

## **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.

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**Part 2 — Terms and concepts**

**Division 1 — Definitions and notes**

**4. Terms used**

In this Act, unless the contrary intention appears —  
***admission***, of a patient, means the admission of the patient by a  
mental health service, whether the patient is admitted as an  
inpatient or otherwise;

***adult*** means a person who has reached 18 years of age;

***advance health directive*** means any of the following —

- (a) an advance health directive made under the GAA Act  
Part 9B;
- (b) an instrument recognised as such under the GAA Act  
section 110ZA;
- (c) a directive given by a patient under the common law  
containing treatment decisions in respect of the patient’s  
future treatment;

***Agency*** means the agency (as defined in the *Public Sector  
Management Act 1994* section 3(1)) principally assisting the  
Minister in administering this Act;

***approved form*** means a form approved by the Chief Psychiatrist  
under section 541(1);

***authorised hospital*** has the meaning given in section 537;

***authorised mental health practitioner*** means an authorised  
mental health practitioner designated as such by an order in  
force under section 536;

***bodily restraint*** has the meaning given in section 227;

***carer***, of a person, has the meaning given in section 280(1);

***CEO*** means the chief executive officer of the Agency;

***CEO of the Health Department*** means the chief executive  
officer of the Health Department;

- 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                    **enduring power of guardianship** means —  
2                    (a) an enduring power of guardianship made under the  
3                                       GAA Act Part 9A; or  
4                    (b) an instrument recognised as such under the GAA Act  
5                                       section 110O;

6                    **file**, in relation to an order, record or other document relating to  
7                    a patient or other person, means to put the order, record or other  
8                    document on the patient's or other person's medical record;

9                    **GAA Act** means the *Guardianship and Administration*  
10                    *Act 1990*;

11                    **general hospital** means a hospital (as defined in the *Hospitals*  
12                    *and Health Services Act 1927* section 2(1)) where overnight  
13                    accommodation is provided to patients other than any of these  
14                    hospitals —  
15                    (a) an authorised hospital;  
16                    (b) a maternity home;  
17                    (c) a nursing home;

18                    **guardian**, of an adult, means the person's guardian as defined in  
19                    the GAA Act section 3(1);

20                    **Health Department** means the agency (as defined in the *Public*  
21                    *Sector Management Act 1994* section 3(1)) principally assisting  
22                    the Health Minister in the administration of the *Health*  
23                    *Legislation Administration Act 1984*;

24                    **Health Minister** means the Minister responsible for the  
25                    administration of the *Health Legislation Administration*  
26                    *Act 1984*;

27                    **hospital** means —  
28                    (a) an authorised hospital; or  
29                    (b) a general hospital;

30                    **informed consent**, to the provision of treatment, means consent  
31                    to the provision of the treatment given in accordance with Part 5  
32                    Division 2;

- 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) does not include —
- 2 (i) a private psychiatric hostel; or
- 3 (ii) a declared place as defined in the MIA Act
- 4 section 23;

5 ***Mental Health Tribunal*** means the Mental Health Tribunal

6 established by section 379;

7 ***mental illness*** has the meaning given in section 6;

8 ***mentally impaired accused*** has the meaning given in the

9 MIA Act section 23;

10 ***Mentally Impaired Accused Review Board*** means the Mentally

11 Impaired Accused Review Board established by the MIA Act

12 section 41;

13 ***metropolitan area*** means an area of the State prescribed by the

14 regulations as a metropolitan area;

15 ***MIA Act*** means the *Criminal Law (Mentally Impaired Accused)*

16 *Act 1996*;

17 ***Minister*** means the Minister responsible for the administration

18 of this Act;

19 ***neurosurgeon*** means a person —

- 20 (a) whose name is contained in the register of specialist
- 21 surgeons kept by the Medical Board of Australia under
- 22 the *Health Practitioner Regulation National Law*
- 23 (*Western Australia*) section 223; and

- 24 (b) who has clinical training in neurosurgery;

25 ***nominated person***, of a person, means the person nominated

26 under section 273(1) to be the person's nominated person;

27 ***nomination*** means a nomination made under section 273(1);

28 ***nurse*** means a person who is registered under the *Health*

29 *Practitioner Regulation National Law (Western Australia)* in

30 the nursing and midwifery profession —

- 31 (a) whose name is entered on Division 1 of the Register of
- 32 Nurses kept under that Law as a registered nurse; or

- 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

- 1                    (b) a mentally impaired accused required under the  
2                    MIA Act to be detained at an authorised hospital.

3                    Note for the definition of voluntary patient:

4                    A voluntary patient can also be —

- 5                    (a) a person who is referred under section 26(2) or (3)(a) or 36(2) or is  
6                    under an order made under section 55(1)(c) or 61(1)(c); or  
7                    (b) a mentally impaired accused who is released from an authorised  
8                    hospital (whether unconditionally or on conditions) under a release  
9                    order made under the MIA Act section 35.

10    **5. Notes and examples not part of Act**

11                    A note or example set out at the foot of a provision of this Act is  
12                    provided to assist understanding and does not form part of this  
13                    Act.

14                    **Division 2 — Mental illness**

15    **6. When a person has a mental illness**

- 16                    (1) A person has a mental illness if the person has a condition  
17                    that —  
18                    (a) is characterised by a disturbance of thought, mood,  
19                    volition, perception, orientation or memory; and  
20                    (b) significantly impairs (temporarily or permanently) the  
21                    person’s judgment or behaviour.
- 22                    (2) A person does not have a mental illness merely because one or  
23                    more of these things apply —  
24                    (a) the person holds, or refuses or fails to hold, a particular  
25                    religious, cultural, political or philosophical belief or  
26                    opinion;  
27                    (b) the person engages in, or refuses or fails to engage in, a  
28                    particular religious, cultural or political activity;  
29                    (c) the person is, or is not, a member of a particular  
30                    religious, cultural or racial group;

**Mental Health Bill 2013**

**Part 2** Terms and concepts

**Division 3** Best interests of a person

**s. 7**

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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           (2) The person or body making the decision must have regard to  
2 these things —
- 3           (a) the person’s wishes, to the extent that it is practicable to  
4 ascertain those wishes;
- 5           (b) the views of each of these people —
- 6               (i) if the person has an enduring guardian or  
7 guardian — the enduring guardian or guardian;
- 8               (ii) if the person is a child — the child’s parent or  
9 guardian;
- 10           (iii) if the person has a nominated person — the  
11 nominated person;
- 12           (iv) if the person has a carer — the carer;
- 13           (v) if the person has a close family member — the  
14 close family member;
- 15           (c) any other matter that the person or body considers  
16 relevant to making the decision.

17                                      **Division 4 — Wishes of a person**

18   **8. Matters relevant to ascertaining person’s wishes**

- 19           (1) This section applies whenever a person or body is required  
20 under this Act to ascertain the wishes of a person in relation to a  
21 matter.
- 22           (2) For the purposes of ascertaining those wishes, the person or  
23 body must have regard to the following —
- 24           (a) any treatment decision in an advance health directive  
25 made by the person that is relevant to the matter;
- 26           (b) any term of an enduring power of guardianship made by  
27 the person that is relevant to the matter;
- 28           (c) anything that the person says or does that is relevant to  
29 the matter if it is said or done at a time that is reasonably  
30 contemporaneous with when those wishes are required  
31 to be ascertained;

- 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 herself, 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                    (c) the reasons for making it;
- 2                    (d) the name, qualifications and signature of the practitioner
- 3                    making it.
- 4                    (7) A practitioner who makes an order under this section in respect
- 5                    of the person must, as soon as practicable, file it and give a copy
- 6                    to the person.
- 7                    (8) The making of an order under this section is an event to which
- 8                    Part 9 applies and the practitioner who makes the order is the
- 9                    person responsible under that Part for notification of that event.
- 10                   (9) A practitioner who makes an order under this section in respect
- 11                   of the person must ensure that the person has the opportunity
- 12                   and the means to contact any carer, close family member or
- 13                   other personal support person of the person and the Chief
- 14                   Mental Health Advocate —
- 15                    (a) as soon as practicable after the order is made; and
- 16                    (b) at all reasonable times while the person is detained
- 17                    under the order.
- 18                   (10) The person cannot continue to be detained if, by the end of a
- 19                   period of detention authorised under this section in respect of
- 20                   the person —
- 21                    (a) the person has not been taken to the authorised hospital
- 22                    or other place; and
- 23                    (b) an order under subsection (2) authorising the
- 24                    continuation of the person's detention from the end of
- 25                    the period has not been made or, because of
- 26                    subsection (3), cannot be made; and
- 27                    (c) the person has not been apprehended under a transport
- 28                    order made under section 29(1).
- 29                   (11) The person cannot continue to be detained if the referral expires
- 30                   before the person is taken to the authorised hospital or other
- 31                   place.

- 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);

1 (iii) the person cannot continue to be detained  
2 because section 28(10) or (11), 52(4), 58(4)  
3 or 70(4) applies.

4 Notes for section 30:

- 5 1. A community treatment order that the patient is under is automatically  
6 revoked under section 116(b) if a psychiatrist makes an inpatient  
7 treatment order under section 55(1)(a), 56(1)(a)(i), 61(1)(a) or 72(1)(a)  
8 in respect of the involuntary community patient.
- 9 2. A community treatment order is no longer suspended if a psychiatrist  
10 makes an order under section 55(1)(d), 56(1)(a)(iii), 61(1)(d)  
11 or 72(1)(c) that the involuntary community patient cannot continue to  
12 be detained.
- 13 3. A community treatment order remains suspended until the period of  
14 the suspension ends under section 30(b), or until the community  
15 treatment order is revoked under section 120(2)(b) or 131(2)(b), if a  
16 psychiatrist makes an order under section 61(1)(c) in respect of the  
17 involuntary community patient.

18 **31. Revoking referral**

- 19 (1) A medical practitioner or authorised mental health practitioner  
20 may make an order revoking a referral made under section 26(2)  
21 or (3)(a) if satisfied that the person who is referred is no longer  
22 in need of an involuntary treatment order.
- 23 (2) The practitioner cannot revoke the referral if it was made by  
24 another practitioner unless —
- 25 (a) the practitioner has consulted the other practitioner  
26 about whether or not to revoke the referral; or
- 27 (b) despite reasonable efforts to do so, the other practitioner  
28 could not be contacted.
- 29 (3) The order must be in the approved form and must include the  
30 following —
- 31 (a) the date and time when it is made;
- 32 (b) the reasons for making it;
- 33 (c) if the other practitioner was consulted — a record of the  
34 consultation;

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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.

**Mental Health Bill 2013**

**Part 6** Involuntary patients

**Division 2** Referrals for examination

**s. 35**

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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 (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           (2) Subdivision 4 applies in relation to an assessment required by  
2           subsection (1).

3           **40. Time limit for making referral**

4           (1) A referral cannot be made under section 26(2) or (3)(a) more  
5           than 48 hours after the time when the assessment required by  
6           section 39(1) is completed.

7           (2) A referral can only be made under section 36(2) immediately  
8           after the time when the assessment required by section 39(1) is  
9           completed.

10          **41. Form of referral**

11          A referral must be in the approved form and must —

- 12           (a) include the following —
- 13               (i) the date and time when it is made;
  - 14               (ii) the date and time when it will expire;
  - 15               (iii) the place where it is made;
  - 16               (iv) whether or not it can be extended under  
17                   section 45 and, if it can, the process for  
18                   extending it;
  - 19               (v) the place where the examination will be  
20                   conducted;
  - 21               (vi) the date and time when the assessment required  
22                   by section 39(1) was completed;
- 23           and
- 24           (b) certify that, having regard to the criteria specified in  
25               section 25, the practitioner making it reasonably  
26               suspects that the person who is referred is in need of an  
27               involuntary treatment order; and
  - 28           (c) include the information on which the suspicion is based;  
29               and

- 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                      (c) a prescribed health professional and the person being  
2                      assessed —
- 3                      (i) are in one another’s physical presence; or  
4                      (ii) if that is not practicable — are able to hear one  
5                      another without using a communication device  
6                      (for example, by being able to hear one another  
7                      through a door).
- 8                      (5) For the purposes of this Act, an assessment conducted using  
9                      audiovisual communication is taken to be conducted, and any  
10                      referral made as a result is taken to be made, at the place where  
11                      the person assessed is when the assessment is conducted.
- 12                      **49. Information to which practitioner may have regard**
- 13                      (1) The practitioner may have regard to any information about the  
14                      person being assessed that is obtained by the practitioner —
- 15                      (a) from —
- 16                      (i) the person, including information obtained by  
17                      observing the person and asking the person  
18                      questions; or  
19                      (ii) any other person;
- 20                      and
- 21                      (b) from the person’s medical record.
- 22                      (2) The practitioner cannot conclude that there is a reasonable  
23                      suspicion that the person being assessed is in need of an  
24                      involuntary treatment order solely on the basis of information  
25                      referred to in either or both of subsection (1)(a)(ii) and (b).
- 26                      **50. Assessment of person of Aboriginal or Torres Strait**  
27                      **Islander descent**
- 28                      To the extent that it is practicable and appropriate to do so, the  
29                      assessment of a person who is of Aboriginal or Torres Strait  
30                      Islander descent must be conducted in collaboration with —
- 31                      (a) Aboriginal or Torres Strait Islander mental health  
32                      workers; 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            hospital is the person responsible under that Part for notification  
2            of that event.

3            Notes for section 55:

- 4            1.        A community treatment order in respect of an involuntary community  
5            patient who is referred under section 26(2) or 36(2) is automatically  
6            revoked under section 116(b) if a psychiatrist makes an inpatient  
7            treatment order under section 55(1)(a) in respect of the involuntary  
8            community patient.
- 9            2.        Part 7 Division 4 applies in relation to the release of a person who is  
10            detained at an authorised hospital under an order made under  
11            section 55(1)(c).
- 12            3.        Part 7 Division 5 applies if a person who is under an order made under  
13            section 55(1)(c) is absent without leave from the authorised hospital  
14            where the person can be detained under the order.
- 15            4.        A community treatment order in respect of an involuntary community  
16            patient who is referred under section 26(2) is no longer suspended if a  
17            psychiatrist makes an order under section 55(1)(d) that the involuntary  
18            community patient cannot continue to be detained (see  
19            section 30(b)(i)).

20        **56.        Effect of order for continuation of detention**

- 21        (1)        An order made under section 55(1)(c) authorises the  
22        continuation of the person's detention until the first of these  
23        things occurs —
- 24            (a)        a psychiatrist conducts the further examination and  
25            makes one of these orders —
- 26                    (i)        an inpatient treatment order authorising the  
27                    person's detention at the authorised hospital for  
28                    the period specified in the order in accordance  
29                    with section 87(a) or (b);
- 30                    (ii)       a community treatment order in respect of the  
31                    person;
- 32                    (iii)      an order that the person cannot continue to be  
33                    detained;
- 34            (b)        the expiry of the period specified in the order under  
35            section 55(3).

- 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 (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



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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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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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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 (h) a requirement that the involuntary community patient  
2 notify the supervising psychiatrist or treating  
3 practitioner of any interstate or overseas travel by the  
4 patient —
- 5 (i) at least 7 days before the day of the patient’s  
6 departure; or
- 7 (ii) if the patient cannot comply with  
8 subparagraph (i) because the patient needs to  
9 travel urgently — as soon as it is practicable for  
10 the patient to give notice of the travel.
- 11 (2) For subsection (1)(f), the treatment period specified in a  
12 community treatment order when it is made cannot exceed  
13 3 months from the day on which it is made.

14 Notes for section 115:

- 15 1. The supervising psychiatrist can also be the treating practitioner (see  
16 section 136(2)(b)).
- 17 2. The terms of a community treatment order may require the involuntary  
18 community patient to be provided with treatment by a mental health  
19 service in another State or a Territory (see section 555).

20 **Division 3 — Operation of order**

21 **116. Duration of order**

22 A community treatment order remains in force until the first of  
23 these things occurs —

- 24 (a) the supervising psychiatrist makes an inpatient treatment  
25 order under section 120(2)(a), 123(1)(a) or 131(2)(a) in  
26 respect of the involuntary community patient;
- 27 (b) a psychiatrist makes an inpatient treatment order under  
28 any other provision of this Act in respect of the  
29 involuntary community patient;
- 30 (c) the supervising psychiatrist revokes the order under  
31 section 120(2)(b) or 131(2)(b);

- 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

**s. 131**

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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.

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

**Division 1 — Apprehension powers**

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

- (1) A police officer may apprehend a person if the officer reasonably suspects that the person —
- (a) has a mental illness; and
  - (b) because of the mental illness, needs to be apprehended to —
    - (i) protect the health or safety of the person or the safety of another person; or
    - (ii) prevent the person causing, or continuing to cause, serious damage to property.
- (2) For the purpose of apprehending a person under subsection (1), a police officer may exercise the powers under sections 159(2) and 172.
- (3) A police officer —
- (a) must, as soon as practicable after apprehending a person under subsection (1), arrange for the person to be assessed by a medical practitioner or authorised mental health practitioner for the purpose of deciding whether or not to refer the person under section 26(2) or (3)(a) for an examination to be conducted by a psychiatrist; and
  - (b) is authorised to detain the person until the first of these things occurs —
    - (i) the person is received into the place where the assessment will be conducted;
    - (ii) the person is delivered into the care of the medical practitioner or authorised mental health 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)).

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**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

**s. 172**

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s. 225	
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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

**s. 180**

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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**

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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**

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- 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**

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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.

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**Division 5** Seclusion

**s. 214**

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- 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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**Part 14** Regulation of certain kinds of treatment and other interventions

**Division 6** Bodily restraint

**s. 231**

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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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- 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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**Division 3**               Complaints to Director of Complaints Office

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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

**Mental Health Bill 2013**

**Part 19**           Complaints about mental health services

**Division 4**       Miscellaneous matters

**s. 345**

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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.

- 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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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                      treatments with electroconvulsive therapy to be  
2                      performed being reduced to the number specified by the  
3                      Tribunal; or  
4                      (c) refusing to approve the electroconvulsive therapy being  
5                      performed.

6                      **Division 7 — Psychosurgery approvals**

7                      **413. Application of this Division**

8                      This Division relates to obtaining the Tribunal’s approval to  
9                      psychosurgery being performed on a patient as required by  
10                      section 208(2)(b).

11                      **414. Application for approval**

- 12                      (1) The patient’s psychiatrist may apply to the Tribunal for  
13                      approval for psychosurgery to be performed on a patient.  
14                      (2) The application must be in writing and must set out —  
15                      (a) the reasons why the patient’s psychiatrist is  
16                      recommending that the psychosurgery be performed;  
17                      and  
18                      (b) a treatment plan in relation to the psychosurgery,  
19                      including —  
20                      (i) a detailed description of the psychosurgery  
21                      proposed to be performed; and  
22                      (ii) the name, qualifications and experience of the  
23                      neurosurgeon who it is proposed will perform the  
24                      psychosurgery; and  
25                      (iii) the name and address of the place where it is  
26                      proposed to perform the psychosurgery.

27                      **415. Parties to proceeding**

28                      The parties to a proceeding in relation to the application are —  
29                      (a) the patient; and

- 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.

1           (2) However, the State Administrative Tribunal or the Supreme  
2           Court may, if satisfied that it is just and reasonable to do so,  
3           extend the period within which the appeal or application for  
4           leave may be made even though the 28-day period referred to in  
5           subsection (1) has expired.

6   **503.    Certain parties must be represented**

7           The Supreme Court may make an order that a party to a  
8           proceeding under this Part must be represented in the  
9           proceeding if, in the Court's opinion, it is not in the best  
10          interests of the party for the party to appear in person in the  
11          proceeding.

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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

**Division 6 — Approved forms**

2

**541. Chief Psychiatrist to approve forms**

3

(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

5

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**

3

(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

14

15

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



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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**Part 26** Information

**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.

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**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.

**s. 583**

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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**

<b>Provision</b>	<b>Description of event</b>	<b>Person responsible</b>
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



<b>Provision</b>	<b>Description of event</b>	<b>Person responsible</b>
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

<b>Provision</b>	<b>Description of event</b>	<b>Person responsible</b>
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

## 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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