be made until the first of these things occurs —

21 (a) at least one carer or one close family member is
22 provided with the information or involved in the matter;

23 (b) it is reasonable for the person responsible to conclude
24 that no carer or no close family member can be provided
25 with the information or involved in the matter.

26 (3) The person responsible must ensure that one of the following is
27 filed —

28 (a) a record of when and how any carer or any close family
29 member was provided with the information or involved
30 in the matter;

31 (b) if no carer or no close family member could be provided
32 with the information or involved in the matter — a
33 record of the efforts made to do so.

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- 1 (4) Sections 296 and 297 do not limit —
- 2 (a) the requirement under subsection (1)(a) to make
- 3 reasonable efforts to provide a carer of a patient with
- 4 information or involve a carer of a patient in a matter; or
- 5 (b) the requirement under subsection (1)(b) to make
- 6 reasonable efforts to provide a close family member of a
- 7 patient with information or involve a close family
- 8 member of a patient in a matter.

9 **292. Provision of information or involvement not in patient's best**

10 **interests**

11 (1) A carer or close family member of a patient is not entitled under

12 section 287(2) or 289(2) to be provided with particular

13 information or involved in a particular matter if the patient's

14 psychiatrist reasonably believes that it is not in the best interests

15 of the patient for the carer or close family member to be

16 provided with that information or involved in that matter.

17 (2) A patient's psychiatrist who decides under subsection (1) that a

18 carer or close family member of the patient is not entitled to be

19 provided with particular information or involved in a particular

20 matter must —

- 21 (a) file a record of the decision and the reasons for it; and
- 22 (b) give a copy to each of —
- 23 (i) the patient; and
- 24 (ii) the Chief Mental Health Advocate.

25 Note for section 292:

26 For the purpose of deciding under section 292(1) what is or is not in the best

27 interests of a patient, Part 2 Division 3 applies.

28 **293. Advising carer or close family member of decision**

29 (1) A patient's psychiatrist who decides under section 292(1) that a

30 carer or close family member of the patient is not entitled to be

31 provided with particular information or involved in a particular

- 1 matter must, if the carer or close family member requests to be
2 provided with the information or involved in the matter —
- 3 (a) advise the carer or close family member of the decision
4 and the reasons for it; and
- 5 (b) file a record of the advice and give a copy to the patient.
- 6 (2) A carer or close family member of a patient to whom advice is
7 provided orally under subsection (1)(a) may request the
8 patient's psychiatrist to confirm the advice in writing.
- 9 (3) The patient's psychiatrist must —
- 10 (a) comply with the request; and
- 11 (b) file a copy of the confirmation and give another copy to
12 the patient.

13 Note for section 293:

14 Any information or advice provided under section 293(1)(a) or (3)(a) must be
15 provided in accordance with section 9(2).

16 **294. Revocation of decision**

- 17 (1) A patient's psychiatrist may revoke a decision under
18 section 292(1) that a carer or close family member of the patient
19 is not entitled to be provided with particular information or
20 involved in a particular matter if satisfied that the reasons for
21 making the decision no longer apply.
- 22 (2) The patient's psychiatrist must, as soon as practicable, file a
23 record of the decision and the reasons for it and give a copy to
24 the patient.
- 25 (3) If the carer or close family member previously requested to be
26 provided with the information or involved in the matter, the
27 patient's psychiatrist must ensure that, as soon as practicable —
- 28 (a) the carer or close family member is provided with the
29 information or involved in the matter; and

1 (b) a record of when and how the carer or close family
2 member was provided with the information or involved
3 in the matter is filed and given to the patient.

4 (4) However, there is no requirement to involve the carer or close
5 family member in a matter if the time for doing so has passed.

6 **295. Rights in another capacity not affected**

7 This Division does not affect any right that a carer or close
8 family member of a patient has (whether under this Act or
9 otherwise) to be provided with information or involved in a
10 matter in another capacity.

11 Note for section 295:

12 A carer of a patient who is a child could for example also be the child's parent
13 or guardian or a close family member of a patient could also be the person
14 responsible for the patient under the GAA Act section 110ZD.

15 **Division 3 — Identifying carer or close family member**

16 **296. When being admitted or received**

17 (1) This section applies when a person is being admitted by, or is
18 being received into, a mental health service for the purpose of
19 providing the person with treatment or care.

20 (2) The person in charge of the mental health service must ensure
21 that the person is asked —

22 (a) whether or not the person has a carer; and

23 (b) whether or not the person has a close family member;
24 and

25 (c) if the person has a carer or close family member,
26 whether or not the person consents to the carer or close
27 family member being —

28 (i) provided with the information referred to in
29 section 285(1)(a) in connection with the
30 provision of that treatment or care; and

1 (ii) involved in the matters referred to in
2 section 285(1)(b) while the person is being
3 provided with that treatment or care.

4 (3) The person in charge of the mental health service must ensure
5 that a record of the person's answers to the questions asked
6 under subsection (2) is filed.

7 **297. While being provided with treatment or care**

8 (1) This section applies in relation to a person —

9 (a) who is being provided with treatment or care by a
10 mental health service; and

11 (b) who —

12 (i) has refused to consent when asked under
13 section 296(2)(c)(i) or (ii); or

14 (ii) has refused to consent when asked under
15 subsection (2); or

16 (iii) consented when asked under section 296(2)(c)(i)
17 or (ii) or subsection (2) but has since then
18 withdrawn the consent.

19 (2) The person in charge of the mental health service must ensure
20 that the person is asked periodically whether or not the person
21 consents to a matter referred to in section 296(2)(c)(i) or (ii) in
22 respect of which the patient has refused to consent or has
23 withdrawn consent.

24 (3) The person in charge of the mental health service must ensure
25 that a record of the following is filed —

26 (a) each time when the person is asked under
27 subsection (2); and

28 (b) the person's answers at that time to the questions asked
29 under subsection (2).

1 **298. Person can withdraw consent, or can consent, at any time**

2 To avoid doubt —

- 3 (a) a person who consents when asked under
4 section 296(2)(c)(i) or (ii) can withdraw consent at any
5 time; and
- 6 (b) a person who refuses to consent when asked under
7 section 296(2)(c)(i) or (ii) can consent at any time.

1 **Part 18 — Children who have a mental illness**

2 **299. Best interests of child is a primary consideration**

3 In performing a function under this Act in relation to a child, a
4 person or body must have regard to what is in the best interests
5 of the child as a primary consideration.

6 Note for section 299:

7 For the purpose of deciding under section 299 what is or is not in the best
8 interests of a child, Part 2 Division 3 applies.

9 **300. Child’s wishes**

10 In performing a function under this Act in relation to a child, a
11 person or body must have regard to the child’s wishes, to the
12 extent that it is practicable to ascertain those wishes.

13 **301. Views of child’s parent or guardian**

14 In performing a function under this Act in relation to a child, a
15 person or body must have regard to the views of the child’s
16 parent or guardian.

17 **302. Child who is a voluntary patient**

18 (1) This section applies in relation to a child who is a voluntary
19 patient.

20 (2) An application for the admission or discharge of the child by a
21 mental health service may be made by the child’s parent or
22 guardian unless it is shown that the child has the capacity to
23 make the application himself or herself.

24 (3) A treatment decision about the provision of treatment to the
25 child may be made by the child’s parent or guardian unless it is
26 shown that the child has the capacity to make the treatment
27 decision himself or herself.

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1 Note for section 302:

2 Part 5 Division 1 sets out what is required to show that a child has the
3 capacity to make a decision, including a treatment decision, about himself or
4 herself.

5 **303. Segregation of children from adult inpatients**

6 (1) This section applies in relation to a mental health service that
7 does not ordinarily provide treatment or care to children who
8 have a mental illness.

9 (2) A child cannot be admitted by a mental health service as an
10 inpatient unless the person in charge of the mental health
11 service is satisfied that —

12 (a) the mental health service can provide the child with
13 treatment, care and support that is appropriate having
14 regard to the child's age, maturity, gender, culture and
15 spiritual beliefs; and

16 (b) the treatment, care and support can be provided to the
17 child in a part of the mental health service that is
18 separate from any part of the mental health service in
19 which adults are provided with treatment and care if,
20 having regard to the child's age and maturity, it would
21 be appropriate to do so.

22 (3) When a child is being admitted by a mental health service as an
23 inpatient, the person in charge of the mental health service
24 must —

25 (a) give to the child's parent or guardian a written report
26 setting out —

27 (i) the reasons why the person in charge is satisfied
28 of the matters referred to in subsection (2)(a)
29 and (b); and

30 (ii) the measures that the mental health service will
31 take to ensure that, while the child is admitted as
32 an inpatient, the child is protected and the child's

1 individual needs in relation to treatment and care
2 are met;

3 and

4 (b) file a copy of the report and give another copy to the
5 Chief Psychiatrist.

6 Note for Part 18:

7 Part 17 applies in relation to a child's carer who is not also the child's parent
8 or guardian.

1 **Part 19 — Complaints about mental health services**

2 **Division 1 — Preliminary matters**

3 **304. Terms used**

4 In this Part —

5 ***Carers Charter*** has the meaning given in the *Carers*
6 *Recognition Act 2004* section 4;

7 ***complainant***, in relation to a complaint made to the Director
8 under Division 3 Subdivision 3, means the person or persons in
9 respect of whom the complaint alleges the respondent acted, or
10 failed to act, in a manner referred to in section 319(2);

11 ***complaint***, for the purposes of Division 3 Subdivision 3,
12 includes a part of a complaint;

13 ***Complaints Office*** means the Health and Disability Services
14 Complaints Office continued by the *Health and Disability*
15 *Services (Complaints) Act 1995* section 6(1);

16 ***Complaints Office staff*** means the staff of the Complaints
17 Office referred to in the *Health and Disability Services*
18 *(Complaints) Act 1995* section 14, 15 or 16;

19 ***Director*** means the Director of the Health and Disability
20 Services Complaints Office appointed under the *Health and*
21 *Disability Services (Complaints) Act 1995* section 7(1);

22 ***investigation*** means —

- 23 (a) an investigation of a complaint made to the Director
24 under Division 3 Subdivision 3; or
25 (b) an investigation conducted under section 340;

26 ***mental health service*** —

- 27 (a) means —
28 (i) a service provided specifically for people who
29 have or may have a mental illness; or

- 1 (ii) a service provided specifically for carers of
2 people who have or may have a mental illness;
3 but
4 (b) does not include a service referred to in paragraph (a)(i)
5 or (ii) if it is —
6 (i) provided wholly from funds paid to a service
7 provider by the Commonwealth; or
8 (ii) provided to a person who has or may have a
9 mental illness by the person’s carer; or
10 (iii) prescribed by the regulations for this paragraph;
11 **respondent**, in relation to a complaint made to the Director
12 under Division 3 Subdivision 3, means the service provider who
13 the complaint alleges acted, or failed to act, in a manner referred
14 to in section 319(2);
15 **service provider** —
16 (a) means an individual, group of individuals or body
17 (whether corporate or unincorporate) that renders or
18 provides mental health services; but
19 (b) does not include —
20 (i) the Chief Psychiatrist; or
21 (ii) a mental health advocate; or
22 (iii) the Mental Health Tribunal.

23 **305. Making complaint to service provider or Director of**
24 **Complaints Office**

- 25 (1) A complaint about a mental health service may be made —
26 (a) to a service provider in accordance with the service
27 provider’s complaints procedure referred to in
28 section 306; or
29 (b) to the Director under Division 3 Subdivision 3.
30 (2) It is irrelevant for the purposes of this Part that a person in
31 respect of whom a complaint made under subsection (1) alleges

1 a service provider acted, or failed to act, does not identify
2 himself or herself as a person who has or may have a mental
3 illness or as a carer of a person who has or may have a mental
4 illness.

5 **Division 2 — Complaints to service providers**

6 **306. Service provider must have complaints procedure**

- 7 (1) The person in charge of a service provider must ensure —
- 8 (a) that there is a procedure (a *complaints procedure*) for
9 investigating any complaint made to the person in
10 charge about any mental health service provided by the
11 service provider; and
- 12 (b) that the complaints procedure is reviewed regularly and
13 revised as necessary.
- 14 (2) The person in charge of a service provider must ensure —
- 15 (a) that copies of the most up-to-date version of the service
16 provider's complaints procedure are freely available at
17 the service provider's premises; and
- 18 (b) that a person who requests a copy of the service
19 provider's complaints procedure is provided with a copy
20 of that version.

21 **307. Prescribed service providers must provide Director with**
22 **information about complaints**

- 23 (1) In this section —
24 *prescribed* means prescribed by the regulations for this section.
- 25 (2) Within the prescribed period after 30 June in each year a
26 prescribed service provider, or a service provider in a class of
27 prescribed service provider, must give to the Director a report in
28 the form prescribed for the service provider or class of service
29 provider relating to —
- 30 (a) complaints received by the service provider during the
31 year that ended on that day; and

- 1 (b) action taken by the service provider during the year that
2 ended on that day in relation to complaints whenever
3 received by the service provider.

4 Penalty: a fine of \$1 000.

5 **Division 3 — Complaints to Director of Complaints Office**

6 **Subdivision 1 — Preliminary matters**

7 **308. Division to be read with *Health and Disability Services***
8 ***(Complaints) Act 1995***

9 This Division is to be read with the *Health and Disability*
10 *Services (Complaints) Act 1995*.

11 **309. Parties themselves may resolve complaint**

12 (1) This Division does not prevent the complainant and the
13 respondent resolving a complaint by agreement at any time,
14 whether or not with the help of the Complaints Office, but if
15 that occurs the complainant must notify the Director without
16 delay that the complaint has been resolved.

17 (2) The Director must stop dealing with a complaint under this
18 Division if the Director is satisfied that it has been resolved.

19 **310. Things done by or in relation to complainant**

20 (1) Except as provided by this Division, a thing required to be done
21 under this Division by or in relation to a complainant may be
22 done by or in relation to —

23 (a) another complainant who made the complaint on the
24 complainant's behalf under section 314(1)(a) and (3); or

25 (b) the person, service provider or registration board who
26 made the complaint on the complainant's behalf under
27 section 314(1)(b) or (2)(b).

28 (2) For the purposes of this Division, a thing done under
29 subsection (1) is taken to have been done by or in relation to the

1 complainant who is required to do the thing or in respect of
2 whom the thing is required to be done under this Division.

3 **Subdivision 2 — Director of Complaints Office**

4 **311. Functions of Director**

5 (1) The functions of the Director under this Division are —

6 (a) dealing with complaints made to the Director in
7 accordance with this Division; and

8 (b) in collaboration with groups of service providers or
9 groups of persons to whom mental health services are
10 provided or both, reviewing and identifying the causes
11 of complaints and suggesting ways of removing and
12 minimising those causes and bringing them to the notice
13 of the public; and

14 (c) taking steps to bring to the notice of people who have or
15 may have a mental illness, the carers of people who
16 have or may have a mental illness and service providers
17 details of procedures for making complaints under this
18 Division; and

19 (d) assisting service providers in developing and improving
20 procedures for making complaints made to the service
21 providers and the training of their staff in handling such
22 complaints; and

23 (e) with the approval of the Minister, inquiring into broader
24 issues about the care of people who have or may have a
25 mental illness arising out of complaints, whether made
26 to service providers or to the Director in accordance
27 with this Division; and

28 (f) preparing and publishing information about, and
29 promoting, the role of the Complaints Office and how to
30 make a complaint to the Director in accordance with this
31 Division; and

- 1 (g) providing advice generally on any matter relating to
2 complaints made to the Director in accordance with this
3 Division, and in particular —
- 4 (i) advice to people who have or may have a mental
5 illness and the carers of people who have or may
6 have a mental illness on the making of
7 complaints; and
- 8 (ii) advice to people who have or may have a mental
9 illness and the carers of people who have or may
10 have a mental illness as to other avenues
11 available for dealing with complaints; and
- 12 (iii) advice about removing or minimising the causes
13 of complaints;
- 14 and
- 15 (h) any other functions conferred on the Director by this
16 Division.
- 17 (2) The function of the Director under subsection (1)(f) does not
18 include the publication of personal information about a person
19 who has or may have a mental illness, but this subsection does
20 not affect the operation of section 342.

21 **312. Directions by Minister**

- 22 (1) The Minister may, after consultation with the Director, issue
23 written directions about the general policy to be followed by the
24 Director in performing functions under this Act.
- 25 (2) The Director may request the Minister to issue a direction under
26 subsection (1).
- 27 (3) A direction cannot be issued under this section in respect of —
- 28 (a) a particular complaint; or
- 29 (b) a particular person who has or may have a mental
30 illness; or
- 31 (c) a particular carer of a person who has or may have a
32 mental illness; or

- 1 (d) a particular service provider; or
2 (e) any other particular person or body.
- 3 (4) The Director must comply with a direction issued under this
4 section.
- 5 (5) The Minister must cause the text of a direction issued under this
6 section to be laid before each House of Parliament on or within
7 14 sitting days of the House after the day on which the direction
8 is issued.
- 9 (6) The text of a direction issued under this section must be
10 included in the annual report submitted by the accountable
11 authority in respect of the Complaints Office under the
12 *Financial Management Act 2006* Part 5.
- 13 **313. Minister to have access to specified information about**
14 **Director's functions**
- 15 (1) In this section —
16 *specified information* means information specified, or of a
17 description specified, by the Minister that relates to the
18 functions of the Director under this Division.
- 19 (2) The Minister is entitled —
20 (a) to have specified information in the possession of the
21 Director; and
22 (b) if the specified information is in or on a document — to
23 have, and make and retain copies of, that document.
- 24 (3) For the purposes of subsection (2), the Minister may —
25 (a) request the Director to give specified information to the
26 Minister; and
27 (b) request the Director to give to the Minister access to
28 specified information; and
29 (c) for the purpose of accessing specified information
30 requested under paragraph (b), be assisted by members
31 of the Complaints Office staff.

- 1 (4) The Director must —
2 (a) comply with a request made under subsection (3)(a)
3 or (b); and
4 (b) make members of the Complaints Office staff and
5 facilities of the Complaints Office available to the
6 Minister for the purpose of subsection (3)(c).
- 7 (5) This section does not entitle the Minister to have personal
8 information unless the information is about an individual who
9 consents to the Minister having the information.

10 **Subdivision 3 — Right to complain**

11 **314. Who may complain**

- 12 (1) A complaint about a service provider referred to in
13 section 319(1) alleging that the service provider acted, or failed
14 to act, in a manner referred to in section 319(2) in respect of a
15 person who has or may have a mental illness, or in respect of a
16 carer of a person who has or may have a mental illness, may be
17 made to the Director —
18 (a) personally by the person who has or may have a mental
19 illness; or
20 (b) on behalf of the person who has or may have a mental
21 illness by —
22 (i) the person's representative recognised under
23 section 315(2); or
24 (ii) a service provider if section 317 applies; or
25 (iii) a registration board if section 318 applies.
- 26 (2) A complaint about a service provider referred to in
27 section 319(1) that is an applicable organisation (as defined in
28 the *Carers Recognition Act 2004* section 4) alleging that the
29 service provider acted, or failed to act, in a manner referred to in
30 section 319(2)(g) in respect of a carer of a person who has or
31 may have a mental illness may be made to the Director —
32 (a) personally by the carer; or

- 1 (b) on behalf of the carer by a registration board if
2 section 318 applies.
- 3 (3) A complaint made under subsection (1)(a) may be made by —
- 4 (a) one person —
- 5 (i) on his or her own behalf; or
- 6 (ii) on behalf of himself or herself and another
7 person or other persons;
- 8 or
- 9 (b) 2 or more persons —
- 10 (i) on their own behalf; or
- 11 (ii) on behalf of themselves and another person or
12 other persons.

13 **315. Representative of person with mental illness or carer**

- 14 (1) In this section —
- 15 *relative*, of a complainant, means a family member of the
16 complainant referred to in section 281(2).
- 17 (2) The Director may, for the purposes of this Division, recognise
18 as the representative for a complainant —
- 19 (a) a person chosen by the complainant; or
- 20 (b) a person not chosen by the complainant if, in the
21 Director's opinion —
- 22 (i) the complainant is unable to complain himself or
23 herself and is unable to choose a person to be his
24 or her representative himself or herself; and
- 25 (ii) the prospective representative is a person who
26 has a sufficient interest in the subject matter of
27 the complaint;
- 28 or
- 29 (c) a person not chosen by the complainant if —
- 30 (i) the complainant has died; and

- 1 (ii) in the Director’s opinion, the prospective
2 representative is a person who has a sufficient
3 interest in the subject matter of the complaint.
- 4 (3) The Director cannot recognise a person as the representative of
5 a complainant unless satisfied that the prospective
6 representative —
- 7 (a) is acting without remuneration or is a prescribed person
8 as defined in section 316(1); and
- 9 (b) if the prospective representative is not a relative of the
10 complainant — has no financial interest in the outcome
11 of the complaint.
- 12 **316. Representative must not be paid**
- 13 (1) In this section —
- 14 *prescribed person* means —
- 15 (a) a mental health advocate; or
- 16 (b) a person designated under subsection (3) as a prescribed
17 person; or
- 18 (c) a person, or a person in a class of person, prescribed by
19 the regulations for this definition.
- 20 (2) A person who is not a prescribed person must not demand or
21 receive any remuneration for acting, for the purposes of this
22 Division, as the representative of a person who has or may have
23 a mental illness or a carer of a person who has or may have a
24 mental illness.
- 25 Penalty:
- 26 (a) for a first offence, a fine of \$1 000;
- 27 (b) for a second or subsequent offence, a fine of \$10 000.
- 28 (3) The Director may designate in writing a person to be a
29 prescribed person if satisfied that it is appropriate to do so.

1 **317. Service provider may complain on behalf of person with**
2 **mental illness or carer**

3 (1) A complaint about a service provider referred to in
4 section 319(1) may be made by another service provider on
5 behalf of a person who has or may have a mental illness or if the
6 Director is satisfied that —

7 (a) the person has died; or

8 (b) because of the person's state of health or general
9 situation, it would be difficult or impossible for the
10 person to make a complaint.

11 (2) A complaint about a service provider referred to in
12 section 319(1) may be made by another service provider on
13 behalf of a carer of a person who has or may have a mental
14 illness or if the Director is satisfied that —

15 (a) the carer has died; or

16 (b) because of the carer's state of health or general situation,
17 it would be difficult or impossible for the carer to make
18 a complaint.

19 **318. Registration board may complain on behalf of person with**
20 **mental illness or carer**

21 A complaint about a service provider referred to in
22 section 319(1) may be made by a registration board on behalf of
23 a person who has or may have a mental illness or a carer of a
24 person who has or may have a mental illness if —

25 (a) the service provider is a health professional or other
26 person for whose professional or occupational
27 registration the registration board is responsible; and

28 (b) the registration board becomes aware that the health
29 professional or other person has acted, or failed to act, in
30 a manner referred to in section 319(2) in relation to the
31 person who has or may have a mental illness or the
32 carer.

1 **319. Who and what can be complained about**

- 2 (1) A complaint can only be about a service provider that, at the
3 time the subject matter of the complaint arose, was providing a
4 mental health service.
- 5 (2) A complaint can only allege that, after the date on which this
6 section comes into operation, a service provider —
- 7 (a) acted unreasonably by not providing a mental health
8 service; or
- 9 (b) acted unreasonably by providing a mental health
10 service; or
- 11 (c) acted unreasonably in the manner of providing a mental
12 health service; or
- 13 (d) acted unreasonably by denying or restricting access to
14 records kept by the service provider; or
- 15 (e) acted unreasonably in disclosing records or confidential
16 information; or
- 17 (f) failed to comply with the Charter of Mental Health Care
18 Principles; or
- 19 (g) failed to comply with the Carers Charter; or
- 20 (h) in respect of a complaint about a matter mentioned in
21 paragraphs (a) to (e) made to the service provider by a
22 person who has or may have a mental illness, acted
23 unreasonably by —
- 24 (i) not properly investigating the complaint or not
25 causing it to be properly investigated; or
- 26 (ii) not taking, or not causing to be taken, proper
27 action in relation to the complaint;
- 28 or
- 29 (i) acted unreasonably by charging an excessive fee; or
- 30 (j) acted unreasonably with respect to a fee.

- 1 (2) The Director may, with the written consent of the complainant,
2 refer a complaint relating to an excluded mental health service
3 to an appropriate person or body.

4 **323. Withdrawal of complaint**

- 5 (1) A complainant may withdraw the complaint at any time by
6 notifying the Director.
- 7 (2) If satisfied that the complainant has withdrawn the complaint,
8 the Director must stop dealing with the complaint under this
9 Division and must notify —
- 10 (a) if details of the complaint have been given to the
11 respondent under section 327(6)(b) — the respondent of
12 the withdrawal; and
- 13 (b) if the complaint has been referred to another person or
14 body under section 322(2) or 328(4) — that person or
15 body of the withdrawal.

16 **324. Complainant should try to resolve matter**

- 17 The Director may reject a complaint if the Director is not
18 satisfied that —
- 19 (a) if the complaint is made under section 314(1)(a)
20 or (2)(a), whether only on the complainant's own behalf
21 or also on behalf of one or more other complainants —
22 the complainant has taken reasonable steps himself or
23 herself to resolve the matter with the respondent; or
- 24 (b) if the complaint is made under section 314(1)(b)
25 or (2)(b) — the person, service provider or registration
26 board who made the complaint on the complainant's
27 behalf has taken all reasonable steps to resolve the
28 matter with the respondent.

1 **325. Complaint that is not to be dealt with by National Board**
2 **under *Health Practitioner Regulation National Law (Western***
3 ***Australia)***

4 (1) In this section —
5 ***registered service provider*** means a registered provider as
6 defined in the *Health and Disability Services (Complaints)*
7 *Act 1995* section 3(1).

8 (2) The Director may deal with a complaint relating to a registered
9 service provider under this Division if, because of the *Health*
10 *Practitioner Regulation National Law (Western Australia)*
11 section 150, the complaint is not to be dealt with by a National
12 Board under that Act.

13 **326. Complaint that is being dealt with by National Board under**
14 ***Health Practitioner Regulation National Law (Western***
15 ***Australia)***

16 (1) This section applies if, because of the *Health Practitioner*
17 *Regulation National Law (Western Australia)* section 150, a
18 complaint is being dealt with by a National Board under
19 that Act.

20 (2) The Director must, on or within 28 days after the day on which
21 the National Board begins dealing with the complaint, notify the
22 complainant that the National Board is dealing with it.

23 **327. Preliminary decision by Director**

24 (1) This section applies in relation to a complaint other than a
25 complaint that, because of the *Health Practitioner Regulation*
26 *National Law (Western Australia)* section 150, is to be dealt
27 with by a National Board under that Act.

28 (2) The Director must, on or within 28 days after the day on which
29 the Director receives the complaint or by the end of any
30 extension of that period under subsection (3), decide whether
31 and to what extent —

32 (a) to accept it; or

- 1 (b) to reject, defer or refer it under section 328.
- 2 (3) The Director may extend the period for making a decision under
3 subsection (2) from the end of the 28-day period referred to in
4 subsection (2) for a further period (not exceeding 28 days) if it
5 is for the benefit of the complainant to do so.
- 6 (4) To enable the Director to make a decision under subsection (2),
7 the Director may make such inquiries as the Director considers
8 appropriate.
- 9 (5) The Director must, on or within 14 days after the day on which
10 the Director makes a decision under subsection (2), take the
11 action required under subsection (6), (7) or (8).
- 12 (6) If the Director accepts the complaint, the Director must —
- 13 (a) give to the complainant written details of —
- 14 (i) the decision; and
- 15 (ii) if the Director decides under subsection (10)(a)
16 or (b) that the complaint is suitable to be dealt
17 with under section 330 or 331 — the
18 arrangements made for negotiated settlement or
19 conciliation discussions between the complainant
20 and the respondent;
- 21 and
- 22 (b) give to the respondent written details of —
- 23 (i) the complaint; and
- 24 (ii) the decision; and
- 25 (iii) if the Director decides under subsection (10)(a)
26 or (b) that the complaint is suitable to be dealt
27 with under section 330 or 331 — the
28 arrangements made for negotiated settlement or
29 conciliation discussions between the complainant
30 and the respondent; and
- 31 (iv) a written statement that the respondent may
32 make submissions to the Director.

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- 1 (7) If the Director rejects the complaint, the Director must give to
2 the complainant written details of the decision.
- 3 (8) If the Director defers or refers the complaint, the Director
4 must —
- 5 (a) give to the complainant written details of the decision;
6 and
- 7 (b) give to the respondent written details of —
- 8 (i) the complaint; and
- 9 (ii) the decision.
- 10 (9) If a complaint is accepted, the Director may give to the
11 respondent a written notice requiring the respondent to give to
12 the Director a written response to the complaint in accordance
13 with section 329.
- 14 (10) If a complaint is accepted, the Director must —
- 15 (a) attempt to negotiate a settlement of the complaint in
16 accordance with section 330; or
- 17 (b) refer the complaint for conciliation under section 331 if,
18 in the Director’s opinion, it is suitable to be dealt with
19 under that provision; or
- 20 (c) investigate the complaint if, in the Director’s opinion —
- 21 (i) it is not suitable to be dealt with under
22 section 330 or 331; and
- 23 (ii) an investigation is warranted, having regard to
24 the likely costs and benefits of the investigation.
- 25 (11) In giving details to the respondent under subsection (6)(b)
26 or (8)(b), the Director cannot disclose personal information
27 about the complainant if the Director considers that, because of
28 particular circumstances, the disclosure of the complainant’s
29 identity —
- 30 (a) may result in the health, safety or welfare of the
31 complainant being put at risk; or

- 1 (b) would prejudice the proper investigation of the
2 complaint.
- 3 (12) If later the Director becomes satisfied that the circumstances
4 described under subsection (11) no longer apply, the Director
5 must disclose the identity of the complainant to the respondent.
- 6 (13) If the Director decides that a complaint is not suitable to be
7 dealt with under section 330 or 331 and does not warrant
8 investigating, the Director must advise the complainant in
9 writing —
- 10 (a) of the decision; and
11 (b) that the Director will take no further action on the
12 complaint.
- 13 (14) The Director cannot try to settle a complaint while performing
14 functions under this section in relation to the complaint.
- 15 **328. Rejection, deferral or referral of complaints**
- 16 (1) The Director must reject a complaint that, in the Director’s
17 opinion —
- 18 (a) is vexatious, trivial or without substance; or
19 (b) does not warrant any further action; or
20 (c) does not comply with this Division.
- 21 (2) The Director must reject a complaint to the extent that it relates
22 to an issue that has already been dealt with —
- 23 (a) under another provision of this Act; or
24 (b) under another written law; or
25 (c) under a law of the Commonwealth; or
26 (d) by a court.
- 27 (3) The Director must defer dealing with a complaint to the extent
28 that it relates to an issue that is being dealt with —
- 29 (a) under another provision of this Act; or
30 (b) under another written law; or

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- 1 (c) under a law of the Commonwealth; or
2 (d) by a court.
- 3 (4) If a complaint raises issues that, in the Director's opinion,
4 would be better dealt with under —
5 (a) another provision of this Act; or
6 (b) another written law,
7 the Director may, with the written consent of the complainant,
8 refer the complaint to the appropriate person or body to be dealt
9 with under that other provision or written law.
- 10 (5) The Director cannot refer a complaint under subsection (4) to —
11 (a) a National Board under the *Health Practitioner*
12 *Regulation National Law (Western Australia)*; or
13 (b) a court.
- 14 Note for section 328:
15 Sections 325 and 326 set out what happens in relation to a complaint that
16 could be dealt with by a National Board under the *Health Practitioner*
17 *Regulation National Law (Western Australia)*.
- 18 **329. Response by respondent**
- 19 (1) A respondent who is given details under section 327(6)(b) may
20 give the Director a written response to the complaint.
- 21 (2) A respondent who is given a notice under section 327(9) must
22 give the Director a written response to the complaint.
- 23 (3) Any response given under subsection (1) or (2) must be given to
24 the Director —
25 (a) on or within 28 days after the day on which the
26 respondent receives —
27 (i) the details given under section 327(6)(b); or
28 (ii) the notice given under section 327(9);
29 or
30 (b) by the end of any extension of that period under
31 subsection (4).

- 1 (4) The Director may extend the period within which a response
2 must be given under subsection (1) or (2) for good reason.
- 3 (5) The Director may deal with a complaint under this Division
4 even if the respondent does not comply with subsection (3).
- 5 (6) Details of any breach of subsection (3) that, in the Director’s
6 opinion, was committed without a reasonable excuse must be
7 included in the annual report submitted by the accountable
8 authority in respect of the Complaints Office under the
9 *Financial Management Act 2006* Part 5.
- 10 (7) Evidence of anything said in a response given by a respondent
11 under this section is not admissible in proceedings before a
12 court or tribunal.
- 13 (8) Despite the *Parliamentary Commissioner Act 1971*
14 section 20(3), evidence referred to in subsection (7) may be
15 disclosed to the Parliamentary Commissioner for the purposes
16 of an investigation under that Act.

17 **Subdivision 5 — Negotiated settlements and conciliation**

18 **330. Resolving complaints by negotiation**

- 19 (1) Having accepted a complaint and complied with section 327(6),
20 the Director may, by negotiating with the complainant and the
21 respondent, attempt to bring about a settlement of the complaint
22 that is acceptable to the parties to it.
- 23 (2) For the purposes of subsection (1), the Director may make any
24 inquiries the Director considers appropriate.
- 25 (3) If the complaint is not settled under subsection (1) on or within
26 56 days after the day on which the Director complies with
27 section 327(6) or by the end of any extension of that period
28 under subsection (4), the Director must —
- 29 (a) refer it for conciliation under section 331 if, in the
30 Director’s opinion, it is suitable to be dealt with under
31 that provision; or

- 1 (b) investigate it if, in the Director's opinion —
- 2 (i) it is not suitable to be dealt with under
- 3 section 331; and
- 4 (ii) an investigation is warranted, having regard to
- 5 the likely costs and benefits of the investigation.
- 6 (4) The Director may extend the period for attempting to bring
- 7 about a negotiated settlement if it is for the benefit of the
- 8 complainant to do so.
- 9 (5) If the Director decides a complaint is not suitable to be dealt
- 10 with under section 331 and does not warrant investigating, the
- 11 Director must advise the complainant in writing —
- 12 (a) of the decision; and
- 13 (b) that the Director will take no further action on the
- 14 complaint.
- 15 (6) Evidence of anything said or admitted during any negotiation
- 16 conducted under subsection (1) is not admissible in proceedings
- 17 before a court or tribunal.
- 18 (7) Despite the *Parliamentary Commissioner Act 1971*
- 19 section 20(3), evidence referred to in subsection (6) may be
- 20 disclosed to the Parliamentary Commissioner for the purposes
- 21 of an investigation under that Act.
- 22 **331. Conciliation of complaints**
- 23 (1) On referring a complaint for conciliation, the Director must
- 24 assign the task of conciliating the complaint to a member of the
- 25 Complaints Office staff whose duties consist of or include the
- 26 conciliation of complaints.
- 27 (2) A conciliator's function is to encourage the settlement of the
- 28 complaint by —
- 29 (a) arranging for the complainant and the respondent to hold
- 30 informal discussions about the complaint; and
- 31 (b) helping in the conduct of those discussions; and

- 1 (c) if possible, assisting the complainant and the respondent
2 to reach agreement.
- 3 (3) Except as provided by subsections (4) and (5), neither the
4 complainant nor the respondent may be represented by another
5 person during the conciliation process.
- 6 (4) The complainant may be represented by the complainant's
7 representative recognised under section 315(2).
- 8 (5) The Director may allow either or both the complainant and the
9 respondent to be represented if the Director is satisfied that the
10 process will not work effectively otherwise.
- 11 (6) Subsections (3), (4) and (5) do not prevent the personal
12 attendance of any other person who may, in the opinion of the
13 conciliator, help in the conciliation.
- 14 (7) Evidence of anything said or admitted during the conciliation
15 process is not admissible in proceedings before a court or
16 tribunal.
- 17 (8) If the conciliation process results in the settlement of a
18 complaint between the complainant and the respondent, the
19 conciliator must make a final report to the Director about the
20 result of that process.
- 21 (9) A report made under subsection (8) must include details of any
22 agreement reached.
- 23 (10) If the conciliation process fails to result in the settlement of a
24 complaint between the complainant and the respondent, the
25 Director may investigate the complaint if, in the Director's
26 opinion, an investigation is warranted, having regard to the
27 likely costs and benefits of the investigation.

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Subdivision 6 — Investigations

332. Conduct generally

- (1) The Director may at any time during an investigation encourage the settlement of a complaint.
- (2) The purpose of an investigation is to enable the Director to decide whether or not a service provider has acted, or failed to act, in a manner referred to in section 319(2).
- (3) In making a decision under subsection (2), the Director must have regard to the following —
 - (a) any treatment, support and discharge plan that is relevant to the investigation;
 - (b) the generally accepted quality of service delivery expected of a service provider;
 - (c) any standards for the provision of mental health services that are prescribed by the regulations for this subsection;
 - (d) the Charter of Mental Health Care Principles;
 - (e) the Carers Charter.
- (4) In conducting an investigation, the Director —
 - (a) must proceed with as little formality and technicality, and as speedily, as the requirements of this Part and proper investigation of the matter permits; and
 - (b) is not bound by the rules of evidence but may inform himself or herself of any matter in such manner as he or she considers appropriate; and
 - (c) may, subject to this Part and the rules of natural justice, determine his or her own procedures.
- (5) In conducting an investigation, the Director may be assisted by members of the Complaints Office staff.

1 **333. Power to require information and records**

2 (1) In this section —

3 *person's representative* means —

- 4 (a) the person's representative recognised under
5 section 315(2); or
6 (b) the person's enduring guardian or guardian; or
7 (c) if the person is a child — the child's parent or guardian;

8 *relevant information* means information that, in the Director's
9 opinion, is or is likely to be relevant to an investigation;

10 *relevant record* means a record of information (however
11 compiled, recorded or stored) that is relevant to an investigation.

12 (2) The Director may, by written notice given to a person, require
13 the person to do one or both of the following —

- 14 (a) provide the Director with a statement signed by the
15 person or, if the person is a body corporate, by an officer
16 of the body corporate, containing the relevant
17 information specified in the notice;
18 (b) produce to the Director the relevant records specified in
19 the notice.

20 (3) The Director cannot give a notice to a person under
21 subsection (2) unless the Director reasonably believes that the
22 person is capable of providing the relevant information or
23 producing the relevant records.

24 (4) A notice under subsection (2) must specify the time and place
25 for providing the relevant information or producing the relevant
26 records.

27 (5) The Director may do any of these things in relation to a relevant
28 record that is produced in accordance with a notice under
29 subsection (2) —

- 30 (a) take possession of and retain the record for the period
31 that is reasonably necessary for the purposes of the
32 investigation;

- 1 (b) inspect, and take a copy of the whole or any part of, the
2 record.
- 3 (6) While the Director retains possession of a relevant record, the
4 Director must permit a person who would be entitled to inspect
5 the record if it were not in the Director's possession to inspect
6 the record at any reasonable time and to take a copy of the
7 whole or any part of the record.
- 8 (7) This section does not prevent a person from —
- 9 (a) refusing to provide relevant information, or to produce a
10 relevant record, because it contains information in
11 respect of which there is legal professional privilege; or
12 (b) refusing to produce a medical record unless —
- 13 (i) the medical record relates to the subject matter of
14 the complaint; and
- 15 (ii) the person to whom the medical record relates, or
16 the person's representative, has consented to the
17 disclosure of information in the medical record.
- 18 (8) A person who is given a notice under subsection (2) commits an
19 offence if the person —
- 20 (a) without reasonable excuse, proof of which is on the
21 person, does not provide relevant information or
22 produce a relevant record in accordance with the notice;
23 or
- 24 (b) in purporting to comply with a requirement under
25 subsection (2)(a) in the notice, provides relevant
26 information that the person knows is false or misleading
27 in a material particular; or
- 28 (c) in purporting to comply with a requirement under
29 subsection (2)(b) in the notice, makes available a
30 relevant record that the person knows is false or
31 misleading in a material particular —
- 32 (i) without indicating that the record is false or
33 misleading and, to the extent the person can, how
34 the record is false or misleading; and

- 1 (ii) if the person has or can reasonably obtain the
2 correct information — without providing the
3 correct information.

4 Penalty: a fine of \$6 000.

- 5 (9) It is enough for a prosecution notice lodged against a person for
6 an offence under subsection (8)(b) or (c) to state that the
7 relevant information or relevant record was false or misleading
8 to the person’s knowledge without stating which.

9 **334. Warrant to enter and inspect premises**

10 (1) The Director may apply for a warrant under the *Health and*
11 *Disability Services (Complaints) Act 1995* section 63 in respect
12 of premises if the Director reasonably believes that the entry
13 and inspection of those premises is necessary for the purposes
14 of an investigation.

15 (2) The *Health and Disability Services (Complaints) Act 1995*
16 Part 4 applies (with the necessary changes) in relation to —

- 17 (a) an application made under subsection (1) for a warrant;
18 and
19 (b) the execution of any warrant issued in respect of such an
20 application.

21 (3) An offence under the *Health and Disability Services*
22 *(Complaints) Act 1995* section 66 as applied by
23 subsection (2)(b) is punishable by a fine not exceeding \$6 000.

24 **335. Conciliator cannot investigate**

25 A person who under section 331 has conciliated, or attempted to
26 conciliate, a complaint cannot investigate that complaint.

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Subdivision 7 — Consequences of investigation

336. What Director must do on completing investigation

- (1) On completing an investigation, the Director must —
 - (a) decide whether or not a service provider has acted, or failed to act, in a manner referred to in section 319(2); and
 - (b) give written notice of the decision to —
 - (i) if a complaint was investigated — the complainant and the respondent; or
 - (ii) if the investigation was conducted under section 340 — the Minister and any person affected by the decision.
- (2) The written notice must be given on or within 14 days after the day on which the Director makes the decision.
- (3) The written notice must specify —
 - (a) the reasons for the decision; and
 - (b) if the Director has decided that a service provider has acted, or failed to act, in a manner referred to in section 319(2) — any action that the Director recommends ought to be taken to remedy the matter by the respondent or any other person.
- (4) Before recommending action that ought to be taken to remedy the matter by the respondent or another person, the Director must consult —
 - (a) the respondent or that other person; and
 - (b) if any action that the Director considers ought to be taken to remedy the matter is likely to have an impact on people other than the respondent or that other person — a group of those people.

1 **337. Respondent or other person to report on remedial action**

2 (1) This section applies if the respondent or other person receives
3 written notice of the decision under section 336(1)(b)
4 recommending remedial action be taken by the respondent or
5 other person.

6 (2) The respondent or other person must give a written report about
7 what remedial action the respondent or other person has taken to
8 the Director —

9 (a) on or within 45 days after the day on which the
10 respondent or other person receives the notice; or

11 (b) by the end of any extension of that period under
12 subsection (4).

13 Penalty: a fine of \$2 500.

14 (3) The respondent or other person may, before the expiry of the
15 45-day period, request the Director to extend the period within
16 which the respondent or other person must report under
17 subsection (2).

18 (4) The Director may, if requested by the respondent or other
19 person under subsection (3), extend the period within which the
20 respondent or other person must report under subsection (2)
21 from the end of the 45-day period for a further period (not
22 exceeding 15 days) if the Director considers it appropriate to
23 do so.

24 **338. Report not provided or remedial action not taken: report to**
25 **Parliament**

26 (1) The Director must, if the respondent or other person does not
27 report in accordance with section 337 about what remedial
28 action has been taken, give to the Minister —

29 (a) a copy of the decision; and

30 (b) a written report about the refusal or failure by the
31 respondent or other person to so report.

- 1 (2) The Director must, if the respondent or other person does not
2 take the remedial action recommended within a time that, in the
3 Director's opinion, is reasonable, give to the Minister —
4 (a) a copy of the decision; and
5 (b) a written report about the refusal or failure by the
6 respondent or other person to take the remedial action.
- 7 (3) The Director cannot include in a document given to the Minister
8 under subsection (1) or (2) personal information about a
9 complainant except with the consent of the complainant.
- 10 (4) The Minister may cause a copy of each of the documents given
11 to the Minister under subsection (1) or (2) to be laid before each
12 House of Parliament.

13 **Subdivision 8 — Other matters relating to investigations**

14 **339. Director to stop if other proceedings begun**

- 15 (1) The Director must stop investigating or otherwise dealing with a
16 complaint to the extent that it relates to an issue that the
17 Director becomes aware is being dealt with —
18 (a) under another provision of this Act; or
19 (b) under another written law; or
20 (c) under a law of the Commonwealth; or
21 (d) in a court.
- 22 (2) The Director must, on or within 14 days after the day on which
23 the Director stops dealing with an issue under subsection (1),
24 give written notice of that fact to —
25 (a) the complainant; and
26 (b) the respondent.
- 27 (3) The Director may resume dealing with an issue that the Director
28 stopped dealing with under subsection (1) if the Director
29 becomes aware that the issue —
30 (a) is no longer being dealt with under that other provision
31 or law or by that court; but

1 (b) has not been resolved.

2 **340. Minister may refer matters for investigation**

3 The Minister may direct the Director to conduct an investigation
4 under Subdivision 6 in accordance with a reference specified by
5 the Minister if, in the Minister’s opinion —

- 6 (a) circumstances exist in relation to a person who has or
7 may have a mental illness that would justify a complaint
8 being made under this Division; or
9 (b) it is in the public interest on a matter of general
10 importance relating to mental health that an
11 investigation be carried out.

12 **341. Confidentiality**

13 (1) A person must not (whether directly or indirectly) record,
14 disclose or use any information obtained by the person because
15 the person is or was —

- 16 (a) a person to whom —
17 (i) details are or were given under section 327(6),
18 (7) or (8); or
19 (ii) a disclosure is or was made under
20 section 327(12);
21 or
22 (b) a person, or a member, officer, employee or agent, of a
23 body, to whom a complaint is or was referred under
24 section 328(4); or
25 (c) a participant in a conciliation under section 331; or
26 (d) a participant in an investigation; or
27 (e) a person to whom the information is or was provided by
28 a complainant or respondent for the purpose of
29 providing the complainant or respondent with a report
30 for use by the complainant or respondent in pursuing or
31 responding to a complaint; or

1 (f) a person who is or was given notice of a decision under
2 section 336(1)(b).

3 Penalty: a fine of \$5 000.

4 (2) Subsection (1) does not apply in relation to the recording,
5 disclosure or use of statistical or other information that is not
6 personal information.

7 (3) A person does not commit an offence under subsection (1) if the
8 recording, disclosure or use of the information is authorised
9 under section 573(1).

10 **Division 4 — Miscellaneous matters**

11 **342. Reports to Parliament**

12 (1) The Director may at any time lay a report before each House of
13 Parliament on any matter that the Director considers
14 necessary —

15 (a) arising from an individual complaint made to the
16 Director under Division 3 Subdivision 3 or an
17 investigation; or

18 (b) in relation to the performance of the Director's functions
19 under this Part.

20 (2) The Director cannot include in a report prepared under
21 subsection (1) personal information about a person who has or
22 may have a mental illness except with the consent of the person.

23 (3) This section does not limit the *Financial Management Act 2006*
24 Part 5.

25 **343. False or misleading information or documents**

26 (1) A person commits an offence if the person —

27 (a) gives to the Director or a member of the Complaints
28 Office staff information that the person knows is false or
29 misleading in a material particular; or

- 1 (b) makes available to the Director or a member of the
2 Complaints Office staff a document that the person
3 knows is false or misleading in a material particular —
4 (i) without indicating that the document is false or
5 misleading and, to the extent the person can, how
6 the document is false or misleading; and
7 (ii) if the person has or can reasonably obtain the
8 correct information — without providing the
9 correct information.
10 Penalty: a fine of \$6 000.
- 11 (2) It is enough for a prosecution notice lodged against a person for
12 an offence under subsection (1)(a) or (b) to state that the
13 information or document was false or misleading to the person’s
14 knowledge without stating which.

15 **344. Person must not be penalised because of complaint or**
16 **investigation**

- 17 (1) In this section —
18 **complaint** means a complaint made —
19 (a) to a service provider in accordance with the service
20 provider’s complaints procedure referred to in
21 section 306; or
22 (b) to the Director under Division 3 Subdivision 3;
23 **prejudicial conduct**, in relation to a person, means —
24 (a) refusing to employ the person; or
25 (b) dismissing the person from employment; or
26 (c) subjecting the person to any detriment.
- 27 (2) A person must not, by threats or intimidation, persuade or
28 attempt to persuade another person —
29 (a) not to make a complaint; or
30 (b) to withdraw a complaint; or

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- 1 (c) not to continue proceedings under Division 3 in respect
2 of a complaint; or
- 3 (d) not to provide information to, or not to otherwise assist,
4 the Director or a member of the Complaints Office staff
5 in performing functions under this Part.

6 Penalty: a fine of \$2 500.

- 7 (3) A person must not engage in prejudicial conduct in relation to
8 another person because the other person —
- 9 (a) intends to make a complaint; or
- 10 (b) has made a complaint; or
- 11 (c) intends to take part in, is taking part in or has taken part
12 in proceedings under Division 3 in respect of a
13 complaint or an investigation.

14 Penalty for this subsection: a fine of \$2 500.

15 **345. Registers: complaints, matters directed to be investigated**

- 16 (1) The Director must establish and maintain —
- 17 (a) a register of complaints reported to the Director under
18 section 307(2); and
- 19 (b) a register of complaints made to the Director under
20 Division 3 Subdivision 3; and
- 21 (c) a register of matters the subject of a direction to conduct
22 an investigation under section 340.
- 23 (2) Each register must be established and maintained in the manner
24 determined by the Director.
- 25 (3) The form and contents of each register must be determined by
26 the Director.

27 **346. Delegation by Director**

- 28 (1) The Director may delegate to a member of the Complaints
29 Office staff any power or duty of the Director under another
30 provision of this Part.

- 1 (2) The delegation must be in writing signed by the Director.
- 2 (3) A person to whom a power or duty is delegated under this
3 section cannot delegate that power or duty.
- 4 (4) A person exercising or performing a power or duty that has been
5 delegated to the person under this section is taken to do so in
6 accordance with the terms of the delegation unless the contrary
7 is shown.
- 8 (5) This section does not limit the ability of the Director to perform
9 a function through an officer or agent.

1 **Part 20 — Mental health advocacy services**

2 **Division 1 — Preliminary matters**

3 **347. Terms used**

4 In this Part —

5 ***identified person*** means any of these people —

- 6 (a) a person who is referred under section 26(2) or (3)(a)
7 or 36(2) for an examination to be conducted by a
8 psychiatrist;
- 9 (b) a voluntary inpatient who is under an order made under
10 section 34(1) for the assessment of the voluntary patient;
- 11 (c) a person who is under an order made under
12 section 55(1)(c) or 61(1)(c) to enable an examination to
13 be conducted by a psychiatrist;
- 14 (d) an involuntary patient;
- 15 (e) a person who is under a hospital order made under the
16 MIA Act section 5(2);
- 17 (f) a mentally impaired accused required under the
18 MIA Act to be detained at an authorised hospital;
- 19 (g) a mentally impaired accused who has been released
20 under a release order made under the MIA Act
21 section 35(1) on a condition imposed under
22 section 35(4)(a) of that Act that the mentally impaired
23 accused undergo treatment as defined in section 4 of this
24 Act;
- 25 (h) a person who is, for the purposes of the *Hospitals and*
26 *Health Services Act 1927* Part IIIB, a resident of a
27 private psychiatric hostel;
- 28 (i) a person who —
- 29 (i) has or may have a mental illness; and
- 30 (ii) is being provided with treatment or care by a
31 body or organisation that is prescribed by the
32 regulations for this paragraph;

- 1 (j) a voluntary patient who is not a person referred to in
2 paragraphs (a) to (e) or paragraph (h) or (i), but only if
3 the voluntary patient is in a class that the Minister
4 directs under section 353 is a class of identified person
5 for the purposes of this paragraph;

6 *mental health service* includes a private psychiatric hostel.

7 **Division 2 — Mental health advocates: appointment or**
8 **engagement, functions and powers**

9 **Subdivision 1 — Appointment or engagement, functions and powers**

10 **348. Chief Mental Health Advocate**

11 There is to be a Chief Mental Health Advocate who is appointed
12 by the Minister.

13 **349. Other mental health advocates**

- 14 (1) The Chief Mental Health Advocate must engage under a
15 contract for services one or more persons to be mental health
16 advocates.
- 17 (2) At least one mental health advocate (a *youth advocate*) engaged
18 under subsection (1) must have qualifications, training or
19 experience relevant to children and young people.
- 20 (3) A mental health advocate engaged under subsection (1) may
21 have qualifications, training or experience relevant to a
22 particular group in the community.
- 23 (4) Otherwise, any person can be engaged under subsection (1).

24 **350. Functions of Chief Mental Health Advocate**

- 25 (1) The functions of the Chief Mental Health Advocate are —
26 (a) ensuring that identified persons are visited or otherwise
27 contacted in accordance with section 356; and

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- 1 (b) promoting compliance with the Charter of Mental
2 Health Care Principles by mental health services; and
- 3 (c) preparing and publishing information about, and
4 promoting, the role of mental health advocates and how
5 to contact the Chief Mental Health Advocate; and
- 6 (d) developing standards and protocols for the performance
7 by mental health advocates of their functions under this
8 Act; and
- 9 (e) ensuring that mental health advocates receive adequate
10 training in relation to the performance of their functions
11 under this Act; and
- 12 (f) providing advice, assistance, control and direction to
13 mental health advocates engaged under section 349(1) in
14 relation to the performance of their functions under this
15 Act; and
- 16 (g) ensuring compliance with any directions given by the
17 Minister under section 353(1), the CEO under
18 section 353(2) or the Chief Mental Health Advocate
19 under paragraph (f); and
- 20 (h) any other functions conferred on the Chief Mental
21 Health Advocate by this Act or another written law.
- 22 (2) The function of the Chief Mental Health Advocate under
23 subsection (1)(c) does not include the publication of personal
24 information about a person who has or may have a mental
25 illness.

26 **351. Functions of mental health advocates**

- 27 (1) The functions of a mental health advocate are —
- 28 (a) visiting or otherwise contacting identified persons in
29 accordance with section 356; and
- 30 (b) inquiring into or investigating any matter relating to the
31 conditions of mental health services that is adversely
32 affecting, or is likely to adversely affect, the health,
33 safety or wellbeing of identified persons; and

- 1 (c) inquiring into or investigating the extent to which
2 identified persons have been informed by mental health
3 services of their rights under this Act and the extent to
4 which those rights have been observed; and
- 5 (d) inquiring into and seeking to resolve complaints made to
6 mental health advocates about the detention of identified
7 persons at, or the treatment or care that is being
8 provided to identified persons by, mental health
9 services; and
- 10 (e) referring any issues arising out of the performance of a
11 function under paragraph (b), (c) or (d) to the
12 appropriate persons or bodies to deal with those issues,
13 including to the Chief Mental Health Advocate under
14 section 362(2); and
- 15 (f) assisting identified persons to protect and enforce their
16 rights under this Act; and
- 17 (g) assisting identified persons to access legal services; and
- 18 (h) in consultation with the medical practitioners and mental
19 health practitioners responsible for their treatment and
20 care, advocating for and facilitating access by identified
21 persons to other services; and
- 22 (i) any other functions conferred on a mental health
23 advocate by this Act or another written law.
- 24 (2) For the purposes of subsection (1)(d), a complaint may be made
25 to a mental health advocate by a person who has a sufficient
26 interest in the identified person concerned.
- 27 (3) The performance by a mental health advocate of the function
28 under subsection (1)(e) includes —
- 29 (a) assisting an identified person to make a complaint under
30 Part 19 to —
- 31 (i) the person in charge of a mental health service;
32 or

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- 1 (ii) the Director of the Complaints Office;
2 and
3 (b) being an identified person's representative in respect of
4 a complaint referred to in paragraph (a)(ii) if recognised
5 as the identified person's representative under
6 section 315(2).
- 7 (4) The performance by a mental health advocate of the function
8 under subsection (1)(f) includes —
9 (a) assisting an identified person in relation to any
10 application made under this Act in respect of the
11 identified person to, and in relation to any proceedings
12 under this Act in respect of the identified person before,
13 the Mental Health Tribunal or the State Administrative
14 Tribunal; and
15 (b) if authorised under this Act — representing an identified
16 person in any proceedings under this Act in respect of
17 the identified person before the Mental Health Tribunal
18 or the State Administrative Tribunal.
- 19 (5) In performing a function under this section, a mental health
20 advocate engaged under section 349(1) is subject to the general
21 direction and control of the Chief Mental Health Advocate.

22 **352. Powers generally**

23 In addition to the specific powers conferred on a mental health
24 advocate by this Act or another written law, a mental health
25 advocate may do anything necessary or convenient for the
26 performance of the functions conferred on the mental health
27 advocate by this Act or another written law.

28 **353. Directions to Chief Mental Health Advocate about general**
29 **matters**

- 30 (1) The Minister may, after consultation with the Chief Mental
31 Health Advocate, issue written directions about the general

- 1 policy to be followed by the Chief Mental Health Advocate in
2 performing functions under this Act.
- 3 (2) The CEO may, after consultation with the Chief Mental Health
4 Advocate, issue written directions about the administrative
5 policies and procedures to be followed by the Chief Mental
6 Health Advocate in managing the office of the Chief Mental
7 Health Advocate.
- 8 (3) The Chief Mental Health Advocate may request the Minister to
9 issue a direction under subsection (1) or the CEO to issue a
10 direction under subsection (2).
- 11 (4) A direction cannot be issued under this section in respect of —
12 (a) a particular identified person; or
13 (b) a particular mental health service; or
14 (c) any other particular person or body.
- 15 (5) The Chief Mental Health Advocate must comply with a
16 direction issued under this section.
- 17 (6) The power to issue a direction under this section includes the
18 power to amend, replace or revoke the direction and that power
19 is exercisable in the same manner, and is subject to the same
20 conditions, as the power to issue the direction.
- 21 (7) The Minister must cause the text of a direction issued under this
22 section to be laid before each House of Parliament on or within
23 14 sitting days of the House after the day on which the direction
24 is issued.
- 25 (8) The text of a direction issued under this section must be
26 included in the Chief Mental Health Advocate's annual report
27 prepared under section 376.

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- 1 **354. Directions to Chief Mental Health Advocate to report on**
2 **particular issues**
- 3 (1) The Minister may issue a written direction requiring the Chief
4 Mental Health Advocate —
- 5 (a) to report to the Minister about the provision of treatment
6 or care by a particular mental health service to a
7 particular person; or
- 8 (b) to ensure that a particular mental health service is visited
9 by a mental health advocate and to report to the Minister
10 on the visit.
- 11 (2) The Chief Mental Health Advocate must comply with a
12 direction issued under this section.
- 13 (3) The power to issue a direction under this section includes the
14 power to amend, replace or revoke the direction and that power
15 is exercisable in the same manner, and is subject to the same
16 conditions, as the power to issue the direction.
- 17 (4) The Minister must cause the text of a direction issued under this
18 section to be laid before each House of Parliament on or within
19 14 sitting days of the House after the day on which the direction
20 is issued.
- 21 (5) The text of a direction issued under this section must be
22 included in the Chief Mental Health Advocate's annual report
23 prepared under section 376.
- 24 (6) The Minister must cause the text of a report provided by the
25 Chief Mental Health Advocate in response to a direction issued
26 under this section to be laid before each House of Parliament on
27 or within 14 sitting days of the House after the day on which the
28 report is provided.
- 29 (7) The text of a report provided by the Chief Mental Health
30 Advocate in response to a direction issued under this section
31 must be included in the Chief Mental Health Advocate's annual
32 report prepared under section 376.

- 1 (8) Subsections (4) to (7) do not authorise the publication of
2 personal information about a person.

3 **Subdivision 2 — Contacting identified person or person with**
4 **sufficient interest**

5 **355. Request to contact identified person**

- 6 (1) A request for an identified person to be contacted by a mental
7 health advocate may be made by —
8 (a) the identified person; or
9 (b) the identified person’s psychiatrist; or
10 (c) a person who has a sufficient interest in the identified
11 person.
- 12 (2) The request may be made to —
13 (a) the mental health service where the identified person is
14 being detained or that is providing treatment or care to
15 the identified person; or
16 (b) the Chief Mental Health Advocate.
- 17 (3) If the request is made to the mental health service, the person in
18 charge of the mental health service must ensure that the Chief
19 Mental Health Advocate is notified of the request as soon as
20 practicable and, in any event, within 24 hours after the time
21 when the request was made.

22 **356. Duty to contact identified person**

- 23 (1) An identified person under paragraph (a), (b) or (c) of the
24 definition of *identified person* in section 347 who is detained
25 under section 28(1) or (2), 34(1), 52(1)(b), 53(1), 58(1)(b),
26 59(2), 62(1) or (2) or 70(1)(b) must be visited or otherwise
27 contacted by a mental health advocate as soon as practicable
28 and, in any event, on or within 3 days after the day on which the
29 Chief Mental Health Advocate receives a request under
30 section 355(2)(b), or is notified of a request under
31 section 355(3), for the person to be contacted.

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- 1 (2) An identified person under paragraph (d) of the definition of
2 *identified person* in section 347 who is under an involuntary
3 treatment order made on or after the day on which this section
4 commences must be visited or otherwise contacted by a mental
5 health advocate —
- 6 (a) if, when the order is made, the person is an adult — on
7 or within 7 days after the day on which the involuntary
8 treatment order is made; or
- 9 (b) if, when the order is made, the person is a child —
10 within 24 hours after the time when the involuntary
11 treatment order is made.
- 12 (3) An identified person under paragraph (d) of the definition of
13 *identified person* in section 347 who is under an involuntary
14 treatment order made —
- 15 (a) before the day on which this section commences; or
16 (b) on or after the day on which this section commences that
17 has been in force for more than 7 days from the day on
18 which the order is made,
- 19 must be visited or otherwise contacted by a mental health
20 advocate on or as soon as practicable after the day on which the
21 Chief Mental Health Advocate receives a request under
22 section 355(2)(b), or is notified of a request under
23 section 355(3), for the person to be contacted.
- 24 (4) An identified person under paragraph (f) of the definition of
25 *identified person* in section 347 who is detained at an
26 authorised hospital under the MIA Act on or after the day on
27 which this section commences must be visited or otherwise
28 contacted by a mental health advocate —
- 29 (a) if, when detained, the person is an adult — on or within
30 7 days after the day on which the person is detained; or
31 (b) if, when detained, the person is a child — within
32 24 hours after the time when the person is detained.

- 1 (5) An identified person under paragraph (f) of the definition of
2 *identified person* in section 347 —
- 3 (a) who was detained at an authorised hospital under the
4 MIA Act before the day on which this section
5 commences; or
- 6 (b) who is detained at an authorised hospital under the
7 MIA Act on or after the day on which this section
8 commences for more than 7 days,
- 9 must be visited or otherwise contacted by a mental health
10 advocate on or as soon as practicable after the day on which the
11 Chief Mental Health Advocate receives a request under
12 section 355(2)(b), or is notified of a request under
13 section 355(3), for the person to be contacted.
- 14 (6) An identified person under paragraph (e), (g), (h) or (i) of the
15 definition of *identified person* in section 347 must be visited or
16 otherwise contacted by a mental health advocate on or as soon
17 as practicable after the day on which the Chief Mental Health
18 Advocate receives a request under section 355(2)(b), or is
19 notified of a request under section 355(3), for the person to be
20 contacted and, in any event, within 7 days after that day.
- 21 (7) An identified person under paragraph (j) of the definition of
22 *identified person* in section 347 must be visited or otherwise
23 contacted by a mental health advocate on or within a reasonable
24 time after the day on which the Chief Mental Health Advocate
25 receives a request under section 355(2)(b), or is notified of a
26 request under section 355(3), for the person to be contacted.
- 27 (8) Despite subsections (6) and (7), an identified person under
28 paragraph (e), (g), (h), (i) or (j) of the definition of *identified*
29 *person* in section 347 who is a child must be visited or
30 otherwise contacted by a mental health advocate on or within
31 24 hours after the day on which the Chief Mental Health
32 Advocate receives a request under section 355(2)(b), or is
33 notified of a request under section 355(3), for the person to be
34 contacted.

1 **357. Contact on mental health advocate's own initiative**

2 In addition to any requirement under section 356 to contact an
3 identified person, a mental health advocate may, subject to any
4 direction of the Chief Mental Health Advocate under
5 section 358(3), visit or otherwise contact an identified person at
6 any time.

7 **Subdivision 3 — Specific powers of mental health advocates**

8 **358. Specific powers of mental health advocates**

- 9 (1) The powers of a mental health advocate include these powers —
- 10 (a) visiting, at any time and for as long as the mental health
11 advocate considers appropriate, a mental health service
12 at which one or more identified persons are being
13 detained or that is providing treatment or care to one or
14 more identified persons;
- 15 (b) inspecting any part of a mental health service that the
16 mental health advocate visits;
- 17 (c) seeing and speaking with an identified person unless the
18 identified person objects to the mental health advocate
19 doing so;
- 20 (d) making inquiries about any of these things —
- 21 (i) the admission or reception of an identified
22 person by a mental health service or other place;
- 23 (ii) the referral of an identified person for an
24 examination to be conducted by a psychiatrist at
25 a mental health service or other place;
- 26 (iii) the detention of an identified person at a mental
27 health service or other place;
- 28 (iv) the provision of treatment or care to an identified
29 person by a mental health service or other place;

- 1 (e) requiring a staff member of a mental health service or
2 other place to do any of these things —
- 3 (i) answer questions or provide information in
4 response to any inquiry made about a matter
5 referred to in paragraph (d)(i) to (iv);
- 6 (ii) make available any document that the mental
7 health advocate may inspect, or take a copy of,
8 under paragraph (f) or (g);
- 9 (iii) give reasonable assistance to the mental health
10 advocate in the exercise of a power under this
11 subsection;
- 12 (f) inspecting and taking a copy of the whole or any part of
13 the medical record of, or any other document about, an
14 identified person that is held by the mental health
15 service unless the identified person objects to the mental
16 health advocate doing so;
- 17 (g) inspecting and taking a copy of the whole or any part of
18 any document, or any document in a class of document,
19 that is held by the mental health service and is
20 prescribed by the regulations.
- 21 (2) A mental health advocate cannot exercise a power under
22 subsection (1)(c) or (f) in relation to an identified person who is
23 a voluntary patient without the consent of —
- 24 (a) the identified person; or
- 25 (b) if the identified person does not have the capacity to
26 consent to the power being exercised in relation to him
27 or her — the person who is authorised by law to consent
28 to the provision of treatment or care to the identified
29 person.
- 30 (3) The exercise by a mental health advocate of any power under
31 subsection (1) is subject to the direction of the Chief Mental
32 Health Advocate.

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1 **359. Documents to which access is restricted**

2 (1) This section applies if an identified person is not entitled under
3 section 248(1) to have access to a document because the
4 identified person has been refused access to the document for a
5 reason referred to in section 249(1)(a).

6 (2) The person in charge of a mental health service must ensure
7 that, before a staff member of the mental health service
8 complies with any requirement of a mental health advocate
9 under section 358(1)(e)(ii) to make available the document, the
10 mental health advocate is advised —

11 (a) that the identified person has been refused access to the
12 document for a reason referred to in section 249(1)(a);
13 and

14 (b) that it is an offence under section 360 for the mental
15 health advocate to disclose any information in the
16 relevant document to the identified person.

17 (3) The person in charge of a mental health service must record on
18 an identified person's medical record or other file any advice
19 given to a mental health advocate under subsection (2) about the
20 matters referred to in subsection (2)(a) and (b).

21 **360. Disclosure by mental health advocate**

22 A mental health advocate who under section 358(1)(f) inspects,
23 or takes a copy of the whole or any part of, a document must not
24 disclose any information in the document if —

25 (a) the identified person to whom the document relates has
26 been refused access to the document for a reason
27 referred to in section 249(1)(a); and

28 (b) before the document was made available to the mental
29 health advocate in compliance with a requirement by the
30 mental health advocate under section 358(1)(e)(ii), the
31 mental health advocate was advised of the matters
32 referred to in section 359(2)(a) and (b).

33 Penalty: a fine of \$5 000.

1 **361. Interfering with exercise of powers**

- 2 (1) A person commits an offence if the person —
- 3 (a) without reasonable excuse, proof of which is on the
- 4 person, does not answer a question or provide
- 5 information when required under section 358(1)(e)(i); or
- 6 (b) in purporting to comply with a requirement under
- 7 section 358(1)(e)(i), gives an answer or provides
- 8 information that the person knows is false or misleading
- 9 in a material particular; or
- 10 (c) in purporting to comply with a requirement under
- 11 section 358(1)(e)(ii), makes available a document that
- 12 the person knows is false or misleading in a material
- 13 particular —
- 14 (i) without indicating that the document is false or
- 15 misleading and, to the extent the person can, how
- 16 the document is false or misleading; and
- 17 (ii) if the person has or can reasonably obtain the
- 18 correct information — without providing the
- 19 correct information;
- 20 or
- 21 (d) without reasonable excuse, proof of which is on the
- 22 person, does not give reasonable assistance when
- 23 required under section 358(1)(e)(iii); or
- 24 (e) without reasonable excuse, proof of which is on the
- 25 person, obstructs or hinders —
- 26 (i) a mental health advocate in the exercise of a
- 27 power under section 358(1); or
- 28 (ii) a person assisting a mental health advocate under
- 29 section 358(1)(e)(iii).

30 Penalty: a fine of \$6 000.

- 31 (2) It is enough for a prosecution notice lodged against a person for
- 32 an offence under subsection (1) alleged to have been committed
- 33 in the circumstances referred to in subsection (1)(b) or (c) to

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functions and powers

s. 362

1 state that the answer, information or document was false or
2 misleading to the person's knowledge without stating which.

3 **362. Issues arising out of inquiries and investigations**

4 (1) A mental health advocate may attempt to resolve any issue that
5 arises in the course of an inquiry into or investigation of a
6 matter under section 351(1)(b), (c) or (d) by dealing directly
7 with the relevant staff members of the mental health service
8 concerned.

9 (2) A mental health advocate must refer an issue to the Chief
10 Mental Health Advocate if the mental health advocate cannot
11 resolve the issue or considers it appropriate to do so.

12 (3) The Chief Mental Health Advocate may provide a report about
13 an issue referred to the Chief Mental Health Advocate under
14 subsection (2) to the person in charge of the mental health
15 service concerned.

16 (4) The Chief Mental Health Advocate may also provide a copy of
17 any report provided to a person in charge of a mental health
18 service under subsection (3) to one or more of the following —

- 19 (a) the Minister;
20 (b) the CEO;
21 (c) the CEO of the Health Department;
22 (d) the Chief Psychiatrist.

23 (5) A person to whom a copy of a report about an issue is provided
24 under subsection (4) must advise the Chief Mental Health
25 Advocate —

- 26 (a) whether or not the person considers further inquiry into
27 or investigation of the issue is warranted; and
28 (b) if it is warranted — the outcome of the further inquiry or
29 investigation, including any recommendations made,
30 directions given or other action taken under this Act or
31 another written law.

- 1 (6) This section does not limit the powers that a mental health
2 advocate has for dealing with any issue that arises in the course
3 of an inquiry into or investigation of a matter under
4 section 351(1)(b), (c) or (d).

5 **Division 3 — Terms and conditions of appointment or**
6 **engagement**

7 **Subdivision 1 — Chief Mental Health Advocate**

8 **363. Terms and conditions of appointment**

- 9 (1) The Chief Mental Health Advocate —
10 (a) holds office for the period (not exceeding 5 years)
11 specified in the instrument of appointment; and
12 (b) is eligible for reappointment.
- 13 (2) Subject to this Subdivision, the Chief Mental Health Advocate
14 holds office on the terms and conditions of appointment
15 determined by the Minister.

16 **364. Remuneration**

17 The Chief Mental Health Advocate is entitled to the
18 remuneration determined by the Minister on the
19 recommendation of the Public Sector Commissioner.

20 **365. Resignation**

- 21 (1) The Chief Mental Health Advocate may resign from office by
22 writing signed and given to the Minister.
- 23 (2) The resignation takes effect on the later of the following —
24 (a) receipt by the Minister;
25 (b) the day specified in the resignation.

1 **366. Removal from office**

2 The Minister may remove a person from the office of Chief
3 Mental Health Advocate on any of these grounds —

- 4 (a) mental or physical incapacity;
5 (b) incompetence;
6 (c) neglect of duty;
7 (d) misconduct.

8 **367. Acting Chief Mental Health Advocate**

9 (1) The Minister may appoint a person to act in the office of the
10 Chief Mental Health Advocate referred to in section 348 —

- 11 (a) during a vacancy in the office, whether or not an
12 appointment has previously been made to the office; or
13 (b) during a period, or during all periods, when the person
14 holding the office or a person acting in the office under
15 an appointment under this subsection is on leave or is
16 otherwise unable to perform the functions of the office.

17 (2) An appointment under subsection (1) may be expressed to have
18 effect only in the circumstances specified in the instrument of
19 appointment.

20 (3) The Minister may —

- 21 (a) determine the terms and conditions of an appointment
22 under subsection (1), including as to remuneration; and
23 (b) terminate an appointment under subsection (1) at any
24 time.

25 (4) The validity of anything done by or in relation to a person
26 purporting to act under an appointment under subsection (1) is
27 not to be called into question on any of these grounds —

- 28 (a) the occasion for the appointment had not arisen;
29 (b) there is a defect or irregularity in the appointment;
30 (c) the appointment had ceased to have effect;

1 (d) the occasion for the person to act had not arisen or had
2 ceased.

3 (5) A person cannot act under an appointment under subsection (1)
4 for a continuous period exceeding 12 months.

5 **Subdivision 2 — Other mental health advocates**

6 **368. Terms and conditions of engagement**

7 (1) A mental health advocate engaged under section 349(1) —

8 (a) holds office for the period (not exceeding 3 years)
9 specified in the contract for services; and

10 (b) is eligible for re-engagement.

11 (2) Subject to this Subdivision, a mental health advocate engaged
12 under section 349(1) holds office on the terms and conditions of
13 engagement determined by the Minister.

14 **369. Remuneration**

15 A mental health advocate engaged under section 349(1) is
16 entitled to the remuneration determined by the Minister.

17 **370. Resignation**

18 (1) A mental health advocate engaged under section 349(1) may
19 resign from office by writing signed and given to the Chief
20 Mental Health Advocate.

21 (2) The resignation takes effect on the later of the following —

22 (a) receipt by the Chief Mental Health Advocate;

23 (b) the day specified in the resignation.

24 **371. Removal from office**

25 The Chief Mental Health Advocate may remove a person from
26 the office of mental health advocate referred to in section 349(1)
27 on any of these grounds —

28 (a) mental or physical incapacity;

- 1 (b) incompetence;
2 (c) neglect of duty;
3 (d) misconduct.

4 **Division 4 — Other matters relating to mental health advocates**

5 **372. Conflict of interest**

- 6 (1) A mental health advocate may be employed by, or have a
7 disqualifying interest under subsection (3) in, a body or
8 organisation that provides treatment or care for identified
9 persons.
- 10 (2) However, the mental health advocate cannot perform any
11 functions under this Act as a mental health advocate in relation
12 to an identified person who is being provided with treatment or
13 care by the body or organisation.
- 14 (3) For subsection (1), a mental health advocate has a disqualifying
15 interest in a body or organisation if —
16 (a) the mental health advocate; or
17 (b) another person with whom the mental health advocate is
18 closely associated,
19 has a financial interest in the body or organisation other than a
20 financial interest prescribed by the regulations for this
21 subsection.
- 22 (4) For subsection (3)(b), a person is closely associated with a
23 mental health advocate if the person —
24 (a) is the spouse, de facto partner or child of the mental
25 health advocate; or
26 (b) is in partnership with the mental health advocate; or
27 (c) is an employer of the mental health advocate; or
28 (d) is a beneficiary under a trust, or an object of a
29 discretionary trust, of which the mental health advocate
30 is a trustee; or

- 1 (e) is a body corporate of which the mental health advocate
2 is an officer; or
- 3 (f) is a body corporate in which the mental health advocate
4 holds shares that have a total nominal value
5 exceeding —
- 6 (i) the amount prescribed by the regulations for this
7 paragraph; or
- 8 (ii) the percentage prescribed by the regulations for
9 this paragraph of the total nominal value of the
10 issued share capital of the body corporate;
- 11 or
- 12 (g) has a relationship specified in paragraphs (a) to (f) with
13 the mental health advocate's spouse or de facto partner.

14 **373. Delegation by Chief Mental Health Advocate**

- 15 (1) In this section —
- 16 *advocacy services officer* means —
- 17 (a) a public service officer who is appointed or made
18 available to assist the Chief Mental Health Advocate as
19 required by section 374; or
- 20 (b) an officer or employee whose services are being used by
21 the Chief Mental Health Advocate by arrangement
22 under section 375(1).
- 23 (2) The Chief Mental Health Advocate may delegate to another
24 mental health advocate or an advocacy services officer any
25 power or duty of the Chief Mental Health Advocate under
26 another provision of this Act.
- 27 (3) The delegation must be in writing signed by the Chief Mental
28 Health Advocate.
- 29 (4) A person to whom a power or duty is delegated under this
30 section cannot delegate that power or duty.

1 (5) A person exercising or performing a power or duty that has been
2 delegated to the person under this section is taken to do so in
3 accordance with the terms of the delegation unless the contrary
4 intention is shown.

5 (6) This section does not limit the ability of the Chief Mental
6 Health Advocate to perform a function through an officer or
7 agent.

8 **Division 5 — Staff and facilities**

9 **374. Advocacy services staff**

10 Public service officers must be appointed under, or made
11 available under, the *Public Sector Management Act 1994* Part 3
12 to assist the Chief Mental Health Advocate in performing his or
13 her functions under this Act or another written law.

14 **375. Use of government staff and facilities**

15 (1) The Chief Mental Health Advocate may, by arrangement, use
16 (either full-time or part-time) the services of any officer or
17 employee employed in the Public Service or a State agency or
18 instrumentality or employed otherwise in the service of the
19 State.

20 (2) The Chief Mental Health Advocate may, by arrangement, use
21 any facilities of a department of the Public Service or a State
22 agency or instrumentality.

23 (3) An arrangement under subsection (1) or (2) must be made on
24 terms agreed to by the parties.

25 **Division 6 — Annual reports**

26 **376. Annual report: preparation**

27 Within 3 months after 30 June in each year, the Chief Mental
28 Health Advocate must prepare and give to the Minister a report

1 as to the general activities of mental health advocates during the
2 financial year ending on that day.

3 **377. Annual report: tabling**

- 4 (1) The Minister must cause a copy of a report referred to in
5 section 376 to be laid before each House of Parliament, or dealt
6 with under subsection (2), on or within 21 days after the day on
7 which the Minister receives the report.
- 8 (2) The Minister must transmit a copy of the report to the Clerk of a
9 House of Parliament if —
- 10 (a) at the beginning of the 21-day period referred to in
11 subsection (1), the House is not sitting; and
- 12 (b) in the Minister’s opinion, the House will not sit during
13 that period.
- 14 (3) A copy of a report transmitted under subsection (2) to the Clerk
15 of a House is taken to have been laid before that House.
- 16 (4) The laying of a copy of a report that is taken to have occurred
17 under subsection (3) must be recorded in the Minutes, or Votes
18 and Proceedings, of the House on the first sitting day of the
19 House after the receipt of the copy by the Clerk.

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Part 21 — Mental Health Tribunal

Division 1 — Preliminary matters

378. Terms used

In this Part —

application means an application made to the Tribunal under this Part;

decision, of the Tribunal, includes an order, direction or declaration made by the Tribunal;

hearing means a hearing in a proceeding;

lawyer means an Australian lawyer as defined in the *Legal Profession Act 2008* section 3;

member means —

- (a) the President of the Tribunal; or
- (b) a member of the Mental Health Tribunal appointed under section 473(1);

party means a party to a proceeding;

person concerned, in an application or proceeding, means the patient or other person whom the application or proceeding concerns;

President of the Tribunal means President of the Mental Health Tribunal appointed under section 472;

presiding member, in a proceeding, has the meaning given in section 437;

proceeding means a proceeding of the Tribunal under this Part and includes part of a proceeding;

registrar means the registrar of the Mental Health Tribunal referred to in section 480;

registry officer means a public service officer appointed or made available to assist the registrar as required by section 483;

1 ***Tribunal*** means the Mental Health Tribunal established by
2 section 379;

3 ***witness*** means a witness in a proceeding.

4 **Division 2 — Establishment, jurisdiction and constitution**

5 **379. Establishment**

6 The Mental Health Tribunal is established.

7 **380. Jurisdiction**

8 The Tribunal has the jurisdiction conferred on it by this Part.

9 **381. Constitution specified by President**

10 When exercising its jurisdiction, subject to sections 382
11 and 383, the Tribunal must be constituted by the members
12 specified by the President of the Tribunal.

13 **382. Constitution generally**

14 For the purpose of a proceeding, except as provided by
15 section 383, the Tribunal must be constituted by 3 members as
16 follows —

- 17 (a) a member who is a lawyer;
- 18 (b) if the involuntary patient is an adult — a member who is
19 a psychiatrist;
- 20 (c) if the involuntary patient is a child —
- 21 (i) a member who is a child and adolescent
22 psychiatrist; or
- 23 (ii) if a member referred to in subparagraph (i) is not
24 available — a member who is a psychiatrist;
- 25 (d) a member who is not —
- 26 (i) a lawyer; or
- 27 (ii) a medical practitioner; or

- 1 (iii) a mental health practitioner who is a staff
2 member of a mental health service or private
3 psychiatric hostel.

4 **383. Constitution for psychosurgical matters**

5 For a proceeding in relation to an application made under
6 section 414(1) for approval for psychosurgery to be performed,
7 the Tribunal must be constituted by 5 members as follows —

- 8 (a) a member who is a lawyer;
9 (b) a neurosurgeon who is appointed as a member after
10 consultation by the Minister with the Health Minister
11 held after consultation by the Health Minister with the
12 Royal Australasian College of Surgeons;
13 (c) if the patient is an adult — 2 members who are
14 psychiatrists;
15 (d) if the patient is a child —
16 (i) a member who is a child and adolescent
17 psychiatrist; and
18 (ii) another member who is a psychiatrist who can
19 (but need not) be a child and adolescent
20 psychiatrist;
21 (e) a member who is not —
22 (i) a lawyer; or
23 (ii) a medical practitioner; or
24 (iii) a mental health practitioner who is a staff
25 member of a mental health service or private
26 psychiatric hostel.

27 **384. Contemporaneous exercise of jurisdiction**

28 The Tribunal constituted in accordance with this Part may
29 exercise its jurisdiction even if the Tribunal differently
30 constituted under this Part is exercising its jurisdiction at the
31 same time.

1 **Division 3 — Involuntary treatment orders: review**

2 **385. Initial review after order made**

3 (1) In this section —

4 *initial review period*, for an involuntary treatment order,
5 means —

- 6 (a) if, when the order is made, the involuntary patient is an
7 adult — the period of 35 days from the day on which the
8 order is made; or
- 9 (b) if, when the order is made, the involuntary patient is a
10 child — the period of 10 days from the day on which the
11 order is made.

12 (2) Unless subsection (4) or (5) applies, as soon as practicable after
13 an involuntary treatment order is made and, in any event, by the
14 end of the initial review period, the Tribunal must review the
15 order to decide whether or not the involuntary patient is still in
16 need of the involuntary treatment order having regard to the
17 criteria specified in section 25.

18 (3) It is sufficient for compliance with subsection (2) if the review
19 is commenced in accordance with that provision and is
20 completed as soon as practicable.

21 (4) The Tribunal is not required to review the order under
22 subsection (2) if the involuntary patient has not, under
23 section 387, been an involuntary patient continuously since the
24 order was made.

25 (5) The Tribunal is not required to review the order under
26 subsection (2) if —

- 27 (a) the Tribunal has —
- 28 (i) previously reviewed under this Division an
29 involuntary treatment order made in respect of
30 the involuntary patient; or

1 (ii) previously reviewed under this Division the
2 terms of a community treatment order that a
3 psychiatrist has been directed under
4 section 394(2)(b) to make in respect of the
5 involuntary patient;

6 and

7 (b) the involuntary patient, has under section 387, been an
8 involuntary patient continuously since the previous
9 review.

10 **386. Periodic reviews while order in force**

11 (1) In this section —

12 ***last review***, of an involuntary treatment order, means —

13 (a) the last review of the order under section 385(2) or
14 subsection (2); or

15 (b) if the order has not been reviewed under either of those
16 provisions because it was made after another
17 involuntary treatment order was last reviewed under one
18 or other of those provisions — the last review of that
19 other order;

20 ***last review day***, for an involuntary treatment order, means the
21 day on which the decision on the last review of the order is
22 made;

23 ***periodic review period*** means —

24 (a) for an inpatient treatment order or for a community
25 treatment order in respect of a patient who, on the last
26 review day, has been an involuntary community patient
27 continuously for not more than 12 months —

28 (i) if, on the last review day, the involuntary patient
29 is an adult — the period of 3 months from that
30 day; or

31 (ii) if, on the last review day, the involuntary patient
32 is a child — the period of 28 days from that day;

33 or

- 1 (b) for a community treatment order in respect of a patient
2 who, on the last review day, has been an involuntary
3 community patient continuously for more than
4 12 months — the period of 6 months from that day;
5 ***prescribed number of days***, before the end of a periodic review
6 period, means —
7 (a) if, when the involuntary treatment order that is the
8 subject of the proceeding was made, the involuntary
9 patient is an adult — 21 days before the day on which
10 that period ends; or
11 (b) if, when the involuntary treatment order that is the
12 subject of the proceeding was made, the involuntary
13 patient was a child — 7 days before the day on which
14 that period ends.
- 15 (2) Unless subsection (4) applies, the Tribunal must, on or within
16 the prescribed number of days before the day on which a
17 periodic review period for an involuntary treatment order ends,
18 review the order to decide whether or not the involuntary patient
19 is still in need of the involuntary treatment order having regard
20 to the criteria specified in section 25.
- 21 (3) It is sufficient for compliance with subsection (2) if a review is
22 commenced in accordance with that provision and is completed
23 as soon as practicable.
- 24 (4) The Tribunal is not required to review the order under
25 subsection (2) if the involuntary patient has not, under
26 section 387, been an involuntary patient continuously since the
27 last review day.

28 **387. Involuntary patient for continuous period**

29 For sections 385(4) and (5)(b) and 386(4), a person has been an
30 involuntary patient continuously for a period if —

- 31 (a) one, or a series of 2 or more, involuntary treatment
32 orders were in force in respect of the person for the
33 whole period; or

- 1 (b) during the period, an involuntary treatment order ceased
2 to be in force in respect of the person and another
3 involuntary treatment order came into force in respect of
4 the person on or within 7 days after the day of the
5 cessation.

6 **388. Review period may be extended**

- 7 (1) In this section —

8 ***maximum extension period*** means —

- 9 (a) if, on the day on which the relevant decision is made,
10 the involuntary patient is an adult — the period of
11 21 days; or
12 (b) if, on the day on which the relevant decision is made,
13 the involuntary patient is a child — the period of 7 days;

14 ***prescribed period*** means —

- 15 (a) if, on the day on which the relevant decision is made,
16 the involuntary patient is an adult — the period of
17 28 days; or
18 (b) if, on the day on which the relevant decision is made,
19 the involuntary patient is a child — the period of 7 days;

20 ***relevant decision***, in relation to the review of an involuntary
21 treatment order under section 385(2) or 386(2), means a
22 decision of the Tribunal the making of which involves a
23 consideration of substantially the same issues as would be raised
24 in the review;

25 ***review period***, for an involuntary treatment order, means —

- 26 (a) the initial review period under section 385(1) for the
27 involuntary treatment order; or
28 (b) a periodic review period under section 386(1) for the
29 involuntary treatment order.

- 30 (2) If the Tribunal makes a relevant decision within the prescribed
31 period before the day on which a review period for an
32 involuntary treatment order ends, the Tribunal may make an

1 order extending the review period from the day on which it
2 would otherwise have ended for the further period (not
3 exceeding the maximum extension period) specified in the
4 order.

5 **389. Application for review**

6 (1) A person specified in subsection (2) may apply to the Tribunal
7 for a review of any of these things —

- 8 (a) an involuntary treatment order, to decide whether or not
9 the involuntary patient is still in need of an involuntary
10 treatment order having regard to the criteria specified in
11 section 25;
- 12 (b) an inpatient treatment order, to decide whether or not the
13 involuntary inpatient is still in need of an inpatient
14 treatment order having regard to the criteria specified in
15 section 25(1);
- 16 (c) a community treatment order, to decide whether or not
17 the terms of the order are appropriate;
- 18 (d) a transfer order made under section 66(1) or 91(2) in
19 respect of an involuntary inpatient, or a refusal to make
20 such an order, to decide whether or not the making of
21 the order or the refusal to do so is appropriate;
- 22 (e) the transfer under section 135(1)(a) of a psychiatrist's
23 responsibility as the supervising psychiatrist under a
24 community treatment order, or a refusal to transfer that
25 responsibility, to decide whether or not the transfer of
26 responsibility or the refusal to do so is appropriate;
- 27 (f) the transfer under section 137(a) of a practitioner's
28 responsibility as the treating practitioner under a
29 community treatment order, or a refusal to transfer that
30 responsibility, to decide whether or not the transfer of
31 responsibility or the refusal to do so is appropriate;
- 32 (g) a transfer order made under section 551(1) in respect of
33 a State inpatient, or a refusal to make such an order, to

- 1 decide whether or not the making of the order or the
2 refusal to do so is appropriate.
- 3 (2) An application may be made under subsection (1) by any of
4 these people —
- 5 (a) the involuntary patient;
- 6 (b) a carer, close family member or other personal support
7 person of the involuntary patient;
- 8 (c) a mental health advocate;
- 9 (d) any other person who, in the Tribunal’s opinion, has a
10 sufficient interest in the matter.
- 11 (3) The application must be in writing and, unless subsection (4)
12 applies, may be made at any time.
- 13 (4) The application cannot be made within the prescribed period
14 after the day on which the Tribunal makes a decision that
15 involves a consideration of substantially the same issues as
16 would be raised by the application unless there has been a
17 material change in the involuntary patient’s circumstances since
18 that day.
- 19 (5) For subsection (4), the prescribed period is —
- 20 (a) if, on the day on which the decision is made, the
21 involuntary patient is an adult — the period of 28 days;
22 or
- 23 (b) if, on the day on which the decision is made, the
24 involuntary patient is a child — the period of 7 days.

25 **390. Review on Tribunal’s own initiative**

26 The Tribunal may, on its own initiative whenever it considers it
27 appropriate, review —

- 28 (a) an involuntary treatment order referred to in
29 section 389(1)(a) to (c) to decide the matter referred in
30 that provision; or

- 1 (b) a transfer order referred to in section 389(1)(d) or (g) to
2 decide the matter referred in that provision; or
3 (c) a transfer of responsibility under section 389(1)(e) or (f)
4 to decide the matter referred to in that provision.

5 **391. Suspending order pending review**

- 6 (1) For the purposes of a proceeding for a review under this
7 Division, the Tribunal may make an order —
8 (a) suspending the operation of the involuntary treatment
9 order that is the subject of the proceeding until the
10 Tribunal makes a decision on the review; or
11 (b) restraining the taking of any action, or any further
12 action, under the involuntary treatment order that is the
13 subject of the proceeding until then.
14 (2) The Tribunal may make an order under subsection (1) on the
15 application of a party or on its own initiative.

16 **392. Parties to proceeding**

- 17 The parties to a proceeding under this Division are —
18 (a) the involuntary patient; and
19 (b) the patient's psychiatrist; and
20 (c) if the proceeding relates to an application made under
21 section 389 and the applicant is not a person referred to
22 in paragraph (a) or (b) — the applicant; and
23 (d) any other person who, in the opinion of the Tribunal, has
24 a sufficient interest in the matter.

25 **393. Things to which Tribunal must have regard**

- 26 (1) In making a decision on a review under this Division in respect
27 of an involuntary patient, the Tribunal must have regard to these
28 things —
29 (a) if the involuntary patient is a child and the Tribunal is
30 not constituted with a child and adolescent

- 1 psychiatrist — the views of a medical practitioner or
2 mental health practitioner specified in subsection (2);
- 3 (b) the involuntary patient’s psychiatric condition;
- 4 (c) the involuntary patient’s medical and psychiatric
5 history;
- 6 (d) the involuntary patient’s treatment, support and
7 discharge plan;
- 8 (e) the involuntary patient’s wishes, to the extent that it is
9 practicable to ascertain those wishes;
- 10 (f) the views of any carer, close family member or other
11 personal support person of the involuntary patient;
- 12 (g) any other things that the Tribunal considers relevant to
13 making the decision.
- 14 (2) For subsection (1)(a), a medical practitioner or mental health
15 practitioner must —
- 16 (a) have qualifications, training or experience relevant to
17 children who have a mental illness; and
- 18 (b) be authorised by the Chief Psychiatrist for this
19 paragraph.

20 Note for section 393:

21 For the purpose of ascertaining the involuntary patient’s wishes under
22 section 393(1)(e), Part 2 Division 4 applies.

23 **394. What Tribunal may do on completing review**

- 24 (1) On completing a review under this Division, the Tribunal may
25 make any orders, and give any directions, the Tribunal considers
26 appropriate.
- 27 (2) Those orders and directions include the following —
- 28 (a) an order revoking an involuntary treatment order;
- 29 (b) a direction to the psychiatrist named in the order to
30 make, within a reasonable period specified in the
31 direction, a community treatment order in terms that are

- 1 consistent with section 115 and specified in the
2 direction;
- 3 (c) an order varying the terms of a community treatment
4 order in any way that is consistent with section 115.
- 5 (3) The Tribunal cannot make an order or give a direction under
6 subsection (1) in relation to an involuntary patient's treatment,
7 support or discharge plan, but may make —
- 8 (a) a recommendation that the patient's psychiatrist review
9 the treatment, support or discharge plan; and
- 10 (b) if such a recommendation is made — a recommendation
11 about the amendments that could be made to the
12 treatment, support and discharge plan.
- 13 (4) The Tribunal may give a copy of any recommendation made
14 under subsection (3) to the Chief Psychiatrist.

15 **395. Review of direction given to psychiatrist**

- 16 (1) A psychiatrist who is directed under section 394(2)(b) to make a
17 community treatment order may, during the period within which
18 the order must be made, apply to the Tribunal for a review of
19 the direction.
- 20 (2) Sections 391 to 393 and section 394(1) and (2)(a) and (c) apply
21 (with the necessary changes) in relation to an application made
22 under subsection (1) as if it were an application made under
23 section 389(1)(c).

24 **Division 4 — Involuntary treatment orders: validity**

25 **396. Application of this Division**

26 This Division applies in relation to any of these orders (a
27 ***treatment order***) —

- 28 (a) an involuntary treatment order;
- 29 (b) a continuation order made under section 89(2)(a)
30 or 121(1) in respect of an involuntary treatment order;

- 1 (c) an order made under section 122(1) varying a
2 community treatment order.

3 **397. Declaration about validity of treatment order**

- 4 (1) The Tribunal may, on the application of a person specified in
5 section 399 or on its own initiative, declare that a treatment
6 order is valid or invalid.
- 7 (2) If the Tribunal declares that a treatment order is invalid,
8 section 398 applies.
- 9 (3) Instead of declaring that a treatment order is invalid, the
10 Tribunal —
- 11 (a) may declare the treatment order to be valid; and
12 (b) may make an order varying the terms of the treatment
13 order in the manner the Tribunal considers most likely
14 to give effect to the intention of the psychiatrist who
15 made the treatment order.
- 16 (4) The Tribunal cannot make a declaration under subsection (3)(a)
17 in respect of a treatment order if the Tribunal is satisfied that the
18 treatment order is invalid on the ground referred to in
19 section 400.
- 20 (5) A declaration made under subsection (1) or (3)(a) has effect
21 according to its terms.

22 **398. Consequences of declaring treatment order invalid**

- 23 (1) If the Tribunal declares that an inpatient treatment order is
24 invalid —
- 25 (a) the inpatient treatment order ceases to be in force; but
26 (b) if the Tribunal reasonably suspects that the person who
27 was subject to the involuntary inpatient order is in need
28 of an involuntary treatment order —
- 29 (i) the Tribunal may make an order for the
30 assessment of the person by a medical
31 practitioner or authorised mental health

- 1 practitioner at the hospital where the person was
2 detained under the inpatient treatment order and
3 authorising the person's detention there for up to
4 the period specified in the order to enable the
5 assessment to be conducted; and
- 6 (ii) this Act applies (with any changes that are
7 necessary or convenient to give effect to the
8 Tribunal's order) as if the Tribunal's order were
9 an order made under section 34(1).
- 10 (2) If the Tribunal declares that a community treatment order is
11 invalid, the community treatment order ceases to be in force.
- 12 (3) If the Tribunal declares that a continuation order made under
13 section 89(2)(a) or 121(1) is invalid, the continuation order
14 ceases to be in force and the involuntary treatment order expires
15 when it would have expired had the continuation order not been
16 made.
- 17 (4) If the Tribunal declares that an order made under section 122(1)
18 is invalid, the community treatment order as in force
19 immediately before the order was made under section 122(1)
20 continues in force.

21 **399. Application for declaration**

22 An application may be made under section 397(1) by any of
23 these people —

- 24 (a) the involuntary patient;
25 (b) the psychiatrist who made the treatment order;
26 (c) a carer, close family member or other personal support
27 person of the involuntary patient;
28 (d) a mental health advocate;
29 (e) any other person who, in the Tribunal's opinion, has a
30 sufficient interest in the matter.

1 **400. Failure to comply with this Act**

2 Without limiting the grounds on which a treatment order can be
3 declared under section 397(1) to be invalid, the Tribunal may
4 declare that a treatment order is invalid if satisfied that —

5 (a) there has been a failure to comply with the requirements
6 of this Act in relation to —

7 (i) the making of the treatment order; or

8 (ii) the conduct of any assessment or examination, or
9 the making of any referral or order, that led to
10 the making of the treatment order;

11 and

12 (b) because of that failure, whether alone or in combination
13 with one or more other such failures, the rights or
14 interests of the involuntary patient have been
15 substantially prejudiced.

16 **Division 5 — Review of admission of long-term**
17 **voluntary inpatients**

18 **401. Application of this Division**

19 This Division applies in relation to a person (a *long-term*
20 *voluntary inpatient*) who —

21 (a) is a voluntary inpatient at an authorised hospital; and

22 (b) has been a voluntary inpatient at the authorised hospital
23 for —

24 (i) if the inpatient is an adult — a continuous period
25 of more than 6 months; or

26 (ii) if the inpatient is a child — a continuous period
27 of more than 3 months.

28 **402. Application for review**

29 (1) A person specified in subsection (2) may apply to the Tribunal
30 for a review of the long-term voluntary inpatient's admission by

1 the authorised hospital to decide whether or not there is still a
2 need for the admission.

- 3 (2) An application may be made under subsection (1) by any of
4 these people —
- 5 (a) the long-term voluntary inpatient;
 - 6 (b) a carer, close family member or other personal support
7 person of the long-term voluntary inpatient;
 - 8 (c) a mental health advocate;
 - 9 (d) any other person who, in the opinion of the Tribunal, has
10 a sufficient interest in the matter.

11 **403. Parties to proceeding**

12 The parties to a proceeding in relation to the application are —

- 13 (a) the long-term voluntary inpatient; and
- 14 (b) the treating psychiatrist; and
- 15 (c) if the applicant is not a person referred to in
16 paragraph (a) or (b) — the applicant; and
- 17 (d) any other person who, in the opinion of the Tribunal, has
18 a sufficient interest in the matter.

19 **404. Things to which Tribunal must have regard**

- 20 (1) In making a decision on a review under this Division in respect
21 of a long-term voluntary inpatient, the Tribunal must have
22 regard to these things —
- 23 (a) if the inpatient is a child and the Tribunal is not
24 constituted with a child and adolescent psychiatrist —
25 the views of a medical practitioner or mental health
26 practitioner specified in subsection (2);
 - 27 (b) the inpatient's psychiatric condition;
 - 28 (c) the inpatient's medical and psychiatric history;
 - 29 (d) the inpatient's wishes, to the extent that it is practicable
30 to ascertain those wishes;

- 1 (e) the views of any carer, close family member or other
2 personal support person of the inpatient;
- 3 (f) any other things that the Tribunal considers relevant to
4 making the decision.

5 (2) For subsection (1)(a), a medical practitioner or mental health
6 practitioner must —

- 7 (a) have qualifications, training or experience relevant to
8 children who have a mental illness; and
- 9 (b) be authorised by the Chief Psychiatrist for this
10 paragraph.

11 Note for section 404:

12 For the purpose of the Tribunal ascertaining the patient's wishes under
13 section 404(1)(d), Part 2 Division 4 applies.

14 **405. What Tribunal may do on completing review**

15 On completing a review under this Division in respect of a
16 long-term voluntary inpatient, the Tribunal may make any of
17 these recommendations —

- 18 (a) the treating psychiatrist consider whether or not there is
19 still a need for the admission;
- 20 (b) a treatment, support and discharge plan for the inpatient
21 be prepared and be reviewed regularly;
- 22 (c) the inpatient be discharged.

23 **Division 6 — Electroconvulsive therapy approvals**

24 **406. Application of this Division**

25 This Division relates to obtaining the Tribunal's approval to
26 electroconvulsive therapy being performed on —

- 27 (a) a child who has reached 14 years of age but is under
28 18 years of age and is a voluntary patient, as required by
29 section 195(2)(b); or

- 1 (b) a child who has reached 14 years of age but is under
2 18 years of age and is an involuntary patient or mentally
3 impaired accused required under the MIA Act to be
4 detained at an authorised hospital, as required by
5 section 196(2); or
6 (c) an adult who is an involuntary patient or mentally
7 impaired accused required under the MIA Act to be
8 detained at an authorised hospital, as required by
9 section 198(2).

10 **407. Application for approval**

- 11 (1) The patient's psychiatrist may apply for approval to perform
12 electroconvulsive therapy on the patient.
- 13 (2) The application must be in writing and must set out —
- 14 (a) the reasons why the patient's psychiatrist is
15 recommending that the electroconvulsive therapy be
16 performed; and
- 17 (b) a treatment plan in relation to the electroconvulsive
18 therapy, including —
- 19 (i) the mental health service at which it is proposed
20 to perform the electroconvulsive therapy; and
- 21 (ii) the maximum number of treatments with
22 electroconvulsive therapy that it is proposed will
23 be performed; and
- 24 (iii) the maximum period over which it is proposed to
25 perform that number of treatments; and
- 26 (iv) the minimum period that it is proposed will
27 elapse between any 2 treatments.

28 **408. Parties to proceeding**

- 29 The parties to a proceeding in relation to the application are —
- 30 (a) the patient; and
- 31 (b) the patient's psychiatrist; and

- 1 (c) any other person who, in the Tribunal's opinion, has a
2 sufficient interest in the matter.

3 **409. Things Tribunal must be satisfied of**

- 4 (1) The Tribunal cannot approve electroconvulsive therapy being
5 performed on a patient unless satisfied that the mental health
6 service at which it is proposed to perform the electroconvulsive
7 therapy is approved under section 540 for that purpose.
- 8 (2) The Tribunal cannot approve electroconvulsive therapy being
9 performed on a patient to whom section 195 applies unless
10 satisfied that informed consent to it being performed on the
11 patient is given as required by section 195(2)(a).
- 12 (3) The Tribunal cannot approve electroconvulsive therapy being
13 performed on a patient to whom section 196(2) or 198(2)
14 applies unless satisfied of the matter in subsection (4) or the
15 matters in subsection (5).
- 16 (4) The Tribunal must be satisfied that the patient gives informed
17 consent to the electroconvulsive therapy being performed on
18 himself or herself.
- 19 (5) Alternatively, the Tribunal must be satisfied that —
20 (a) the patient —
21 (i) does not have the capacity to give informed
22 consent to the electroconvulsive therapy being
23 performed on himself or herself; or
24 (ii) has the capacity referred to in subparagraph (i)
25 but has refused to give informed consent to the
26 electroconvulsive therapy being performed on
27 himself or herself; or
28 (iii) has the capacity referred to in subparagraph (i)
29 but has neither given nor refused to give
30 informed consent to the electroconvulsive
31 therapy being performed on himself or herself;
32 but

- 1 (b) performing the electroconvulsive therapy is the most
2 appropriate treatment for the health and wellbeing of the
3 patient.

4 **410. Tribunal must have regard to Chief Psychiatrist's guidelines**

5 In deciding whether or not to approve electroconvulsive therapy
6 being performed on a patient, the Tribunal must have regard to
7 the guidelines published under section 543(1)(f) about the
8 performance of electroconvulsive therapy.

9 **411. Other things to which Tribunal must have regard if no**
10 **informed consent**

- 11 (1) In deciding whether or not to approve electroconvulsive therapy
12 being performed on a patient referred to in section 409(5)(a), the
13 Tribunal must also have regard to these things —
- 14 (a) if the patient is a child and the Tribunal is not
15 constituted with a child and adolescent psychiatrist —
16 the views of a medical practitioner or mental health
17 practitioner specified in subsection (2);
- 18 (b) the patient's wishes, to the extent that it is practicable to
19 ascertain those wishes;
- 20 (c) if the patient is an adult but does not have the capacity to
21 give informed consent to the electroconvulsive therapy
22 being performed on himself or herself — the views of
23 the person who is authorised by law to give that consent
24 on the patient's behalf were that consent required;
- 25 (d) if the patient is a child — the views of the child's parent
26 or guardian;
- 27 (e) if the patient has a nominated person — the views of the
28 nominated person;
- 29 (f) if the patient has a carer — the views of the carer;
- 30 (g) if the patient has a close family member — the views of
31 the close family member;

- 1 (h) the reasons why the patient’s psychiatrist is
2 recommending that the electroconvulsive therapy be
3 performed;
- 4 (i) the consequences for the treatment and care of the
5 patient of not performing the electroconvulsive therapy;
- 6 (j) the nature and degree of any significant risk of
7 performing the electroconvulsive therapy;
- 8 (k) whether the electroconvulsive therapy is likely to
9 promote and maintain the health and wellbeing of the
10 patient;
- 11 (l) whether any alternative treatment is available;
- 12 (m) the nature and degree of any significant risk of
13 providing any alternative treatment that is available;
- 14 (n) any other things that the Tribunal considers relevant to
15 making the decision.
- 16 (2) For subsection (1)(a), a medical practitioner or mental health
17 practitioner must —
- 18 (a) have qualifications, training or experience relevant to
19 children who have a mental illness; and
- 20 (b) be authorised by the Chief Psychiatrist for this
21 paragraph.

22 Note for section 411:

23 For the purpose of the Tribunal ascertaining the patient’s wishes under
24 section 411(1)(b), Part 2 Division 4 applies.

25 **412. Decision on application**

26 The Tribunal may decide the application by —

- 27 (a) approving the electroconvulsive therapy being
28 performed in accordance with the treatment plan set out
29 in the application; or
- 30 (b) approving the electroconvulsive therapy being
31 performed in accordance with the treatment plan set out
32 in the application subject to the maximum number of

- 1 (b) the patient’s psychiatrist; and
2 (c) any other person who, in the Tribunal’s opinion, has a
3 sufficient interest in the matter.

4 **416. Things Tribunal must be satisfied of**

5 The Tribunal cannot approve the psychosurgery being
6 performed on the patient unless satisfied of these things —

- 7 (a) the patient gives informed consent to the psychosurgery
8 being performed on himself or herself as required by
9 section 208(2)(a);
10 (b) performing the psychosurgery has clinical merit and is
11 appropriate in the circumstances;
12 (c) all alternatives to performing psychosurgery that are
13 reasonably available and likely to be of a sufficient and
14 lasting benefit to the patient have been appropriately
15 trialled with the patient but have not resulted in a
16 sufficient and lasting benefit to the patient;
17 (d) the neurosurgeon who it is proposed will perform the
18 psychosurgery is suitably qualified and experienced;
19 (e) the place where it is proposed to perform the
20 psychosurgery is a suitable place.

21 **417. Things to which Tribunal must have regard**

22 In deciding whether or not to approve the psychosurgery
23 therapy being performed on the patient, the Tribunal must have
24 regard to these things —

- 25 (a) the views of any carer, close family member or other
26 personal support person of the patient;
27 (b) the consequences for the treatment and care of the
28 patient of not performing the psychosurgery;
29 (c) the nature and degree of any significant risk of
30 performing the psychosurgery;

- 1 (d) whether the psychosurgery is likely to promote and
2 maintain the health and wellbeing of the patient;
3 (e) any other things that the Tribunal considers relevant to
4 making the decision.

5 **418. Decision on application**

6 The Tribunal may decide the application by —

- 7 (a) approving the psychosurgery being performed in
8 accordance with the application; or
9 (b) refusing to approve the psychosurgery being performed.

10 **Division 8 — Compliance notices for non-clinical matters**

11 **419. Terms used**

12 In this Division —

13 ***prescribed requirement*** means a requirement under this Act —

- 14 (a) to do any of these things —
15 (i) give a document, or provide other information, to
16 a patient or another person;
17 (ii) include a document or other information on a
18 patient's medical record;
19 (iii) comply with a request made by a patient or other
20 person;

21 or

- 22 (b) to ensure that a thing referred to in paragraph (a) is
23 done;

24 ***service provider***, in relation to a prescribed requirement, means
25 the person in charge of a mental health service, the medical
26 practitioner or the mental health practitioner required under this
27 Act to comply with, or to ensure compliance with, the
28 requirement.

1 **420. Tribunal may issue service provider with compliance notice**

2 (1) The Tribunal may, on the application of a person referred to in
3 section 421 or on its own initiative, issue a service provider with
4 a compliance notice if it appears to the Tribunal that the service
5 provider has not complied with a prescribed requirement.

6 (2) The compliance notice may direct the service provider —

7 (a) to take specified action within the specified period for
8 the purpose of complying with the prescribed
9 requirement; and

10 (b) to report to the Tribunal in the specified manner within
11 the specified period that —

12 (i) the service provider has taken the action
13 specified under paragraph (a) within the period
14 specified under paragraph (a); or

15 (ii) if the service provider has not taken the specified
16 action or has not taken that action within the
17 specified period — the reasons for not doing so.

18 (3) Before deciding whether or not to issue a compliance notice
19 with a service provider, the Tribunal must consider whether it
20 would be appropriate to refer the matter to one or more of the
21 following —

22 (a) the CEO;

23 (b) the CEO of the Health Department;

24 (c) the Chief Psychiatrist;

25 (d) a registration board.

26 (4) If the Tribunal decides that it would be appropriate to refer the
27 matter to a person or body referred to in subsection (3), the
28 Tribunal may refer the matter instead of, or in addition to,
29 issuing the service provider with a compliance notice.

1 **421. Application for service of compliance notice**

2 An application for the Tribunal to issue a service provider with
3 a compliance notice may be made under section 420(1) by any
4 of these people —

- 5 (a) the patient or other person to whom the prescribed
6 requirement relates;
- 7 (b) a carer, close family member or other personal support
8 person of the patient or other person;
- 9 (c) a mental health advocate;
- 10 (d) any other person who, in the Tribunal’s opinion, has a
11 sufficient interest in the matter.

12 **422. Parties to proceeding**

13 The parties to a proceeding under section 420 are —

- 14 (a) the patient or other person to whom the prescribed
15 requirement relates; and
- 16 (b) the service provider on whom the prescribed
17 requirement is imposed; and
- 18 (c) if the proceeding relates to an application made under
19 section 421 and the applicant is not the patient or other
20 person to whom the prescribed requirement relates —
21 the applicant; and
- 22 (d) any other person who, in the opinion of the Tribunal, has
23 a sufficient interest in the matter.

24 **423. Compliance notices to be reported on in annual report**

25 The President of the Tribunal must include in the report
26 prepared under section 485 in respect of a financial year —

- 27 (a) the name of each service provider issued with a
28 compliance notice during that year; and
- 29 (b) the number of compliance notices with which each of
30 those service providers was issued during that year.

1 **Division 9 — Review of orders restricting freedom**
2 **of communication**

3 **424. Application for review**

4 (1) A person specified in subsection (2) may apply to the Tribunal
5 for a review of an order made under section 262 prohibiting a
6 patient from exercising, or limiting the extent to which a patient
7 can exercise, a right under section 261.

8 (2) An application may be made under subsection (1) by any of
9 these people —

10 (a) the patient;

11 (b) a carer, close family member or other personal support
12 person of the patient;

13 (c) a mental health advocate;

14 (d) any other person who, in the opinion of the Tribunal, has
15 a sufficient interest in the matter.

16 **425. Parties to proceeding**

17 The parties to a proceeding in relation to the application are —

18 (a) the patient; and

19 (b) the person who made the decision under section 262;
20 and

21 (c) if the applicant is not the patient — the applicant; and

22 (d) any other person who, in the opinion of the Tribunal, has
23 a sufficient interest in the matter.

24 **426. Decision on application**

25 The Tribunal may decide the application by —

26 (a) confirming the order as made or amended; or

27 (b) amending, or further amending, the order as made or
28 amended; or

29 (c) revoking the order.

1 **Division 10 — Jurisdiction in relation to nominated persons**

2 **427. Application for decision**

3 (1) A person specified in subsection (2) may apply to the Tribunal
4 for a decision under this Division about a nomination.

5 (2) An application may be made under subsection (1) by any of
6 these people —

7 (a) the person who made the nomination;

8 (b) the nominated person;

9 (c) a carer, close family member or other personal support
10 person of the person who made the nomination;

11 (d) a mental health advocate;

12 (e) any other person who, in the opinion of the Tribunal, has
13 a sufficient interest in the matter.

14 **428. Declaration about validity of nomination**

15 (1) The Tribunal may declare that a nomination is valid or invalid.

16 (2) Instead of declaring that a nomination is invalid because of a
17 failure to comply with section 275, the Tribunal —

18 (a) may declare the nomination to be valid; and

19 (b) may make an order varying the terms of the nomination
20 in the manner the Tribunal considers most likely to give
21 effect to the intention of the person who made the
22 nomination.

23 (3) A declaration made under subsection (1) or (2)(a) has effect
24 according to its terms.

25 **429. Revocation of nomination**

26 The Tribunal may revoke a nomination if satisfied that the
27 nominated person is not an appropriate person to perform the
28 role of the nominated person because —

29 (a) the person is likely, in performing that role, to adversely
30 affect to a significant degree the interests of the person
31 who made the nomination; or

- 1 (b) the person is not capable of performing that role because
2 of mental or physical incapacity; or
3 (c) the person is not willing, or is not reasonably able, to
4 perform that role.

5 **430. Parties to proceeding**

6 The parties to a proceeding in relation to an application under
7 this Division are —

- 8 (a) the person who made the nomination; and
9 (b) the nominated person; and
10 (c) if the applicant is not a person referred to in
11 paragraph (a) or (b) — the applicant; and
12 (d) any other person who, in the opinion of the Tribunal, has
13 a sufficient interest in the matter.

14 **Division 11 — Review of decisions affecting rights**

15 **431. Application for review**

- 16 (1) A person specified in subsection (2) may apply to the Tribunal
17 for a review of a decision made under this Act affecting a
18 person's rights under this Act.
19 (2) An application may be made under subsection (1) by any of
20 these people —
21 (a) the person whose right is affected;
22 (b) a carer, close family member or other personal support
23 person of the person whose right is affected;
24 (c) a mental health advocate;
25 (d) any other person who, in the opinion of the Tribunal, has
26 a sufficient interest in the matter.
27 (3) The Tribunal can only review a decision under subsection (1) if
28 satisfied that the matter cannot be heard and determined by the
29 Tribunal under another Division of this Part.

1 **432. Parties to proceeding**

2 The parties to a proceeding in relation to the application are —

- 3 (a) the person whose rights it is alleged are affected; and
4 (b) if the applicant is not the person referred to in
5 paragraph (a) — the applicant; and
6 (c) any other person who, in the opinion of the Tribunal, has
7 a sufficient interest in the matter.

8 **433. What Tribunal may do on completing review**

9 On completing the review, the Tribunal may make any orders,
10 and give any directions, the Tribunal considers appropriate.

11 **Division 12 — Procedural matters**

12 **Subdivision 1 — Proceedings generally**

13 **434. Lodgment of documents**

14 An application or other document required to be made or given
15 to the Tribunal must be lodged at the office of the Tribunal.

16 **435. Sittings**

17 The Tribunal sits at the times, and in the places in the State,
18 determined by the President of the Tribunal.

19 **436. Conduct of proceedings**

- 20 (1) A proceeding must be conducted with as little formality and
21 technicality, and as speedily, as a proper consideration of the
22 matter before the Tribunal permits.
- 23 (2) In a proceeding, the Tribunal is bound by the rules of natural
24 justice.
- 25 (3) Subject to this Part, the practice and procedure of the Tribunal
26 in a proceeding is —
27 (a) as provided for in the rules made under section 469; or

- 1 (b) if no provision is made in the rules — as determined by
2 the Tribunal.

3 **437. Presiding member**

4 The presiding member of the Tribunal as constituted for a
5 proceeding is the member of the Tribunal as so constituted who
6 is a lawyer.

7 **438. Deciding questions in proceedings**

- 8 (1) In this section —
9 *question of law* includes a question of mixed law and fact.
10 (2) A question in a proceeding (other than a question of law) must
11 be resolved according to the opinion of the majority of the
12 members constituting the Tribunal for the proceeding.
13 (3) A question of law in a proceeding before the Tribunal must be
14 resolved according to the opinion of the presiding member.

15 **439. Assistance from persons with relevant knowledge or
16 experience**

17 The Tribunal may engage or appoint one or more persons with
18 knowledge or experience that the Tribunal considers relevant to
19 a proceeding to assist the Tribunal in the proceeding.

20 **440. No fees payable**

- 21 No fees are payable in relation to —
22 (a) any application made under this Part; or
23 (b) any proceeding of the Tribunal under this Part.

24 **441. Each party to bear own costs**

25 Subject to section 442(1)(b), each party must bear the party's
26 own costs.

1 **442. Frivolous, vexatious or improper proceedings**

- 2 (1) The Tribunal may, if satisfied that a proceeding is frivolous or
3 vexatious or has been brought for an improper purpose —
- 4 (a) dismiss the proceeding; and
- 5 (b) make any order as to costs that the Tribunal considers
6 appropriate; and
- 7 (c) on the application of a party, order that the party who
8 instituted the proceeding cannot institute a proceeding of
9 a kind specified in the order without the leave of the
10 Tribunal.
- 11 (2) An order made under subsection (1)(c) has effect despite any
12 other provision of this Part.
- 13 (3) The Tribunal may amend or revoke an order made under
14 subsection (1)(c).

15 **Subdivision 2 — Notice of proceedings**

16 **443. Notice of applications**

- 17 (1) If the person concerned in an application is an adult, the
18 Tribunal must give a copy of the application to —
- 19 (a) if the person concerned is not the applicant — the
20 person concerned and the person concerned's
21 representative under section 446(1)(a) or (b); and
- 22 (b) each of the other parties; and
- 23 (c) any carer, close family member or other personal
24 support person of the person concerned —
- 25 (i) who is not the person concerned's representative
26 under section 446(1)(a) or (b) or a party; and
- 27 (ii) whose name and contact details are provided to
28 the Tribunal.

- 1 (2) If the person concerned in an application is a child, the Tribunal
2 must give a copy of the application to —
- 3 (a) if the child is not the applicant and —
- 4 (i) section 447(1) applies in respect of the child —
5 the child and the child’s representative under
6 section 447(1)(b); or
- 7 (ii) section 448(1) applies in respect of the child —
8 the child’s representative under that provision;
- 9 and
- 10 (b) if the child’s parent or guardian is not the child’s
11 representative under section 447(1)(b) or 448(1) or a
12 party — the child’s parent or guardian; and
- 13 (c) each of the other parties who is not the applicant; and
- 14 (d) any carer, close family member or other personal
15 support person of the child —
- 16 (i) who is not the child’s representative under
17 section 447(1)(b) or 448(1) or a party; and
- 18 (ii) whose name and contact details are provided to
19 the Tribunal;
- 20 and
- 21 (e) if a mental health advocate is not also a party — the
22 Chief Mental Health Advocate.
- 23 (3) Without limiting the requirement under subsection (1)(c)
24 or (2)(d), the requirement is taken to have been complied with if
25 the Tribunal ensures that reasonable efforts to give to any carer,
26 close family member or other personal support person a copy of
27 the application continue to be made until the first of these things
28 occurs —
- 29 (a) at least one carer, close family member or other personal
30 support person is given a copy of the application;
- 31 (b) it is reasonable for the Tribunal to conclude that no
32 carer, close family member or other personal support
33 person can be given a copy of the application.

1 **444. Notice of hearings**

- 2 (1) If the person concerned in a proceeding is an adult, the Tribunal
3 must give notice of the date, time and place of any hearing to —
- 4 (a) the person concerned or the person concerned's
5 representative under section 446(1)(a) or (b); and
 - 6 (b) each of the other parties; and
 - 7 (c) any carer, close family member or other personal
8 support person of the person concerned —
 - 9 (i) who is not the person concerned's representative
10 under section 446(1)(a) or (b) or a party; and
 - 11 (ii) whose name and contact details are provided to
12 the Tribunal.
- 13 (2) If the person concerned in a proceeding is a child, the Tribunal
14 must give notice of the date, time and place of any hearing to —
- 15 (a) if —
 - 16 (i) section 447(1) applies in respect of the child —
17 the child or the child's representative under
18 section 447(1)(b); or
 - 19 (ii) section 448(1) applies in respect of the child —
20 the child's representative under that provision;
 - 21 and
 - 22 (b) if the child's parent or guardian is not the child's
23 representative under section 447(1)(b) or 448(1) or a
24 party — the child's parent or guardian; and
 - 25 (c) each of the other parties; and
 - 26 (d) any carer, close family member or other personal
27 support person of the child —
 - 28 (i) who is not the child's representative under
29 section 447(1)(b) or 448(1) or a party; and
 - 30 (ii) whose name and contact details are provided to
31 the Tribunal;
 - 32 and

- 1 (e) if a mental health advocate is not also a party — the
2 Chief Mental Health Advocate.
- 3 (3) Without limiting the requirement under subsection (1)(c)
4 or (2)(d), the requirement is taken to have been complied with if
5 the Tribunal ensures that reasonable efforts to give any carer,
6 close family member or other personal support person notice of
7 the hearing continue to be made until the first of these things
8 occurs —
- 9 (a) at least one carer, close family member or other personal
10 support person is notified of the hearing;
- 11 (b) it is reasonable for the Tribunal to conclude that no
12 carer, close family member or other personal support
13 person can be notified of the application.

14 **445. Tribunal may request information from SAT about person’s**
15 **guardian**

- 16 (1) For the purpose of giving under section 443 or 444 a copy of an
17 application or notice of a hearing to the guardian of an adult, the
18 Tribunal may request the State Administrative Tribunal for the
19 name and contact details of the adult’s guardian.
- 20 (2) The State Administrative Tribunal may comply with any request
21 made under subsection (1).

22 **Subdivision 3 — Appearance and representation**

23 **446. Party is an adult**

- 24 (1) In a proceeding, a party who is an adult —
- 25 (a) may appear in person or be represented by another
26 person; or
- 27 (b) must be represented by another person if the Tribunal
28 makes an order under subsection (2) in respect of the
29 party.
- 30 (2) The Tribunal may make an order that the party must be
31 represented in the proceeding if, in the Tribunal’s opinion, it is

1 not in the best interests of the party for the party to appear in
2 person in the proceeding.

3 (3) Even though a party who is an adult is represented in the
4 proceeding, the party is entitled to express in person his or her
5 views about any matter arising in the course of the proceeding
6 that may affect the party.

7 Note for section 446:

8 For the purpose of deciding under section 446(2) what is or is not in the best
9 interests of a party, Part 2 Division 3 applies.

10 **447. Party is a child with capacity to consent**

11 (1) In a proceeding, a party who is a child with sufficient maturity
12 and understanding to make reasonable decisions about matters
13 relating to himself or herself —

14 (a) may appear in person; or

15 (b) may be represented by any of these people —

16 (i) a legal practitioner;

17 (ii) a mental health advocate;

18 (iii) the child's parent or guardian unless the Tribunal
19 makes an order under section 453(2)(b) in
20 respect of the child's parent or guardian;

21 (iv) any other person who, in the Tribunal's opinion,
22 is willing and able to represent the child's
23 interests.

24 (2) Even though a party who is a child referred to in subsection (1)
25 is represented in the proceeding, the child is entitled to express
26 in person his or her views about any matter arising in the course
27 of the proceeding that may affect the child.

28 **448. Party is a child with no capacity to consent**

29 (1) In a proceeding, a party who is a child who does not have
30 sufficient maturity or understanding to make reasonable

- 1 decisions about matters relating to himself or herself must be
2 represented by one of these people —
- 3 (a) a legal practitioner;
4 (b) a mental health advocate;
5 (c) the child’s parent or guardian unless the Tribunal makes
6 an order under section 453(2)(b) in respect of the child’s
7 parent or guardian;
8 (d) any other person who, in the Tribunal’s opinion, can
9 represent the child’s interests.
- 10 (2) Even though a party who is a child referred to in subsection (1)
11 is represented in a proceeding and the child does not have the
12 maturity or understanding referred to in subsection (1), the child
13 is entitled to express in person his or her views about any matter
14 arising in the course of the proceeding that may affect the child.

15 **449. Tribunal may make arrangements for representation**

16 The Tribunal may make arrangements for a party to be
17 represented at a hearing if the party wants the Tribunal to make
18 such an arrangement on the party’s behalf.

19 **450. Legal representation of person with mental illness**

20 The fact that a person has a mental illness, or is being provided
21 with treatment for a mental illness, is presumed not to be an
22 impediment to the representation of the person by a legal
23 practitioner before the Tribunal or to the person giving
24 instructions to a legal practitioner for the purpose of that
25 representation.

26 **451. Representative must not be paid**

- 27 (1) In this section —
28 *prescribed person* means —
29 (a) a legal practitioner; or
30 (b) a mental health advocate; or

- 1 (c) a person prescribed by the regulations for this definition.
- 2 (2) A person who is not a prescribed person must not demand or
3 receive any remuneration for representing a party in a
4 proceeding.
- 5 Penalty:
- 6 (a) for a first offence, a fine of \$1 000;
- 7 (b) for a second or subsequent offence, a fine of \$10 000.

8 **Subdivision 4 — Hearings and evidence**

9 **452. Nature of review proceedings**

- 10 (1) In this section —
- 11 ***decision-maker***, in relation to a review proceeding, means —
- 12 (a) the psychiatrist who made the involuntary treatment
13 order; or
- 14 (b) the medical practitioner who admitted the long-term
15 voluntary patient; or
- 16 (c) the psychiatrist who made the decision under
17 section 262 to make, confirm or amend the order
18 prohibiting, or limiting the extent of, the exercise of the
19 right;
- 20 ***reviewable decision***, in relation to a review proceeding,
21 means —
- 22 (a) the decision to make the involuntary treatment order; or
- 23 (b) the decision to admit the long-term voluntary patient; or
- 24 (c) the decision under section 262 to make, confirm or
25 amend the order prohibiting, or limiting the extent of,
26 the exercise of the right;
- 27 ***review proceeding*** means —
- 28 (a) a review under Division 3 of an involuntary treatment
29 order; or

- 1 (b) a review under Division 5 of a long-term voluntary
2 inpatient's admission; or
- 3 (c) a review under Division 9 of an order made under
4 section 262 prohibiting a patient from exercising, or
5 limiting the extent to which a patient can exercise, a
6 right under section 261.
- 7 (2) A review proceeding is a hearing de novo and is not confined to
8 material that was before the decision-maker but may involve the
9 consideration of new material whether or not it existed when the
10 reviewable decision was made.
- 11 (3) The purpose of a review proceeding is to produce the correct
12 and preferable decision at the time of the Tribunal's decision on
13 the review proceeding.

14 **453. Closed hearings**

- 15 (1) A hearing is not open to the public unless the Tribunal orders
16 that the hearing or a part of the hearing is open to the public.
- 17 (2) The Tribunal may, on the application of any person or on its
18 own initiative, make an order —
- 19 (a) permitting a specified person to be present at a hearing
20 or part of a hearing; or
- 21 (b) excluding a specified person (including a witness) from
22 a hearing or part of a hearing.
- 23 (3) Despite section 466, the Tribunal must provide reasons for
24 making an order under this section at the time when the
25 Tribunal makes the order.
- 26 (4) The operation of this section is not limited by section 454.

27 Note for section 453:

28 Any reasons provided under section 453(3) must be provided in accordance
29 with section 9(2).

1 **454. Person chosen by person concerned may be present**

2 (1) A person chosen by the person concerned in a proceeding may
3 be present at a hearing unless the Tribunal makes an order under
4 section 453(2)(b) excluding the person from the hearing or a
5 part of the hearing.

6 (2) The Tribunal may make an order referred to in subsection (1) on
7 the application of any person if satisfied that it is not in the best
8 interests of the person concerned for the person to be present at
9 the hearing or the part of the hearing.

10 Note for section 454:

11 For the purpose of deciding under section 454(2) what is or is not in the best
12 interests of the person concerned in a proceeding, Part 2 Division 3 applies.

13 **455. Right to be heard**

14 The Tribunal must give each party a reasonable opportunity —

- 15 (a) to call or give evidence; and
16 (b) to examine or cross-examine witnesses; and
17 (c) to make submissions.

18 **456. Evidence generally**

19 (1) The Tribunal is not bound by the rules of evidence but may
20 inform itself of a matter relevant to a proceeding in any manner
21 the Tribunal considers appropriate.

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

23 (3) The Tribunal may require evidence in a proceeding to be given
24 on oath or by affidavit.

25 (4) The presiding member in a proceeding may direct a person
26 appearing as a witness —

- 27 (a) to answer a question relevant to the proceeding; or
28 (b) to produce a document relevant to the proceeding.

- 1 (5) A person appearing as a witness has the same protection and
2 immunity as a witness has in a proceeding in the Supreme
3 Court.

4 **457. Oral evidence about restricted information**

- 5 (1) In this section —

6 *restricted information* means information in a document to
7 which a person is not entitled to have access because of
8 section 249(1)(a) or (b) or (3).

- 9 (2) At a hearing —

- 10 (a) oral evidence about restricted information cannot be
11 given in the presence of the person who is not entitled to
12 have access to the document containing the restricted
13 information; and
14 (b) a witness cannot be examined or cross-examined about
15 restricted information in the presence of that person; and
16 (c) an oral submission about restricted information cannot
17 be made in the presence of that person.

- 18 (3) The Tribunal must request the person to leave the hearing while
19 the evidence is given, the examination or cross-examination is
20 conducted or the submission is made.

- 21 (4) If the person refuses to comply with the Tribunal's request, the
22 Tribunal must make an order excluding the person from the
23 hearing while the evidence is given, the examination or
24 cross-examination is conducted or the submission is made.

25 **458. Summons to give evidence or produce documents**

26 The Tribunal may, by issuing a summons signed on behalf of
27 the Tribunal by a member or the registrar and serving the
28 summons on the person to whom it is addressed, require the
29 person to attend before the Tribunal at the time and place
30 specified in the summons —

- 31 (a) to give evidence in a proceeding; or

- 1 (b) to produce a document relevant to a proceeding that is in
2 the person's custody or control and is specified in the
3 summons; or
4 (c) to do both of those things.

5 **459. Self-incrimination**

- 6 (1) A person is not excused from complying with a direction given
7 to the person under section 456(4), or a summons served on the
8 person under section 458, on the ground that the answer to a
9 question or the production of a document might tend to
10 incriminate the person or expose the person to a criminal
11 penalty.
- 12 (2) However, any answer given or document produced by a person
13 in compliance with a direction given to the person under
14 section 456(4), or a summons served on the person under
15 section 458, is not admissible in evidence in any criminal
16 proceedings against the person other than proceedings for an
17 offence under section 461(1)(d) or (e).

18 **460. Powers in relation to documents produced**

19 In relation to a document produced to the Tribunal in a
20 proceeding, the Tribunal may do any of these things —

- 21 (a) inspect the document;
22 (b) retain the document for a reasonable period;
23 (c) take a copy of the whole or any part of the document.

24 **461. Offences relating to evidence and documents**

- 25 (1) A person commits an offence if the person —
26 (a) without reasonable excuse, proof of which is on the
27 person, does not swear an oath or make an affirmation
28 when required under section 456(3); or
29 (b) without reasonable excuse, proof of which is on the
30 person, does not answer a question or produce a

- 1 document when directed to do so under section 456(4);
2 or
3 (c) without reasonable excuse, proof of which is on the
4 person, does not attend before the Tribunal as required
5 by a summons served on the person under section 458;
6 or
7 (d) gives an answer to the Tribunal in a proceeding that the
8 person knows is false or misleading in a material
9 particular; or
10 (e) produces a document or provides any other information
11 to the Tribunal in a proceeding that the person knows is
12 false or misleading in a material particular —
13 (i) without indicating that the document or other
14 information is false or misleading and, to the
15 extent the person can, how the document or other
16 information is false or misleading; and
17 (ii) if the person has or can reasonably obtain the
18 correct information — without providing the
19 correct information.

20 Penalty: a fine of \$5 000.

- 21 (2) It is enough for a prosecution notice lodged against a person for
22 an offence under subsection (1)(d) or (e) to state that the
23 answer, document or information was false or misleading to the
24 person's knowledge without stating which.

25 **462. Evidence and findings in other proceedings**

26 In a proceeding, the Tribunal —

- 27 (a) may receive in evidence the transcript of evidence in a
28 proceeding before a court or other person or body acting
29 judicially and may draw any conclusion of fact from that
30 evidence that the Tribunal considers appropriate; and
31 (b) may adopt a finding, decision or judgment of a court or
32 other person or body acting judicially that is relevant to
33 the proceeding.

1 **463. Contempt of Tribunal**

2 A person commits an offence if the person —

- 3 (a) wilfully insults the Tribunal, or a member of the
4 Tribunal, as constituted for a proceeding; or
5 (b) wilfully interrupts or obstructs the conduct of a hearing;
6 or
7 (c) wilfully creates a disturbance, or takes part in creating or
8 continuing a disturbance, in or near a place where the
9 Tribunal is sitting.

10 Penalty: a fine of \$10 000.

11 **464. Hearings to be recorded**

12 The registrar must ensure that each hearing is recorded and the
13 recording is kept in a form from which a transcript of the
14 hearing can be prepared if required.

15 **465. Publication of information about proceedings**

16 (1) In this section —

17 ***information about a proceeding*** means —

- 18 (a) an account of a proceeding; or
19 (b) any evidence in a proceeding; or
20 (c) the contents of a document, or of a part of a document,
21 produced in a proceeding; or
22 (d) any other information about a proceeding;

23 ***publish*** means to disseminate to the public or a section of the
24 public by any means, including —

- 25 (a) in a newspaper or periodical publication; or
26 (b) by radio broadcast, television or other electronic means.

27 (2) A person must not publish information about a proceeding that
28 identifies —

- 29 (a) a party; or

- 1 (b) a person who is related to or associated with a party; or
2 (c) a witness; or
3 (d) a person who is or is alleged to be concerned in any
4 other way in a matter to which the proceeding relates.
- 5 (3) A person must not publish a list of proceedings identified by
6 reference to the names of the parties except —
7 (a) by displaying in the Tribunal’s premises a notice listing
8 the proceedings; or
9 (b) as permitted by rules made under section 469.
- 10 (4) A person who contravenes subsection (2) or (3) commits a
11 crime.
12 Penalty:
13 (a) for an individual, a fine of \$5 000 and imprisonment
14 for 12 months;
15 (b) for a body corporate, a fine of \$10 000.
- 16 Summary conviction penalty:
17 (a) for an individual, a fine of \$2 500;
18 (b) for a body corporate, a fine of \$5 000.
- 19 (5) A prosecution for an offence under subsection (4) cannot be
20 commenced except with the written consent of the Minister.
- 21 (6) Without limiting subsection (2), information about a proceeding
22 identifies a person if —
23 (a) it contains particulars that are sufficient to identify the
24 person to a member of the public or a member of the
25 section of the public to which the information is
26 disseminated, being any of these particulars —
27 (i) the name, title, pseudonym or alias of the person;
28 (ii) the address of any premises where the person
29 resides or works or the locality where those
30 premises are situated;

- 1 (iii) the physical description or the style of dress of
2 the person;
- 3 (iv) any employment or occupation engaged in, or
4 any profession practised or calling pursued by,
5 the person or any official or honorary position
6 held by the person;
- 7 (v) the relationship of the person to identified
8 relatives of the person or the association of the
9 person with identified friends or identified
10 business, official or professional acquaintances
11 of the person;
- 12 (vi) the recreational interests, or the political,
13 philosophical or religious beliefs or interests, of
14 the person;
- 15 (vii) any real or personal property in which the person
16 has an interest or with which the person is
17 otherwise associated;
- 18 or
- 19 (b) it is accompanied by a picture of the person; or
- 20 (c) it is spoken in whole or in part by the person and the
21 person's voice is sufficient to identify the person to a
22 member of the public or a member of the section of the
23 public to which the account is disseminated.
- 24 (7) Subsections (2) and (3) do not apply in relation to any of these
25 publications —
- 26 (a) the communication of a transcript of evidence or other
27 document to a person concerned in a proceeding in a
28 court or tribunal for use in connection with the
29 proceeding;
- 30 (b) the communication of a transcript of evidence or other
31 document to —
- 32 (i) a body that is responsible for disciplining
33 members of a profession or occupation; or

- 1 (ii) a person concerned in a proceeding before such a
2 body;
- 3 (c) the communication of a transcript of evidence or other
4 document to a body that grants assistance by way of
5 legal aid for the purpose of making a decision as to
6 whether such assistance should be granted or continued
7 in a particular case;
- 8 (d) the publication of a notice or report at the direction of
9 the Tribunal, the State Administrative Tribunal or a
10 court;
- 11 (e) a publication genuinely intended primarily for the use of
12 members of a profession or occupation, being —
- 13 (i) a separate volume of, or a volume in a part of a
14 series of, law reports; or
- 15 (ii) a decision of a court or tribunal published from
16 information stored electronically or otherwise; or
- 17 (iii) any other publication of a technical character;
- 18 (f) the publication or other dissemination —
- 19 (i) to a person who is a member of a profession or
20 occupation in connection with the practice by the
21 person of that profession or occupation or in the
22 course of any form of professional or
23 occupational training in which the person is
24 involved; or
- 25 (ii) to a person who is a student in connection with
26 the person's studies.
- 27 (8) Subsection (7)(e) does not authorise the publication of the name
28 of a party in a law report or other publication referred to in that
29 provision.
- 30 (9) Without limiting subsection (2) or (3), the Tribunal may make
31 an order in relation to a particular proceeding that information
32 about the proceeding that is specified in the order —
- 33 (a) must not be published; or

1 **468. Giving effect to Tribunal's decisions**

2 (1) In this section —

3 *decision*, of the Tribunal, does not include —

4 (a) a recommendation made by the Tribunal under
5 section 394(3) about an involuntary patient's treatment
6 support and discharge plan; or

7 (b) a recommendation made by the Tribunal under
8 section 405 about a long-term voluntary inpatient's
9 admission as an inpatient.

10 (2) A person who does not give effect to a decision of the Tribunal
11 according to its terms commits an offence.

12 Penalty for an offence under this subsection: a fine of \$10 000.

13 **Division 13 — Rules**

14 **469. Power to make**

15 The President of the Tribunal may make rules for the Tribunal,
16 but only after consultation with the members appointed under
17 section 473(1).

18 **470. Content**

19 (1) Rules made under section 469 may make provision for any
20 matter that is —

21 (a) required or permitted by this Act to be provided for in
22 the rules; or

23 (b) necessary or convenient for the Tribunal to operate
24 efficiently, economically and expeditiously.

25 (2) Without limiting subsection (1), the rules may provide for any
26 of these things —

27 (a) the organisation and management of the business of the
28 Tribunal;

29 (b) custody and use of the Tribunal's seal;

- 1 (c) the practice and procedure of the Tribunal in a
2 proceeding, including —
- 3 (i) the participation by a party, a party’s
4 representative or a witness in a hearing by
5 telephone, video link or other means of
6 communication; and
- 7 (ii) the conduct of all or part of a proceeding entirely
8 on the basis of documents and without the
9 parties, their representatives or any witnesses
10 appearing at or participating in a hearing;
- 11 (d) the form in which documents are to be lodged with or
12 issued by the Tribunal or to be served, which may be an
13 electronic form;
- 14 (e) the Tribunal’s records.

15 **471. Publication and tabling**

- 16 (1) Rules made under section 469 —
- 17 (a) must be published in the *Gazette*; and
- 18 (b) take effect on or from the date of publication or on or
19 from any later date or dates that are specified in the
20 rules; and
- 21 (c) must be laid before each House of Parliament within
22 6 sitting days of the House after the day on which the
23 rules were published.
- 24 (2) A rule or a part of a rule ceases to have effect if either House of
25 Parliament passes a resolution, of which notice is given at any
26 time on or within 6 sitting days of the House after the day on
27 which the rule was laid before it, disallowing the rule or the part
28 of the rule.
- 29 (3) However, the validity of any proceedings taken or of anything
30 done in the meantime under the rule or the part of the rule is not
31 affected by the disallowance.

- 1 (4) Notice of the passage of disallowing a rule or any part of a rule
2 must be published in the *Gazette* as soon as practicable.

3 **Division 14 — Tribunal members**

4 **472. President of Tribunal**

5 There is to be a President of the Mental Health Tribunal who is
6 appointed by the Governor on the recommendation of the
7 Minister.

8 **473. Other members**

9 (1) There are to be 2 or more members of the Mental Health
10 Tribunal in addition to the President, each of whom is appointed
11 by the Governor on the recommendation of the Minister.

12 (2) Any number of persons may be appointed under subsection (1)
13 provided that the membership of the Tribunal (including the
14 President of the Tribunal) includes —

- 15 (a) at least one lawyer; and
16 (b) at least one psychiatrist; and
17 (c) at least one person who is not —
18 (i) a lawyer; or
19 (ii) a medical practitioner; or
20 (iii) a mental health practitioner who is a staff
21 member of a mental health service or private
22 psychiatric hostel.

23 **474. Terms and conditions of appointment**

24 (1) The President of the Tribunal may be appointed on a full-time
25 or part-time basis.

26 (2) A member appointed under section 473(1) may be appointed on
27 a full-time, part-time or sessional basis.

- 1 (3) A member —
2 (a) holds office for the period (not exceeding 5 years)
3 specified in the instrument of appointment; and
4 (b) is eligible for reappointment.
- 5 (4) Subject to this Division, a member holds office on the terms and
6 conditions of appointment determined by the Minister.

7 **475. Remuneration**

- 8 (1) The President of the Tribunal is entitled to the remuneration
9 determined by the Salaries and Allowances Tribunal under the
10 *Salaries and Allowances Act 1975* and, for the purposes of that
11 Act and any other written law, the office of President of the
12 Mental Health Tribunal is taken to be prescribed under
13 section 6(1)(e) of that Act for the purposes of section 6 of that
14 Act.
- 15 (2) A member appointed under section 473(1) is entitled to the
16 remuneration determined by the Minister on the
17 recommendation of the Public Sector Commissioner.

18 **476. Resignation**

- 19 (1) A member may resign from office by writing signed and given
20 to the Minister.
- 21 (2) The resignation takes effect on the later of the following —
22 (a) receipt by the Minister;
23 (b) the day specified in the resignation.

24 **477. Removal from office**

- 25 The Governor may remove a person from the office of member
26 on any of these grounds —
27 (a) mental or physical incapacity;
28 (b) incompetence;
29 (c) neglect of duty;

- 1 (d) misconduct;
- 2 (e) ceasing to have a particular status if the person was
- 3 appointed to that office on the basis of having that
- 4 status;
- 5 (f) attaining a particular status if the person was appointed
- 6 to that office on the basis of not having that status.

7 **478. Acting members**

- 8 (1) The Minister may appoint a person to act in —
- 9 (a) the office of President of the Mental Health Tribunal
- 10 referred to in section 472; or
- 11 (b) the office of member of the Mental Health Tribunal
- 12 referred to in section 473(1).
- 13 (2) A person may be appointed under subsection (1) to act in an
- 14 office —
- 15 (a) during a vacancy in the office, whether or not an
- 16 appointment has previously been made to the office; or
- 17 (b) during a period, or during all periods, when the person
- 18 holding the office or a person acting in the office under
- 19 an appointment under subsection (1) is on leave or is
- 20 otherwise unable to perform the functions of the office.
- 21 (3) An appointment under subsection (1) may be expressed to have
- 22 effect only in the circumstances specified in the instrument of
- 23 appointment.
- 24 (4) The Minister may —
- 25 (a) determine the terms and conditions of an appointment
- 26 under subsection (1), including as to remuneration; and
- 27 (b) terminate an appointment under subsection (1) at any
- 28 time.

- 1 (5) The validity of anything done by or in relation to a person
2 purporting to act under an appointment under subsection (1) is
3 not to be called into question on any of these grounds —
4 (a) the occasion for the appointment had not arisen;
5 (b) there is a defect or irregularity in the appointment;
6 (c) the appointment had ceased to have effect;
7 (d) the occasion for the person to act had not arisen or had
8 ceased.
- 9 (6) A person cannot act under an appointment under subsection (1)
10 for a continuous period exceeding 12 months.

11 **479. Delegation by President**

- 12 (1) The President of the Tribunal may delegate to another member
13 or the registrar any power or duty of the President of the
14 Tribunal under another provision of this Act that is of an
15 administrative nature.
- 16 (2) The President of the Tribunal may delegate the power or duty
17 under section 381 to a member who is a lawyer.
- 18 (3) A delegation under this section must be in writing signed by the
19 President of the Tribunal.
- 20 (4) A member to whom a power or duty is delegated under this
21 section cannot delegate that power or duty.
- 22 (5) A delegation under this section to the registrar may expressly
23 authorise the registrar to further delegate the power or duty to a
24 registry officer.
- 25 (6) A person exercising or performing a power or duty that has been
26 delegated to the person as authorised under this section is taken
27 to do so in accordance with the terms of the delegation unless
28 the contrary is shown.
- 29 (7) This section does not limit the ability of the President of the
30 Tribunal to perform a function through an officer or agent.

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Division 15 — Registrar and other staff

480. Registrar

There is to be a registrar of the Mental Health Tribunal who is appointed under the *Public Sector Management Act 1994* Part 3.

481. Functions of registrar

The functions of the registrar are —

- (a) keeping, in accordance with the regulations, particulars of each involuntary patient; and
- (b) ensuring that a proceeding for a review under Division 3 of an involuntary treatment order is brought before the Tribunal within the period specified under that Division or, if no period is specified, as soon as practicable; and
- (c) ensuring that any other proceeding is brought before the Tribunal as soon as practicable; and
- (d) receiving any document that must be given under this Act to the Tribunal and arranging for it to be dealt with as soon as practicable; and
- (e) ensuring that any document that must be given under this Act by the Tribunal is given in accordance with this Act and as soon as practicable; and
- (f) generally being the executive officer of the Tribunal; and
- (g) any other functions conferred on, or delegated to, the registrar by or under this Act or another written law.

482. President may give registrar directions

- (1) The President of the Tribunal may give to the registrar directions with respect to the performance of the registrar’s functions under this Act, either generally or in relation to a particular matter.
- (2) The registrar must comply with a direction given under subsection (1).

1 **483. Registry staff**

2 Public service officers must be appointed under, or made
3 available under, the *Public Sector Management Act 1994* Part 3
4 to assist the registrar in performing his or her functions under
5 this Act or another written law.

6 **484. Delegation by registrar**

7 (1) The registrar may delegate to a registry officer any power or
8 duty of the registrar under another provision of this Act.

9 (2) The delegation must be in writing signed by the registrar.

10 (3) A person to whom a power or duty is delegated cannot delegate
11 that power or duty.

12 (4) A person exercising or performing a power or duty that has been
13 delegated to the person under this section is taken to do so in
14 accordance with the terms of the delegation unless the contrary
15 is shown.

16 (5) This section does not limit the ability of the registrar to perform
17 a function through an officer or agent.

18 **Division 16 — Annual reports**

19 **485. Annual report: preparation**

20 Within 3 months after 30 June in each year, the President of the
21 Tribunal must prepare and give to the Minister a report as to the
22 general activities of the Tribunal during the financial year
23 ending on that day.

24 **486. Annual report: tabling**

25 (1) The Minister must cause a copy of a report referred to in
26 section 485 to be laid before each House of Parliament, or dealt
27 with under subsection (2), on or within 21 days after the day on
28 which the Minister receives the report.

- 1 (2) The Minister must transmit a copy of the report to the Clerk of a
2 House of Parliament if —
- 3 (a) at the beginning of the 21-day period referred to in
4 subsection (1), the House is not sitting; and
- 5 (b) in the Minister’s opinion, the House will not sit during
6 that period.
- 7 (3) A copy of a report transmitted under subsection (2) to the Clerk
8 of a House is taken to have been laid before that House.
- 9 (4) The laying of a copy of a report that is taken to have occurred
10 under subsection (3) must be recorded in the Minutes, or Votes
11 and Proceedings, of the House on the first sitting day of the
12 House after the receipt of the copy by the Clerk.

13 **Division 17 — Miscellaneous matters**

14 **487. Seal**

15 The Tribunal must have a seal.

16 **488. Judicial notice of certain matters**

- 17 (1) A court or other person or body acting judicially must take
18 judicial notice of the following —
- 19 (a) the fact that a person is or was a member or the registrar;
- 20 (b) the official signature of a person who is or was a
21 member or the registrar;
- 22 (c) a seal of the Tribunal affixed to a document.
- 23 (2) A court or other person acting judicially must presume that the
24 seal of the Tribunal affixed to a document was properly affixed
25 unless the contrary is proved.

26 **489. Meetings of members**

- 27 (1) The members of the Tribunal must meet as often as necessary
28 for the effective and efficient operation of the Tribunal.

- 1 (2) The President —
- 2 (a) may convene a meeting at any time; and
- 3 (b) must convene a meeting if requested in writing by 2 or
- 4 more other members.
- 5 (3) The quorum for a meeting is at least one-half of the members.
- 6 (4) The presiding member at a meeting is —
- 7 (a) the President; or
- 8 (b) if the President is not present — a member chosen by
- 9 the members present.
- 10 (5) At a meeting —
- 11 (a) each member has a deliberative vote; and
- 12 (b) a question is decided by a majority of the members
- 13 present and voting; and
- 14 (c) if the votes on a question are equal — the question must
- 15 be decided in the negative.
- 16 (6) The registrar must ensure that minutes of each meeting are kept.
- 17 (7) Except as provided by this section, the members can decide the
- 18 procedure for meetings.

1 **Part 22 — Review by State Administrative Tribunal**

2 **Division 1 — Preliminary matters**

3 **490. Terms used**

4 In this Part —

5 *application* means an application made to the State
6 Administrative Tribunal under this Part;

7 *decision*, of the Mental Health Tribunal, includes an order,
8 direction or declaration made by the Mental Health Tribunal;

9 *hearing* means a hearing in a proceeding;

10 *party* means a party to a proceeding;

11 *person concerned*, in an application or proceeding, means the
12 patient or other person whom the application or proceeding
13 concerns;

14 *proceeding* means a proceeding of the State Administrative
15 Tribunal under this Part and includes part of a proceeding.

16 **Division 2 — Jurisdiction**

17 **491. Review of decisions of Mental Health Tribunal**

18 (1) A person in respect of whom the Mental Health Tribunal makes
19 a decision who is dissatisfied with the decision may apply to the
20 State Administrative Tribunal for a review of the decision.

21 (2) Any other person who, in the State Administrative Tribunal's
22 opinion, has a sufficient interest in the matter may, with the
23 leave of the State Administrative Tribunal, apply to the State
24 Administrative Tribunal for a review of a decision of the Mental
25 Health Tribunal.

- 1 the State Administrative Tribunal must be constituted by these
2 5 members —
- 3 (a) a judicial member, a senior member or a legally
4 qualified member;
- 5 (b) a neurosurgeon appointed as a member after
6 consultation by the Minister responsible for
7 administering the *State Administrative Tribunal*
8 *Act 2004* with the Health Minister held after
9 consultation by the Health Minister with the Royal
10 Australasian College of Surgeons;
- 11 (c) if the patient is an adult — a member who is a
12 psychiatrist;
- 13 (d) if the patient is a child — a child and adolescent
14 psychiatrist;
- 15 (e) 2 members, neither of whom is —
- 16 (i) a legally qualified member; or
17 (ii) a medical practitioner; or
18 (iii) a mental health practitioner who is a staff
19 member of a mental health service or private
20 psychiatric hostel.

21 **495. Constitution for determining questions of law**

22 For the purpose of a proceeding under section 492 to determine
23 a question of law, the State Administrative Tribunal must be
24 constituted by a judicial member.

25 **Division 4 — Procedural matters**

26 **496. No fees payable**

27 No fees are payable in relation to an application or proceeding.

1 **497. Appearance and representation**

- 2 (1) At a hearing, a party —
- 3 (a) may appear before the State Administrative Tribunal in
- 4 person or be represented by another person; or
- 5 (b) must be represented by another person if the State
- 6 Administrative Tribunal makes an order under
- 7 subsection (2) in respect of the party.
- 8 (2) The State Administrative Tribunal may make an order that the
- 9 party must be represented at the hearing if, in the State
- 10 Administrative Tribunal’s opinion, it is not in the best interests
- 11 of the party for the party to appear in person at the hearing.
- 12 (3) The State Administrative Tribunal may make arrangements for
- 13 a party to a proceeding under this Part to be represented at a
- 14 hearing if the party wants the State Administrative Tribunal to
- 15 make such an arrangement on the party’s behalf.
- 16 (4) The fact that a person has a mental illness, or is being provided
- 17 with treatment for a mental illness, is presumed not to be an
- 18 impediment to the representation of the person by a legal
- 19 practitioner before the State Administrative Tribunal or to the
- 20 person giving instructions to a legal practitioner for the purpose
- 21 of that representation.
- 22 (5) Despite the *State Administrative Tribunal Act 2004*
- 23 section 39(1), a party to a proceeding under this Part may be
- 24 represented by a person who is not a legal practitioner or a
- 25 person referred to in section 39(1)(a) to (f) of that Act.

26 Note for section 497:

27 For the purpose of deciding under section 497(2) what is or is not in the best

28 interests of a party, Part 2 Division 3 applies.

29 **498. Closed hearings**

- 30 (1) A hearing is not open to the public unless the State
- 31 Administrative Tribunal orders that the hearing or a part of the
- 32 hearing is open to the public.

- 1 (2) The State Administrative Tribunal may make an order —
2 (a) permitting a specified person to be present at a hearing
3 or part of a hearing; or
4 (b) excluding a specified person (including a witness) from
5 a hearing or part of a hearing.

6 **499. Publication of information about proceedings**

- 7 (1) In this section —
8 ***information about a proceeding*** means —
9 (a) an account of a proceeding; or
10 (b) any evidence in a proceeding; or
11 (c) the contents of a document, or of a part of a document,
12 produced in a proceeding; or
13 (d) any other information about a proceeding;
14 ***publish*** means to disseminate to the public or a section of the
15 public by any means, including —
16 (a) in a newspaper or periodical publication; or
17 (b) by radio broadcast, television or other electronic means.
18 (2) A person must not publish information about a proceeding that
19 identifies —
20 (a) a party; or
21 (b) a person who is related to or associated with a party; or
22 (c) a witness; or
23 (d) a person who is or is alleged to be concerned in any
24 other way in a matter to which the proceeding relates.
25 (3) A person must not publish a list of proceedings identified by
26 reference to the names of the parties except —
27 (a) by displaying in the State Administrative Tribunal's
28 premises a notice listing the proceedings; or
29 (b) as permitted by rules made under the *State*
30 *Administrative Tribunal Act 2004* section 170(1).

- 1 (4) A person who contravenes subsection (2) or (3) commits a
2 crime.
- 3 Penalty:
- 4 (a) for an individual, a fine of \$5 000 and imprisonment
5 for 12 months;
- 6 (b) for a body corporate, a fine of \$10 000.
- 7 Summary conviction penalty:
- 8 (a) for an individual, a fine of \$2 500;
- 9 (b) for a body corporate, a fine of \$5 000.
- 10 (5) A prosecution for an offence under subsection (4) cannot be
11 commenced except with the written consent of the Minister.
- 12 (6) Without limiting subsection (2), information about a proceeding
13 identifies a person if —
- 14 (a) it contains particulars that are sufficient to identify the
15 person to a member of the public or a member of the
16 section of the public to which the information is
17 disseminated, being any of these particulars —
- 18 (i) the name, title, pseudonym or alias of the person;
- 19 (ii) the address of any premises where the person
20 resides or works or the locality where those
21 premises are situated;
- 22 (iii) the physical description or the style of dress of
23 the person;
- 24 (iv) any employment or occupation engaged in, or
25 any profession practised or calling pursued by,
26 the person or any official or honorary position
27 held by the person;
- 28 (v) the relationship of the person to identified
29 relatives of the person or the association of the
30 person with identified friends or identified
31 business, official or professional acquaintances
32 of the person;

- 1 (vi) the recreational interests, or the political,
2 philosophical or religious beliefs or interests, of
3 the person;
- 4 (vii) any real or personal property in which the person
5 has an interest or with which the person is
6 otherwise associated;
- 7 or
- 8 (b) it is accompanied by a picture of the person; or
- 9 (c) it is spoken in whole or in part by the person and the
10 person's voice is sufficient to identify the person to a
11 member of the public or a member of the section of the
12 public to which the account is disseminated.
- 13 (7) Subsections (2) and (3) do not apply in relation to any of these
14 publications —
- 15 (a) the communication of a transcript of evidence or other
16 document to a person concerned in a proceeding in a
17 court or tribunal for use in connection with the
18 proceeding;
- 19 (b) the communication of a transcript of evidence or other
20 document to —
- 21 (i) a body that is responsible for disciplining
22 members of a profession or occupation; or
- 23 (ii) a person concerned in a proceeding before such a
24 body;
- 25 (c) the communication of a transcript of evidence or other
26 document to a body that grants assistance by way of
27 legal aid for the purpose of making a decision as to
28 whether such assistance should be granted or continued
29 in a particular case;
- 30 (d) the publication of a notice or report at the direction of
31 the State Administrative Tribunal or a court;

- 1 (e) a publication genuinely intended primarily for the use of
2 members of a profession or occupation, being —
- 3 (i) a separate volume of, or a volume in a part of a
4 series of, law reports; or
- 5 (ii) a decision of a court or tribunal published from
6 information stored electronically or otherwise; or
- 7 (iii) any other publication of a technical character;
- 8 (f) the publication or other dissemination —
- 9 (i) to a person who is a member of a profession or
10 occupation in connection with the practice by the
11 person of that profession or occupation or in the
12 course of any form of professional or
13 occupational training in which the person is
14 involved; or
- 15 (ii) to a person who is a student in connection with
16 the person's studies.
- 17 (8) Subsection (7)(e) does not authorise the publication of the name
18 of a party to a proceeding in a law report or other publication
19 referred to in that provision.
- 20 (9) Without limiting subsection (2) or (3), the State Administrative
21 Tribunal may make an order in relation to a particular
22 proceeding that information about the proceeding that is
23 specified in the order —
- 24 (a) must not be published; or
- 25 (b) must not be published except in the manner specified, or
26 to a person specified, in the order.
- 27 (10) A person who contravenes an order made under subsection (9)
28 commits an offence.
29 Penalty for an offence under this subsection: a fine of \$5 000.

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Division 5 — Appeals to Supreme Court

500. Appeals against SAT’s decisions

- (1) In this section —
decision or order means a decision or order of the State Administrative Tribunal in the exercise of its jurisdiction under this Act.
- (2) A person in respect of whom a decision or order is made who is dissatisfied with the decision or order may appeal, without leave, under the *State Administrative Tribunal Act 2004* section 105 against the decision or order.
- (3) Any other person who, in the opinion of the Supreme Court, has a sufficient interest in a matter in respect of which a decision or order is made may appeal, with the leave of the Court, under the *State Administrative Tribunal Act 2004* section 105 against the decision or order.

501. Grounds of appeal

The grounds of an appeal under section 500 can be —

- (a) that the State Administrative Tribunal —
 - (i) made an error of law or of fact, or of both law and fact; or
 - (ii) acted without jurisdiction or in excess of its jurisdiction; or
 - (iii) did both of those things;
- or
- (b) that there is another sufficient reason for hearing an appeal against the decision or order.

502. Time for appeal or leave to appeal

- (1) An appeal under section 500(2) or an application for leave to appeal under section 500(3) must be made within 28 days after the decision or order is made.

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Part 23 — Administration

Division 1 — Preliminary matters

504. Term used: mental health service

In this Part —

mental health service includes a private psychiatric hostel.

Division 2 — Chief Psychiatrist

Subdivision 1 — Appointment, terms and conditions

505. Appointment

- (1) There is to be a Chief Psychiatrist who is appointed by the Governor on the recommendation of the Minister.
- (2) Only a psychiatrist is eligible to be appointed as the Chief Psychiatrist.

506. Terms and conditions of appointment

- (1) The Chief Psychiatrist —
 - (a) holds office for the period (not exceeding 5 years) specified in the instrument of appointment; and
 - (b) is eligible for reappointment.
- (2) Subject to this Subdivision, the Chief Psychiatrist holds office on the terms and conditions of appointment determined by the Minister.

507. Remuneration

The Chief Psychiatrist is entitled to the remuneration determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* and, for the purposes of that Act and any other written law, the office of Chief Psychiatrist is taken to be prescribed under section 6(1)(e) of that Act for the purposes of section 6 of that Act.

1 **508. Resignation**

- 2 (1) The Chief Psychiatrist may resign from office by writing signed
3 and given to the Minister.
- 4 (2) The resignation takes effect on the later of the following —
5 (a) receipt by the Minister;
6 (b) the day specified in the resignation.

7 **509. Removal from office**

- 8 The Governor may remove a person from the office of Chief
9 Psychiatrist on any of these grounds —
- 10 (a) mental or physical incapacity;
11 (b) incompetence;
12 (c) neglect of duty;
13 (d) misconduct.

14 **510. Acting Chief Psychiatrist**

- 15 (1) The Minister may appoint a psychiatrist to act in the office of
16 the Chief Psychiatrist referred to in section 505(1) —
- 17 (a) during a vacancy in the office, whether or not an
18 appointment has previously been made to the office; or
- 19 (b) during a period, or during all periods, when the person
20 holding the office or a person acting in the office under
21 an appointment under this subsection is on leave or is
22 otherwise unable to perform the functions of the office.
- 23 (2) An appointment under subsection (1) may be expressed to have
24 effect only in the circumstances specified in the instrument of
25 appointment.
- 26 (3) The Minister may —
- 27 (a) determine the terms and conditions of an appointment
28 under subsection (1), including as to remuneration; and

- 1 (b) terminate an appointment under subsection (1) at any
2 time.
- 3 (4) The validity of anything done by or in relation to a person
4 purporting to act under an appointment under subsection (1) is
5 not to be called into question on any of these grounds —
- 6 (a) the occasion for the appointment had not arisen;
7 (b) there is a defect or irregularity in the appointment;
8 (c) the appointment had ceased to have effect;
9 (d) the occasion for the person to act had not arisen or had
10 ceased.
- 11 (5) A person cannot act under an appointment under subsection (1)
12 for a continuous period exceeding 12 months.

13 **Subdivision 2 — Functions and powers generally**

14 **511. Functions generally**

15 The functions of the Chief Psychiatrist are the functions
16 conferred on the Chief Psychiatrist by this Act or another
17 written law.

18 **512. Responsibility for treatment and care**

- 19 (1) The Chief Psychiatrist is responsible for overseeing the
20 treatment and care of these people —
- 21 (a) all voluntary patients being provided with treatment or
22 care by a mental health service;
- 23 (b) all involuntary patients;
- 24 (c) all mentally impaired accused required under the
25 MIA Act to be detained at an authorised hospital;
- 26 (d) all persons referred under section 26(2) or (3)(a)
27 or 36(2) for an examination to be conducted by a
28 psychiatrist at an authorised hospital or other place;

1 (e) all persons under an order made under section 55(1)(c)
2 or 61(1)(c) to enable an examination to be conducted by
3 a psychiatrist at an authorised hospital.

4 (2) The Chief Psychiatrist must discharge that responsibility by —

5 (a) publishing under section 543(2) standards for the
6 treatment and care to be provided by mental health
7 services to the persons referred to in subsection (1); and

8 (b) overseeing compliance with those standards.

9 **513. Directions by Minister**

10 (1) The Minister may, after consultation with the Chief Psychiatrist,
11 issue written directions about the general policy to be followed
12 by the Chief Psychiatrist in performing functions under this Act.

13 (2) The Chief Psychiatrist may request the Minister to issue a
14 direction under subsection (1).

15 (3) A direction cannot be issued under this section in respect of —

16 (a) a particular person referred to in section 512(1); or

17 (b) a particular medical practitioner or mental health
18 practitioner; or

19 (c) a particular mental health service; or

20 (d) any other particular person or body.

21 (4) The Chief Psychiatrist must comply with a direction issued
22 under this section.

23 (5) The power to issue a direction under this section includes the
24 power to amend, replace or revoke the direction and that power
25 is exercisable in the same manner, and is subject to the same
26 conditions, as the power to issue the direction.

27 (6) The Minister must cause the text of a direction issued under this
28 section to be laid before each House of Parliament on or within
29 14 sitting days of the House after the day on which the direction
30 is issued.

1 (7) The text of a direction issued under this section must be
2 included in the Chief Psychiatrist's annual report prepared
3 under section 530(1).

4 **514. Minister may request report about any matter**

5 (1) The Minister may request the Chief Psychiatrist to report to the
6 Minister on a particular matter, or on matters generally, relating
7 to the Chief Psychiatrist's functions.

8 (2) The Chief Psychiatrist must comply with a request made under
9 subsection (1) unless, in the Chief Psychiatrist's opinion, there
10 are reasonable grounds for not doing so.

11 **515. CEO of Health Department may request report about**
12 **treatment and care of patients**

13 (1) The CEO of the Health Department may request the Chief
14 Psychiatrist to report to the CEO of the Health Department on a
15 particular matter, or on matters generally, relating to the Chief
16 Psychiatrist's functions in respect of the treatment and care of
17 patients if the matter or matters are within the remit of the CEO
18 of the Health Department.

19 (2) The Chief Psychiatrist must comply with a request made under
20 subsection (1) unless, in the Chief Psychiatrist's opinion, there
21 are reasonable grounds for not doing so.

22 **516. Powers generally**

23 In addition to the specific powers conferred on the Chief
24 Psychiatrist by this Act or another written law, the Chief
25 Psychiatrist may do anything necessary or convenient for the
26 performance of the functions conferred on the Chief Psychiatrist
27 by this Act or another written law.

1 **Subdivision 3 — Specific powers relating to treatment and care**

2 **517. Review of treatment**

3 (1) The Chief Psychiatrist may review any decision of a psychiatrist
4 about the provision of treatment to —

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

9 (2) Before reviewing the decision, the Chief Psychiatrist must give
10 the psychiatrist written notice of the review.

11 (3) On the review, the Chief Psychiatrist may decide to —

- 12 (a) affirm the decision; or
13 (b) vary the decision; or
14 (c) revoke the decision; or
15 (d) substitute another decision.

16 (4) The Chief Psychiatrist —

- 17 (a) must advise the psychiatrist in writing of the decision
18 under subsection (3) and the reasons for it; and
19 (b) may give to the psychiatrist written directions about
20 implementing the decision.

21 (5) The psychiatrist must comply with any directions given under
22 subsection (4)(b).

23 Penalty: a fine of \$10 000.

24 (6) This section does not affect the operation of Part 13 Division 2
25 or 3 in relation to the provision of treatment to —

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

1 **518. Visits to mental health services**

2 (1) The Chief Psychiatrist may visit —

- 3 (a) an authorised hospital whenever the Chief Psychiatrist
4 considers it appropriate to do so; and
5 (b) a mental health service that is not an authorised hospital
6 whenever the Chief Psychiatrist reasonably suspects that
7 proper standards of treatment and care have not been, or
8 are not being, maintained by the mental health service.

9 (2) The Chief Psychiatrist may visit a mental health service under
10 subsection (1) at any time without notice.

11 (3) While visiting a mental health service under subsection (1), the
12 Chief Psychiatrist may do any of these things —

- 13 (a) inspect any part of the mental health service;
14 (b) interview any person referred to in section 512(1) who is
15 being provided with treatment or care by the mental
16 health service;
17 (c) require a staff member of the mental health service to do
18 any of these things —
19 (i) answer questions or provide information about
20 the provision of treatment or care by the mental
21 health service to any person referred to in
22 section 512(1);
23 (ii) produce any medical record or other document
24 that is held by the mental health service and
25 relates to the treatment or care that has been or is
26 being provided by the mental health service to
27 any person referred to in section 512(1);
28 (iii) give reasonable assistance to the Chief
29 Psychiatrist in the exercise of a power under this
30 section;
31 (d) inspect, or take a copy of the whole or any part of any
32 medical record or other document produced under
33 paragraph (c)(ii).

1 **519. Offence to interfere with visit to mental health service**

- 2 (1) A person commits an offence if the person —
- 3 (a) without reasonable excuse, proof of which is on the
4 person, does not answer a question or provide
5 information when required under section 518(3)(c)(i); or
- 6 (b) in purporting to comply with a requirement under
7 section 518(3)(c)(i), gives an answer or provides
8 information that the person knows is false or misleading
9 in a material particular; or
- 10 (c) in purporting to comply with a requirement under
11 section 518(3)(c)(ii), makes available a document that
12 the person knows is false or misleading in a material
13 particular —
- 14 (i) without indicating that the document is false or
15 misleading and, to the extent the person can, how
16 the document is false or misleading; and
- 17 (ii) if the person has or can reasonably obtain the
18 correct information — without providing the
19 correct information;
- 20 or
- 21 (d) without reasonable excuse, proof of which is on the
22 person, does not give reasonable assistance when
23 required under section 518(3)(c)(iii); or
- 24 (e) without reasonable excuse, proof of which is on the
25 person, obstructs or hinders —
- 26 (i) the Chief Psychiatrist in the exercise of a power
27 under section 518; or
- 28 (ii) a person assisting the Chief Psychiatrist under
29 section 518(3)(c)(iii).

30 Penalty: a fine of \$6 000.

- 31 (2) It is enough for a prosecution notice lodged against a person for
32 an offence under subsection (1)(b) or (c) to state that the

1 answer, information or document was false or misleading to the
2 person's knowledge without stating which.

3 **520. Directions to mental health services to disclose information**

4 (1) In this section —

5 **relevant information** means information that, in the Chief
6 Psychiatrist's opinion, is or is likely to be relevant to the
7 treatment or care that has been or is being provided to a person,
8 or the persons in a class of person, specified in section 512(1).

9 (2) The Chief Psychiatrist may issue a written direction to the
10 person in charge of a mental health service that holds relevant
11 information requiring the person in charge to disclose the
12 information to the Chief Psychiatrist.

13 (3) The person in charge of a mental health service to whom a
14 direction is issued under subsection (2) must comply with the
15 direction.

16 Penalty for an offence under this subsection: a fine of \$5 000.

17 **Subdivision 4 — Notifiable incidents**

18 **521. Application of this Subdivision**

19 This Subdivision applies in relation to —

- 20 (a) a person referred to in section 512(1); or
21 (b) a person who is, for the purposes of the *Hospitals and*
22 *Health Services Act 1927* Part IIIB, a resident of a
23 private psychiatric hostel.

24 **522. Term used: notifiable incident**

25 In this Subdivision —

26 **notifiable incident**, in respect of a person referred to in
27 section 521(a) or (b), means any of these events —

- 28 (a) the death of the person, wherever it occurs;

- 1 (b) an error in any medication prescribed for, or
2 administered or supplied to, the person that has had, or
3 is likely to have, an adverse effect on the person;
- 4 (c) any other incident in connection with the provision of
5 treatment or care to the person that has had, or is likely
6 to have, an adverse effect on the person;
- 7 (d) a reportable incident (as defined in section 254(1)) in
8 relation to the person;
- 9 (e) any other event that the Chief Psychiatrist declares, by
10 notice published in the *Gazette*, to be a notifiable
11 incident for the purposes of this definition.

12 **523. Reporting notifiable incidents**

- 13 (1) This section applies if the person in charge of a mental health
14 service becomes aware of the occurrence of a notifiable incident
15 in respect of a person referred to in section 521(a) or (b) who is
16 being provided with treatment or care by the mental health
17 service.
- 18 (2) The person in charge must, as soon as practicable, report the
19 occurrence to the Chief Psychiatrist in accordance with
20 subsection (3).
21 Penalty: a fine of \$6 000.
- 22 (3) The report must be in the approved form and must include these
23 things in relation to the notifiable incident —
- 24 (a) the date and time when the incident occurred;
- 25 (b) the location where the incident occurred;
- 26 (c) the name, and status under section 512(1) or 521(b), of
27 the person in relation to whom the incident occurred;
- 28 (d) the names of any staff members of the mental health
29 service who were involved in the incident;
- 30 (e) the names of any other people who were involved in the
31 incident;

- 1 (f) the names of any staff members of the mental health
2 service who witnessed the incident;
- 3 (g) the names of any other people who witnessed the
4 incident;
- 5 (h) a description of the incident and the circumstances in
6 which it occurred;
- 7 (i) any other information about the incident that the person
8 in charge considers relevant to include.

9 **524. Action that Chief Psychiatrist may take**

- 10 (1) On receipt of a report under section 523 in relation to a
11 notifiable incident, the Chief Psychiatrist may do one of the
12 following —
- 13 (a) investigate the incident;
- 14 (b) refer the incident to all or any of the following —
- 15 (i) the CEO;
- 16 (ii) the CEO of the Health Department;
- 17 (iii) a registration board;
- 18 (c) take no action in relation to the incident.
- 19 (2) Despite having decided to investigate a notifiable incident under
20 subsection (1)(a), the Chief Psychiatrist may decide at any time
21 during the investigation to instead refer the incident to a person
22 or body under subsection (1)(b).

23 **525. Notification of decision to take action**

24 The Chief Psychiatrist must advise the person in charge of the
25 mental health service in connection with which a notifiable
26 incident was reported under section 523(2) in writing of any
27 decision that the Chief Psychiatrist makes under section 524 in
28 respect of the incident.

1 **526. Chief Psychiatrist's powers of investigation**

- 2 (1) For the purpose of conducting an investigation under
3 section 524(1)(a), the Chief Psychiatrist may —
- 4 (a) make any inquiries the Chief Psychiatrist considers
5 appropriate; and
- 6 (b) exercise any of the powers that the Chief Psychiatrist
7 has under sections 518 and 520.
- 8 (2) For the purpose of subsection (1)(b), sections 518, 519 and 520
9 apply with the necessary changes.

10 **527. Notification of outcome of investigation**

- 11 On completing the investigation of a notifiable incident under
12 section 524(1)(a), the Chief Psychiatrist —
- 13 (a) must give the person in charge of the mental health
14 service in connection with which the incident was
15 reported under section 523(2) a written report about the
16 outcome of the investigation; and
- 17 (b) may include in the report recommendations about that
18 outcome.

19 **Subdivision 5 — Staff and facilities**

20 **528. Chief Psychiatrist's staff**

21 Public service officers must be appointed under, or made
22 available under, the *Public Sector Management Act 1994* Part 3
23 to assist the Chief Psychiatrist in performing his or her functions
24 under this Act or another written law.

25 **529. Use of government staff and facilities**

- 26 (1) The Chief Psychiatrist may, by arrangement, use (either
27 full-time or part-time) the services of any officer or employee
28 employed in the Public Service or a State agency or
29 instrumentality or employed otherwise in the service of the
30 State.

1 (2) The Chief Psychiatrist may, by arrangement, use any facilities
2 of a department of the Public Service or a State agency or
3 instrumentality.

4 (3) An arrangement under subsection (1) or (2) must be made on
5 terms agreed to by the parties.

6 **Subdivision 6 — Annual reports**

7 **530. Annual report: preparation**

8 (1) Within 3 months after 30 June in each year, the Chief
9 Psychiatrist must prepare and give to the Minister a report about
10 the performance during the financial year ending on that day of
11 the functions conferred on the Chief Psychiatrist by this Act or
12 another written law.

13 (2) The report must include statistics about these matters —

- 14 (a) emergency electroconvulsive therapy approved during
15 the year by the Chief Psychiatrist under
16 section 199(2)(c);
- 17 (b) electroconvulsive therapy performed during the year and
18 reported on under section 201(3);
- 19 (c) emergency psychiatric treatment provided during the
20 year and reported on under section 204(1)(b);
- 21 (d) psychosurgery performed during the year and reported
22 on under section 209(1)(a);
- 23 (e) seclusion imposed during the year and reported on under
24 section 224(2)(a);
- 25 (f) bodily restraint applied during the year and reported on
26 under section 240(2)(a);
- 27 (g) urgent non-psychiatric treatment provided during the
28 year and reported on under section 242(3)(a);
- 29 (h) notifiable incidents occurring during the year and
30 reported on under section 523(2) and the action taken
31 under section 524 in relation to those incidents.

1 **531. Annual report: tabling**

- 2 (1) The Minister must cause a copy of a report referred to in
3 section 530(1) to be laid before each House of Parliament, or
4 dealt with under subsection (2), on or within 21 days after the
5 day on which the Minister receives the report.
- 6 (2) The Minister must transmit a copy of the report to the Clerk of a
7 House of Parliament if —
- 8 (a) at the beginning of the 21-day period referred to in
9 subsection (1), the House is not sitting; and
- 10 (b) in the Minister’s opinion, the House will not sit during
11 that period.
- 12 (3) A copy of a report transmitted under subsection (2) to the Clerk
13 of a House is taken to have been laid before that House.
- 14 (4) The laying of a copy of a report that is taken to have occurred
15 under subsection (3) must be recorded in the Minutes, or Votes
16 and Proceedings, of the House on the first sitting day of the
17 House after the receipt of the copy by the Clerk.

18 **Subdivision 7 — Miscellaneous matters**

19 **532. Request for information about patient or person detained**

- 20 (1) A person may request the Chief Psychiatrist to advise the person
21 whether or not a particular individual —
- 22 (a) is admitted by a mental health service as an inpatient; or
23 (b) is detained at a mental health service.
- 24 (2) If, in the Chief Psychiatrist’s opinion, the person making the
25 request has a sufficient interest in the matter, the Chief
26 Psychiatrist may provide the person with the following
27 information (as applicable) in relation to that admission or
28 detention —
- 29 (a) the date of the admission or detention;

- 1 (b) the date of the individual's discharge or release from the
2 admission or detention;
- 3 (c) if the individual died while so admitted or detained —
4 the date of death.

5 **533. Request for list of mentally impaired accused**

- 6 (1) The Chief Psychiatrist may request the Mentally Impaired
7 Accused Review Board in writing to give to the Chief
8 Psychiatrist a list of all mentally impaired accused required
9 under the MIA Act to be detained at an authorised hospital.
- 10 (2) The Mentally Impaired Accused Review Board must comply
11 with any request made under subsection (1).

12 **534. Delegation by Chief Psychiatrist**

- 13 (1) The Chief Psychiatrist may delegate to another psychiatrist any
14 power or duty of the Chief Psychiatrist under another provision
15 of this Act or under another written law.
- 16 (2) The delegation must be in writing signed by the Chief
17 Psychiatrist.
- 18 (3) A person to whom a power or duty is delegated under this
19 section cannot delegate that power or duty.
- 20 (4) A person exercising or performing a power or duty that has been
21 delegated to the person under this section is taken to do so in
22 accordance with the terms of the delegation unless the contrary
23 is shown.
- 24 (5) This section does not limit the ability of the Chief Psychiatrist to
25 perform a function through an officer or agent.

- 1 whether to make, amend or revoke an order under this
2 section;
- 3 (b) the performance by authorised mental health
4 practitioners of their functions under this Act;
- 5 (c) any matter about which an authorised mental health
6 practitioner must notify the Chief Psychiatrist;
- 7 (d) the grounds on which the designation of an authorised
8 mental health practitioner must or may be revoked.
- 9 (5) For subsection (4)(a), training includes training approved by the
10 Chief Psychiatrist.

11 **Division 4 — Authorised hospitals**

12 **537. Authorised hospital: meaning**

13 An authorised hospital is —

- 14 (a) a public hospital, or part of a public hospital, in respect
15 of which an order is in force under section 538; or
- 16 (b) a private hospital the licence of which is endorsed under
17 the *Hospitals and Health Services Act 1927*
18 section 26DA(2).

19 Note for section 537:

20 The licence of a private hospital cannot be endorsed unless the Chief
21 Psychiatrist recommends the endorsement (see the *Hospitals and Health*
22 *Services Act 1927* section 26DA(3A)).

23 **538. Authorisation of public hospitals**

- 24 (1) The Governor may, by order published in the *Gazette*, authorise
25 a public hospital, or a part of a public hospital, for —
- 26 (a) the reception of persons under this Act; and
27 (b) the admission of involuntary patients.
- 28 (2) The Governor may, by order published in the *Gazette*, amend or
29 revoke an order made under subsection (1).

1 (3) The Governor cannot make, amend or revoke an order under
2 this section unless the Chief Psychiatrist recommends that the
3 order be made, amended or revoked.

4 **539. Patients to be transferred if hospital no longer authorised**

5 (1) This section applies if —

6 (a) an authorisation of a public hospital or a part of a public
7 hospital is revoked under section 538(2); or

8 (b) the endorsement on the licence of a private hospital is
9 cancelled under the *Hospitals and Health Services*
10 *Act 1927* section 26FA(1).

11 (2) Every person received into, and every involuntary patient
12 admitted by, the hospital or that part of the hospital must be
13 transferred in accordance with the regulations to an authorised
14 hospital or other place.

15 Note for section 539:

16 The endorsement on the licence of a private hospital cannot be cancelled
17 unless the Chief Psychiatrist is consulted (see the *Hospitals and Health*
18 *Services Act 1927* section 26FA(2A)).

19 **Division 5 — Mental health services approved for**
20 **electroconvulsive therapy**

21 **540. Chief Psychiatrist to approve mental health services**

22 (1) The Chief Psychiatrist may, by order published in the *Gazette*,
23 approve a mental health service as a mental health service at
24 which electroconvulsive therapy can be performed.

25 (2) The order may specify any conditions subject to which
26 electroconvulsive therapy can be performed at the mental health
27 service specified in the order.

28 (3) The Chief Psychiatrist may, by order published in the *Gazette*,
29 amend or revoke an order published under subsection (1).

1

Division 6 — Approved forms

2

541. Chief Psychiatrist to approve forms

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(1) The Chief Psychiatrist may approve forms for use under this Act other than forms for use by police officers under Part 11 Division 2.

4

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6

(2) An approved form may be or include a statutory declaration.

7

Note for section 541:

8

The Commissioner of Police approves forms for use by police officers under Part 11 Division 2 (see section 169).

9

10

542. Publication of approved forms and related guidelines

11

(1) The Chief Psychiatrist —

12

(a) must publish all approved forms; and

13

(b) may publish guidelines about how to complete any of the approved forms.

14

15

(2) It is sufficient for compliance with subsection (1) if copies of the forms and guidelines are published on a website maintained by the Agency.

16

17

18

Division 7 — Guidelines and standards

19

543. Publication of guidelines and standards

20

(1) The Chief Psychiatrist must publish guidelines for each of these purposes —

21

22

(a) making decisions about whether or not a person is in need of an inpatient treatment order or a community treatment order;

23

24

25

(b) making decisions under section 26(3)(a) about whether or not a place that is not an authorised hospital is an appropriate place to conduct an examination;

26

27

- 1 (c) ensuring as far as practicable the independence of
2 psychiatrists from whom further opinions referred to in
3 section 121(5) or 182(2) are obtained;
- 4 (d) making decisions under section 183(2) about whether or
5 not to comply with requests made under section 182 for
6 additional opinions;
- 7 (e) the preparation, review and revision of treatment,
8 support and discharge plans;
- 9 (f) the performance of electroconvulsive therapy;
- 10 (g) compliance with approved forms;
- 11 (h) ensuring compliance with this Act by mental health
12 services.
- 13 (2) The Chief Psychiatrist must publish standards for the treatment
14 and care to be provided by mental health services to the persons
15 specified in section 512(1).
- 16 (3) The Chief Psychiatrist may publish guidelines for such other
17 purposes relating to the treatment and care of persons who have
18 a mental illness as the Chief Psychiatrist considers appropriate.

19 **544. Application, adoption or incorporation of other documents**

20 Guidelines or standards published under section 543 may apply,
21 adopt or incorporate (with or without changes) the whole or any
22 part of a document that is in force or existing at a particular time
23 or from time to time.

24 **545. Publication on Agency's website**

25 It is sufficient for compliance with section 543 if a copy of the
26 guidelines or standards is published on a website maintained by
27 the Agency.

1

Division 8 — Miscellaneous matters

2

546. Delegation by Minister or CEO

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(1) The Minister may delegate to the CEO any power or duty of the Minister under another provision of this Act.

4

5

(2) The CEO may delegate to a public service officer who is employed in, or seconded to, the Agency any power or duty of the CEO under another provision of this Act.

6

7

8

(3) A delegation under this section must be in writing signed by the Minister or the CEO, as the case requires.

9

10

(4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

11

12

(5) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

13

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16

(6) This section does not limit the ability of the Minister or the CEO to perform a function through an officer or agent.

17

Part 24 — Interstate arrangements

Division 1 — Preliminary matters

547. Terms used

(1) In this Part —

corresponding law means a law of another State or a Territory that is declared by the regulations to be a corresponding law for the purposes of this Part;

intergovernmental agreement means —

(a) an agreement entered into under section 548(1); or

(b) an agreement in respect of which a declaration under section 548(2) is in force;

interstate community patient means a person who is under an interstate community treatment order;

interstate community treatment order means an order made under a corresponding law under which a person can be provided with treatment in the community;

interstate inpatient means a person who is under an interstate inpatient treatment order;

interstate inpatient treatment order means an order made under a corresponding law under which a person can be admitted by a hospital, and detained there, to enable the person to be provided with treatment;

interstate mental health service means —

(a) a hospital or other place in another State or a Territory where a person can be detained, and provided with treatment, under an interstate inpatient treatment order; or

(b) a place in another State or a Territory where a person can be provided with treatment under an interstate community treatment order;

1 **State inpatient** means a person who is under an inpatient
2 treatment order.

3 (2) For section 551(1), a State inpatient is absent without leave
4 from a hospital if the inpatient is absent without leave from the
5 hospital as described in section 97(2).

6 (3) For section 553(1), an interstate inpatient is absent without
7 leave from an interstate mental health service if the inpatient
8 leaves the interstate mental health service without lawful
9 authority.

10 **Division 2 — Intergovernmental agreements**

11 **548. Agreements with other States and Territories**

12 (1) The Minister may enter into an agreement with a Minister
13 responsible for administering a corresponding law about any
14 matter in connection with the administration of this Part or the
15 corresponding law.

16 (2) The Minister may, by notice published in the *Gazette*, declare
17 that an agreement entered into before the commencement of this
18 Part has effect for the purposes of this Part.

19 (3) The Minister may, by notice published in the *Gazette*, revoke a
20 declaration made under subsection (2).

21 **549. Agreement must be in place**

22 A person cannot perform a function under this Part in
23 connection with an interstate mental health service in, or an
24 interstate inpatient or interstate community patient in or from,
25 another State or a Territory unless there is an intergovernmental
26 agreement in relation to that State or Territory.

27 **550. Performance of functions under corresponding laws or**
28 **intergovernmental agreements**

29 A person who is authorised to perform a function under this Act
30 may perform in the State or another State or a Territory any

1 similar function conferred on the person under a corresponding
2 law of, or an intergovernmental agreement in relation to, that
3 State or Territory.

4 **Division 3 — Transfer to or from interstate mental**
5 **health service**

6 **551. Transfer from hospital to interstate mental health service**

- 7 (1) The person in charge of a hospital may, with the written
8 approval of the Chief Psychiatrist, make an order (a *transfer*
9 *order*) authorising the transfer of a State inpatient who is
10 detained at, or who is absent without leave as described in
11 section 547(2) from, the hospital to the interstate mental health
12 service specified in the order.
- 13 (2) The transfer order must be in the approved form and must
14 include the following —
- 15 (a) the State inpatient's name;
 - 16 (b) the hospital from which the State inpatient is to be
17 transferred;
 - 18 (c) the interstate mental health service to which the State
19 inpatient is to be transferred;
 - 20 (d) the date and time when the order is made;
 - 21 (e) the reasons for the transfer;
 - 22 (f) the name, qualifications and signature of the person in
23 charge of the hospital.
- 24 (3) The person in charge of the hospital must, as soon as
25 practicable —
- 26 (a) file the approval and the transfer order and give a copy
27 of each to the State inpatient; and
 - 28 (b) transmit a copy of each to the person in charge of the
29 interstate mental health service.
- 30 (4) The making of a transfer order under subsection (1) is an event
31 to which Part 9 applies and the person in charge of the hospital

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

3 **552. Making transport order**

4 (1) The person in charge of the hospital may make a transport order
5 in respect of the State inpatient.

6 (2) The person in charge of the hospital cannot make the transport
7 order unless satisfied that no other safe means of taking the
8 State inpatient to the interstate mental health service is
9 reasonably available.

10 (3) Part 10 applies in relation to the transport order as if —

11 (a) the transport order were made under section 92(1); and

12 (b) a reference in section 92(2) to an authorised hospital
13 were a reference to the interstate mental health service;
14 and

15 (c) a reference in Part 10 to a police officer included a
16 reference to a police officer of the State or Territory in
17 which the interstate mental health service is located; and

18 (d) a reference in Part 10 to a transport officer included a
19 reference to a person who is authorised under a
20 corresponding law of, or an intergovernmental
21 agreement in relation to, that State or Territory to
22 perform functions similar to those of a transport officer.

23 **553. Transfer from interstate mental health service to hospital**

24 (1) The person in charge of a hospital may, with the written consent
25 of the Chief Psychiatrist, make an order (a ***transfer approval***
26 ***order***) approving the transfer of an interstate inpatient who is
27 detained at, or who is absent without leave as described in
28 section 547(3) from, an interstate mental health service to the
29 hospital.

- 1 (2) The transfer approval order must be in the approved form and
2 must include the following —
- 3 (a) the interstate patient’s name;
- 4 (b) the interstate mental health service from which the
5 interstate inpatient is to be transferred;
- 6 (c) the hospital to which the interstate inpatient is to be
7 transferred;
- 8 (d) the date and time when the order is made;
- 9 (e) the reasons for the approval;
- 10 (f) the name, qualifications and signature of the person in
11 charge of the hospital.
- 12 (3) The person in charge of the hospital must, as soon as
13 practicable, transmit a copy of each of the consent and the
14 transfer approval order to the person in charge of the interstate
15 mental health service.
- 16 (4) On the interstate inpatient’s admission by the hospital as an
17 inpatient, the interstate inpatient treatment order is taken to be
18 an inpatient treatment order made under this Act.
- 19 (5) The person in charge of the hospital must, as soon as practicable
20 after the interstate inpatient is admitted as an inpatient, file the
21 consent and the transfer approval order and give a copy of each
22 to the interstate inpatient.
- 23 (6) The making of a transfer approval order under subsection (1) is
24 an event to which Part 9 applies and the person in charge of the
25 hospital is the person responsible under that Part for notification
26 of that event.

27 **554. Transport of interstate inpatient to hospital**

- 28 (1) This section applies in relation to an interstate inpatient under a
29 transfer approval order made under section 553(1).
- 30 (2) A person who is authorised under a corresponding law or an
31 interstate agreement to transport the interstate inpatient from an

1 interstate mental health service to a hospital may exercise in the
2 State any of the powers the person has under the corresponding
3 law or interstate agreement for that purpose.

4 **Division 4 — Community treatment orders**

5 **555. Treatment interstate under State order**

6 The terms of a community treatment order may include a
7 requirement that the involuntary community patient attend an
8 interstate mental health service to be provided with treatment.

9 **556. Making transport order**

10 (1) A medical practitioner or mental health practitioner may make a
11 transport order in respect of an involuntary community patient
12 who fails to comply with the requirement referred to in
13 section 555.

14 (2) The practitioner cannot make the transport order unless satisfied
15 that no other safe means of ensuring the involuntary community
16 patient attends the interstate mental health service is reasonably
17 available.

18 (3) Part 10 applies in relation to the transport order as if —
19 (a) the transport order were made under section 129(2); and
20 (b) a reference in section 129(3) to a place were a reference
21 to an interstate mental health service; and
22 (c) a reference in Part 10 to a police officer included a
23 reference to a police officer of the State or Territory in
24 which the interstate mental health service is located; and
25 (d) a reference in Part 10 to a transport officer included a
26 reference to a person who is authorised under a
27 corresponding law of, or an intergovernmental
28 agreement in relation to, that State or Territory to
29 perform functions similar to those of a transport officer.

1 **557. Treatment in State under interstate order**

2 An interstate community treatment order that includes a
3 requirement that the interstate community patient be provided
4 with treatment by a mental health service in the State is taken to
5 be a community treatment order that, despite any other
6 provision of this Act, has the same terms as and is in force for
7 the same period as the interstate community treatment order.

8 **558. Supervision in State under interstate order**

9 A person who is authorised under a corresponding law of
10 another State or a Territory to perform a function in relation to
11 an interstate community treatment order made under the
12 corresponding law may perform that function in relation to the
13 order in the State.

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Part 25 — Ministerial inquiries

559. Appointment of person to conduct inquiry

The Minister may appoint a person to inquire into, and report to the Minister on, any matter relating to —

- (a) the treatment, care or other services provided (whether under this Act or otherwise) to a person, or the persons in a class of person, who has or may have a mental illness; or
- (b) the administration or enforcement of this Act.

560. Powers of investigation

The person appointed under section 559 to conduct an inquiry may, for the purpose of the inquiry —

- (a) enter —
 - (i) a mental health service at any time without notice; or
 - (ii) any other premises at any reasonable time and at any other time with the owner’s consent;
- and
- (b) on entering any premises under paragraph (a), do any of these things —
 - (i) inspect the premises and anything on the premises;
 - (ii) require a person on the premises to answer questions, or provide information, that the person appointed under section 559 considers relevant to the inquiry;
 - (iii) require a person on the premises to produce any documents that the person appointed under section 559 considers relevant to the inquiry;
 - (iv) inspect, or take a copy of the whole or any part of any document produced under subparagraph (iii);

- 1 (v) require a person on the premises to give
2 reasonable assistance to the person appointed
3 under section 559 in the exercise of a power
4 under this section.

5 **561. Interfering with investigation**

- 6 (1) A person commits an offence if the person —
- 7 (a) without reasonable excuse, proof of which is on the
8 person, does not answer a question or provide
9 information when required under section 560(b)(ii); or
- 10 (b) in purporting to comply with a requirement under
11 section 560(b)(ii), gives an answer or provides
12 information that the person knows is false or misleading
13 in a material particular; or
- 14 (c) in purporting to comply with a requirement under
15 section 560(b)(iii), makes available a document that the
16 person knows is false or misleading in a material
17 particular —
- 18 (i) without indicating that the document is false or
19 misleading and, to the extent the person can, how
20 the document is false or misleading; and
- 21 (ii) if the person has or can reasonably obtain the
22 correct information — without providing the
23 correct information;
- 24 or
- 25 (d) without reasonable excuse, proof of which is on the
26 person, does not give reasonable assistance when
27 required under section 560(b)(v); or
- 28 (e) without reasonable excuse, proof of which is on the
29 person, obstructs or hinders —
- 30 (i) a person appointed under section 559 in the
31 exercise of a power under section 560; or

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- 1 (ii) a person assisting such a person under
2 section 560(b)(v).

3 Penalty: a fine of \$6 000.

- 4 (2) It is enough for a prosecution notice lodged against a person for
5 an offence under subsection (1)(b) or (c) to state that the
6 answer, information or document was false or misleading to the
7 person's knowledge without stating which.

8 **562. Conduct of inquiry generally**

- 9 (1) An inquiry must be conducted with as little formality and
10 technicality, and with as much expedition, as a proper
11 consideration of the subject matter of the inquiry permits.
- 12 (2) In conducting an inquiry, the person appointed under
13 section 559 to conduct the inquiry is bound by the rules of
14 natural justice.
- 15 (3) Subject to this Part, the practice and procedure for conducting
16 an inquiry is as determined by the person appointed under
17 section 559 to conduct the inquiry.

18 **563. Evidence generally**

- 19 (1) A person appointed under section 559 to conduct an inquiry is
20 not bound by the rules of evidence but may inform himself or
21 herself of a matter relevant to the inquiry in any manner the
22 person considers appropriate.
- 23 (2) Evidence in an inquiry may be given orally or in writing.
- 24 (3) The person appointed under section 559 to conduct an inquiry
25 may require evidence in the inquiry to be given on oath or by
26 affidavit.
- 27 (4) The person appointed under section 559 to conduct an inquiry
28 may direct a person appearing as a witness in the inquiry —
- 29 (a) to answer a question relevant to the inquiry; or
30 (b) to produce a document relevant to the inquiry.

- 1 (5) A person appearing as a witness in an inquiry has the same
2 protection and immunity as a witness has in a proceeding in the
3 Supreme Court.

4 **564. Summons to give evidence or produce documents**

5 The person appointed under section 559 to conduct an inquiry
6 may, by issuing a signed summons and having the summons
7 served on the person to whom it is addressed, require the person
8 to attend at the time and place specified in the summons —

- 9 (a) to give evidence in the inquiry; or
10 (b) to produce a document relevant to the inquiry that is in
11 the person's custody or control and is specified in the
12 summons; or
13 (c) to do both of those things.

14 **565. Self-incrimination**

15 (1) A person is not excused from complying with a direction given
16 to the person under section 563(4), or a summons served on the
17 person under section 564, on the ground that the answer to a
18 question or the production of a document might tend to
19 incriminate the person or expose the person to a criminal
20 penalty.

21 (2) However, any answer given or document produced by a person
22 in compliance with a direction given to the person under
23 section 563(4), or a summons served on the person under
24 section 564, is not admissible in evidence in any criminal
25 proceedings against the person other than proceedings for an
26 offence under section 567(1)(d) or (e).

27 **566. Powers in relation to documents produced**

28 In relation to a document produced in an inquiry, the person
29 appointed under section 559 to conduct the inquiry may do any
30 of these things —

- 31 (a) inspect the document;

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- 1 (b) retain the document for a reasonable period;
2 (c) take a copy of the whole or any part of the document.

3 **567. Offences relating to evidence and documents**

- 4 (1) A person commits an offence if the person —
5 (a) without reasonable excuse, proof of which is on the
6 person, does not swear an oath or make an affirmation
7 when required under section 563(3); or
8 (b) without reasonable excuse, proof of which is on the
9 person, does not answer a question or produce a
10 document when directed to do so under section 563(4);
11 or
12 (c) without reasonable excuse, proof of which is on the
13 person, does not attend as required by a summons served
14 on the person under section 564; or
15 (d) gives an answer in an inquiry that the person knows is
16 false or misleading in a material particular; or
17 (e) produces a document or provides any other information
18 in an inquiry that the person knows is false or
19 misleading in a material particular —
20 (i) without indicating that the document or other
21 information is false or misleading and, to the
22 extent the person can, how the document or other
23 information is false or misleading; and
24 (ii) if the person has or can reasonably obtain the
25 correct information — without providing the
26 correct information.

27 Penalty: a fine of \$5 000.

- 28 (2) It is enough for a prosecution notice lodged against a person for
29 an offence under subsection (1)(d) or (e) to state that the
30 answer, document or information was false or misleading to the
31 person's knowledge without stating which.

Part 26 — Information

**Division 1 — Voluntary disclosure of information by public
authorities and mental health services**

568. Powers of Agency's CEO

(1) In this section —

corresponding overseas authority means a person in another country who has functions corresponding to the CEO's functions under this Act;

interstate authority means —

- (a) a department of the Public Service of the Commonwealth, another State or a Territory; or
- (b) an agency or instrumentality of the Commonwealth, another State or a Territory; or
- (c) a body (whether corporate or unincorporate), or the holder of an office, post or position, established or continued in existence for a public purpose under a law of the Commonwealth, another State or a Territory;

mental health service —

- (a) includes —
 - (i) a private psychiatric hostel; and
 - (ii) an individual, a group of individuals or a body (whether corporate or unincorporate) that provides a service specifically for people who have or may have a mental illness, or the carers of people who have or may have a mental illness, wholly or partly from funds paid to the individual, group or body by the Agency;

but

- (b) does not include the carer of a person who has or may have a mental illness;

- 1 **relevant information** means information (including personal
2 information) that, in the CEO's opinion, is or is likely to be
3 relevant to any of the following —
- 4 (a) the treatment or care of a person, or the persons in a
5 class of person, who has or may have a mental illness;
 - 6 (b) the health, safety or wellbeing of a person who has or
7 may have a mental illness;
 - 8 (c) the safety of another person with respect to which there
9 is a serious risk because of a person who has or may
10 have a mental illness;
 - 11 (d) the administration or enforcement of this Act;
 - 12 (e) the implementation and evaluation of programmes
13 managed by the Agency for the purpose of coordinating
14 the care and support of people who have a mental
15 illness;
 - 16 (f) the planning for, and evaluation of, mental health
17 services;
 - 18 (g) epidemiological analysis of mental illness and mental
19 health research;
- 20 **State authority** means any of these persons or bodies —
- 21 (a) the Minister;
 - 22 (b) a department of the Public Service;
 - 23 (c) a State agency or instrumentality;
 - 24 (d) a local government or regional local government;
 - 25 (e) a body (whether corporate or unincorporate), or the
26 holder of an office, post or position, established or
27 continued for a public purpose under a written law.
- 28 (2) The CEO may disclose relevant information to any of these
29 persons or bodies —
- 30 (a) a State authority;
 - 31 (b) an interstate authority;
 - 32 (c) a corresponding overseas authority;

- 1 (d) a mental health service.
- 2 (3) The CEO may request any of these persons or bodies to disclose
3 relevant information to the CEO —
- 4 (a) a State authority;
- 5 (b) an interstate authority;
- 6 (c) a corresponding overseas authority;
- 7 (d) a mental health service.

8 **569. Powers of CEOs of prescribed State authorities**

- 9 (1) In this section —
- 10 **CEO**, of a prescribed State authority, means —
- 11 (a) if the prescribed State authority is a body referred to in
12 paragraph (a) of the definition of **prescribed State**
13 **authority** — the chief executive officer (however
14 described) of that body; or
- 15 (b) if the prescribed State authority is a person referred to in
16 paragraph (b) of the definition of **prescribed State**
17 **authority** — that person;
- 18 **prescribed State authority** means —
- 19 (a) a body (whether corporate or unincorporate) established
20 or continued for a public purpose under a written law
21 and prescribed by the regulations for this paragraph; or
- 22 (b) a person lawfully holding, acting in or performing the
23 functions of an office, post or position established or
24 continued for a public purpose under a written law and
25 prescribed by the regulations for this paragraph;
- 26 **relevant information** means information (including personal
27 information) that, in the opinion of the disclosing CEO under
28 subsection (2) or the requesting CEO under subsection (3), is or
29 is likely to be relevant to —
- 30 (a) the treatment or care of a person, or the persons in a
31 class of person, who has or may have a mental illness; or

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Division 1 Voluntary disclosure of information by public authorities and mental health services

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- 1 (b) the health, safety or wellbeing of a person who has or
2 may have a mental illness; or
- 3 (c) the safety of another person with respect to which there
4 is a risk because of a person who has or may have a
5 mental illness; or
- 6 (d) the performance of a function under this Act by the
7 CEO's prescribed State authority.
- 8 (2) The CEO of a prescribed State authority (the *disclosing CEO*)
9 may disclose relevant information to the CEO of another
10 prescribed State authority.
- 11 (3) The CEO of a prescribed State authority (the *requesting CEO*)
12 may request the CEO of another prescribed State authority to
13 disclose relevant information to the requesting CEO.

14 **570. Powers of CEOs of mental health services**

- 15 (1) In this section —
16 *CEO*, of a mental health service, means the person in charge of
17 the mental health service;
18 *mental health service* —
19 (a) includes —
20 (i) a private psychiatric hostel; and
21 (ii) an individual, a group of individuals or a body
22 (whether corporate or unincorporate) that
23 provides a service specifically for people who
24 have or may have a mental illness;
25 but
26 (b) does not include the carer of a person who has or may
27 have a mental illness;

- 1 **relevant information** means information (including personal
2 information) that, in the opinion of the disclosing CEO under
3 subsection (2) or the requesting CEO under subsection (3), is or
4 is likely to be relevant to any of the following —
- 5 (a) the treatment or care of a person who has been, is being,
6 or will or may be, provided with treatment or care by the
7 CEO’s mental health service;
- 8 (b) the health, safety or wellbeing of a person who has been,
9 is being, or will or may be, provided with treatment or
10 care by the CEO’s mental health service;
- 11 (c) the safety of another person with respect to which there
12 is a serious risk because of a person who has been, is
13 being, or will or may be, provided with treatment or care
14 by the CEO’s mental health service.
- 15 (2) The CEO of a mental health service (the **disclosing CEO**) may
16 disclose relevant information to the CEO of another mental
17 health service.
- 18 (3) The CEO of a mental health service (the **requesting CEO**) may
19 request the CEO of another mental health service to disclose
20 relevant information to the requesting CEO.

21 **571. Delegation by CEO of prescribed State authority**

- 22 (1) This section applies to the CEO of a prescribed State authority
23 (as defined in section 569(1)) if the CEO does not have the
24 power under another provision of this Act to delegate any power
25 or duty of the CEO under section 569.
- 26 (2) The CEO of a prescribed State authority may delegate to a
27 member of the prescribed State authority’s staff any power or
28 duty of the CEO under section 569.
- 29 (3) The delegation must be in writing signed by the CEO of the
30 prescribed State authority.
- 31 (4) A person to whom a power or duty is delegated under this
32 section cannot delegate that power or duty.

- 1 (5) A person exercising or performing a power or duty that has been
2 delegated to the person under this section is taken to do so in
3 accordance with the terms of the delegation unless the contrary
4 is shown.
- 5 (6) This section does not limit the ability of the CEO of a
6 prescribed State authority to perform a function through an
7 officer or agent.

8 **Division 2 — Miscellaneous matters**

9 **572. Confidentiality**

- 10 (1) In this section —
11 *relevant written law* means any of these written laws —
12 (a) this Act;
13 (b) the *Mental Health Act 1996*;
14 (c) the *Mental Health Act 1962*.
- 15 (2) A person must not (whether directly or indirectly) record,
16 disclose or use any information obtained by the person because
17 of —
18 (a) the person's office, position, employment or
19 engagement under or for the purposes of a relevant
20 written law; or
21 (b) any disclosure made to the person under this Act,
22 including in response to a request made under
23 section 445(1), 568(3), 569(3) or 570(3).
24 Penalty: a fine of \$5 000.
- 25 (3) Subsection (2) does not apply in relation to the recording,
26 disclosure or use of statistical or other information that is not
27 personal information.
- 28 (4) A person does not commit an offence under subsection (2) if the
29 recording, disclosure or use of the information is authorised
30 under section 573(1).

1 **573. Authorised recording, disclosure or use of information**

- 2 (1) For the purposes of this Act, the recording, disclosure or use of
3 information is authorised if the information is recorded,
4 disclosed or used in good faith in any of these circumstances —
- 5 (a) in the course of duty, whether under this Act or
6 otherwise;
 - 7 (b) under this Act, including in response to a request made
8 under section 445(1), 568(3), 569(3) or 570(3);
 - 9 (c) under another law;
 - 10 (d) to a court or other person or body acting judicially in the
11 course of proceedings before the court or other person or
12 body;
 - 13 (e) under an order of a court or other person or body acting
14 judicially;
 - 15 (f) for the purposes of the investigation of a suspected
16 offence or disciplinary matter or the conduct of
17 proceedings against a person for an offence or
18 disciplinary matter;
 - 19 (g) if the information recorded, disclosed or used is personal
20 information — with the consent of the individual, or
21 each individual, to whom the personal information
22 relates;
 - 23 (h) any other circumstances prescribed by the regulations
24 for this subsection.
- 25 (2) Subsection (1)(d) and (e) apply subject to sections 329(7)
26 and (8), 330(6) and (7), 331(7), 459(2) and 565(2).
- 27 (3) If the recording, disclosure or use of information is authorised
28 under subsection (1) —
- 29 (a) no civil or criminal liability is incurred in respect of the
30 recording, disclosure or use; and

- 1 (b) the recording, disclosure or use is not to be regarded
2 as —
- 3 (i) a breach of any duty of confidentiality or secrecy
4 imposed by law; or
- 5 (ii) a breach of professional ethics or standards or
6 any principles of conduct applicable to a
7 person's employment; or
- 8 (iii) unprofessional conduct.

9 **574. Receipt and storage of, and access to, information disclosed**

- 10 (1) This section applies in relation to information disclosed in any
11 of these circumstances —
- 12 (a) in compliance with a direction issued by the Chief
13 Psychiatrist under section 520(2);
- 14 (b) by the CEO under section 568(2) or in response to a
15 request made by the CEO under section 568(3);
- 16 (c) by the CEO of a public authority under section 569(2) or
17 in response to a request made by the CEO of a public
18 authority under section 569(3);
- 19 (d) by the CEO of a mental health service under
20 section 570(2) or in response to a request made by the
21 CEO of a mental health service under section 570(3).
- 22 (2) The regulations may provide for —
- 23 (a) the receipt and storage of information to which this
24 section applies; or
- 25 (b) access to such information.

Part 27 — Miscellaneous matters

575. Restrictions on powers of medical practitioners and mental health practitioners

(1) In this section —

company means a company registered under the *Corporations Act 2001* (Commonwealth);

prescribed financial market has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

related person, in relation to a medical practitioner or mental health practitioner, means —

- (a) a relative of the practitioner; or
- (b) a company not listed on a prescribed financial market in Australia in respect of any share in which the practitioner, the practitioner's spouse or de facto partner or a child of the practitioner has a relevant interest; or
- (c) a company listed on a prescribed financial market in Australia in which the aggregate of the interests of the practitioner, the practitioner's spouse or de facto partner and the practitioner's children amounts to a substantial holding; or
- (d) the trustee of a trust in which the practitioner, the practitioner's spouse or de facto partner or a child of the practitioner has —
 - (i) a beneficial interest, whether vested or contingent; or
 - (ii) a potential beneficial interest because the trust is a discretionary trust;

relative, of a person, means a family member of the person referred to in section 281(2);

relevant interest, in relation to a share, has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

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1 **substantial holding** has the meaning given in the *Corporations*
2 *Act 2001* (Commonwealth) section 9.

3 (2) A medical practitioner or mental health practitioner cannot
4 exercise a power under this Act in respect of a person if the
5 practitioner is —

- 6 (a) a relative of the person; or
- 7 (b) the person’s enduring guardian or guardian; or
- 8 (c) in partnership with the person; or
- 9 (d) the employer or employee of the person; or
- 10 (e) the person’s supervisor or subordinate.

11 (3) A person in charge of a ward at an authorised hospital cannot
12 exercise a power under this Act in respect of a patient in the
13 ward if the person in charge is —

- 14 (a) a relative of the patient; or
- 15 (b) the patient’s enduring guardian or guardian; or
- 16 (c) in partnership with the patient; or
- 17 (d) the employer or employee of the patient; or
- 18 (e) the patient’s supervisor or subordinate.

19 (4) A medical practitioner or mental health practitioner cannot refer
20 a person under section 26(2) or (3)(a) for an examination to be
21 conducted by a psychiatrist at a private hospital the licence for
22 which is held by the practitioner or a related person.

23 **576. Obstructing or hindering person performing functions**

24 A person who, without reasonable excuse (proof of which is on
25 the person) obstructs or hinders a person in the performance of,
26 or a person assisting another person in the performance of, a
27 function under this Act commits an offence.

28 Penalty: a fine of \$6 000.

1 **577. Amendment of referrals and orders**

2 (1) For this section, a referral or order made under this Act contains
3 a formal defect if it contains —

4 (a) a clerical error or an error because of an accidental
5 omission; or

6 (b) an evident material error in the description of a person.

7 (2) If a referral or order made under this Act contains a formal
8 defect —

9 (a) the validity of anything done or omitted to be done in
10 reliance on the referral or order is not affected; but

11 (b) the person who does an act or makes an omission in
12 reliance on the referral or order may request the person
13 who made the referral or order to rectify the defect.

14 (3) A person who makes a request under subsection (2)(b) to rectify
15 a referral or order may, by order (a *revocation order*), revoke
16 any involuntary treatment order made as a consequence of the
17 referral or order if the request is not complied with.

18 (4) A revocation order has effect on and from the time specified in
19 the revocation order.

20 (5) A revocation order does not prevent another referral or order
21 being made under this Act in respect of the person to whom the
22 revocation order relates, whether that referral or order is made
23 before or after the revocation order comes into effect.

24 **578. Medical record to be kept by mental health services**

25 (1) The person in charge of a mental health service must ensure that
26 a medical record is kept in respect of —

27 (a) each person who is admitted by the mental health
28 service; and

29 (b) each person who is otherwise provided with treatment or
30 care by the mental health service.

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- 1 (2) The medical record must be in the approved form and must
2 include the following information —
- 3 (a) the name, address and date of birth of the person;
- 4 (b) the nature of any illness, or mental or physical disability,
5 from which the person suffers;
- 6 (c) particulars of —
- 7 (i) any treatment provided to the person by the
8 mental health service; and
- 9 (ii) the authority for providing the treatment,
10 including details of any order made under this
11 Act under which the treatment was provided;
- 12 (d) if the person dies at the mental health service — the date
13 of death and, if known, the cause of death;
- 14 (e) any other information prescribed by the regulations for
15 this subsection.

16 **579. Protection from liability when performing functions**

- 17 (1) An action in tort does not lie against a person other than the
18 State for anything that the person has done in good faith —
- 19 (a) in the performance or purported performance of a
20 function under this Act; or
- 21 (b) in assisting another person in the performance or
22 purported performance of a function under this Act.
- 23 (2) The protection given by subsection (1) applies even though the
24 thing done as described in that provision may have been capable
25 of being done whether or not this Act had been enacted.
- 26 (3) Despite subsection (1), the State is not relieved from any
27 liability that it might have for an act done by a person against
28 whom this section provides that an action does not lie.
- 29 (4) In this section, a reference to the doing of anything includes a
30 reference to an omission to do anything.

1 **580. Protection from liability when detaining person with mental**
2 **illness**

3 (1) This section applies if —

4 (a) a person has lawful charge of a person who has, or is
5 reasonably suspected of having, a mental illness while
6 that person is at a particular place; and

7 (b) the person who has, or is reasonably suspected of
8 having, a mental illness does not have the capacity to
9 decide whether or not to withdraw himself or herself
10 from that lawful charge.

11 (2) No civil or criminal liability is incurred because the person who
12 has that lawful charge detains, or continues the detention of, the
13 person who has, or is reasonably suspected of having, a mental
14 illness in order to prevent that person from leaving the particular
15 place.

16 (3) The protection given by subsection (2) does not apply if the
17 person who has lawful charge of the person who has, or is
18 reasonably suspected of having, a mental illness uses bodily
19 restraint to prevent that person from leaving the particular place.

20 (4) For subsection (3), the bodily restraint of a person is the
21 physical restraint or mechanical restraint, within the meaning of
22 those terms in section 227(2) and (3), of the person.

23 **581. Relationship with *Freedom of Information Act 1992***

24 This Act has effect despite the *Freedom of Information*
25 *Act 1992*.

26 **582. Regulations**

27 The Governor may make regulations prescribing matters —

28 (a) required or permitted to be prescribed by this Act; or

29 (b) necessary or convenient to be prescribed for giving
30 effect to this Act.

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1 **583. Review of this Act after 5 years**

2 (1) The Minister must review the operation and effectiveness of this
3 Act as soon as practicable after the expiry of 5 years from the
4 commencement of section 10.

5 (2) The Minister must, as soon as practicable —

6 (a) prepare a report about the outcome of the review; and

7 (b) cause a copy of the report to be laid before each House
8 of Parliament.

1 support of high quality based on contemporary best practice to promote
2 recovery in the least restrictive manner that is consistent with their needs.

3 **Principle 5: Choice and self-determination**

4 A mental health service must involve people in decision-making and
5 encourage self-determination, cooperation and choice, including by
6 recognising people's capacity to make their own decisions.

7 **Principle 6: Diversity**

8 A mental health service must recognise, and be sensitive and responsive
9 to, diverse individual circumstances, including those relating to gender,
10 sexuality, age, family, disability, lifestyle choices and cultural and
11 spiritual beliefs and practices.

12 **Principle 7: People of Aboriginal or Torres Strait Islander descent**

13 A mental health service must provide treatment and care to people of
14 Aboriginal or Torres Strait Islander descent that is appropriate to, and
15 consistent with, their cultural and spiritual beliefs and practices and
16 having regard to the views of their families and, to the extent that it is
17 practicable and appropriate to do so, the views of significant members of
18 their communities, including elders and traditional healers, and
19 Aboriginal or Torres Strait Islander mental health workers.

20 **Principle 8: Co-occurring needs**

21 A mental health service must address physical, medical and dental health
22 needs of people experiencing mental illness and other co-occurring health
23 issues, including physical and intellectual disability and alcohol and other
24 drug problems.

25 **Principle 9: Factors influencing mental health and wellbeing**

26 A mental health service must recognise the range of circumstances, both
27 positive and negative, that influence mental health and wellbeing,
28 including relationships, accommodation, recreation, education, financial
29 circumstances and employment.

30 **Principle 10: Privacy and confidentiality**

31 A mental health service must respect and maintain privacy and
32 confidentiality.

1 **Principle 11: Responsibilities and dependants**

2 A mental health service must acknowledge the responsibilities and
3 commitments of people experiencing mental illness, particularly the
4 needs of their children and other dependants.

5 **Principle 12: Provision of information about mental illness and**
6 **treatment**

7 A mental health service must provide, and clearly explain, information
8 about the nature of the mental illness and about treatment (including any
9 risks, side effects and alternatives) to people experiencing mental illness
10 in a way that will help them to understand and to express views or make
11 decisions.

12 **Principle 13: Provision of information about rights**

13 A mental health service must provide, and clearly explain, information
14 about legal rights, including those relating to representation, advocacy,
15 complaints procedures, services and access to personal information, in a
16 way that will help people experiencing mental illness to understand,
17 obtain assistance and uphold their rights.

18 **Principle 14: Involvement of other people**

19 A mental health service must take a collaborative approach to decision
20 making, including respecting and facilitating the right of people
21 experiencing mental illness to involve their family members, carers and
22 other personal support persons in planning, undertaking, evaluating and
23 improving their treatment, care and support.

24 **Principle 15: Accountability and improvement**

25 A mental health service must be accountable, committed to continuous
26 improvement and open to solving problems in partnership with all people
27 involved in the treatment, care and support of people experiencing mental
28 illness, including their family members, carers and other personal and
29 professional support persons.

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Schedule 2 — Notifiable events

[s. 138(2)]

Table

Provision	Description of event	Person responsible
s. 28(8)	The making of an order under s. 28	The practitioner who makes the order
s. 28(12)	The release of a person because of s. 28(10) or (11)	A medical practitioner or authorised mental health practitioner
s. 29(4)	The making of a transport order under s. 29(1)	The practitioner who makes the order
s. 31(7)	The release of a person because of s. 31(6)	The practitioner who revokes the referral
s. 55(6)	The making of an order under s. 55(1)	The person in charge of the authorised hospital
s. 61(5)	The making of an order under s. 61(1)	The psychiatrist who makes the order
s. 66(5)	The making of a transfer order under s. 66(1)	The treating psychiatrist
s. 68(7)	The release of a person because of s. 68(6)	The person in charge of the authorised hospital
s. 89(6)	The release of a person because of an order made under s. 89(2)(b) or (c)	The person in charge of the hospital
s. 90(5)	The making of an order under s. 90(1)	The psychiatrist who makes the order

Provision	Description of event	Person responsible
s. 91(5)	The making of a transfer order under s. 91(2)	The psychiatrist who makes the order
s. 93(4)	The expiry of an inpatient treatment order	The person in charge of the hospital at which the involuntary inpatient was being detained
s. 97(3)	The absence of a person without leave from a hospital or other place	The person in charge of the hospital or other place
s. 105(13)	The making of an order under s. 105(1)	The psychiatrist who makes the order
s. 106(4)	The making of an order under s. 106(1)	The psychiatrist who makes the order
s. 110(5)	The making of an order under s. 110(2)	The psychiatrist who makes the order
s. 120(7)	The making of an order under s. 120(2)	The supervising psychiatrist
s. 123(8)	The making of an order under s. 123(1)	The supervising psychiatrist
s. 124(7)	The release of a person because of s. 124(6)	The person in charge of the authorised hospital
s. 130(5)	The release of a person because of s. 130(4)	The person in charge of the place
s. 131(8)	The making of an order under s. 131(2)	The supervising psychiatrist
s. 242(5)	The provision of urgent non-psychiatric treatment	The person in charge of the authorised hospital

Provision	Description of event	Person responsible
s. 551(4)	The making of a transfer order under s. 551(1)	The person in charge of the hospital
s. 553(6)	The making of a transfer approval order under s. 553(1)	The person in charge of the hospital

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Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

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