

Western Australia

Mental Health Bill 2012

DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill to do the following —

- 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.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.

All submissions should be forwarded to:

legislation@mentalhealth.wa.gov.au

or

Mental Health Commission
Level 5, 81 St Georges Tce, Perth
GPO Box X2299, Perth Business Centre WA 6847

DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill to do the following —

- 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.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.

Mental Health Bill 2012

CONTENTS

Part 1 — Preliminary matters

- | | | |
|----|-----------------|---|
| 1. | Short title | 2 |
| 2. | Commencement | 2 |
| 3. | Act binds Crown | 2 |

Part 2 — Terms and concepts

Division 1 — Definitions and notes

- | | | |
|----|-----------------------|---|
| 4. | Terms used | 3 |
| 5. | Notes not part of Act | 8 |

Division 2 — Mental illness

- | | | |
|----|------------------------------------|---|
| 6. | When a person has a mental illness | 8 |
|----|------------------------------------|---|

Division 3 — Best interests of a person

- | | | |
|----|--|---|
| 7. | Matters relevant to decision about person's best interests | 9 |
|----|--|---|

Division 4 — Wishes of a person

- | | | |
|----|--|----|
| 8. | Matters relevant to ascertaining person's wishes | 10 |
|----|--|----|

Part 3 — Objects

- | | | |
|----|---------|----|
| 9. | Objects | 11 |
|----|---------|----|

Part 4 — Charter of Mental Health Care Principles

- | | | |
|-----|-----------------------------|----|
| 10. | Regard to be had to Charter | 12 |
|-----|-----------------------------|----|

Contents

11.	Compliance with Charter by mental health services	12
Part 5 — Decision making capacity and informed consent		
Division 1 — Decision making capacity generally		
12.	Capacity of person who has reached 18 years of age to make decisions	13
13.	Capacity of child to make decisions	13
14.	Determining capacity to make decisions	13
Division 2 — Informed consent to treatment		
15.	Requirements for informed consent	14
16.	People who can give informed consent	14
17.	Capacity to make treatment decision	14
18.	Explanation of proposed treatment must be given	15
19.	Sufficient time for consideration	15
Part 6 — Involuntary patients		
Division 1 — When a person will be an involuntary patient		
20.	Involuntary patient	17
21.	Inpatient treatment order	17
22.	Community treatment order	17
23.	Making involuntary treatment order	17
24.	Criteria for involuntary treatment order	18
Division 2 — Referrals for examination		
Subdivision 1 — Person suspected of needing involuntary treatment order		
25.	Referral for examination at authorised hospital or other place	20
26.	Person to be taken to authorised hospital or other place as soon as practicable	21
27.	Detention to enable person to be taken to authorised hospital or other place	21
28.	Making transport order	23
29.	Effect of referral on community treatment order	23
30.	Revoking referral	24
Subdivision 2 — Voluntary inpatient admitted by authorised hospital		
31.	Application of this Subdivision	25
32.	Effect of admission on community treatment order	25
33.	Person in charge of ward may order assessment	25
34.	Revoking order for assessment	26
35.	Referral for examination at authorised hospital	27
36.	Revoking referral	27
Subdivision 3 — Requirements for referral		
37.	Application of this Subdivision	28

38.	No referral without assessment	28
39.	Time limit for making referral	28
40.	Form of referral	29
41.	Providing information contained in referral to person referred	29
42.	Copy of referral must be put on person's medical record	30
43.	Period of referral made under s. 25(2) or (3)(a)	30
44.	Extending referral made outside metropolitan area	30
	Subdivision 4 — Conduct of assessment	
45.	Application of this Subdivision	31
46.	How assessment must be conducted	32
47.	Information to which practitioner may have regard	32
48.	Assessment of people of Aboriginal or Torres Strait Islander descent	32
	Division 3 — Examinations	
	Subdivision 1 — Examination at authorised hospital	
49.	Application of this Subdivision	33
50.	Detention for examination on referral made under s. 25(2)	33
51.	Detention for examination on referral made under s. 35(2)	33
52.	Conducting examination	34
53.	What psychiatrist must do on completing examination	34
54.	Effect of order for continuation of detention made under s. 53(1)(c)	35
	Subdivision 2 — Examination at place that is not authorised hospital	
55.	Application of this Subdivision	36
56.	Detention for examination on referral made under s. 25(3)(a)	36
57.	Detention at place outside metropolitan area	37
58.	Conducting examination	38
59.	What psychiatrist must do on completing examination	38
60.	Detention to enable person to be taken to hospital	39
61.	Making transport order	41
	Subdivision 3 — Inpatient treatment order authorising detention at general hospital	
62.	Application of this Subdivision	41
63.	Treating psychiatrist must report regularly to Chief Psychiatrist	41
64.	Transfer from general hospital to authorised hospital	42
65.	Making transport order	43

Contents

	Subdivision 4 — Order for further examination at authorised hospital	
66.	Application of this Subdivision	43
67.	Detention at authorised hospital	43
68.	Conducting examination at authorised hospital	44
69.	What psychiatrist must do on completing examination at authorised hospital	44
	Subdivision 5 — Examination without referral	
70.	Application of this Subdivision	45
71.	Conducting examination	45
72.	What psychiatrist may do on completing examination	45
73.	Confirmation of community treatment order	45
	Subdivision 6 — Conduct of examination	
74.	Application of this Subdivision	46
75.	Referring psychiatrist cannot conduct examination	46
76.	How examination must be conducted	47
77.	Information to which psychiatrist or practitioner may have regard	47
	Part 7 — Detention for examination or treatment	
	Division 1 — Preliminary matters	
78.	Application of this Part	48
79.	Principles relating to detention	48
	Division 2 — Detention at authorised hospital or other place for examination	
80.	Detention authorised	48
	Division 3 — Detention at hospital under inpatient treatment order	
81.	Application of this Division	49
82.	Terms used	50
83.	Detention authorised	50
84.	Period that must be specified in inpatient treatment order	50
85.	Period for which detention is authorised	50
86.	Examination before end of each detention period	51
87.	Changing involuntary inpatient's status	52
88.	Transfer between authorised hospitals	53
89.	Making transport order	53
90.	Expiry of inpatient treatment order: involuntary inpatient to be advised	54
	Division 4 — Release from hospital or other place	
91.	Application of this Division	54
92.	Person must be allowed to leave	54
93.	Delivery into custody under another law	55

	Division 5 — Absence without leave from hospital or other place	
94.	Persons who are absent without leave	55
95.	Making apprehension and return order	56
96.	Operation of apprehension and return order	57
97.	Period of apprehension and return order	57
98.	Revocation of apprehension and return order	57
99.	Return of person to place where apprehended	58
	Division 6 — Leave of absence from detention at hospital under inpatient treatment order	
	Subdivision 1 — Preliminary matters	
100.	Application of this Subdivision	58
101.	Term used: leave of absence	59
	Subdivision 2 — Grant, extension, cancellation etc. of leave	
102.	Granting leave	59
103.	Extending or varying leave granted	61
104.	Involuntary inpatient must comply with conditions of leave	62
105.	Monitoring involuntary inpatient on leave	62
106.	Changing involuntary inpatient's status while inpatient on leave	62
107.	Cancelling leave	63
	Subdivision 3 — Transport to and from hospital	
108.	Application of this Subdivision	63
109.	Making transport order	64
	Part 8 — Community treatment orders	
	Division 1 — Preliminary matters	
110.	Terms used	65
	Division 2 — Making order	
111.	Things psychiatrist must be satisfied of before making order	65
112.	Terms of order	66
	Division 3 — Operation of order	
113.	Duration of order	67
114.	Supervising psychiatrist must advise patient of when and where treatment to be provided	67
115.	Monthly examination of patient	68
116.	Supervising psychiatrist may request practitioner to examine involuntary community patient	69
117.	What supervising psychiatrist may do after examination	69
118.	Continuation order	70
119.	Varying order	71

Contents

120.	Making inpatient treatment order or revoking community treatment order	72
121.	Expiry of community treatment order: involuntary community patient to be advised	73
	Division 4 — Breach of order	
122.	When involuntary community patient will be in breach	74
123.	What supervising psychiatrist must do if order breached	74
124.	Order to attend if non-compliance continues	75
125.	Making transport order	76
126.	Detention at place specified in order to attend	76
127.	Other action supervising psychiatrist may take if non-compliance with orders	77
	Division 5 — Transport to hospital	
128.	Application of this Division	79
129.	Making transport order	79
	Division 6 — Supervising psychiatrist and treating practitioner	
130.	Supervising psychiatrist	79
131.	Change of supervising psychiatrist	79
132.	Treating practitioner	80
133.	Change of treating practitioner	80
	Part 9 — Notification of certain events	
	Division 1 — Preliminary matters	
134.	Application of this Part	81
	Division 2 — Notification of carer, close family member or other personal support person	
135.	Notification of any event to which this Part applies	81
136.	Reasonable efforts to be made to notify carer, close family member or other personal support person	81
137.	Notifying nominated person, carer or close family member not in person's best interests	82
	Division 3 — Notification of other persons and bodies	
138.	Making, revocation or expiry of involuntary treatment order	83
	Part 10 — Transport orders	
139.	Application of this Part	85
140.	Transport officers	85
141.	Making transport order	85
142.	Operation of transport order	86
143.	Period of transport order	87

144.	Extension of transport order made under s. 28(1) if referral extended	88
145.	Extension of other transport orders	88
146.	Revocation of transport order made under s. 28(1) if referral revoked	89
147.	Revocation of transport order if order no longer needed	89
148.	Return of person if transport order expires or is revoked	90

Part 11 — Apprehension, search and seizure powers

Division 1 — Apprehension powers

149.	Apprehension by police officer of person suspected of having mental illness	91
150.	Assessment of person arrested	92
151.	Police must be notified when person leaves	92
152.	Apprehension of other persons	92

Division 2 — Search and seizure powers

153.	Term used: approved form	93
154.	Authorised persons	93
155.	Search of person while detained or admitted	93
156.	Conduct of search	94
157.	Seizure of articles	96
158.	Record of search and seizure	96
159.	Dealing with articles seized under s. 152(2)(c) when person apprehended	97
160.	Return of articles given to or seized by mental health service	98
161.	Return of articles given to medical practitioner or authorised mental health practitioner	100
162.	Approval of forms for use by police officers under this Division	100

Division 3 — Miscellaneous matters

163.	Term used: prescribed provision	101
164.	Reasonable assistance and reasonable force authorised	101
165.	Duty to obey directions	101
166.	Obstruction of person exercising power	101
167.	Other written laws not affected	101

Part 12 — Provision of treatment generally

Division 1 — Voluntary patients

168.	Informed consent necessary	102
169.	Informed consent must be recorded on voluntary patient's medical record	102

Contents

	Division 2 — Involuntary patients and mentally impaired accused	
170.	Application of this Division	103
171.	Informed consent not necessary	103
172.	Patient's psychiatrist must have regard to patient's wishes	103
173.	Record of treatment	105
174.	Further opinion may be requested	105
175.	Request for additional opinion under s. 174 may be refused	106
176.	Chief Psychiatrist may request reconsideration of treatment being provided	108
	Division 3 — Treatment, support and discharge planning	
177.	Application of this Division	108
178.	Treatment, support and discharge plan	109
179.	Preparation and review of plan	109
180.	Who should be involved in preparation and review of plan	110
	Division 4 — Miscellaneous matters	
181.	Provision of treatment to patients of Aboriginal or Torres Strait Islander descent	112
	Part 13 — Regulation of certain kinds of treatment and other interventions	
	Division 1 — Electroconvulsive therapy	
182.	Electroconvulsive therapy (ECT): meaning of	113
183.	ECT prohibited: offence	113
184.	ECT prohibited: child under 14 years of age	113
185.	Requirements for ECT: child between 14 and 18 years of age	113
186.	Requirements for ECT: voluntary patient who has reached 18 years of age	114
187.	Requirements for ECT: involuntary patient or mentally impaired accused who has reached 18 years of age	114
188.	Emergency ECT: involuntary patient or mentally impaired accused who has reached 18 years of age	115
189.	Mentally Impaired Accused Review Board: report	115
190.	Statistics about ECT	115
	Division 2 — Emergency psychiatric treatment: voluntary patients	
191.	Emergency psychiatric treatment: meaning of	117
192.	Informed consent not required	117
193.	Record of emergency psychiatric treatment	118

	Division 3 — Psychosurgery	
194.	Psychosurgery: meaning of	118
195.	Psychosurgery prohibited: offence	119
196.	Psychosurgery prohibited: child under 14 years of age	119
197.	Requirements for psychosurgery	119
198.	Chief Psychiatrist and Mentally Impaired Accused Review Board: report	120
	Division 4 — Deep sleep and insulin coma therapy	
199.	Deep sleep and insulin coma therapy prohibited	120
	Division 5 — Seclusion	
200.	Terms used	120
201.	Seclusion: meaning of	121
202.	Seclusion must be authorised	121
203.	Giving oral authorisation	121
204.	Making seclusion order	123
205.	Criteria for authorising seclusion	125
206.	Treating psychiatrist (if any) to be informed	125
207.	Extending seclusion order	126
208.	Revoking seclusion order	127
209.	Release of person on revocation or expiry of seclusion order	127
210.	Record of seclusion order expiring	127
211.	Requirements relating to seclusion	128
212.	Examination of person released from seclusion	129
213.	Chief Psychiatrist and Mentally Impaired Accused Review Board: report	129
	Division 6 — Bodily restraint	
214.	Terms used	130
215.	Bodily restraint: meaning of	130
216.	Bodily restraint must be authorised	131
217.	Giving oral authorisation	131
218.	Making bodily restraint order	133
219.	Criteria for authorising bodily restraint	136
220.	Treating psychiatrist (if any) must be informed	137
221.	Varying bodily restraint order	137
222.	Revoking bodily restraint order	138
223.	Release of person on revocation or expiry of bodily restraint order	139
224.	Record of bodily restraint order expiring	139
225.	Requirements relating to bodily restraint	139
226.	Examination of person released from bodily restraint	140
227.	Chief Psychiatrist and Mentally Impaired Accused Review Board: report	141

	Part 14 — People in hospitals: health care generally	
	Division 1 — Examination to assess person's physical condition	
228.	Physical examination on arrival at hospital	142
	Division 2 — Urgent non-psychiatric treatment for involuntary inpatients and mentally impaired accused	
229.	Provision of urgent non-psychiatric treatment: report to Chief Psychiatrist	143
	Part 15 — Protection of patients' rights	
	Division 1 — Patients' rights generally	
	Subdivision 1 — Explanation of rights	
230.	Application of this Subdivision	144
231.	Rights to be explained to person	144
232.	Person's rights to be explained to another person	145
233.	Person responsible for ensuring explanation is provided	145
	Subdivision 2 — Access to records about patients and former patients	
234.	Term used: relevant document	145
235.	Right to access medical record etc.	146
236.	Restrictions on access	146
237.	Providing access to medical practitioner or legal practitioner	147
238.	Disclosure by medical practitioner or legal practitioner	147
	Subdivision 3 — Duties of staff of mental health services toward patients	
239.	Term used: mental health service	147
240.	Duty not to ill-treat or wilfully neglect patients	148
241.	Duty to report certain incidents	148
	Division 2 — Additional rights of inpatients in hospitals	
	Subdivision 1 — Admission of voluntary inpatients by authorised hospitals	
242.	Admission by medical practitioner	148
243.	Confirmation of admission by psychiatrist	148
244.	Reasons for refusing to admit or confirm admission	148
	Subdivision 2 — Rights of inpatients generally	
245.	Application of this Subdivision	149
246.	Personal possessions	149
247.	Interview with psychiatrist	150

248.	Freedom of lawful communication	151
249.	Restrictions on freedom of communication	151
	Division 3 — Nominated persons	
	Subdivision 1 — Purpose and effect of nomination	
250.	Role of nominated person	153
251.	Effect of nomination	153
	Subdivision 2 — Right to information, and to be involved in matters, relating to patient's treatment and care	
252.	Application of this Subdivision	154
253.	Rights of nominated person	154
254.	Patient's psychiatrist must ensure nominated person provided with information etc.	155
255.	Identifying and contacting nominated person	155
256.	Provision of information etc. to nominated person not in patient's best interests	156
257.	No effect on nominated person's right to be provided with information etc. in another capacity	157
	Subdivision 3 — Making and ending nomination	
258.	Who can make nomination	158
259.	Who can be nominated	158
260.	Formal requirements	158
261.	Only one nominated person	158
262.	Revocation of nomination	159
263.	Resignation of nominated person	159
264.	Notification of revocation or resignation	159
	Part 16 — Recognition of rights of carers and families	
	Division 1 — Role of carers and families	
265.	Carers	160
266.	Close family members	160
267.	Acknowledgment of and respect for role of carers and close family members	161
268.	More than one carer or close family member	161
	Division 2 — Right to information about, and to be involved in, patient's treatment and care	
269.	Application of this Division	161
270.	Rights of carers and close family members	161
271.	Voluntary patient with capacity to consent	163
272.	Voluntary patient with no capacity to consent	163
273.	Involuntary patient or mentally impaired accused with capacity to consent	163
274.	Involuntary patient or mentally impaired accused with no capacity to consent	164

Contents

275.	Patient's psychiatrist must ensure carer or close family member provided with information etc.	164
276.	Reasonable efforts to be made to identify and contact carer or close family member	165
277.	Provision of information etc. to carer or close family member not in patient's best interests	166
278.	No effect on right to be provided with information etc. in another capacity	167
	Division 3 — Identifying carer or close family member of person admitted by or received at mental health service	
279.	When being admitted by or received at mental health service	168
280.	While being provided with treatment or care by mental health service	168
281.	Person can withdraw consent, or can consent, at any time	169
	Part 17 — Children who have a mental illness	
282.	Best interests of child is a primary consideration	170
283.	Child's wishes	170
284.	Views of child's parent or guardian	170
285.	Child who is a voluntary patient	170
286.	Children who are inpatients: segregation from inpatients who have reached 18 years of age	170
	Part 18 — Complaints about mental health services	
	Division 1 — Preliminary matters	
287.	Terms used	172
288.	Making complaint to service provider or Director of Complaints Office	173
	Division 2 — Complaints to service providers	
289.	Service provider must have complaints procedure	173
290.	Prescribed service providers must provide Director with information about complaints	174
	Division 3 — Complaints to Director of Complaints Office	
	Subdivision 1 — Preliminary matters	
291.	This Division to be read with <i>Health and Disability Services (Complaints) Act 1995</i>	174
292.	Parties themselves may resolve complaint	175
	Subdivision 2 — Director of Complaints Office	
293.	Functions of Director	175
294.	Directions by Minister	176

295.	Minister to have access to specified information about Director's functions	176
	Subdivision 3 — Right to complain	
296.	Who may complain	177
297.	Representative of person who has or may have mental illness	178
298.	Representative must not be paid	179
299.	Service provider may complain on behalf of person who has or may have mental illness	179
300.	Registration board may complain on behalf of person who has or may have mental illness or on behalf of carer	180
301.	Who and what can be complained about	180
302.	Time for complaining	181
	Subdivision 4 — Initial procedures	
303.	How to complain	181
304.	Referral of complaint about excluded mental health service	182
305.	Withdrawal of complaint	182
306.	Complainant should try to resolve matter	182
307.	Complaint that is not to be dealt with by National Board under <i>Health Practitioner Regulation National Law (Western Australia)</i>	182
308.	Complaint that is being dealt with by National Board under <i>Health Practitioner Regulation National Law (Western Australia)</i>	183
309.	Preliminary decision by Director	183
310.	Rejection, deferral or referral of complaints	185
311.	Response by respondent	186
	Subdivision 5 — Negotiated settlements and conciliation	
312.	Resolving complaints by negotiation	187
313.	Conciliation of complaints	188
	Subdivision 6 — Investigations	
314.	Conduct generally	189
315.	Power to require information and records	190
316.	Warrant to enter and inspect premises	192
317.	Conciliator must not investigate	192
	Subdivision 7 — Consequences of investigation	
318.	What Director must do on completing investigation	192
319.	Respondent or other person to report on remedial action	193
320.	Report not provided or remedial action not taken: report to Parliament	194
	Subdivision 8 — Other matters relating to investigations	
321.	Director to stop if other proceedings begun	194
322.	Minister may refer matters for investigation	195

Contents

323.	Confidentiality	195
	Division 4 — Miscellaneous matters	
324.	Reports to Parliament	196
325.	False or misleading information or documents	196
326.	Person must not be penalised because of complaint or investigation	197
327.	Registers: complaints, matters directed to be investigated	198
328.	Delegation by Director	198
	Part 19 — Mental health advocacy services	
	Division 1 — Preliminary matters	
329.	Terms used	199
	Division 2 — Mental health advocates: appointment, functions and powers	
	Subdivision 1 — Appointment, functions and powers	
330.	Chief Mental Health Advocate	200
331.	Other mental health advocates	200
332.	Functions of Chief Mental Health Advocate	200
333.	Functions of mental health advocates	201
334.	Powers generally	202
335.	Directions by Minister or CEO	202
	Subdivision 2 — Contacting identified person or person with sufficient interest	
336.	Request for mental health advocate to contact identified person	203
337.	Duty to contact identified person	204
338.	Contact on mental health advocate's own initiative	205
	Subdivision 3 — Specific powers of mental health advocates	
339.	Specific powers of mental health advocates	205
340.	Documents to which access is restricted	206
341.	Disclosure by mental health advocate	207
342.	Interfering with exercise of powers: offences	207
343.	Dealing with issues arising out of inquiries and investigations	208
	Division 3 — Mental health advocates: terms and conditions of appointment	
	Subdivision 1 — Chief Mental Health Advocate	
344.	Term of appointment	209
345.	Remuneration	209
346.	Resignation	209
347.	Removal from office	210
348.	Acting Chief Mental Health Advocate	210

	Subdivision 2 — Other mental health advocates	
349.	Terms and conditions of engagement or appointment	211
350.	Resignation	211
351.	Removal from office	211
	Division 4 — Mental health advocates: miscellaneous matters	
352.	Conflict of interest	211
353.	Identity cards	212
354.	Delegation by Chief Mental Health Advocate	213
	Division 5 — Staff and facilities	
355.	Advocacy services staff	214
356.	Use of government staff and facilities	214
	Division 6 — Annual reports	
357.	Annual report: preparation	214
358.	Annual report: tabling	215
	Part 20 — Mental Health Tribunal	
	Division 1 — Preliminary matters	
359.	Terms used	216
	Division 2 — Establishment, jurisdiction and constitution	
360.	Establishment	217
361.	Jurisdiction	217
362.	Constitution specified by President	217
363.	Constitution generally	217
364.	Constitution for psychosurgical matters	217
365.	Contemporaneous exercise of jurisdiction	218
	Division 3 — Involuntary treatment orders: review	
366.	Initial review after order made	218
367.	Periodic reviews while order in force	219
368.	Involuntary patient for continuous period	220
369.	Review period may be extended	221
370.	Application for review	221
371.	Review on Tribunal's own initiative	223
372.	Suspending involuntary treatment order pending review	223
373.	Parties to proceeding	223
374.	Things to which Tribunal must have regard	224
375.	What Tribunal may do on completing review	224
376.	Review of direction given to psychiatrist	225
	Division 4 — Involuntary treatment orders: declarations about validity	
377.	Application of this Division	225
378.	Declaration about validity of treatment order	226
379.	Application for declaration	226

Contents

380.	Ground of invalidity: failure to comply with this Act	226
	Division 5 — Long-term voluntary inpatients: review of admission by authorised hospitals	
381.	Application of this Division	227
382.	Application for review	227
383.	Parties to proceeding	227
384.	Things to which Tribunal must have regard	228
385.	What Tribunal may do on completing review	228
	Division 6 — Electroconvulsive therapy: approvals	
386.	Application of this Division	229
387.	Application for approval	229
388.	Parties to proceeding	230
389.	Things Tribunal must be satisfied of	230
390.	Things to which Tribunal must have regard if no informed consent	231
391.	Decision on application	232
	Division 7 — Psychosurgery: approvals	
392.	Application of this Division	232
393.	Application for approval	232
394.	Parties to proceeding	233
395.	Things Tribunal must be satisfied of	233
396.	Things to which Tribunal must have regard	234
397.	Decision on application	234
	Division 8 — Non-clinical matters: compliance notices	
398.	Terms used	234
399.	Tribunal may issue service provider with compliance notice	235
400.	Application for service of compliance notice	235
401.	Parties to proceeding	236
402.	Compliance notices to be reported on in annual report	236
	Division 9 — Restrictions on patients' freedom of communication: review of orders	
403.	Application for review	236
404.	Parties to proceeding	237
405.	Things to which Tribunal must have regard	237
406.	Decision on application	237
	Division 10 — Jurisdiction in relation to nominated persons	
407.	Application for decision	238
408.	Declaration about validity of nomination	238
409.	Revocation of nomination	238
410.	Parties to proceeding	238

	Division 11 — Review of decisions affecting rights	
411.	Application for review with leave of Tribunal	239
412.	Parties to proceeding	239
413.	What Tribunal may do on completing review	239
	Division 12 — Procedural matters	
	Subdivision 1 — Proceedings generally	
414.	Lodgment of documents	239
415.	Sittings	239
416.	Conduct of proceedings	240
417.	Presiding member	240
418.	Deciding questions in proceedings	240
419.	Assistance from persons with relevant knowledge or experience	240
420.	No fees payable	240
421.	Each party to bear own costs	241
422.	Frivolous, vexatious or improper proceedings	241
	Subdivision 2 — Notice of proceedings	
423.	Notice of applications	241
424.	Notice of hearings	242
425.	Tribunal may request information from SAT about person's guardian	244
	Subdivision 3 — Appearance and representation	
426.	Party who has reached 18 years of age	244
427.	Party who is child with capacity to consent	244
428.	Party who is child with no capacity to consent	245
429.	Tribunal may make arrangements for representation	245
430.	Legal representation of person who has or is being treated for mental illness	245
431.	Representative must not be paid	246
	Subdivision 4 — Hearings and evidence	
432.	Nature of review proceedings	246
433.	Closed hearings	247
434.	Person chosen by person concerned may be present	247
435.	Parent or guardian may be excluded from hearing	248
436.	Right to be heard	248
437.	Evidence generally	248
438.	Oral evidence etc. about information to which access is restricted under s. 236	249
439.	Power to summon persons to attend and produce documents	250
440.	Self-incrimination	250
441.	Powers in relation to documents produced	250
442.	Offences relating to answering questions, producing documents and providing other information	250
443.	Evidence and findings in other proceedings	251

Contents

444.	Contempt of Tribunal	251
445.	Hearings to be recorded	252
446.	Publication of information about proceedings	252
	Subdivision 5 — Decisions in proceedings	
447.	Reasons for decision	255
448.	Extension of time to request reasons	255
449.	Giving effect to Tribunal's decisions	256
	Division 13 — Rules	
450.	Power to make	256
451.	Content	256
452.	Publication and tabling	257
	Division 14 — Tribunal members	
453.	President of Tribunal	257
454.	Other members	258
455.	Tenure of office	258
456.	Remuneration	258
457.	Resignation	258
458.	Removal from office	259
459.	Acting members	259
460.	Delegation by President of Tribunal	260
	Division 15 — Registrar and other staff	
461.	Registrar	260
462.	Functions of registrar	261
463.	President of Tribunal may give registrar directions	261
464.	Registry staff	261
465.	Delegation by registrar	261
	Division 16 — Annual reports	
466.	Annual report: preparation	262
467.	Annual report: tabling	262
	Division 17 — Miscellaneous matters	
468.	Seal	262
469.	Judicial notice of certain matters	262
	Part 21 — Review by State Administrative Tribunal	
	Division 1 — Preliminary matters	
470.	Terms used	264
	Division 2 — Jurisdiction	
471.	Review of decisions of Mental Health Tribunal	264
472.	Determination of questions of law before Mental Health Tribunal	264
	Division 3 — Constitution	
473.	Constitution generally	264
474.	Constitution for psychosurgical matters	265
475.	Constitution for determining questions of law	265

	Division 4 — Procedural matters	
476.	No fees payable	266
477.	Appearance and representation	266
478.	Closed hearings	267
479.	Publication of information about proceedings	267
	Part 22 — Administration	
	Division 1 — Preliminary matters	
480.	Term used: mental health service	271
	Division 2 — Chief Psychiatrist	
	Subdivision 1 — Appointment, terms and conditions	
481.	Appointment	271
482.	Remuneration	271
483.	Resignation	271
484.	Removal from office	271
485.	Acting Chief Psychiatrist	272
	Subdivision 2 — Functions and powers generally	
486.	Responsibility for treatment and care	272
487.	Directions by CEO	273
488.	Powers generally	274
	Subdivision 3 — Specific powers relating to treatment and care	
489.	Review of treatment	274
490.	Visits to mental health services	275
491.	Interfering with visits to mental health services: offence	276
492.	Directions to mental health services to disclose information	277
	Subdivision 4 — Notifiable incidents	
493.	Application of this Subdivision	277
494.	Term used: notifiable incident	277
495.	Person in charge of mental health service must report notifiable incidents	278
496.	Action Chief Psychiatrist may take in relation to notifiable incident	278
497.	Chief Psychiatrist must advise person in charge of decision	279
498.	Powers of Chief Psychiatrist for investigation under s. 496(1)(a)	279
499.	Chief Psychiatrist must advise person in charge of outcome of investigation	279
	Subdivision 5 — Staff and facilities	
500.	Chief Psychiatrist's staff	279
501.	Use of government staff and facilities	280
	Subdivision 6 — Annual reports	
502.	Annual report: preparation	280
503.	Annual report: tabling	281

Contents

	Subdivision 7 — Miscellaneous matters	
504.	Compliance with request for information about patient or person detained	281
505.	Request for list of mentally impaired accused	282
506.	Delegation by Chief Psychiatrist	282
	Division 3 — Mental health practitioners and authorised mental health practitioners	
507.	Mental health practitioners	282
508.	Authorised mental health practitioners	283
	Division 4 — Authorised hospitals	
509.	Authorised hospital: meaning of	284
510.	Authorisation of public hospitals	284
	Division 5 — Approved forms	
511.	Approval of forms by Chief Psychiatrist	284
512.	Publication of approved forms and related guidelines	284
	Division 6 — Guidelines and standards	
513.	Publication of guidelines and standards for various purposes	285
514.	Application, adoption or incorporation of other documents	285
515.	Publication on Mental Health Commission's website	286
	Division 7 — Miscellaneous matters	
516.	Delegation by Minister or CEO	286
	Part 23 — Interstate arrangements	
	Division 1 — Preliminary matters	
517.	Terms used	287
	Division 2 — Intergovernmental agreements	
518.	Agreements with other States and Territories	288
519.	Agreement must be in place	288
520.	Performance of functions under corresponding laws or intergovernmental agreements	288
	Division 3 — Transfer to or from interstate mental health service	
521.	Transfer from hospital to interstate mental health service	288
522.	Transport order	289
523.	Transfer from interstate mental health service to hospital	290
524.	Transport of interstate inpatient to hospital	291
	Division 4 — Community treatment orders	
525.	Community treatment order: treatment interstate	291
526.	Transport order	291

527.	Interstate community treatment order: treatment in State	292
528.	Interstate community treatment order: supervision in State	292
Part 24 — Ministerial inquiries		
529.	Appointment of person to conduct inquiry	293
530.	Powers of investigation	293
531.	Interfering with investigation	294
532.	Conduct of inquiry generally	295
533.	Evidence generally	295
534.	Power to summon persons to attend and produce documents	295
535.	Self-incrimination	296
536.	Powers in relation to documents produced	296
537.	Offences relating to answering questions, producing documents and providing other information	296
Part 25 — Information		
Division 1 — Collection of information from service providers		
538.	Terms used	298
539.	Information that may be collected	298
540.	Direction to provide information	299
Division 2 — Voluntary disclosure of information by public authorities and mental health services		
541.	Powers of CEO of Mental Health Commission	300
542.	Powers of CEOs of prescribed State authorities	301
543.	Delegation by CEO of prescribed State authority	302
Division 3 — Miscellaneous matters		
544.	Confidentiality	303
545.	Authorised recording, disclosure or use of information	303
546.	Information disclosed under s. 492, 540, 541 or 545: receipt, storage and access	304
Part 26 — Miscellaneous matters		
547.	Restrictions on powers of medical practitioners and mental health practitioners	306
548.	Obstructing or hindering person performing functions	307
549.	Amendment of referrals and orders	307
550.	Medical records to be kept by mental health services	308
551.	Protection from liability: performance of functions	308

Contents

552.	Protection from liability: detention of person who has or may have mental illness	309
553.	Relationship with <i>Freedom of Information Act 1992</i>	309
554.	Regulations	309
555.	Review of this Act after 5 years	309

**Schedule 1 — Charter of Mental
Health Care Principles**

Defined Terms

Mental Health Bill 2012

**A draft for public comment of
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:

1 **Part 1 — Preliminary matters**

2 **1. Short title**

3 This is the *Mental Health Act 2012*.

4 **2. Commencement**

5 This Act comes into operation as follows —

6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;

8 (b) the rest of the Act — on a day fixed by proclamation,
9 and different days may be fixed for different provisions.

10 **3. Act binds Crown**

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

- 1 ***child and adolescent psychiatrist*** means a psychiatrist who has
2 qualifications and clinical training in the treatment of mental
3 illness in children;
- 4 ***CL(MIA) Act*** means the *Criminal Law (Mentally Impaired*
5 *Accused) Act 1996*;
- 6 ***close family member***, of a person, has the meaning given in
7 section 266(1);
- 8 ***community treatment order*** has the meaning given in
9 section 22(1);
- 10 ***Director of the Complaints Office*** means the Director as
11 defined in section 287;
- 12 ***discharge***, of a patient, means the discharge of the patient by a
13 mental health service, whether the patient was admitted as an
14 inpatient or otherwise;
- 15 ***document*** has the meaning given in the *Evidence Act 1906*
16 section 79B;
- 17 ***electroconvulsive therapy*** has the meaning given in section 182;
- 18 ***emergency psychiatric treatment*** has the meaning given in
19 section 191;
- 20 ***enduring guardian***, of a person who has reached 18 years of
21 age, means the person's enduring guardian as defined in the
22 GAA Act section 3(1);
- 23 ***GAA Act*** means the *Guardianship and Administration*
24 *Act 1990*;
- 25 ***general hospital*** means a hospital (as defined in the *Hospitals*
26 *and Health Services Act 1927* section 2(1)) where overnight
27 accommodation is provided to patients except any of these
28 hospitals —
- 29 (a) an authorised hospital;
- 30 (b) a maternity home;
- 31 (c) a nursing home;
- 32 ***guardian***, of a person who has reached 18 years of age, means
33 the person's guardian as defined in the GAA Act section 3(1);
- 34 ***Health Department*** means the agency (as defined in the *Public*
35 *Sector Management Act 1994* section 3(1)) principally assisting
36 the Health Minister;
- 37 ***Health Minister*** means the Minister to whom the administration
38 of the *Health Legislation Administration Act 1984* is committed;

- 1 **hospital** means —
- 2 (a) an authorised hospital; or
- 3 (b) a general hospital;
- 4 **informed consent**, to the provision of treatment, means consent
- 5 to the provision of the treatment given in accordance with Part 5
- 6 Division 2;
- 7 **inpatient treatment order** has the meaning given in
- 8 section 21(1);
- 9 **involuntary community patient** means a person who is under a
- 10 community treatment order;
- 11 **involuntary inpatient** means a person who is under an inpatient
- 12 treatment order;
- 13 **involuntary patient** means a person who is under an involuntary
- 14 treatment order;
- 15 **involuntary treatment order** means —
- 16 (a) an inpatient treatment order; or
- 17 (b) a community treatment order;
- 18 **legal practitioner** means an Australian legal practitioner as
- 19 defined in the *Legal Profession Act 2008* section 3;
- 20 **medical practitioner** means a person registered under the
- 21 *Health Practitioner Regulation National Law (Western*
- 22 *Australia)* in the medical profession;
- 23 **mental health advocate** means —
- 24 (a) the Chief Mental Health Advocate; or
- 25 (b) a person lawfully holding, acting in or performing the
- 26 functions of the office of mental health advocate
- 27 referred to in section 331(1);
- 28 **Mental Health Commission** means the agency (as defined in
- 29 the *Public Sector Management Act 1994* section 3(1))
- 30 principally assisting the Minister in administering this Act;
- 31 **mental health practitioner** has the meaning given in
- 32 section 507;
- 33 **mental health service** means any of these services —
- 34 (a) a hospital, but only to the extent that the hospital
- 35 provides treatment or care to people who have or may
- 36 have a mental illness;
- 37 (b) a psychiatric out-patients clinic;
- 38 (c) a community mental health service;

- 1 (d) any other service prescribed by the regulations for this
2 definition;
- 3 ***Mental Health Tribunal*** means the Mental Health Tribunal
4 established by section 360;
- 5 ***mental illness*** has the meaning given in section 6;
- 6 ***mentally impaired accused*** has the meaning given in the
7 CL(MIA) Act section 23;
- 8 ***Mentally Impaired Accused Review Board*** means the Mentally
9 Impaired Accused Review Board established by the CL(MIA)
10 Act section 41;
- 11 ***metropolitan area*** means an area of the State prescribed by the
12 regulations as a metropolitan area;
- 13 ***neurosurgeon*** means a person —
- 14 (a) whose name is contained in the register of specialist
15 surgeons kept by the Medical Board of Australia under
16 the *Health Practitioner Regulation National Law*
17 (*Western Australia*) section 223; and
- 18 (b) who has clinical training in neurosurgery;
- 19 ***nominated person***, of a person, means the person nominated
20 under section 258(1) to be the person's nominated person;
- 21 ***nomination*** means a nomination made under section 258(1);
- 22 ***patient*** means a person to whom treatment is being, or is
23 proposed to be, provided;
- 24 ***patient's psychiatrist*** means —
- 25 (a) if the patient is a voluntary patient — the treating
26 psychiatrist; or
- 27 (b) if the patient is an involuntary patient who is under an
28 inpatient treatment order — the treating psychiatrist; or
- 29 (c) if the patient is an involuntary patient who is under a
30 community treatment order — the supervising
31 psychiatrist; or
- 32 (d) if the patient is a mentally impaired accused who is
33 required under the CL(MIA) Act to be detained at an
34 authorised hospital — the treating psychiatrist;
- 35 ***personal information*** has the meaning given in the *Freedom of*
36 *Information Act 1992* in the Glossary clause 1;
- 37 ***personal support person***, of a person, means a person referred
38 to in section 7(2)(b)(i), (ii), (iii), (iv) or (v);

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

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

5 **psychiatrist** means a medical practitioner —

- 6 (a) who is a fellow of the Royal Australian and New
7 Zealand College of Psychiatrists; or
- 8 (b) who holds specialist registration under the *Health*
9 *Practitioner Regulation National Law (Western*
10 *Australia)* in the specialty of psychiatry; or
- 11 (c) who holds limited registration under the *Health*
12 *Practitioner Regulation National Law (Western*
13 *Australia)* that enables the medical practitioner to
14 practise in the specialty of psychiatry;

15 **psychosurgery** has the meaning given in section 194;

16 **public hospital** has the meaning given in the *Hospitals and*
17 *Health Services Act 1927* section 2(1);

18 **registration board** has the meaning given in the *Health and*
19 *Disability Services (Complaints) Act 1995* section 3(1);

20 **remuneration** has the meaning given in the *Salaries and*
21 *Allowances Act 1975* section 4(1);

22 **seclusion** has the meaning given in section 201;

23 **staff member**, of a mental health service, means a person —

- 24 (a) who is employed in a mental health service under a
25 contract of employment or contract of training; or
- 26 (b) who provides services to a mental health service under a
27 contract for services;

28 **supervising psychiatrist** has the meaning given in section 110;

29 **transport officer** has the meaning given in section 140;

30 **treating psychiatrist**, in relation to a patient, means the
31 psychiatrist who is in charge of the patient's treatment;

32 **treatment** means the provision of a psychiatric, medical,
33 psychological, social or other therapeutic intervention intended
34 (whether alone or in combination with one or more other
35 therapeutic interventions) to alleviate or prevent the
36 deterioration of —

- 37 (a) a mental illness; or
- 38 (b) a condition that is a consequence of a mental illness,
39 and does not include bodily restraint or seclusion;

1 ***treatment decision***, in relation to a person, means a decision to
2 give consent, or to refuse to give consent, to treatment being
3 provided to the person;

4 ***treatment in the community*** means treatment that can be
5 provided to a patient without detaining the patient at a hospital
6 under an inpatient treatment order;

7 ***treatment, support and discharge plan*** has the meaning given
8 in section 178;

9 ***voluntary inpatient*** means a voluntary patient who is admitted
10 by a mental health service as an inpatient;

11 ***voluntary patient*** means a patient who is not —

12 (a) an involuntary patient; or

13 (b) a mentally impaired accused who is required under the
14 CL(MIA) Act to be detained at an authorised hospital.

15 Note for the definition of ***voluntary patient***:

16 A voluntary patient includes —

17 (a) a person who is referred under section 25(2) or (3)(a) or 35(2) or is
18 under an order made under section 53(1)(c) or 59(1)(c); and

19 (b) a mentally impaired accused who is released from an authorised hospital
20 (whether unconditionally or on conditions) under a release order made
21 under the CL(MIA) Act section 35.

22 **5. Notes not part of Act**

23 A note set out at the foot of a provision of this Act is provided
24 to assist understanding and does not form part of this Act.

25 **Division 2 — Mental illness**

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

27 (1) A person has a mental illness if the person has a condition
28 that —

29 (a) is characterised by a disturbance of thought, mood,
30 volition, perception, orientation or memory; and

31 (b) significantly impairs (temporarily or permanently) the
32 person's judgment or behaviour.

33 (2) A person does not have a mental illness merely because one or
34 more of these things apply —

35 (a) the person holds, or refuses or fails to hold, a particular
36 religious, cultural, political or philosophical belief or
37 opinion;

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

Division 3 — Best interests of a person

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

- 30 (1) This section applies whenever a person or body is required
- 31 under this Act to decide what is or is not in the best interests of
- 32 a person.
- 33 (2) The person or body making the decision must have regard to
- 34 these things —
- 35 (a) the person's wishes, to the extent that it is practicable to
- 36 ascertain those wishes;

- 1 (b) the views of each of these people —
- 2 (i) if the person has an enduring guardian or
- 3 guardian, the enduring guardian or guardian;
- 4 (ii) if the person is a child, the child's parent or
- 5 guardian; and
- 6 (iii) if the person has a nominated person, the
- 7 nominated person;
- 8 (iv) if the person has a carer, the carer;
- 9 (v) if the person has a close family member, the
- 10 close family member;
- 11 (c) any other matter that the person or body considers
- 12 relevant to making the decision.

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

14 **8. Matters relevant to ascertaining person's wishes**

- 15 (1) This section applies whenever a person or body is required
- 16 under this Act to ascertain the wishes of a person.
- 17 (2) For the purposes of ascertaining the person's wishes, the person
- 18 or body must have regard to the following —
- 19 (a) any treatment decision in any advance health directive
- 20 made by the person;
- 21 (b) the terms of any enduring power of guardianship (as
- 22 defined in the GAA Act section 3(1)) made by the
- 23 person;
- 24 (c) any other things that the person or body considers
- 25 relevant to ascertaining the person's wishes.

Part 3 — Objects

9. 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 **10. 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 **11. Compliance with Charter by mental health services**

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

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

Division 1 — Decision making capacity generally

12. Capacity of person who has reached 18 years of age to make decisions

(1) For the purposes of this Act, a person who has reached 18 years of age is presumed to have the capacity to make a decision about a matter relating to himself or herself unless the person is shown not to have that capacity.

(2) For the purposes of this Act, if a person who has reached 18 years of age does not have the capacity to make a decision about a matter relating to himself or herself, the person who is authorised by law to do so may make the decision on the person's behalf.

13. Capacity of child to make decisions

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

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

14. Determining capacity to make decisions

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

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

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

(c) understand the effect of the decision; and

(d) communicate the decision in some way.

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

Division 2 — Informed consent to treatment

15. Requirements for informed consent

- (1) A person gives informed consent to the provision of treatment only if —
- (a) the requirements of this Division in relation to making a treatment decision about the provision of the treatment are satisfied; and
 - (b) the consent is given freely and voluntarily.
- (2) Failing to offer resistance does not by itself constitute giving consent.

16. People who can give informed consent

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

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

Notes for section 16:

- 1. The patient can give informed consent by making an advance health directive (see the GAA Act section 110ZJ(2)).
- 2. The patient's enduring guardian or guardian or the person responsible for the patient can give informed consent on the patient's behalf (see the GAA Act section 110ZJ(3) to (5)).
- 3. A child's parent or guardian can give informed consent on the child's behalf unless the child has the capacity to give informed consent (see section 285(3)).

17. Capacity to make treatment decision

A person does not have the capacity to make a treatment decision about the provision of treatment, whether to himself or herself or another person, unless the person has the capacity to —

- (a) understand the things that are required under section 18 to be communicated to the person about the treatment; and
- (b) understand the matters involved in making the treatment decision; and

- 1 (c) understand the effect of the treatment decision; and
2 (d) communicate the treatment decision in some way.

3 **18. Explanation of proposed treatment must be given**

- 4 (1) Before a person is asked to make a treatment decision about the
5 provision of treatment, whether to himself or herself or another
6 person, the person must be given a clear explanation of the
7 treatment —
8 (a) containing sufficient information to enable the person to
9 make a balanced judgment about the treatment; and
10 (b) identifying and explaining any alternative treatment
11 about which there is insufficient knowledge to justify it
12 being recommended or to enable its effect to be
13 predicted reliably; and
14 (c) warning the person of any risks inherent in the
15 treatment.
16 (2) The extent of the information required under subsection (1) to
17 be provided to a person is limited to information that a
18 reasonable person in the person's position would be likely to
19 consider significant to the treatment decision unless the person
20 providing the information knows, or could reasonably have been
21 expected to know, that the person is likely to consider other
22 information to be significant to the treatment decision.
23 (3) Subsection (1) applies despite any privilege claimed by a
24 person.
25 (4) Any explanation provided under subsection (1) to a person must
26 be provided in a language, form of communication and terms
27 that the person is likely to understand using any means of
28 communication that is practicable and using an interpreter if
29 necessary and practicable.

30 **19. Sufficient time for consideration**

- 31 A person cannot be asked to make a treatment decision about
32 the provision of treatment unless the person —
33 (a) has been given sufficient time to consider the matters
34 involved in the treatment decision; and
35 (b) has been given a reasonable opportunity to discuss those
36 matters with the medical practitioner or other health
37 professional who is proposing the provision of the
38 treatment; and

s. 19

Informed consent to treatment

1 (c) has been given a reasonable opportunity to obtain any
2 other advice or assistance in relation to the treatment
3 decision that the person wishes.

Part 6 — Involuntary patients

Division 1 — When a person will be an involuntary patient

20. 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.

21. 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 53(1)(a), 54(1)(a)(i), 69(1)(a), 117(2)(a), 120(1)(a) or 127(2)(a).
- (3) An inpatient treatment order authorising a person's detention at a general hospital may be made under section 59(1)(a) or 127(2)(a).

22. 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 53(1)(b), 54(1)(a)(ii), 59(1)(b), 69(1)(b), 72(1), 86(2)(b) or 87(1)(a).

23. Making involuntary treatment order

- (1) Only a psychiatrist may make an involuntary treatment order.
- (2) A psychiatrist cannot make an involuntary treatment order except in accordance with this Act.
- (3) A psychiatrist must not make an inpatient treatment order in respect of a person unless satisfied, having regard to the criteria

- 1 specified in section 24(1), that the person is in need of an
2 inpatient treatment order.
- 3 (4) Before deciding whether or not to make an inpatient treatment
4 order in respect of a person, a psychiatrist must consider
5 whether the objects of this Act would be better achieved by
6 making a community treatment order in respect of the person.
- 7 (5) A psychiatrist must not make a community treatment order in
8 respect of a person unless satisfied, having regard to the criteria
9 specified in section 24(2), that the person is in need of a
10 community treatment order.
- 11 (6) An involuntary treatment order made in respect of a person
12 must —
- 13 (a) be in force for as brief a period as practicable; and
14 (b) be reviewed regularly; and
15 (c) be revoked as soon as practicable after the person no
16 longer meets the criteria for the order.

17 **24. Criteria for involuntary treatment order**

- 18 (1) A person is in need of an inpatient treatment order only if all of
19 these criteria are satisfied —
- 20 (a) that the person has a mental illness for which the person
21 is in need of treatment;
- 22 (b) that, because of the mental illness, there is —
- 23 (i) a significant risk to the health or safety of the
24 person or to the safety of another person; or
- 25 (ii) a significant risk of serious harm to the person or
26 to another person;
- 27 (c) that —
- 28 (i) the person does not have the capacity required by
29 section 17 to make a treatment decision about the
30 provision of the treatment to himself or herself;
31 or
- 32 (ii) the person has unreasonably refused treatment;
- 33 (d) that, because of the person's mental or physical
34 condition or another reason, treatment in the community
35 cannot reasonably be provided to the person;
- 36 (e) that the person cannot be adequately provided with
37 treatment in a way that would involve less restriction on

- 1 the person's freedom of choice and movement than
2 making an inpatient treatment order.
- 3 (2) A person is in need of a community treatment order only if all
4 of these criteria are satisfied —
- 5 (a) that the person has a mental illness for which the person
6 is in need of treatment;
- 7 (b) that, because of the mental illness, there is —
- 8 (i) a significant risk to the health or safety of the
9 person or to the safety of another person; or
- 10 (ii) a significant risk of serious harm to the person or
11 to another person; or
- 12 (iii) a significant risk of the person suffering serious
13 physical or mental deterioration;
- 14 (c) that —
- 15 (i) the person does not have the capacity required by
16 section 17 to make a treatment decision about the
17 provision of the treatment to himself or herself;
18 or
- 19 (ii) the person has unreasonably refused treatment;
- 20 (d) that treatment in the community can reasonably be
21 provided to the person;
- 22 (e) that the person cannot be adequately provided with
23 treatment in a way that would involve less restriction on
24 the person's freedom of choice and movement than
25 making a community treatment order.
- 26 (3) A decision whether or not a person is in need of an inpatient
27 treatment order or a community treatment order must be made
28 having regard to the guidelines published under
29 section 513(1)(a).

30 Note for Division 1:

31 Part 20 Division 3 confers jurisdiction on the Mental Health Tribunal to
32 conduct reviews relating to involuntary patients.

Division 2 — Referrals for examination

Subdivision 1 — Person suspected of needing involuntary treatment order

25. Referral for examination at authorised hospital or other place

(1) A medical practitioner or authorised mental health practitioner may refer a person under subsection (2) or (3)(a) for an examination by a psychiatrist if, having regard to the criteria specified in section 24, the practitioner reasonably suspects that —

(a) the person is in need of an involuntary treatment order; or

(b) if the person is under a community treatment order, the person is in need of an inpatient treatment order.

(2) The practitioner may refer the person for an examination to be conducted by a psychiatrist at an authorised hospital.

(3) The practitioner —

(a) may refer the person for an examination to be conducted by a psychiatrist at a place that is not an authorised hospital if, in the practitioner's opinion, it is an appropriate place to conduct the examination having regard to the guidelines published under section 513(1)(b); and

(b) if the practitioner refers the person under paragraph (a), must make any arrangements that are necessary to enable the examination to be conducted at that place.

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

(5) Sections 26 to 29 apply to a person who is referred under subsection (2) or (3)(a).

Notes for section 25:

1. A person who is referred under section 25(2) or (3)(a) can be detained under an order made under section 27(1) or (2) to enable the person to be taken to the authorised hospital or other place and can be detained there under section 50(1)(b) or 56(1)(b) to enable the person to be examined.
2. Part 7 Division 4 applies to the release of a person who is detained under section 27(1) or (2), 50(1)(b) or 56(1)(b).

1 3. Part 7 Division 5 applies if a person who is detained under
2 section 27(1) or (2), 50(1)(b) or 56(1)(b) is absent without leave from
3 the authorised hospital or other place where the person is be detained.

4 **26. Person to be taken to authorised hospital or other place as**
5 **soon as practicable**

6 The person must be taken to the authorised hospital or other
7 place as soon as practicable and, in any event, before the referral
8 expires, whether or not a transport order is made under
9 section 28(1) in respect of the person.

10 **27. Detention to enable person to be taken to authorised**
11 **hospital or other place**

12 (1) A medical practitioner or authorised mental health practitioner
13 may make an order authorising the person's detention for up to
14 6 hours from the time when the referral is made if satisfied that,
15 because of the person's mental or physical condition, the person
16 needs to be detained to enable the person to be taken to the
17 authorised hospital or other place.

18 (2) A medical practitioner or authorised mental health practitioner
19 may, immediately before the end of the period of detention
20 ordered under subsection (1) or any further period of detention
21 ordered under this subsection in respect of the person, make an
22 order authorising the continuation of the person's detention for
23 up to 6 hours from the end of that period to enable the person to
24 be taken to the authorised hospital or other place.

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

27 (4) A practitioner must not make an order under subsection (2) in
28 respect of the person unless —

29 (a) immediately before making the order, the practitioner
30 assesses the person; and

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

35 (5) Subdivision 4 applies to an assessment required by
36 subsection (4)(a).

37 (6) An order made under this section must be in the approved form
38 and must —

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

Mental Health Bill 2012

Part 6 Involuntary patients

Division 2 Referrals for examination

s. 27

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

28. Making transport order

- (1) A medical practitioner or authorised mental health practitioner may make a transport order in respect of the person.
- (2) The practitioner must not make the transport order unless satisfied that —
 - (a) because of the person’s mental or physical condition, the person needs to be taken to the authorised hospital or other place; and
 - (b) no other safe means of taking the person is reasonably available.
- (3) Part 10 applies to the transport order.
- (4) The making of a transport order under subsection (1) is an event to which Part 9 applies and the practitioner who makes the order is the person responsible for notification of that event under that Part.

29. Effect of referral on community treatment order

A community treatment order that is in force in respect of a person who is referred under section 25(2) or (3)(a) is suspended for the period —

- (a) beginning when the referral is made; and
- (b) ending when the first of these things occurs —
 - (i) a psychiatrist makes an order under section 53(1)(a) or (d), 54(1)(a)(i) or (iii), 59(1)(a) or (d) or 69(1)(a) or (c) in respect of the person;
 - (ii) the referral is revoked under section 30(1);
 - (iii) the person cannot continue to be detained because section 27(10) or (11), 50(4), 56(4) or 67(4) applies.

Notes for section 29:

1. A community treatment order that the patient is under is automatically revoked under section 113(b) if a psychiatrist makes an inpatient treatment order under section 53(1)(a), 54(1)(a)(i), 59(1)(a) or 69(1)(a) in respect of the involuntary community patient.
2. A community treatment order is no longer suspended if a psychiatrist makes an order under section 53(1)(d), 54(1)(a)(iii), 59(1)(d) or 69(1)(c) that the involuntary community patient cannot continue to be detained.
3. A community treatment order remains suspended until the period of the suspension ends under section 29(b), or until the community treatment order is revoked under section 117(2)(b) or 127(2)(b), if a

1 psychiatrist makes an order under section 59(1)(c) in respect of the
2 involuntary community patient.

3 **30. Revoking referral**

4 (1) A medical practitioner or authorised mental health practitioner
5 may make an order revoking a referral made under section 25(2)
6 or (3)(a) if satisfied that the person who is referred is no longer
7 in need of an involuntary treatment order.

8 (2) The practitioner must not revoke the referral if it was made by
9 another practitioner unless —

10 (a) the practitioner has consulted the other practitioner
11 about whether or not to revoke the referral; or

12 (b) despite reasonable efforts to do so, the other practitioner
13 could not be contacted.

14 (3) The order must be in the approved form and must —

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

16 (b) specify the reasons for making it; and

17 (c) include —

18 (i) if the other practitioner was consulted — a
19 record of the consultation; or

20 (ii) if the other practitioner could not be contacted —
21 a record of the efforts made to do so;

22 and

23 (d) specify the name and qualifications of, and be signed by,
24 the practitioner.

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

26 (a) put the order on the person's medical record; and

27 (b) give a copy of the order to the person.

28 (5) The practitioner must, as soon as practicable —

29 (a) advise the transport officer or police officer who was to
30 have carried out, or who was carrying out, any transport
31 order made under section 28(1) in respect of the person
32 that the referral has been revoked under subsection (1)
33 and that therefore the transport order has been revoked
34 under section 146; and

35 (b) put a record of that advice on the person's medical
36 record.

- 1 (6) The person cannot continue to be detained if the referral is
2 revoked under subsection (1).
- 3 (7) The release of a person because of subsection (6) is an event to
4 which Part 9 applies and the practitioner who revokes the
5 referral is the person responsible for notification of that event
6 under that Part.

7 **Subdivision 2 — Voluntary inpatient admitted by authorised**
8 **hospital**

9 **31. Application of this Subdivision**

10 This Subdivision applies to a voluntary inpatient who is
11 admitted by an authorised hospital.

12 **32. Effect of admission on community treatment order**

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

- 15 (a) beginning when the voluntary inpatient is admitted as an
16 inpatient by the authorised hospital; and
- 17 (b) ending when the first of these things occurs —
- 18 (i) a psychiatrist makes an order under
19 section 53(1)(a) or 54(1)(a)(i);
- 20 (ii) the voluntary inpatient is discharged as an
21 inpatient by the authorised hospital.

22 Notes for section 32:

- 23 1. A community treatment order is automatically revoked under
24 section 113(b) if a psychiatrist makes an inpatient treatment order
25 under section 53(1)(a) or 54(1)(a)(i) in respect of the voluntary
26 inpatient.
- 27 2. A community treatment order can be revoked under section 117(2)(b)
28 or 127(2)(b).

29 **33. Person in charge of ward may order assessment**

- 30 (1) The person in charge of the voluntary inpatient's ward may
31 make an order for an assessment of the voluntary inpatient by a
32 medical practitioner or authorised mental health practitioner at
33 the authorised hospital if —
- 34 (a) the voluntary inpatient wants to leave the authorised
35 hospital against medical advice; and
- 36 (b) having regard to the criteria specified in section 24, the
37 person in charge reasonably suspects that the voluntary
38 inpatient is in need of an involuntary treatment order.

- 1 (2) The order must be in the approved form and must —
2 (a) specify the date and time when it is made; and
3 (b) specify the reasons for making it; and
4 (c) specify the name and qualifications of, and be signed by,
5 the person in charge.
- 6 (3) The voluntary inpatient can be detained under the order at the
7 authorised hospital for up to 6 hours from the time when the
8 order was made to enable the assessment to be conducted.
- 9 (4) The person in charge must, as soon as practicable —
10 (a) put the order on the voluntary inpatient's medical
11 record; and
12 (b) give a copy of the order to the voluntary inpatient.
- 13 (5) The person in charge of the voluntary patient's ward must
14 ensure that the voluntary inpatient has the opportunity and the
15 means to contact any carer, close family member or other
16 personal support person of the inpatient and the Chief Mental
17 Health Advocate —
18 (a) as soon as practicable after the order is made; and
19 (b) at all reasonable times while the voluntary inpatient is
20 detained under the order.
- 21 (6) Subdivision 4 applies to an assessment ordered under
22 subsection (1).
- 23 (7) The voluntary inpatient cannot continue to be detained if, by the
24 end of the 6-hour period referred to in subsection (3) —
25 (a) the assessment has not been completed; or
26 (b) the assessment has been completed but a referral has not
27 been made under section 35(2) in respect of the
28 voluntary inpatient.

29 **34. Revoking order for assessment**

- 30 (1) The person who makes an order under section 33(1) for an
31 assessment of a voluntary inpatient may, at any time before the
32 assessment is commenced, make an order revoking the order for
33 an assessment if satisfied that the patient is no longer in need of
34 an involuntary treatment order.
- 35 (2) The order must be in the approved form and must —
36 (a) specify the date and time when it is made; and
37 (b) specify the reasons for making it; and

1 (c) specify the name and qualifications of, and be signed by,
2 the person.

3 (3) The person who makes the order must, as soon as practicable —

4 (a) put it on the voluntary inpatient's medical record; and

5 (b) give a copy of it to the voluntary inpatient.

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

8 **35. Referral for examination at authorised hospital**

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

11 (a) because of an order made under section 33(1); or

12 (b) in the course of the voluntary inpatient's treatment while
13 admitted by the authorised hospital.

14 (2) The practitioner may refer the inpatient for an examination to be
15 conducted by a psychiatrist at the authorised hospital if, having
16 regard to the criteria specified in section 24, the practitioner
17 reasonably suspects that the voluntary inpatient is in need of an
18 involuntary treatment order.

19 (3) Subdivision 3 applies to the referral of a voluntary inpatient
20 under subsection (2).

21 Notes for section 35:

22 1. A voluntary patient who is referred under section 35(2) can be detained
23 at the authorised hospital under section 51(1) to enable the voluntary
24 patient to be examined.

25 2. Part 7 Division 4 applies to the release of a voluntary patient who is
26 detained under section 51(1).

27 3. Part 7 Division 5 applies if a voluntary patient who is detained under
28 section 51(1) is absent without leave from the authorised hospital
29 where the voluntary patient is detained.

30 **36. Revoking referral**

31 (1) A medical practitioner or authorised mental health practitioner
32 may make an order revoking a referral made under section 35(2)
33 if satisfied that the voluntary inpatient who is referred is no
34 longer in need of an involuntary treatment order.

35 (2) The practitioner must not revoke the referral if it was made by
36 another practitioner unless —

37 (a) the practitioner has consulted the other practitioner
38 about whether or not to revoke the referral; or

Mental Health Bill 2012

Part 6 Involuntary patients

Division 2 Referrals for examination

s. 37

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

20 **Subdivision 3 — Requirements for referral**

21 **37. Application of this Subdivision**

22 This Subdivision applies to the referral of a person for an
23 examination by a psychiatrist that is made by a medical
24 practitioner or authorised mental health practitioner under
25 section 25(2) or (3)(a) or 35(2).

26 **38. No referral without assessment**

- 27 (1) A practitioner must not refer a person unless the practitioner has
28 assessed the person.
- 29 (2) Subdivision 4 applies to an assessment required by
30 subsection (1).

31 **39. Time limit for making referral**

- 32 (1) A referral cannot be made under section 25(2) or (3)(a) more
33 than 48 hours after the time when the assessment required by
34 section 38(1) is completed.

- 1 (2) A referral can only be made under section 35(2) immediately
2 after the time when the assessment required by section 38(1) is
3 completed.

4 **40. Form of referral**

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

- 6 (a) specify the date and time when it is made; and
7 (b) specify the date and time when it will expire; and
8 (c) specify the place where it is made; and
9 (d) specify whether or not it can be extended under
10 section 44 and, if it can, specify the process for
11 extending it; and
12 (e) specify the authorised hospital or other place where the
13 examination will be conducted; and
14 (f) specify the date and time when the assessment required
15 by section 38(1) was completed; and
16 (g) certify that, having regard to the criteria specified in
17 section 24, the practitioner making it reasonably
18 suspects that the person who is referred is in need of an
19 involuntary treatment order; and
20 (h) specify the information on which the suspicion is based;
21 and
22 (i) in respect of so much of that information as was
23 obtained during the assessment by the practitioner
24 making the referral, distinguish between —
25 (i) the information obtained from the person who is
26 referred, including by observing the person and
27 asking the person questions; and
28 (ii) the information obtained from another person or
29 from the person's medical records;
30 and
31 (j) specify the name and qualifications of, and be signed by,
32 the practitioner making the referral.

33 **41. Providing information contained in referral to person**
34 **referred**

- 35 (1) The practitioner must provide the person who is referred with
36 the information referred to in section 40(a) to (g) and, subject to
37 subsection (2), the information referred to in section 40(h).

- (b) may extend the referral himself or herself if —
- (i) there is no medical practitioner or authorised mental health practitioner reasonably available to whom an application could be made under paragraph (a); and
 - (ii) the person responsible is a medical practitioner or authorised mental health practitioner.
- (3) The practitioner or person responsible may extend the referral if satisfied that the referral is likely to expire before the person is received at the authorised hospital or other place.
- (4) The referral may be extended for a further period of 72 hours from the time when the 72-hour period referred to in section 43 ends.
- (5) The person who extends the referral must, as soon as practicable —
- (a) record the extension in the approved form, specifying the following —
 - (i) the date and time when the referral was extended;
 - (ii) the date and time when, because of the extension, the referral will expire;
 - (iii) the reasons for the extension;and
 - (b) put the record of the extension on the person’s medical record; and
 - (c) give a copy of the record of the extension to the person.
- (6) The referral cannot be extended more than once.

28 **Subdivision 4 — Conduct of assessment**

29 **45. Application of this Subdivision**

30 This Subdivision applies to the conduct of an assessment by a
31 medical practitioner or authorised mental health practitioner that
32 is required by, or has been ordered under, section 27(4)(a),
33 33(1), 38(1) or 60(4)(a).

46. How assessment must be conducted

(1) Subject to subsection (2), the assessment must be conducted in the least restrictive way, and the least restrictive environment, practicable.

(2) The practitioner and the person being assessed —

(a) must be in one another's physical presence; or

(b) if that is not practicable, must be able to hear one another without using a communication device (for example, by being able to hear one another through a door).

47. Information to which practitioner may have regard

(1) The practitioner may have regard to any information about the person being assessed that is obtained by the practitioner —

(a) from —

(i) the person, including information obtained by observing the person and asking the person questions; or

(ii) any other person;

and

(b) from the person's medical records.

(2) The practitioner cannot conclude that there is a reasonable suspicion that the person being assessed is in need of an involuntary treatment order solely on the basis of information referred to in either or both of subsection (1)(a)(ii) and (b).

48. Assessment of people of Aboriginal or Torres Strait Islander descent

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

(a) Aboriginal or Torres Strait Islander mental health workers; and

(b) significant members of the person's community, including traditional healers identified by the person or by a significant member of that community.

Division 3 — Examinations

Subdivision 1 — Examination at authorised hospital

49. Application of this Subdivision

This Subdivision applies to a person who is referred under section 25(2) or 35(2) for an examination by a psychiatrist at an authorised hospital.

50. Detention for examination on referral made under s. 25(2)

- (1) A person who is referred under section 25(2) —
 - (a) must be received at the authorised hospital unless subsection (2) applies; and
 - (b) can be detained there to enable the examination to be conducted for up to 24 hours from the time when the person is received.
- (2) The person must not be received at the authorised hospital if the referral has expired.
- (3) The person in charge of the authorised hospital must ensure that the person has the opportunity and the means to contact any carer, close family member or other personal support person of the person and the Chief Mental Health Advocate —
 - (a) as soon as practicable after the person is received at the authorised hospital; and
 - (b) at all reasonable times while the person is detained there under subsection (1)(b).
- (4) The person cannot continue to be detained if, by the end of the 24-hour period referred to in subsection (1)(b) —
 - (a) the examination has not been completed; or
 - (b) the examination has been completed but an order has not been made under section 53(1) in respect of the person.
- (5) Reception at an authorised hospital under this section is not admission by the hospital under this Act.

51. Detention for examination on referral made under s. 35(2)

- (1) A person who is referred under section 35(2) can be detained at the authorised hospital to enable the examination to be conducted for up to 24 hours from the time when —
 - (a) if section 35(1)(a) applies — the order for the assessment of the person was made under section 33(1); or

- 1 (b) if section 35(1)(b) applies — the person was referred
2 under section 35(2).
- 3 (2) The person in charge of the authorised hospital must ensure that
4 the person has the opportunity and the means to contact any
5 carer, close family member or other personal support person of
6 the person and the Chief Mental Health Advocate —
- 7 (a) as soon as practicable after the person is detained under
8 subsection (1) at the authorised hospital; and
- 9 (b) at all reasonable times while the person is detained there
10 under subsection (1).
- 11 (3) The person cannot continue to be detained if, by the end of the
12 24-hour period referred to in subsection (1)(a) or (b) —
- 13 (a) the examination has not been completed; or
- 14 (b) the examination has been completed but an order has not
15 been made under section 53(1) in respect of the person.

16 **52. Conducting examination**

17 Subdivision 6 applies to the conduct of the examination referred
18 to in section 50(1)(b) or 51(1).

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

- 20 (1) On completing the examination referred to in section 50(1)(b) or
21 51(1), the psychiatrist must make one 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 84(a)
25 or (b);
- 26 (b) a community treatment order in respect of the person;
- 27 (c) an order authorising the continuation of the person's
28 detention at the authorised hospital to enable a further
29 examination to be conducted by a psychiatrist;
- 30 (d) an order that the person cannot continue to be detained.
- 31 (2) The order must be in the approved form and must —
- 32 (a) specify the date and time when it is made; and
- 33 (b) if it is made under subsection (1)(a), (b) or (c), specify
34 the reasons for making it; and
- 35 (c) specify the name and qualifications of, and be signed by,
36 the psychiatrist.

- 1 (3) The person can continue to be detained at the authorised
2 hospital under an order made under subsection (1)(c) for the
3 period specified in the order, which must not exceed 72 hours
4 from the time when the person was —
 - 5 (a) received at the authorised hospital under
6 section 50(1)(a); or
 - 7 (b) detained at the authorised hospital under section 51(1).
- 8 (4) An order made under subsection (1)(c) cannot be extended.
- 9 (5) The psychiatrist must, as soon as practicable —
 - 10 (a) put the order made under subsection (1) on the person's
11 medical record; and
 - 12 (b) give a copy of the order made under subsection (1) to
13 the person.
- 14 (6) The making of an order under subsection (1) is an event to
15 which Part 9 applies and the person in charge of the authorised
16 hospital is the person responsible for notification of that event
17 under that Part.

18 Notes for section 53:

- 19 1. A community treatment order in respect of an involuntary community
20 patient who is referred under section 25(2) or 35(2) is automatically
21 revoked under section 113(b) if a psychiatrist makes an inpatient
22 treatment order under section 53(1)(a) in respect of the involuntary
23 community patient.
- 24 2. Part 7 Division 4 applies to the release of a person who is detained at
25 an authorised hospital under an order made under section 53(1)(c).
- 26 3. Part 7 Division 5 applies if a person who is under an order made under
27 section 53(1)(c) is absent without leave from the authorised hospital
28 where the person can be detained under the order.
- 29 4. A community treatment order in respect of an involuntary community
30 patient who is referred under section 25(2) is no longer suspended if a
31 psychiatrist makes an order under section 53(1)(d) that the involuntary
32 community patient cannot continue to be detained (see
33 section 29(b)(i)).

34 **54. Effect of order for continuation of detention made under**
35 **s. 53(1)(c)**

- 36 (1) An order made under section 53(1)(c) authorises the
37 continuation of the person's detention until the first of these
38 things occurs —
 - 39 (a) a psychiatrist conducts the further examination and
40 makes one of these orders —
 - 41 (i) an inpatient treatment order authorising the
42 person's detention at the authorised hospital for

- 1 the period specified in the order in accordance
2 with section 84(a) or (b);
- 3 (ii) a community treatment order in respect of the
4 person;
- 5 (iii) an order that the person cannot continue to be
6 detained;
- 7 (b) the expiry of the period specified in the order under
8 section 53(3).
- 9 (2) An order made under subsection (1)(a) must —
- 10 (a) specify the date and time when it is made; and
11 (b) if it is made under subsection (1)(a)(i) or (ii), specify the
12 reasons for making it; and
13 (c) specify the name and qualifications of, and be signed by,
14 the psychiatrist making it.
- 15 (3) A psychiatrist who makes an order under subsection (1)(a)
16 must, as soon as practicable —
- 17 (a) put it on the person's medical record; and
18 (b) give a copy of it to the person.
- 19 Notes for section 54:
- 20 1. A community treatment order in respect of an involuntary community
21 patient who is referred under section 25(2) or 35(2) is automatically
22 revoked under section 113(b) if a psychiatrist makes an inpatient
23 treatment order under section 54(1)(a)(i) in respect of the involuntary
24 community patient.
- 25 2. A community treatment order in respect of an involuntary community
26 patient who is referred under section 25(2) is no longer suspended if a
27 psychiatrist makes an order under section 54(1)(a)(iii) that the
28 involuntary community patient cannot continue to be detained (see
29 section 29(b)(i)).

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

31 **55. Application of this Subdivision**

32 This Subdivision applies to a person who is referred under
33 section 25(3)(a) for an examination by a psychiatrist at a place
34 that is not an authorised hospital.

35 **56. Detention for examination on referral made under**
36 **s. 25(3)(a)**

- 37 (1) The person —
- 38 (a) must be received at the place unless subsection (2)
39 applies; and

- 1 (b) can be detained there for up to 24 hours from the time
2 when the person is received to enable the examination to
3 be conducted.
- 4 (2) The person must not be received at the place if the referral has
5 expired.
- 6 (3) The person in charge of the place must ensure that the person
7 has the opportunity and the means to contact any carer, close
8 family member or other personal support person of the person
9 and the Chief Mental Health Advocate —
- 10 (a) as soon as practicable after the person is received at the
11 place; and
- 12 (b) at all reasonable times while the person is detained there
13 under subsection (1)(b).
- 14 (4) The person cannot continue to be detained if, by the end of the
15 24-hour period referred to in subsection (1)(b) —
- 16 (a) either —
- 17 (i) the examination has not been completed; or
- 18 (ii) the examination has been completed but an order
19 has not been made under section 59(1) in respect
20 of the person;
- 21 and
- 22 (b) if the place is outside a metropolitan area, an order
23 authorising the continuation of the person's detention
24 from the end of that period has not been made under
25 section 57(2).

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

- 27 (1) This section applies if —
- 28 (a) the person is referred for an examination at a place that
29 is outside a metropolitan area; and
- 30 (b) it is not practicable to complete the examination within
31 the 24-hour period referred to in section 56(1)(b).
- 32 (2) A medical practitioner or authorised mental health practitioner
33 at the place may make an order authorising the continuation of
34 the person's detention at the place to enable the examination to
35 be completed for up to an additional 48 hours from the end of
36 the 24-hour period.
- 37 (3) The order must be in the approved form and must —
- 38 (a) specify the date and time when it is made; and

- 1 (b) specify the date and time when it expires; and
2 (c) specify the reasons for the continuation; and
3 (d) specify the name and qualifications of, and be signed by,
4 the practitioner making it.
- 5 (4) The practitioner who made the order must, as soon as
6 practicable —
7 (a) put it on the person's medical record; and
8 (b) give a copy of it to the person.
- 9 (5) The practitioner who makes the order must ensure that the
10 person has the opportunity and the means to contact any carer,
11 close family member or other personal support person of the
12 person and the Chief Mental Health Advocate —
13 (a) as soon as practicable after the order is made; and
14 (b) at all reasonable times while the person is detained
15 under the order.
- 16 (6) The person cannot continue to be detained if, by the end of the
17 additional 48-hour period —
18 (a) the examination has not been completed; or
19 (b) the examination has been completed but an order has not
20 been made under section 59(1) in respect of the person.
- 21 **58. Conducting examination**
- 22 Subdivision 6 applies to the conduct of the examination.
- 23 **59. What psychiatrist must do on completing examination**
- 24 (1) On completing the examination, the psychiatrist must make one
25 of these orders —
26 (a) subject to subsection (2), an inpatient treatment order
27 authorising the person's detention at the general hospital
28 specified in the order for the period specified in the
29 order in accordance with section 84(a) or (b);
30 (b) a community treatment order in respect of the person;
31 (c) an order authorising the person's reception at an
32 authorised hospital, and the person's detention there, to
33 enable an examination to be conducted by a psychiatrist;
34 (d) an order that the person cannot continue to be detained.

- 1 (2) The psychiatrist must not make an order under subsection (1)(a)
2 unless —
 - 3 (a) satisfied that attempting to take the person to an
4 authorised hospital poses a significant risk to the
5 person's physical health; and
 - 6 (b) the Chief Psychiatrist consents to the order being made.
- 7 (3) The order must be in the approved form and must —
 - 8 (a) specify the date and time when it is made; and
 - 9 (b) if it is made under subsection (1)(a), (b) or (c), specify
10 the reasons for making it; and
 - 11 (c) specify the name and qualifications of, and be signed by,
12 the psychiatrist.
- 13 (4) The psychiatrist must, as soon as practicable —
 - 14 (a) put it on the person's medical record; and
 - 15 (b) give a copy of it to the person.
- 16 (5) The making of an order under subsection (1) is an event to
17 which Part 9 applies and the psychiatrist who makes the order is
18 the person responsible for notification of that event under that
19 Part.

20 Notes for section 59:

- 21 1. A community treatment order in respect of a person who is referred
22 under section 25(3)(a) is automatically revoked under section 113(b) if
23 a psychiatrist makes an inpatient treatment order under
24 section 59(1)(a) in respect of the involuntary community patient.
- 25 2. Part 7 Division 4 applies to the release of a person who is detained at
26 an authorised hospital under an order made under section 59(1)(c).
- 27 3. Part 7 Division 5 applies if a person who is under an order made under
28 section 59(1)(c) is absent without leave from the authorised hospital
29 where the person can be detained under the order.
- 30 4. A community treatment order in respect of a person who is referred
31 under section 25(3)(a) is no longer suspended if a psychiatrist makes
32 an order under section 59(1)(d) that the involuntary community patient
33 cannot continue to be detained (see section 29(b)(i)).

34 **60. Detention to enable person to be taken to hospital**

- 35 (1) A medical practitioner or authorised mental health practitioner
36 may make an order authorising the continuation of the person's
37 detention for up to 6 hours from the time when the order under
38 section 59(1)(a) or (c) is made if satisfied that, because of the
39 person's mental or physical condition, the person needs to be
40 detained to enable the person to be taken to the hospital.

- 1 (2) A medical practitioner or authorised mental health practitioner
2 may, immediately before the end of the period of detention
3 ordered under subsection (1) or any further period of detention
4 ordered under this subsection in respect of the person, make an
5 order authorising the continuation of the person's detention for
6 up to 6 hours from the end of that period to enable the person to
7 be taken to the hospital.
- 8 (3) A person cannot be detained under orders made under this
9 section for a continuous period of more than 72 hours.
- 10 (4) A medical practitioner or authorised mental health practitioner
11 must not make an order under subsection (2) in respect of the
12 person unless —
- 13 (a) immediately before making the order, the practitioner
14 assesses the person; and
- 15 (b) as a consequence, the practitioner is satisfied that,
16 because of the person's mental or physical condition, the
17 person still needs to be detained to enable the person to
18 be taken to the hospital.
- 19 (5) Division 2 Subdivision 4 applies to the conduct of an
20 assessment required by subsection (4)(a).
- 21 (6) An order made under this section must be in the approved form
22 and must —
- 23 (a) specify the date and time when it is made; and
24 (b) specify the date and time when it expires; and
25 (c) specify the reasons for the continuation; and
26 (d) specify the name and qualifications of, and be signed by,
27 the practitioner making it.
- 28 (7) A practitioner who makes an order under this section in respect
29 of a person must, as soon as practicable —
- 30 (a) put it on the person's medical record; and
31 (b) give a copy of it to the person.
- 32 (8) A practitioner who makes an order under this section in respect
33 of a person must ensure that the person has the opportunity and
34 the means to contact any carer, close family member or other
35 personal support person of the person and the Chief Mental
36 Health Advocate —
- 37 (a) as soon as practicable after it is made; and
38 (b) at all reasonable times while the person is detained
39 under it.

- 1 (9) The person cannot continue to be detained if, by the end of a
2 period of detention ordered under this section in respect of the
3 person —
4 (a) the person has not been taken to the hospital; and
5 (b) the person has not been apprehended under a transport
6 order made under section 61(1); and
7 (c) an order under subsection (2) authorising the
8 continuation of the person’s detention from the end of
9 that period has not been made or, because of
10 subsection (3), cannot be made.

11 **61. Making transport order**

- 12 (1) A psychiatrist may make a transport order in respect of a person
13 who is under an order made under section 59(1)(a) or (c).
14 (2) The psychiatrist must not make the transport order unless
15 satisfied that —
16 (a) because of the person’s mental or physical condition, the
17 person needs to be taken to the hospital specified in the
18 order made under section 59(1)(a) or (c); and
19 (b) no other safe means of taking the person is reasonably
20 available.
21 (3) Part 10 applies to the transport order.

22 **Subdivision 3 — Inpatient treatment order authorising detention at**
23 **general hospital**

24 **62. Application of this Subdivision**

25 This Subdivision applies to an involuntary inpatient under an
26 inpatient treatment order made under section 59(1)(a) or
27 127(2)(a) authorising the involuntary inpatient’s detention at a
28 general hospital.

29 **63. Treating psychiatrist must report regularly to Chief**
30 **Psychiatrist**

- 31 (1) At the end of each successive 7-day period that the involuntary
32 inpatient is detained at the general hospital, the treating
33 psychiatrist must report to the Chief Psychiatrist about these
34 matters —
35 (a) the involuntary inpatient’s mental and physical
36 condition;

- 1 (b) any treatment (as defined in section 4) being provided to
2 the involuntary inpatient at the general hospital;
- 3 (c) any other medical or surgical treatment being provided
4 to the involuntary inpatient at the general hospital.
- 5 (2) The report must be in the approved form.
- 6 **64. Transfer from general hospital to authorised hospital**
- 7 (1) Once the treating psychiatrist is satisfied that attempting to take
8 the involuntary inpatient to an authorised hospital no longer
9 poses a significant risk to the inpatient's physical health, then as
10 soon as practicable, the treating psychiatrist must make an order
11 (a *transfer order*) authorising the inpatient's transfer to the
12 authorised hospital specified in the order.
- 13 (2) In deciding whether or not there is still a significant risk to the
14 involuntary inpatient's physical health, the treating psychiatrist
15 may consult with any other medical practitioner or health care
16 provider who is responsible for any medical or surgical
17 treatment being provided to the inpatient.
- 18 (3) The transfer order must be in the approved form and must —
19 (a) specify the involuntary inpatient's name; and
20 (b) specify the general hospital from which the involuntary
21 inpatient is to be transferred; and
22 (c) specify the authorised hospital to which the involuntary
23 inpatient is to be transferred; and
24 (d) specify the date and time when the order is made; and
25 (e) specify the reasons for the transfer; and
26 (f) specify the name and qualifications of, and be signed by,
27 the treating psychiatrist.
- 28 (4) The treating psychiatrist must, as soon as practicable —
29 (a) put the transfer order on the involuntary inpatient's
30 medical record; and
31 (b) give a copy of the transfer order to the involuntary
32 inpatient.
- 33 (5) The making of a transfer order under subsection (1) is an event
34 to which Part 9 applies and the treating psychiatrist is the person
35 responsible for notification of that event under that Part.

65. Making transport order

- (1) A psychiatrist may make a transport order in respect of an inpatient who is under a transfer order made under section 64(1).
- (2) The psychiatrist must not make the transport order unless satisfied that no other safe means of taking the involuntary inpatient to the authorised hospital is reasonably available.
- (3) Part 10 applies to the transport order.

Subdivision 4 — Order for further examination at authorised hospital

66. Application of this Subdivision

This Subdivision applies to a person who is under an order made under section 59(1)(c) that the person be received at an authorised hospital, and detained there, to enable an examination to be conducted by a psychiatrist.

67. Detention at authorised hospital

- (1) The person —
- (a) must be received at the authorised hospital unless subsection (2) applies; and
 - (b) can be detained there for up to 24 hours from the time when the person is received to enable the examination to be conducted.
- (2) The person must not be received at the authorised hospital more than 72 hours after the time when the order under section 59(1)(c) is made.
- (3) The person in charge of the authorised hospital must ensure that the person has the opportunity and the means to contact any carer, close family member or other personal support person of the person and the Chief Mental Health Advocate —
- (a) as soon as practicable after the person is received at the authorised hospital; and
 - (b) at all reasonable times while the person is detained there under subsection (1)(b).
- (4) The person cannot continue to be detained if, by the end of the 24-hour period referred to in subsection (1)(b) —
- (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 69(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 **68. Conducting examination at authorised hospital**

6 Subdivision 6 applies to the conduct of the examination.

7 **69. What psychiatrist must do on completing examination at**
8 **authorised hospital**

- 9 (1) On completing the examination, the psychiatrist must make one
10 of these orders —

- 11 (a) an inpatient treatment order authorising the person's
12 detention at the authorised hospital for the period
13 specified in the order in accordance with section 84(a)
14 or (b);
15 (b) a community treatment order in respect of the person;
16 (c) an order that the person cannot continue to be detained.

- 17 (2) The order must be in the approved form and must —

- 18 (a) specify the date and time when it is made;
19 (b) if it is made under subsection (1)(a) or (b), specify the
20 reasons for making it;
21 (c) specify the name and qualifications of, and be signed by,
22 the psychiatrist.

- 23 (3) The psychiatrist must, as soon as practicable —

- 24 (a) put the order on the person's medical record; and
25 (b) give a copy of the order to the person.

26 Notes for section 69:

- 27 1. A community treatment order is automatically revoked under
28 section 113(b) if a psychiatrist makes an inpatient treatment order
29 under section 69(1)(a) in respect of the involuntary community patient.
30 2. A community treatment order is no longer suspended if a psychiatrist
31 makes an order under section 69(1)(c) that the involuntary community
32 patient cannot continue to be detained.

Subdivision 5 — Examination without referral

70. Application of this Subdivision

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

- (a) because of a referral made under section 25(2) or (3)(a) or 35(2); or
- (b) because of an order made under section 53(1)(c) or 59(1)(c); or
- (c) under section 86(1) or 127(3)(a).

71. Conducting examination

Subdivision 6 applies to the conduct of the examination.

72. What psychiatrist may do on completing examination

- (1) On completing the examination, the psychiatrist may make a community treatment order in respect of the person.
- (2) The order must be in the approved form and must —
 - (a) specify the date and time when it is made; and
 - (b) specify the reasons for making it; and
 - (c) specify the name and qualifications of, and be signed by, the psychiatrist.
- (3) The psychiatrist must, as soon as practicable —
 - (a) put the order on the person's medical record; and
 - (b) give a copy of the order to the person.

73. Confirmation of community treatment order

- (1) The community treatment order must be confirmed within 72 hours after the time when it is made by —
 - (a) another psychiatrist; or
 - (b) if another psychiatrist is not reasonably available —
 - (i) another medical practitioner; or
 - (ii) an authorised mental health practitioner.
- (2) The confirmation must be in the approved form and must —
 - (a) specify the date and time when it is made; and
 - (b) specify the reasons for the confirmation; and

- 1 (c) specify the name and qualifications of, and be signed by,
2 the practitioner confirming the community treatment
3 order.
- 4 (3) The supervising psychiatrist —
- 5 (a) must inform the person about whether or not the order
6 has been confirmed; and
- 7 (b) if it has been confirmed —
- 8 (i) put the confirmation on the person's medical
9 record; and
- 10 (ii) give a copy of the confirmation to the person.
- 11 (4) The order ceases to be in force if it is not confirmed in
12 accordance with subsection (1).

13 **Subdivision 6 — Conduct of examination**

14 **74. Application of this Subdivision**

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

- 17 (a) by a psychiatrist because of a referral made under
18 section 25(2) or (3)(a) or 35(2);
- 19 (b) by a psychiatrist because of an order made under
20 section 53(1)(c) or 59(1)(c);
- 21 (c) by a psychiatrist in circumstances in which
22 Subdivision 5 applies;
- 23 (d) by a supervising psychiatrist as required by
24 section 115(2)(a);
- 25 (e) by a medical practitioner or authorised mental health
26 practitioner as required by section 115(2)(b);
- 27 (f) by a supervising psychiatrist as required by
28 section 118(2);
- 29 (g) by a supervising psychiatrist under section 127(3)(a);
- 30 (h) by a psychiatrist as required by section 174(6) as applied
31 by section 118(6) or by section 174(6).

32 **75. Referring psychiatrist cannot conduct examination**

33 An examination referred to section 74(a) cannot be conducted
34 by the psychiatrist who made the referral under section 25(2)
35 or (3)(a) or 35(2).

1 **76. How examination must be conducted**

- 2 (1) Subject to this section, an examination must be conducted in the
3 least restrictive way, and the least restrictive environment,
4 practicable.
- 5 (2) For an examination referred to in section 74(a), (b), (c) or (e),
6 the psychiatrist or practitioner and the person being examined
7 must be in one another's physical presence.
- 8 (3) For an examination referred to in section 74(d), (f), (g) or (h) —
9 (a) the psychiatrist and the person being examined need not
10 be in one another's physical presence; but
11 (b) if they are not, each of them must be able to see and hear
12 the other while the other is speaking (for example, by
13 being able to see one another through a window and
14 hear one another using a telephone or to see and hear
15 one another using an audio-visual system).

16 **77. Information to which psychiatrist or practitioner may have**
17 **regard**

- 18 (1) The psychiatrist or practitioner may have regard to any
19 information about the person being examined that is obtained by
20 the psychiatrist or practitioner —
21 (a) from —
22 (i) the person, including information obtained by
23 observing the person and asking the person
24 questions; or
25 (ii) any other person;
26 and
27 (b) from the person's medical records.
- 28 (2) The psychiatrist or practitioner cannot conclude that the person
29 being examined is in need of, is still in need of, or is no longer
30 in need of, an involuntary treatment order solely on the basis of
31 information referred to in either or both of subsection (1)(a)(ii)
32 and (b).

Part 7 — Detention for examination or treatment

Division 1 — Preliminary matters

78. Application of this Part

This Part does not apply to a mentally impaired accused who is being detained at an authorised hospital under the CL(MIA) Act, whether or not the mentally impaired accused was being detained at the authorised hospital under this Act immediately before the mentally impaired accused was detained at the authorised hospital under the CL(MIA) Act.

79. Principles relating to detention

These principles apply 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, or to keep the person detained, 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 — Detention at authorised hospital or other place for examination

80. Detention authorised

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

- (a) a person who can be detained at an authorised hospital under section 33(3) because of an order for an assessment made under section 33(1);
- (b) a person who can be detained at an authorised hospital under section 50(1)(b) because of a referral made under section 25(2);
- (c) a person who can be detained at an authorised hospital under section 51(1) because of a referral made under section 35(2);

- 1 (d) a person who is under an order made under
- 2 section 53(1)(c) authorising the continuation of the
- 3 person's detention at an authorised hospital to enable a
- 4 further examination to be conducted;
- 5 (e) a person who can be detained at a place that is not an
- 6 authorised hospital under section 56(1)(b) because of a
- 7 referral made under section 25(3)(a);
- 8 (f) a person who is under an order made under section 57(2)
- 9 authorising the continuation of the person's detention at
- 10 a place that is not an authorised hospital to enable an
- 11 examination to be completed;
- 12 (g) a person who is under an order made under
- 13 section 59(1)(c) authorising the person's detention at an
- 14 authorised hospital to enable an examination to be
- 15 conducted.

16 (2) The referral or order authorises —

- 17 (a) the person's reception at the authorised hospital or other
- 18 place specified in the referral or order; and
- 19 (b) the person's detention there for the period authorised by
- 20 this Act for which the person can be detained because of
- 21 the referral or under the order.

22 Notes for section 80:

- 23 1. The period for which a person can be detained under section 33(3) is
- 24 authorised under that section.
- 25 2. The period for which a person can be detained under section 50(1)(b),
- 26 51(1) or 56(1)(b), or under an order made under section 53(1)(c), 57(2)
- 27 or 59(1)(c), is authorised under Part 6 Division 3.

28 **Division 3 — Detention at hospital under inpatient treatment**

29 **order**

30 **81. Application of this Division**

31 This Division applies to an involuntary inpatient who is under

32 an inpatient treatment order authorising the involuntary

33 inpatient's detention at an authorised hospital or a general

34 hospital.

35 Notes for section 81:

- 36 1. An inpatient treatment order authorising a person's detention at an
- 37 authorised hospital can be made under section 53(1)(a), 54(1)(a)(i),
- 38 69(1)(a), 117(2)(a), 120(1)(a) or 127(2)(a).
- 39 2. An inpatient treatment order authorising a person's detention at a
- 40 general hospital can be made under section 59(1)(a) or 127(2)(a).

1 **82. Terms used**

2 In this Division —

3 ***continuation order*** means a continuation order made under
4 section 86(2)(a);

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

- 6 (a) the period for which the involuntary inpatient can be
7 detained under the order as specified in the order in
8 accordance with section 84(a) or (b); or
9 (b) the further period for which the involuntary inpatient
10 can be detained under the order as specified in a
11 continuation order.

12 **83. Detention authorised**

13 An inpatient treatment order authorises —

- 14 (a) the involuntary inpatient's admission as an inpatient
15 by —
16 (i) the hospital specified in the order; and
17 (ii) any authorised hospital to which the patient is
18 transferred under section 64(1) or 88(2);
19 and
20 (b) the involuntary inpatient's detention there for the period
21 authorised by this Act for which the inpatient can be
22 detained under this Act.

23 **84. Period that must be specified in inpatient treatment order**

24 The period specified in an inpatient treatment order as the
25 period for which the involuntary inpatient can be detained under
26 the order must not exceed —

- 27 (a) if, when the order is made, the involuntary inpatient has
28 reached 18 years of age — 21 days from the day on
29 which the order is made; or
30 (b) if, when the order is made, the involuntary inpatient is a
31 child — 14 days from the day on which the order is
32 made.

33 **85. Period for which detention is authorised**

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

- 36 (a) a psychiatrist makes an order under section 86(2)(b)
37 or 87(1)(a) in respect of the involuntary inpatient;

- 1 (b) a psychiatrist revokes the order under section 86(2)(c)
- 2 or 87(1)(b);
- 3 (c) the expiry of the detention period unless the detention of
- 4 the involuntary inpatient under the inpatient treatment
- 5 order has been continued under a continuation order.

86. Examination before end of each detention period

- 7 (1) The treating psychiatrist must ensure that, on or within 7 days
- 8 before the day on which the detention period for an inpatient
- 9 treatment order ends, the involuntary inpatient is examined by a
- 10 psychiatrist.
- 11 (2) On completing the examination, the psychiatrist who conducted
- 12 it must make one of these orders —
- 13 (a) if satisfied, having regard to the criteria specified in
- 14 section 24, that the involuntary inpatient is still in need
- 15 of the inpatient treatment order — a continuation order
- 16 continuing the inpatient treatment order from the end of
- 17 the detention period for the further detention period that
- 18 is specified in the continuation order in accordance with
- 19 subsection (3)(a) or (b);
- 20 (b) if satisfied, having regard to the criteria specified in
- 21 section 24, that the involuntary inpatient is no longer in
- 22 need of the inpatient treatment order but is in need of a
- 23 community treatment order — a community treatment
- 24 order in respect of the inpatient;
- 25 (c) if satisfied, having regard to the criteria in section 24,
- 26 that the involuntary inpatient is no longer in need of an
- 27 involuntary treatment order — an order revoking the
- 28 inpatient treatment order.
- 29 (3) For subsection (2)(a), the detention period specified in a
- 30 continuation order must not exceed —
- 31 (a) if, when the continuation order is made, the involuntary
- 32 inpatient has reached 18 years of age — 3 months; or
- 33 (b) if, when the continuation order is made, the involuntary
- 34 inpatient is a child — 28 days.
- 35 (4) An order made under subsection (2) must be in the approved
- 36 form and must —
- 37 (a) specify the date and time when it is made; and
- 38 (b) if it is made under subsection (2)(a) or (b), specify the
- 39 reasons for making it; and

Mental Health Bill 2012

Part 7 Detention for examination or treatment

Division 3 Detention at hospital under inpatient treatment order

s. 87

- 1 (c) specify the name and qualifications of, and be signed by,
2 the psychiatrist making it.
- 3 (5) A psychiatrist who makes an order under subsection (2) must, as
4 soon as practicable —
- 5 (a) put it on the involuntary inpatient's medical record; and
6 (b) give a copy of it to the involuntary inpatient.
- 7 (6) The release of a person because of an order made under
8 subsection (2)(b) or (c) is an event to which Part 9 applies and
9 the person in charge of the hospital is the person responsible for
10 notification of that event under that Part.
- 11 **87. Changing involuntary inpatient's status**
- 12 (1) A psychiatrist may make either of these orders during the
13 detention period —
- 14 (a) if satisfied, having regard to the criteria specified in
15 section 24, that the involuntary inpatient is no longer in
16 need of the inpatient treatment order but is in need of a
17 community treatment order — a community treatment
18 order in respect of the inpatient;
- 19 (b) if satisfied, having regard to the criteria specified in
20 section 24, that the involuntary inpatient is no longer in
21 need of an involuntary treatment order — an order
22 revoking the inpatient treatment order.
- 23 (2) The psychiatrist may make the order without examining the
24 involuntary inpatient.
- 25 (3) The order must be in the approved form and must —
- 26 (a) specify the date and time when it is made; and
27 (b) if it is made under subsection (1)(a), specify the reasons
28 for making it; and
- 29 (c) specify the name and qualifications of, and be signed by,
30 the psychiatrist.
- 31 (4) The psychiatrist must, as soon as practicable —
- 32 (a) put the order on the involuntary inpatient's medical
33 record; and
34 (b) give a copy of the order to the involuntary inpatient.
- 35 (5) The making of an order under subsection (1) is an event to
36 which Part 9 applies and the psychiatrist who makes the order is
37 the person responsible for notification of that event under that
38 Part.

88. Transfer between authorised hospitals

- (1) This section applies to an involuntary inpatient who is detained at an authorised hospital.
- (2) The treating psychiatrist or, if the treating psychiatrist is not reasonably available, another psychiatrist at the authorised hospital may make an order (a *transfer order*) authorising the involuntary inpatient's transfer from the authorised hospital to another authorised hospital specified in the order.
- (3) The transfer order must be in the approved form and must —
 - (a) specify the involuntary inpatient's name; and
 - (b) specify the authorised hospital from which the involuntary inpatient is to be transferred; and
 - (c) specify the authorised hospital to which the involuntary inpatient is to be transferred; and
 - (d) specify the date and time when the order is made; and
 - (e) specify the reasons for the transfer; and
 - (f) specify the name and qualifications of, and be signed by, the psychiatrist making it.
- (4) A psychiatrist who makes a transfer order must, as soon as practicable —
 - (a) put it on the involuntary inpatient's medical record; and
 - (b) give a copy of it to the involuntary inpatient.
- (5) The making of a transfer order under subsection (2) is an event to which Part 9 applies and the psychiatrist who makes the order is the person responsible for notification of that event under that Part.

Note for section 88:

Section 64 applies to the transfer of an involuntary inpatient from a general hospital to an authorised hospital.

89. Making transport order

- (1) A psychiatrist may make a transport order in respect of an inpatient who is under a transfer order made under section 88(2).
- (2) The psychiatrist must not make the transport order unless satisfied that no other safe means of taking the involuntary inpatient to the authorised hospital is reasonably available.
- (3) Part 10 applies to the transport order.

90. Expiry of inpatient treatment order: involuntary inpatient to be advised

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

(2) The treating psychiatrist must advise the involuntary inpatient in writing of —

(a) the expiry; and

(b) the consequences of the expiry.

(3) The treating psychiatrist must put a copy of that advice on the involuntary inpatient's medical record.

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

Division 4 — Release from hospital or other place

91. Application of this Division

This Division applies to any of these people —

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

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

(ii) to be assessed or examined;

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

(c) an involuntary community patient who is detained under section 126(2)(b).

92. Person must be allowed to leave

(1) This section applies whenever a person cannot continue to be detained at a hospital or other place for a reason referred to in section 91.

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

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

(b) if the person leaves the hospital or other place before a medical practitioner or mental health practitioner can

Mental Health Bill 2012

Part 7 Detention for examination or treatment

Division 5 Absence without leave from hospital or other place

s. 95

- 1 (c) in the case of an involuntary community patient who is
2 detained under section 126(2)(b) — the person leaves
3 the place where the patient is detained.
- 4 (2) For subsection (1)(b), a person who is under an inpatient
5 treatment order is absent without leave —
- 6 (a) if the person is away from the hospital where the person
7 is detained under the order without being granted leave
8 of absence under section 102(1); or
- 9 (b) if, on the cancellation under section 107(1) of leave of
10 absence granted to the person under section 102(1) or on
11 the expiry of such leave, the person does not return to
12 either of these hospitals —
- 13 (i) the hospital from which the person was granted
14 the leave of absence;
- 15 (ii) the hospital to which the person's transfer has
16 been ordered under section 64(1) or 88(2).
- 17 (3) The absence of a person without leave from a hospital or other
18 place is an event to which Part 9 applies and the person in
19 charge of the hospital or other place is the person responsible
20 for notification of that event under that Part.

21 **95. Making apprehension and return order**

- 22 (1) The person in charge of a hospital or other place or a medical
23 practitioner may make an order (an ***apprehension and return***
24 ***order***) in respect of a person who is absent without leave from
25 the hospital or other place if satisfied that no other safe means
26 of ensuring that the person returns to the hospital or other place
27 is reasonably available.
- 28 (2) An apprehension and return order must be in the approved form
29 and must —
- 30 (a) specify the name of the person who is absent without
31 leave; and
- 32 (b) specify the hospital or other place from which the
33 person is absent without leave and to which the person
34 must be returned; and
- 35 (c) specify the date when it is made; and
- 36 (d) specify the date when it will expire; and
- 37 (e) specify the reasons for making it; and
- 38 (f) specify the name and qualifications of, and be signed by,
39 the person making it.

- 1 (3) A person who makes an apprehension and return order must, as
2 soon as practicable —
- 3 (a) put it on the medical record of the person who is absent
4 without leave; and
- 5 (b) give a copy of it to the police officer or person
6 prescribed who will carry it out.

7 **96. Operation of apprehension and return order**

8 An apprehension and return order made in respect of a person
9 authorises a police officer or a person prescribed by the
10 regulations for this section to do these things —

- 11 (a) apprehend the person and, for that purpose, exercise the
12 powers under sections 152(2) and 164;
- 13 (b) if the person is apprehended, return the person to the
14 hospital or other place specified in the apprehension and
15 return order as soon as practicable and, in any event,
16 before the order expires;
- 17 (c) for the purpose of returning the person, detain the person
18 until the first of these things occurs —
- 19 (i) the person is received at the hospital or other
20 place;
- 21 (ii) the apprehension and return order expires.

22 **97. Period of apprehension and return order**

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

26 **98. Revocation of apprehension and return order**

- 27 (1) The person in charge of a hospital or other place from which a
28 person is absent without leave or a medical practitioner may
29 make an order (a **revocation order**) revoking an apprehension
30 and return order made in respect of the person if satisfied that
31 the apprehension and return order is no longer needed.
- 32 (2) The revocation order must be in the approved form and must —
- 33 (a) specify the date and time when it is made; and
- 34 (b) specify the reasons for the revocation; and
- 35 (c) specify the name and qualifications of, and be signed by,
36 the person making it.

Mental Health Bill 2012

Part 7 Detention for examination or treatment

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

s. 99

- 1 (3) A person who makes a revocation order must, as soon as
2 practicable —
- 3 (a) put it on the person's medical record; and
4 (b) advise the police officer or person prescribed who was
5 to have carried out, or was carrying out, the
6 apprehension and return order of the revocation; and
7 (c) put a record of that advice on the person's medical
8 record.

9 **99. Return of person to place where apprehended**

- 10 (1) Subsection (2) applies if, after a person is apprehended under an
11 apprehension or return order but before the person is received at
12 the hospital or other place to which the person is required under
13 the order to be returned, the order is revoked under
14 section 98(1) or expires.
- 15 (2) The police officer or person prescribed who was carrying out
16 the apprehension and return order must take reasonable steps to
17 ensure the person is taken, at the person's election —
- 18 (a) back to the place where the person was apprehended; or
19 (b) to a place reasonably nominated by the person.
- 20 (3) Subsection (2) does not require the person to be taken to a place
21 if to do so poses a serious risk to the safety of the person or
22 another person.

23 **Division 6 — Leave of absence from detention at hospital under**
24 **inpatient treatment order**

25 **Subdivision 1 — Preliminary matters**

26 **100. Application of this Subdivision**

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

31 Notes for section 100:

- 32 1. An inpatient treatment order authorising a person's detention at an
33 authorised hospital can be made under section 53(1)(a), 54(1)(a)(i),
34 69(1)(a), 117(2)(a), 120(1)(a) or 127(2)(a).
- 35 2. An inpatient treatment order authorising a person's detention at a
36 general hospital can be made under section 59(1)(a) or 127(2)(a).

101. Term used: leave of absence

In this Division —
leave of absence —

- (a) means leave of absence granted under section 102(1);
and
- (b) includes leave of absence as extended or varied under
section 103(1).

Subdivision 2 — Grant, extension, cancellation etc. of leave

102. Granting leave

- (1) A psychiatrist may make an order granting an involuntary
inpatient leave of absence from a hospital if satisfied that
granting the leave of absence —
 - (a) will —
 - (i) be likely to benefit the involuntary inpatient's
recovery from mental illness or to benefit the
inpatient's mental health in some other way; or
 - (ii) enable the involuntary inpatient to obtain
medical or surgical treatment or be likely to
benefit the inpatient's physical health in some
other way;
 - and
 - (b) is not inconsistent with the involuntary inpatient's need
to be provided with treatment for a reason specified in
section 24(1)(b).
- (2) The psychiatrist must not make the order unless the psychiatrist
has consulted each of these people about the matters specified in
subsection (3) —
 - (a) if the involuntary inpatient has an enduring guardian or
guardian, the enduring guardian or guardian;
 - (b) if the involuntary inpatient is a child, the child's parent
or guardian;
 - (c) if the involuntary inpatient has a nominated person, the
nominated person unless the nominated person is not
entitled under section 256 to be consulted;
 - (d) if the involuntary inpatient has a carer, the carer unless
the carer is not entitled under section 273(2) or 277(1) to
be consulted;

Mental Health Bill 2012

Part 7 Detention for examination or treatment

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

s. 102

- 1 (e) if the involuntary inpatient has a close family member,
2 the close family member unless the close family
3 member is not entitled under section 273(2) or 277(1) to
4 be consulted.
- 5 (3) For subsection (2), these matters are specified —
- 6 (a) whether or not to make the order; and
- 7 (b) what period and conditions would be appropriate to
8 specify in the order if it were to be made.
- 9 (4) Without limiting a requirement under subsection (2)(a) to
10 consult the involuntary inpatient's enduring guardian or
11 guardian, or under subsection (2)(b) to consult the involuntary
12 inpatient's parent or guardian, about the matters referred to in
13 subsection (3)(a) and (b), the requirement is taken to be
14 complied with if the psychiatrist ensures that reasonable efforts
15 continue to be made to identify the person and consult the
16 person about those matters until the first of these things
17 occurs —
- 18 (a) the person is identified and consulted about those
19 matters;
- 20 (b) it is reasonable for the psychiatrist to conclude that the
21 person cannot be identified and consulted about those
22 matters.
- 23 (5) Part 15 Division 3 Subdivision 2 applies to a requirement under
24 subsection (2)(c) to consult the involuntary inpatient's
25 nominated person about the matters referred to in
26 subsection (3)(a) and (b).
- 27 (6) Part 16 Division 2 applies to a requirement under
28 subsection (2)(d) to consult a carer of the involuntary inpatient,
29 or under subsection (2)(e) to consult a close family member of
30 the involuntary inpatient, about the matters referred to in
31 subsection (3)(a) and (b).
- 32 (7) The psychiatrist must ensure that the involuntary inpatient's
33 medical record includes —
- 34 (a) if a person referred to in subsection (2)(a) to (e) was
35 consulted — a record of that consultation; or
- 36 (b) if a person referred to in subsection (2)(a) to (e) could
37 not be identified or consulted — a record of the efforts
38 made to do so.

- 1 (8) The psychiatrist must not make the order unless the psychiatrist
2 has considered whether it would be more appropriate to make
3 an order under section 87(1) in respect of the involuntary
4 inpatient.
 - 5 (9) The order authorises the involuntary inpatient's absence from
6 the hospital for the period, and subject to the conditions, the
7 psychiatrist considers appropriate and specifies in the order.
 - 8 (10) The conditions imposed under subsection (9) may include
9 conditions about the involuntary inpatient doing any of these
10 things —
 - 11 (a) residing at a specified place;
 - 12 (b) receiving specified treatment;
 - 13 (c) attending at a specified place, and remaining there as
14 specified in the order, to enable the involuntary inpatient
15 to be provided with specified treatment.
 - 16 (11) The order must be in the approved form and must —
 - 17 (a) specify the date and time when it is made; and
 - 18 (b) specify the period and conditions of the leave of
19 absence; and
 - 20 (c) specify the reasons for granting the leave of absence;
21 and
 - 22 (d) specify the name and qualifications of, and be signed by,
23 the psychiatrist.
 - 24 (12) The psychiatrist must, as soon as practicable —
 - 25 (a) put the order on the involuntary inpatient's medical
26 record; and
 - 27 (b) give a copy of the order to the involuntary inpatient.
 - 28 (13) The making of an order under subsection (1) is an event to
29 which Part 9 applies and the psychiatrist making the order is the
30 person responsible for notification of that event under that Part.
- 31 **103. Extending or varying leave granted**
- 32 (1) A psychiatrist may make an order —
 - 33 (a) extending an involuntary inpatient's leave of absence; or
 - 34 (b) varying the conditions subject to which an involuntary
35 inpatient's leave of absence is granted.

Mental Health Bill 2012

Part 7 Detention for examination or treatment

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

s. 104

- 1 (2) The order must be in the approved form and must —
2 (a) specify the date and time when it is made; and
3 (b) specify —
4 (i) the period of the extension; or
5 (ii) the variation of the conditions;
6 and
7 (c) specify the reasons for the extension or variation; and
8 (d) specify the name and qualifications of, and be signed by,
9 the psychiatrist.
- 10 (3) The psychiatrist must, as soon as practicable —
11 (a) put the order on the involuntary inpatient's medical
12 record; and
13 (b) give a copy of the order to the involuntary inpatient.
- 14 (4) The making of an order under subsection (1) is an event to
15 which Part 9 applies and the psychiatrist making the order is the
16 person responsible for notification of that event under that Part.

17 **104. Involuntary inpatient must comply with conditions of leave**

18 An involuntary inpatient who is on leave of absence from a
19 hospital must comply with the conditions to which the leave of
20 absence is subject.

21 **105. Monitoring involuntary inpatient on leave**

- 22 (1) This section applies if an involuntary inpatient is away from a
23 hospital on leave of absence for more than 21 consecutive days.
- 24 (2) The treating psychiatrist must consider whether it would be
25 appropriate to make an order under section 87(1) in respect of
26 the inpatient.
- 27 (3) For the purpose of subsection (2), the treating psychiatrist may
28 make any inquiries the psychiatrist considers appropriate.

29 **106. Changing involuntary inpatient's status while inpatient on leave**

- 30
- 31 (1) This section applies if, while an involuntary inpatient is away
32 from a hospital on leave of absence, the treating psychiatrist is
33 given a written opinion from another medical practitioner or a
34 mental health practitioner to the effect that the involuntary
35 inpatient is no longer in need of an inpatient treatment order.

- 1 (2) The treating psychiatrist must put the opinion on the involuntary
2 inpatient's medical record as soon as practicable, whether or not
3 the treating psychiatrist acts under subsection (3) on the basis of
4 the opinion.
- 5 (3) The treating psychiatrist may make an order under section 87(1)
6 in respect of the involuntary inpatient on the basis of the opinion
7 and without examining the inpatient.

8 **107. Cancelling leave**

- 9 (1) This section applies if, while an involuntary inpatient is away
10 from a hospital on leave of absence, a psychiatrist forms the
11 reasonable belief that it is inappropriate for the inpatient to
12 continue to be away from the hospital.
- 13 (2) The psychiatrist may make an order cancelling the leave of
14 absence.
- 15 (3) The order must —
16 (a) specify the date and time when it is made; and
17 (b) specify the reasons for that belief; and
18 (c) specify the name and qualifications of, and be signed by,
19 the psychiatrist.
- 20 (4) The psychiatrist must, as soon as practicable —
21 (a) put the order on the involuntary inpatient's medical
22 record; and
23 (b) orally advise the involuntary patient that the leave of
24 absence has been cancelled; and
25 (c) give a copy of the order to the involuntary inpatient.
- 26 (5) The making of an order under subsection (2) is an event to
27 which Part 9 applies and the psychiatrist making the order is the
28 person responsible for notification of that event under that Part.

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

30 **108. Application of this Subdivision**

- 31 This Subdivision applies to an involuntary inpatient —
- 32 (a) who is granted leave of absence to enable the
33 involuntary inpatient to obtain medical or surgical
34 treatment at a general hospital; or

Mental Health Bill 2012

Part 7 Detention for examination or treatment

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

s. 109

1 (b) who, because of the cancellation under section 107(1) of
2 leave of absence granted to the involuntary patient for a
3 purpose referred to in paragraph (a) or because of the
4 expiry of such leave, must return to —

5 (i) the hospital from which the leave was granted; or

6 (ii) an authorised hospital to which the involuntary
7 inpatient's transfer has been ordered under
8 section 64(1) or 88(2).

9 **109. Making transport order**

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

12 (2) The psychiatrist must not make the transport order unless
13 satisfied that no other safe means of taking the involuntary
14 inpatient to the hospital is reasonably available.

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

Part 8 — Community treatment orders

Division 1 — Preliminary matters

110. Terms used

In this Part —

community treatment order includes a community treatment order as varied under section 118(1), 119(1), 131(1)(a) or 133(a);

continuation order means a continuation order made under section 118(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 112(2); or
- (b) the further treatment period for which the order remains in force as specified in a continuation order.

Division 2 — Making order

111. Things psychiatrist must be satisfied of before making order

A psychiatrist must not 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 24(2)(b);
- (b) suitable arrangements can be made for the treatment and care of the person in the community, including —
 - (i) arrangements for a psychiatrist to be the supervising psychiatrist under the order; and

- 1 (ii) arrangements for a medical practitioner or mental
2 health practitioner to be the treating practitioner
3 under the order.

4 Note for section 111:

5 Under section 132(2)(b), the supervising psychiatrist can also be the treating
6 practitioner.

7 **112. Terms of order**

8 (1) The terms of a community treatment order must include these
9 things —

- 10 (a) the name of the psychiatrist who will be the supervising
11 psychiatrist under the order;
- 12 (b) a requirement that the involuntary community patient
13 comply with all of the supervising psychiatrist's
14 directions to the patient about treatment to be provided
15 to the patient under the order;
- 16 (c) the name of the medical practitioner or mental health
17 practitioner who will be the treating practitioner under
18 the order;
- 19 (d) the date and time when the order is made;
- 20 (e) the date and time when the order comes into force,
21 which must be within 7 days after the date and time
22 when the order is made;
- 23 (f) the treatment period for which the order remains in force
24 as specified under subsection (2);
- 25 (g) a requirement that the involuntary community patient
26 notify the supervising psychiatrist or treating
27 practitioner of any change in the patient's residential
28 address;
- 29 (h) a requirement that the involuntary community patient
30 notify the supervising psychiatrist or treating
31 practitioner of any interstate or overseas travel by the
32 patient —
- 33 (i) at least 7 days before the day of the patient's
34 departure; or
- 35 (ii) if the patient cannot comply with
36 subparagraph (i) because the patient needs to
37 travel urgently — as soon as it is practicable for
38 the patient to give notice of the travel.

- (2) For subsection (1)(f), the treatment period specified in a community treatment order when it is made must not exceed 3 months from the day on which it is made.

Notes for section 112:

1. Under section 132(2)(b), the supervising psychiatrist can also be the treating practitioner.
2. Under section 525, the terms of a community treatment order may require the involuntary community patient to be provided with treatment by a mental health service in another State or a Territory.

Division 3 — Operation of order

113. Duration of order

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

- (a) the supervising psychiatrist makes an inpatient treatment order under section 117(2)(a), 120(1)(a) or 127(2)(a) in respect of the involuntary community patient;
- (b) a psychiatrist makes an inpatient treatment order under any other provision of this Act in respect of the involuntary community patient;
- (c) the supervising psychiatrist revokes the order under section 117(2)(b) or 127(2)(b);
- (d) the expiry of the treatment period for the order unless the order has been continued under a continuation order.

Notes for section 113:

1. In addition to the provisions referred to in section 113(a), an inpatient treatment order authorising a person's detention at an authorised hospital can be made under section 53(1)(a), 54(1)(a)(i) or 69(1)(a) or at a general hospital under section 59(1)(a).
2. A community treatment order may be suspended under section 29 or 32.

114. Supervising psychiatrist must advise patient of when and where treatment to be provided

- (1) The supervising psychiatrist must ensure that the involuntary community patient is advised of when and where treatment is to be provided to the patient under the community treatment order.
- (2) Without limiting subsection (1), the supervising psychiatrist must ensure that, on or within 14 days after the day on which the community treatment order is made, the involuntary community patient is advised in writing of the date, time and

1 place of the involuntary community patient's first appointment
2 (whether with the treating practitioner or otherwise) for the
3 provision of treatment under the order.

4 **115. Monthly examination of patient**

5 (1) In this section —

6 *first treatment period*, for a community treatment order, means
7 the treatment period for which the order remains in force as
8 specified in the order under section 112(2);

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

- 10 (a) the period of one month beginning on the day on which
11 the first treatment period for the order begins; or
12 (b) the period of one month beginning on the day after the
13 day on which the involuntary community patient was
14 last examined under subsection (2) for the purposes of
15 the order.

16 (2) The involuntary community patient must be examined, on or
17 within 14 days before the day on which a review period for a
18 community treatment order ends, by —

- 19 (a) the supervising psychiatrist; or
20 (b) subject to subsection (3), another medical practitioner or
21 a mental health practitioner —
22 (i) if the supervising psychiatrist is unavailable; or
23 (ii) if requested by the supervising psychiatrist under
24 section 116(1).

25 (3) The involuntary community patient cannot be examined by a
26 practitioner under subsection (2)(b) if more than 2 months has
27 elapsed since the day on which the patient was last examined
28 under subsection (2)(a) by the supervising psychiatrist.

29 (4) Part 6 Division 3 Subdivision 6 applies to the conduct of an
30 examination under subsection (2).

31 (5) A practitioner who examines the involuntary community patient
32 under subsection (2)(b) must provide the supervising
33 psychiatrist with a written report of the examination that
34 includes a recommendation about whether or not, having regard
35 to the criteria specified in section 24, the patient is still in need
36 of an involuntary treatment order.

- 1 (6) The supervising psychiatrist must put on the involuntary
2 community patient's medical record —
 - 3 (a) a record of each examination of the involuntary
4 community patient that the supervising psychiatrist
5 conducts under subsection (2)(a); and
 - 6 (b) each report of an examination of the involuntary
7 community patient provided to the supervising
8 psychiatrist under subsection (5).
- 9 **116. Supervising psychiatrist may request practitioner to**
10 **examine involuntary community patient**
- 11 (1) For the purpose of section 115(2)(b)(ii), the supervising
12 psychiatrist may request another medical practitioner or a
13 mental health practitioner to examine the involuntary
14 community patient.
 - 15 (2) The request must be in the approved form and may specify
16 requirements for either or both of these things —
 - 17 (a) carrying out the examination;
18 (b) preparing the report.
- 19 **117. What supervising psychiatrist may do after examination**
- 20 (1) This section applies —
 - 21 (a) on completion of the examination of the involuntary
22 community patient by the supervising psychiatrist under
23 section 115(2)(a); or
 - 24 (b) on provision of a report about the involuntary
25 community patient to the supervising psychiatrist under
26 section 115(5).
 - 27 (2) The supervising psychiatrist must consider whether or not the
28 involuntary community patient is still in need of an involuntary
29 treatment order and may make either of these orders —
 - 30 (a) if satisfied, having regard to the criteria specified in
31 section 24, that the involuntary community patient is
32 still in need of an involuntary treatment order but not
33 satisfied of the things referred to in section 111(a) and
34 (b) — an inpatient treatment order authorising the
35 patient's detention at the authorised hospital specified in
36 the order for the period specified in the order in
37 accordance with section 84(a) or (b); or
 - 38 (b) if satisfied, having regard to the criteria specified in
39 section 24, that the involuntary community patient is no

Mental Health Bill 2012

Part 8 Community treatment orders

Division 3 Operation of order

s. 118

- 1 longer in need of an involuntary treatment order — an
2 order revoking the community treatment order.
- 3 (3) The supervising psychiatrist may make the order on the basis of
4 a report provided to the psychiatrist under section 115(5)
5 without examining the involuntary community patient.
- 6 (4) The order must be in the approved form and must —
7 (a) specify the date and time when it is made; and
8 (b) if it is made under subsection (2)(a), specify the reasons
9 for making it; and
10 (c) specify the name and qualifications of, and be signed by,
11 the supervising psychiatrist.
- 12 (5) The supervising psychiatrist must, as soon as practicable —
13 (a) put the order on the involuntary community patient's
14 medical record; and
15 (b) give a copy of the order to the involuntary community
16 patient.
- 17 (6) The making of an order under subsection (2) is an event to
18 which Part 9 applies and the supervising psychiatrist is the
19 person responsible for notification of that event under that Part.
- 20 Note for section 117:
- 21 A community treatment order is automatically revoked under section 113(a) if
22 a psychiatrist makes an inpatient treatment order under section 117(2)(a), or
23 under section 113(b) if a psychiatrist makes an inpatient treatment order
24 under any other provision of this Act, in respect of the involuntary community
25 patient.

26 **118. Continuation order**

- 27 (1) The supervising psychiatrist may, on or within 7 days before the
28 day on which a treatment period ends, make an order (a
29 **continuation order**) continuing the community treatment order
30 from the end of the treatment period for the further treatment
31 period (not exceeding 3 months) that is specified in the
32 continuation order.
- 33 (2) The supervising psychiatrist must not make the continuation
34 order unless the supervising psychiatrist has examined the
35 involuntary community patient in accordance with Part 6
36 Division 3 Subdivision 6.

- 1 (3) The continuation order must be in the approved form and
2 must —
 - 3 (a) specify the date when which it is made; and
 - 4 (b) specify the treatment period for which the community
5 treatment order is continued; and
 - 6 (c) specify the date when, because of the continuation, the
7 community treatment order will expire; and
 - 8 (d) specify the reasons for the continuation; and
 - 9 (e) specify the name and qualifications, and be signed by,
10 the supervising psychiatrist.
 - 11 (4) The supervising psychiatrist must, as soon as practicable —
 - 12 (a) put the continuation order on the involuntary community
13 patient's medical record; and
 - 14 (b) give a copy of the continuation order to the involuntary
15 community patient.
 - 16 (5) The involuntary community patient may request in writing the
17 supervising psychiatrist to obtain the opinion (a **further**
18 **opinion**) of another psychiatrist about whether it is appropriate
19 to have continued the community treatment order by making the
20 continuation order (but not whether the length of the treatment
21 period specified in the continuation order is appropriate).
 - 22 (6) Sections 174 and 176 apply (with the necessary changes) in
23 relation to the further opinion.
 - 24 (7) The continuation order does not come into force or ceases to be
25 in force, as the case requires, if the further opinion —
 - 26 (a) is not obtained on or within 14 days after the day on
27 which the involuntary community patient's request is
28 received by the supervising psychiatrist; or
 - 29 (b) does not confirm that it is appropriate to have continued
30 the community treatment order.
 - 31 (8) Subsection (7) does not apply if the further opinion is not
32 obtained within the 14-day period referred to in
33 subsection (7)(a) because the involuntary community patient did
34 not attend an examination to be conducted by the psychiatrist
35 who was to have given the further opinion.
- 36 **119. Varying order**
- 37 (1) The supervising psychiatrist may, at any time while a
38 community treatment order is in force, make an order varying

Mental Health Bill 2012

Part 8 Community treatment orders

Division 3 Operation of order

s. 120

- 1 the terms of the community treatment order in any way that is
2 consistent with section 112 and the supervising psychiatrist
3 considers appropriate.
- 4 (2) The order must be in the approved form and must —
5 (a) specify the date and time when it is made; and
6 (b) specify the variation; and
7 (c) specify the reasons for the variation; and
8 (d) specify the name and qualifications of, and be signed by,
9 the supervising psychiatrist.
- 10 (3) The supervising psychiatrist must, as soon as practicable —
11 (a) put the order on the involuntary community patient's
12 medical record; and
13 (b) give a copy of the order to the involuntary community
14 patient.
- 15 **120. Making inpatient treatment order or revoking community**
16 **treatment order**
- 17 (1) The supervising psychiatrist may, at any time while a
18 community treatment order is in force, make either of these
19 orders —
20 (a) if satisfied, having regard to the criteria specified in
21 section 24(1), that the involuntary community patient is
22 in need of an inpatient treatment order — an inpatient
23 treatment order;
24 (b) if satisfied, having regard to the criteria specified in
25 section 24, that the involuntary community patient is no
26 longer in need of an involuntary treatment order — an
27 order revoking the community treatment order.
- 28 (2) The supervising psychiatrist may make the order without doing
29 any of these things —
30 (a) examining the involuntary community patient, but
31 subsection (3) applies in that event;
32 (b) giving the involuntary community patient notice of a
33 breach of the community treatment order under
34 section 123(2)(b);
35 (c) making an order to attend under section 124(2).
- 36 (3) In making the order without examining the involuntary
37 community patient, the supervising psychiatrist must have

- 1 regard to any information about the patient that is obtained by
2 the psychiatrist —
- 3 (a) from either or both of —
- 4 (i) the involuntary community patient, including
5 information obtained by observing the patient
6 and asking the patient questions; and
- 7 (ii) any other person;
- 8 and
- 9 (b) from the involuntary community patient’s medical
10 records.
- 11 (4) The order must be in the approved form and must —
- 12 (a) specify the date and time when it is made; and
- 13 (b) if it is made under subsection (1)(a), specify the reasons
14 for making it; and
- 15 (c) specify the name and qualifications of, and be signed by,
16 the supervising psychiatrist.
- 17 (5) The supervising psychiatrist must, as soon as practicable —
- 18 (a) put the order on the involuntary community patient’s
19 medical record; and
- 20 (b) give a copy of the order to the involuntary community
21 patient.
- 22 (6) The making of an order under subsection (1) is an event to
23 which Part 9 applies and the supervising psychiatrist is the
24 person responsible for notification of that event under that Part.
- 25 Note for section 120:
- 26 A community treatment order is automatically revoked under section 113(a) if
27 a psychiatrist makes an inpatient treatment order under section 120(1)(a) in
28 respect of the involuntary community patient.

29 **121. Expiry of community treatment order: involuntary**
30 **community patient to be advised**

- 31 (1) This section applies if a community treatment order expires.
- 32 (2) The supervising psychiatrist must advise the involuntary
33 community patient in writing of —
- 34 (a) the expiry; and
- 35 (b) the consequences of the expiry.

- 1 (3) The supervising psychiatrist must put a copy of that advice on
2 the involuntary community patient's medical record.

3 Note for Division 3:

4 Part 20 Division 3 confers jurisdiction on the Mental Health Tribunal to
5 conduct reviews relating to involuntary patients.

6 **Division 4 — Breach of order**

7 **122. When involuntary community patient will be in breach**

8 An involuntary community patient breaches a community
9 treatment order if —

- 10 (a) the involuntary community patient has not complied
11 with the order; and
12 (b) all reasonable steps have been taken to obtain the
13 involuntary community patient's compliance; and
14 (c) the supervising psychiatrist reasonably believes that —
15 (i) despite the steps that have been taken, the
16 non-compliance is continuing; and
17 (ii) there is a significant risk of the involuntary
18 community patient suffering serious physical or
19 mental deterioration if the non-compliance
20 continues.

21 **123. What supervising psychiatrist must do if order breached**

- 22 (1) This section applies if an involuntary community patient
23 breaches a community treatment order.

24 (2) The supervising psychiatrist must —

- 25 (a) record the breach; and
26 (b) give notice of the breach to the involuntary community
27 patient.

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

- 30 (a) details of the involuntary community patient's
31 non-compliance;
32 (b) the steps that have been taken to obtain the involuntary
33 community patient's compliance;
34 (c) a statement that the supervising psychiatrist holds the
35 belief referred to in section 122(c);
36 (d) the facts on which that belief is based;

- 1 (e) the reasons for that belief.
- 2 (4) The notice of the breach must be in the approved form and must
3 include these things —
- 4 (a) details of the involuntary community patient's
5 non-compliance;
- 6 (b) details of what the involuntary community patient must
7 do to comply;
- 8 (c) a statement that continued non-compliance with the
9 order may result in the involuntary community patient
10 being required to attend a place to enable the patient to
11 be provided with treatment.
- 12 (5) The supervising psychiatrist must, as soon as practicable, put
13 these things on the involuntary community patient's medical
14 record —
- 15 (a) the record of the breach;
- 16 (b) a copy of the notice of the breach.

17 **124. Order to attend if non-compliance continues**

- 18 (1) This section applies if, having given the involuntary community
19 patient notice of the breach under section 123(2)(b), the
20 supervising psychiatrist is not satisfied that the patient is
21 complying with the community treatment order.
- 22 (2) The supervising psychiatrist may make an order (an **order to**
23 **attend**) requiring the involuntary community patient to attend at
24 the time and place specified in the order to be provided with
25 treatment.
- 26 (3) The order to attend must include a warning that, if the
27 involuntary community patient does not comply with the order,
28 a transport order authorising the patient's apprehension and
29 transport to the place specified in the order to attend may be
30 made.
- 31 (4) The order to attend must be in the approved form and must —
- 32 (a) specify the date and time when it is made; and
- 33 (b) specify the reasons for making it; and
- 34 (c) specify the time and place referred to in subsection (2);
35 and
- 36 (d) include the warning referred to in subsection (3); and
- 37 (e) specify the name and qualifications of, and be signed by,
38 the supervising psychiatrist.

- 1 (5) The supervising psychiatrist must, as soon as practicable —
2 (a) put the order to attend on the involuntary community
3 patient's medical record; and
4 (b) give a copy of the order to attend to the involuntary
5 community patient.

6 **125. Making transport order**

- 7 (1) This section applies if an involuntary community patient does
8 not comply with an order to attend.
9 (2) A medical practitioner or mental health practitioner may make a
10 transport order in respect of the involuntary community patient.
11 (3) The practitioner must not make the transport order unless
12 satisfied that no other safe means of ensuring the involuntary
13 community patient attends the place is reasonably available.
14 (4) Part 10 applies to the transport order.

15 **126. Detention at place specified in order to attend**

- 16 (1) This section applies to an involuntary community patient
17 who —
18 (a) attends a place in compliance with an order to attend; or
19 (b) is transported to a place under a transport order made
20 under section 125(2).
21 (2) The involuntary community patient —
22 (a) must be received at the place; and
23 (b) can be detained at the place until the first of these things
24 occurs —
25 (i) treatment is provided to the involuntary
26 community patient;
27 (ii) the supervising psychiatrist makes an order under
28 section 127(2)(a) in respect of the patient;
29 (iii) the expiry of 6 hours from the time when the
30 patient was received.
31 (3) The involuntary community patient cannot continue to be
32 detained if, by the end of the 6-hour period referred to in
33 subsection (2)(b)(iii) —
34 (a) treatment has not been provided to the involuntary
35 community patient; and

1 (b) the supervising psychiatrist has not made an order under
2 section 127(2)(a) in respect of the involuntary
3 community patient.

4 (4) The release of a person because of subsection (3) is an event to
5 which Part 9 applies and the person in charge of the place is the
6 person responsible for notification of that event under that Part.

7 Notes for section 126:

- 8 1. Part 7 Division 4 applies to the release of an involuntary community
9 patient who is detained at a place under section 126(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 126(2)(b).

13 **127. Other action supervising psychiatrist may take if**
14 **non-compliance with orders**

15 (1) This section applies in these circumstances —

- 16 (a) an involuntary community patient is in breach of a
17 community treatment order under section 122;
18 (b) the supervising psychiatrist has given the involuntary
19 community patient notice of the breach under
20 section 123(2)(b);
21 (c) since the involuntary community patient was given the
22 notice —
23 (i) the patient's non-compliance with the
24 community treatment order has continued; or
25 (ii) the supervising psychiatrist has made an order to
26 attend under section 124(2) with which the
27 patient has not complied despite being given a
28 copy of the order under section 124(5)(b).

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

- 30 (a) if satisfied, having regard to the criteria specified in
31 section 24, that the involuntary community patient is
32 still in need of an involuntary treatment order but not
33 satisfied of the things referred to in section 111(a) and
34 (b) — an inpatient treatment order authorising the
35 patient's detention at the hospital specified in the order
36 for the period specified in the order in accordance with
37 section 84(a) or (b);
38 (b) if satisfied, having regard to the criteria specified in
39 section 24, that the involuntary community patient is no
40 longer in need of an involuntary treatment order — an
41 order revoking the community treatment order.

Mental Health Bill 2012

Part 8 Community treatment orders

Division 4 Breach of order

s. 127

- 1 (3) The supervising psychiatrist may make the order —
- 2 (a) after examining the involuntary community patient in
- 3 accordance with Part 6 Division 3 Subdivision 6; or
- 4 (b) without examining the involuntary community patient,
- 5 but subsection (4) applies in that event.
- 6 (4) In making the order without examining the involuntary
- 7 community patient, the supervising psychiatrist must have
- 8 regard to any information about the patient that is obtained by
- 9 the psychiatrist from —
- 10 (a) clinical observation of the involuntary community
- 11 patient; and
- 12 (b) any person other than the involuntary community
- 13 patient; and
- 14 (c) the involuntary community patient's medical records.
- 15 (5) The order must be in the approved form and must —
- 16 (a) specify the date and time when it is made; and
- 17 (b) specify the reasons for making it; and
- 18 (c) specify the name and qualifications of, and be signed by,
- 19 the supervising psychiatrist.
- 20 (6) The supervising psychiatrist must, as soon as practicable —
- 21 (a) put the order on the involuntary community patient's
- 22 medical record; and
- 23 (b) give a copy of the order to the involuntary community
- 24 patient.
- 25 (7) The making of an order under subsection (2) is an event to
- 26 which Part 9 applies and the supervising psychiatrist is the
- 27 person responsible for notification of that event under that Part.
- 28 Notes for section 127:
- 29 1. A community treatment order is automatically revoked under
- 30 section 113(a) if a psychiatrist makes an inpatient treatment order
- 31 under section 127(2)(a) in respect of the involuntary community
- 32 patient.
- 33 2. Part 6 Division 3 Subdivision 3 applies to the transfer of an involuntary
- 34 inpatient under an involuntary inpatient treatment order made under
- 35 section 127(2)(a) from the general hospital specified in the order to an
- 36 authorised hospital.

Division 5 — Transport to hospital

128. Application of this Division

This Division applies if the supervising psychiatrist makes an inpatient treatment order under section 117(2)(a), 120(1)(a) or 127(2)(a) authorising the involuntary community patient's detention in a hospital.

129. Making transport order

- (1) A medical practitioner or mental health practitioner may make a transport order in respect of the involuntary community patient.
- (2) The practitioner must not make the transport order unless satisfied that —
 - (a) because of the involuntary community patient's mental or physical condition, the patient needs to be taken to the hospital; and
 - (b) no other safe means of taking the involuntary community patient is reasonably available.
- (3) Part 10 applies to the transport order.

Division 6 — Supervising psychiatrist and treating practitioner

130. Supervising psychiatrist

- (1) The supervising psychiatrist under a community treatment order is responsible for supervising the carrying out of the order.
- (2) The supervising psychiatrist under a community treatment order must be —
 - (a) the psychiatrist who made the order; or
 - (b) another psychiatrist.

131. Change of supervising psychiatrist

- (1) The supervising psychiatrist under a community treatment order —
 - (a) may, by arrangement, transfer a psychiatrist's responsibility as the supervising psychiatrist under the order to another psychiatrist; and
 - (b) on transferring that responsibility, must inform the patient in writing of the transfer.

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

18 **132. Treating practitioner**

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

28 **133. Change of treating practitioner**

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

Part 9 — Notification of certain events

Division 1 — Preliminary matters

134. Application of this Part

This Part applies to an event if a provision of this Act —

- (a) specifies that the event is an event to which this Part applies; and
- (b) specifies who is the person responsible for notification of the event under this Part.

Division 2 — Notification of carer, close family member or other personal support person

135. Notification of any event to which this Part applies

- (1) The person responsible for notification under this Part of an event to which this Part applies must ensure that, as soon as practicable after the event occurs in respect of a person, a carer, close family member or other personal support person of the person is notified of that event.
- (2) However, the notification of a nominated person, carer or close family member is subject to section 137(1) and (2).
- (3) A notification under subsection (1) must be provided in a language, form of communication and terms that the person being notified is likely to understand using any means of communication that is practicable and using an interpreter if necessary and practicable.

136. Reasonable efforts to be made to notify carer, close family member or other personal support person

- (1) Without limiting the requirement under section 135(1), the requirement is taken to have been complied with if the person responsible for notification ensures that reasonable efforts continue to be made to notify a carer, close family member or other personal support person of the event until the first of these things occurs —
 - (a) at least one carer, close family member or other personal support person is notified of the event; or
 - (b) it is reasonable for the person responsible to conclude that no carer, close family member or other personal support person can be notified of the event.

Mental Health Bill 2012

Part 9 Notification of certain events

Division 2 Notification of carer, close family member or other personal support person

s. 137

- 1 (2) The person responsible must ensure that the medical record of
2 the person in respect of whom the event occurs includes —
- 3 (a) a record of when and how any carer, close family
4 member or other personal support person was notified
5 under section 135(1) of the event; or
- 6 (b) if no carer, close family member or other personal
7 support person could be notified under section 135(1) of
8 the event, a record of the efforts made to do so.
- 9 **137. Notifying nominated person, carer or close family member**
10 **not in person's best interests**
- 11 (1) A nominated person, carer or close family member is not
12 entitled to be notified under section 135(1) of —
- 13 (a) the making of an order under section 27(1) or (2) for the
14 detention or further detention of a person; or
- 15 (b) the making of a transport order under section 28(1) in
16 respect of a person,
- 17 if the medical practitioner or authorised mental health
18 practitioner who makes the order reasonably believes that it is
19 not in the best interests of the person for the nominated person,
20 carer or close family member to be notified of the making of the
21 order.
- 22 (2) A nominated person, carer or close family member is not
23 entitled to be notified under section 135(1) of any other event
24 that occurs in respect of a person if a psychiatrist believes that it
25 is not in the best interests of the person for the nominated
26 person, carer or close family member to be notified of the event.
- 27 (3) A practitioner or psychiatrist —
- 28 (a) who decides under subsection (1) or (2) that a
29 nominated person, carer or close family member is not
30 entitled to be notified of an event; or
- 31 (b) who decides to revoke a decision made under
32 subsection (1) or (2) because the reasons for making that
33 decision no longer apply,
- 34 must —
- 35 (c) record the decision and the reasons for it; and
36 (d) put the record on the person's medical record.

- 1 (4) A practitioner or psychiatrist who decides under subsection (1)
2 or (2) that a nominated person, carer or close family member is
3 not entitled to be notified of an event must, if the nominated
4 person, carer or close family member requests to be notified of
5 the event —
6 (a) advise the nominated person, carer or close family
7 member —
8 (i) that the nominated person, carer or close family
9 member is not entitled to be notified of that
10 event; and
11 (ii) of the reasons for that;
12 and
13 (b) put a record of the advice on the person's medical
14 record; and
15 (c) give a copy of the record of the advice to the person.
16 (5) A nominated person, carer or close family member to whom
17 advice is provided orally under subsection (4)(a) may request
18 the practitioner or psychiatrist to confirm the advice in writing.
19 (6) The practitioner or psychiatrist must —
20 (a) comply with a request made under subsection (5); and
21 (b) put a copy of the confirmation on the person's medical
22 record; and
23 (c) give a copy of the confirmation to the person.
24 (7) Any advice provided under subsection (4)(a) or (6)(a) to a
25 nominated person, carer or close family member must be
26 provided in a language, form of communication and terms that
27 the nominated person, carer or close family member is likely to
28 understand using any means of communication that is
29 practicable and using an interpreter if necessary and practicable.
30 Note for section 137:
31 For the purpose of deciding under section 137(1) or (2) what is or is not in the
32 best interests of a person, Part 2 Division 3 applies.

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

34 **138. Making, revocation or expiry of involuntary treatment**
35 **order**

- 36 (1) The person responsible for notification under this Part of the
37 making of an involuntary treatment order must ensure that, as

- 1 soon as practicable, each of the persons and bodies specified in
2 subsection (4) is —
- 3 (a) given a copy of the involuntary treatment order; and
4 (b) provided with the name and contact details of any carer,
5 close family member or other personal support person
6 who has been notified under section 135(1) of the
7 making of the involuntary treatment order, to the extent
8 that information is known to the person responsible.
- 9 (2) The person responsible for notification under this Part of the
10 making of an order revoking an involuntary treatment order
11 must ensure that, as soon as practicable, each of the persons and
12 bodies specified in subsection (4) is given a copy of the order.
- 13 (3) The person responsible for notification under this Part of the
14 expiry of an involuntary treatment order must ensure that, as
15 soon as practicable, each of the persons and bodies specified in
16 subsection (4) is advised in writing of the expiry.
- 17 (4) For subsections (1), (2) and (3), each of these persons and
18 bodies is specified —
- 19 (a) the Chief Mental Health Advocate;
20 (b) Mental Health Tribunal;
21 (c) if the involuntary patient is a mentally impaired accused,
22 the Mentally Impaired Accused Review Board.
- 23 (5) The person responsible must ensure that the involuntary
24 patient's medical record includes —
- 25 (a) a record of —
- 26 (i) each person or body to whom a copy of an order
27 is given under subsection (1)(a) or (2) or advice
28 is provided under subsection (3); and
29 (ii) the date on which the copy is given or the advice
30 is provided to that person or body;
31 and
- 32 (b) a record of —
- 33 (i) each person or body to whom any information
34 referred to in subsection (1)(b) is provided; and
35 (ii) details of the information provided to that person
36 or body; and
37 (iii) the date on which the information is provided to
38 that person or body.

Part 10 — Transport orders

139. Application of this Part

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

- (a) section 28(1) to enable a person who is referred under section 25(2) or (3)(a) to be taken to an authorised hospital or other place;
- (b) section 61(1) to enable a person who is under an inpatient treatment order made under section 59(1)(a) to be taken to a general hospital;
- (c) section 61(1) to enable a person who is under an order for a further examination made under section 59(1)(c) to be taken to an authorised hospital;
- (d) section 65(1) to enable an involuntary inpatient who is under a transfer order made under section 64(1) to be transferred to an authorised hospital;
- (e) section 89(1) to enable an involuntary inpatient who is under a transfer order made under section 88(2) to be transferred to an authorised hospital;
- (f) section 109(1) to enable an involuntary patient on leave of absence from a hospital to be taken back to that hospital or another hospital;
- (g) section 125(2) to enable an involuntary community patient who is not complying with an order to attend made under section 124(2) to be taken to a specified place;
- (h) section 129(1) to enable an involuntary community patient who is under an inpatient treatment order made under section 117(2)(a), 120(1)(a) or 127(2)(a) to be taken to a hospital.

140. Transport officers

The regulations may authorise a person (a *transport officer*) to carry out a transport order.

141. Making transport order

- (1) A transport order must be in the approved form and must —
- (a) specify the name of the person to be transported; and
 - (b) specify the place from which the person is to be transported; and

s. 142

- 1 (c) specify the hospital or other place to which the person
2 must be transported; and
- 3 (d) specify the reasons why, in order to transport the person
4 to that hospital or other place, it is necessary to make the
5 order; and
- 6 (e) specify whether the order is to be carried out by a
7 transport officer or, if section 142(2) applies, a police
8 officer; and
- 9 (f) if the order is to be carried out by a police officer,
10 having regard to the matters referred to in
11 section 142(2)(a) and (b), specify the reasons why it
12 cannot be carried out by a transport officer; and
- 13 (g) specify the date and time when the order is made; and
- 14 (h) specify the date and time when the order will expire
15 under section 143(2)(a), (b) or (c); and
- 16 (i) specify whether or not the order can be extended
17 because of section 144(2) or under section 145(3) and, if
18 it can, the process for extending it; and
- 19 (j) specify the name and qualifications, and be signed by,
20 the psychiatrist or practitioner making the order.
- 21 (2) A practitioner or psychiatrist who makes a transport order in
22 respect of a person must, as soon as practicable —
- 23 (a) put it on the person's medical record; and
- 24 (b) give a copy of it to each of these people —
- 25 (i) the person;
- 26 (ii) the transport officer or police officer who will
27 carry out the order.

28 **142. Operation of transport order**

- 29 (1) A transport order made in respect of a person authorises a
30 transport officer or, if subsection (2) applies, a police officer to
31 do these things —
- 32 (a) apprehend the person and, for that purpose, exercise the
33 powers under sections 152(2) and 164;
- 34 (b) if the person is apprehended, transport the person to the
35 hospital or other place specified in the order as soon as
36 practicable and, in any event, before the transport order
37 expires;

- 1 (c) for the purpose of transporting the person, detain the
2 person until the first of these things occurs —
- 3 (i) the person is received at the hospital or other
4 place;
- 5 (ii) the transport order expires.
- 6 (2) A transport order can only authorise a police officer instead of a
7 transport officer to carry out the order if the practitioner or
8 psychiatrist making the order is satisfied —
- 9 (a) that there is a significant risk of serious harm to the
10 person being transported or to another person; or
- 11 (b) that —
- 12 (i) a transport officer will not be available to carry
13 out the order within a reasonable time; and
- 14 (ii) any delay in carrying out the order beyond that
15 time is likely to pose a significant risk of harm to
16 the person being transported or to another
17 person.

18 **143. Period of transport order**

- 19 (1) A transport order remains in force for the period specified in
20 subsection (2) in respect of the order.
- 21 (2) For subsection (1), the period is —
- 22 (a) if the transport order is made under section 28(1), the
23 period —
- 24 (i) beginning at the time when the transport order is
25 made; and
- 26 (ii) ending at the time when the referral expires
27 under section 43 unless the transport order is
28 extended because section 144(2);
- 29 or
- 30 (b) if the transport order is made under section 61(1), the
31 period —
- 32 (i) beginning at the time when the transport order is
33 made; and
- 34 (ii) ending 72 hours after the time when the inpatient
35 treatment order was made under section 59(1)(a)
36 or the order for a further examination was made
37 under section 59(1)(c), as the case requires,
38 unless the transport order is extended under
39 section 145(3);

s. 144

- 1 or
- 2 (c) if the transport order is made under section 65(1), 89(1),
- 3 109(1), 125(2) or 129(1), the period —
- 4 (i) beginning at the time when the transport order is
- 5 made; and
- 6 (ii) ending 72 hours afterwards unless the transport
- 7 order is extended under section 145(3).

8 **144. Extension of transport order made under s. 28(1) if referral**

9 **extended**

- 10 (1) This section applies if —
- 11 (a) a transport order is made under section 28(1) to enable a
- 12 person who is referred to be taken to an authorised
- 13 hospital or other place; and
- 14 (b) the place from which the person is being transported is
- 15 outside a metropolitan area; and
- 16 (c) the referral is extended under section 44(3).
- 17 (2) The transport order is, because of this subsection, extended for
- 18 the same period as the referral.

19 **145. Extension of other transport orders**

- 20 (1) This section applies if —
- 21 (a) a transport order is made under section 61(1), 65(1),
- 22 89(1), 109(1), 125(2) or 129(1) in respect of a person;
- 23 and
- 24 (b) the place from which the person is being transported is
- 25 outside a metropolitan area; and
- 26 (c) the transport officer or police officer who is transporting
- 27 the person forms the opinion that the transport order is
- 28 likely to expire before the person is received at the
- 29 hospital or other place to which the person is being
- 30 transported.
- 31 (2) The transport officer or police officer may orally request an
- 32 extension of the transport order from a medical practitioner or
- 33 mental health practitioner.
- 34 (3) The practitioner may make an order (an *extension order*) orally
- 35 extending the transport order from the end of the period
- 36 specified in section 143(2)(b) or (c) in respect of the order for
- 37 the further period (not exceeding 72 hours) specified in the
- 38 extension order.

-
- 1 (4) The practitioner must, as soon as practicable —
- 2 (a) record the order in the approved form, specifying the
- 3 following —
- 4 (i) the date and time when the order was made;
- 5 (ii) the date and time when, because of the extension,
- 6 the transport order will expire;
- 7 and
- 8 (b) put the record of the order on the person’s medical
- 9 record; and
- 10 (c) give a copy of the record of the order to the transport
- 11 officer or police officer.
- 12 (5) The transport order cannot be extended more than once.
- 13 **146. Revocation of transport order made under s. 28(1) if**
- 14 **referral revoked**
- 15 A transport order made under section 28(1) in respect of a
- 16 person who is referred under section 25(2) or (3)(a) is, because
- 17 of this section, revoked if the referral is revoked under
- 18 section 30(1).
- 19 **147. Revocation of transport order if order no longer needed**
- 20 (1) A medical practitioner or mental health practitioner may make
- 21 an order (a **revocation order**) revoking a transport order made in
- 22 respect of a person if satisfied that the transport order is no
- 23 longer needed.
- 24 (2) The revocation order must be in the approved form and must —
- 25 (a) specify the date and time when it is made; and
- 26 (b) specify the reasons for the revocation; and
- 27 (c) specify the name and qualifications of, and be signed by,
- 28 the practitioner.
- 29 (3) The practitioner must, as soon as practicable —
- 30 (a) put the revocation order on the person’s medical record;
- 31 and
- 32 (b) give a copy of the revocation order to the person; and
- 33 (c) give a copy of the revocation order to the transport
- 34 officer or police officer who was to have carried out, or
- 35 was carrying out, the transport order.

s. 148

1 **148. Return of person if transport order expires or is revoked**

2 (1) Subsection (2) applies if a transport order made in respect of a
3 person is revoked under section 147(1), or expires, before the
4 person is received at the hospital or other place to which the
5 person was to have been transported under the order.

6 (2) The transport officer or police officer who was to have carried
7 out, or was carrying out, the transport order must take
8 reasonable steps to ensure the person is taken, at the person's
9 election —

10 (a) back to the place from which the person was being or
11 was to have been transported; or

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

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

Part 11 — Apprehension, search and seizure powers

Division 1 — Apprehension powers

149. 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 section 152(2).
- (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 25(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 at 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;
 - (iii) the police officer is satisfied that the grounds for suspecting that the person needs to be apprehended no longer exist.
- (4) This section does not prevent a police officer from charging a person apprehended under subsection (1) with an offence.

150. Assessment of person arrested

- (1) This section applies if a police officer arrests a person whom the police officer reasonably suspects has a mental illness for which the person is in need of immediate treatment.
- (2) The police officer must, as soon as practicable, 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 25(2) or (3)(a) for an examination to be conducted by a psychiatrist.
- (3) This section does not prevent a police officer from charging the person arrested with an offence.

151. Police must be notified when person leaves

- (1) This section applies if —
 - (a) the medical practitioner or authorised mental health practitioner referred to in section 149(3)(a) or 150(2) decides not to refer the person under section 25(2) or (3)(a); or
 - (b) the person, having been referred under section 25(2) or (3)(a), cannot continue to be detained under this Act.
- (2) The practitioner or the person in charge of the authorised hospital or other place where the person was being detained under this Act must ensure that —
 - (a) as soon as practicable, a police officer is informed that the person has not been referred under section 25(2) or (3)(a) or cannot continue to be detained under this Act; and
 - (b) as soon as practicable after the police officer is informed, these things are recorded on the person's medical record —
 - (i) the name of the person who informed the police officer of the person's release;
 - (ii) the police officer's name, rank and location;
 - (iii) the date and time when the police officer was informed of the person's release.

152. Apprehension of other persons

- (1) This section applies to the apprehension of a person —
 - (a) under section 96(a) by a police officer or person prescribed for the purpose of carrying out an apprehension and return order; or

- 1 (b) under section 142(1)(a) by a transport officer or police
2 officer for the purpose of carrying out a transport order;
3 or
4 (c) under section 149(1) by a police officer because the
5 person is suspected of having a mental illness and needs
6 to be apprehended.
- 7 (2) For the purpose of apprehending the person, the police officer,
8 person prescribed or transport officer may do any of these
9 things —
- 10 (a) subject to subsection (3), enter any premises where the
11 person is reasonably suspected to be;
12 (b) search, in accordance with sections 156 and 164, the
13 person and any article found on or with the person;
14 (c) seize, in accordance with sections 157 and 164, any
15 article listed in section 157(2) that is found on or with
16 the person.
- 17 (3) A transport officer can only enter premises prescribed by the
18 regulations for this subsection.

Division 2 — Search and seizure powers

20 **153. Term used: approved form**

21 In this Division —

22 *approved form* means —

- 23 (a) a form approved by the Commissioner of Police under
24 section 162 for use by police officers under this
25 Division; or
26 (b) a form approved by the Chief Psychiatrist under
27 section 511(1) for use by other persons under this
28 Division.

29 **154. Authorised persons**

30 The regulations may authorise a person (an *authorised person*)
31 to exercise the powers under this Division.

32 **155. Search of person while detained or admitted**

33 (1) This section applies —

- 34 (a) to any of these people —
35 (i) a patient who is admitted by a mental health
36 service;

Mental Health Bill 2012

Part 11 Apprehension, search and seizure powers

Division 2 Search and seizure powers

s. 156

- 1 (ii) a person who is detained under this Act at a
2 mental health service or other place to enable an
3 examination to be conducted by a psychiatrist;
4 (iii) any other person who presents at a mental health
5 service for treatment;
6 and
7 (b) at these times —
8 (i) when the patient or other person is being
9 admitted by, or is being received at, the mental
10 health service or other place;
11 (ii) at any time while the patient or other person is
12 being provided with treatment or care at the
13 mental health service or other place.
- 14 (2) A police officer or authorised person who reasonably suspects
15 that there is on or with the patient or other person any article
16 listed in section 157(2) may —
17 (a) search, in accordance with sections 156 and 164, the
18 person and any article found on or with the patient or
19 other person; and
20 (b) seize, in accordance with sections 157 and 164, any
21 article listed in section 157(2) that is found on or with
22 the patient or other person.

23 **156. Conduct of search**

- 24 (1) This section applies to a search of a person —
25 (a) under section 152(2)(b) by a police officer, prescribed
26 person or transport officer; or
27 (b) under section 155(2)(a) by a police officer or authorised
28 person.
- 29 (2) Before the search is conducted, the person who will conduct the
30 search must, if reasonably practicable —
31 (a) identify himself or herself to the person; and
32 (b) inform the person of the reason for the search; and
33 (c) request the person to consent to being searched.
- 34 (3) The person conducting the search must, if practicable, be a
35 person of the same gender as the person to be searched.

- 1 (4) The person conducting the search may do all or any of these
2 things —
- 3 (a) scan the person with an electronic or mechanical device,
4 whether hand held or not, to detect any thing;
- 5 (b) remove the person’s headwear, gloves, footwear or outer
6 clothing (such as a coat or jacket), but not the person’s
7 inner clothing or underwear, in order to facilitate a frisk
8 search;
- 9 (c) frisk search the person by quickly and methodically
10 running the hands over the outside of the person’s
11 clothing;
- 12 (d) search any article removed under paragraph (b).
- 13 (5) The person conducting the search may do any or all of these
14 things for the purpose of conducting the search —
- 15 (a) search any thing being carried by or under the
16 immediate control of the person;
- 17 (b) order the person to remove any thing that might injure
18 the person conducting the search from any article that
19 the person is wearing;
- 20 (c) photograph part or all of the search while it is being
21 done;
- 22 (d) order the person to do anything reasonable to facilitate
23 the exercise by the person conducting the search of any
24 power in this section.
- 25 (6) The search must be conducted as follows —
- 26 (a) the search must be done as quickly as is reasonably
27 practicable;
- 28 (b) the search must not be any more intrusive than is
29 reasonably necessary in the circumstances;
- 30 (c) if the person conducting the search proposes to remove
31 any article that the person is wearing, the person
32 conducting the search must tell the person why it is
33 considered necessary to do so;
- 34 (d) the person must be allowed to dress as soon as the
35 search is finished;
- 36 (e) the person must be provided with a reasonably adequate
37 replacement for any article of clothing or footwear
38 seized if, due to the seizure, the person is left without
39 adequate clothing or footwear in the circumstances.

1 **157. Seizure of articles**

- 2 (1) This section applies to the seizure from a person of an article
3 under section 152(2)(c) or 155(2)(b).
- 4 (2) Any of these articles may be seized —
- 5 (a) an intoxicant;
- 6 (b) an article, including a drug that is prescribed for the
7 person, that may pose a serious risk to the health or
8 safety of the person or another person;
- 9 (c) an article that the person conducting the search believes
10 is likely to materially assist in determining any question
11 in relation to the person that is likely to arise for
12 determination under this Act.
- 13 (3) Any article that is seized must be dealt with under section 159
14 or 160.

15 **158. Record of search and seizure**

- 16 (1) A person who conducts a search of a person under
17 section 152(2)(b) or 155(2)(a) must, as soon as practicable —
- 18 (a) record the search in accordance with subsection (2); and
- 19 (b) give the record of the search to, as the case requires —
- 20 (i) the person in charge of the mental health service
21 or other place to which the person searched is
22 required to be taken under the apprehension or
23 return order or the transport order; or
- 24 (ii) the person in charge of the mental health service
25 or other place at which the person searched is
26 received, or the medical practitioner or
27 authorised mental health practitioner into whose
28 care the person is delivered, under
29 section 149(3)(b)(i) or (ii); or
- 30 (iii) the person searched if the person is released
31 without being taken to a mental health service or
32 other place or delivered into the care of a
33 medical practitioner or authorised mental health
34 practitioner; or
- 35 (iv) the person in charge of the mental health service
36 or other place where the search is conducted
37 under section 155(2)(a).

- 1 (2) The record of the search must be in the form approved under
2 section 162 and must—
 - 3 (a) specify the date and time the search was conducted; and
 - 4 (b) specify the reasons for conducting the search; and
 - 5 (c) specify any article seized under section 152(2)(c) or
6 155(2)(b) in the course of the search; and
 - 7 (d) specify the name, qualifications and sex of, and be
8 signed by, the person who conducted the search.
- 9 (3) The person to whom the record of the search is given under
10 subsection (1)(b)(i), (ii) or (iv) must ensure that, as soon as
11 practicable —
 - 12 (a) the record of the search is put on the medical record of
13 the person searched; and
 - 14 (b) a copy of the record of the search is given to the person
15 searched.

159. Dealing with articles seized under s. 152(2)(c) when person apprehended

- 18 (1) This section applies to an article that is seized under
19 section 152(2)(c) from a person who is apprehended under
20 section 96(a), 142(1)(a) or 149(1).
- 21 (2) The article must be dealt with —
 - 22 (a) under subsection (3)(a) or (b); or
 - 23 (b) otherwise according to law.
- 24 (3) The article must be —
 - 25 (a) given to, as the case requires —
 - 26 (i) the person in charge of the mental health service
27 or other place referred to in section 158(1)(b)(i),
28 (ii) or (iv) when the person is received there; or
 - 29 (ii) the medical practitioner or authorised mental
30 health practitioner referred to in
31 section 158(1)(b)(ii) when the person is delivered
32 into the practitioner’s care;
 - 33 or
 - 34 (b) if the person is released without being taken to a mental
35 health service or other place or delivered into the care of
36 a medical practitioner or authorised mental health
37 practitioner, returned to the person when the person is
38 released.

Mental Health Bill 2012

Part 11 Apprehension, search and seizure powers

Division 2 Search and seizure powers

s. 160

- 1 (4) A person who deals with an article under subsection (2)(a)
2 or (b) must, as soon as practicable —
- 3 (a) record in the form approved under section 162 details of
4 how the article was dealt with; and
- 5 (b) give the record of those details to, as the case
6 requires —
- 7 (i) the person in charge of the mental health service
8 or other place referred to in section 158(1)(b)(i),
9 (ii) or (iv) when the person is received there; or
- 10 (ii) the medical practitioner or authorised mental
11 health practitioner referred to in
12 section 158(1)(b)(ii) when the person is delivered
13 into the practitioner's care; or
- 14 (iii) if the person is released without being taken to a
15 mental health service or other place or delivered
16 into the care of a medical practitioner or
17 authorised mental health practitioner, the person
18 when the person is released.
- 19 (5) A person to whom a record is given under subsection (4)(b)(i)
20 or (ii) must ensure that, as soon as practicable, the record is put
21 on the person's medical record.
- 22 **160. Return of articles given to or seized by mental health service**
- 23 (1) This section applies to an article that is —
- 24 (a) seized from a patient or other person under
25 section 155(2)(b); or
- 26 (b) given to the person in charge of a mental health service
27 or other place under section 159(3)(a)(i).
- 28 (2) The article must be dealt with —
- 29 (a) under subsection (3), (4), (5) or (6); or
30 (b) otherwise according to law.
- 31 (3) The article must be returned to the person when the person is
32 released or discharged by or otherwise leaves the mental health
33 service or other place unless subsection (4) applies.
- 34 (4) If, in the opinion of the person in charge of the mental health
35 service or other place, the return of the article to the person may
36 pose a serious risk to the health or safety of the person or
37 another person, the article must be given to a carer, close family
38 member or other personal support person of the person when the
39 person is released or discharged by or otherwise leaves the

- 1 mental health service or other place unless the person in charge
2 considers that it is not appropriate to give the article to the carer,
3 close family member or other personal support person.
- 4 (5) If the article is not returned to the person under subsection (3),
5 or given to another person under subsection (4), when the
6 person is released or discharged by or otherwise leaves the
7 mental health service or other place, then —
- 8 (a) the article may be returned to the person, or may be
9 given to a carer, close family member or other personal
10 support person of the person, at any time afterwards; and
- 11 (b) subsections (3) and (4) apply (with the necessary
12 changes) in relation to the article.
- 13 (6) If the article is not returned to the person, or given to another
14 person, under this section —
- 15 (a) the article must be stored at the mental health service or
16 other place; and
- 17 (b) if the article has been stored under paragraph (a) for
18 more than 6 months since the person was released or
19 discharged by or otherwise left the mental health service
20 or other place, the article may be destroyed or otherwise
21 disposed of.
- 22 (7) The person in charge of the mental health service or other place
23 must ensure that the person's medical record includes a record
24 of how the article was dealt with under this section.
- 25 (8) The record must be in the form approved under section 162 and
26 must include these things —
- 27 (a) details of the article;
- 28 (b) if the article was returned to the person, the date when it
29 was returned;
- 30 (c) if the article was not returned to the person, the reasons
31 for not returning it;
- 32 (d) if the article was given to a carer, close family member
33 or other personal support person, the date when it was
34 given to that person;
- 35 (e) if the article was not given to a carer, close family
36 member or other personal support person, the reasons
37 for not giving it to that person;

Mental Health Bill 2012

Part 11 Apprehension, search and seizure powers

Division 2 Search and seizure powers

s. 161

- 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), any
8 other relevant information.

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

- 11 (1) This section applies to an article that is given to a medical
12 practitioner or authorised mental health practitioner under
13 section 159(3)(a)(ii) who decides not to refer under
14 section 25(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 —
- 19 (i) returned to the person; or
20 (ii) otherwise dealt with according to law;
21 and
- 22 (b) a record of how the article was returned or otherwise
23 dealt with under paragraph (a) is put on the person's
24 medical record; and
- 25 (c) a copy of the record of how the article was returned or
26 otherwise dealt with under paragraph (a) is given to the
27 person.

28 **162. Approval of forms for use by police officers under this**
29 **Division**

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

32 Note for section 162:

33 The Chief Psychiatrist approves forms for use by other persons under this
34 Division (see section 511(1)).

Division 3 — Miscellaneous matters

163. Term used: prescribed provision

In this Division —

prescribed provision means any of these provisions —

- (a) section 96;
- (b) section 142(1);
- (c) this Part.

164. Reasonable assistance and reasonable force authorised

- (1) A person exercising a power under a prescribed provision may require another person to give the person reasonable assistance in exercising that power.
- (2) A person exercising, or assisting another person in exercising, a power under a prescribed provision may use reasonable force in doing so.

165. Duty to obey directions

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

Penalty: a fine of \$6 000.

166. Obstruction of person exercising power

A person must not, without reasonable excuse, obstruct or hinder a person exercising, or assisting a person in exercising, a power under a prescribed provision.

Penalty: a fine of \$6 000.

167. Other written laws not affected

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

Part 12 — Provision of treatment generally

Division 1 — Voluntary patients

168. Informed consent necessary

- (1) A voluntary patient cannot be provided with treatment without informed consent being given to the provision of the treatment.
- (2) Subsection (1) does not apply to any of these treatments because this Act makes specific provision in respect of each of them —
 - (a) electroconvulsive therapy;
 - (b) emergency psychiatric treatment;
 - (c) psychosurgery;
 - (d) treatment that is prohibited by section 199(1).

169. Informed consent must be recorded on voluntary patient's medical record

- (1) The person responsible under subsection (2) must ensure that a voluntary patient's medical record includes a record of any informed consent given to the provision of treatment to the voluntary patient.
- (2) For subsection (1), the person responsible is —
 - (a) if the treatment is provided at a mental health service — the person in charge of the mental health service; or
 - (b) if the treatment is provided at a place other than a mental health service — the medical practitioner or mental health practitioner providing the treatment.
- (3) The record of the informed consent must include —
 - (a) the date when the informed consent was given; and
 - (b) whether the informed consent was given —
 - (i) by the patient himself or herself; or
 - (ii) by a person authorised by law to give the informed consent on the patient's behalf;and
 - (c) if paragraph (b)(ii) applies —
 - (i) the name and contact details of the person who gave the informed consent; and

- 1 (ii) details of the person's authority to do so.
- 2 Notes for section 169:
- 3 1. For section 169(3)(b)(i), the patient can give consent by making an
4 advance health directive (see the GAA Act section 110ZJ(2)).
- 5 2. For section 169(3)(b)(ii) —
- 6 (a) the patient's enduring guardian or guardian or the person
7 responsible for the patient can give consent on the patient's
8 behalf (see the GAA Act section 110ZJ(3) to (5)); or
- 9 (b) if the patient is a child, the child's parent or guardian can give
10 consent on the child's behalf (see section 285(3) of this Act).

11 **Division 2 — Involuntary patients and mentally**
12 **impaired accused**

13 **170. Application of this Division**

- 14 This Division applies to —
- 15 (a) an involuntary patient; or
- 16 (b) a patient who is a mentally impaired accused who is
17 required under the CL(MIA) Act to be detained at an
18 authorised hospital.

19 **171. Informed consent not necessary**

- 20 (1) The patient can be provided with treatment without informed
21 consent being given to the provision of the treatment.
- 22 (2) Subsection (1) does not apply to any of these treatments because
23 this Act makes specific provision in respect of each of them —
- 24 (a) electroconvulsive therapy;
- 25 (b) emergency psychiatric treatment;
- 26 (c) psychosurgery;
- 27 (d) treatment that is prohibited by section 199(1).

28 Note for section 171:

29 Emergency psychiatric treatment can only be provided to a voluntary patient
30 (see section 191).

31 **172. Patient's psychiatrist must have regard to patient's wishes**

- 32 (1) In deciding what treatment will be provided to the patient, the
33 patient's psychiatrist must have regard to the patient's wishes in
34 relation to the provision of treatment, to the extent that it is
35 practicable to ascertain those wishes.

Mental Health Bill 2012

Part 12 Provision of treatment generally

Division 2 Involuntary patients and mentally impaired accused

s. 172

- 1 (2) The patient's psychiatrist must ensure that the patient's medical
2 record includes —
- 3 (a) a record of the patient's wishes, to the extent they were
4 able to be ascertained; and
- 5 (b) the things to which the patient's psychiatrist had regard
6 in ascertaining the patient's wishes; and
- 7 (c) if a decision made by the patient's psychiatrist to
8 provide the patient with treatment is inconsistent with
9 the patient's wishes, the reasons for making the
10 decision.
- 11 (3) The patient's psychiatrist must give a copy of the reasons
12 referred to in subsection (2)(c) to each of these people —
- 13 (a) the patient;
- 14 (b) if the patient has an enduring guardian or guardian, the
15 enduring guardian or guardian;
- 16 (c) if the patient is a child, the child's parent or guardian;
- 17 (d) if the patient has a nominated person, the nominated
18 person unless the nominated person is not entitled under
19 section 256 to be given a copy;
- 20 (e) if the patient has a carer, the carer unless the carer is not
21 entitled under section 273(2) or 277(1) to be given a
22 copy;
- 23 (f) if the patient has a close family member, the close
24 family member unless the close family member is not
25 entitled under section 273(2) or 277(1) to be given a
26 copy;
- 27 (g) the Chief Psychiatrist.

28 Notes for section 172:

- 29 1. For the purpose of ascertaining the patient's wishes under
30 section 172(1), Part 2 Division 4 applies.
- 31 2. In deciding what treatment will be provided to the patient, the patient's
32 psychiatrist must also have regard to —
- 33 (a) if the patient is a child, the views of the child's parent or
34 guardian (see section 284); and
- 35 (b) if the patient has a nominated person, except in certain
36 circumstances, the views of the nominated person (see Part 15
37 Division 3 Subdivision 1); and
- 38 (c) if the patient has a carer or close family member, except in
39 certain circumstances, the views of the carer or close family
40 member (see Part 16 Division 2).

1 **173. Record of treatment**

2 The patient's psychiatrist must ensure that the patient's medical
3 record includes a record of the treatment provided to the patient.

4 **174. Further opinion may be requested**

5 (1) This section applies to any of these people —

- 6 (a) the patient, whether or not the patient has the capacity to
7 give informed consent to the treatment being provided to
8 him or her were that consent required;
- 9 (b) if the patient does not have that capacity, the person who
10 is authorised by law to give that consent on the patient's
11 behalf were that consent required;
- 12 (c) if the patient has a nominated person, the nominated
13 person;
- 14 (d) if the person has a carer, the carer;
- 15 (e) if the person has a close family member, the close
16 family member.

17 (2) A person to whom this section applies who is dissatisfied with
18 the treatment being provided to the patient may request in
19 writing the patient's psychiatrist or the Chief Psychiatrist to
20 obtain the opinion (a *further opinion*) of a psychiatrist who is
21 not the patient's psychiatrist about whether it is appropriate to
22 provide the treatment to the patient.

23 (3) The patient's psychiatrist or the Chief Psychiatrist must —

- 24 (a) record an oral request and put the record of the oral
25 request on the patient's medical record; or
- 26 (b) put a written request on the patient's medical record.

27 (4) The patient's psychiatrist or the Chief Psychiatrist must obtain
28 the further opinion as soon as practicable after the patient's
29 psychiatrist or Chief Psychiatrist receives the request unless —

- 30 (a) if the patient's nominated person or carer requests the
31 further opinion, the patient objects to the further opinion
32 being obtained; or
- 33 (b) under section 175 —
- 34 (i) the patient's psychiatrist or the Chief Psychiatrist
35 decides not to comply with the request; and
- 36 (ii) if the patient's psychiatrist decides not to comply
37 with the request, the Chief Psychiatrist confirms
38 that decision.

Mental Health Bill 2012

Part 12 Provision of treatment generally

Division 2 Involuntary patients and mentally impaired accused

s. 175

- 1 (5) In obtaining the further opinion, the patient's psychiatrist or the
2 Chief Psychiatrist must have regard to the guidelines published
3 under section 513(1)(c) about the independence of psychiatrists
4 from whom further opinions are obtained.
- 5 (6) A psychiatrist must not give a further opinion unless the
6 psychiatrist has examined the patient in accordance with Part 6
7 Division 3 Subdivision 6.
- 8 (7) The further opinion —
9 (a) must be given in writing; and
10 (b) may include recommendations about the provision of
11 treatment to the patient.
- 12 (8) The patient's psychiatrist must, as soon as practicable after
13 obtaining the further opinion —
14 (a) put it on the patient's medical record; and
15 (b) give a copy of it to —
16 (i) the patient; and
17 (ii) if it was requested by a person other than the
18 patient, the person who requested it.
- 19 (9) The Chief Psychiatrist must, as soon as practicable after
20 obtaining the further opinion, give —
21 (a) it to the patient's psychiatrist; and
22 (b) a copy of it to —
23 (i) the patient; and
24 (ii) if it was requested by a person other than the
25 patient, the person who requested it.
- 26 (10) The patient's psychiatrist must, as soon as practicable after
27 receiving the further opinion from the Chief Psychiatrist, put it
28 on the patient's medical record.
- 29 (11) In providing treatment to the patient, the patient's psychiatrist
30 must have regard to any further opinion relating to the provision
31 of that treatment that is obtained under this section, including
32 any recommendations included in the opinion under
33 subsection (7)(b).
- 34 **175. Request for additional opinion under s. 174 may be refused**
- 35 (1) This section applies if —
36 (a) a further opinion about the treatment being provided to a
37 patient has been obtained under section 174; and

- 1 (b) a person to whom that provision applies requests that the
2 patient's psychiatrist or the Chief Psychiatrist obtain an
3 additional opinion under that provision about the
4 treatment being provided to the patient.
- 5 (2) The patient's psychiatrist or the Chief Psychiatrist may refuse to
6 comply with the request if satisfied that, having regard to the
7 guidelines published under section 513(1)(d) about complying
8 with such requests, the additional opinion is not warranted.
- 9 (3) The patient's psychiatrist must, as soon as practicable after
10 deciding under subsection (2) not to comply with the request —
- 11 (a) record the decision and the reasons for it; and
12 (b) put the record on the patient's medical record; and
13 (c) give a copy of the record of the decision and reasons to
14 each of these people —
- 15 (i) the patient;
16 (ii) if the additional opinion was requested by a
17 person other than the patient, the person who
18 requested it;
19 (iii) the Chief Psychiatrist.
- 20 (4) The Chief Psychiatrist must, as soon as practicable after
21 receiving a copy of the record from the patient's psychiatrist —
- 22 (a) confirm or refuse to confirm the decision of the patient's
23 psychiatrist; and
24 (b) record the confirmation or refusal and the reasons for it;
25 and
26 (c) give a copy of the record of the confirmation or refusal
27 to each of these people —
- 28 (i) the patient;
29 (ii) if the additional opinion was requested by a
30 person other than the patient, the person who
31 requested it;
32 (iii) the patient's psychiatrist.
- 33 (5) The Chief Psychiatrist must, as soon as practicable after
34 deciding under subsection (2) not to comply with the request —
- 35 (a) record the decision and the reasons for it; and
36 (b) give a copy of the record of the decision and reasons to
37 each of these people —
- 38 (i) the patient;

1 (ii) if the additional opinion was requested by a
2 person other than the patient, the person who
3 requested it;

4 (iii) the patient's psychiatrist.

5 (6) The patient's psychiatrist must, as soon as practicable after
6 receiving a copy of the Chief Psychiatrist's decision under
7 subsection (4) or (5), put the copy on the patient's medical
8 record.

9 **176. Chief Psychiatrist may request reconsideration of treatment**
10 **being provided**

11 (1) This section applies if, after any further opinion in relation to a
12 patient is obtained under section 174, the person who requested
13 that it be obtained remains dissatisfied with the treatment being
14 provided to the patient.

15 (2) The Chief Psychiatrist may request the patient's psychiatrist
16 to —

17 (a) reconsider the decision to provide the treatment; and

18 (b) give the Chief Psychiatrist a written report about —

19 (i) the outcome of the reconsideration; and

20 (ii) the reasons for the outcome.

21 (3) The patient's psychiatrist must, as soon as practicable —

22 (a) give the report to the Chief Psychiatrist; and

23 (b) put a copy of it on the patient's medical record; and

24 (c) give a copy of it to —

25 (i) the patient; and

26 (ii) if the further opinion was requested by a person
27 other than the patient, the person who requested
28 it.

29 (4) Subsection (1) does not limit the powers of the Chief
30 Psychiatrist under section 489.

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

32 **177. Application of this Division**

33 This Division applies in relation to —

34 (a) a patient who is admitted by a hospital as an involuntary
35 patient whose detention at the hospital is authorised
36 under an inpatient treatment order; or

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

5 **178. 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 177(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 177(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 **179. 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.
- 30 (2) The plan must be prepared, reviewed and revised having regard
- 31 to the guidelines published under section 513(1)(e).
- 32 (3) The patient's psychiatrist must ensure that —
- 33 (a) the plan (as prepared and as revised) is put on the
- 34 patient's medical record; and
- 35 (b) a copy of the plan (as prepared and as revised) is given
- 36 to each of these people —
- 37 (i) the patient;

Mental Health Bill 2012

Part 12 Provision of treatment generally

Division 3 Treatment, support and discharge planning

s. 180

- 1 (ii) the person referred to in section 180(1)(b);
- 2 (iii) if the patient is a child, the child's parent or
- 3 guardian;
- 4 (iv) if the patient has a nominated person, the
- 5 nominated person unless the nominated person is
- 6 not entitled under section 256 to be given a copy;
- 7 (v) if the patient has a carer, the carer unless the
- 8 carer is not entitled under section 273(2) or
- 9 277(1) to be given a copy;
- 10 (vi) if the patient has a close family member, the
- 11 close family member unless the close family
- 12 member is not entitled under section 273(2) or
- 13 277(1) to be given a copy.

- 14 (4) The patient's psychiatrist may also ensure that a copy of the
- 15 plan (as prepared or as revised) is given to any other person or
- 16 body that the psychiatrist considers appropriate.

17 Note for section 179(4):

18 For example, the patient's psychiatrist may consider it appropriate to give a

19 copy of the plan to a community mental health service.

20 **180. Who should be involved in preparation and review of plan**

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

- 24 (a) the patient —

- 25 (i) whether or not the patient has the capacity to
- 26 consent to the plan being implemented in relation
- 27 to himself or herself; and

- 28 (ii) whether or not the plan can be implemented
- 29 without the patient's consent;

- 30 (b) if the patient does not have the capacity referred to in
- 31 paragraph (a)(i) —

- 32 (i) if the plan cannot be implemented without the
- 33 patient's consent — the person who is authorised
- 34 by law to consent on the patient's behalf; or

- 35 (ii) if the plan can be implemented without the
- 36 patient's consent — the person who would be
- 37 authorised by law to consent on the patient's
- 38 behalf if the plan could not have been
- 39 implemented without consent;

- 1 (c) if the patient is a child, the child's parent or guardian;
 - 2 (d) if the patient has a nominated person, the nominated
 - 3 person unless the nominated person is not entitled under
 - 4 section 256 to be involved;
 - 5 (e) if the patient has a carer, the carer unless the carer is not
 - 6 entitled under section 273(2) or 277(1) to be involved;
 - 7 (f) if the patient has a close family member, the close
 - 8 family member unless the close family member is not
 - 9 entitled under section 273(2) or 277(1) to be involved.
- 10 (2) Without limiting a requirement under subsection (1)(b) to
- 11 involve the person who is or would be required by law to
- 12 consent on the patient's behalf, or under subsection (1)(c) to
- 13 involve the child's parent or guardian, in the preparation or
- 14 review of the treatment, support and discharge plan, the
- 15 requirement is taken to be complied with if the patient's
- 16 psychiatrist ensures that reasonable efforts continue to be made
- 17 to identify the person and involve the person in the preparation
- 18 or review of the treatment, support and discharge plan until the
- 19 first of these things occurs —
- 20 (a) the person is identified and involved in that preparation
- 21 or review;
- 22 (b) it is reasonable for the patient's psychiatrist to conclude
- 23 that the person cannot be identified and involved in that
- 24 preparation or review.
- 25 (3) Part 15 Division 3 Subdivision 2 applies to a requirement under
- 26 subsection (1)(d) to involve the patient's nominated person in
- 27 the preparation or review of the treatment, support and
- 28 discharge plan.
- 29 (4) Part 16 Division 2 applies to a requirement under
- 30 subsection (1)(e) to consult a carer of the involuntary inpatient,
- 31 or under subsection (1)(f) to consult a close family member of
- 32 the patient, in the preparation or review of the treatment,
- 33 support and discharge plan.
- 34 (5) The patient's psychiatrist may also ensure that any other person
- 35 or body that the psychiatrist considers appropriate is involved in
- 36 the preparation or review of the treatment, support and
- 37 discharge plan for the patient.
- 38 (6) The patient's psychiatrist must ensure that the patient's medical
- 39 record includes —
- 40 (a) if a person referred to in subsection (1)(b) to (f), or a
- 41 person or body referred to in subsection (5), was

Mental Health Bill 2012

Part 12 Provision of treatment generally

Division 4 Miscellaneous matters

s. 181

- 1 involved in the preparation or review of treatment,
2 support and discharge plan — a record of that
3 involvement; or
4 (b) if a person referred to in subsection (1)(b) to (f) could
5 not be involved in the preparation or review of
6 treatment, support and discharge plan — a record of the
7 efforts made to do so.

8 Note for section 180(5):

9 For example, the patient's psychiatrist may consider it appropriate to involve a
10 community mental health service.

11 **Division 4 — Miscellaneous matters**

12 **181. Provision of treatment to patients of Aboriginal or Torres**
13 **Strait Islander descent**

- 14 (1) This section applies to any patient who is of Aboriginal or
15 Torres Strait Islander descent.
16 (2) To the extent that it is practicable and appropriate to do so,
17 treatment provided to the patient must be provided in
18 collaboration with —
19 (a) Aboriginal or Torres Strait Islander mental health
20 workers; and
21 (b) significant members of the patient's community,
22 including traditional healers identified by the patient or
23 by a significant member of that community.

**Part 13 — Regulation of certain kinds of treatment
and other interventions**

Division 1 — Electroconvulsive therapy

182. Electroconvulsive therapy (ECT): meaning of

Electroconvulsive therapy is the application of electric current to specific areas of a person's head to produce a generalised seizure that is modified by general anaesthesia and the administration of a muscle relaxing agent.

183. ECT prohibited: offence

A person must not perform electroconvulsive therapy on another person except in accordance with this Division.

Penalty: a fine of \$15 000 and imprisonment for 2 years.

184. ECT prohibited: child under 14 years of age

A person must not perform electroconvulsive therapy on a child under 14 years of age.

185. Requirements for ECT: child between 14 and 18 years of age

- (1) A person must not perform electroconvulsive therapy on a voluntary patient who is a child who has reached 14 years of age but is under 18 years of age unless —
 - (a) the person is a medical practitioner; and
 - (b) informed consent to the electroconvulsive therapy being performed has been given; and
 - (c) the Mental Health Tribunal has given its approval under Part 20 Division 6 to the electroconvulsive therapy being performed.
- (2) A person must not perform electroconvulsive therapy on an involuntary patient or mentally impaired accused who is a child who has reached 14 years of age but is under 18 years of age unless —
 - (a) the person is a medical practitioner; and

Mental Health Bill 2012

Part 13 Regulation of certain kinds of treatment and other interventions

Division 1 Electroconvulsive therapy

s. 186

- 1 (b) the Mental Health Tribunal has given its approval under
2 Part 20 Division 6 to the electroconvulsive therapy
3 being performed.

4 Note for section 185(1)(b):

5 The child or the child's parent or guardian may have given informed consent
6 (see sections 13 and 14).

7 **186. Requirements for ECT: voluntary patient who has reached**
8 **18 years of age**

9 A person must not perform electroconvulsive therapy on a
10 voluntary patient who has reached 18 years of age unless —

- 11 (a) the person is a medical practitioner; and
12 (b) informed consent has been given to the
13 electroconvulsive therapy being performed on the
14 voluntary patient.

15 Note for section 186:

16 For section 186(b), the voluntary patient may have given informed consent in
17 an advance health directive (see the GAA Act section 110ZJ(2)) or the
18 voluntary patient's enduring guardian or guardian or the person responsible
19 for the voluntary patient may have given informed consent on the voluntary
20 patient's behalf (see the GAA Act section 110ZJ(3) to (5)).

21 **187. Requirements for ECT: involuntary patient or mentally**
22 **impaired accused who has reached 18 years of age**

23 (1) This section applies to —

- 24 (a) an involuntary patient; or
25 (b) a patient who is a mentally impaired accused who is
26 required under the CL(MIA) Act to be detained at an
27 authorised hospital,

28 who has reached 18 years of age.

29 (2) A person must not perform electroconvulsive therapy on a
30 patient —

- 31 (a) unless —
32 (i) the person is a medical practitioner; and
33 (ii) the Mental Health Tribunal has given its
34 approval under Part 20 Division 6 to the
35 electroconvulsive therapy being performed;
36 or
37 (b) unless section 188 applies.

- 1 **188. Emergency ECT: involuntary patient or mentally impaired**
2 **accused who has reached 18 years of age**
- 3 (1) This section applies to —
- 4 (a) an involuntary patient; or
- 5 (b) a patient who is a mentally impaired accused who is
- 6 required under the CL(MIA) Act to be detained at an
- 7 authorised hospital,
- 8 who has reached 18 years of age.
- 9 (2) A medical practitioner who performs electroconvulsive therapy
- 10 on a patient does not commit an offence under section 183 if —
- 11 (a) the patient needs to be provided with electroconvulsive
- 12 therapy —
- 13 (i) to save the patient’s life; or
- 14 (ii) because there is an imminent risk of the patient
- 15 behaving in a way that is likely to result in
- 16 serious physical injury to the patient or another
- 17 person;
- 18 and
- 19 (b) the Chief Psychiatrist has approved the
- 20 electroconvulsive therapy being performed.
- 21 **189. Mentally Impaired Accused Review Board: report**
- 22 (1) This section applies to a patient who is a mentally impaired
- 23 accused who is required under the CL(MIA) Act to be detained
- 24 at an authorised hospital.
- 25 (2) The patient’s psychiatrist must report the performance of a
- 26 course of electroconvulsive therapy on the patient as soon as
- 27 practicable to the Mentally Impaired Accused Review Board.
- 28 (3) The report must be in the approved form and must be
- 29 accompanied by a copy of the approval of the Mental Health
- 30 Tribunal or the Chief Psychiatrist, as the case requires.
- 31 **190. Statistics about ECT**
- 32 (1) This section applies to a mental health service where
- 33 electroconvulsive therapy is performed.
- 34 (2) In this section —
- 35 *month* means any of the 12 months of the year;

- 1 *serious adverse event*, in relation to a course of treatments with
2 electroconvulsive therapy, includes any of the following —
- 3 (a) premature consciousness during a treatment;
- 4 (b) anaesthetic complications, such as cardiac arrhythmia,
5 during recovery from a treatment;
- 6 (c) an acute and persistent confused state during recovery
7 from a treatment;
- 8 (d) muscle tears or vertebral column damage;
- 9 (e) severe and persistent headaches;
- 10 (f) persistent memory deficit.
- 11 (3) The person in charge of the mental health service must, as soon
12 as practicable after the end of each month, report to the Chief
13 Psychiatrist on these matters —
- 14 (a) the number of people in respect of whom a course of
15 electroconvulsive therapy at the mental health service
16 was completed under subsection (4), or was
17 discontinued under subsection (5), during the month;
- 18 (b) the number of those people who were children;
- 19 (c) the number of those people who were voluntary patients;
- 20 (d) the number of those voluntary patients who were
21 children;
- 22 (e) the number of those people who were involuntary
23 patients;
- 24 (f) the number of those involuntary patients who were
25 children;
- 26 (g) the number of those people who were mentally impaired
27 accused;
- 28 (h) the number of those mentally impaired accused who
29 were children;
- 30 (i) the number of treatments with electroconvulsive therapy
31 in each of those courses;
- 32 (j) the number of those courses that were courses of
33 emergency electroconvulsive therapy performed under
34 section 188;
- 35 (k) details of any serious adverse event that occurred, or is
36 suspected of having occurred, during or after any of
37 those courses.
- 38 (4) For the purposes of subsection (3)(a), a course of
39 electroconvulsive therapy is taken to have been completed

193. Record of emergency psychiatric treatment

- (1) The medical practitioner must, as soon as practicable —
- (a) record the provision of the emergency psychiatric treatment to the voluntary patient in accordance with subsection (2); and
 - (b) put the record of the emergency psychiatric treatment provided on the voluntary patient's medical record; and
 - (c) give a copy of the record of the emergency psychiatric treatment provided to each of these people —
 - (i) the voluntary patient;
 - (ii) the Chief Psychiatrist;
 - (iii) if the voluntary patient is a mentally impaired accused, the Mentally Impaired Accused Review Board.
- (2) The record of the treatment provided must be in the approved form and must include these things —
- (a) the name of the voluntary patient provided with the treatment;
 - (b) the name and qualifications of the practitioner who provided the treatment;
 - (c) the names of any other people involved in providing the treatment;
 - (d) the date, time and place the treatment was provided;
 - (e) particulars of the circumstances in which the treatment was provided;
 - (f) particulars of the treatment provided.

Division 3 — Psychosurgery

194. Psychosurgery: meaning of

Psychosurgery is —

- (a) the use of a surgical technique or procedure or intracerebral electrodes to create in a person's brain a lesion intended (whether alone or in combination with one or more other lesions created at the same or other times) to alter permanently —
 - (i) the person's thoughts or emotions; or

- 1 (ii) the person's behaviour, except 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, except behaviour
- 11 secondary to a paroxysmal cerebral dysrhythmia.

12 **195. Psychosurgery prohibited: offence**

- 13 (1) A person must not perform psychosurgery on another person
- 14 except in accordance with this Division.
- 15 Penalty: imprisonment for 5 years.
- 16 (2) An offence under subsection (1) is a crime.

17 **196. Psychosurgery prohibited: child under 14 years of age**

- 18 A person must not perform psychosurgery on a child under
- 19 14 years of age.

20 **197. Requirements for psychosurgery**

- 21 (1) This section applies subject to section 196.
- 22 (2) A person must not perform psychosurgery on another person
- 23 unless —
- 24 (a) the person is a neurosurgeon; and
- 25 (b) the person on whom it is proposed to perform the
- 26 psychosurgery has given informed consent to the
- 27 psychosurgery being performed on himself or herself;
- 28 and
- 29 (c) the Mental Health Tribunal has given its approval under
- 30 Part 20 Division 7 to the psychosurgery being
- 31 performed.

32 Note for section 197:

33 For the purpose of section 197(2)(b), the person may have given informed

34 consent in an advance health directive (see the GAA Act section 110ZJ(2)).

198. Chief Psychiatrist and Mentally Impaired Accused Review Board: report

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

Division 4 — Deep sleep and insulin coma therapy

199. Deep sleep and insulin coma therapy prohibited

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

Division 5 — Seclusion

200. Terms used

In this Division —

nurse means —

- (a) a person who is registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing and midwifery profession whose name is entered on Division 1 of the Register of Nurses kept under that Law as a registered nurse; or
- (b) a person who is registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing and midwifery profession whose name is entered on Division 2 of the Register of Nurses kept under that Law as an enrolled nurse;

oral authorisation means an authorisation given orally under section 203(1);

- 1 ***seclusion order*** —
- 2 (a) means a seclusion order made under section 204(1); and
- 3 (b) includes a seclusion order as extended under
- 4 section 207(1).

5 **201. Seclusion: meaning of**

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 **202. Seclusion must be authorised**

11 A person must not keep another person in seclusion except in

12 accordance with —

- 13 (a) an oral authorisation; or
- 14 (b) a seclusion order.

15 Penalty: a fine of \$6 000.

16 **203. Giving oral authorisation**

17 (1) A medical practitioner or mental health practitioner at an

18 authorised hospital or the person in charge of a ward at an

19 authorised hospital may authorise orally the seclusion of any of

20 these people —

- 21 (a) a person who is a patient admitted by the authorised
- 22 hospital;
- 23 (b) a person who is referred under section 25(2) or 35(2) for
- 24 an examination to be conducted by a psychiatrist at the
- 25 authorised hospital;
- 26 (c) a person who is under an order made under
- 27 section 53(1)(c) or 59(1)(c) to enable an examination to
- 28 be conducted by a psychiatrist at the authorised hospital.

29 (2) A person must not give an oral authorisation in respect of a

30 person unless satisfied of the matters specified in section 205.

31 (3) A person giving an oral authorisation in respect of a person

32 must specify the room or area where the person can be secluded.

- 1 (4) A person who gives an oral authorisation in respect of a person
2 must, as soon as practicable after the person is secluded under
3 the authorisation —
- 4 (a) record the oral authorisation in the approved form,
5 specifying the following —
- 6 (i) the date and time when it was given;
- 7 (ii) the room or area specified under subsection (3);
- 8 (iii) the reasons for giving it;
- 9 and
- 10 (b) put the record of the oral authorisation on the person's
11 medical record; and
- 12 (c) give a copy of the record of the oral authorisation to the
13 person.
- 14 (5) A mental health practitioner or the person in charge of a ward
15 who gives an oral authorisation in respect of a person must, as
16 soon as practicable and, in any event, within sufficient time to
17 enable the person to be examined as required under
18 section 211(4), inform a medical practitioner that, as
19 applicable —
- 20 (a) the person is secluded under the oral authorisation; or
- 21 (b) the person was secluded under the oral authorisation but
22 has since been released from seclusion.
- 23 (6) A mental health practitioner or the person in charge of a ward
24 who informs a medical practitioner under subsection (5) must,
25 as soon as practicable —
- 26 (a) record in the approved form —
- 27 (i) the medical practitioner's name and
28 qualifications; and
- 29 (ii) the date and time when the medical practitioner
30 was informed; and
- 31 (iii) the date and time of any physical attendance on
32 the person by the medical practitioner;
- 33 and
- 34 (b) put the record of that information on the person's
35 medical record; and
- 36 (c) give a copy of the record of that information to the
37 person.

- 1 (7) If a person who gives an oral authorisation in respect of a
2 person does not make a seclusion order confirming the oral
3 authorisation as soon as practicable and, in any event, within
4 3 hours after the time when the person is secluded under the
5 authorisation —
- 6 (a) the person cannot continue to be secluded; and
7 (b) the person who gave the oral authorisation must ensure
8 that the person is —
- 9 (i) informed of that fact; and
10 (ii) released from seclusion.

11 **204. Making seclusion order**

- 12 (1) A medical practitioner or mental health practitioner at an
13 authorised hospital or the person in charge of a ward at an
14 authorised hospital may make a seclusion order authorising the
15 seclusion of any of these people —
- 16 (a) a person who is a patient admitted by the authorised
17 hospital;
- 18 (b) a person who is referred under section 25(2) or 35(2) for
19 an examination to be conducted by a psychiatrist at the
20 authorised hospital;
- 21 (c) a person who is under an order made under
22 section 53(1)(c) or 59(1)(c) to enable an examination to
23 be conducted by a psychiatrist at the authorised hospital.
- 24 (2) A person must not make a seclusion order in respect of a person
25 unless satisfied of the matters specified in section 205.
- 26 (3) A seclusion order must be in the approved form and must —
- 27 (a) specify the name and date of birth of the person being
28 secluded under the order; and
- 29 (b) specify the date and time when the order is made; and
- 30 (c) specify the date and time when any oral authorisation
31 being confirmed by the order was given; and
- 32 (d) specify the period for which the person can be secluded
33 under the order, which must include the period for
34 which the person was secluded under any oral
35 authorisation being confirmed by the order; and
- 36 (e) specify the room or area where the person can be
37 secluded; and

Mental Health Bill 2012

Part 13	Regulation of certain kinds of treatment and other interventions
Division 5	Seclusion
s. 204	

- 1 (f) with reference to the criteria specified in section 205(1),
2 specify the reasons for authorising the person's
3 seclusion; and
- 4 (g) if a mental health practitioner or the person in charge of
5 a ward makes the order, with reference to the criteria
6 specified in section 205(2), specify the reasons for the
7 urgency; and
- 8 (h) specify particulars of any observations made about the
9 person —
- 10 (i) if the order is confirming an oral authorisation —
11 when the person was secluded under the oral
12 authorisation; or
- 13 (ii) otherwise — when the person is secluded under
14 the order;
- 15 and
- 16 (i) specify particulars of any directions given by a medical
17 practitioner or mental health practitioner about the
18 treatment and care to be provided to the person while
19 secluded; and
- 20 (j) specify the name and qualifications of, and be signed by,
21 the person making the order.
- 22 (4) A mental health practitioner or the person in charge of a ward
23 who makes a seclusion order in respect of a person must, as
24 soon as practicable and, in any event, within sufficient time to
25 enable the person to be examined as required under
26 section 211(4), inform a medical practitioner that, as
27 applicable —
- 28 (a) the person is secluded under the seclusion order; or
- 29 (b) the person was secluded under the seclusion order but
30 has since been released from seclusion.
- 31 (5) A mental health practitioner or the person in charge of a ward
32 who informs a medical practitioner under subsection (4) must,
33 as soon as practicable —
- 34 (a) record in the approved form —
- 35 (i) the medical practitioner's name and
36 qualifications; and
- 37 (ii) the date and time when the medical practitioner
38 was informed;
- 39 and

- 1 (b) put the record of that information on the person's
 - 2 medical record; and
 - 3 (c) give a copy of the record of that information to the
 - 4 person.
- 5 (6) A person who makes a seclusion order in respect of a person
- 6 must, as soon as practicable after the person is secluded under
- 7 the order —
- 8 (a) put the seclusion order on the person's medical record;
 - 9 and
 - 10 (b) give a copy of the seclusion order to —
 - 11 (i) the person; and
 - 12 (ii) if the person is a child, the child's parent or
 - 13 guardian.

14 **205. Criteria for authorising seclusion**

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

33 **206. Treating psychiatrist (if any) to be informed**

- 34 (1) This section applies if —
- 35 (a) a person secluded under an oral authorisation or
 - 36 seclusion order has a treating psychiatrist; and

Mental Health Bill 2012

Part 13 Regulation of certain kinds of treatment and other interventions

Division 5 Seclusion

s. 207

- 1 (b) the treating psychiatrist did not give the oral
2 authorisation or make the seclusion order; and
- 3 (c) the medical practitioner informed under section 203(5)
4 or 204(4) of the person's seclusion is not the treating
5 psychiatrist.
- 6 (2) The person who gives the oral authorisation or makes the
7 seclusion order must, as soon as practicable and, in any event,
8 within 3 hours after the time when the person is secluded under
9 the authorisation or order, inform the treating psychiatrist that,
10 as applicable —
- 11 (a) the person is secluded under the authorisation or order;
12 or
- 13 (b) the person was secluded under the authorisation or order
14 but has since been released from seclusion.
- 15 (3) A person who informs the treating psychiatrist under
16 subsection (2) must, as soon as practicable —
- 17 (a) record in the approved form —
- 18 (i) the treating psychiatrist's name and
19 qualifications; and
- 20 (ii) the date and time when the treating psychiatrist
21 was informed;
- 22 and
- 23 (b) put the record of that information on the person's
24 medical record; and
- 25 (c) give a copy of the record of that information to the
26 person.

27 **207. Extending seclusion order**

- 28 (1) A medical practitioner may make an order extending a seclusion
29 order.
- 30 (2) The order must be in the approved form and must —
- 31 (a) specify the date and time when it is made; and
- 32 (b) specify the period of the extension; and
- 33 (c) specify the reasons for the extension; and
- 34 (d) specify the name and qualifications of, and be signed by.
35 the medical practitioner.
- 36 (3) The medical practitioner must, as soon as practicable —
- 37 (a) put the order on the person's medical record; and

- 1 (b) give a copy of the order to —
- 2 (i) the person; and
- 3 (ii) if the person is a child, the child's parent or
- 4 guardian.

5 **208. Revoking seclusion order**

- 6 (1) A medical practitioner or mental health practitioner or the
- 7 person in charge of a ward at an authorised hospital may make
- 8 an order revoking a seclusion order in force in respect of a
- 9 person.
- 10 (2) The order must be in the approved form and must —
- 11 (a) specify the date and time when the seclusion order is
- 12 revoked; and
- 13 (b) specify the name and qualifications of, and be signed by,
- 14 the person making it.
- 15 (3) The person who makes the order must, as soon as practicable —
- 16 (a) put it on the person's medical record; and
- 17 (b) give a copy of it to —
- 18 (i) the person; and
- 19 (ii) if the person is a child, the child's parent or
- 20 guardian.

21 **209. Release of person on revocation or expiry of seclusion order**

- 22 A medical practitioner or mental health practitioner must, as
- 23 soon as practicable after the time when a person cannot continue
- 24 to be secluded under a seclusion order —
- 25 (a) inform the person of that fact; and
 - 26 (b) ensure that the person is released from seclusion.

27 **210. Record of seclusion order expiring**

- 28 (1) This section applies if a seclusion order expires.
- 29 (2) A medical practitioner or mental health practitioner must, as
- 30 soon as practicable —
- 31 (a) record in the approved form the date and time when the
- 32 seclusion order expired; and
- 33 (b) put the record of the expiry on the person's medical
- 34 record.

211. Requirements relating to seclusion

- (1) This section applies while a person is secluded under an oral authorisation or a seclusion order.
- (2) The person in charge of the ward where the person is secluded must ensure that the requirements specified in this section, and any other requirements prescribed by the regulations for this section, are complied with.
- (3) A mental health practitioner or a nurse must observe the person every 15 minutes and, as soon as practicable —
 - (a) record in the approved form those observations; and
 - (b) put a copy of the record of those observations on the person's medical record; and
 - (c) give a copy of the record of those observations to the person.
- (4) A medical practitioner must examine the person at least every 2 hours and, as soon as practicable —
 - (a) record in the approved form this information about the examination —
 - (i) the medical practitioner's name and qualifications;
 - (ii) the date and time of the examination;
 - (iii) the results of the examination, including whether or not the medical practitioner considers that, having regard to the criteria specified in section 205(1), the person should continue to be secluded;
 - and
 - (b) put a copy of the record of the examination on the person's medical record; and
 - (c) give a copy of the record of the examination to the person.
- (5) The person must be provided with these things —
 - (a) the bedding and clothing appropriate in the circumstances;
 - (b) sufficient food and drink;
 - (c) access to toilet facilities;
 - (d) any other care appropriate to the person's needs.

- 1 **212. 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 that the person is examined by a medical
- 6 practitioner within 6 hours after the time when the person is
- 7 released unless the person is released or discharged by or
- 8 otherwise leaves the authorised hospital before the end of that
- 9 period.
- 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 practitioner’s name and qualifications;
- 14 (ii) the date and time of the examination;
- 15 (iii) the results of the examination, including any
- 16 complication of or deterioration in the person’s
- 17 mental or physical condition that is a result of, or
- 18 may be the result of, the person being secluded;
- 19 and
- 20 (b) put the record of the examination on the person’s
- 21 medical record; and
- 22 (c) give a copy of the record of the examination to the
- 23 person.
- 24 **213. Chief Psychiatrist and Mentally Impaired Accused Review**
- 25 **Board: report**
- 26 (1) This section applies whenever a person is released from
- 27 seclusion under an oral authorisation or a seclusion order.
- 28 (2) The treating psychiatrist or, if the person does not have a
- 29 treating psychiatrist, the person in charge of the authorised
- 30 hospital where the person was secluded must, as soon as
- 31 practicable, give the documents specified in subsection (3)
- 32 relating to the seclusion to —
- 33 (a) the Chief Psychiatrist; and
- 34 (b) if the person is a mentally impaired accused, the
- 35 Mentally Impaired Accused Review Board.
- 36 (3) For subsection (2), these documents are specified —
- 37 (a) a copy of the record of the oral authorisation (if any)
- 38 made under section 203(4)(a);

Mental Health Bill 2012

Part 13 Regulation of certain kinds of treatment and other interventions

Division 6 Bodily restraint

s. 214

- 1 (b) a copy of the seclusion order (if any) made under
2 section 204(1);
- 3 (c) a copy of any order extending the seclusion order made
4 under section 207(1);
- 5 (d) a copy of any order revoking the seclusion order made
6 under section 208(1) or any record of the expiry of the
7 seclusion order under section 210(2)(a);
- 8 (e) a copy of each of the records made under
9 section 203(6)(a), 204(5)(a), 206(3)(a), 211(3)(a) and
10 (4)(a) and 212(3)(a).
- 11 (4) The treating psychiatrist or person in charge must, as soon as
12 practicable, include a record of having complied with
13 subsection (2) on the person's medical record.

14 **Division 6 — Bodily restraint**

15 **214. Terms used**

16 In this Division —

17 ***bodily restraint order*** —

- 18 (a) means a bodily restraint order made under
19 section 218(1); and
- 20 (b) includes a bodily restraint order as varied under
21 section 221(1);

22 ***nurse*** means —

- 23 (a) a person who is registered under the *Health Practitioner*
24 *Regulation National Law (Western Australia)* in the
25 nursing and midwifery profession whose name is
26 entered on Division 1 of the Register of Nurses kept
27 under that Law as a registered nurse; or
- 28 (b) a person who is registered under the *Health Practitioner*
29 *Regulation National Law (Western Australia)* in the
30 nursing and midwifery profession whose name is
31 entered on Division 2 of the Register of Nurses kept
32 under that Law as an enrolled nurse;

33 ***oral authorisation*** means an authorisation given orally under
34 section 217(1).

35 **215. Bodily restraint: meaning of**

- 36 (1) Bodily restraint is the physical or mechanical restraint of a
37 person who is being provided with treatment or care at an
38 authorised hospital.

- 1 (2) Physical restraint is the restraint of a person by the application
2 of bodily force to the person's body to restrict the person's
3 movement.
- 4 (3) Mechanical restraint is the restraint of a person by the
5 application of a device (for example, a belt, harness, manacle,
6 sheet or strap) to a person's body to restrict the person's
7 movement.
- 8 (4) Mechanical restraint does not include either of these forms of
9 restraint —
10 (a) the appropriate use of a medical or surgical appliance in
11 the treatment of a physical illness or injury;
12 (b) the appropriate use of furniture that restricts a person's
13 capacity to get off the furniture (for example, a bed
14 fitted with cot sides or a chair fitted with a table across
15 the arms).
- 16 (5) Bodily restraint does not include physical or mechanical
17 restraint by a police officer acting in the course of duty.

18 **216. Bodily restraint must be authorised**

19 A person must not use bodily restraint on another person except
20 in accordance with —

- 21 (a) an oral authorisation; or
- 22 (b) a bodily restraint order.

23 Penalty: a fine of \$6 000.

24 **217. Giving oral authorisation**

- 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 authorise orally the bodily restraint of
28 any of these people —
29 (a) a person who is a patient admitted by the authorised
30 hospital;
31 (b) a person who is referred under section 25(2) or 35(2) for
32 an examination to be conducted by a psychiatrist at the
33 authorised hospital;
34 (c) a person who is under an order made under
35 section 53(1)(c) or 59(1)(c) to enable an examination to
36 be conducted by a psychiatrist at the authorised hospital.
- 37 (2) A person must not give an oral authorisation in respect of a
38 person unless satisfied of the matters specified in section 219.

Mental Health Bill 2012

Part 13 Regulation of certain kinds of treatment and other interventions

Division 6 Bodily restraint

s. 217

- 1 (3) A person giving an oral authorisation in respect of a person
2 must specify —
- 3 (a) whether physical or mechanical restraint can be used to
4 restrain the person; and
- 5 (b) if mechanical restraint can be used —
- 6 (i) the device that can be used to restrain the person;
7 and
- 8 (ii) the way in which the device can be applied to the
9 person's body.
- 10 (4) A person who gives an oral authorisation in respect of a person
11 must, as soon as practicable after the person is restrained under
12 the oral authorisation —
- 13 (a) record the oral authorisation in the approved form,
14 specifying the following —
- 15 (i) the date and time when it was given;
- 16 (ii) the matters specified under subsection (3);
- 17 (iii) the reasons for giving it;
- 18 and
- 19 (b) put the record of the oral authorisation on the person's
20 medical record; and
- 21 (c) give a copy of the record of the oral authorisation to the
22 person.
- 23 (5) A mental health practitioner or the person in charge of a ward
24 who gives an oral authorisation in respect of a person must, as
25 soon as practicable and, in any event, within sufficient time to
26 enable the person to be examined as required under
27 subsection (7)(a), inform a medical practitioner that, as
28 applicable —
- 29 (a) the person is restrained under the oral authorisation; or
- 30 (b) the person was restrained under the oral authorisation
31 but has since been released from bodily restraint.
- 32 (6) A mental health practitioner or the person in charge of a ward
33 who informs a medical practitioner under subsection (5) must,
34 as soon as practicable —
- 35 (a) record in the approved form —
- 36 (i) the medical practitioner's name and
37 qualifications; and
- 38 (ii) the date and time when the medical practitioner
39 was informed;

- 1 and
- 2 (b) put the record of that information on the person's
- 3 medical record; and
- 4 (c) give a copy of the record of that information to the
- 5 person.
- 6 (7) A medical practitioner who is informed under subsection (5)
- 7 that a person is restrained must, as soon as practicable and, in
- 8 any event, within 30 minutes after the time when the person is
- 9 restrained under the authorisation —
- 10 (a) examine the person; and
- 11 (b) record in the approved form —
- 12 (i) the date and time of the examination; and
- 13 (ii) the results of the examination, including whether
- 14 or not the medical practitioner considers that,
- 15 having regard to the criteria specified in
- 16 section 219(1), the person should continue to be
- 17 restrained; and
- 18 (c) put the record of the examination on the person's
- 19 medical record; and
- 20 (d) give a copy of the record of the examination to the
- 21 person.
- 22 (8) If a person who gives an oral authorisation in respect of a
- 23 person does not make a bodily restraint order confirming the
- 24 oral authorisation as soon as practicable and, in any event,
- 25 within 3 hours after the time when the person is restrained under
- 26 the authorisation —
- 27 (a) the person cannot continue to be restrained and must be
- 28 released from bodily restraint; and
- 29 (b) the person who gave the oral authorisation must ensure
- 30 that the person is —
- 31 (i) informed of that fact; and
- 32 (ii) released from bodily restraint.

33 **218. Making bodily restraint order**

- 34 (1) A medical practitioner or mental health practitioner at an
- 35 authorised hospital or the person in charge of a ward at an
- 36 authorised hospital may make a bodily restraint order
- 37 authorising the bodily restraint of any of these people —
- 38 (a) a person who is a patient admitted by the authorised
- 39 hospital;

Mental Health Bill 2012

Part 13 Regulation of certain kinds of treatment and other interventions

Division 6 Bodily restraint

s. 218

- 1 (b) a person who is referred under section 25(2) or 35(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 53(1)(c) or 59(1)(c) to enable an examination to
6 be conducted by a psychiatrist at the authorised hospital.
- 7 (2) A person must not make a bodily restraint order in respect of a
8 person unless satisfied of the matters specified in section 219.
- 9 (3) A bodily restraint order must be in the approved form and
10 must —
- 11 (a) specify the name and date of birth of the person being
12 restrained under the order;
- 13 (b) specify the date and time when the order is made;
- 14 (c) specify the date and time when any oral authorisation
15 being confirmed by the order was given;
- 16 (d) specify the period for which the person can be restrained
17 under the order, which must include the period for
18 which the person was restrained under any oral
19 authorisation being confirmed by the order;
- 20 (e) specify whether physical or mechanical restraint can be
21 used to restrain the person;
- 22 (f) if mechanical restraint can be used —
- 23 (i) specify the device that can be used to restrain the
24 person; and
- 25 (ii) specify the way in which the device can be
26 applied to the person's body;
- 27 (g) with reference to the criteria specified in
28 section 219(1) —
- 29 (i) specify the reasons for authorising the use of
30 bodily restraint on the person; and
- 31 (ii) if mechanical restraint is authorised, specify the
32 reasons for authorising the use and application of
33 the device specified under paragraph (f);
- 34 (h) if a mental health practitioner or the person in charge of
35 a ward makes the order, with reference to the criteria
36 specified in section 219(2), specify the reasons for the
37 urgency;

- 1 (i) specify particulars of any observations made about the
2 person —
 - 3 (i) if the order is confirming an oral authorisation —
4 when the person was restrained under the oral
5 authorisation; or
 - 6 (ii) otherwise — when the person is restrained under
7 the order;
 - 8 (j) specify particulars of any directions given by a medical
9 practitioner or mental health practitioner about the
10 treatment and care to be provided to the person while
11 restrained;
 - 12 (k) specify the name and qualifications of, and be signed by,
13 the person making the order.
- 14 (4) A mental health practitioner or the person in charge of a ward
15 who makes a bodily restraint order in respect of a person must,
16 as soon as practicable and, in any event, within sufficient time
17 to enable the person to be examined as required under
18 subsection (6)(a), inform a medical practitioner that, as
19 applicable —
 - 20 (a) the person is restrained under the bodily restraint order;
21 or
 - 22 (b) the person was restrained under the bodily restraint
23 order but has since been released from bodily restraint.
- 24 (5) A mental health practitioner or the person in charge of a ward
25 who informs a medical practitioner under subsection (4) must,
26 as soon as practicable —
 - 27 (a) record in the approved form —
 - 28 (i) the medical practitioner's name and
29 qualifications; and
 - 30 (ii) the date and time when the medical practitioner
31 was informed;
 - 32 and
 - 33 (b) put the record of the medical practitioner having been
34 informed on the person's medical record; and
 - 35 (c) give a copy of the record of the medical practitioner
36 having been informed to the person.
- 37 (6) A medical practitioner who is informed under subsection (5)
38 that a person is restrained must, as soon as practicable and, in

Mental Health Bill 2012

Part 13 Regulation of certain kinds of treatment and other interventions

Division 6 Bodily restraint

s. 219

- 1 any event, within 30 minutes after the time when the person is
2 restrained under the order —
- 3 (a) examine the person; and
4 (b) record in the approved form —
5 (i) the date and time of the examination; and
6 (ii) the results of the examination, including whether
7 or not the medical practitioner considers that,
8 having regard to the criteria specified in
9 section 219(1), the person should continue to be
10 restrained;
- 11 and
- 12 (c) put the record of the examination on the person's
13 medical record; and
14 (d) give a copy of the record of the examination to the
15 person.
- 16 (7) The person who makes a bodily restraint order in respect of a
17 person must, as soon as practicable after the person is restrained
18 under the order —
- 19 (a) put the bodily restraint order on the person's medical
20 record; and
21 (b) give a copy of the bodily restraint order to —
22 (i) the person; and
23 (ii) if the person is a child, the child's parent or
24 guardian.

25 **219. Criteria for authorising bodily restraint**

- 26 (1) A person must not give an oral authorisation or make a bodily
27 restraint order in respect of a person unless satisfied of these
28 things —
- 29 (a) the person needs to be restrained to —
30 (i) provide the person with treatment; or
31 (ii) prevent the person from physically injuring
32 himself or herself or another person; or
33 (iii) prevent the person from persistently causing
34 serious damage to property;
35 and
36 (b) there is no less restrictive way of providing the
37 treatment or preventing the injury or damage; and

- 1 (c) the use of bodily restraint on the person is unlikely to
- 2 pose a significant risk to the person's physical health.
- 3 (2) A mental health practitioner or the person in charge of a ward
- 4 must not give an oral authorisation or make a bodily restraint
- 5 order in respect of a person unless also satisfied that —
- 6 (a) the person needs to be restrained urgently; and
- 7 (b) a medical practitioner is not reasonably available to give
- 8 an oral authorisation or make a bodily restraint order in
- 9 respect of the person.

10 **220. Treating psychiatrist (if any) must be informed**

- 11 (1) This section applies if —
- 12 (a) a person restrained under an oral authorisation or a
- 13 bodily restraint order has a treating psychiatrist; and
- 14 (b) the treating psychiatrist does not give the oral
- 15 authorisation or make the bodily restraint order; and
- 16 (c) the medical practitioner informed of the restraint under
- 17 section 217(5) or 218(4) is not the treating psychiatrist.
- 18 (2) The person who gave the oral authorisation or made the bodily
- 19 restraint order must, as soon as practicable and, in any event,
- 20 within 3 hours after the time when the person is restrained under
- 21 the authorisation or order —
- 22 (a) inform the treating psychiatrist that the person is
- 23 restrained; and
- 24 (b) record in the approved form —
- 25 (i) the treating psychiatrist's name and
- 26 qualifications; and
- 27 (ii) the date and time when the treating psychiatrist
- 28 was informed;
- 29 and
- 30 (c) put the record of that information on the person's
- 31 medical record; and
- 32 (d) give a copy of the record of that information to the
- 33 person.

34 **221. Varying bodily restraint order**

- 35 (1) A medical practitioner or mental health practitioner may make
- 36 an order varying a bodily restraint order in force in respect of a
- 37 person by —
- 38 (a) extending or shortening the period for which the person
- 39 can be restrained under the bodily restraint order; or

- 1 (b) varying the device that is authorised for use to restrict
2 the person's movement or the way in which the device is
3 authorised to be applied to the person's body.
- 4 (2) A mental health practitioner must not make an order under
5 subsection (1)(a) extending a bodily restraint order unless
6 satisfied that —
- 7 (a) the bodily restraint order needs to be extended urgently;
8 and
- 9 (b) a medical practitioner is not reasonably available to
10 make an order under subsection (1)(a) extending the
11 bodily restraint order.
- 12 (3) An order made under subsection (1) must be in the approved
13 form and must —
- 14 (a) specify the date and time when it is made; and
15 (b) specify the variation of the bodily restraint order; and
16 (c) specify the reasons for the variation; and
17 (d) specify the name and qualifications of, and be signed by,
18 the practitioner making it.
- 19 (4) A person who makes an order under subsection (1) must, as
20 soon as practicable —
- 21 (a) put the order on the person's medical record; and
22 (b) give a copy of the order to —
- 23 (i) the person; and
24 (ii) if the person is a child, the child's parent or
25 guardian.

26 **222. Revoking bodily restraint order**

- 27 (1) A medical practitioner or mental health practitioner or the
28 person in charge of a ward at an authorised hospital may make
29 an order revoking a bodily restraint order in force in respect of a
30 person.
- 31 (2) The order must be in the approved form and must —
- 32 (a) specify the date and time when the bodily restraint order
33 is revoked; and
- 34 (b) specify the name and qualifications of, and be signed by,
35 the practitioner making it.
- 36 (3) The person who makes the order must, as soon as practicable —
- 37 (a) put it on the person's medical record; and

- 1 (b) give a copy of it to —
2 (i) the person; and
3 (ii) if the person is a child, the child's parent or
4 guardian.

5 **223. Release of person on revocation or expiry of bodily restraint**
6 **order**

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

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

12 **224. Record of bodily restraint order expiring**

13 (1) This section applies if a bodily restraint order expires.

14 (2) A medical practitioner or mental health practitioner must, as
15 soon as practicable —

- 16 (a) record in the approved form the date and time when the
17 bodily restraint order expired; and
18 (b) put the record of the expiry on the person's medical
19 record.

20 **225. Requirements relating to bodily restraint**

21 (1) This section applies while a person is restrained under an oral
22 authorisation or a bodily restraint order.

23 (2) The person in charge of the ward where the person is restrained
24 must ensure that the requirements specified in this section, and
25 any other requirements prescribed by the regulations for this
26 section, are complied with.

27 (3) A mental health practitioner or a nurse must be in physical
28 attendance on the person at all times and, as soon as
29 practicable —

- 30 (a) record in the approved form any observations made
31 about the person by the mental health practitioner or;
32 and
33 (b) put the record of those observations on the person's
34 medical record; and
35 (c) give a copy of the record of those observations to the
36 person.

Mental Health Bill 2012

Part 13 Regulation of certain kinds of treatment and other interventions

Division 6 Bodily restraint

s. 226

- 1 (4) If the person remains restrained for more than 6 hours, a
2 psychiatrist must review the use of bodily restraint on the
3 person and, as soon as practicable —
4 (a) record in the approved form —
5 (i) the psychiatrist's name and qualifications; and
6 (ii) the date, time and results of the review;
7 and
8 (b) put the record of the review on the person's medical
9 record; and
10 (c) give a copy of the record of the review to the person.
11 (5) The person must be provided with these things —
12 (a) the bedding and clothing appropriate in the
13 circumstances;
14 (b) sufficient food and drink;
15 (c) access to toilet facilities;
16 (d) any other care appropriate to the person's needs.
- 17 **226. Examination of person released from bodily restraint**
- 18 (1) This section applies whenever a person is released from bodily
19 restraint under an oral authorisation or a bodily restraint order.
- 20 (2) The person in charge of the ward where the person was
21 restrained must ensure —
22 (a) that the person is examined by a medical practitioner as
23 soon as practicable and, in any event, within 6 hours
24 after the time when the person is released; or
25 (b) if the person is to be released or discharged by, or
26 against medical advice wants to leave, the authorised
27 hospital where the person was restrained before being
28 examined under paragraph (a) — that the person is
29 offered an examination by a medical practitioner to be
30 conducted before the person is released, discharged or
31 leaves.
- 32 (3) A medical practitioner must, as soon as practicable after
33 examining a person for the purposes of subsection (2) —
34 (a) record in the approved form this information about the
35 examination —
36 (i) the medical practitioner's name and
37 qualifications;

- 1 (ii) the date and time when the examination was
- 2 conducted;
- 3 (iii) the results of the examination, including any
- 4 complication of or deterioration in the person's
- 5 mental or physical condition that is a result of, or
- 6 may be the result of, the person being restrained;
- 7 and
- 8 (b) put the record of the examination on the person's
- 9 medical record; and
- 10 (c) give a copy of the record of the examination to the
- 11 person.

12 **227. Chief Psychiatrist and Mentally Impaired Accused Review**
 13 **Board: report**

- 14 (1) This section applies whenever a person is released from restraint
- 15 under an oral authorisation or a bodily restraint order.
- 16 (2) The treating psychiatrist or, if the person does not have a
- 17 treating psychiatrist, the person in charge of the authorised
- 18 hospital where the person was restrained must, as soon as
- 19 practicable, give the documents specified in subsection (3)
- 20 relating to the restraint to —
- 21 (a) the Chief Psychiatrist; and
- 22 (b) if the person is a mentally impaired accused, the
- 23 Mentally Impaired Accused Review Board.
- 24 (3) For subsection (2), these documents are specified —
- 25 (a) a copy of the record of the oral authorisation (if any)
- 26 made under section 217(4)(a);
- 27 (b) a copy of the bodily restraint order (if any) made under
- 28 section 218(1);
- 29 (c) a copy of any order varying the bodily restraint order
- 30 made under section 221(1);
- 31 (d) a copy of any order revoking the bodily restraint order
- 32 made under section 222(1) or any record of the expiry of
- 33 the bodily restraint order made under section 224(2)(a);
- 34 (e) a copy of each of the records made under
- 35 section 217(6)(a), 218(5)(a) and (6)(b), 220(2)(b),
- 36 225(3)(a) and (4)(a) and 226(3)(a).
- 37 (4) The treating psychiatrist or person in charge must, as soon as
- 38 practicable, include a record of having complied with
- 39 subsection (2) on the person's medical record.

Part 14 — People in hospitals: health care generally

Division 1 — Examination to assess person's physical condition

228. Physical examination on arrival at hospital

(1) This section applies when —

(a) a person is admitted —

(i) by a hospital as a voluntary inpatient; or

(ii) by a hospital as an involuntary patient whose detention at the hospital is authorised under an inpatient treatment order; or

(iii) by an authorised hospital as a mentally impaired accused who is required under the CL(MIA) Act to be detained at the authorised hospital;

or

(b) a person is received at an authorised hospital under section 50(1)(a) or 67(1)(a).

(2) The person in charge of the hospital must ensure that, as soon as practicable and, in any event, within 12 hours after the time when the person is admitted or received, a medical practitioner physically attends on the person for the purpose of examining the person to assess the person's physical condition.

(3) For the purposes of subsection (2), these things may be done in relation to a person referred to in subsection (1)(a)(ii) or (iii) or (b) without consent —

(a) the person may be examined;

(b) samples of the person's blood, tissue and excreta may be taken.

(4) A medical practitioner who examines a person for the purposes of subsection (2) must, as soon as practicable, record these things on the person's medical record —

(a) the practitioner's name and qualifications;

(b) the date and time when the examination was conducted;

(c) the results of the examination.

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

3 **229. Provision of urgent non-psychiatric treatment: report to**
4 **Chief Psychiatrist**

- 5 (1) This section applies if urgent non-psychiatric treatment is
6 provided to a patient who is —
- 7 (a) an involuntary patient who is under an inpatient
8 treatment order authorising the patient's detention at an
9 authorised hospital; or
- 10 (b) a mentally impaired accused who is required under the
11 CL(MIA) Act to be detained at an authorised hospital.

- 12 (2) In this section —
- 13 ***urgent non-psychiatric treatment*** means urgent treatment as
14 defined in the GAA Act section 110ZH.

- 15 (3) The person in charge of the authorised hospital must, as soon as
16 practicable, report the provision of the urgent non-psychiatric
17 treatment to —

- 18 (a) the Chief Psychiatrist; and
- 19 (b) if the patient is a mentally impaired accused, the
20 Mentally Impaired Accused Review Board.

- 21 (4) The report must be in the approved form and must include these
22 things about the urgent non-psychiatric treatment —

- 23 (a) the name of the patient provided with the treatment;
- 24 (b) the name and qualifications of the practitioner who
25 provided the treatment;
- 26 (c) the names of any other people involved in providing the
27 treatment;
- 28 (d) the date, time and place the treatment was provided;
- 29 (e) particulars of the circumstances in which the treatment
30 was provided;
- 31 (f) particulars of the treatment provided.

32 Note for section 229:

33 The GAA Act section 110ZI or 110ZIA may apply in relation to the provision
34 urgent non-psychiatric treatment to a patient referred to in section 229.

Part 15 — Protection of patients' rights

Division 1 — Patients' rights generally

Subdivision 1 — Explanation of rights

230. Application of this Subdivision

This Subdivision applies when —

- (a) a patient is being admitted —
 - (i) by a hospital as a voluntary inpatient; or
 - (ii) by a hospital as an involuntary patient whose detention at the hospital is authorised under an inpatient treatment order; or
 - (iii) by an authorised hospital as a mentally impaired accused who is required under the CL(MIA) Act to be detained at the authorised hospital;
- or
- (b) an inpatient treatment order is made in respect of a patient; or
- (c) a patient who is under an inpatient treatment order is granted leave of absence from a hospital under section 102(1); or
- (d) a community treatment order is made in respect of a patient; or
- (e) a person is referred under section 25(2) or 35(2) for an examination to be conducted by a psychiatrist at an authorised hospital; or
- (f) a person is referred under section 25(3)(a) for an examination to be conducted by a psychiatrist at a place that is not an authorised hospital.

231. Rights to be explained to person

- (1) The person responsible under section 233 must ensure that the person is provided with an explanation, as described in the regulations, of the person's rights under this Act.
- (2) The explanation must be provided in a language, form of communication and terms that the person being provided with the explanation is likely to understand using any means of communication that is practicable and using an interpreter if necessary and practicable.

1 **232. Person's rights to be explained to another person**

- 2 (1) The person responsible under section 233 must ensure that a
3 carer, close family member or other personal support person of
4 the person is provided with an explanation, as described in the
5 regulations, of the person's rights under this Act.
- 6 (2) The explanation must be provided to in a language, form of
7 communication and terms that the person being provided with
8 the explanation is likely to understand using any means of
9 communication that is practicable and using an interpreter if
10 necessary and practicable.
- 11 (3) This section applies despite any requirement under
12 section 271(2) or 273(2) relating to the person's consent or
13 refusal to consent.

14 **233. Person responsible for ensuring explanation is provided**

15 For sections 231 and 232, the person responsible is —

- 16 (a) when section 230(a) applies — the person in charge of
17 the authorised hospital; or
- 18 (b) when section 230(b) applies — the psychiatrist who
19 makes the inpatient treatment order; or
- 20 (c) when section 230(c) applies — the psychiatrist who
21 grants the leave of absence; or
- 22 (d) when section 230(d) applies — the psychiatrist who
23 makes the community treatment order; or
- 24 (e) when section 230(e) or (f) applies — the medical
25 practitioner or authorised mental health practitioner who
26 makes the referral.

27 **Subdivision 2 — Access to records about patients and**
28 **former patients**

29 **234. Term used: relevant document**

30 In this Subdivision —

31 ***relevant document***, in relation to a person, means the whole or
32 any part of —

- 33 (a) the person's medical record; or
- 34 (b) any other document about the person.

235. Right to access medical record etc.

(1) Unless section 236(1)(a) or (b) or (3) applies, a person who is or was provided with treatment or care by a mental health service is entitled to inspect, and to be provided with a copy of, any relevant document relating to the person that is in the possession or control of —

(a) the person in charge of the mental health service; or

(b) a staff member of the mental health service.

(2) Subsection (1) does not affect any other right that the person has under this Act or another law to be provided with access to a document.

(3) The person in charge of the mental health service must ensure —

(a) that any request by the person to inspect, or to be provided with a copy of, a relevant document relating to the person is dealt with as soon as practicable after the request is received by the person who has possession or control of the relevant document; and

(b) if the request is refused, that —

(i) the reasons for the refusal are recorded in the approved form; and

(ii) the record of the reasons is put on the person's medical record; and

(iii) a copy of the record of the reasons is given to the person.

236. Restrictions on access

(1) A person is not entitled to have access under section 235(1) to a relevant document relating to the person —

(a) if a psychiatrist reasonably believes that disclosure of the information in the document to the person —

(i) poses a significant risk to the health or safety of the person or to the safety of another person; or

(ii) poses a significant risk of serious harm to the person or to another person;

or

(b) if disclosure of the information in the document to the person would reveal —

(i) personal information about an individual who is not the person; or

- (ii) information of a confidential nature that was obtained in confidence.
- (2) Subsection (1)(b) does not apply if the personal information is about an individual who consents to the disclosure of the information.
- (3) A person is not entitled to have access under section 235(1) to a relevant document relating to the person if the person —
- (a) is or was a mentally impaired accused required under the CL(MIA) Act to be detained at an authorised hospital; and
- (b) the relevant document came into existence under, or for the purposes of, the *Prisons Act 1981*.

13 **237. Providing access to medical practitioner or legal**
14 **practitioner**

- 15 (1) This section applies if a person has been refused access under
16 section 235(1) to a relevant document relating to the person for
17 a reason referred to in section 236(1)(a).
- 18 (2) The person may nominate a medical practitioner or a legal
19 practitioner or both to inspect, and to be given a copy of, the
20 relevant document.
- 21 (3) A practitioner nominated under subsection (2) is entitled to
22 inspect, and to be given a copy of, the relevant document.

23 **238. Disclosure by medical practitioner or legal practitioner**

24 A person who inspects, or is given a copy of, a relevant
25 document in the exercise or purported exercise of a right under
26 section 237(3) must not disclose any information in the
27 document to the person who has been refused access under
28 section 235(1) to the document.

29 Penalty: a fine of \$5 000.

30 **Subdivision 3 — Duties of staff of mental health services**
31 **toward patients**

32 **239. Term used: mental health service**

33 In this Subdivision —

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

240. Duty not to ill-treat or wilfully neglect patients

A staff member of a mental health service must not ill-treat or wilfully neglect a person for whom the Chief Psychiatrist is responsible under section 486(1) who is being provided with treatment or care by the mental health service.

Penalty: a fine of \$15 000 and imprisonment for 2 years.

241. Duty to report certain incidents

(1) In this section —

reportable incident, in relation to a person, means —

- (a) unlawful sexual contact with the person by a staff member of a mental health service; or
- (b) the unreasonable use of force on the person by a staff member of a mental health service.

(2) A staff member of a mental health service who reasonably suspects that a reportable incident has occurred in relation to a person for whom the Chief Psychiatrist is responsible under section 486(1) who is being provided with treatment or care by the mental health service must report the suspicion to —

- (a) the person in charge of the mental health service; or
- (b) the Chief Psychiatrist.

Penalty: a fine of \$6 000.

Division 2 — Additional rights of inpatients in hospitals

Subdivision 1 — Admission of voluntary inpatients by authorised hospitals

242. Admission by medical practitioner

A voluntary patient can only be admitted as an inpatient of an authorised hospital by a medical practitioner.

243. Confirmation of admission by psychiatrist

The admission of a voluntary patient as an inpatient of an authorised hospital must be confirmed by a psychiatrist.

244. Reasons for refusing to admit or confirm admission

(1) A medical practitioner who refuses to admit, or a psychiatrist who refuses to confirm the admission of, a voluntary patient as an inpatient of an authorised hospital must —

- (a) inform the voluntary patient of the reasons for the refusal; and

- 1 (b) advise the voluntary patient that the person may make a
2 complaint about the refusal —
 - 3 (i) under Part 18 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 (2) A person to whom information or advice is provided orally
8 under subsection (1) may request the medical practitioner or
9 psychiatrist who provided the information or advice to confirm
10 it in writing.
- 11 (3) The medical practitioner or psychiatrist must comply with the
12 request.
- 13 (4) Any information or advice provided under subsection (1) or (3)
14 to a person must be provided in a language, form of
15 communication and terms that the person is likely to understand
16 using any means of communication that is practicable and using
17 an interpreter if necessary and practicable.

18 **Subdivision 2 — Rights of inpatients generally**

19 **245. Application of this Subdivision**

20 This Subdivision applies to these patients —

- 21 (a) an involuntary patient whose detention at a hospital is
22 authorised under an inpatient treatment order; or
- 23 (b) a mentally impaired accused who is required under the
24 CL(MIA) Act to be detained at an authorised hospital.

25 **246. Personal possessions**

- 26 (1) This section applies only to a patient who is admitted by an
27 authorised hospital.
- 28 (2) In this section —
29 *personal possessions*, of a patient, means any of these items —
 - 30 (a) articles of clothing, jewellery or footwear belonging to
31 the patient;
 - 32 (b) articles for personal use by the patient;
 - 33 (c) aids for daily living, or medical prostheses, that are
34 usually used by the patient as means of assistance or to
35 maintain the patient's dignity.

- 1 (3) Subject to subsections (4) and (5), the person in charge of an
2 authorised hospital must ensure that each patient —
- 3 (a) is provided with a secure facility in which to store the
4 patient's personal possessions; and
- 5 (b) is allowed to use those possessions.
- 6 (4) Subsection (3) does not apply to an item (including an aid for
7 daily living or medical prosthesis) that, in the opinion of the
8 person in charge, may pose a risk of harm to the patient or to
9 another person.
- 10 (5) Subsection (3) does not apply to an item that is not an aid for
11 daily living or medical prosthesis that, in the opinion of the
12 person in charge, is not an appropriate item to store at the
13 authorised hospital.
- 14 (6) Any personal possessions of a patient left at an authorised
15 hospital for more than 6 months after the day on which the
16 patient is discharged by the hospital may be sold or otherwise
17 disposed of by the person in charge of the hospital, but only
18 after —
- 19 (a) the person in charge has given at least one month's
20 notice of the proposed disposal to a carer, close family
21 member or other personal support person of the person;
22 and
- 23 (b) no carer, close family member or other personal support
24 person of the person has claimed those possessions
25 within that 6-month period.

26 **247. Interview with psychiatrist**

- 27 (1) A patient may, at any time while admitted by a hospital, request
28 an interview with a psychiatrist.
- 29 (2) The person in charge of the hospital must ensure —
- 30 (a) that, unless subsection (4) applies, the request is
31 complied with within a reasonable time after the request
32 is made; and
- 33 (b) that the patient's medical record includes a record of the
34 request having been made.
- 35 (3) The psychiatrist who interviews a patient in compliance with a
36 request made under subsection (1) must record on the patient's
37 medical record —
- 38 (a) the date and time when the interview occurred; and

- 1 (b) the matters discussed during the interview.
- 2 (4) A psychiatrist may refuse a patient's request for an interview
3 under subsection (1) if —
- 4 (a) the patient has a history of making repeated requests
5 under subsection (1); and
- 6 (b) the psychiatrist is satisfied that the patient is acting
7 unreasonably in making the request.
- 8 (5) A psychiatrist who refuses a patient's request under
9 subsection (4) must —
- 10 (a) record in writing the reasons for the refusal; and
- 11 (b) put a copy of those reasons on the patient's medical
12 record; and
- 13 (c) give a copy of those reasons to the patient.
- 14 **248. Freedom of lawful communication**
- 15 (1) This section applies subject to section 249.
- 16 (2) A patient has the right of freedom of lawful communication.
- 17 (3) A patient's freedom of lawful communication includes the
18 freedom to do any of these things in reasonable privacy —
- 19 (a) see and speak with other people in the hospital to the
20 extent that is reasonable;
- 21 (b) have uncensored communications with people, including
22 by receiving visits, sending and receiving telephone
23 calls, and sending and receiving mail and electronic
24 communications;
- 25 (c) receive visits from, and be otherwise contacted by, the
26 patient's legal practitioner at all reasonable times;
- 27 (d) receive visits from, and be otherwise contacted by, a
28 mental health advocate at any time;
- 29 (e) receive visits from, and be otherwise contacted by, other
30 people at all reasonable times.

31 **249. Restrictions on freedom of communication**

- 32 (1) Subject to subsections (2) to (4), a psychiatrist may make an
33 order —
- 34 (a) prohibiting a patient from exercising a right under
35 section 248; or

Mental Health Bill 2012

Part 15 Protection of patients' rights

Division 2 Additional rights of inpatients in hospitals

s. 249

- 1 (b) limiting the extent to which a patient can exercise a right
2 under section 248.
- 3 (2) A psychiatrist must not make an order under subsection (1)
4 prohibiting, or limiting the extent of, a patient's right under
5 section 248(3)(a), (b) or (e) unless satisfied that making the
6 order is in the best interests of the patient.
- 7 (3) A psychiatrist must not make an order under subsection (1)
8 prohibiting, or limiting the extent of, a patient's right under
9 section 248(3)(c) or (d) to receive visits from the person's legal
10 practitioner or a mental health advocate unless satisfied that —
- 11 (a) there is a serious risk to the safety of the legal
12 practitioner or mental health advocate if the order is not
13 made; and
- 14 (b) there are no other steps that could reasonably be taken to
15 reduce that risk.
- 16 (4) A psychiatrist cannot make an order under subsection (1)
17 prohibiting, or limiting the extent of, a patient's right under
18 section 248(3)(c) or (d) to be otherwise contacted by the
19 person's legal practitioner or a mental health advocate.
- 20 (5) The order must be in the approved form and must —
- 21 (a) specify the date and time when it is made; and
22 (b) specify the reasons for making it; and
23 (c) specify the name and qualifications of, and be signed by,
24 the psychiatrist.
- 25 (6) A psychiatrist who makes an order under subsection (1) must, as
26 soon as practicable —
- 27 (a) put it on the patient's medical record; and
28 (b) give a copy of it to —
- 29 (i) the patient; and
30 (ii) any carer, close family member or other personal
31 support person of the patient.
- 32 (7) A psychiatrist must, before the end of each 24-hour period that
33 an order made under subsection (1) is in force, review the order
34 and confirm, amend or revoke it.
- 35 (8) A psychiatrist who confirms, amends or revokes an order made
36 under subsection (1) must —
- 37 (a) record the confirmation, amendment or revocation, and
38 the reasons for it, on the patient's medical record; and

- 1 (b) advise the patient of the confirmation, amendment or
2 revocation and those reasons.
- 3 (9) An order made under subsection (1) ceases to be in force if it is
4 not reviewed before the end of any 24-hour period referred to in
5 subsection (7).
- 6 (10) A psychiatrist who makes an order under subsection (1) in
7 respect of a patient must, within 24 hours after the time when
8 the order is made, advise the Chief Mental Health Advocate that
9 the order has been made.
- 10 Note for section 249:
- 11 For the purpose of deciding under section 249(2) what is or is not in the best
12 interests of a patient, Part 2 Division 3 applies.

Division 3 — Nominated persons

Subdivision 1 — Purpose and effect of nomination

250. 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 into account.

251. Effect of nomination

- (1) This section does not limit the role of a nominated person under section 250.
- (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 249(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.

Mental Health Bill 2012

Part 15 Protection of patients' rights

Division 3 Nominated persons

s. 252

1 (4) To the extent provided by section 253, a patient's nominated
2 person is entitled to be provided with information, and to be
3 involved in matters, relating to the patient's treatment and care.

4 (5) A patient's nominated person may exercise, on behalf of the
5 patient, the rights conferred under this Act on the patient.

6 (6) To avoid doubt, a nomination does not authorise a patient's
7 nominated person to —

8 (a) apply on the patient's behalf for admission or discharge
9 by a mental health service; or

10 (b) make a treatment decision about the provision of
11 treatment to the patient,

12 unless the nominated person is authorised to do so in another
13 capacity.

14 Note for section 251(6):

15 For example, a patient's nominated person could also be the patient's
16 enduring guardian or guardian or the person responsible for the patient under
17 the GAA Act section 110ZD.

18 **Subdivision 2 — Right to information, and to be involved in matters,**
19 **relating to patient's treatment and care**

20 **252. Application of this Subdivision**

21 This Subdivision does not apply to the notification of an event
22 to which Part 9 applies.

23 **253. Rights of nominated person**

24 (1) A patient's nominated person is entitled —

25 (a) subject to section 256, to be provided with information
26 relating to the patient's treatment and care, including
27 information about these matters —

28 (i) the mental illness for which the patient is being
29 provided with treatment or care;

30 (ii) if the patient is an involuntary patient, the
31 grounds on which, and the provision of this Act
32 under which, the involuntary treatment order was
33 made;

34 (iii) the treatment and care proposed to be provided to
35 the patient and any other options for the patient's
36 treatment and care that are reasonably available;

37 (iv) the services available to meet the patient's needs;

- 1 and
- 2 (b) subject to section 256, to be involved in matters relating
- 3 to the patient's treatment and care, including these
- 4 matters —
- 5 (i) the consideration of the options that are
- 6 reasonably available for the patient's treatment
- 7 and care; and
- 8 (ii) the provision of support to the patient; and
- 9 (iii) the preparation and review of any treatment,
- 10 support and discharge plan for the patient;
- 11 and
- 12 (c) to be provided with information about the patient's
- 13 rights under this Act and how those rights can be
- 14 accessed and exercised.

15 (2) A patient's nominated person may indicate the extent to which

16 the nominated person wants to be provided with the information

17 referred to in subsection (1)(a) or (c) or to be involved in the

18 matters referred to in subsection (1)(b).

19 (3) Any information provided under subsection (1)(a) or (c) to a

20 nominated person must be provided in a language, form of

21 communication and terms that the nominated person is likely to

22 understand using any means of communication that is

23 practicable and using an interpreter if necessary and practicable.

24 **254. Patient's psychiatrist must ensure nominated person**

25 **provided with information etc.**

26 A patient's psychiatrist must ensure that the patient's nominated

27 person is provided with information referred to in

28 section 253(1)(a) or (c), or involved in a matter referred to in

29 section 253(1)(b), if no other provision is made under this Act

30 about who must ensure that the nominated person is provided

31 with that information or involved in that matter.

32 **255. Identifying and contacting nominated person**

- 33 (1) This section applies to a requirement under this Act to provide a
- 34 patient's nominated person with information referred to in
- 35 section 253(1)(a) or (c) or to involve a patient's nominated
- 36 person in a matter referred to in section 253(1)(b).
- 37 (2) Without limiting a requirement referred to in subsection (1), the
- 38 requirement is taken to have been complied with if the person

- 1 responsible for ensuring the requirement is complied with
2 ensures that reasonable efforts continue to be made —
- 3 (a) to identify the nominated person and provide the
4 nominated person with the information; and
- 5 (b) to involve the nominated person in the matter,
6 until the first of these things occurs —
- 7 (c) the nominated person is identified and provided with the
8 information or involved in the matter; or
- 9 (d) it is reasonable for the person responsible to conclude
10 that the nominated person cannot be identified and
11 provided with the information or involved in the matter.
- 12 (3) A person who is required under this Act to ensure that a
13 patient's nominated person is provided with information
14 referred to in section 253(1)(a) or (c), or involved in a matter
15 referred to in section 253(1)(b), must ensure that the patient's
16 medical record includes —
- 17 (a) a record of when and how the nominated person was
18 provided with that information or was involved in that
19 matter; or
- 20 (b) if the nominated person could not be identified, or could
21 not be provided with that information or involved in that
22 matter, a record of the efforts made to do so.

23 **256. Provision of information etc. to nominated person not in**
24 **patient's best interests**

- 25 (1) A patient's nominated person is not entitled to be provided with
26 particular information, or to be involved in a particular matter, if
27 the patient's psychiatrist reasonably believes that it is not in the
28 best interests of the patient for the nominated person to be
29 provided with that information or to be involved in that matter.
- 30 (2) If a patient's psychiatrist —
- 31 (a) decides under subsection (1) that the patient's
32 nominated person is not entitled to be provided with
33 particular information or to be involved in a particular
34 matter; or
- 35 (b) decides to revoke a decision made under subsection (1)
36 because the reasons for making the decision no longer
37 apply,
- 38 the patient's psychiatrist must —
- 39 (c) record the decision and the reasons for it; and

- 1 (d) put the record of the decision and reasons on the
2 patient's medical record; and
- 3 (e) give a copy of the record of the decision and reasons to
4 the patient.
- 5 (3) If a patient's nominated person makes a request to be provided
6 with particular information, or to be involved in a particular
7 matter, to which subsection (1) applies, the patient's psychiatrist
8 must —
- 9 (a) advise the nominated person —
- 10 (i) that the nominated person is not entitled to be
11 provided with that information or to be involved
12 in that matter; and
- 13 (ii) of the reasons for that;
- 14 and
- 15 (b) put a record of the advice on the patient's medical
16 record; and
- 17 (c) give a copy of the record of the advice to the patient.
- 18 (4) A patient's nominated person to whom advice is provided orally
19 under subsection (3)(a) may request the patient's psychiatrist to
20 confirm the advice in writing.
- 21 (5) The patient's psychiatrist must —
- 22 (a) comply with the request; and
- 23 (b) put a copy of the confirmation on the patient's medical
24 record; and
- 25 (c) give a copy of the confirmation to the patient.
- 26 (6) Any information or advice provided under subsection (3)(a)
27 or (5)(a) to a patient's nominated person must be provided in a
28 language, form of communication and terms that the nominated
29 person is likely to understand using any means of
30 communication that is practicable and using an interpreter if
31 necessary and practicable.

32 Note for section 256:

33 For the purpose of deciding under section 256(1) what is or is not in the best
34 interests of a patient, Part 2 Division 3 applies.

35 **257. No effect on nominated person's right to be provided with**
36 **information etc. in another capacity**

37 This Subdivision does not affect any right (whether under this
38 Act or otherwise) to be provided with information, or to be

1 involved in a matter, that a patient's nominated person has in
2 another capacity.

3 Note for section 257:

4 For example, a child's nominated person could also be the child's parent or
5 guardian.

6 **Subdivision 3 — Making and ending nomination**

7 **258. Who can make nomination**

8 (1) A person, including a child, may nominate another person to be
9 the person's nominated person.

10 (2) A person cannot make a nomination under subsection (1) unless
11 the person understands the effect of making the nomination.

12 **259. Who can be nominated**

13 A person is eligible to be nominated under section 258(1) if the
14 person has reached 18 years of age.

15 **260. Formal requirements**

16 (1) A nomination is not valid unless —

- 17 (a) it is in the approved form; and
18 (b) it states the name and contact details of the person being
19 nominated; and
20 (c) it states the date on which it takes effect; and
21 (d) it is signed by the person making the nomination or by
22 another person in the presence of, and at the direction of,
23 the person making the nomination; and
24 (e) the signature referred to in paragraph (d) is witnessed by
25 a person referred to in subsection (2); and
26 (f) it is signed by the person being nominated to indicate
27 that the person accepts the nomination; and
28 (g) the signature referred to in paragraph (f) is witnessed by
29 a person referred to in subsection (2).

30 (2) For the purposes of subsection (1)(e) and (g), the witness must
31 be authorised by law to take declarations but cannot be a person
32 referred to in subsection (1)(d) or (f).

33 **261. Only one nominated person**

34 A person cannot have more than one nominated person at any
35 time.

1 **262. Revocation of nomination**

2 (1) A nomination may be revoked by the person who made it at any
3 time by any means whatsoever.

4 (2) A nomination is revoked if the person who made it makes
5 another nomination.

6 **263. Resignation of nominated person**

7 (1) A nominated person may resign the nomination by writing
8 signed and given to the person who made the nomination.

9 (2) The resignation takes effect on the later of the following —
10 (a) receipt by the person who made the nomination;
11 (b) the day specified in the resignation.

12 **264. Notification of revocation or resignation**

13 (1) Subsection (2) applies if a patient's nominated person —
14 (a) resigns the nomination; or
15 (b) becomes aware that the patient has revoked the
16 nomination.

17 (2) The nominated person must take all reasonable steps to notify
18 any medical practitioner, mental health practitioner or mental
19 health service that the nominated person is aware is providing
20 treatment or care to the patient that the nomination no longer
21 has effect.

22 (3) Subsection (4) applies if a medical practitioner, mental health
23 practitioner or mental health service who is providing treatment
24 or care to a patient becomes aware that the patient has revoked a
25 nomination.

26 (4) The practitioner or the person in charge of the mental health
27 service must ensure that all reasonable steps are taken to notify
28 the nominated person of the revocation.

29 Note for Division 3:

30 Part 20 Division 10 confers jurisdiction on the Mental Health Tribunal to hear
31 and determine applications relating to nominated persons.

1 **Part 16 — Recognition of rights of carers and families**

2 **Division 1 — Role of carers and families**

3 **265. 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 **266. 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 a personal support person of the person
18 referred to in section 7(2)(b)(i), (ii), (iii) or (iv); 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;

30 (v) a step parent;

31 (vi) a foster parent;

32 (vii) a sibling;

33 (viii) a grandparent;

34 (ix) an aunt or uncle;

35 (x) a niece or nephew;

- 1 (xi) a cousin;
2 and
3 (b) if the person is of Aboriginal or Torres Strait Islander
4 descent, any person regarded under the customary law
5 or tradition of that person's community as the equivalent
6 of a person described in paragraph (a).

7 **267. Acknowledgment of and respect for role of carers and close**
8 **family members**

9 The role of carers and close family members in the provision of
10 treatment, care and support to a person who has a mental illness
11 should be acknowledged and respected.

12 **268. More than one carer or close family member**

- 13 (1) If a person has more than one carer, it is sufficient for
14 compliance with a requirement under this Act relating to a carer
15 of the person if there is compliance in respect of at least one
16 carer.
- 17 (2) If a person has more than one close family member, it is
18 sufficient for compliance with a requirement under this Act
19 relating to a close family member of the person if there is
20 compliance in respect of at least one close family member.

21 **Division 2 — Right to information about, and to be involved in,**
22 **patient's treatment and care**

23 **269. Application of this Division**

24 This Division does not apply to the notification of an event to
25 which Part 9 applies.

26 **270. Rights of carers and close family members**

- 27 (1) Any carer or close family member of a patient is entitled —
28 (a) subject to this Division, to be provided with information
29 relating to the patient's treatment and care that is
30 relevant to the carer or close family member, including
31 information about these matters —
32 (i) the mental illness for which the patient is being
33 provided with treatment or care;
34 (ii) if the patient is an involuntary patient, the
35 grounds on which, and the provision of this Act

Mental Health Bill 2012

Part 16 Recognition of rights of carers and families

Division 2 Right to information about, and to be involved in, patient's treatment and care

s. 270

- 1 under which, the involuntary treatment order was
2 made;
- 3 (iii) the treatment and care proposed to be provided to
4 the patient and any other options for the patient's
5 treatment and care that are reasonably available;
- 6 (iv) the services available to meet the patient's needs;
7 and
- 8 (b) subject to this Division, to be involved in matters
9 relating to the patient's treatment and care, including
10 these matters —
- 11 (i) the consideration of the options that are
12 reasonably available for the patient's treatment
13 and care; and
- 14 (ii) the provision of support to the patient; and
- 15 (iii) the preparation and review of any treatment,
16 support and discharge plan for the patient;
17 and
- 18 (c) to be provided with information about the patient's
19 rights under this Act and how those rights can be
20 accessed and exercised; and
- 21 (d) to be provided with information about the rights of the
22 carer or close family member under this Act and how
23 those rights can be accessed and exercised.
- 24 (2) A carer or close family member of a patient may indicate the
25 extent to which the carer or close family member wants to be
26 provided with the information referred to in subsection (1)(a),
27 (c) or (d) or to be involved in the matters referred to in
28 subsection (1)(b).
- 29 (3) Any information provided under subsection (1)(a), (c) or (d) to a
30 carer or close family member must be provided in a language,
31 form of communication and terms that the carer or close family
32 member is likely to understand using any means of
33 communication that is practicable and using an interpreter if
34 necessary and practicable.
- 35 (4) To avoid doubt, a carer or close family member of a patient is
36 not authorised to —
- 37 (a) to apply on the patient's behalf for admission or
38 discharge by a mental health service; or

- 1 (b) make a treatment decision about the provision of
2 treatment to the patient,
- 3 unless the carer or close family member is authorised to do so in
4 another capacity.

5 Note for section 270(4):

6 For example, a carer of a patient could also be the patient's enduring guardian
7 or guardian or a close family member of a patient could also be the person
8 responsible for the patient under the GAA Act section 110ZD.

9 **271. Voluntary patient with capacity to consent**

- 10 (1) This section applies to a voluntary patient who has the capacity
11 to consent to a carer or close family member of the patient being
12 provided with the information referred to in section 270(1)(a),
13 or being involved in the matters referred to in section 270(1)(b),
14 relating to his or her treatment and care.
- 15 (2) The carer or close family member is entitled to be provided with
16 that information, or to be involved in those matters, with the
17 voluntary patient's consent.

18 **272. Voluntary patient with no capacity to consent**

- 19 (1) This section applies to a voluntary patient who does not have
20 the capacity to consent to a carer or close family member of the
21 patient being provided with the information referred to in
22 section 270(1)(a), or being involved in the matters referred to in
23 section 270(1)(b), relating to his or her treatment and care.
- 24 (2) The carer or close family member is entitled, subject to
25 section 277, to be provided with that information, or to be
26 involved in those matters.

27 **273. Involuntary patient or mentally impaired accused with**
28 **capacity to consent**

- 29 (1) This section applies to a patient —
- 30 (a) who is —
- 31 (i) an involuntary patient; or
- 32 (ii) a mentally impaired accused who is required
33 under the CL(MIA) Act to be detained at an
34 authorised hospital;
- 35 and
- 36 (b) who has the capacity to consent to a carer or close
37 family member of the patient being provided with the

Mental Health Bill 2012

Part 16 Recognition of rights of carers and families

Division 2 Right to information about, and to be involved in, patient's treatment and care

s. 274

- 1 information referred to in section 270(1)(a), or being
2 involved in the matters referred to in section 270(1)(b),
3 relating to his or her treatment and care.
- 4 (2) The carer or close family member is entitled to be provided with
5 that information, or to be involved in those matters, unless —
- 6 (a) the patient has refused to consent to the carer or close
7 family member being provided with that information or
8 being involved in those matters; and
- 9 (b) the patient's psychiatrist considers that the refusal is
10 reasonable.
- 11 **274. Involuntary patient or mentally impaired accused with no**
12 **capacity to consent**
- 13 (1) This section applies to a patient —
- 14 (a) who is —
- 15 (i) an involuntary patient; or
- 16 (ii) a mentally impaired accused who is required
17 under the CL(MIA) Act to be detained at an
18 authorised hospital;
- 19 and
- 20 (b) who does not have the capacity to consent to a carer or
21 close family member of the patient being provided with
22 the information referred to in section 270(1)(a), or being
23 involved in the matters referred to in section 270(1)(b),
24 relating to his or her treatment and care.
- 25 (2) The carer or close family member is entitled, subject to
26 section 277, to be provided with that information, or to be
27 involved in those matters.
- 28 **275. Patient's psychiatrist must ensure carer or close family**
29 **member provided with information etc.**
- 30 A patient's psychiatrist must ensure that a carer or close family
31 member of the patient is provided with information referred to
32 in section 270(1)(a), (c) or (d), or involved in a matter referred
33 to in section 270(1)(b), if no other provision is made under this
34 Act about who must ensure that a carer or close family member
35 is provide with that information or involved in that matter.

- 1 **276. Reasonable efforts to be made to identify and contact carer**
2 **or close family member**
- 3 (1) This section applies to a requirement under this Act —
- 4 (a) to provide a carer of a patient with information referred
5 to in section 270(1)(a), (c) or (d) or to involve a carer of
6 a patient in a matter referred to in section 270(1)(b); or
- 7 (b) to provide a close family member of a patient with
8 information referred to in section 270(1)(a), (c) or (d) or
9 to involve a close family member of a patient in a matter
10 referred to in section 270(1)(b).
- 11 (2) Without limiting a requirement referred to in subsection (1)(a)
12 or (b), the requirement is taken to have been complied with if
13 the person responsible for ensuring that the requirement is
14 complied with ensures that reasonable efforts continue to be
15 made —
- 16 (a) to identify a carer or close family member; and
17 (b) to provide a carer or close family member who is
18 identified with the information or to involve a carer or
19 close family member who is identified in the matter,
- 20 until the first of these things occurs —
- 21 (c) at least one carer or close family member is identified
22 and provided with the information or involved in the
23 matter;
- 24 (d) it is reasonable for the person responsible to conclude
25 that no carer or close family member can be identified
26 and provided with the information or involved in the
27 matter.
- 28 (3) A person who is required under this Act to ensure that a carer or
29 close family member of a patient is provided with information
30 referred to in section 270(1)(a), (c) or (d), or involved in a
31 matter referred to in section 270(1)(b), must ensure that the
32 patient's medical record includes —
- 33 (a) a record of when and how any carer or close family
34 member was provided with that information or involved
35 in that matter; or
- 36 (b) if no carer or close family member could be identified
37 and provided with that information or involved in that
38 matter, a record of the efforts made to do so.

Mental Health Bill 2012

Part 16 Recognition of rights of carers and families

Division 2 Right to information about, and to be involved in, patient's treatment and care

s. 277

- 1 (4) Sections 279 and 280 do not limit a requirement under
2 subsection (1) to make reasonable efforts —
- 3 (a) to provide a carer of a patient with information or to
4 involve a carer of a patient in a matter; or
- 5 (b) to provide a close family member of a patient with
6 information or to involve a close family member of a
7 patient in a matter.
- 8 **277. Provision of information etc. to carer or close family**
9 **member not in patient's best interests**
- 10 (1) A carer or close family member of a patient is not entitled under
11 section 272(2) or 274(2) to be provided with particular
12 information, or to be involved in a particular matter, if the
13 patient's psychiatrist reasonably believes that it is not in the best
14 interests of the patient for the carer or close family member to
15 be provided with that information or to be involved in that
16 matter.
- 17 (2) If a patient's psychiatrist —
- 18 (a) decides under subsection (1) that a carer or close family
19 member of the patient is not entitled to be provided with
20 particular information or to be involved in a particular
21 matter; or
- 22 (b) decides to revoke a decision made under subsection (1)
23 because the reasons for making the decision no longer
24 apply,
- 25 the patient's psychiatrist must —
- 26 (c) record the decision and the reasons for it; and
27 (d) put the record of the decision and reasons on the
28 patient's medical record; and
- 29 (e) give a copy of the record of the decision and reasons to
30 the patient.
- 31 (3) If a carer or close family member of a patient makes a request to
32 be provided with particular information, or to be involved in a
33 particular matter, to which subsection (1) applies, the patient's
34 psychiatrist must —
- 35 (a) advise the carer or close family member —
- 36 (i) that the carer or close family member is not
37 entitled to be provided with that information or
38 to be involved in that matter; and

- 1 (ii) of the reasons for that;
- 2 and
- 3 (b) put a record of the advice on the patient's medical
- 4 record; and
- 5 (c) give a copy of the record of the advice to the patient.
- 6 (4) A carer or close family member of a patient to whom advice is
- 7 provided orally under subsection (3)(a) may request the
- 8 patient's psychiatrist to confirm the advice in writing.
- 9 (5) The patient's psychiatrist must —
- 10 (a) comply with the request; and
- 11 (b) put a copy of the confirmation on the patient's medical
- 12 record; and
- 13 (c) give a copy of the confirmation to the patient.
- 14 (6) Any information or advice provided under subsection (3)(a)
- 15 or (5)(a) to a carer or close family member of a patient must be
- 16 provided in a language, form of communication and terms that
- 17 the carer is likely to understand using any means of
- 18 communication that is practicable and using an interpreter if
- 19 necessary and practicable.

20 Note for section 277:

21 For the purpose of deciding under section 277(1) what is or is not in the best

22 interests of a patient, Part 2 Division 3 applies.

23 **278. No effect on right to be provided with information etc. in**

24 **another capacity**

25 This Division does not affect any right (whether under this Act

26 or otherwise) to be provided with information, or to be involved

27 in a matter, that a carer or close family member of a patient has

28 in another capacity.

29 Note for section 278:

30 For example, a carer of a patient who is a child could also be the child's

31 parent or guardian or a close family member of a patient could also be the

32 person responsible for the patient under the GAA Act section 110ZD.

1 **Division 3 — Identifying carer or close family member of**
2 **person admitted by or received at mental health service**

3 **279. When being admitted by or received at mental health**
4 **service**

- 5 (1) This section applies when a person is being admitted by, or is
6 being received at, a mental health service for the purpose of
7 providing the person with treatment or care.
- 8 (2) The person in charge of the mental health service must ensure
9 that the person is asked —
- 10 (a) whether or not the person has a carer; and
- 11 (b) whether or not the person has a close family member;
12 and
- 13 (c) if the person has a carer or close family member,
14 whether or not the person consents to the carer or close
15 family member being —
- 16 (i) provided with the information referred to in
17 section 270(1)(a) in connection with the
18 provision of that treatment or care; and
- 19 (ii) involved in the matters referred to in
20 section 270(1)(b) while the person is being
21 provided with that treatment or care.
- 22 (3) The person in charge of the mental health service must ensure
23 that the person's medical record includes a record of the
24 person's answers to the questions asked under subsection (2).

25 **280. While being provided with treatment or care by mental**
26 **health service**

- 27 (1) This section applies to a person —
- 28 (a) who is being provided with treatment or care by a
29 mental health service; and
- 30 (b) who —
- 31 (i) has refused to consent when asked under
32 section 279(2)(c)(i) or (ii); or
- 33 (ii) has refused to consent when asked under
34 subsection (2); or
- 35 (iii) consented when asked under section 279(2)(c)(i)
36 or (ii) or subsection (2) but has since then
37 withdrawn the consent.

- 1 (2) The person in charge of the mental health service must ensure
2 that the person is asked periodically whether or not the person
3 consents to a matter referred to in section 279(2)(c)(i) or (ii) in
4 respect of which the patient has refused to consent or has
5 withdrawn consent.
- 6 (3) The person in charge of the mental health service must ensure
7 that the person's medical record includes a record of —
- 8 (a) each time when the person is asked under
9 subsection (2); and
- 10 (b) the person's answers at that time to the questions asked
11 under subsection (2).

12 **281. Person can withdraw consent, or can consent, at any time**

13 To avoid doubt —

- 14 (a) a person who consents when asked under
15 section 279(2)(c)(i) or (ii) can withdraw consent at any
16 time; and
- 17 (b) a person who refuses to consent when asked under
18 section 279(2)(c)(i) or (ii) can consent at any time.

1 **Part 17 — Children who have a mental illness**

2 **282. 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 282:

7 For the purpose of deciding under section 282 what is or is not in the best
8 interests of a child, Part 2 Division 3 applies.

9 **283. 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 **284. 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 **285. Child who is a voluntary patient**

18 (1) This section applies to a child who is a voluntary patient.

19 (2) An application for the admission or discharge of the child by a
20 mental health service may be made by the child's parent or
21 guardian unless it is shown that the child has the capacity to
22 make the application himself or herself.

23 (3) A treatment decision about the provision of treatment to the
24 child may be made by the child's parent or guardian unless it is
25 shown that the child has the capacity to make the treatment
26 decision himself or herself.

27 Note for section 285:

28 Part 5 sets out what is required to show that a child has the capacity to make
29 a decision, including a treatment decision, about himself or herself.

30 **286. Children who are inpatients: segregation from inpatients**
31 **who have reached 18 years of age**

32 (1) This section applies to a mental health service that does not
33 ordinarily provide treatment or care to children who have a
34 mental illness.

- 1 (2) A child must not be admitted by a mental health service as an
2 inpatient unless the person in charge of the mental health
3 service is satisfied that —
- 4 (a) the mental health service can provide the child with
5 treatment, care and support that is appropriate having
6 regard to the child's age, maturity, gender, culture and
7 spiritual beliefs; and
- 8 (b) the treatment, care and support can be provided to the
9 child in a part of the mental health service that is
10 separate from any part of the mental health service in
11 which persons who have reached 18 years of age are
12 provided with treatment and care if, having regard to the
13 child's age and maturity, it would be appropriate to do
14 so.
- 15 (3) When a child is being admitted by a mental health service as an
16 inpatient, the person in charge of the mental health service
17 must —
- 18 (a) give to the child's parent or guardian a written report
19 setting out —
- 20 (i) the reasons why the person in charge is satisfied
21 of the matters referred to in subsection (2)(a) and
22 (b); and
- 23 (ii) the measures that the mental health service will
24 take to ensure that, while the child is admitted as
25 an inpatient, the child is protected and the child's
26 individual needs in relation to treatment and care
27 are met;
- 28 and
- 29 (b) put a copy of the report on the child's medical record;
30 and
- 31 (c) give a copy of the report to the Chief Psychiatrist.

32 Note for Part 17:

33 Part 16 applies to a child's carer who is not also the child's parent or guardian.

Part 18 — Complaints about mental health services

Division 1 — Preliminary matters

287. Terms used

In this Part —

Carers Charter has the meaning given in the *Carers Recognition Act 2004* section 4;

complainant, in relation to a complaint made to the Director under Division 3 Subdivision 3 —

(a) means the person, or each of the persons, who makes the complaint; and

(b) includes the person, or each of the persons, on whose behalf the complaint is made;

complaint includes a part of a complaint;

Complaints Office means the Health and Disability Services Complaints Office continued by the *Health and Disability Services (Complaints) Act 1995* section 6(1);

Complaints Office staff means the staff of the Complaints Office referred to in the *Health and Disability Services (Complaints) Act 1995* section 14, 15 or 16;

Director means the person lawfully holding, acting in or performing the functions of the office of Director of the Health and Disability Services Complaints Office referred to in the *Health and Disability Services (Complaints) Act 1995* section 7(1);

investigation means —

(a) an investigation of a complaint made to the Director under Division 3 Subdivision 3; or

(b) an investigation conducted under section 322;

mental health service means —

(a) a service provided specifically for people who have or may have a mental illness; or

(b) a service provided specifically for carers of people who have or may have a mental illness,

but does not include a service referred to in paragraph (a) or (b) if it is —

(c) provided wholly from funds paid to a service provider by the Commonwealth; or

- 1 (d) provided to a person who has or may have a mental
2 illness by the person's carer; or
- 3 (e) prescribed by the regulations for this paragraph;
- 4 **person's representative** means a person's representative
5 recognised under section 297;
- 6 **respondent**, in relation to a complaint made to the Director
7 under Division 3 Subdivision 3, means the person or body about
8 whom the complaint is made;
- 9 **service provider** means —
- 10 (a) an individual or group of individuals; or
- 11 (b) a body (whether incorporate or unincorporate),
12 that renders or provides mental health services, but does not
13 include —
- 14 (c) the Chief Psychiatrist; or
- 15 (d) a mental health advocate; or
- 16 (e) the Mental Health Tribunal.

17 **288. Making complaint to service provider or Director of**
18 **Complaints Office**

- 19 (1) A person may make a complaint about a mental health service
20 that has been, or is being, provided to the person or another
21 person by a service provider.
- 22 (2) The complaint may be made —
- 23 (a) to the service provider in accordance with the service
24 provider's complaints procedure referred to in
25 section 289; or
- 26 (b) to the Director under Division 3 Subdivision 3.
- 27 (3) It is irrelevant for the purposes of this Part that a person who
28 makes a complaint, whether on the person's own behalf or on
29 another person's behalf, does not identify himself or herself or
30 that other person as a person who has or may have a mental
31 illness or as the carer of a person who has or may have a mental
32 illness.

33 **Division 2 — Complaints to service providers**

34 **289. Service provider must have complaints procedure**

- 35 (1) The person in charge of a service provider must ensure —
- 36 (a) that there is a procedure (a **complaints procedure**) for
37 investigating any complaint made to the person in

Mental Health Bill 2012

Part 18 Complaints about mental health services

Division 3 Complaints to Director of Complaints Office

s. 290

- 1 charge about any mental health service provided by the
2 service provider; and
- 3 (b) that the complaints procedure is reviewed regularly and
4 revised as necessary.
- 5 (2) The person in charge of a service provider must ensure —
- 6 (a) that copies of the most up to date version of the service
7 provider's complaints procedure are freely available at
8 the service provider's premises; and
- 9 (b) that a person who requests a copy of the service
10 provider's complaints procedure is provided with a copy
11 of that version.

12 **290. Prescribed service providers must provide Director with**
13 **information about complaints**

- 14 (1) In this section —
15 *prescribed* means prescribed by the regulations for this section.
- 16 (2) Within the prescribed period after 30 June in each year —
- 17 (a) a prescribed service provider; or
- 18 (b) a service provider who is in a class of prescribed service
19 providers,
- 20 must give to the Director a report in the form prescribed for the
21 service provider or class of service providers, as the case
22 requires, relating to —
- 23 (c) complaints received by the service provider during the
24 year that ended on that day; and
- 25 (d) action taken by the service provider during the year that
26 ended on that day in relation to complaints whenever
27 received by the service provider.
- 28 Penalty: a fine of \$1 000.

29 **Division 3 — Complaints to Director of Complaints Office**

30 **Subdivision 1 — Preliminary matters**

31 **291. This Division to be read with *Health and Disability Services***
32 ***(Complaints) Act 1995***

33 This Division is to be read with the *Health and Disability*
34 *Services (Complaints) Act 1995*.

292. Parties themselves may resolve complaint

- (1) This Division does not prevent the complainant and the respondent resolving a complaint by agreement at any time, whether or not with the help of the Complaints Office, but if that occurs the complainant must notify the Director without delay that the complaint has been resolved.
- (2) The Director must stop dealing with a complaint under this Division if the Director becomes aware that it has been resolved.

Subdivision 2 — Director of Complaints Office

293. Functions of Director

- (1) The Director has these functions under this Division —
- (a) dealing with complaints made to the Director in accordance with this Division;
 - (b) in collaboration with groups of service providers or groups of persons to whom mental health services are provided or both, reviewing and identifying the causes of complaints and suggesting ways of removing and minimising those causes and bringing them to the notice of the public;
 - (c) taking steps to bring to the notice of people who have or may have a mental illness and service providers details of procedures for making complaints under this Division;
 - (d) assisting service providers in developing and improving procedures for making complaints and the training of their staff in handling complaints;
 - (e) with the approval of the Minister, inquiring into broader issues about the care of people who have or may have a mental illness arising out of complaints received;
 - (f) subject to subsection (2), preparing and publishing information about, and promoting, the role of the Complaints Office and how to make a complaint;
 - (g) providing advice generally on any matter relating to complaints under this Division, and in particular —
 - (i) advice to people who have or may have a mental illness on the making of complaints; and

Mental Health Bill 2012

Part 18 Complaints about mental health services

Division 3 Complaints to Director of Complaints Office

s. 294

- 1 (ii) advice to people who have or may have a mental
2 illness as to other avenues available for dealing
3 with complaints; and
4 (iii) advice about removing or minimising the causes
5 of complaints.

- 6 (2) The function of the Director under subsection (1)(f) does not
7 include the publication of personal information about a person
8 who has or may have a mental illness, but this subsection does
9 not affect the operation of section 324.

10 **294. Directions by Minister**

- 11 (1) The Minister may, after consultation with the Director, issue
12 written directions about the general policy to be followed by the
13 Director in performing functions under this Act.

- 14 (2) The Director may request the Minister to issue a direction under
15 subsection (1).

- 16 (3) A direction cannot be issued under this section in respect of —

- 17 (a) a particular complaint; or
18 (b) a particular person who has or may have a mental
19 illness; or
20 (c) a particular carer of a person who has or may have a
21 mental illness; or
22 (d) a particular service provider.

- 23 (4) The Director must comply with a direction issued under this
24 section.

- 25 (5) The Minister must cause the text of a direction issued under this
26 section to be laid before each House of Parliament on or within
27 14 sitting days after the day on which the direction is issued.

- 28 (6) The text of a direction issued under this section must be
29 included in the annual report submitted by the accountable
30 authority in respect of the Complaints Office under the
31 *Financial Management Act 2006* Part 5.

32 **295. Minister to have access to specified information about**
33 **Director's functions**

- 34 (1) In this section —
35 *specified information* means information specified, or of a
36 description specified, by the Minister that relates to the
37 functions of the Director under this Division.

- 1 (2) The Minister is entitled —
 - 2 (a) to have specified information in the possession of the
 - 3 Director; and
 - 4 (b) if the specified information is in or on a document, to
 - 5 have, and make and retain copies of, that document.
- 6 (3) For the purposes of subsection (2), the Minister may —
 - 7 (a) request the Director to give specified information to the
 - 8 Minister; and
 - 9 (b) request the Director to give to the Minister access to
 - 10 specified information; and
 - 11 (c) for the purpose of accessing specified information
 - 12 requested under paragraph (b), be assisted by members
 - 13 of the Complaints Office staff.
- 14 (4) The Director must —
 - 15 (a) comply with a request made under subsection (3)(a)
 - 16 or (b); and
 - 17 (b) make members of the Complaints Office staff and
 - 18 facilities of the Complaints Office available to the
 - 19 Minister for the purpose of subsection (3)(c).

Subdivision 3 — Right to complain

21 **296. Who may complain**

- 22 (1) A complaint about a person referred to in section 301(1)
- 23 alleging one or more of the matters set out in section 301(2)
- 24 may be made to the Director —
 - 25 (a) personally by a person who has or may have a mental
 - 26 illness; or
 - 27 (b) on behalf of a person who has or may have a mental
 - 28 illness by —
 - 29 (i) the person's representative; or
 - 30 (ii) a service provider if section 299 applies; or
 - 31 (iii) a registration board if section 300 applies.
- 32 (2) A complaint alleging the matter set out in section 301(2)(g)
- 33 about a person who —
 - 34 (a) is referred to in section 301(1); and

Mental Health Bill 2012

Part 18 Complaints about mental health services

Division 3 Complaints to Director of Complaints Office

s. 297

- 1 (b) is an applicable organisation as defined in the *Carers*
2 *Recognition Act 2004* section 4,
3 may be made to the Director —
4 (c) personally by a carer of a person who has or may have a
5 mental illness; or
6 (d) on behalf of a carer of a person who has or may have a
7 mental illness, by a registration board if section 300
8 applies.
- 9 (3) A complaint made under subsection (1)(a) or (2)(c) may be
10 made by —
11 (a) one person —
12 (i) on his or her own behalf; or
13 (ii) on behalf of himself or herself and another
14 person or other persons;
15 or
16 (b) 2 or more persons —
17 (i) on their own behalf; or
18 (ii) on behalf of themselves and another person or
19 other persons.

20 **297. Representative of person who has or may have mental**
21 **illness**

- 22 (1) In this section —
23 *relative*, of a person who has or may have a mental illness,
24 means a family member of the person referred to in
25 section 266(2).
- 26 (2) The Director may, for the purposes of this Division, recognise
27 as the representative for a person who has or may have a mental
28 illness —
29 (a) a person chosen as such by that person; or
30 (b) a person not chosen by that person if, in the Director's
31 opinion —
32 (i) that person is unable to complain himself or
33 herself and is unable to choose a person to be his
34 or her representative himself or herself; and
35 (ii) the prospective representative is a person who
36 has a sufficient interest in the subject matter of
37 the complaint;

- 1 or
- 2 (c) a person not chosen by that person if —
- 3 (i) that person has died; and
- 4 (ii) in the Director’s opinion, the prospective
- 5 representative is a person who has a sufficient
- 6 interest in the subject matter of the complaint.
- 7 (3) The Director must not recognise a person as the representative
- 8 of a person who has or may have a mental illness unless
- 9 satisfied that the prospective representative —
- 10 (a) is acting without remuneration; and
- 11 (b) except if the prospective representative is a relative of
- 12 that person, has no financial interest in the outcome of
- 13 the complaint.
- 14 (4) Subsection (3) does not prevent the Director from recognising a
- 15 mental health advocate as the representative of a person who
- 16 has or may have a mental illness.

17 **298. Representative must not be paid**

- 18 (1) In this section —
- 19 *prescribed person* means —
- 20 (a) a mental health advocate; or
- 21 (b) a person prescribed by the regulations for this definition.
- 22 (2) A person who is not a prescribed person must not demand or
- 23 receive any remuneration for acting as the representative of a
- 24 person who has or may have a mental illness for the purposes of
- 25 this Division.
- 26 Penalty:
- 27 (a) for a first offence, a fine of \$1 000;
- 28 (b) for a second or subsequent offence, a fine of \$10 000.

29 **299. Service provider may complain on behalf of person who has**

30 **or may have mental illness**

- 31 A complaint about a service provider referred to in
- 32 section 301(1) may be made by another service provider on
- 33 behalf of a person who has or may have a mental illness if the
- 34 Director is satisfied that —
- 35 (a) the person has died; or

- 1 (b) because of the person's state of health or general
2 situation, it would be difficult or impossible for the
3 person to make a complaint.

4 **300. Registration board may complain on behalf of person who**
5 **has or may have mental illness or on behalf of carer**

6 A complaint about a service provider referred to in
7 section 301(1) may be made by a registration board on behalf of
8 a person who has or may have a mental illness or a carer of a
9 person who has or may have a mental illness if —

- 10 (a) the service provider is a health professional or other
11 person for whose professional or occupational
12 registration the registration board is responsible; and
13 (b) the registration board becomes aware that the health
14 professional or other person has acted, or failed to act, in
15 a manner referred to in section 301(2) in relation to the
16 person who has or may have a mental illness or the
17 carer.

18 **301. Who and what can be complained about**

- 19 (1) A complaint can only be about a service provider that, at the
20 time the subject matter of the complaint arose, was providing a
21 mental health service.
- 22 (2) A complaint can only allege that, after the date on which this
23 section comes into operation, a service provider —
- 24 (a) acted unreasonably by not providing a mental health
25 service to the complainant; or
- 26 (b) acted unreasonably by providing a mental health service
27 to the complainant, whether the service was requested
28 by the complainant or a third party; or
- 29 (c) acted unreasonably in the manner of providing a mental
30 health service to the complainant; or
- 31 (d) acted unreasonably by denying or restricting the
32 complainant's access to records relating to the
33 complainant kept by the service provider; or
- 34 (e) acted unreasonably in disclosing records or confidential
35 information relating to the complainant; or
- 36 (f) failed to comply with the Charter of Mental Health Care
37 Principles; or
- 38 (g) failed to comply with the Carers Charter; or

(h) in respect of a complaint about a matter mentioned in paragraphs (a) to (e) made to the service provider by a person who has or may have a mental illness, acted unreasonably by —

(i) not properly investigating the complaint or not causing it to be properly investigated; or

(ii) not taking, or not causing to be taken, proper action in relation to the complaint;

or

(i) acted unreasonably by charging the complainant an excessive fee; or

(j) acted unreasonably with respect to a fee.

302. Time for complaining

The Director must reject a complaint the subject matter of which occurred more than 24 months before the day on which the complaint is made unless, in the Director's opinion, the complainant has shown good reason for the delay.

Subdivision 4 — Initial procedures

303. How to complain

(1) A person may complain to the Director orally, including by telephone, or in writing.

(2) The Director must require a complainant who makes a complaint orally to confirm it in writing unless the complainant satisfies the Director that there is good reason why it should not be confirmed in writing.

(3) The Director —

(a) must require a complainant to provide his or her name; and

(b) may require the complainant to provide other information relating to the complainant's identity.

(4) The Director may require a complainant to provide more information about the complaint within a time fixed by the Director.

(5) The Director may reject a complaint if the complainant does not comply with a requirement of the Director under subsection (2), (3)(a) or (b) or (4).

304. Referral of complaint about excluded mental health service

(1) In this section —

excluded mental health service means a mental health service that is provided without fee in a rescue or emergency situation.

(2) The Director may, with the written consent of the complainant, refer a complaint relating to an excluded mental health service to an appropriate person or body.

305. Withdrawal of complaint

A complainant may withdraw the complaint at any time by notifying the Director and the Director must then —

(a) stop dealing with the complaint; and

(b) if details of the complaint have been given to the respondent under section 309(5)(a)(ii), notify the respondent of the withdrawal; and

(c) if the complaint has been referred to another person or body under section 310(4), notify that person or body of the withdrawal.

306. Complainant should try to resolve matter

The Director may reject a complaint if the Director is not satisfied that —

(a) if the complainant is a person who has or may have a mental illness or is a carer — the complainant has taken reasonable steps to resolve the matter with the respondent; or

(b) if the complainant has made the complaint on behalf of a person who has or may have a mental illness — the complainant has taken all reasonable steps to resolve the matter with the respondent.

307. Complaint that is not to be dealt with by National Board under *Health Practitioner Regulation National Law (Western Australia)*

(1) In this section —

registered service provider means a registered provider as defined in the *Health and Disability Services (Complaints) Act 1995* section 3(1).

(2) The Director may deal with a complaint relating to a registered service provider under this Division if, because of the *Health*

1 *Practitioner Regulation National Law (Western Australia)*
2 section 150, the complaint is not to be dealt with by a National
3 Board under that Act.

4 **308. Complaint that is being dealt with by National Board under**
5 ***Health Practitioner Regulation National Law (Western***
6 ***Australia)***

7 (1) This section applies if, because of the *Health Practitioner*
8 *Regulation National Law (Western Australia)* section 150, a
9 complaint is being dealt with by a National Board under that
10 Act.

11 (2) The Director must, on or within 28 days after the day on which
12 the National Board begins dealing with the complaint, notify the
13 complainant that the National Board is dealing with it.

14 **309. Preliminary decision by Director**

15 (1) This section applies to a complaint other than a complaint that,
16 because of the *Health Practitioner Regulation National Law*
17 *(Western Australia)* section 150, is to be dealt with by a
18 National Board under that Act.

19 (2) The Director must, on or within 28 days after the day on which
20 the Director receives the complaint or by the end of any
21 extension of that period under subsection (3), decide whether
22 and to what extent —

23 (a) to accept it; or

24 (b) to reject, defer or refer it under section 310.

25 (3) The Director may extend the period for making a decision under
26 subsection (2) from the end of the 28-day period referred to in
27 subsection (2) for a further period (not exceeding 28 days) if it
28 is for the benefit of the complainant to do so.

29 (4) To enable the Director to make a decision under subsection (2),
30 the Director may make such inquiries as the Director considers
31 appropriate.

32 (5) The Director must, on or within 14 days after the day on which
33 the Director makes a decision under subsection (2) —

34 (a) if the complaint is accepted —

35 (i) give to the complainant written details of —

36 (I) the decision; and

Mental Health Bill 2012

Part 18 Complaints about mental health services

Division 3 Complaints to Director of Complaints Office

s. 309

- 1 (II) if the Director decides under
2 subsection (7)(a) or (b) that the
3 complaint is suitable to be dealt with
4 under section 312 or 313, the
5 arrangements made for negotiated
6 settlement or conciliation discussions
7 between the complainant and the
8 respondent;
- 9 and
- 10 (ii) subject to subsection (8), give to the respondent
11 written details of —
- 12 (I) the complaint; and
13 (II) the decision; and
14 (III) if the Director decides under
15 subsection (7)(a) or (b) that the
16 complaint is suitable to be dealt with
17 under section 312 or 313, the
18 arrangements made for negotiated
19 settlement or conciliation discussions
20 between the complainant and the
21 respondent; and
- 22 (IV) a written statement that the respondent
23 may make submissions to the Director;
- 24 or
- 25 (b) if the complaint is rejected — give to the complainant
26 written details of the decision; or
- 27 (c) if the complaint is deferred or referred —
- 28 (i) give to the complainant written details of the
29 decision; and
- 30 (ii) subject to subsection (8), give to the respondent
31 written details of —
- 32 (I) the complaint; and
33 (II) the decision.
- 34 (6) If a complaint is accepted, the Director may give to the
35 respondent a written notice requiring the respondent to give to
36 the Director a written response to the complaint in accordance
37 with section 311.
- 38 (7) If a complaint is accepted, the Director must then —
- 39 (a) attempt to negotiate a settlement of the complaint in
40 accordance with section 312; or

- 1 (b) refer the complaint for conciliation under section 313 if,
2 in the Director's opinion, it is suitable to be dealt with
3 under that provision; or
4 (c) investigate the complaint if, in the Director's opinion —
5 (i) it is not suitable to be dealt with under
6 section 312 or 313; and
7 (ii) an investigation is warranted, having regard to
8 the likely costs and benefits of the investigation.
- 9 (8) In giving details to the respondent under subsection (5)(a)(ii)
10 or (c)(ii), the Director must not disclose personal information
11 about the complainant if the Director considers that, because of
12 particular circumstances, the disclosure of the complainant's
13 identity —
14 (a) may result in the health, safety or welfare of the
15 complainant being put at risk; or
16 (b) would prejudice the proper investigation of the
17 complaint.
- 18 (9) If later the Director becomes satisfied that the circumstances
19 described under subsection (8) no longer apply, the Director
20 must disclose the identity of the complainant to the respondent.
- 21 (10) If the Director decides that a complaint is not suitable to be
22 dealt with under section 312 or 313 and does not warrant
23 investigating, the Director must advise the complainant in
24 writing —
25 (a) of the decision; and
26 (b) that the Director will take no further action on the
27 complaint.
- 28 (11) The Director must not try to settle a complaint while performing
29 functions under this section in relation to the complaint.

30 **310. Rejection, deferral or referral of complaints**

- 31 (1) The Director must reject a complaint that, in the Director's
32 opinion —
33 (a) is vexatious, trivial or without substance; or
34 (b) does not warrant any further action; or
35 (c) does not comply with this Division.

Mental Health Bill 2012

Part 18 Complaints about mental health services

Division 3 Complaints to Director of Complaints Office

s. 311

- 1 (2) The Director must reject a complaint to the extent that it relates
2 to an issue that has already been dealt with —
- 3 (a) under another provision of this Act; or
4 (b) under another written law; or
5 (c) under a law of the Commonwealth; or
6 (d) by a court.
- 7 (3) The Director must defer dealing with a complaint to the extent
8 that it relates to an issue that is being dealt with —
- 9 (a) under another provision of this Act; or
10 (b) under another written law; or
11 (c) under a law of the Commonwealth; or
12 (d) by a court.
- 13 (4) If a complaint raises issues that, in the Director's opinion,
14 would be better dealt with under —
- 15 (a) another provision of this Act; or
16 (b) another written law,
- 17 the Director may, with the written consent of the complainant,
18 refer the complaint to the appropriate person or body to be dealt
19 with under that other provision or written law.
- 20 (5) The Director cannot refer a complaint under subsection (4) to —
- 21 (a) a National Board under the *Health Practitioner*
22 *Regulation National Law (Western Australia)*; or
23 (b) a court.
- 24 Note for section 310:
- 25 Sections 307 and 308 set out what happens in relation to a complaint that
26 could be dealt with by a National Board under the *Health Practitioner*
27 *Regulation National Law (Western Australia)*.
- 28 **311. Response by respondent**
- 29 (1) A respondent who is given details under section 309(5)(a)(ii)
30 may give the Director a written response to the complaint.
- 31 (2) A respondent who is given a notice under section 309(6) must
32 give the Director a written response to the complaint.

- 1 (3) Any response given under subsection (1) or (2) must be given to
2 the Director —
 - 3 (a) on or within 28 days after the day on which the
4 respondent receives —
 - 5 (i) the details given under section 309(5)(a)(ii); or
 - 6 (ii) the notice given under section 309(6);
 - 7 or
 - 8 (b) by the end of any extension of that period under
9 subsection (4).
- 10 (4) The Director may extend the period within which a response
11 must be given under subsection (1) or (2) for good reason.
- 12 (5) The Director may deal with a complaint under this Division
13 even if the respondent does not comply with subsection (3).
- 14 (6) Details of any breach of subsection (3) that, in the Director's
15 opinion, was committed without a reasonable excuse must be
16 included in the annual report submitted by the accountable
17 authority in respect of the Complaints Office under the
18 *Financial Management Act 2006* Part 5.
- 19 (7) Evidence of anything said in a response given by a respondent
20 under this section is not admissible in proceedings before a
21 court or tribunal.
- 22 (8) Despite the *Parliamentary Commissioner Act 1971*
23 section 20(3), evidence referred to in subsection (7) may be
24 disclosed to the Parliamentary Commissioner for the purposes
25 of an investigation under that Act.

26 **Subdivision 5 — Negotiated settlements and conciliation**

27 **312. Resolving complaints by negotiation**

- 28 (1) Having accepted a complaint and complied with
29 section 309(5)(a), the Director may, by negotiating with the
30 complainant and the respondent, attempt to bring about a
31 settlement of the complaint that is acceptable to the parties to it.
- 32 (2) For the purposes of subsection (1), the Director may make any
33 inquiries the Director considers appropriate.
- 34 (3) If the complaint is not settled under subsection (1) on or within
35 56 days after the day on which the Director complies with

- 1 section 309(5)(a) or by the end of any extension of that period
2 under subsection (4), the Director must —
- 3 (a) refer it for conciliation under section 313 if, in the
4 Director's opinion, it is suitable to be dealt with under
5 that provision; or
- 6 (b) investigate it if, in the Director's opinion —
- 7 (i) it is not suitable to be dealt with under
8 section 313; and
- 9 (ii) an investigation is warranted, having regard to
10 the likely costs and benefits of the investigation.
- 11 (4) The Director may extend the period for attempting to bring
12 about a negotiated settlement if it is for the benefit of the
13 complainant to do so.
- 14 (5) If the Director decides a complaint is not suitable to be dealt
15 with under section 313 and does not warrant investigating, the
16 Director must advise the complainant in writing —
- 17 (a) of the decision; and
- 18 (b) that the Director will take no further action on the
19 complaint.
- 20 (6) Evidence of anything said or admitted during any negotiation
21 conducted under subsection (1) is not admissible in proceedings
22 before a court or tribunal.
- 23 (7) Despite the *Parliamentary Commissioner Act 1971*
24 section 20(3), evidence referred to in subsection (6) may be
25 disclosed to the Parliamentary Commissioner for the purposes
26 of an investigation under that Act.
- 27 **313. Conciliation of complaints**
- 28 (1) On referring a complaint for conciliation, the Director must
29 assign the task of conciliating the complaint to a member of the
30 Complaints Office staff whose duties consist of or include the
31 conciliation of complaints.
- 32 (2) A conciliator's function is to encourage the settlement of the
33 complaint by —
- 34 (a) arranging for the complainant and the respondent to hold
35 informal discussions about the complaint; and
- 36 (b) helping in the conduct of those discussions; and
- 37 (c) if possible, assisting the complainant and the respondent
38 to reach agreement.

- (3) Except as provided by subsections (4) and (5), neither the complainant nor the respondent may be represented by another person during the conciliation process.
- (4) The complainant may be represented by the complainant's representative recognised under section 297.
- (5) The Director may allow either or both the complainant and the respondent to be represented if the Director is satisfied that the process will not work effectively otherwise.
- (6) Subsections (3), (4) and (5) do not prevent the personal attendance of any other person who may, in the opinion of the conciliator, help in the conciliation.
- (7) Evidence of anything said or admitted during the conciliation process is not admissible in proceedings before a court or tribunal.
- (8) If the conciliation process results in the settlement of a complaint between the complainant and the respondent, the conciliator must make a final report to the Director about the result of that process.
- (9) A report made under subsection (8) must include details of any agreement reached.
- (10) If the conciliation process fails to result in the settlement of a complaint between the complainant and the respondent, the Director may investigate the complaint if, in the Director's opinion, an investigation is warranted, having regard to the likely costs and benefits of the investigation.

26 Subdivision 6 — Investigations

27 **314. 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 301(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;

Mental Health Bill 2012

Part 18 Complaints about mental health services

Division 3 Complaints to Director of Complaints Office

s. 315

- 1 (b) the generally accepted quality of service delivery
2 expected of a service provider;
- 3 (c) any standards for the provision of mental health services
4 that are prescribed by the regulations for this subsection;
- 5 (d) the Charter of Mental Health Care Principles;
- 6 (e) the Carers Charter.
- 7 (4) In conducting an investigation, the Director —
- 8 (a) must proceed with as little formality and technicality,
9 and as speedily, as the requirements of this Part and
10 proper investigation of the matter permits; and
- 11 (b) is not bound by the rules of evidence but may inform
12 himself or herself of any matter in such manner as he or
13 she considers appropriate; and
- 14 (c) may, subject to this Part and the rules of natural justice,
15 determine his or her own procedures.
- 16 (5) In conducting an investigation, the Director may be assisted by
17 members of the Complaints Office staff.

18 **315. Power to require information and records**

- 19 (1) In this section —
- 20 **relevant information** means information that is relevant to an
21 investigation;
- 22 **relevant record** means a record of information (however
23 compiled, recorded or stored) that is relevant to an investigation.
- 24 (2) The Director may, by written notice given to a person, require
25 the person to do one or both of the following —
- 26 (a) provide the Director with a statement signed by the
27 person or, if the person is a body corporate, by an officer
28 of the body corporate, containing the relevant
29 information specified in the notice;
- 30 (b) produce to the Director the relevant records specified in
31 the notice.
- 32 (3) The Director must not give a notice to a person under
33 subsection (2) unless the Director reasonably believes that the
34 person is capable of providing the relevant information or
35 producing the relevant records, as the case may be.
- 36 (4) A notice under subsection (2) must specify the time and place
37 for providing the relevant information or producing the relevant
38 records, as the case may be.

- 1 (5) The Director may do any of these things in relation to a relevant
2 record that is produced in accordance with a notice under
3 subsection (2) —
- 4 (a) take possession of and retain the record for the period
5 that is reasonably necessary for the purposes of the
6 investigation;
- 7 (b) inspect, and take a copy of the whole or any part of, the
8 record.
- 9 (6) While the Director retains possession of a relevant record, the
10 Director must permit a person who would be entitled to inspect
11 the record if it were not in the Director's possession to inspect
12 the record at any reasonable time, and take a copy of the whole
13 or any part of the record.
- 14 (7) This section does not prevent a person from —
- 15 (a) refusing to provide relevant information or to produce a
16 relevant record because it contains information in
17 respect of which there is legal professional privilege; or
- 18 (b) refusing to produce a medical record except if —
- 19 (i) the medical record relates to the subject matter of
20 the complaint; and
- 21 (ii) the person to whom the medical record relates, or
22 the person's representative, has consented to the
23 disclosure of information in the medical record.
- 24 (8) A person who has been given a notice under subsection (2)
25 commits an offence if the person —
- 26 (a) without reasonable excuse, proof of which is on the
27 person, does not provide relevant information or
28 produce a relevant record in accordance with the notice;
29 or
- 30 (b) in purporting to comply with a requirement under
31 subsection (2)(a) in the notice, provides relevant
32 information that the person knows is false or misleading
33 in a material particular; or
- 34 (c) in purporting to comply with a requirement under
35 subsection (2)(b) in the notice, makes available a
36 relevant record that the person knows is false or
37 misleading in a material particular —
- 38 (i) without indicating that the record is false or
39 misleading; or

Mental Health Bill 2012

Part 18 Complaints about mental health services

Division 3 Complaints to Director of Complaints Office

s. 316

- 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 **316. 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) The penalty for an offence under the *Health and Disability*
22 *Services (Complaints) Act 1995* section 66 as applied by
23 subsection (2)(b) is punishable by a fine not exceeding \$6 000.

24 **317. Conciliator must not investigate**

25 A person who under section 313 has conciliated, or attempted to
26 conciliate, a complaint cannot investigate that complaint.

27 **Subdivision 7 — Consequences of investigation**

28 **318. What Director must do on completing investigation**

- 29 (1) On completing an investigation, the Director must —
30 (a) decide whether or not a service provider has acted, or
31 failed to act, in a manner referred to in section 301(2);
32 and
33 (b) give written notice of the decision to —
34 (i) if a complaint was investigated — the
35 complainant and the respondent; or

- 1 (ii) if the investigation was conducted under
2 section 322 — the Minister and any person
3 affected by the decision.
- 4 (2) The written notice must be given on or within 14 days after the
5 day on which the Director makes the decision.
- 6 (3) The written notice must —
7 (a) specify the reasons for the decision; and
8 (b) if the Director has decided that a service provider has
9 acted, or failed to act, in a manner referred to in
10 section 301(2), specify any action that the Director
11 recommends ought to be taken to remedy the matter
12 by —
13 (i) the respondent; or
14 (ii) any other person.
- 15 (4) Before recommending action that ought to be taken to remedy
16 the matter by the respondent or another person, the Director
17 must —
18 (a) consult the respondent or that other person; and
19 (b) if any action that the Director considers ought to be
20 taken to remedy the matter is likely to have an impact on
21 people other than the respondent or that other person,
22 consult a group of those people.

23 **319. Respondent or other person to report on remedial action**

- 24 (1) This section applies if the respondent or other person receives
25 written notice of the decision under section 318(1)(b)
26 recommending remedial action be taken by the respondent or
27 other person.
- 28 (2) The respondent or other person must give a written report about
29 what remedial action the respondent or other person has taken to
30 the Director —
31 (a) on or within 45 days after the day on which the
32 respondent or other person receives the notice; or
33 (b) by the end of any extension of that period under
34 subsection (4).
- 35 Penalty: a fine of \$2 500.
- 36 (3) The respondent or other person may, before the expiry of the
37 45-day period, request the Director to extend the period within

1 which the respondent or other person must report under
2 subsection (2).

3 (4) The Director may, if requested by the respondent under
4 subsection (3), extend the period within which the respondent or
5 other person must report under subsection (1) from the end of
6 the 45-day period for a further period (not exceeding 15 days) if
7 the Director considers it appropriate to do so.

8 **320. Report not provided or remedial action not taken: report to**
9 **Parliament**

10 (1) The Director must, if the respondent or other person does not
11 report in accordance with section 319 about what remedial
12 action has been taken, give to the Minister —

13 (a) a copy of the decision; and

14 (b) a written report about the refusal or failure by the
15 respondent or other person to so report.

16 (2) The Director must, if the respondent or other person does not
17 take the remedial action recommended within a time that, in the
18 Director's opinion, is reasonable, give to the Minister —

19 (a) a copy of the decision; and

20 (b) a written report about the refusal or failure by the
21 respondent or other person to take the remedial action.

22 (3) The Director must not include in a document given to the
23 Minister under subsection (1) or (2) personal information about
24 a complainant except with the consent of the complainant.

25 (4) The Minister may cause a copy of each of the documents given
26 to the Minister under subsection (1) or (2) to be laid before each
27 House of Parliament.

28 **Subdivision 8 — Other matters relating to investigations**

29 **321. Director to stop if other proceedings begun**

30 (1) The Director must stop investigating or otherwise dealing with a
31 complaint if the Director becomes aware that the complaint is
32 being dealt with —

33 (a) under another provision of this Act; or

34 (b) under another written law; or

35 (c) under a law of the Commonwealth; or

36 (d) in a court.

- 1 (2) The Director must, on or within 14 days after the day on which
2 the Director stops dealing with a complaint under
3 subsection (1), give written notice of that fact to —
4 (a) the complainant; and
5 (b) the respondent.
- 6 (3) The Director may resume dealing with a complaint that the
7 Director stopped dealing with under subsection (1) if the
8 Director becomes aware that the complaint —
9 (a) is no longer being dealt with under that other provision
10 or law or by that court; but
11 (b) has not been resolved.

12 **322. Minister may refer matters for investigation**

- 13 The Minister may direct the Director to conduct an investigation
14 under Subdivision 6 in accordance with a reference specified by
15 the Minister if, in the Minister's opinion —
16 (a) circumstances exist in relation to a person who has or
17 may have a mental illness that would justify a complaint
18 being made under this Division; or
19 (b) it is in the public interest on a matter of general
20 importance relating to mental health services that an
21 investigation be carried out.

22 **323. Confidentiality**

- 23 (1) A person must not (whether directly or indirectly) record,
24 disclose or use any information obtained by the person because
25 the person is or was —
26 (a) a person to whom —
27 (i) details are or were given under section 309(5); or
28 (ii) a disclosure is or was made under section 309(9);
29 or
30 (b) a person, or a member, officer, employee or agent, of a
31 body, to whom a complaint is or was referred under
32 section 310(4); or
33 (c) a participant in a conciliation under section 313; or
34 (d) a participant in an investigation; or
35 (e) a person to whom the information is or was provided by
36 a complainant or respondent for the purpose of
37 providing the complainant or respondent with a report

1 for use by the complainant or respondent in pursuing or
2 responding to a complaint; or

3 (f) a person who is or was given notice of a decision under
4 section 318(1)(b).

5 Penalty: a fine of \$5 000.

6 (2) Subsection (1) does not apply to the recording, disclosure or use
7 of statistical or other information that is not personal
8 information.

9 (3) A person does not commit an offence under subsection (1) if the
10 recording, disclosure or use of the information is authorised
11 under section 545(1).

12 **Division 4 — Miscellaneous matters**

13 **324. Reports to Parliament**

14 (1) The Director may at any time lay a report before each House of
15 Parliament on any matter that the Director considers
16 necessary —

17 (a) arising from an individual complaint made to the
18 Director under Division 3 Subdivision 3 or an
19 investigation; or

20 (b) in relation to the performance of the Director's functions
21 under this Part.

22 (2) The Director must not include in a report prepared under
23 subsection (1) personal information about a person who has or
24 may have a mental illness except with the consent of the person.

25 (3) This section does not limit the *Financial Management Act 2006*
26 Part 5.

27 **325. False or misleading information or documents**

28 (1) A person commits an offence if the person —

29 (a) gives to the Director or a member of the Complaints
30 Office staff information that the person knows is false or
31 misleading in a material particular; or

32 (b) makes available to the Director or a member of the
33 Complaints Office staff a document that the person
34 knows is false or misleading in a material particular —

35 (i) without indicating that the document is false or
36 misleading and, to the extent the person can, how
37 the document 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 (2) It is enough for a prosecution notice lodged against a person for
6 an offence under subsection (1)(b) to state that the information
7 or document was false or misleading to the person's knowledge
8 without stating which.

9 **326. Person must not be penalised because of complaint or**
10 **investigation**

- 11 (1) In this section —

12 ***complaint*** means a complaint made —

- 13 (a) to a service provider in accordance with the service
14 provider's complaints procedure referred to in
15 section 289; or
16 (b) to the Director under Division 3 Subdivision 3.

- 17 (2) A person —

- 18 (a) must not, by threats or intimidation, persuade or attempt
19 to persuade another person —

- 20 (i) not to make a complaint; or
21 (ii) to withdraw a complaint; or
22 (iii) not to continue proceedings under Division 3 in
23 respect of a complaint; or
24 (iv) not to provide information to, or not to otherwise
25 assist, the Director or a member of the
26 Complaints Office staff in performing functions
27 under this Part;

28 or

- 29 (b) must not —

- 30 (i) refuse to employ another person; or
31 (ii) dismiss another person from employment; or
32 (iii) subject another person to any detriment,

33 because the other person —

- 34 (iv) intends to make a complaint; or
35 (v) has made a complaint; or

Mental Health Bill 2012

Part 18 Complaints about mental health services

Division 4 Miscellaneous matters

s. 327

- 1 (vi) intends to take part in, is taking part in or has
2 taken part in proceedings under Division 3 in
3 respect of a complaint or an investigation.

4 Penalty for an offence under subsection (2): a fine of \$2 500.

5 **327. Registers: complaints, matters directed to be investigated**

6 (1) The Director must establish and maintain —

- 7 (a) a register of complaints reported to the Director under
8 section 290(2); and
9 (b) a register of complaints made to the Director under
10 Division 3 Subdivision 3; and
11 (c) a register of matters the subject of a direction to conduct
12 an investigation under section 322.

13 (2) The registers must be established and maintained in the manner
14 determined from time to time by the Director.

15 (3) The form and contents of the registers must be determined from
16 time to time by the Director.

17 **328. Delegation by Director**

18 (1) The Director may delegate to a member of the Complaints
19 Office staff any power or duty of the Director under another
20 provision of this Part.

21 (2) The delegation must be in writing signed by the Director.

22 (3) A person to whom a power or duty is delegated under this
23 section cannot delegate that power or duty.

24 (4) A person exercising or performing a power or duty that has been
25 delegated to the person under this section is taken to do so in
26 accordance with the terms of the delegation unless the contrary
27 is shown.

28 (5) This section does not limit the ability of the Director to perform
29 a function through an officer or agent.

Part 19 — Mental health advocacy services

Division 1 — Preliminary matters

329. Terms used

In this Part —

identified person means any of these people —

- (a) a person who is referred under section 25(2) or (3)(a) or 35(2) for an examination to be conducted by a psychiatrist;
- (b) a person who is under an order made under section 53(1)(c) or 59(1)(c) to enable an examination to be conducted by a psychiatrist;
- (c) an involuntary patient;
- (d) a person who is under a hospital order made under the CL(MIA) Act section 5(2);
- (e) a mentally impaired accused who is required under the CL(MIA) Act to be detained at an authorised hospital;
- (f) a mentally impaired accused who has been released under a release order made under the CL(MIA) Act section 35(1) on a condition imposed under section 35(4)(a) of that Act that the mentally impaired accused undergo treatment as defined in section 4 of this Act;
- (g) a person who is, for the purposes of the *Hospitals and Health Services Act 1927* Part IIIB, a resident of a private psychiatric hostel;
- (h) a person who —
 - (i) has or may have a mental illness; and
 - (ii) is being provided with treatment or care by a body or organisation that is prescribed by the regulations for this paragraph;
- (i) a voluntary patient who is not a person referred to in paragraph (g) or (h), but only if the voluntary patient is in a class of voluntary patients that the Minister directs under section 335 are identified persons for the purposes of this paragraph;

mental health service includes a private psychiatric hostel.

1 **Division 2 — Mental health advocates: appointment, functions**
2 **and powers**

3 **Subdivision 1 — Appointment, functions and powers**

4 **330. Chief Mental Health Advocate**

5 The Minister must appoint a person to be the Chief Mental
6 Health Advocate.

7 **331. Other mental health advocates**

8 (1) The Chief Mental Health Advocate must engage or appoint one
9 or more persons to be mental health advocates.

10 (2) Subject to subsections (3) and (4), any person can be engaged or
11 appointed under subsection (1).

12 (3) At least one mental health advocate (a *youth advocate*) engaged
13 or appointed under subsection (1) must have qualifications,
14 training or experience relevant to children and young people.

15 (4) A mental health advocate engaged or appointed under
16 subsection (1) may have qualifications, training or experience
17 relevant to a particular group in the community.

18 **332. Functions of Chief Mental Health Advocate**

- 19 (1) The Chief Mental Health Advocate has these functions —
- 20 (a) ensuring that identified persons are visited or otherwise
21 contacted in accordance with section 337;
- 22 (b) promoting compliance with the Charter of Mental
23 Health Care Principles by mental health services;
- 24 (c) subject to subsection (2), preparing and publishing
25 information about, and promoting, the role of mental
26 health advocates and how to contact the Chief Mental
27 Health Advocate;
- 28 (d) developing standards and protocols for the performance
29 by mental health advocates of their functions under this
30 Act;
- 31 (e) ensuring that mental health advocates receive adequate
32 training in relation to the performance of their functions
33 under this Act;
- 34 (f) providing advice, assistance and direction to mental
35 health advocates appointed under section 331(1) in

1 relation to the performance of their functions under this
2 Act;

3 (g) ensuring compliance with any directions given by the
4 Minister under section 335(1) or by the Chief Mental
5 Health Advocate under section 335(4);

6 (h) any other functions conferred on the Chief Mental
7 Health Advocate by this Act.

8 (2) The function of the Chief Mental Health Advocate under
9 subsection (1)(c) does not include the publication of personal
10 information about a person who has or may have a mental
11 illness.

12 **333. Functions of mental health advocates**

13 (1) Each mental health advocate has these functions —

14 (a) visiting or otherwise contacting identified persons in
15 accordance with section 337;

16 (b) inquiring into or investigating any matter relating to the
17 environmental conditions of mental health services that
18 is adversely affecting, or is likely to adversely affect, the
19 health safety or wellbeing of identified persons;

20 (c) inquiring into or investigating the extent to which
21 identified persons have been informed by mental health
22 services of their rights under this Act and the extent to
23 which those rights have been observed;

24 (d) hearing, inquiring into and seeking to resolve complaints
25 made to mental health advocates about the detention of
26 identified persons at, or the treatment or care that is
27 being provided to identified persons by, mental health
28 services;

29 (e) referring any issues arising out of the performance of a
30 function under paragraph (b), (c) or (d) to the
31 appropriate persons or bodies to deal with those issues,
32 including to the Chief Mental Health Advocate under
33 section 343(2);

34 (f) assisting identified persons to protect and enforce their
35 rights under this Act;

36 (g) assisting identified persons to access legal services;

37 (h) in consultation with the medical practitioners and mental
38 health practitioners who are responsible for their
39 treatment and care, advocating for and facilitating access
40 by identified persons to other services.

Mental Health Bill 2012

Part 19 Mental health advocacy services

Division 2 Mental health advocates: appointment, functions and powers

s. 334

- 1 (2) For the purposes of subsection (1)(d), a complaint may be made
2 to a mental health advocate by a person who has a sufficient
3 interest in the identified person concerned.
- 4 (3) The performance by a mental health advocate of the function
5 under subsection (1)(e) includes —
- 6 (a) assisting an identified person to make a complaint under
7 Part 18 to —
- 8 (i) the person in charge of a mental health service;
9 or
10 (ii) the Director of the Complaints Office;
11 and
- 12 (b) being an identified person's representative in respect of
13 a complaint referred to in paragraph (a)(ii) if recognised
14 as the identified person's representative under
15 section 297(2).
- 16 (4) The performance by a mental health advocate of the function
17 under subsection (1)(f) includes —
- 18 (a) assisting an identified person in relation to any
19 application made under this Act in respect of the
20 identified person to, and in relation to any proceedings
21 under this Act in respect of the identified person before,
22 the Mental Health Tribunal or the State Administrative
23 Tribunal; and
- 24 (b) if authorised under this Act, representing an identified
25 person in any proceedings under this Act in respect of
26 the identified person before the Mental Health Tribunal
27 or the State Administrative Tribunal.

28 **334. Powers generally**

29 A mental health advocate may do anything necessary or
30 convenient for the performance of the functions conferred on
31 the mental health advocate.

32 **335. Directions by Minister or CEO**

- 33 (1) The Minister may, after consultation with the Chief Mental
34 Health Advocate, issue written directions about the general
35 policy to be followed by the Chief Mental Health Advocate in
36 performing functions under this Act.
- 37 (2) The CEO may, after consultation with the Chief Mental Health
38 Advocate, issue written directions about the administrative

- 1 policies and procedures to be followed by the Chief Mental
 - 2 Health Advocate in managing the office of the Chief Mental
 - 3 Health Advocate.
- 4 (3) The Chief Mental Health Advocate may request the Minister to
 - 5 issue a direction under subsection (1) or the CEO to issue a
 - 6 direction under subsection (2).
- 7 (4) A direction cannot be issued under this section in respect of —
 - 8 (a) a particular identified person; or
 - 9 (b) a particular mental health service; or
 - 10 (c) any other particular person or body.
- 11 (5) The Chief Mental Health Advocate must comply with a
 - 12 direction issued under this section.
- 13 (6) 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 (7) 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 after the day on which the direction is issued.
- 20 (8) The text of a direction issued under this section must be
 - 21 included in the Chief Mental Health Advocate's annual report
 - 22 prepared under section 357.

23 **Subdivision 2 — Contacting identified person or person with**

24 **sufficient interest**

25 **336. Request for mental health advocate to contact identified**

26 **person**

- 27 (1) A request for an identified person to be contacted by a mental
 - 28 health advocate may be made by —
 - 29 (a) the identified person; or
 - 30 (b) the identified person's psychiatrist; or
 - 31 (c) a person who has a sufficient interest in the identified
 - 32 person.
- 33 (2) The request may be made to —
 - 34 (a) the mental health service where the identified person is
 - 35 being detained or that is providing treatment or care to
 - 36 the identified person; or

Mental Health Bill 2012

Part 19 Mental health advocacy services

Division 2 Mental health advocates: appointment, functions and powers

s. 337

1 (b) the Chief Mental Health Advocate.

2 (3) If the request is made to the mental health service, the person in
3 charge of the mental health service must ensure that the Chief
4 Mental Health Advocate is notified of the request as soon as
5 practicable and, in any event, within 24 hours after the time
6 when the request was made.

7 **337. Duty to contact identified person**

8 (1) An identified person who is detained under section 27(1) or (2),
9 33(1), 50(1)(b), 51(1), 56(1)(b), 57(2), 60(1) or (2) or 67(1)(b)
10 must be visited or otherwise contacted by a mental health
11 advocate as soon as practicable after the time when a request is
12 made under section 336(1) for the person to be contacted and, in
13 any event, within 72 hours after that time.

14 (2) An identified person who is under an involuntary treatment
15 order made on or after the day on which this section commences
16 must be visited or otherwise contacted —

17 (a) if, when the order is made, the person has reached
18 18 years of age — by a mental health advocate on or
19 within 7 days after the day on which the involuntary
20 treatment order is made; or

21 (b) if, when the order is made, the person is a child — by a
22 mental health advocate within 24 hours after the time
23 when the involuntary treatment order is made.

24 (3) An identified person who is under —

25 (a) an involuntary treatment order made before the day on
26 which this section commences; or

27 (b) an involuntary treatment order made on or after the day
28 on which this section commences that has been in force
29 for more than 7 days from the day on which the order is
30 made,

31 must be visited or otherwise contacted by a mental health
32 advocate as soon as practicable after a request is made under
33 section 336(1) for the person to be contacted.

34 (4) An identified person under paragraph (g) or (h) of the definition
35 of *identified person* in section 329 must be visited or otherwise
36 contacted by a mental health advocate as soon as practicable
37 after the day on which a request is made under section 336(1)
38 for the person to be contacted and, in any event, within 7 days
39 after that day.

1 (5) An identified person under paragraph (i) of the definition of
 2 ***identified person*** in section 329 must be visited or otherwise
 3 contacted by a mental health advocate within a reasonable time
 4 after a request is made under section 336(1) for the person to be
 5 contacted.

6 (6) Despite subsections (4) and (5), an identified person under
 7 paragraph (g), (h) or (i) of the definition of ***identified person*** in
 8 section 329 who is a child must be visited or otherwise
 9 contacted by a mental health advocate within 24 hours after the
 10 time when a request is made under section 336(1) for the child
 11 to be contacted.

12 **338. Contact on mental health advocate’s own initiative**

13 In addition to any requirement under section 337 to contact an
 14 identified person, a mental health advocate may, subject to any
 15 direction of the Chief Mental Health Advocate under
 16 section 339(3), visit or otherwise contact an identified person at
 17 any time.

18 **Subdivision 3 — Specific powers of mental health advocates**

19 **339. Specific powers of mental health advocates**

- 20 (1) The powers of a mental health advocate include these powers —
- 21 (a) visiting, at any time and for as long as the mental health
 22 advocate considers appropriate, a mental health service
 23 where an identified person is being detained or that is
 24 providing treatment or care to an identified person;
 - 25 (b) inspecting any part of a mental health service that the
 26 mental health advocate visits;
 - 27 (c) subject to subsection (2), seeing and speaking with an
 28 identified person unless the identified person objects to
 29 the mental health advocate doing so;
 - 30 (d) making inquiries about any of these things —
 - 31 (i) the admission or reception of an identified
 32 person by a mental health service or other place;
 - 33 (ii) the referral of an identified person for an
 34 examination to be conducted by a psychiatrist at
 35 a mental health service or other place;
 - 36 (iii) the detention of an identified person at a mental
 37 health service or other place;

Mental Health Bill 2012

Part 19 Mental health advocacy services

Division 2 Mental health advocates: appointment, functions and powers

s. 340

- 1 (iv) the provision of treatment or care to an identified
2 person by a mental health service or other place;
- 3 (e) requiring a staff member of a mental health service or
4 other place to do any of these things —
- 5 (i) answer questions or provide information in
6 response to any inquiry made about a matter
7 referred to in paragraph (d)(i) to (iv);
- 8 (ii) make available any document that the mental
9 health advocate may inspect, or take a copy of,
10 under paragraph (f) or (g);
- 11 (iii) give reasonable assistance to the mental health
12 advocate;
- 13 (f) subject to subsection (2), inspecting and taking a copy of
14 the whole or any part of any of these documents —
- 15 (i) an identified person's medical record;
- 16 (ii) any other documents about an identified person,
17 unless the identified person objects to the mental health
18 advocate doing so;
- 19 (g) inspecting and taking a copy of the whole or any part of
20 any document, or any document in a class of documents,
21 prescribed by the regulations.
- 22 (2) A mental health advocate cannot exercise a power under
23 subsection (1)(c) or (f) in relation to an identified person who is
24 a voluntary patient without the consent of —
- 25 (a) the identified person; or
- 26 (b) if the identified person does not have the capacity to
27 consent to the power being exercised in relation to him
28 or her, the person who is authorised by law to consent to
29 the provision of treatment or care to the identified
30 person.
- 31 (3) The exercise by a mental health advocate of any power under
32 subsection (1) is subject to the direction of the Chief Mental
33 Health Advocate.
- 34 **340. Documents to which access is restricted**
- 35 (1) This section applies if an identified person is not entitled under
36 section 235(1) to have access to a document because the
37 identified person has been refused access to the document for a
38 reason referred to in section 236(1)(a).

- 1 (2) The person in charge of a mental health service must ensure
2 that, before a staff member of the mental health service
3 complies with any requirement of a mental health advocate
4 under section 339(1)(e)(ii) to make available the document, the
5 mental health advocate is advised —
- 6 (a) that the identified person has been refused access to the
7 document for a reason referred to in section 236(1)(a);
8 and
9 (b) that it is an offence under section 341 for the mental
10 health advocate to disclose any information in the
11 relevant document to the identified person.
- 12 (3) The person in charge of a mental health service must record on
13 an identified person's medical record or file any advice given to
14 a mental health advocate under subsection (2) about the matters
15 referred to in subsection (2)(a) and (b).

16 **341. Disclosure by mental health advocate**

- 17 A mental health advocate who under section 339(1)(f) inspects,
18 or takes a copy of the whole or any part of, a document must not
19 disclose any information in the document if —
- 20 (a) the identified person to whom the document relates has
21 been refused access to the document for a reason
22 referred to in section 236(1)(a); and
23 (b) before the document was made available to the mental
24 health advocate in compliance with a requirement by the
25 mental health advocate under section 339(1)(e)(ii), the
26 mental health advocate was advised of the matters
27 referred to in section 340(2)(a) and (b).
- 28 Penalty: a fine of \$5 000.

29 **342. Interfering with exercise of powers: offences**

- 30 (1) A person commits an offence if the person —
- 31 (a) without reasonable excuse, proof of which is on the
32 person, does not answer a question or provide
33 information when required under section 339(1)(e)(i); or
34 (b) in purporting to comply with a requirement under
35 section 339(1)(e)(i), gives an answer or provides
36 information that the person knows is false or misleading
37 in a material particular; or
38 (c) in purporting to comply with a requirement under
39 section 339(1)(e)(ii), makes available a document that

Mental Health Bill 2012

Part 19 Mental health advocacy services

Division 2 Mental health advocates: appointment, functions and powers

s. 343

- 1 the person knows is false or misleading in a material
2 particular —
- 3 (i) without indicating that the document is false or
4 misleading and, to the extent the person can, how
5 the document is false or misleading; and
- 6 (ii) if the person has or can reasonably obtain the
7 correct information, without providing the
8 correct information;
- 9 or
- 10 (d) without reasonable excuse, proof of which is on the
11 person, does not give reasonable assistance when
12 required under section 339(1)(e)(iii); or
- 13 (e) without reasonable excuse, proof of which is on the
14 person, obstructs or hinders —
- 15 (i) a mental health advocate exercising a power
16 under section 339(1); or
- 17 (ii) a person assisting a mental health advocate under
18 section 339(1)(e)(iii).

19 Penalty: a fine of \$6 000.

- 20 (2) It is enough for a prosecution notice lodged against a person for
21 an offence under subsection (1)(b) or (c) to state that the
22 answer, information or document was false or misleading to the
23 person's knowledge without stating which.

24 **343. Dealing with issues arising out of inquiries and**
25 **investigations**

- 26 (1) A mental health advocate may attempt to resolve any issue that
27 arises in the course of an inquiry into or investigation of a
28 matter under section 333(1)(b), (c) or (d) by dealing directly
29 with the relevant staff members of the mental health service
30 concerned.
- 31 (2) A mental health advocate must refer an issue to the Chief
32 Mental Health Advocate if the mental health advocate cannot
33 resolve the issue or considers it appropriate to do so.
- 34 (3) The Chief Mental Health Advocate may provide a report about
35 an issue referred to the Chief Mental Health Advocate under
36 subsection (2) to the person in charge of the mental health
37 service concerned.

- 1 (4) The Chief Mental Health Advocate may also provide a copy of
2 any report provided to a mental health service under
3 subsection (3) to one or more of the following —
4 (a) the Minister;
5 (b) the CEO;
6 (c) CEO of the Health Department;
7 (d) the Chief Psychiatrist.
- 8 (5) A person to whom an issue is reported under subsection (4)
9 must advise the Chief Mental Health Advocate —
10 (a) whether or not the person considers further inquiry into
11 or investigation of the issue is warranted; and
12 (b) if so, the outcome of the further inquiry or investigation,
13 including any recommendations made, directions given
14 or other action taken under this Act or another written
15 law.
- 16 (6) This section does not limit the powers that a mental health
17 advocate has for dealing with any issue that arises in the course
18 of an inquiry into or investigation of a matter under
19 section 333(1)(b), (c) or (d).

20 **Division 3 — Mental health advocates: terms and conditions of**
21 **appointment**

22 **Subdivision 1 — Chief Mental Health Advocate**

23 **344. Term of appointment**

- 24 The Chief Mental Health Advocate —
25 (a) holds office for the period (not exceeding 5 years)
26 specified in the instrument of appointment; and
27 (b) is eligible for reappointment.

28 **345. Remuneration**

29 The Chief Mental Health Advocate is entitled to the
30 remuneration determined by the Minister on the
31 recommendation of the Public Sector Commissioner.

32 **346. Resignation**

- 33 (1) The Chief Mental Health Advocate may resign from office by
34 writing signed and given to the Minister.

- 1 (2) The resignation takes effect on the later of the following —
2 (a) receipt by the Minister;
3 (b) the day specified in the resignation.

4 **347. Removal from office**

5 The Minister may remove a person from the office of Chief
6 Mental Health Advocate on any of these grounds —

- 7 (a) mental or physical incapacity;
8 (b) incompetence;
9 (c) neglect of duty;
10 (d) misconduct.

11 **348. Acting Chief Mental Health Advocate**

- 12 (1) The Minister may appoint a person to act in the office of the
13 Chief Mental Health Advocate referred to in section 330 —
14 (a) during a vacancy in the office; or
15 (b) during a period, or during all periods, when the person
16 holding the office or a person acting in the office under
17 an appointment under this subsection is on leave or is
18 otherwise unable to perform the functions of the office,
19 if no other person is appointed under this subsection to so act.

- 20 (2) An appointment under subsection (1) may be expressed to have
21 effect only in the circumstances specified in the instrument of
22 appointment.

- 23 (3) The Minister may —
24 (a) determine the terms and conditions of an appointment
25 under subsection (1), including as to remuneration; and
26 (b) terminate an appointment under subsection (1) at any
27 time.

- 28 (4) The validity of anything done by or in relation to a person
29 purporting to act under an appointment under subsection (1) is
30 not to be called into question on any of these grounds —
31 (a) the occasion for the appointment had not arisen;
32 (b) there is a defect or irregularity in the appointment;
33 (c) the appointment had ceased to have effect;
34 (d) the occasion for the person to act had not arisen or had
35 ceased.

- 1 (5) A person cannot act under an appointment under subsection (1)
2 for a continuous period exceeding 12 months.

3 **Subdivision 2 — Other mental health advocates**

4 **349. Terms and conditions of engagement or appointment**

5 A mental health advocate engaged or appointed under
6 section 331(1) has the terms and conditions of engagement or
7 appointment, including as to remuneration, determined by the
8 Minister.

9 **350. Resignation**

- 10 (1) A mental health advocate engaged or appointed under
11 section 331(1) may resign from office by writing signed and
12 given to the Chief Mental Health Advocate.
- 13 (2) The resignation takes effect on the later of the following —
14 (a) receipt by the Chief Mental Health Advocate;
15 (b) the day specified in the resignation.

16 **351. Removal from office**

17 The Chief Mental Health Advocate may remove a person from
18 the office of mental health advocate referred to in section 331(1)
19 on any of these grounds —
20 (a) mental or physical incapacity;
21 (b) incompetence;
22 (c) neglect of duty;
23 (d) misconduct.

24 **Division 4 — Mental health advocates: miscellaneous matters**

25 **352. Conflict of interest**

- 26 (1) A mental health advocate may be employed by, or have a
27 disqualifying interest under subsection (3) in, a body or
28 organisation that provides treatment or care for identified
29 persons.
- 30 (2) However, the mental health advocate cannot perform any
31 functions as a mental health advocate in relation to an identified
32 person who is being provided with treatment or care by the body
33 or organisation.

Mental Health Bill 2012

Part 19 Mental health advocacy services

Division 4 Mental health advocates: miscellaneous matters

s. 353

- 1 (3) For subsection (1), a mental health advocate has a disqualifying
2 interest in a body or organisation if —
- 3 (a) the mental health advocate; or
- 4 (b) another person with whom the mental health advocate is
5 closely associated,
- 6 has a financial interest in the body or organisation, except a
7 financial interest prescribed by the regulations for this
8 subsection.
- 9 (4) For subsection (3)(b), a person is closely associated with a
10 mental health advocate if the person —
- 11 (a) is the spouse, de facto partner or child of the mental
12 health advocate; or
- 13 (b) is in partnership with the mental health advocate; or
- 14 (c) is an employer of the mental health advocate; or
- 15 (d) is a beneficiary under a trust, or an object of a
16 discretionary trust, of which the mental health advocate
17 is a trustee; or
- 18 (e) is a body corporate of which the mental health advocate
19 is an officer; or
- 20 (f) is a body corporate in which the mental health advocate
21 holds shares that have a total nominal value
22 exceeding —
- 23 (i) the amount prescribed by the regulations for this
24 paragraph; or
- 25 (ii) the percentage prescribed by the regulations for
26 this paragraph of the total nominal value of the
27 issued share capital of the body corporate;
- 28 or
- 29 (g) has a relationship specified in paragraphs (a) to (f) with
30 the mental health advocate's spouse or de facto partner.

31 **353. Identity cards**

- 32 (1) The CEO must issue the Chief Mental Health Advocate with an
33 identity card.
- 34 (2) The Chief Mental Health Advocate must issue each mental
35 health advocate engaged or appointed under section 331(1) with
36 an identity card.

- 1 (3) An identity card issued under subsection (1) or (2) in respect of
2 a person must —
- 3 (a) state the name of the person; and
4 (b) include a recent photograph of the person's face; and
5 (c) identify the person as the Chief Mental Health Advocate
6 or a mental health advocate engaged or appointed under
7 section 331(1), as the case requires; and
8 (d) state the date on which the identity card is issued; and
9 (e) state the date on which the identity card expires; and
10 (f) include the person's signature.
- 11 (4) A mental health advocate must display his or her identity card
12 whenever dealing with a person in respect of whom the mental
13 health advocate has exercised, is exercising or is about to
14 exercise a power under this Act.
- 15 (5) In any proceedings, the production by a mental health advocate
16 of his or her identity card is conclusive evidence of his or her
17 appointment under section 330 or 331(1), as the case requires.
- 18 (6) A person who ceases to be a mental health advocate must return
19 his or her identity card to the person who issued it as soon as
20 practicable unless the person has a reasonable excuse.
- 21 Penalty for an offence under subsection (6): a fine of \$2 000.

22 **354. Delegation by Chief Mental Health Advocate**

- 23 (1) In this section —
24 *advocacy services officer* means —
- 25 (a) a member of the staff referred to in section 355; or
26 (b) an officer or employee whose services are being used by
27 the Chief Mental Health Advocate by arrangement
28 under section 356(1).
- 29 (2) The Chief Mental Health Advocate may delegate to another
30 mental health advocate or an advocacy services officer any
31 power or duty of the Chief Mental Health Advocate under
32 another provision of this Act.
- 33 (3) The delegation must be in writing signed by the Chief Mental
34 Health Advocate.
- 35 (4) A person to whom a power or duty is delegated under this
36 section cannot delegate that power or duty.

Mental Health Bill 2012

Part 19 Mental health advocacy services

Division 5 Staff and facilities

s. 355

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 Chief Mental
6 Health Advocate to perform a function through an officer or
7 agent.

8 **Division 5 — Staff and facilities**

9 **355. 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.

14 **356. Use of government staff and facilities**

15 (1) The Chief Mental Health Advocate may by arrangement with
16 the relevant employer use, either full-time or part-time, the
17 services of any officer or employee employed —

- 18 (a) in the Public Service; or
19 (b) in a State agency or instrumentality; or
20 (c) otherwise in the service of the State.

21 (2) The Chief Mental Health Advocate may by arrangement with —

- 22 (a) a department of the Public Service; or
23 (b) a State agency or instrumentality,

24 use any facilities of the department, agency or instrumentality.

25 (3) An arrangement under subsection (1) or (2) must be made on
26 terms agreed to by the parties.

27 **Division 6 — Annual reports**

28 **357. Annual report: preparation**

29 Within 3 months after 30 June in each year, the Chief Mental
30 Health Advocate must prepare and give to the Minister a report
31 as to the general activities of mental health advocates during the
32 financial year ending on that day.

1 **358. Annual report: tabling**

- 2 (1) The Minister must cause a copy of a report referred to in
3 section 357 to be laid before each House of Parliament, or dealt
4 with under subsection (2), on or within 21 days after the day on
5 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.

Part 20 — Mental Health Tribunal

Division 1 — Preliminary matters

359. 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, in relation to a proceeding, means a hearing in the proceeding;

member means —

- (a) the President of the Tribunal; or
- (b) a person lawfully holding, acting in or performing the functions of the office of member of the Mental Health Tribunal referred to in section 454(1);

party, in relation to a proceeding, means a party to the 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 the person lawfully holding, acting in or performing the functions of the office of President of the Mental Health Tribunal referred to in section 453;

presiding member, in a proceeding, has the meaning given in section 417;

proceeding means a proceeding of the Tribunal under this Part and includes part of a proceeding;

registrar means a person lawfully holding, acting in or performing the functions of the office of registrar of the Mental Health Tribunal referred to in section 461;

registry officer means a member of the staff referred to in section 464;

Tribunal means the Mental Health Tribunal established by section 360.

Division 2 — Establishment, jurisdiction and constitution

360. Establishment

The Mental Health Tribunal is established.

361. Jurisdiction

The Tribunal has the jurisdiction conferred on it by this Part.

362. Constitution specified by President

When exercising its jurisdiction, subject to sections 363 and 364, the Tribunal must be constituted by the members specified by the President of the Tribunal.

363. Constitution generally

(1) For the purpose of a proceeding under this Part, except as provided by section 364, the Tribunal must be constituted by 3 members as follows —

- (a) a member who is a legal practitioner;
- (b) if the involuntary patient has reached 18 years of age, a member who is a psychiatrist;
- (c) if the involuntary patient is a child —
 - (i) a member who is child and adolescent psychiatrist; or
 - (ii) if a member referred to in subparagraph (i) is not available, a member who is a psychiatrist;
- (d) a member who is not —
 - (i) a legal practitioner; or
 - (ii) a medical practitioner; or
 - (iii) a mental health practitioner who is a staff member of a mental health service.

364. Constitution for psychosurgical matters

For a proceeding in relation to an application made under section 393(1) for approval for psychosurgery to be performed, the Tribunal must be constituted by 5 members as follows —

- (a) a member who is a legal practitioner;
- (b) a neurosurgeon who is appointed as a member after consultation by the Minister with the Health Minister held after consultation by the Health Minister with the Royal Australasian College of Surgeons;

- 1 (c) if the patient has reached 18 years of age, 2 members
2 who are psychiatrists;
- 3 (d) if the patient is a child —
- 4 (i) a member who is a child and adolescent
5 psychiatrist; and
- 6 (ii) a member who is a psychiatrist;
- 7 (e) a member who is not —
- 8 (i) a legal practitioner; or
9 (ii) a medical practitioner; or
10 (iii) a mental health practitioner who is a staff
11 member of a mental health service.

12 **365. Contemporaneous exercise of jurisdiction**

13 The Tribunal constituted in accordance with this Part may
14 exercise its jurisdiction even if the Tribunal differently
15 constituted under this Part is exercising its jurisdiction at the
16 same time.

17 **Division 3 — Involuntary treatment orders: review**

18 **366. Initial review after order made**

- 19 (1) In this section —
- 20 *initial review period*, for an involuntary treatment order,
21 means —
- 22 (a) if, when the order is made, the involuntary patient has
23 reached 18 years of age — the period of 35 days from
24 the day on which the order is made; or
- 25 (b) if, when the order is made, the involuntary patient is a
26 child — the period of 10 days from the day on which the
27 order is made.
- 28 (2) Unless subsection (4) or (5) applies, as soon as practicable after
29 an involuntary treatment order is made and, in any event, by the
30 end of the initial review period, the Tribunal must review the
31 order to decide whether or not the involuntary patient is still in
32 need of the involuntary treatment order having regard to the
33 criteria specified in section 24.
- 34 (3) It is sufficient for compliance with subsection (2) if the review
35 is commenced in accordance with that provision and is
36 completed as soon as practicable.

(4) The Tribunal is not required to review the order under subsection (2) if the involuntary patient has not, under section 368, been an involuntary patient continuously since the order was made.

(5) The Tribunal is not required to review the order under subsection (2) if —

(a) the Tribunal has —

(i) previously reviewed under this Division an involuntary treatment order made in respect of the involuntary patient; or

(ii) previously reviewed under this Division the terms of a community treatment order that a psychiatrist has been directed under section 375(2)(b) to make in respect of the involuntary patient;

and

(b) the involuntary patient, has under section 368, been an involuntary patient continuously since the previous review.

367. Periodic reviews while order in force

(1) In this section —

last review, of an involuntary treatment order, means —

(a) the last review of the order under section 366(2) or subsection (2); or

(b) if the order has not been reviewed under either of those provisions because it was made after another involuntary treatment order was last reviewed under one or other of those provisions, the last review of that other order;

last review day, for an involuntary treatment order, means the day on which the decision on the last review of the order is made;

periodic review period means —

(a) for an inpatient treatment order or a community treatment order in respect of a patient who, on the last review day, has been an involuntary community patient continuously for not more than 12 months —

(i) if, on the last review day, the involuntary patient has reached 18 years of age — the period of 3 months from that day; or

- 1 (ii) if, on the last review day, the involuntary patient
2 is a child — the period of 28 days from that day;
3 or
4 (b) for a community treatment order in respect of a patient
5 who, on the last review day, has been an involuntary
6 community patient continuously for more than
7 12 months — the period of 6 months from that day;
8 ***prescribed number of days***, before the end of a periodic review
9 period, means —
10 (a) if, when the involuntary treatment order that is the
11 subject of the proceeding was made, the involuntary
12 patient had reached 18 years of age — 21 days before
13 the day on which that period ends; or
14 (b) if, when the involuntary treatment order that is the
15 subject of the proceeding was made, the involuntary
16 patient was a child — 7 days before the day on which
17 that period ends.
18 (2) Unless subsection (4) applies, the Tribunal must, on or within
19 the prescribed number of days before the day on which a
20 periodic review period for an involuntary treatment order ends,
21 review the order to decide whether or not the involuntary patient
22 is still in need of the involuntary treatment order having regard
23 to the criteria specified in section 24.
24 (3) It is sufficient for compliance with subsection (2) if a review is
25 commenced in accordance with that provision and is completed
26 as soon as practicable.
27 (4) The Tribunal is not required to review the order under
28 subsection (2) if the involuntary patient has not, under
29 section 368, been an involuntary patient continuously since the
30 last review day.

31 **368. Involuntary patient for continuous period**

32 For sections 366(4) and (5)(b) and 367(4), a person has been an
33 involuntary patient continuously for a period if —

- 34 (a) one, or a series of 2 or more, involuntary treatment
35 orders were in force in respect of the person for the
36 whole period; or
37 (b) during the period, an involuntary treatment order ceased
38 to be in force in respect of the person and another
39 involuntary treatment order came into force in respect of

1 the person on or within 7 days after the day of the
2 cessation.

3 **369. Review period may be extended**

4 (1) In this section —

5 ***maximum extension period*** means —

- 6 (a) if, on the day on which the relevant decision is made,
7 the involuntary patient has reached 18 years of age —
8 the period of 21 days; or
9 (b) if, on the day on which the relevant decision is made,
10 the involuntary patient is a child — the period of 7 days;

11 ***prescribed period*** means —

- 12 (a) if, on the day on which the relevant decision is made,
13 the involuntary patient has reached 18 years of age —
14 the period of 28 days; or
15 (b) if, on the day on which the relevant decision is made,
16 the involuntary patient is a child — the period of 7 days;

17 ***relevant decision***, in relation to the review of an involuntary
18 treatment order under section 366(2) or 367(2), means a
19 decision of the Tribunal the making of which involves a
20 consideration of substantially the same issues as would be raised
21 in the review;

22 ***review period***, for an involuntary treatment order, means —

- 23 (a) the initial review period under section 366(1) for the
24 involuntary treatment order; or
25 (b) a periodic review period under section 367(1) for the
26 involuntary treatment order.

27 (2) If the Tribunal makes a relevant decision within the prescribed
28 period before the day on which a review period for an
29 involuntary treatment order ends, the Tribunal may make an
30 order extending the review period from the day on which it
31 would otherwise have ended for the further period (not
32 exceeding the maximum extension period) specified in the
33 order.

34 **370. Application for review**

35 (1) A person specified in subsection (2) may apply to the Tribunal
36 for a review of any of these things —

- 37 (a) an involuntary treatment order, to decide whether or not
38 the involuntary patient is still in need of an involuntary

- 1 treatment order having regard to the criteria specified in
2 section 24;
- 3 (b) an inpatient treatment order, to decide whether or not the
4 involuntary inpatient is still in need of an inpatient
5 treatment order having regard to the criteria specified in
6 section 24(1);
- 7 (c) a community treatment order, to decide whether or not
8 the terms of the order are appropriate;
- 9 (d) a transfer order made under section 64(1) or 88(2) in
10 respect of an involuntary inpatient, or a refusal to make
11 such an order, to decide whether or not the making of
12 the order or the refusal to do so is appropriate;
- 13 (e) the transfer under section 131(1)(a) of a psychiatrist's
14 responsibility as the supervising psychiatrist under a
15 community treatment order, or a refusal to transfer that
16 responsibility, to decide whether or not the transfer of
17 responsibility or the refusal to do so is appropriate;
- 18 (f) the transfer under section 133(a) of a practitioner's
19 responsibility as the treating practitioner under a
20 community treatment order, or a refusal to transfer that
21 responsibility, to decide whether or not the transfer of
22 responsibility or the refusal to do so is appropriate;
- 23 (g) a transfer order made under section 521(1) in respect of
24 a State inpatient, or a refusal to make such an order, to
25 decide whether or not the making of the order or the
26 refusal to do so is appropriate.
- 27 (2) An application may be made under subsection (1) by any of
28 these people —
- 29 (a) the involuntary patient;
- 30 (b) a mental health advocate;
- 31 (c) any other person who, in the Tribunal's opinion, has a
32 sufficient interest in the matter.
- 33 (3) The application must be in writing.
- 34 (4) Subject to subsection (5), the application may be made at any
35 time.
- 36 (5) The application cannot be made within the prescribed period
37 after the day on which the Tribunal makes a decision that
38 involves a consideration of substantially the same issues as
39 would be raised by the application unless there has been a

1 material change in the involuntary patient's circumstances since
2 that day.

- 3 (6) For subsection (5), the prescribed period is —
- 4 (a) if, on the day on which the decision is made, the
5 involuntary patient has reached 18 years of age — the
6 period of 28 days; or
- 7 (b) if, on the day on which the decision is made, the
8 involuntary patient is a child — the period of 7 days.

9 **371. Review on Tribunal's own initiative**

10 The Tribunal may, on its own initiative whenever it considers it
11 appropriate, review —

- 12 (a) an involuntary treatment order referred to in
13 section 370(1)(a) to (c) to decide the matter referred in
14 that provision; or
- 15 (b) a transfer order referred to in section 370(1)(d) or (g) to
16 decide the matter referred in that provision; or
- 17 (c) a transfer of responsibility under section 370(1)(e) or (f)
18 to decide the matter referred to in that provision.

19 **372. Suspending involuntary treatment order pending review**

- 20 (1) For the purposes of a proceeding for a review under this
21 Division, the Tribunal may make an order —
- 22 (a) suspending the operation of the involuntary treatment
23 order that is the subject of the proceeding; or
- 24 (b) restraining the taking of any action, or any further
25 action, under the involuntary treatment order that is the
26 subject of the proceeding,

27 until the Tribunal makes a decision on the review.

- 28 (2) The Tribunal may make an order under subsection (1) on the
29 application of a party or on its own initiative.

30 **373. Parties to proceeding**

31 The parties to a proceeding under this Division are —

- 32 (a) the involuntary patient; and
- 33 (b) the patient's psychiatrist; and
- 34 (c) if the proceeding relates to an application made under
35 section 370 and the applicant is not a person referred to
36 in paragraph (a) or (b), the applicant; and

- 1 (d) any other person who, in the opinion of the Tribunal, has
2 a sufficient interest in the matter.

3 **374. Things to which Tribunal must have regard**

- 4 (1) In making a decision on a review under this Division in respect
5 of an involuntary patient, the Tribunal must have regard to these
6 things —

- 7 (a) if —
8 (i) the involuntary patient is a child; and
9 (ii) the Tribunal is not constituted with a child and
10 adolescent psychiatrist,
11 the views of a medical practitioner or mental health
12 practitioner specified in subsection (2);
13 (b) the involuntary patient's psychiatric condition;
14 (c) the involuntary patient's medical and psychiatric
15 history;
16 (d) the involuntary patient's treatment, support and
17 discharge plan;
18 (e) the involuntary patient's wishes, to the extent that it is
19 practicable to ascertain those wishes;
20 (f) the views of any carer, close family member or other
21 personal support person of the involuntary patient;
22 (g) any other things that the Tribunal considers relevant to
23 making the decision.

- 24 (2) For subsection (1)(a), a medical practitioner or mental health
25 practitioner must —

- 26 (a) have qualifications, training or experience relevant to
27 children who have a mental illness; and
28 (b) be authorised by the Chief Psychiatrist for this
29 paragraph.

30 Note for section 374:

31 For the purpose of ascertaining the involuntary patient's wishes under
32 section 374(1)(e), Part 2 Division 4 applies.

33 **375. What Tribunal may do on completing review**

- 34 (1) On completing a review under this Division, subject to this Act,
35 the Tribunal may make any orders, and give any directions, the
36 Tribunal considers appropriate.

- 1 (2) Those orders and directions include the following —
- 2 (a) an order revoking an involuntary treatment order;
- 3 (b) a direction to the psychiatrist named in the order to
- 4 make, within a reasonable period specified in the
- 5 direction, a community treatment order in terms that are
- 6 consistent with section 112 and specified in the
- 7 direction;
- 8 (c) an order varying the terms of a community treatment
- 9 order in any way that is consistent with section 112.
- 10 (3) The Tribunal cannot make an order or give a direction under
- 11 subsection (1) in relation to an involuntary patient's treatment,
- 12 support or discharge plan, but may make —
- 13 (a) a recommendation that the patient's psychiatrist review
- 14 the treatment, support or discharge plan; and
- 15 (b) if so, a recommendation about the amendments that
- 16 could be made to the treatment, support and discharge
- 17 plan.
- 18 (4) The Tribunal may give a copy of any recommendation made
- 19 under subsection (3) to the Chief Psychiatrist.

20 **376. Review of direction given to psychiatrist**

- 21 (1) A psychiatrist who is directed under section 375(2)(b) to make a
- 22 community treatment order may, during the period within which
- 23 the order must be made, apply to the Tribunal for a review of
- 24 the direction.
- 25 (2) Sections 372 to 374 and section 375(1) and (2)(a) and (c) apply
- 26 (with the necessary changes) in relation to an application made
- 27 under subsection (1) as if it were an application made under
- 28 section 370(1)(c).

29 **Division 4 — Involuntary treatment orders: declarations about**

30 **validity**

31 **377. Application of this Division**

32 This Division applies to any of these orders (a *treatment*

33 *order*) —

- 34 (a) an involuntary treatment order;
- 35 (b) a continuation order made under section 86(2)(a)
- 36 or 118(1) in respect of an involuntary treatment order;

- 1 (c) an order made under section 119(1) varying a
2 community treatment order.

3 **378. Declaration about validity of treatment order**

- 4 (1) The Tribunal may, on the application of a person specified in
5 section 379 or on its own initiative, declare that a treatment
6 order is valid or invalid.
- 7 (2) Instead of declaring that a treatment order is invalid, the
8 Tribunal —
- 9 (a) may declare the treatment order to be valid; and
10 (b) may make an order varying the terms of the treatment
11 order in the manner the Tribunal considers most likely
12 to give effect to the intention of the psychiatrist who
13 made the treatment order.
- 14 (3) The Tribunal cannot make a declaration under subsection (2)(a)
15 in respect of a treatment order if the Tribunal is satisfied that the
16 treatment order is invalid under section 380.
- 17 (4) A declaration made under subsection (1) or (2)(a) has effect
18 according to its terms.

19 **379. Application for declaration**

20 An application may be made under section 378(1) by any of
21 these people —

- 22 (a) the involuntary patient;
23 (b) the psychiatrist who made the treatment order;
24 (c) a mental health advocate;
25 (d) any other person who, in the Tribunal's opinion, has a
26 sufficient interest in the matter.

27 **380. Ground of invalidity: failure to comply with this Act**

28 Without limiting the grounds on which a treatment order can be
29 declared under section 378(1) to be invalid, the Tribunal may
30 declare that a treatment order is invalid if satisfied that —

- 31 (a) there has been a failure to comply with the requirements
32 of this Act in relation to —
- 33 (i) the making of the treatment order; or
34 (ii) the conduct of any assessment or examination, or
35 the making of any referral or order, that led to
36 the making of the treatment order;

- 1 and
- 2 (b) because of that failure, whether alone or in combination
- 3 with one or more other such failures, the rights or
- 4 interests of the involuntary patient have been
- 5 substantially prejudiced.

6 **Division 5 — Long-term voluntary inpatients: review of**

7 **admission by authorised hospitals**

8 **381. Application of this Division**

9 This Division applies to a person (a *long-term voluntary*

10 *inpatient*) —

- 11 (a) who is a voluntary inpatient at an authorised hospital;
- 12 and
- 13 (b) who has been a voluntary inpatient at the authorised
- 14 hospital for a continuous period of more than 6 months.

15 **382. Application for review**

16 (1) A person specified in subsection (2) may apply to the Tribunal

17 for a review of the long-term voluntary inpatient's admission by

18 the authorised hospital to decide whether or not there is still a

19 need for the admission.

20 (2) An application may be made under subsection (1) by any of

21 these people —

- 22 (a) the long-term voluntary inpatient;
- 23 (b) a mental health advocate;
- 24 (c) any other person who, in the opinion of the Tribunal, has
- 25 a sufficient interest in the matter.

26 **383. Parties to proceeding**

27 The parties to a proceeding in relation to the application are —

- 28 (a) the long-term voluntary inpatient; and
- 29 (b) the treating psychiatrist; and
- 30 (c) if the applicant is not a person referred to in
- 31 paragraph (a) or (b), the applicant; and
- 32 (d) any other person who, in the opinion of the Tribunal, has
- 33 a sufficient interest in the matter.

s. 384

384. Things to which Tribunal must have regard

(1) In making a decision on a review under this Division in respect of a long-term voluntary inpatient, the Tribunal must have regard to these things —

(a) if —

(i) the inpatient is a child; and

(ii) the Tribunal is not constituted with a child and adolescent psychiatrist,

the views of a medical practitioner or mental health practitioner specified in subsection (2);

(b) the inpatient's psychiatric condition;

(c) the inpatient's medical and psychiatric history;

(d) the inpatient's wishes, to the extent that it is practicable to ascertain those wishes;

(e) the views of any carer, close family member or other personal support person of the inpatient;

(f) any other things that the Tribunal considers relevant to making the decision.

(2) For subsection (1)(a), a medical practitioner or mental health practitioner must —

(a) have qualifications, training or experience relevant to children who have a mental illness; and

(b) be authorised by the Chief Psychiatrist for this paragraph.

Note for section 384:

For the purpose of ascertaining the patient's wishes under section 384(1)(d), Part 2 Division 4 applies.

385. What Tribunal may do on completing review

On completing a review under this Division in respect of a long-term voluntary inpatient, the Tribunal may make any of these recommendations —

(a) the treating psychiatrist consider whether or not there is still a need for the admission;

(b) a treatment, support and discharge plan for the inpatient be prepared and be reviewed regularly;

(c) the inpatient be discharged.

Division 6 — Electroconvulsive therapy: approvals

386. Application of this Division

This Division relates to obtaining the Tribunal's approval to electroconvulsive therapy being performed on —

- (a) a voluntary patient who is a child who has reached 14 years of age but is under 18 years of age as required by section 185(1)(c); or
- (b) an involuntary patient or mentally impaired accused who is a child who has reached 14 years of age but is under 18 years of age as required by section 185(2)(b); or
- (c) an involuntary patient or mentally impaired accused who has reached 18 years of age as required by section 187.

387. Application for approval

- (1) The patient's psychiatrist may apply for approval to perform electroconvulsive therapy on a patient.
- (2) The application must —
 - (a) be in writing; and
 - (b) set out the clinical and ethical reasons why the patient's psychiatrist is recommending that the electroconvulsive therapy be performed; and
 - (c) set out a treatment plan in relation to the electroconvulsive therapy, including —
 - (i) the name, qualifications and experience of the medical practitioner who it is proposed will perform the electroconvulsive therapy; and
 - (ii) the name and address of the place where it is proposed to perform the electroconvulsive therapy; and
 - (iii) the maximum number of treatments with electroconvulsive therapy that it is proposed will be performed; and
 - (iv) the maximum period over which it is proposed to perform that number of treatments; and
 - (v) the maximum period that it is proposed will elapse between any 2 treatments.

388. Parties to proceeding

The parties to a proceeding in relation to the application are —

- (a) the patient; and
- (b) the patient's psychiatrist; and
- (c) any other person who, in the Tribunal's opinion, has a sufficient interest in the matter.

389. Things Tribunal must be satisfied of

(1) The Tribunal must not approve electroconvulsive therapy being performed on a patient to whom section 185(1) applies unless satisfied that informed consent to the electroconvulsive therapy being performed on the patient has been given as required by section 185(1)(b).

(2) The Tribunal must not approve electroconvulsive therapy being performed on a patient to whom section 185(2) or 187 applies unless satisfied —

(a) that the patient has given informed consent to the electroconvulsive therapy being performed on himself or herself;

or

(b) that the patient —

(i) does not have the capacity to give informed consent to the electroconvulsive therapy being performed on himself or herself; or

(ii) has the capacity referred to in subparagraph (i) but has refused to give informed consent to the electroconvulsive therapy being performed on himself or herself; or

(iii) has the capacity referred to in subparagraph (i) but has neither given nor refused to give informed consent to the electroconvulsive therapy being performed on himself or herself,

but that performing the electroconvulsive therapy is the most appropriate treatment for the health and wellbeing of the patient.

(3) The Tribunal must not approve electroconvulsive therapy being performed on a patient unless also satisfied of these things —

(a) the medical practitioner who it is proposed will perform the electroconvulsive therapy is suitably qualified and experienced; and

- 1 (b) the place where it is proposed to perform the
2 electroconvulsive therapy is a suitable place.

3 **390. Things to which Tribunal must have regard if no informed**
4 **consent**

- 5 (1) In deciding whether or not to approve electroconvulsive therapy
6 being performed on a patient referred to in section 389(2)(b),
7 the Tribunal must have regard to these things —

- 8 (a) if —
9 (i) the patient is a child; and
10 (ii) the Tribunal is not constituted with a child and
11 adolescent psychiatrist,
12 the views of a medical practitioner or mental health
13 practitioner specified in subsection (2);
14 (b) the patient's wishes, to the extent that it is practicable to
15 ascertain those wishes;
16 (c) if the patient has reached 18 years of age and does not
17 have the capacity to give informed consent to the
18 electroconvulsive therapy being performed on himself or
19 herself, the views of the person who is authorised by law
20 to give that consent on the patient's behalf were that
21 consent required;
22 (d) if the patient is a child, the views of the child's parent or
23 guardian;
24 (e) if the patient has a nominated person, the views of the
25 nominated person;
26 (f) if the patient has a carer, the views of the carer;
27 (g) if the patient has a close family member, the views of
28 the close family member;
29 (h) the clinical and ethical reasons why the patient's
30 psychiatrist is recommending that the electroconvulsive
31 therapy be performed;
32 (i) the consequences for the treatment and care of the
33 patient if the electroconvulsive therapy is not performed;
34 (j) the nature and degree of any significant risk of
35 performing the electroconvulsive therapy;
36 (k) whether the electroconvulsive therapy is likely to
37 promote and maintain the health and wellbeing of the
38 patient;
39 (l) whether any alternative treatment is available;

- 1 (m) the nature and degree of any significant risk of
2 providing any alternative treatment that is available;
3 (n) 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 390:

12 For the purpose of ascertaining the patient's wishes under section 390(1)(b),
13 Part 2 Division 4 applies.

14 **391. Decision on application**

- 15 The Tribunal may decide the application by —
16 (a) approving the electroconvulsive therapy being
17 performed in accordance with the treatment plan set out
18 in the application; or
19 (b) approving the electroconvulsive therapy being
20 performed in accordance with the treatment plan set out
21 in the application subject to the maximum number of
22 treatments with electroconvulsive therapy to be
23 performed being reduced to the number specified by the
24 Tribunal; or
25 (c) refusing to approve the electroconvulsive therapy being
26 performed.

27 **Division 7 — Psychosurgery: approvals**

28 **392. Application of this Division**

29 This Division relates to obtaining the Tribunal's approval to
30 psychosurgery being performed on a patient as required by
31 section 197(2)(c).

32 **393. Application for approval**

- 33 (1) The patient's psychiatrist may apply to the Tribunal for
34 approval for psychosurgery to be performed on a patient.
35 (2) The application must —
36 (a) be in writing; and

- 1 (b) set out the reasons why the patient's psychiatrist is
2 recommending that the psychosurgery be performed;
3 and
4 (c) set out a treatment plan in relation to the psychosurgery,
5 including —
6 (i) a detailed description of the psychosurgery
7 proposed to be performed;
8 (ii) the name, qualifications and experience of the
9 neurosurgeon who it is proposed will perform the
10 psychosurgery;
11 (iii) the name and address of the place where it is
12 proposed to perform the psychosurgery.

13 **394. Parties to proceeding**

- 14 The parties to a proceeding in relation to the application are —
15 (a) the patient; and
16 (b) the patient's psychiatrist; and
17 (c) any other person who, in the Tribunal's opinion, has a
18 sufficient interest in the matter.

19 **395. Things Tribunal must be satisfied of**

- 20 The Tribunal must not approve the psychosurgery being
21 performed on the patient unless satisfied of these things —
22 (a) the patient has given informed consent to the
23 psychosurgery being performed on himself or herself as
24 required by section 197(2)(b);
25 (b) performing the psychosurgery has clinical merit and is
26 appropriate in the circumstances;
27 (c) all alternatives to performing psychosurgery that are
28 reasonably available and likely to be of a sufficient and
29 lasting benefit to the patient have been appropriately
30 trialled with the patient but have not resulted in a
31 sufficient and lasting benefit to the patient;
32 (d) the neurosurgeon who it is proposed will perform the
33 psychosurgery is suitably qualified and experienced;
34 (e) the place where it is proposed to perform the
35 psychosurgery is a suitable place.

396. Things to which Tribunal must have regard

In deciding whether or not to approve the psychosurgery therapy being performed on the patient, the Tribunal must have regard to these things —

- (a) the views of any carer, close family member or other personal support person of the patient;
- (b) the consequences for the treatment and care of the patient if the psychosurgery is not performed;
- (c) the nature and degree of any significant risk of performing the psychosurgery;
- (d) whether the psychosurgery is likely to promote and maintain the health and wellbeing of the patient;
- (e) any other things that the Tribunal considers relevant to making the decision.

397. Decision on application

The Tribunal may decide the application by —

- (a) approving the psychosurgery being performed in accordance with the application; or
- (b) refusing to approve the psychosurgery being performed.

Division 8 — Non-clinical matters: compliance notices

398. Terms used

In this Division —

prescribed requirement means a requirement under this Act —

- (a) to do any of these things —
 - (i) give a document, or provide other information, to a patient or another person;
 - (ii) include a document or other information on a patient's medical record;
 - (iii) comply with a request made by a patient or other person;

or

- (b) to ensure that a thing referred to in paragraph (a) is done;

service provider, in relation to a prescribed requirement, means —

- (a) the person in charge of a mental health service; or

1

4

5

9

10

11

12

13

15

16

16

17

19

10

20

21

- 1 (b) any other person who, in the Tribunal's opinion, has a
2 sufficient interest in the matter.

3 **401. Parties to proceeding**

4 The parties to a proceeding under section 399 are —

- 5 (a) the patient or other person to whom the prescribed
6 requirement relates; and
7 (b) the service provider on whom the prescribed
8 requirement is imposed; and
9 (c) if the proceeding relates to an application made under
10 section 400 and the applicant is not the patient or other
11 person to whom the prescribed requirement relates, the
12 applicant; and
13 (d) any other person who, in the opinion of the Tribunal, has
14 a sufficient interest in the matter.

15 **402. Compliance notices to be reported on in annual report**

16 The President of the Tribunal must include in the report
17 prepared under section 466 in respect of a financial year —

- 18 (a) the name of each service provider issued with a
19 compliance notice during that year; and
20 (b) the number of compliance notices with which each of
21 those service providers was issued during that year.

22 **Division 9 — Restrictions on patients' freedom of**
23 **communication: review of orders**

24 **403. Application for review**

- 25 (1) A person specified in subsection (2) may apply to the Tribunal
26 for a review of a decision under section 249 to make, confirm or
27 amend an order prohibiting a patient from exercising, or
28 limiting the extent to which a patient can exercise, a right under
29 section 248.
30 (2) An application may be made under subsection (1) by any of
31 these people —
32 (a) the patient;
33 (b) any other person who, in the opinion of the Tribunal, has
34 a sufficient interest in the matter.

404. Parties to proceeding

The parties to a proceeding in relation to the application are —

- (a) the patient; and
- (b) the person who made the decision under section 249;
and
- (c) if the applicant is not the patient, the applicant; and
- (d) any other person who, in the opinion of the Tribunal, has
a sufficient interest in the matter.

405. Things to which Tribunal must have regard

- (1) In making a decision on a review under this Division in respect
of a patient, the Tribunal must have regard to these things —

- (a) if —
 - (i) the patient is a child; and
 - (ii) the Tribunal is not constituted with a child and
adolescent psychiatrist,
the views of a medical practitioner or mental health
practitioner specified in subsection (2);
- (b) any other things that the Tribunal considers relevant to
making the decision.

- (2) For subsection (1)(a), a medical practitioner or mental health
practitioner must —

- (a) have qualifications, training or experience relevant to
children who have a mental illness; and
- (b) be authorised by the Chief Psychiatrist for this
paragraph.

406. Decision on application

The Tribunal may decide the application by —

- (a) confirming the order as made or amended; or
- (b) amending, or further amending, the order as made or
amended; or
- (c) revoking the order.

1 **Division 10 — Jurisdiction in relation to nominated persons**

2 **407. Application for decision**

3 A person who, in the opinion of the Tribunal, has a sufficient
4 interest in the matter may apply to the Tribunal for a decision
5 under this Division.

6 **408. Declaration about validity of nomination**

7 (1) The Tribunal may declare that a nomination is valid or invalid.

8 (2) Instead of declaring that a nomination is invalid because of a
9 failure to comply with section 260, the Tribunal —

10 (a) may declare the nomination to be valid; and

11 (b) may make an order varying the terms of the nomination
12 in the manner the Tribunal considers most likely to give
13 effect to the intention of the person who made the
14 nomination.

15 (3) A declaration made under subsection (1) or (2)(a) has effect
16 according to its terms.

17 **409. Revocation of nomination**

18 The Tribunal may revoke a nomination if satisfied that the
19 nominated person is not an appropriate person to perform the
20 role of the nominated person because —

21 (a) the person is likely, in performing that role, to adversely
22 affect to a significant degree the interests of the person
23 who made the nomination;

24 (b) the person is not capable of performing that role because
25 of mental or physical incapacity;

26 (c) the person is not willing, or is not reasonably able, to
27 perform that role.

28 **410. Parties to proceeding**

29 The parties to a proceeding in relation to an application under
30 this Division are —

31 (a) the person who made the nomination; and

32 (b) the nominated person; and

33 (c) if the applicant is not a person referred to in
34 paragraph (a) or (b), the applicant; and

- 1 (d) any other person who, in the opinion of the Tribunal, has
2 a sufficient interest in the matter.

3 **Division 11 — Review of decisions affecting rights**

4 **411. Application for review with leave of Tribunal**

- 5 (1) A person who, in the opinion of the Tribunal, has a sufficient
6 interest in the matter may apply to the Tribunal for a review of a
7 decision made under this Act affecting a person's rights under
8 this Act.
- 9 (2) The Tribunal can only review a decision under subsection (1) if
10 satisfied that the matter cannot be heard and determined by the
11 Tribunal under another Division of this Part.

12 **412. Parties to proceeding**

13 The parties to the proceeding in relation to the application
14 are —

- 15 (a) the person whose rights it is alleged are affected; and
16 (b) if the applicant is not the person referred to in
17 paragraph (a), the applicant; and
18 (c) any other person who, in the opinion of the Tribunal, has
19 a sufficient interest in the matter.

20 **413. What Tribunal may do on completing review**

21 On completing the review, subject to this Act, the Tribunal may
22 make any orders, and give any directions, the Tribunal considers
23 appropriate.

24 **Division 12 — Procedural matters**

25 **Subdivision 1 — Proceedings generally**

26 **414. Lodgment of documents**

27 An application or other document required to be made or given
28 to the Tribunal must be lodged at the office of the Tribunal.

29 **415. Sittings**

30 The Tribunal sits at the times, and in the places in the State,
31 determined by the President of the Tribunal.

416. Conduct of proceedings

- (1) A proceeding must be conducted with as little formality and technicality, and as speedily, as a proper consideration of the matter before the Tribunal permits.
- (2) In a proceeding, the Tribunal is bound by the rules of natural justice.
- (3) Subject to this Part, the practice and procedure of the Tribunal in a proceeding is —
- (a) as provided for in the rules made under section 450; or
 - (b) if no provision is made in the rules, as determined by the Tribunal.

417. Presiding member

The presiding member of the Tribunal as constituted for a proceeding is the member of the Tribunal as so constituted who is a legal practitioner.

418. Deciding questions in proceedings

- (1) In this section —
question of law includes a question of mixed law and fact.
- (2) Subject to subsection (3), a question in a proceeding before the Tribunal must be resolved according to the opinion of the majority of the members constituting the Tribunal for the proceeding.
- (3) A question of law in a proceeding before the Tribunal must be resolved according to the opinion of the presiding member.

419. Assistance from persons with relevant knowledge or experience

The Tribunal may engage or appoint one or more persons with knowledge or experience that the Tribunal considers relevant to a proceeding to assist the Tribunal in the proceeding.

420. No fees payable

- No fees are payable in relation to —
- (a) any application made under this Part; or
 - (b) any proceeding of the Tribunal under this Part.

421. Each party to bear own costs

Subject to section 422(1)(b), each party to a proceeding must bear the party's own costs.

422. Frivolous, vexatious or improper proceedings

(1) The Tribunal may, if satisfied that a proceeding is frivolous or vexatious or has been brought for an improper purpose —

(a) dismiss the proceeding; and

(b) make any order as to costs that the Tribunal considers appropriate; and

(c) on the application of a party, order that the party who instituted the proceeding cannot institute a proceeding of a kind specified in the order without the leave of the Tribunal.

(2) An order made under subsection (1)(c) has effect despite any other provision of this Part.

(3) The Tribunal may amend or revoke an order made under subsection (1)(c).

Subdivision 2 — Notice of proceedings

423. Notice of applications

(1) If the person concerned in an application has reached 18 years of age, the Tribunal must give a copy of the application to —

(a) if the person concerned is not the applicant —

(i) the person concerned; or

(ii) the person concerned's representative under section 426(1)(a) or (2);

and

(b) each of the other parties to a proceeding on the application other than the applicant; and

(c) unless subsection (3) applies, each of these people who is not also a party to a proceeding on the application —

(i) if the person concerned has an enduring guardian or guardian, the enduring guardian or guardian;

(ii) if the person concerned has a nominated person, the nominated person;

(iii) if the person concerned has a carer, the carer;

(iv) if the person concerned has a close family member, the close family member.

- 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 427(1) applies in respect of the child —
5 (I) the child; or
6 (II) the child's representative under
7 section 427(1)(b);
8 or
9 (ii) section 428(1) applies in respect of the child, the
10 child's representative under that provision;
11 and
12 (b) each of the other parties to a proceeding on the
13 application other than the applicant; and
14 (c) unless subsection (3) applies, each of these people who
15 is not also a party to a proceeding on the application —
16 (i) the child's parent or guardian;
17 (ii) if the child has a nominated person, the
18 nominated person;
19 (iii) if the child has a carer, the carer;
20 (iv) if the child has a close family member, the close
21 family member;
22 (d) if a mental health advocate is not also a party to a
23 proceeding on the application, the Chief Mental Health
24 Advocate.
25 (3) The Tribunal is not required to give a copy of an application to a
26 person referred to in subsection (1)(c)(i), (ii), (iii) or (iv) or
27 (2)(c)(i), (ii), (iii) or (iv) if the Tribunal considers that it is not in
28 the best interests of the person concerned in the application for
29 the person to be given a copy of the application.

30 Note for section 423:

31 For the purpose of deciding under section 423(3) what is or is not in the best
32 interests of the person concerned in an application, Part 2 Division 3 applies.

33 **424. Notice of hearings**

- 34 (1) If the person concerned in a proceeding has reached 18 years of
35 age, the Tribunal must give notice of the date, time and place of
36 any hearing to —
37 (a) the person concerned or the person concerned's
38 representative under section 426(1)(a) or (2); and

- 1 (b) each of the other parties; and
- 2 (c) unless subsection (3) applies, each of these people who
- 3 is not also a party —
- 4 (i) if the person concerned has an enduring guardian
- 5 or guardian, the enduring guardian or guardian;
- 6 (ii) if the person concerned has a nominated person,
- 7 the nominated person;
- 8 (iii) if the person concerned has a carer, the carer;
- 9 (iv) if the person concerned has a close family
- 10 member, the close family member.
- 11 (2) If the person concerned in a proceeding is a child, the Tribunal
- 12 must give notice of the date, time and place of any hearing to —
- 13 (a) if —
- 14 (i) section 427(1) applies in respect of the child —
- 15 (I) the child; or
- 16 (II) the child's representative under
- 17 section 427(1)(b);
- 18 or
- 19 (ii) section 428(1) applies in respect of the child, the
- 20 child's representative under that provision;
- 21 and
- 22 (b) each of the other parties; and
- 23 (c) unless subsection (3) applies, each of these people who
- 24 is not also a party —
- 25 (i) the child's parent or guardian;
- 26 (ii) if the child has a nominated person, the
- 27 nominated person;
- 28 (iii) if the child has a carer, the carer;
- 29 (iv) if the child has a close family member, the close
- 30 family member;
- 31 (d) if a mental health advocate is not also a party to a
- 32 proceeding on the application, the Chief Mental Health
- 33 Advocate.
- 34 (3) The Tribunal is not required to give notice of a hearing to a
- 35 person referred to in subsection (1)(c)(i), (ii), (iii) or (iv) or
- 36 (2)(c)(i), (ii), (iii) or (iv) if the Tribunal considers that it is not in
- 37 the best interests of the person concerned in the application for
- 38 the person to be given notice of the hearing.

1 Note for section 424:

2 For the purpose of deciding under section 424(3) what is or is not in the best
3 interests of the person concerned in an application, Part 2 Division 3 applies.

4 **425. Tribunal may request information from SAT about person's**
5 **guardian**

6 (1) For the purpose of giving under section 423 or 424 a copy of an
7 application or notice of a hearing to the guardian of a person
8 who has reached 18 years of age, the Tribunal may request the
9 State Administrative Tribunal for the name and contact details
10 of the person's guardian.

11 (2) The State Administrative Tribunal may comply with any request
12 made under subsection (1).

13 **Subdivision 3 — Appearance and representation**

14 **426. Party who has reached 18 years of age**

15 (1) In a proceeding, a party who has reached 18 years of age —

16 (a) may appear in person or be represented by another
17 person; or

18 (b) must be represented by another person if the Tribunal
19 makes an order under subsection (2) in respect of the
20 party.

21 (2) The Tribunal may make an order that the party must be
22 represented in the proceeding if, in the Tribunal's opinion, it is
23 not in the best interests of the party for the party to appear in
24 person in the proceeding.

25 (3) Even though a party to a proceeding who has reached 18 years
26 of age is represented in the proceeding, the party is entitled to
27 express in person his or her views about any matter arising in
28 the course of the proceeding that may affect the party.

29 Note for section 426:

30 For the purpose of deciding under section 426(2) what is or is not in the best
31 interests of a party to a proceeding, Part 2 Division 3 applies.

32 **427. Party who is child with capacity to consent**

33 (1) In a proceeding, a party who is a child who has sufficient
34 maturity and understanding to make reasonable decisions about
35 matters relating to himself or herself —

36 (a) may appear in person; or

- 1 (b) may be represented by any of these people —
- 2 (i) the child’s parent or guardian unless the Tribunal
- 3 makes an order under section 435(2) in respect of
- 4 the child’s parent or guardian;
- 5 (ii) any other person who, in the Tribunal’s opinion,
- 6 is willing and able to represent the child’s
- 7 interests.
- 8 (2) Even though a party to a proceeding who is a child referred to in
- 9 subsection (1) is represented in the proceeding, the child is
- 10 entitled to express in person his or her views about any matter
- 11 arising in the course of the proceeding that may affect the child.
- 12 **428. Party who is child with no capacity to consent**
- 13 (1) At a hearing in a proceeding, a party who is a child who does
- 14 not have sufficient maturity or understanding to make
- 15 reasonable decisions about matters relating to himself or herself
- 16 must be represented by one of these people —
- 17 (a) the child’s parent or guardian unless the Tribunal makes
- 18 an order under section 435(2) in respect of the child’s
- 19 parent or guardian;
- 20 (b) any other person who, in the Tribunal’s opinion, can
- 21 represent the child’s interests.
- 22 (2) Even though a party to a proceeding who is a child referred to in
- 23 subsection (1) is represented in the proceeding and the child
- 24 does not have the maturity or understanding referred to in
- 25 subsection (1), the child is entitled to express in person his or
- 26 her views about any matter arising in the course of the
- 27 proceeding that may affect the child.
- 28 **429. Tribunal may make arrangements for representation**
- 29 The Tribunal may make arrangements for a party to a
- 30 proceeding to be represented at a hearing if the party wants the
- 31 Tribunal to make such an arrangement on the party’s behalf.
- 32 **430. Legal representation of person who has or is being treated**
- 33 **for mental illness**
- 34 The fact that a person has a mental illness, or is being provided
- 35 with treatment for a mental illness, is presumed not to be an
- 36 impediment to the representation of the person by a legal
- 37 practitioner before the Tribunal.

431. Representative must not be paid

(1) In this section —

prescribed person means —

- (a) a legal practitioner; or
- (b) a mental health advocate; or
- (c) a person prescribed by the regulations for this definition.

(2) A person who is not a prescribed person must not demand or receive any remuneration for representing in a proceeding a party to the proceeding.

Penalty for an offence under subsection (2):

- (a) for a first offence, a fine of \$1 000;
- (b) for a second or subsequent offence, a fine of \$10 000.

Subdivision 4 — Hearings and evidence

432. Nature of review proceedings

(1) In this section —

decision-maker, in relation to a review proceeding, means —

- (a) the psychiatrist who made the involuntary treatment order; or
- (b) the medical practitioner who admitted the long-term voluntary patient; or
- (c) the psychiatrist who made the decision under section 249 to make, confirm or amend the order prohibiting, or limiting the extent of, the exercise of the right;

reviewable decision, in relation to a review proceeding, means —

- (a) the decision to make the involuntary treatment order; or
- (b) the decision to admit the long-term voluntary patient; or
- (c) the decision under section 249 to make, confirm or amend the order prohibiting, or limiting the extent of, the exercise of the right;

review proceeding means —

- (a) a review under Division 3 of an involuntary treatment order; or
- (b) a review under Division 5 of a long-term voluntary inpatient's admission; or

- 1 (c) a review under Division 9 of a decision
2 under section 249 to make, confirm or amend an order
3 prohibiting a patient from exercising, or limiting the
4 extent to which a patient can exercise, a right under
5 section 248.
- 6 (2) The review proceeding is a hearing de novo and is not confined
7 to matters that were before the decision-maker but may involve
8 the consideration of new material whether or not it existed when
9 the reviewable decision was made.
- 10 (3) The purpose of a review proceeding is to produce the correct
11 and preferable decision at the time of the Tribunal's decision on
12 the review proceeding.

13 **433. Closed hearings**

- 14 (1) A hearing in a proceeding is not open to the public unless the
15 Tribunal orders that the hearing or a part of the hearing is open
16 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; or
20 (b) excluding a specified person (including a witness) from,
21 a hearing in a proceeding or a part of a hearing in a proceeding.
- 22 (3) Despite section 447, the Tribunal must give reasons for making
23 an order under this section at the time when the Tribunal makes
24 the order.
- 25 (4) Any reasons given by the Tribunal in compliance with
26 subsection (3) must be in a language, form of communication
27 and terms that a person who is affected by the order is likely to
28 understand using any means of communication that is
29 practicable and using an interpreter if necessary and practicable.
- 30 (5) The operation of this section is not limited by section 434
31 or 435.

32 **434. Person chosen by person concerned may be present**

- 33 (1) A person chosen by the person concerned in a proceeding may
34 be present at a hearing unless the Tribunal makes an order under
35 section 433(2)(b) excluding the person from the hearing or a
36 part of the hearing.

- 1 (2) The Tribunal may make an order referred to in subsection (1) on
2 the application of any person if satisfied that it is not in the best
3 interests of the person concerned for the person to be present at
4 the hearing or the part of the hearing.

5 Note for section 434:

6 For the purpose of deciding under section 434(2) what is or is not in the best
7 interests of the person concerned in a proceeding, Part 2 Division 3 applies.

8 **435. Parent or guardian may be excluded from hearing**

- 9 (1) This section applies if the person concerned in a proceeding is a
10 child.

- 11 (2) The Tribunal may, on the application of —

- 12 (a) the child's psychiatrist; or
13 (b) if the child does not have a psychiatrist or the child's
14 psychiatrist is not reasonably available, another
15 psychiatrist,

16 make an order under section 433(2)(a) excluding the child's
17 parent or guardian from a hearing in a proceeding or a part of a
18 hearing in a proceeding if, in the Tribunal's opinion, it is not in
19 the best interests of the child for the parent or guardian to be
20 present at the hearing or the part of the hearing.

21 Note for section 435:

22 For the purpose of deciding under section 435(2) what is or is not in the best
23 interests of a child, Part 2 Division 3 applies.

24 **436. Right to be heard**

25 The Tribunal must give each party to a proceeding a reasonable
26 opportunity —

- 27 (a) to call or give evidence; and
28 (b) to examine or cross-examine witnesses; and
29 (c) to make submissions.

30 **437. Evidence generally**

- 31 (1) The Tribunal is not bound by the rules of evidence but may
32 inform itself of a matter relevant to a proceeding in any manner
33 the Tribunal considers appropriate.
- 34 (2) Evidence in a proceeding may be given orally or in writing.
- 35 (3) The Tribunal may require evidence in a proceeding to be given
36 on oath or by affidavit.

- 1 (4) The presiding member in a proceeding may direct a person
2 appearing as a witness in the proceeding —
3 (a) to answer a question relevant to the proceeding; or
4 (b) to produce a document relevant to the proceeding.
- 5 (5) A person appearing as a witness in a proceeding has the same
6 protection and immunity as a witness has in a proceeding in the
7 Supreme Court.

8 **438. Oral evidence etc. about information to which access is**
9 **restricted under s. 236**

- 10 (1) In this section —
11 *restricted information* means information in a document to
12 which a person is not entitled to have access because of
13 section 236(1)(a) or (b) or (3).
- 14 (2) At a hearing in a proceeding —
15 (a) oral evidence about restricted information cannot be
16 given; and
17 (b) a witness cannot be examined or cross-examined about
18 restricted information; and
19 (c) an oral submission about restricted information cannot
20 be made,
21 in the presence of the person who is not entitled to have access
22 to the document containing the restricted information.
- 23 (3) If the person is present at the hearing when —
24 (a) such oral evidence is about to be given; or
25 (b) such an examination or cross-examination is about to be
26 conducted; or
27 (c) such a submission is about to be made,
28 the Tribunal must request the person to leave the hearing while
29 the evidence is given, the examination or cross-examination is
30 conducted or the submission is made.
- 31 (4) If the person refuses to comply with the Tribunal's request, the
32 Tribunal must make an order excluding the person from the
33 hearing while the evidence is given, the examination or
34 cross-examination is conducted or the submission is made.

1 **439. Power to summon persons to attend and produce documents**

2 The Tribunal may, by issuing a summons signed on behalf of
3 the Tribunal by a member or the registrar and serving the
4 summons on the person to whom it is addressed, require the
5 person to attend before the Tribunal at the time and place
6 specified in the summons —

- 7 (a) to give evidence in a proceeding; or
8 (b) to produce a document relevant to a proceeding that is in
9 the person's custody or control and is specified in the
10 summons; or
11 (c) to do both of those things.

12 **440. Self-incrimination**

13 (1) A person is not excused from complying with a direction given
14 to the person under section 437(4), or a summons served on the
15 person under section 439, on the ground that the answer to a
16 question or the production of a document might tend to
17 incriminate the person or expose the person to a criminal
18 penalty.

19 (2) However, any answer given or document produced by a person
20 in compliance with a direction given to the person under
21 section 437(4), or a summons served on the person under
22 section 439, is not admissible in evidence in any criminal
23 proceedings against the person other than proceedings for an
24 offence under section 442(1)(d).

25 **441. Powers in relation to documents produced**

26 In relation to a document produced to the Tribunal in a
27 proceeding, the Tribunal may do any of these things —

- 28 (a) inspect the document;
29 (b) retain the document for a reasonable period;
30 (c) take a copy of the whole or any part of the document.

31 **442. Offences relating to answering questions, producing**
32 **documents and providing other information**

33 (1) A person commits an offence if the person —
34 (a) without reasonable excuse, proof of which is on the
35 person, does not swear an oath or make an affirmation
36 when required under section 437(3); or

- 1 (b) without reasonable excuse, proof of which is on the
2 person, does not answer a question or produce a
3 document when directed to do so under section 437(4);
4 or
5 (c) without reasonable excuse, proof of which is on the
6 person, does not attend before the Tribunal as required
7 by a summons served on the person under section 439;
8 or
9 (d) gives an answer to the Tribunal in a proceeding that the
10 person knows is false or misleading in a material
11 particular; or
12 (e) produces a document or provides any other information
13 to the Tribunal in a proceeding that the person knows is
14 false or misleading in a material particular —
15 (i) without indicating that the document or other
16 information is false or misleading and, to the
17 extent the person can, how the document or other
18 information is false or misleading; or
19 (ii) if the person has or can reasonably obtain the
20 correct information, without providing the
21 correct information.

22 Penalty: a fine of \$5 000.

- 23 (2) It is enough for a prosecution notice lodged against a person for
24 an offence under subsection (1)(d) or (e) to state that the
25 answer, document or information was false or misleading to the
26 person's knowledge without stating which.

27 **443. Evidence and findings in other proceedings**

28 In a proceeding, the Tribunal —

- 29 (a) may receive in evidence the transcript of evidence in a
30 proceeding before a court or other person or body acting
31 judicially and may draw any conclusion of fact from that
32 evidence that the Tribunal considers appropriate; and
33 (b) may adopt a finding, decision or judgment of a court or
34 other person or body acting judicially that is relevant to
35 the proceeding.

36 **444. Contempt of Tribunal**

37 A person commits an offence if the person —

- 38 (a) wilfully insults the Tribunal, or a member of the
39 Tribunal, constituted for a proceeding; or

- 1 (b) wilfully interrupts or obstructs the conduct of a hearing;
2 or
3 (c) wilfully creates a disturbance, or takes part in creating or
4 continuing a disturbance, in or near a place where the
5 Tribunal is sitting.
6 Penalty: a fine of \$10 000.

7 **445. Hearings to be recorded**

8 The registrar must ensure that each hearing in a proceeding is
9 recorded and the recording is kept in a form from which a
10 transcript of the hearing can be prepared if required.

11 **446. Publication of information about proceedings**

12 (1) In this section —

13 *information about a proceeding* means —

- 14 (a) an account of a proceeding or a part a proceeding; or
15 (b) any evidence in a proceeding; or
16 (c) the contents of a document, or of a part of a document,
17 produced in a proceeding; or
18 (d) any other information about a proceeding;

19 *publish* means to disseminate to the public, or to a section of the
20 public, by any means, including —

- 21 (a) in a newspaper or periodical publication; or
22 (b) by radio broadcast, television or other electronic means.

23 (2) A person must not publish information about a proceeding that
24 identifies —

- 25 (a) a party; or
26 (b) a person who is related to or associated with a party; or
27 (c) a witness in the proceeding; or
28 (d) a person who is or is alleged to be concerned in any
29 other way in a matter to which the proceeding relates.

30 (3) A person must not publish a list of proceedings identified by
31 reference to the names of the parties to those proceedings
32 except —

- 33 (a) by displaying in the Tribunal's premises a notice listing
34 the proceedings; or
35 (b) as permitted by rules made under section 450.

- 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) For but without limiting subsection (2), information about a
13 proceeding identifies a person if —
- 14 (a) it contains any of these particulars —
- 15 (i) the name, title, pseudonym or alias of the person;
- 16 (ii) the address of any premises where the person
17 resides or works or the locality where those
18 premises are situated;
- 19 (iii) the physical description or the style of dress of
20 the person;
- 21 (iv) any employment or occupation engaged in, or
22 any profession practised or calling pursued by,
23 the person or any official or honorary position
24 held by the person;
- 25 (v) the relationship of the person to identified
26 relatives of the person or the association of the
27 person with identified friends or identified
28 business, official or professional acquaintances
29 of the person;
- 30 (vi) the recreational interests, or the political,
31 philosophical or religious beliefs or interests, of
32 the person;
- 33 (vii) any real or personal property in which the person
34 has an interest or with which the person is
35 otherwise associated,
- 36 being particulars that are sufficient to identify the person
37 to a member of the public, or to a member of the section
38 of the public to which the information is disseminated,
39 as the case requires; or

- 1 (b) it is accompanied by a picture of the person; or
- 2 (c) it is spoken in whole or in part by the person and the
- 3 person's voice is sufficient to identify the person to a
- 4 member of the public, or to a member of the section of
- 5 the public to which the account is disseminated, as the
- 6 case requires.
- 7 (7) Subsections (2) and (3) do not apply to any of these
- 8 publications —
- 9 (a) the communication of a transcript of evidence or other
- 10 document to a person concerned in a proceeding in a
- 11 court or tribunal for use in connection with the
- 12 proceeding;
- 13 (b) the communication of a transcript of evidence or other
- 14 document to —
- 15 (i) a body that is responsible for disciplining
- 16 members of a profession or occupation; or
- 17 (ii) a person concerned in a proceeding before such a
- 18 body;
- 19 (c) the communication of a transcript of evidence or other
- 20 document to a body that grants assistance by way of
- 21 legal aid for the purpose of making a decision as to
- 22 whether such assistance should be granted or continued
- 23 in a particular case;
- 24 (d) the publication of a notice or report at the direction of
- 25 the Tribunal, the State Administrative Tribunal or a
- 26 court;
- 27 (e) a publication genuinely intended primarily for the use of
- 28 members of a profession or occupation, being —
- 29 (i) a separate volume of, or a volume in a part of a
- 30 series of, law reports; or
- 31 (ii) a decision of a court or tribunal published from
- 32 information stored electronically or otherwise; or
- 33 (iii) any other publication of a technical character;
- 34 (f) the publication or other dissemination —
- 35 (i) to a person who is a member of a profession or
- 36 occupation in connection with the practice by the
- 37 person of that profession or occupation or in the
- 38 course of any form of professional or
- 39 occupational training in which the person is
- 40 involved; or

- 1 (ii) to a person who is a student in connection with
2 the person's studies.
- 3 (8) Subsection (7)(e) does not authorise the publication of the name
4 of a party to a proceeding in a law report or other publication
5 referred to in that provision.
- 6 (9) Without limiting subsections (2) or (3), the Tribunal may make
7 an order in relation to a particular proceeding that information
8 about the proceeding that is specified in the order —
- 9 (a) must not be published; or
10 (b) must not be published except in the manner specified, or
11 to a person specified, in the order.
- 12 (10) A person who contravenes an order made under subsection (9)
13 commits an offence.
14 Penalty for an offence under subsection (10): a fine of \$5 000.

Subdivision 5 — Decisions in proceedings

447. Reasons for decision

- 17 (1) A party to a proceeding may request the Tribunal to provide the
18 party with reasons for the decision.
- 19 (2) The request must be made —
- 20 (a) on or within 28 days after the day on which the Tribunal
21 makes a decision in the proceeding; or
- 22 (b) by the end of any extension of that period under
23 section 448(2).
- 24 (3) The Tribunal must comply with the request.
- 25 (4) Any reasons provided by the Tribunal in compliance with the
26 request must be in a language, form of communication and
27 terms that the party is likely to understand using any means of
28 communication that is practicable and using an interpreter if
29 necessary and practicable.

448. Extension of time to request reasons

- 31 (1) A party to a proceeding may, whether before or after the expiry
32 of the 28-day period referred to in section 447(2)(a), request the
33 President of the Tribunal to extend the period within which the
34 party may request the Tribunal to provide the party with reasons
35 for a decision in the proceeding.

- 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 in a
5 proceeding by telephone, video link or other
6 means of 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 **452. Publication and tabling**

- 16 (1) Rules made under section 450 —
 - 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 next following the day on
23 which the 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 has been given
26 at any time on or within 6 sitting days after the day on which the
27 rule was laid before it, disallowing the rule or the part of the
28 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.
- 32 (4) Notice of the passage of disallowing a rule or any part of a rule
33 must be published in the *Gazette* as soon as practicable.

34 **Division 14 — Tribunal members**

35 **453. President of Tribunal**

36 The Governor may appoint a person recommended by the
37 Minister to be the President of the Mental Health Tribunal.

1 **454. Other members**

2 (1) The Governor may appoint 2 or more persons recommended by
3 the Minister to be members of the Mental Health Tribunal in
4 addition to the President of the Tribunal.

5 (2) Any number of persons that the Minister considers appropriate
6 may be appointed under subsection (1), provided that the
7 membership of the Tribunal (including the President of the
8 Tribunal) includes —

9 (a) at least one legal practitioner; and

10 (b) at least one psychiatrist; and

11 (c) at least one person who is neither a legal practitioner nor
12 a medical practitioner.

13 **455. Tenure of office**

14 (1) The President of the Tribunal may be appointed on a full-time
15 or part-time basis.

16 (2) A member appointed under section 454(1) may be appointed on
17 a full-time, part-time or sessional basis.

18 (3) A member —

19 (a) holds office for the period (not exceeding 5 years)
20 specified in the instrument of appointment; and

21 (b) is eligible for reappointment.

22 **456. Remuneration**

23 (1) The President of the Tribunal is entitled to the remuneration
24 determined by the Salaries and Allowances Tribunal under the
25 *Salaries and Allowances Act 1975*.

26 (2) A member appointed under section 454(1) is entitled to the
27 remuneration determined by the Minister on the
28 recommendation of the Public Sector Commissioner.

29 **457. Resignation**

30 (1) A member may resign from office by writing signed and given
31 to the Minister.

32 (2) The resignation takes effect on the later of the following —

33 (a) receipt by the Minister;

34 (b) the day specified in the resignation.

458. Removal from office

The Governor may remove a person from the office of member on any of these grounds —

- (a) mental or physical incapacity;
- (b) incompetence;
- (c) neglect of duty;
- (d) misconduct;
- (e) ceasing to have a particular status if the person was appointed to that office on the basis of having that status;
- (f) attaining a particular status if the person was appointed to that office on the basis of not having that status.

459. Acting members

(1) The Minister may appoint a person to act in —

- (a) the office of President of the Mental Health Tribunal referred to in section 453; or
- (b) the office of member of the Mental Health Tribunal referred to in section 454(1).

(2) A person may be appointed under subsection (1) to act in an office —

- (a) during a vacancy in the office; or
- (b) during a period, or during all periods, when the person holding the office or a person acting in the office under an appointment under subsection (1) is on leave or is otherwise unable to perform the functions of the office,

if no other person is appointed under subsection (1) to so act.

(3) An appointment under subsection (1) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(4) The Minister may —

- (a) determine the terms and conditions of an appointment under subsection (1), including as to remuneration; and
- (b) terminate an appointment under subsection (1) at any 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 **460. Delegation by President of Tribunal**

- 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 (except
15 section 362) that is of an administrative nature.
- 16 (2) The President of the Tribunal may delegate a power or duty
17 under section 362 to a member who is a legal practitioner.
- 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.

31 **Division 15 — Registrar and other staff**

32 **461. Registrar**

33 A registrar of the Mental Health Tribunal must be appointed
34 under the *Public Sector Management Act 1994* Part 3.

1 **462. Functions of registrar**

2 In addition to the functions conferred on, or delegated to, the
3 registrar under this Act, the registrar has these functions —

- 4 (a) keeping, in accordance with the regulations, particulars
5 of each involuntary patient;
- 6 (b) ensuring that a proceeding for a review under Division 3
7 of an involuntary treatment order is brought before the
8 Tribunal within the period specified under that Division
9 or, if no period is specified, as soon as practicable;
- 10 (c) ensuring that any other proceeding is brought before the
11 Tribunal as soon as practicable;
- 12 (d) receiving any document that must be given under this
13 Act to the Tribunal and arranging for it to be dealt with
14 as soon as practicable;
- 15 (e) ensuring that any document that must be given under
16 this Act by the Tribunal is given in accordance with this
17 Act and as soon as practicable.

18 **463. President of Tribunal may give registrar directions**

- 19 (1) The President of the Tribunal may give to the registrar
20 directions with respect to the performance of the registrar's
21 functions under this Act, either generally or in relation to a
22 particular matter.
- 23 (2) The registrar must comply with a direction given under
24 subsection (1).

25 **464. Registry staff**

26 Public service officers must be appointed under, or made
27 available under, the *Public Sector Management Act 1994* Part 3
28 to assist the registrar in performing his or her functions.

29 **465. Delegation by registrar**

- 30 (1) The registrar may delegate to a registry officer any power or
31 duty of the registrar under another provision of this Act.
- 32 (2) The delegation must be in writing signed by the registrar.
- 33 (3) A person to whom a power or duty is delegated cannot delegate
34 that power or duty.
- 35 (4) A person exercising or performing a power or duty that has been
36 delegated to the person under this section is taken to do so in

1 accordance with the terms of the delegation unless the contrary
2 is shown.

3 (5) This section does not limit the ability of the registrar to perform
4 a function through an officer or agent.

5 **Division 16 — Annual reports**

6 **466. Annual report: preparation**

7 Within 3 months after 30 June in each year, the President of the
8 Tribunal must prepare and give to the Minister a report as to the
9 general activities of the Tribunal during the financial year
10 ending on that day.

11 **467. Annual report: tabling**

12 (1) The Minister must cause a copy of a report referred to in
13 section 466 to be laid before each House of Parliament, or dealt
14 with under subsection (2), on or within 21 days after the day on
15 which the Minister receives the report.

16 (2) The Minister must transmit a copy of the report to the Clerk of a
17 House of Parliament if —

18 (a) at the beginning of the 21-day period referred to in
19 subsection (1), the House is not sitting; and

20 (b) in the Minister's opinion, the House will not sit during
21 that period.

22 (3) A copy of a report transmitted under subsection (2) to the Clerk
23 of a House is taken to have been laid before that House.

24 (4) The laying of a copy of a report that is taken to have occurred
25 under subsection (3) must be recorded in the Minutes, or Votes
26 and Proceedings, of the House on the first sitting day of the
27 House after the receipt of the copy by the Clerk.

28 **Division 17 — Miscellaneous matters**

29 **468. Seal**

30 The Tribunal must have a seal.

31 **469. Judicial notice of certain matters**

32 (1) A court or other person or body acting judicially must take
33 judicial notice of the following —

34 (a) the signature of a person who is or was a member;

- 1 (b) the signature of a person who is or was the registrar;
2 (c) the fact that a person referred to in paragraph (a) or (b)
3 is or was a member or the registrar;
4 (d) a seal of the Tribunal affixed to a document.
- 5 (2) A court or other person acting judicially must presume that the
6 seal of the Tribunal affixed to a document was properly affixed
7 unless the contrary is proved.

Part 21 — Review by State Administrative Tribunal

Division 1 — Preliminary matters

470. Terms used

In this Part —

decision, of the Mental Health Tribunal, includes an order, direction or declaration made by the Mental Health Tribunal;

person concerned, in an application or proceeding under this Part, means the patient or other person whom the application or proceeding concerns.

Division 2 — Jurisdiction

471. Review of decisions of Mental Health Tribunal

(1) A person in respect of whom the Mental Health Tribunal makes a decision who is dissatisfied with the decision may apply to the State Administrative Tribunal for a review of the decision.

(2) Any other person who, in the State Administrative Tribunal's opinion, has a sufficient interest in the matter may, with the leave of the State Administrative Tribunal, apply to the State Administrative Tribunal for a review of a decision of the Mental Health Tribunal.

472. Determination of questions of law before Mental Health Tribunal

(1) In this section —

question of law does not include a question of mixed law and fact.

(2) The Mental Health Tribunal may apply to the State Administrative Tribunal for a determination on a question of law that arises in a proceeding before the Mental Health Tribunal.

Division 3 — Constitution

473. Constitution generally

For the purpose of a proceeding under this Part, except as provided by sections 474 and 475, the State Administrative Tribunal must be constituted by 3 members as follows —

(a) a judicial member, a senior member or a legally qualified member;

- 1 (b) if the person concerned in the proceeding has reached
2 18 years of age, a member who is a psychiatrist;
3 (c) if the person concerned in the proceeding is a child, a
4 member who is a child and adolescent psychiatrist;
5 (d) a member who is not —
6 (i) a legally qualified member; or
7 (ii) a medical practitioner; or
8 (iii) a mental health practitioner who is a staff
9 member of a mental health service.

10 **474. Constitution for psychosurgical matters**

11 For the purpose of a proceeding under section 471 on an
12 application for review of a decision under Part 20 Division 7,
13 the State Administrative Tribunal must be constituted by these
14 5 members —

- 15 (a) a judicial member, a senior member or a legally
16 qualified member;
17 (b) a neurosurgeon who was appointed as a member after
18 consultation by the Minister responsible for
19 administering the *State Administrative Tribunal*
20 *Act 2004* with the Health Minister held after
21 consultation by the Health Minister with the Royal
22 Australasian College of Surgeons;
23 (c) if the patient has reached 18 years of age — a member
24 who is a psychiatrist;
25 (d) if the patient is a child — a child and adolescent
26 psychiatrist;
27 (e) 2 members, neither of whom is —
28 (i) a legally qualified member; or
29 (ii) a medical practitioner; or
30 (iii) a mental health practitioner who is a staff
31 member of a mental health service.

32 **475. Constitution for determining questions of law**

33 For the purpose of a proceeding under section 472 to determine
34 a question of law, the State Administrative Tribunal must be
35 constituted by a judicial member.

1 **Division 4 — Procedural matters**

2 **476. No fees payable**

3 No fees are payable in relation to —

- 4 (a) any application made under this Part; or
5 (b) any proceeding of the State Administrative Tribunal
6 under this Part.

7 **477. Appearance and representation**

8 (1) At a hearing in a proceeding under this Part, a party to the
9 proceeding —

- 10 (a) may appear before the State Administrative Tribunal in
11 person or be represented by another person; or
12 (b) must be represented by another person if the State
13 Administrative Tribunal makes an order under
14 subsection (2) in respect of the party.

15 (2) The State Administrative Tribunal may make an order that the
16 party must be represented at the hearing if, in the State
17 Administrative Tribunal's opinion, it is not in the best interests
18 of the party for the party to appear in person at the hearing.

19 (3) The State Administrative Tribunal may make arrangements for
20 a party to a proceeding under this Part to be represented at a
21 hearing in the proceeding if the party wants the State
22 Administrative Tribunal to make such an arrangement on the
23 party's behalf.

24 (4) The fact that a person has a mental illness, or is being provided
25 with treatment for a mental illness, is presumed not to be an
26 impediment to the representation of the person by a legal
27 practitioner before the State Administrative Tribunal.

28 (5) Despite the *State Administrative Tribunal Act 2004*
29 section 39(1), a party to a proceeding under this Part may be
30 represented by a person who is not a legal practitioner or a
31 person referred to in section 39(1)(a) to (f) of that Act.

32 Note for section 477:

33 For the purpose of deciding under section 477(2) what is or is not in the best
34 interests of a party to a proceeding, Part 2 Division 3 applies.

478. Closed hearings

- (1) A hearing in a proceeding under this Part is not open to the public unless the State Administrative Tribunal orders that the hearing or a part of the hearing is open to the public.
- (2) The State Administrative Tribunal may make an order —
- (a) permitting a specified person to be present at; or
 - (b) excluding a specified person (including a witness) from,
- a hearing in a proceeding under this Part or a part of a hearing in a proceeding under this Part.

479. Publication of information about proceedings

- (1) In this section —

information about a proceeding means —

- (a) an account of a proceeding, or a part of a proceeding, under this Part; or
- (b) any evidence in a proceeding under this Part; or
- (c) the contents of a document, or of a part of a document, produced in a proceeding under this Part; or
- (d) any other information about a proceeding under this Part;

publish means to disseminate to the public, or to a section of the public, by any means, including —

- (a) in a newspaper or periodical publication; or
- (b) by radio broadcast, television or other electronic means.

- (2) A person must not publish information about a proceeding that identifies —

- (a) a party to the proceeding; or
- (b) a person who is related to or associated with a party to the proceeding; or
- (c) a witness in the proceeding; or
- (d) a person who is or is alleged to be concerned in any other way in a matter to which the proceeding relates.

- (3) A person must not publish a list of proceedings under this Part identified by reference to the names of the parties to those proceedings except —

- (a) by displaying in the State Administrative Tribunal's premises a notice listing the proceedings; or

- 1 (b) as permitted by rules made under the *State*
2 *Administrative Tribunal Act 2004* section 170(1).
- 3 (4) A person who contravenes subsection (2) or (3) commits a
4 crime.
5 Penalty:
6 (a) for an individual, a fine of \$5 000 and imprisonment
7 for 12 months;
8 (b) for a body corporate, a fine of \$10 000.
9 Summary conviction penalty:
10 (a) for an individual, a fine of \$2 500;
11 (b) for a body corporate, a fine of \$5 000.
- 12 (5) A prosecution for an offence under subsection (4) cannot be
13 commenced except with the written consent of the Minister.
- 14 (6) For but without limiting subsection (2), information about a
15 proceeding identifies a person if —
16 (a) it contains any of these particulars —
17 (i) the name, title, pseudonym or alias of the person;
18 (ii) the address of any premises where the person
19 resides or works or the locality where those
20 premises are situated;
21 (iii) the physical description or the style of dress of
22 the person;
23 (iv) any employment or occupation engaged in, or
24 any profession practised or calling pursued by,
25 the person or any official or honorary position
26 held by the person;
27 (v) the relationship of the person to identified
28 relatives of the person or the association of the
29 person with identified friends or identified
30 business, official or professional acquaintances
31 of the person;
32 (vi) the recreational interests, or the political,
33 philosophical or religious beliefs or interests, of
34 the person;
35 (vii) any real or personal property in which the person
36 has an interest or with which the person is
37 otherwise associated,
38 being particulars that are sufficient to identify the person
39 to a member of the public, or to a member of the section

- 1 of the public to which the information is disseminated,
2 as the case requires; or
- 3 (b) it is accompanied by a picture of the person; or
- 4 (c) it is spoken in whole or in part by the person and the
5 person's voice is sufficient to identify the person to a
6 member of the public, or to a member of the section of
7 the public to which the account is disseminated, as the
8 case requires.
- 9 (7) Subsections (2) and (3) do not apply to any of these
10 publications —
- 11 (a) the communication of a transcript of evidence or other
12 document to a person concerned in a proceeding in a
13 court or tribunal for use in connection with the
14 proceeding;
- 15 (b) the communication of a transcript of evidence or other
16 document to —
- 17 (i) a body that is responsible for disciplining
18 members of a profession or occupation; or
- 19 (ii) a person concerned in a proceeding before such a
20 body;
- 21 (c) the communication of a transcript of evidence or other
22 document to a body that grants assistance by way of
23 legal aid for the purpose of making a decision as to
24 whether such assistance should be granted or continued
25 in a particular case;
- 26 (d) the publication of a notice or report at the direction of
27 the State Administrative Tribunal or a court;
- 28 (e) a publication genuinely intended primarily for the use of
29 members of a profession or occupation, being —
- 30 (i) a separate volume of, or a volume in a part of a
31 series of, law reports; or
- 32 (ii) a decision of a court or tribunal published from
33 information stored electronically or otherwise; or
- 34 (iii) any other publication of a technical character;
- 35 (f) the publication or other dissemination —
- 36 (i) to a person who is a member of a profession or
37 occupation in connection with the practice by the
38 person of that profession or occupation or in the
39 course of any form of professional or

Mental Health Bill 2012

Part 21 Review by State Administrative Tribunal

Division 4 Procedural matters

s. 479

- 1 occupational training in which the person is
2 involved; or
- 3 (ii) to a person who is a student in connection with
4 the person's studies.
- 5 (8) Subsection (7)(e) does not authorise the publication of the name
6 of a party to a proceeding in a law report or other publication
7 referred to in that provision.
- 8 (9) Without limiting subsection (2) or (3), the State Administrative
9 Tribunal may make an order in relation to a particular
10 proceeding that information about the proceeding that is
11 specified in the order —
- 12 (a) must not be published; or
13 (b) must not be published except in the manner specified, or
14 to a person specified, in the order.
- 15 (10) A person who contravenes an order made under subsection (9)
16 commits an offence.
- 17 Penalty for an offence under subsection (10): a fine of \$5 000.

Part 22 — Administration

Division 1 — Preliminary matters

480. 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

481. Appointment

(1) The Governor may appoint a psychiatrist recommended by the Minister to be the Chief Psychiatrist.

(2) 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.

482. Remuneration

The Chief Psychiatrist is entitled to the remuneration determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975*.

483. Resignation

(1) The Chief Psychiatrist may resign from office by writing signed and given to the Minister.

(2) The resignation takes effect on the later of the following —

- (a) receipt by the Minister;
- (b) the day specified in the resignation.

484. Removal from office

The Governor may remove a person from the office of Chief Psychiatrist on any of these grounds —

- (a) mental or physical incapacity;
- (b) incompetence;
- (c) neglect of duty;
- (d) misconduct.

485. Acting Chief Psychiatrist

- (1) The Minister may appoint a psychiatrist to act in the office of the Chief Psychiatrist referred to in section 481(1) —
- (a) during a vacancy in the office; or
 - (b) during a period, or during all periods, when the person holding the office or a person acting in the office under an appointment under this subsection is on leave or is otherwise unable to perform the functions of the office,
- if no other person is appointed under this subsection to so act.
- (2) An appointment under subsection (1) may be expressed to have effect only in the circumstances specified in the instrument of appointment.
- (3) The Minister may —
- (a) determine the terms and conditions of an appointment under subsection (1), including as to remuneration; and
 - (b) terminate an appointment under subsection (1) at any time.
- (4) The validity of anything done by or in relation to a person purporting to act under an appointment under subsection (1) is not to be called into question on any of these grounds —
- (a) the occasion for the appointment had not arisen;
 - (b) there is a defect or irregularity in the appointment;
 - (c) the appointment had ceased to have effect;
 - (d) the occasion for the person to act had not arisen or had ceased.
- (5) A person cannot act under an appointment under subsection (1) for a continuous period exceeding 12 months.

Subdivision 2 — Functions and powers generally

486. Responsibility for treatment and care

- (1) The Chief Psychiatrist is responsible for overseeing the treatment and care of these people —
- (a) all voluntary patients who are being provided with treatment or care by a mental health service;
 - (b) all involuntary patients;

- 1 (c) all mentally impaired accused who are required under
2 the CL(MIA) Act to be detained at an authorised
3 hospital;
4 (d) all persons who have been referred under section 25(2)
5 or (3)(a) or 35(2) for an examination to be conducted by
6 a psychiatrist at an authorised hospital or other place;
7 (e) all persons under an order made under section 53(1)(c)
8 or 59(1)(c) to enable an examination to be conducted by
9 a psychiatrist at an authorised hospital.
- 10 (2) The Chief Psychiatrist must discharge that responsibility by —
11 (a) publishing under section 513(2) standards for the
12 treatment and care to be provided by mental health
13 services to the persons referred to in subsection (1); and
14 (b) overseeing compliance with those standards.

15 **487. Directions by CEO**

- 16 (1) The CEO may, after consultation with the Chief Psychiatrist,
17 issue written directions about any of these matters —
18 (a) the general policy to be followed by the Chief
19 Psychiatrist in performing functions under this Act;
20 (b) the administrative policies and procedures to be
21 followed by the Chief Psychiatrist in managing the
22 office of the Chief Psychiatrist.
- 23 (2) The Chief Psychiatrist may request the CEO to issue a direction
24 under subsection (1)(a) or (b).
- 25 (3) A direction cannot be issued under this section in respect of —
26 (a) a particular person referred to in section 486(1); or
27 (b) a particular medical practitioner or mental health
28 practitioner; or
29 (c) a particular mental health service; or
30 (d) any other particular person or body.
- 31 (4) The Chief Psychiatrist must comply with a direction issued
32 under this section.
- 33 (5) The power to issue a direction under this section includes the
34 power to amend, replace or revoke the direction and that power
35 is exercisable in the same manner, and is subject to the same
36 conditions, as the power to issue the direction.

1 (6) The Minister must cause the text of a direction issued under this
2 section to be laid before each House of Parliament on or within
3 14 sitting days after the day on which the direction is issued.

4 (7) The text of a direction issued under this section must be
5 included in the Chief Psychiatrist's annual report prepared
6 under section 502(1).

7 **488. Powers generally**

8 In addition to the specific powers conferred on the Chief
9 Psychiatrist by this Act or another written law, the Chief
10 Psychiatrist may do anything necessary or convenient for the
11 performance of the functions conferred on the Chief
12 Psychiatrist.

13 **Subdivision 3 — Specific powers relating to treatment and care**

14 **489. Review of treatment**

- 15 (1) The Chief Psychiatrist —
- 16 (a) may review any decision of a psychiatrist about the
17 provision of treatment to —
- 18 (i) an involuntary patient; or
- 19 (ii) a patient who is a mentally impaired accused
20 who is required under the CL(MIA) Act to be
21 detained at an authorised hospital,
- 22 but only after giving the psychiatrist written notice of
23 the proposed review; and
- 24 (b) on the review, may decide to —
- 25 (i) affirm the decision; or
- 26 (ii) vary the decision; or
- 27 (iii) revoke the decision; or
- 28 (iv) substitute another decision.
- 29 (2) The Chief Psychiatrist —
- 30 (a) must advise the psychiatrist in writing of —
- 31 (i) the decision under subsection (1)(b); and
- 32 (ii) the reasons for the decision;
- 33 and
- 34 (b) may give to the psychiatrist written directions about
35 implementing that decision.

1 (3) The psychiatrist must comply with any directions given under
2 subsection (2)(b).

3 Penalty: a fine of \$10 000.

4 (4) This section does not affect the operation of Part 12 Division 2
5 or 3 in relation to the provision of treatment to —

6 (a) an involuntary patient; or

7 (b) a patient who is a mentally impaired accused who is
8 required under the CL(MIA) Act to be detained at an
9 authorised hospital.

10 **490. Visits to mental health services**

11 (1) The Chief Psychiatrist may visit —

12 (a) an authorised hospital whenever the Chief Psychiatrist
13 considers it appropriate to do so; and

14 (b) a mental health service that is not an authorised hospital
15 whenever the Chief Psychiatrist reasonably suspects that
16 proper standards of treatment and care have not been, or
17 are not being, maintained by the mental health service.

18 (2) The Chief Psychiatrist may visit a mental health service under
19 subsection (1) at any time without notice.

20 (3) While visiting a mental health service under subsection (1), the
21 Chief Psychiatrist may do any of these things —

22 (a) inspect any part of the mental health service;

23 (b) interview any person referred to in section 486(1) who is
24 being provided with treatment or care by the mental
25 health service;

26 (c) require a staff member of the mental health service to do
27 any of these things —

28 (i) answer questions or provide information about
29 the provision of treatment or care by the mental
30 health service to any person referred to in
31 section 486(1);

32 (ii) produce any medical records or other documents
33 relating to the treatment or care that has been, or
34 is being, provided by the mental health service to
35 any person referred to in section 486(1);

36 (iii) give reasonable assistance to the Chief
37 Psychiatrist;

- 1 (d) inspect, or take a copy of the whole or any part of any
2 medical records or other document produced under
3 paragraph (c)(ii).

4 **491. Interfering with visits to mental health services: offence**

5 (1) A person commits an offence if the person —

6 (a) without reasonable excuse, proof of which is on the
7 person, does not answer a question or provide
8 information when required under section 490(3)(c)(i); or

9 (b) in purporting to comply with a requirement under
10 section 490(3)(c)(i), gives an answer or provides
11 information that the person knows is false or misleading
12 in a material particular; or

13 (c) in purporting to comply with a requirement under
14 section 490(3)(c)(ii), makes available a document that
15 the person knows is false or misleading in a material
16 particular —

17 (i) without indicating that the document is false or
18 misleading and, to the extent the person can, how
19 the document is false or misleading; and

20 (ii) if the person has or can reasonably obtain the
21 correct information, without providing the
22 correct information;

23 or

24 (d) without reasonable excuse, proof of which is on the
25 person, does not give reasonable assistance when
26 required under section 490(3)(c)(iii); or

27 (e) without reasonable excuse, proof of which is on the
28 person, obstructs or hinders —

29 (i) the Chief Psychiatrist exercising a power under
30 section 490; or

31 (ii) a person assisting the Chief Psychiatrist under
32 section 490(3)(c)(iii).

33 Penalty: a fine of \$6 000.

34 (2) It is enough for a prosecution notice lodged against a person for
35 an offence under subsection (1)(b) or (c) to state that the
36 answer, information or document was false or misleading to the
37 person's knowledge without stating which.

492. Directions to mental health services to disclose information

(1) In this section —

relevant information means information that, in the Chief Psychiatrist's opinion, is or is likely to be relevant to the treatment or care that has been, or is being, provided to a person or class of persons specified in section 486(1).

(2) The Chief Psychiatrist may issue a written direction to the person in charge of a mental health service that holds relevant information requiring the person in charge to disclose the information to the Chief Psychiatrist.

(3) The person in charge of a mental health service to whom a direction is issued under subsection (2) must comply with the direction.

Penalty for an offence under subsection (3): a fine of \$5 000.

Subdivision 4 — Notifiable incidents

493. Application of this Subdivision

This Subdivision applies to —

- (a) a person referred to in section 486(1); or
- (b) a person who is, for the purposes of the *Hospitals and Health Services Act 1927* Part IIIB, a resident of a private psychiatric hostel.

494. Term used: notifiable incident

In this Subdivision —

notifiable incident, in respect of a person referred to in section 493(a) or (b), means any of these events —

- (a) the death of the person, wherever it occurs;
- (b) an error in any medication prescribed for, or administered or supplied to, the person that has had, or is likely to have, an adverse effect on the person;
- (c) any other incident in connection with the provision of treatment or care to the person that has had, or is likely to have, an adverse effect on the person;
- (d) a reportable incident (as defined in section 241(1)) in relation to the person;
- (e) any other event that the Chief Psychiatrist declares, by notice published in the *Gazette*, to be a notifiable incident for the purposes of this definition.

495. Person in charge of mental health service must report notifiable incidents

(1) This section applies if the person in charge of a mental health service becomes aware of the occurrence of a notifiable incident in respect of a person referred to in section 493(a) or (b) who is being provided with treatment or care by the mental health service.

(2) The person in charge must, as soon as practicable, report the occurrence to the Chief Psychiatrist in accordance with subsection (3).

Penalty: a fine of \$6 000.

(3) The report must be in the approved form and must include these things in relation to the notifiable incident —

- (a) the date and time when the incident occurred;
- (b) the location where the incident occurred;
- (c) the name, and status under section 486(1) or 493(b), of the person in relation to whom the incident occurred;
- (d) the names of any staff members of the mental health service who were involved in the incident;
- (e) the names of any other people who were involved in the incident;
- (f) the names of any staff members of the mental health service who witnessed the incident;
- (g) the names of any other people who witnessed the incident;
- (h) a description of the incident and the circumstances in which it occurred;
- (i) any other information about the incident that the person in charge considers relevant to include.

496. Action Chief Psychiatrist may take in relation to notifiable incident

(1) On receipt of a report under section 495 in relation to a notifiable incident, the Chief Psychiatrist may do one of the following —

- (a) investigate the incident;
- (b) refer the incident to all or any of the following —
 - (i) the CEO;
 - (ii) the CEO of the Health Department;

- 1 (iii) a registration board;
- 2 (c) take no action in relation to the incident.
- 3 (2) Despite having decided to investigate a notifiable incident under
- 4 subsection (1)(a), the Chief Psychiatrist may decide at any time
- 5 during the investigation to instead refer the incident to a person
- 6 or body under subsection (1)(b).

7 **497. Chief Psychiatrist must advise person in charge of decision**

8 The Chief Psychiatrist must advise the person in charge of the

9 mental health service in connection with which a notifiable

10 incident was reported under section 495(2) in writing of any

11 decision that the Chief Psychiatrist makes under section 496 in

12 respect of the incident.

13 **498. Powers of Chief Psychiatrist for investigation under**

14 **s. 496(1)(a)**

- 15 (1) For the purpose of conducting an investigation under
- 16 section 496(1)(a), the Chief Psychiatrist may —
- 17 (a) make any inquiries the Chief Psychiatrist considers
- 18 appropriate; and
- 19 (b) exercise any of the powers that the Chief Psychiatrist
- 20 has under sections 490 and 492.
- 21 (2) For the purpose of subsection (1)(b), sections 490, 491 and 492
- 22 apply with the necessary changes.

23 **499. Chief Psychiatrist must advise person in charge of outcome**

24 **of investigation**

- 25 On completing the investigation of a notifiable incident under
- 26 section 496(1)(a), the Chief Psychiatrist —
- 27 (a) must give the person in charge of the mental health
- 28 service in connection with which the incident was
- 29 reported under section 495(2) a written report about the
- 30 outcome of the investigation; and
- 31 (b) may include in the report recommendations about that
- 32 outcome.

33 **Subdivision 5 — Staff and facilities**

34 **500. Chief Psychiatrist's staff**

35 Public service officers must be appointed under, or made

36 available under, the *Public Sector Management Act 1994* Part 3

1 to assist the Chief Psychiatrist in performing his or her
2 functions.

3 **501. Use of government staff and facilities**

4 (1) The Chief Psychiatrist may by arrangement with the relevant
5 employer use, either full-time or part-time, the services of any
6 officer or employee employed —

- 7 (a) in the Public Service; or
8 (b) in a State agency or instrumentality; or
9 (c) otherwise in the service of the State.

10 (2) The Chief Psychiatrist may by arrangement with —

- 11 (a) a department of the Public Service; or
12 (b) a State agency or instrumentality,

13 use any facilities of the department, agency or instrumentality.

14 (3) An arrangement under subsection (1) or (2) must be made on
15 terms agreed to by the parties.

16 **Subdivision 6 — Annual reports**

17 **502. Annual report: preparation**

18 (1) Within 3 months after 30 June in each year, the Chief
19 Psychiatrist must prepare and give to the Minister a report about
20 the performance during the financial year ending on that day of
21 the functions conferred on the Chief Psychiatrist by this Act or
22 another written law.

23 (2) The report must include statistics about these matters —

- 24 (a) emergency electroconvulsive therapy approved during
25 the year by the Chief Psychiatrist under
26 section 188(2)(b);
27 (b) electroconvulsive therapy performed during the year and
28 reported on under section 190(3);
29 (c) emergency psychiatric treatment provided during the
30 year and reported on under section 193(1)(c);
31 (d) psychosurgery performed during the year and reported
32 on under section 198(1)(a);
33 (e) seclusion imposed during the year and reported on under
34 section 213(2)(a);
35 (f) bodily restraint applied during the year and reported on
36 under section 227(2)(a);

- 1 (g) urgent non-psychiatric treatment provided during the
2 year and reported on under section 229(3)(a);
3 (h) notifiable incidents occurring during the year and
4 reported on under section 495(2) and the action taken
5 under section 496 in relation to those incidents.

6 **503. Annual report: tabling**

- 7 (1) The Minister must cause a copy of a report referred to in
8 section 502(1) to be laid before each House of Parliament, or
9 dealt with under subsection (2), on or within 21 days after the
10 day on which the Minister receives the report.
11 (2) The Minister must transmit a copy of the report to the Clerk of a
12 House of Parliament if —
13 (a) at the beginning of the 21-day period referred to in
14 subsection (1), the House is not sitting; and
15 (b) in the Minister's opinion, the House will not sit during
16 that period.
17 (3) A copy of a report transmitted under subsection (2) to the Clerk
18 of a House is taken to have been laid before that House.
19 (4) The laying of a copy of a report that is taken to have occurred
20 under subsection (3) must be recorded in the Minutes, or Votes
21 and Proceedings, of the House on the first sitting day of the
22 House after the receipt of the copy by the Clerk.

23 **Subdivision 7 — Miscellaneous matters**

24 **504. Compliance with request for information about patient or**
25 **person detained**

- 26 (1) A person may request the Chief Psychiatrist to advise the person
27 whether or not a particular individual —
28 (a) is admitted by a mental health service as an inpatient; or
29 (b) is detained at a mental health service.
30 (2) If, in the Chief Psychiatrist's opinion, the person making the
31 request has a sufficient interest in the matter, the Chief
32 Psychiatrist may provide the person with the following
33 information (as applicable) in relation to that admission or
34 detention —
35 (a) the date of the admission or detention;
36 (b) the date of the individual's discharge or release from the
37 admission or detention;

- 1 (c) if the individual died while so admitted or detained, the
2 date of death.

3 **505. Request for list of mentally impaired accused**

4 (1) The Chief Psychiatrist may request the Mentally Impaired
5 Accused Review Board in writing to give to the Chief
6 Psychiatrist a list of all mentally impaired accused who are
7 required under the CL(MIA) Act to be detained at an authorised
8 hospital.

9 (2) The Mentally Impaired Accused Review Board must comply
10 with any request made under subsection (1).

11 **506. Delegation by Chief Psychiatrist**

12 (1) The Chief Psychiatrist may delegate to another psychiatrist any
13 power or duty of the Chief Psychiatrist under another provision
14 of this Act.

15 (2) The delegation must be in writing signed by the Chief
16 Psychiatrist.

17 (3) A person to whom a power or duty is delegated under this
18 section cannot delegate that power or duty.

19 (4) A person exercising or performing a power or duty that has been
20 delegated to the person under this section is taken to do so in
21 accordance with the terms of the delegation unless the contrary
22 is shown.

23 (5) This section does not limit the ability of the Chief Psychiatrist to
24 perform a function through an officer or agent.

25 **Division 3 — Mental health practitioners and authorised**
26 **mental health practitioners**

27 **507. Mental health practitioners**

28 A mental health practitioner is —

- 29 (a) a person registered under the *Health Practitioner*
30 *Regulation National Law (Western Australia)* in the
31 psychology profession; or
32 (b) a person registered under the *Health Practitioner*
33 *Regulation National Law (Western Australia)* in the
34 nursing and midwifery profession; or

- 1 (c) a person registered under the *Health Practitioner*
- 2 *Regulation National Law (Western Australia)* in the
- 3 occupational therapy profession; or
- 4 (d) a person with a degree awarded by an Australian
- 5 university or a recognised overseas university, as those
- 6 terms are defined in the *Higher Education Act 2004*
- 7 section 3, after the completion of a course in social
- 8 work,
- 9 who has at least 3 years' experience in the management of
- 10 people who have a mental illness.

11 **508. Authorised mental health practitioners**

- 12 (1) The Chief Psychiatrist may, by order published in the *Gazette*,
- 13 designate a mental health practitioner as an authorised mental
- 14 health practitioner if satisfied that the practitioner has the
- 15 qualifications, training and experience appropriate for
- 16 performing the functions of an authorised mental health
- 17 practitioner under this Act.
- 18 (2) The order may specify any limits within which, or any
- 19 conditions subject to which, those functions may be performed
- 20 by the authorised mental health practitioner designated as such
- 21 by the order.
- 22 (3) The Chief Psychiatrist may, by order published in the *Gazette*,
- 23 amend or revoke an order published under subsection (1).
- 24 (4) The regulations may provide for matters relating to authorised
- 25 mental health practitioners, including the following —
- 26 (a) the qualifications, training and experience to which the
- 27 Chief Psychiatrist must have regard when deciding
- 28 whether to make, amend or revoke an order under this
- 29 section;
- 30 (b) the performance by authorised mental health
- 31 practitioners of their functions under this Act;
- 32 (c) any matter about which an authorised mental health
- 33 practitioner must notify the Chief Psychiatrist;
- 34 (d) the grounds on which the designation of an authorised
- 35 mental health practitioner must or may be revoked.

Division 4 — Authorised hospitals

509. Authorised hospital: meaning of

An authorised hospital is —

- (a) a public hospital, or part of a public hospital, in respect of which an order is in force under section 510; or
- (b) a private hospital the licence for which is endorsed under the *Hospitals and Health Services Act 1927* section 26DA(2).

510. Authorisation of public hospitals

(1) The Governor may, by order published in the *Gazette*, authorise a public hospital, or a part of a public hospital, recommended by the Chief Psychiatrist for —

- (a) the reception of persons under this Act; and
- (b) the admission of involuntary patients.

(2) The Governor may, by order published in the *Gazette*, amend or revoke, as recommended by the Chief Psychiatrist, an order made under subsection (1).

(3) If an authorisation of a hospital or a part of a hospital is revoked under subsection (2), every person received at and every involuntary patient admitted by the hospital or that part of the hospital must be transferred in accordance with the regulations to an authorised hospital.

Division 5 — Approved forms

511. Approval of forms by Chief Psychiatrist

(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.

(2) An approved form may be a statutory declaration.

Note for section 511(1):

The Commissioner of Police approves forms for use by police officers under Part 11 Division 2 (see section 162).

512. Publication of approved forms and related guidelines

(1) The Chief Psychiatrist —

- (a) must publish all approved forms; and

1 (b) may publish guidelines about how to complete any of
2 the approved forms.

3 (2) It is sufficient for compliance with subsection (1) if copies of
4 the forms and guidelines are published on a website maintained
5 by the Mental Health Commission.

6 **Division 6 — Guidelines and standards**

7 **513. Publication of guidelines and standards for various purposes**

8 (1) The Chief Psychiatrist must publish guidelines for each of these
9 purposes —

10 (a) making decisions about whether or not a person is in
11 need of an inpatient treatment order or a community
12 treatment order;

13 (b) making decisions under section 25(3)(a) about whether
14 or not a place that is not an authorised hospital is an
15 appropriate place to conduct an examination;

16 (c) ensuring as far as practicable the independence of
17 psychiatrists from whom further opinions referred to in
18 section 118(5) or 174(2) are obtained;

19 (d) making decisions under section 175(2) about whether or
20 not to comply with requests made under section 174 for
21 additional opinions;

22 (e) the preparation, review and revision of treatment,
23 support and discharge plans;

24 (f) ensuring compliance with this Act by mental health
25 services.

26 (2) The Chief Psychiatrist must publish standards for the treatment
27 and care to be provided by mental health services to the persons
28 specified in section 486(1).

29 (3) The Chief Psychiatrist may publish guidelines or standards for
30 such other purposes relating to the treatment and care of persons
31 who have a mental illness as the Chief Psychiatrist considers
32 appropriate.

33 **514. Application, adoption or incorporation of other documents**

34 Guidelines published under section 513 may apply, adopt or
35 incorporate (with or without changes) the whole or any part of a
36 document that is in force or existing at a particular time or from
37 time to time.

1 **515. Publication on Mental Health Commission’s website**

2 It is sufficient for compliance with section 513 if a copy of the
3 guidelines is published on a website maintained by the Mental
4 Health Commission.

5 **Division 7 — Miscellaneous matters**

6 **516. Delegation by Minister or CEO**

7 (1) The Minister may delegate to the CEO any power or duty of the
8 Minister under another provision of this Act.

9 (2) The CEO may delegate to a public service officer who is
10 employed in, or seconded to, the Mental Health Commission
11 any power or duty of the CEO under another provision of this
12 Act.

13 (3) A delegation under this section must be in writing signed by the
14 Minister or the CEO, as the case requires.

15 (4) A person to whom a power or duty is delegated under this
16 section cannot delegate that power or duty.

17 (5) A person exercising or performing a power or duty that has been
18 delegated to the person under this section is taken to do so in
19 accordance with the terms of the delegation unless the contrary
20 is shown.

21 (6) This section does not limit the ability of the Minister or the
22 CEO to perform a function through an officer or agent.

Part 23 — Interstate arrangements

Division 1 — Preliminary matters

517. Terms used

(1) In this Part —

corresponding law means a law of another State or a Territory that is declared by the regulations to be a corresponding law for the purposes of this Part;

intergovernmental agreement means —

(a) an agreement entered into under section 518(1); or

(b) an agreement in respect of which a declaration under section 518(2) is in force;

interstate community patient means a person who is under an interstate community treatment order;

interstate community treatment order means an order made under a corresponding law under which a person can be provided with treatment in the community;

interstate inpatient means a person who is under an interstate inpatient treatment order;

interstate inpatient treatment order means an order made under a corresponding law under which a person can be admitted by a hospital, and detained there, to enable the person to be provided with treatment;

interstate mental health service means —

(a) a hospital or other place in another State or a Territory where a person can be detained, and provided with treatment, under an interstate inpatient treatment order; or

(b) a place in another State or a Territory where a person can be provided with treatment under an interstate community treatment order;

State inpatient means a person who is under an inpatient treatment order.

(2) For section 521(1), a State inpatient is absent without leave from a hospital if the inpatient is absent without leave from the hospital as described in section 94(2).

(3) For section 523(1), an interstate inpatient is absent without leave from an interstate mental health service if the inpatient

1 leaves the interstate mental health service without lawful
2 authority.

3 **Division 2 — Intergovernmental agreements**

4 **518. Agreements with other States and Territories**

- 5 (1) The Minister may enter into an agreement with a Minister
6 responsible for administering a corresponding law about any
7 matter in connection with the administration of this Part or the
8 corresponding law.
- 9 (2) The Minister may, by notice published in the *Gazette*, declare
10 that an agreement entered into before the commencement of this
11 Part has effect for the purposes of this Part.
- 12 (3) The Minister may, by notice published in the *Gazette*, revoke a
13 declaration made under subsection (2).

14 **519. Agreement must be in place**

15 A person cannot perform a function under this Part in
16 connection with an interstate mental health service in, or an
17 interstate inpatient or interstate community patient in or from,
18 another State or a Territory unless there is an intergovernmental
19 agreement in relation to that State or Territory.

20 **520. Performance of functions under corresponding laws or**
21 **intergovernmental agreements**

22 A person who is authorised to perform a function under this Act
23 may perform in the State or another State or a Territory any
24 similar function conferred on the person under a corresponding
25 law of, or an intergovernmental agreement in relation to, that
26 State or Territory.

27 **Division 3 — Transfer to or from interstate mental**
28 **health service**

29 **521. Transfer from hospital to interstate mental health service**

- 30 (1) The person in charge of a hospital may, with the written
31 approval of the Chief Psychiatrist, make an order (*a transfer*
32 *order*) authorising the transfer of a State inpatient who is
33 detained at, or who is absent without leave as described in
34 section 517(2) from, the hospital to the interstate mental health
35 service specified in the order.

- 1 (2) The transfer order must be in the approved form and must —
- 2 (a) specify the State inpatient's name; and
- 3 (b) the hospital from which the State inpatient is to be
- 4 transferred; and
- 5 (c) the interstate mental health service to which State
- 6 inpatient is to be transferred; and
- 7 (d) specify the date and time when the order is made; and
- 8 (e) specify the reasons for the transfer; and
- 9 (f) specify the name and qualifications of, and be signed by,
- 10 the person in charge of the hospital.
- 11 (3) The person in charge of the hospital must, as soon as
- 12 practicable —
- 13 (a) put the order and the Chief Psychiatrist's approval on
- 14 the State inpatient's medical record; and
- 15 (b) give a copy of each of those documents to the State
- 16 inpatient; and
- 17 (c) transmit a copy of each of those documents to the person
- 18 in charge of the interstate mental health service.
- 19 (4) The making of a transfer order under subsection (1) is an event
- 20 to which Part 9 applies and the person in charge of the hospital
- 21 is the person responsible for notification of that event under that
- 22 Part.

23 **522. Transport order**

- 24 (1) The person in charge of the hospital may make a transport order
- 25 in respect of the State inpatient.
- 26 (2) The person in charge of the hospital must not make the transport
- 27 order unless satisfied that no other safe means of taking the
- 28 State inpatient to the interstate mental health service is
- 29 reasonably available.
- 30 (3) Part 10 applies to the transport order as if —
- 31 (a) the transport order were made under section 89(1); and
- 32 (b) a reference in section 89(2) to an authorised hospital
- 33 were a reference to the interstate mental health service;
- 34 and
- 35 (c) a reference in Part 10 to a police officer included a
- 36 reference to a police officer of the State or Territory in
- 37 which the interstate mental health service is located; and

- 1 (d) a reference in Part 10 to a transport officer included a
2 reference to a person who is authorised under a
3 corresponding law of, or an intergovernmental
4 agreement in relation to, that State or Territory to
5 perform functions similar to those of a transport officer.

6 **523. Transfer from interstate mental health service to hospital**

- 7 (1) The person in charge of a hospital may, with the written consent
8 of the Chief Psychiatrist, make an order (a ***transfer approval***
9 ***order***) approving the transfer of an interstate inpatient who is
10 detained at, or who is absent without leave as described in
11 section 517(3) from, an interstate mental health service to the
12 hospital.
- 13 (2) The transfer approval order must be in the approved form and
14 must —
- 15 (a) specify the interstate patient's name; and
16 (b) specify the interstate mental health service from which
17 the interstate inpatient is to be transferred; and
18 (c) specify the hospital to which the interstate inpatient is to
19 be transferred; and
20 (d) specify the date and time when the order is made; and
21 (e) specify the reasons for the approval; and
22 (f) specify the name and qualifications of, and be signed by,
23 the person in charge of the hospital.
- 24 (3) The person in charge of the hospital must, as soon as
25 practicable, transmit a copy of these things to the person in
26 charge of the interstate mental health service —
- 27 (a) a copy of the transfer approval order;
28 (b) a copy of the Chief Psychiatrist's consent.
- 29 (4) On the interstate inpatient's admission by the hospital as an
30 inpatient, the interstate inpatient treatment order is taken to be
31 an inpatient treatment order made under this Act.
- 32 (5) The person in charge of the hospital must, as soon as practicable
33 after the interstate inpatient is admitted as an inpatient —
- 34 (a) put the transfer approval order and the Chief
35 Psychiatrist's consent on the interstate inpatient's
36 medical record; and
37 (b) give a copy of each of those documents to the interstate
38 inpatient.

- 1 (6) The making of a transfer approval order under subsection (1) is
2 an event to which Part 9 applies and the person in charge of the
3 hospital is the person responsible for notification of that event
4 under that Part.

5 **524. Transport of interstate inpatient to hospital**

- 6 (1) This section applies to an interstate inpatient under a transfer
7 approval order made under section 523(1).

8 (2) A person who is authorised under a corresponding law or an
9 interstate agreement to transport the interstate inpatient from an
10 interstate mental health service to a hospital may exercise in the
11 State any of the powers the person has under the corresponding
12 law or interstate agreement for that purpose.

13 **Division 4 — Community treatment orders**

14 **525. Community treatment order: treatment interstate**

15 The terms of a community treatment order may include a
16 requirement that the involuntary community patient be provided
17 with treatment by an interstate mental health service.

18 **526. Transport order**

- 19 (1) A medical practitioner or mental health practitioner may make a
20 transport order in respect of an involuntary community patient
21 who fails to comply with the requirement referred to in
22 section 525.

23 (2) The practitioner must not make the transport order unless
24 satisfied that no other safe means of ensuring the involuntary
25 community patient attends the interstate mental health service is
26 reasonably available.

27 (3) Part 10 applies to the transport order as if —
28 (a) the transport order were made under section 125(2); and
29 (b) a reference in section 125(3) to a place were a reference
30 to an interstate mental health service;
31 (c) a reference in Part 10 to a police officer included a
32 reference to a police officer of the State or Territory in
33 which the interstate mental health service is located; and
34 (d) a reference in Part 10 to a transport officer included a
35 reference to a person who is authorised under a
36 corresponding law of, or an intergovernmental

1 agreement in relation to, that State or Territory to
2 perform functions similar to those of a transport officer.

3 **527. Interstate community treatment order: treatment in State**

4 An interstate community treatment order that includes a
5 requirement that the interstate community patient be provided
6 with treatment by a mental health service in the State is taken to
7 be a community treatment order that, despite any other
8 provision of this Act, has the same terms as and is in force for
9 the same period as the interstate community treatment order.

10 **528. Interstate community treatment order: supervision in State**

11 A person who is authorised under a corresponding law of
12 another State or a Territory to perform a function in relation to
13 an interstate community treatment order made under the
14 corresponding law may perform that function in relation to the
15 order in the State.

Part 24 — Ministerial inquiries

529. 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 —
 - (i) a person who has or may have a mental illness; or
 - (ii) a class of persons who have or may have a mental illness;
- or
- (b) the administration or enforcement of this Act.

530. Powers of investigation

The person appointed under section 529 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 any thing on the premises;
 - (ii) require a person on the premises to answer questions, or provide information, that the person appointed under section 529 considers relevant to the inquiry;
 - (iii) require a person on the premises to produce any documents that the person appointed under section 529 considers relevant to the inquiry;
 - (iv) inspect, or take a copy of the whole or any part of any document produced under subparagraph (iii);

s. 531

- 1 (v) require a person on the premises to give
2 reasonable assistance to the person appointed
3 under section 529.

4 **531. Interfering with investigation**

5 (1) A person commits an offence if the person —

- 6 (a) without reasonable excuse, proof of which is on the
7 person, does not answer a question or provide
8 information when required under section 530(b)(ii); or
9 (b) in purporting to comply with a requirement under
10 section 530(b)(ii), gives an answer or provides
11 information that the person knows is false or misleading
12 in a material particular; or
13 (c) in purporting to comply with a requirement under
14 section 530(b)(iii), makes available a document that the
15 person knows is false or misleading in a material
16 particular —
17 (i) without indicating that the document is false or
18 misleading and, to the extent the person can, how
19 the document is false or misleading; and
20 (ii) if the person has or can reasonably obtain the
21 correct information, without providing the
22 correct information;
23 or
24 (d) without reasonable excuse, proof of which is on the
25 person, does not give reasonable assistance when
26 required under section 530(b)(v); or
27 (e) without reasonable excuse, proof of which is on the
28 person, obstructs or hinders —
29 (i) a person appointed under section 529 exercising
30 a power under section 530; or
31 (ii) a person assisting such a person under
32 section 530(b)(v).

33 Penalty: a fine of \$6 000.

34 (2) It is enough for a prosecution notice lodged against a person for
35 an offence under subsection (1)(b) or (c) to state that the
36 answer, information or document was false or misleading to the
37 person's knowledge without stating which.

532. Conduct of inquiry generally

- (1) An inquiry must be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the subject matter of the inquiry permits.
- (2) In conducting an inquiry, the person appointed under section 529 to conduct the inquiry is bound by the rules of natural justice.
- (3) Subject to this Part, the practice and procedure for conducting an inquiry is as determined by the person appointed under section 529 to conduct the inquiry.

533. Evidence generally

- (1) A person appointed under section 529 to conduct an inquiry is not bound by the rules of evidence but may inform himself or herself of a matter relevant to the inquiry in any manner the person considers appropriate.
- (2) Evidence in an inquiry may be given orally or in writing.
- (3) The person appointed under section 529 to conduct an inquiry may require evidence in the inquiry to be given on oath or by affidavit.
- (4) The person appointed under section 529 to conduct an inquiry may direct a person appearing as a witness in the inquiry —
- (a) to answer a question relevant to the inquiry; or
 - (b) to produce a document relevant to the inquiry.
- (5) A person appearing as a witness in an inquiry has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

534. Power to summon persons to attend and produce documents

- The person appointed under section 529 to conduct an inquiry may, by issuing a signed summons and having the summons served on the person to whom it is addressed, require the person to attend at the time and place specified in the summons —
- (a) to give evidence in the inquiry; or
 - (b) to produce a document relevant to the inquiry that is in the person's custody or control and is specified in the summons; or
 - (c) to do both of those things.

s. 535

1 **535. Self-incrimination**

2 (1) A person is not excused from complying with a direction given
3 to the person under section 533(4), or a summons served on the
4 person under section 534, on the ground that the answer to a
5 question or the production of a document might tend to
6 incriminate the person or expose the person to a criminal
7 penalty.

8 (2) However, any answer given or document produced by a person
9 in compliance with a direction given to the person under
10 section 533(4), or a summons served on the person under
11 section 534, is not admissible in evidence in any criminal
12 proceedings against the person other than proceedings for an
13 offence under section 537(1)(d).

14 **536. Powers in relation to documents produced**

15 In relation to a document produced in an inquiry, the person
16 appointed under section 529 to conduct the inquiry may do any
17 of these things —

- 18 (a) inspect the document;
19 (b) retain the document for a reasonable period;
20 (c) take a copy of the whole or any part of the document.

21 **537. Offences relating to answering questions, producing**
22 **documents and providing other information**

- 23 (1) A person commits an offence if the person —
- 24 (a) without reasonable excuse, proof of which is on the
25 person, does not swear an oath or make an affirmation
26 when required under section 533(3); or
- 27 (b) without reasonable excuse, proof of which is on the
28 person, does not answer a question or produce a
29 document when directed to do so under section 533(4);
30 or
- 31 (c) without reasonable excuse, proof of which is on the
32 person, does not attend as required by a summons served
33 on the person under section 534; or
- 34 (d) gives an answer in an inquiry that the person knows is
35 false or misleading in a material particular; or

- 1 (e) produces a document or provides any other information
2 in an inquiry that the person knows is false or
3 misleading in a material particular —
- 4 (i) without indicating that the document or other
5 information is false or misleading and, to the
6 extent the person can, how the document or other
7 information is false or misleading; or
- 8 (ii) if the person has or can reasonably obtain the
9 correct information, without providing the
10 correct information.
- 11 Penalty: a fine of \$5 000.
- 12 (2) It is enough for a prosecution notice lodged against a person for
13 an offence under subsection (1)(d) or (e) to state that the
14 answer, document or information was false or misleading to the
15 person's knowledge without stating which.

Part 25 — Information

Division 1 — Collection of information from service providers

538. Terms used

In this Part —

chief executive officer, of a service provider, means the person who is responsible for the day-to-day management of the service provider;

mental health service means —

- (a) a service provided specifically for people who have or may have a mental illness; or
- (b) a service provided specifically for carers of people who have a mental illness,

but does not include a service referred to in paragraph (a) or (b) if it is —

- (c) provided wholly from funds paid to a service provider by the Commonwealth; or
- (d) provided to a person who has a mental illness by the person's carer; or
- (e) prescribed by the regulations for this paragraph;

service provider means —

- (a) an individual or group of individuals; or
- (b) a body (whether incorporate or unincorporate), that renders or provides mental health services, but does not include —
 - (c) the Chief Psychiatrist; or
 - (d) a mental health advocate; or
 - (e) the Mental Health Tribunal.

539. Information that may be collected

The information that the CEO may collect under this Part is information relevant to one or more of these matters —

- (a) the implementation and evaluation of programmes managed by the Mental Health Commission for the purpose of coordinating the care and support of people who have a mental illness;
- (b) the administration and enforcement of this Act;

- 1 (c) the planning for, and evaluation of, mental health
2 services;
3 (d) epidemiological analysis of mental illness and mental
4 health research.

5 **540. Direction to provide information**

- 6 (1) The CEO may issue a written direction to the chief executive
7 officer of a service provider requiring the chief executive officer
8 to provide the CEO with the information, or the information in a
9 class of information, specified in the direction.
- 10 (2) The CEO cannot specify information in the direction unless the
11 information —
12 (a) relates to mental health services provided to individuals
13 by the service provider; and
14 (b) in the CEO's opinion, relates to one or more of the
15 matters listed in section 539.
- 16 (3) Without limiting the information that can be specified in the
17 direction, that information can include —
18 (a) personal information about a person —
19 (i) if the information is reasonably necessary for a
20 purpose described in section 539(a); or
21 (ii) with the consent of the person to whom the
22 information relates;
23 and
24 (b) information obtained by the service provider before the
25 commencement of this Part.
- 26 (4) The direction can specify the form in which the information is
27 required to be provided.
- 28 (5) A direction may be issued under subsection (1) to —
29 (a) a named service provider; or
30 (b) the service providers who are in a class of service
31 providers; or
32 (c) all service providers.
- 33 (6) The chief executive officer of a service provider to whom a
34 direction is issued under subsection (1) must comply with the
35 direction.
- 36 Penalty for an offence under subsection (6): a fine of \$5 000.

Division 2 — Voluntary disclosure of information by public authorities and mental health services

541. Powers of CEO of Mental Health Commission

(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;

relevant information means information (including personal information) that, in the CEO's opinion, is or is likely to be relevant to —

- (a) the treatment or care of —
 - (i) a person who has or may have a mental illness; or
 - (ii) a class of persons who have or may have a mental illness;
- or
- (b) the health, safety or wellbeing of a person who has or may have a mental illness; or
- (c) the safety of another person with respect to which there is a serious risk because of a person who has or may have a mental illness; or
- (d) the administration or enforcement of this Act;

State authority means any of these persons or bodies —

- (a) the Minister;
- (b) a department of the Public Service;
- (c) a State agency or instrumentality;
- (d) a local government or regional local government;

- 1 (e) a body (whether corporate or unincorporate), or the
2 holder of an office, post or position, established or
3 continued for a public purpose under a written law.
- 4 (2) The CEO may disclose relevant information to any of these
5 persons or bodies —
- 6 (a) a State authority;
7 (b) an interstate authority;
8 (c) a corresponding overseas authority;
9 (d) a mental health service.
- 10 (3) The CEO may request any of these persons or bodies to disclose
11 relevant information to the CEO —
- 12 (a) a State authority;
13 (b) an interstate authority;
14 (c) a corresponding overseas authority;
15 (d) a mental health service.

16 **542. Powers of CEOs of prescribed State authorities**

- 17 (1) In this section —
- 18 **CEO**, of a prescribed State authority, means —
- 19 (a) if the prescribed State authority is a body referred to in
20 paragraph (a) of the definition of ***prescribed State***
21 ***authority*** — the chief executive officer (however
22 described) of that body; or
- 23 (b) if the prescribed State authority is a person referred to in
24 paragraph (b) of the definition of ***prescribed State***
25 ***authority*** — that person;
- 26 ***prescribed State authority*** means —
- 27 (a) a body (whether corporate or unincorporate) established
28 or continued for a public purpose under a written law
29 and prescribed by the regulations for this paragraph; or
- 30 (b) a person lawfully holding, acting in or performing the
31 functions of an office, post or position established or
32 continued for a public purpose under a written law and
33 prescribed by the regulations for this paragraph;

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 —

5 (a) the treatment or care of —

6 (i) a person who has or may have a mental illness;
7 or

8 (ii) a class of persons who have or may have a
9 mental illness;

10 or

11 (b) the health, safety or wellbeing of a person who has or
12 may have a mental illness; or

13 (c) the safety of another person with respect to which there
14 is a risk because of a person who has or may have a
15 mental illness; or

16 (d) the performance of a function under this Act by the
17 CEO's prescribed State authority.

18 (2) The CEO of a prescribed State authority (the **disclosing CEO**)
19 may disclose relevant information to the CEO of another
20 prescribed State authority.

21 (3) The CEO of a prescribed State authority (the **requesting CEO**)
22 may request the CEO of another prescribed State authority to
23 disclose relevant information to the requesting CEO.

24 **543. Delegation by CEO of prescribed State authority**

25 (1) This section applies to the CEO of a prescribed State authority,
26 as defined in section 542(1), if the CEO does not have the
27 power under another provision of this Act to delegate any power
28 or duty of the CEO under section 542.

29 (2) The CEO of a prescribed State authority may delegate to a
30 member of the prescribed State authority's staff any power or
31 duty of the CEO under section 542.

32 (3) The delegation must be in writing signed by the CEO of the
33 prescribed State authority.

34 (4) A person to whom a power or duty is delegated under this
35 section cannot delegate that power or duty.

36 (5) A person exercising or performing a power or duty that has been
37 delegated to the person under this section is taken to do so in

1 accordance with the terms of the delegation unless the contrary
2 is shown.

- 3 (6) This section does not limit the ability of the CEO of a
4 prescribed State authority to perform a function through an
5 officer or agent.

6 **Division 3 — Miscellaneous matters**

7 **544. Confidentiality**

- 8 (1) In this section —

9 ***relevant written law*** means any of these written laws —

- 10 (a) this Act;
11 (b) the *Mental Health Act 1996*;
12 (c) the *Mental Health Act 1962*.

- 13 (2) A person must not (whether directly or indirectly) record,
14 disclose or use any information obtained by the person because
15 of —

- 16 (a) the person's office, position, employment or
17 engagement under or for the purposes of a relevant
18 written law; or
19 (b) any disclosure made to the person under this Act,
20 including in response to a request made under
21 section 425(1), 541(3) or 542(3).

22 Penalty: a fine of \$5 000.

- 23 (3) Subsection (2) does not apply to the recording, disclosure or use
24 of statistical or other information that is not personal
25 information.

- 26 (4) A person does not commit an offence under subsection (2) if the
27 recording, disclosure or use of the information is authorised
28 under section 545(1).

29 **545. Authorised recording, disclosure or use of information**

- 30 (1) For the purposes of this Act, the recording, disclosure or use of
31 information is authorised if the information is recorded,
32 disclosed or used in good faith in any of these circumstances —

- 33 (a) in the course of duty, whether under this Act or
34 otherwise;
35 (b) under this Act, including in response to a request made
36 under section 425(1), 541(3) or 542(3);

- 1 (c) under another law;
- 2 (d) to a court or other person or body acting judicially in the
- 3 course of proceedings before the court or other person or
- 4 body;
- 5 (e) under an order of a court or other person or body acting
- 6 judicially;
- 7 (f) for the purposes of the investigation of a suspected
- 8 offence or disciplinary matter or the conduct of
- 9 proceedings against a person for an offence or
- 10 disciplinary matter;
- 11 (g) if the information recorded, disclosed or used is personal
- 12 information, with the consent of the individual, or each
- 13 individual, to whom the personal information relates;
- 14 (h) any other circumstances prescribed by the regulations
- 15 for this subsection.
- 16 (2) Subsection (1)(d) and (e) apply subject to sections 311(7)
- 17 and (8), 312(6) and (7), 313(7), 440(2) and 535(2).
- 18 (3) If the recording, disclosure or use of information is authorised
- 19 under subsection (1) —
- 20 (a) no civil or criminal liability is incurred in respect of the
- 21 recording, disclosure or use; and
- 22 (b) the recording, disclosure or use is not to be regarded
- 23 as —
- 24 (i) a breach of any duty of confidentiality or secrecy
- 25 imposed by law; or
- 26 (ii) a breach of professional ethics or standards or
- 27 any principles of conduct applicable to a
- 28 person's employment; or
- 29 (iii) unprofessional conduct.
- 30 **546. Information disclosed under s. 492, 540, 541 or 545: receipt,**
- 31 **storage and access**
- 32 (1) This section applies to information disclosed in any of these
- 33 circumstances —
- 34 (a) in compliance with a direction issued by the Chief
- 35 Psychiatrist under section 492(2);
- 36 (b) in compliance with a direction issued by the CEO under
- 37 section 540(1);
- 38 (c) by the CEO under section 541(2) or in response to a
- 39 request made by the CEO under section 541(3);

- 1 (d) by the CEO of a public authority under section 542(2) or
2 in response to a request made by the CEO of a public
3 authority under section 542(3).
- 4 (2) The regulations may provide for —
- 5 (a) the receipt and storage of information to which this
6 section applies; or
- 7 (b) access to such information.

Part 26 — Miscellaneous matters

547. 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 266(2);

relevant interest, in relation to a share, has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

substantial holding has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

(2) A medical practitioner or mental health practitioner cannot exercise a power under this Act in respect of a person if the practitioner is —

- (a) a relative of the person; or
- (b) the person's enduring guardian or guardian; or

- 1 (c) in partnership with the person; or
2 (d) the employer or employee of the person; or
3 (e) the person's supervisor or subordinate.
- 4 (3) A medical practitioner or mental health practitioner cannot refer
5 a person under section 25(2) or (3)(a) for an examination to be
6 conducted by a psychiatrist at a private hospital the licence for
7 which is held by the practitioner or a related person.

8 **548. Obstructing or hindering person performing functions**

9 A person who, without reasonable excuse, proof of which is on
10 the person, obstructs or hinders a person performing, or
11 assisting another person in performing, a function under this Act
12 commits an offence.

13 Penalty: a fine of \$6 000.

14 **549. Amendment of referrals and orders**

15 (1) For this section, a referral or order made under this Act contains
16 a formal defect if it contains —

- 17 (a) a clerical error or an error because of an accidental
18 omission; or
19 (b) an evident material error in the description of a person.

20 (2) If a referral or order made under this Act contains a formal
21 defect —

- 22 (a) the validity of any thing done, or omitted to be done, in
23 reliance on the referral or order is not affected; but
24 (b) the person who does an act, or makes an omission, in
25 reliance on the referral or order may request the person
26 who made the referral or order to rectify the defect.

27 (3) A person who makes a request under subsection (2)(b) to rectify
28 a referral or order may, by order (a **revocation order**), revoke
29 any involuntary treatment order made as a consequence of the
30 referral or order if the request is not complied with.

31 (4) A revocation order has effect on and from the time specified in
32 the revocation order.

33 (5) A revocation order does not prevent another referral or order
34 being made under this Act in respect of the person to whom the
35 revocation order relates, whether that referral or order is made
36 before or after the revocation order comes into effect.

s. 550

550. Medical records to be kept by mental health services

(1) The person in charge of a mental health service must ensure that a medical record is kept in respect of —

(a) each person who is admitted by the mental health service; and

(b) each person who is otherwise provided with treatment or care by the mental health service.

(2) The medical record must be in the approved form and must include the following information —

(a) the name, address and date of birth of the person;

(b) the nature of any illness, or mental or physical disability, from which the person suffers;

(c) particulars of —

(i) any treatment provided to the person by the mental health service; and

(ii) the authority for providing the treatment, including details of any order made under this Act under which the treatment was provided;

(d) if the person dies at the mental health service —

(i) the date of death; and

(ii) the cause of death (if known);

(e) any other information prescribed by the regulations for this subsection.

551. Protection from liability: performance of functions

(1) An action in tort does not lie against a person other than the State for anything that the person has done in good faith in the performance or purported performance of a function under this Act.

(2) The protection given by subsection (1) applies even though the thing done as described in that provision may have been capable of being done whether or not this Act had been enacted.

(3) Despite subsection (1), the State is not relieved from any liability that it might have for an act done by a person against whom this section provides that an action does not lie.

(4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

552. Protection from liability: detention of person who has or may have mental illness

(1) This section applies if —

- (a) a person has lawful charge of a person who has, or is reasonably suspected of having, a mental illness while that person is at a particular place; and
- (b) the person who has, or is reasonably suspected of having, a mental illness does not have the capacity to decide whether or not to withdraw himself or herself from that lawful charge.

(2) No civil or criminal liability is incurred because the person who has that lawful charge detains, or continues the detention of, the person who has, or is reasonably suspected of having, a mental illness in order to prevent that person from leaving the particular place.

(3) The protection given by subsection (2) does not apply if the person who has lawful charge of the person who has, or is reasonably suspected of having, a mental illness uses —

- (a) physical restraint as described in section 215(2); or
- (b) mechanical restraint as described in section 215(3) and (4),

to prevent that person from leaving the particular place.

553. Relationship with *Freedom of Information Act 1992*

This Act has effect despite the *Freedom of Information Act 1992*.

554. Regulations

The Governor may make regulations prescribing matters —

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient to be prescribed for giving effect to this Act.

555. Review of this Act after 5 years

(1) The Minister must review the operation and effectiveness of this Act as soon as practicable after the expiry of 5 years from the commencement of section 9.

(2) The Minister must, as soon as practicable —

- (a) prepare a report about the outcome of the review; and

s. 555

- 1 (b) cause a copy of the report to be laid before each House
2 of Parliament.

Schedule 1 — Charter of Mental Health Care Principles

[s. 10, 11, 301(2)(f), 314(3)(d) and 332(1)(b)]

Purpose

- A. The Charter of Mental Health Care Principles is a rights-based set of principles that mental health services must make every effort to comply with in providing treatment, care and support to people experiencing mental illness.
- B. The Charter is intended to influence the interconnected factors that facilitate recovery from mental illness.

Principle 1: Attitude towards people experiencing mental illness

A mental health service must treat people experiencing mental illness with dignity, equality, courtesy and compassion and must not discriminate against or stigmatise them.

Principle 2: Human rights

A mental health service must protect and uphold the fundamental human rights of people experiencing mental illness and act in accordance with the national and international standards that apply to mental health services.

Principle 3: Attitudes towards mental illness

A mental health service must promote positive and encouraging attitudes towards mental illness, including that people can and do recover, lead full and productive lives and make meaningful contributions to the community.

Principle 4: Recovery focus

- 4.1 A mental health service must be safe and accessible and provide timely treatment and care that is of high quality and promotes recovery.
- 4.2 A mental health service must be committed to achieving the best possible outcomes for people experiencing mental illness in the least restrictive manner that is consistent with their needs.

Principle 5: Empowering people experiencing mental illness

A mental health service must involve people in decision-making and encourage self-responsibility, cooperation and choice, including by recognising people's capacity to make their own decisions.

Principle 6: Diversity

A mental health service must recognise, and be sensitive and responsive to, diverse individual circumstances, including those relating to gender, sexuality, age, family, disability, lifestyle choices and cultural and spiritual beliefs and practices.

1 **Principle 7: People of Aboriginal or Torres Strait Islander descent**

2 A mental health service must provide treatment and care to people of
3 Aboriginal or Torres Strait Islander descent that is appropriate to, and
4 consistent with, their cultural and spiritual beliefs and practices and having
5 regard to the views of their families and communities.

6 **Principle 8: Co-occurring needs**

7 A mental health service must address physical, medical and dental health
8 needs of people experiencing mental illness and other co-occurring health
9 issues, including alcohol and other drug problems.

10 **Principle 9: Factors influencing mental health and wellbeing**

11 A mental health service must recognise the range of circumstances, both
12 positive and negative, that influence mental health and wellbeing,
13 including relationships, accommodation, recreation, education, financial
14 circumstances and employment.

15 **Principle 10: Privacy and confidentiality**

16 A mental health service must respect and maintain privacy and
17 confidentiality.

18 **Principle 11: Responsibilities and dependants**

19 A mental health service must acknowledge the responsibilities and
20 commitments of people experiencing mental illness, particularly the needs
21 of their children and other dependants.

22 **Principle 12: Provision of information about treatment**

23 A mental health service must provide, and clearly explain, information
24 about diagnosis and treatment (including any risks, side effects and
25 alternatives) to people in their preferred language and form of
26 communication to facilitate informed consent.

27 **Principle 13: Provision of information about rights**

28 A mental health service must provide, and clearly explain, information to
29 people in their preferred language and form of communication about
30 rights, including those relating to legal matters, advocacy, complaints
31 procedures and services and access to personal information.

32 **Principle 14: Involvement of other people**

33 A mental health service must, at all times, respect and facilitate the right of
34 people experiencing mental illness to involve carers, families and other
35 personal and professional support persons in planning, undertaking and
36 evaluating their treatment, care and support.

1 **Principle 15: Accountability and improvement**

2 A mental health service must be accountable, committed to continuous
3 improvement and open to solving problems in partnership with all people
4 involved in the treatment, care and support of people experiencing mental
5 illness, including their carers, families and other personal and professional
6 support persons.

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
admission	4
advance health directive.....	4
advocacy services officer.....	354
application.....	359
apprehension and return order.....	95
approved form.....	4, 153
authorised hospital	4
authorised mental health practitioner	4
authorised person	154
bodily restraint	4
bodily restraint order.....	214
carer	4
Carers Charter	287
CEO	4, 542(1)
CEO of the Health Department.....	4
Charter of Mental Health Care Principles	4
chief executive officer.....	538
Chief Mental Health Advocate	4
Chief Psychiatrist.....	4
child	4
child and adolescent psychiatrist.....	4
CL(MIA) Act	4
close family member.....	4
community treatment order.....	4, 110
company.....	547(1)
complainant.....	287
complaint	287, 326
Complaints Office.....	287
Complaints Office staff.....	287
complaints procedure	289(1)
continuation order.....	82, 110, 118(1)
corresponding law.....	517(1)
corresponding overseas authority.....	541(1)
decision	359, 449(1), 470
decision-maker.....	432(1)
detention period	82
Director	287
Director of the Complaints Office	4
discharge	4
disclosing CEO	542(2)
document.....	4
electroconvulsive therapy	4
emergency psychiatric treatment	4
enduring guardian	4
excluded mental health service	304(1)
extension order.....	145(3)
first treatment period.....	115
further opinion	118(5), 174(2)
GAA Act.....	4

Defined Terms

general hospital	4
guardian	4
Health Department	4
Health Minister	4
hearing	359
hospital	4
identified person	329
information about a proceeding	446(1), 479(1)
informed consent	4
initial review period	366(1)
inpatient treatment order	4
intergovernmental agreement	517(1)
interstate authority	541(1)
interstate community patient	517(1)
interstate community treatment order	517(1)
interstate inpatient	517(1)
interstate inpatient treatment order	517(1)
interstate mental health service	517(1)
investigation	287
involuntary community patient	4, 110
involuntary inpatient	4
involuntary patient	4
involuntary treatment order	4
last review	367(1)
last review day	367(1)
leave of absence	101
legal practitioner	4
long-term voluntary inpatient	381
maximum extension period	369(1)
medical practitioner	4
member	359
mental health advocate	4
Mental Health Commission	4
mental health practitioner	4
mental health service	4, 239, 287, 329, 480, 538
Mental Health Tribunal	4
mental illness	4
mentally impaired accused	4
Mentally Impaired Accused Review Board	4
metropolitan area	4
month	190(2)
neurosurgeon	4
nominated person	4
nomination	4
notifiable incident	494
nurse	200, 214
oral authorisation	200, 214
order to attend	124(2)
party	359
patient	4
patient's psychiatrist	4
periodic review period	367(1)
person concerned	359, 470
person's representative	287

Defined Terms

personal information	4
personal possessions	246(1)
personal support person	4
prescribed.....	290
prescribed financial market.....	547(1)
prescribed number of days	367(1)
prescribed period.....	369(1)
prescribed person	298(1), 431(1)
prescribed provision.....	163
prescribed requirement.....	398
prescribed State authority	542(1)
President of the Tribunal.....	359
presiding member	359
private hospital.....	4
private psychiatric hostel	4
proceeding.....	359
psychiatrist	4
psychosurgery	4
public hospital.....	4
publish.....	446(1), 479(1)
question of law	418(1), 472(1)
registered service provider.....	307(1)
registrar	359
registration board	4
registry officer.....	359
related person.....	547(1)
relative	297(1), 547(1)
relevant decision	369(1)
relevant document.....	234
relevant information.....	315, 492(1), 541(1), 542(1)
relevant interest.....	547(1)
relevant record	315
relevant written law.....	544
remuneration	4
reportable incident	241(1)
requesting CEO.....	542(3)
respondent.....	287
restricted information.....	438(1)
review period	115, 369(1)
review proceeding.....	432(1)
reviewable decision.....	432(1)
revocation order	98(1), 147(1), 549(3)
seclusion	4
seclusion order	200
serious adverse event	190(2)
service provider.....	287, 398, 538
specified information	295(1)
staff member	4
State authority	541(1)
State inpatient	517(1)
substantial holding	547(1)
supervising psychiatrist.....	4, 110
transfer approval order.....	523(1)
transfer order.....	64(1), 88(2), 521(1)

Defined Terms

transport officer.....	4, 140
treating practitioner.....	110
treating psychiatrist.....	4
treatment	4
treatment decision	4
treatment in the community	4
treatment order.....	377
treatment period	110
treatment, support and discharge plan.....	4
Tribunal.....	359
urgent non-psychiatric treatment	229(2)
voluntary inpatient	4
voluntary patient	4
youth advocate	331(3)