

DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill —

- **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 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 2011

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Schedule 1 — Charter of Mental Health Care Principles

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Western Australia

Mental Health Bill 2011

**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 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 2011*.

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. Terms used**

11 (1) In this Act, unless the contrary intention appears —

12 **admission** means the admission of a patient to a hospital for the
13 purpose of providing the patient with treatment;

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

- 15 (a) an advance health directive made under the
16 Guardianship Act Part 9B;
- 17 (b) an instrument recognised as such under the
18 Guardianship Act section 110ZA;
- 19 (c) a directive given by a patient under the common law
20 containing treatment decisions in respect of the patient's
21 future treatment;

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

25 **approved form** means a form approved under section 425(1);

26 **authorised hospital** has the meaning given in section 423;

27 **authorised mental health practitioner** means an authorised
28 mental health practitioner designated as such by an order in
29 force under section 422;

1 **bodily restraint** has the meaning given in section 189;
2 **carer**, of a patient, means the person who is the carer of the
3 patient under the *Carers Recognition Act 2004* section 5;
4 **CEO** means the person lawfully holding, acting in or
5 performing the functions of the office of chief executive officer
6 of the Agency;
7 **CEO of the Health Department** means the person lawfully
8 holding, acting in or performing the functions of the office of
9 chief executive officer of the Health Department;
10 **Chief Mental Health Advocate** means the person lawfully
11 holding, acting in or performing the functions of the office of
12 Chief Mental Health Advocate referred to in section 264;
13 **Chief Psychiatrist** means the person lawfully holding, acting in
14 or performing the functions of the office of Chief Psychiatrist
15 referred to in section 397(1);
16 **child** means a person under 18 years of age;
17 **child and adolescent psychiatrist** means a psychiatrist who has
18 qualifications and clinical training in the treatment of mental
19 illness in children;
20 **CL(MIA) Act** means the *Criminal Law (Mentally Impaired*
21 *Accused) Act 1996*;
22 **community treatment order** has the meaning given in
23 section 23(1);
24 **Director of HaDSCO** means the person lawfully holding, acting
25 in or performing the functions of the office of Director of the
26 Health and Disability Services Complaints Office referred to in
27 the *Health and Disability Services (Complaints) Act 1995*
28 section 7(1);
29 **electroconvulsive therapy** has the meaning given in section 151;
30 **emergency psychiatric treatment** has the meaning given in
31 section 163;
32 **enduring guardian** has the meaning given in the Guardianship
33 Act section 3(1);

- 1 **general hospital** means a hospital (as defined in the *Hospitals*
2 *and Health Services Act 1927* section 2(1)) where overnight
3 accommodation is provided to patients except any of these
4 hospitals —
- 5 (a) an authorised hospital;
- 6 (b) a maternity home;
- 7 (c) a nursing home;
- 8 **guardian** has the meaning given in the Guardianship Act
9 section 3(1);
- 10 **Guardianship Act** means the *Guardianship and Administration*
11 *Act 1990*;
- 12 **Health Department** means the agency (as defined in the *Public*
13 *Sector Management Act 1994* section 3(1)) principally assisting
14 the Minister to whom the administration of the *Hospitals and*
15 *Health Services Act 1927* is committed in its administration;
- 16 **hospital** means —
- 17 (a) an authorised hospital; or
- 18 (b) a general hospital;
- 19 **identified person** has the meaning given in section 263;
- 20 **informed consent** has the meaning given in Part 4 Division 1;
- 21 **in-patient treatment order** has the meaning given in
22 section 22(1);
- 23 **involuntary patient** has the meaning given in section 21(1);
- 24 **involuntary treatment order** has the meaning given in
25 section 21(2);
- 26 **legal practitioner** means an Australian legal practitioner as
27 defined in the *Legal Profession Act 2008* section 3;
- 28 **medical practitioner** means a person registered under the
29 *Health Practitioner Regulation National Law (Western*
30 *Australia)* in the medical profession;
- 31 **mental health advocate** means —

- 1 (a) the Chief Mental Health Advocate; or
2 (b) a person lawfully holding, acting in or performing the
3 functions of the office of mental health advocate
4 referred to in section 265(1);
- 5 **Mental Health Care Charter** means the Charter of Mental
6 Health Care Principles in Schedule 1;
- 7 **mental health practitioner** has the meaning given in
8 section 421(1);
- 9 **mental health service** means any of the following —
- 10 (a) a hospital;
11 (b) a psychiatric out-patients clinic;
12 (c) a community mental health service;
13 (d) a health service that provides treatment or care to people
14 who have or may have a mental illness;
15 (e) a private psychiatric hostel;
16 (f) an agency that provides community support services to
17 people who have or may have a mental illness;
- 18 **mental illness** has the meaning given in section 4;
- 19 **mentally impaired accused** has the meaning given in the
20 CL(MIA) Act section 23;
- 21 **Mentally Impaired Accused Review Board** means the Mentally
22 Impaired Accused Review Board established by the CL(MIA)
23 Act section 41;
- 24 **neurosurgeon** means a person —
- 25 (a) whose name is contained in the register of specialist
26 surgeons kept by the Medical Board of Australia under
27 the *Health Practitioner Regulation National Law*
28 (*Western Australia*) section 223; and
29 (b) who has clinical training in neurosurgery;
- 30 **nominated person**, of a patient, means the person nominated
31 under section 235(1) to be the patient's nominated person;

- 1 ***nomination*** means a nomination made under section 235(1);
- 2 ***patient*** means a person to whom treatment is being, or is
- 3 proposed to be, provided;
- 4 ***patient's psychiatrist*** means —
- 5 (a) if the patient is a voluntary patient — the treating
- 6 psychiatrist; or
- 7 (b) if the patient is an involuntary patient in respect of
- 8 whom an in-patient treatment order is in force — the
- 9 treating psychiatrist; or
- 10 (c) if the patient is an involuntary patient in respect of
- 11 whom a community treatment order is in force — the
- 12 supervising psychiatrist; or
- 13 (d) if the patient is a mentally impaired accused who must
- 14 be detained at an authorised hospital because of a
- 15 determination made under the CL(MIA) Act
- 16 section 25(1)(b) or amended under section 26 of that
- 17 Act — the treating psychiatrist;
- 18 ***personal information*** has the meaning given in the *Freedom of*
- 19 *Information Act 1992* in the Glossary clause 1;
- 20 ***police officer*** includes an Aboriginal police liaison officer who
- 21 is authorised under section 137(2) to exercise the powers of a
- 22 police officer under this Act;
- 23 ***private hospital*** has the meaning given in the *Hospitals and*
- 24 *Health Services Act 1927* section 2(1);
- 25 ***private psychiatric hostel*** has the meaning given in the
- 26 *Hospitals and Health Services Act 1927* section 26P;
- 27 ***psychiatrist*** means a person whose name is contained in the
- 28 register of specialist psychiatrists kept by the Medical Board of
- 29 Australia under the *Health Practitioner Regulation National*
- 30 *Law (Western Australia)* section 223;
- 31 ***psychologist*** means a person registered under the *Health*
- 32 *Practitioner Regulation National Law (Western Australia)* in
- 33 the psychology profession;

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- 1 **psychosurgery** has the meaning given in section 166;
- 2 **public hospital** has the meaning given in the *Hospitals and*
- 3 *Health Services Act 1927* section 2(1);
- 4 **regulate** includes prohibit;
- 5 **staff member**, of a mental health service, means a person
- 6 who —
- 7 (a) is employed in a mental health service under a contract
- 8 of employment or contract of training; or
- 9 (b) provides services to a mental health service under a
- 10 contract for services;
- 11 **sterilisation procedure** has the meaning given in section 208;
- 12 **supervising psychiatrist** has the meaning given in section 102;
- 13 **treating psychiatrist**, in relation to a patient, means the
- 14 psychiatrist who is in charge of the patient's treatment;
- 15 **treatment** means the provision of a psychiatric, medical,
- 16 psychological, social or other therapeutic intervention intended,
- 17 whether alone or with one or more other therapeutic
- 18 interventions, to alleviate or prevent the deterioration of —
- 19 (a) a mental illness; or
- 20 (b) a condition that is a consequence of a mental illness;
- 21 **treatment decision**, in relation to a patient, means a decision to
- 22 consent or refuse consent to the provision of treatment;
- 23 **treatment in the community** means treatment that can be
- 24 provided to a patient without detaining the patient at a hospital
- 25 under an in-patient treatment order;
- 26 **treatment, support and discharge plan** has the meaning given
- 27 in section 148;
- 28 **voluntary patient** means is a person who is being provided with
- 29 treatment but is not —
- 30 (a) an involuntary patient; or
- 31 (b) a mentally impaired accused who must be detained at an
- 32 authorised hospital because of a determination made

1 under the CL(MIA) Act section 25(1)(b) or amended
2 under section 26 of that Act;

3 **youth advocate** means a mental health advocate who has
4 qualifications, training or experience in dealing with children.

5 (2) A note set out at the foot of a provision of this Act is provided
6 to assist understanding and does not form part of this Act.

7 **4. Mental illness**

8 (1) A person has a mental illness if the person has a condition
9 that —

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

12 (b) significantly impairs (temporarily or permanently) the
13 person's judgment or behaviour.

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

16 (a) the person holds, or refuses or fails to hold, a particular
17 religious, cultural, political or philosophical belief or
18 opinion;

19 (b) the person engages in, or refuses or fails to engage in, a
20 particular religious, cultural or political activity;

21 (c) the person is, or is not, a member of a particular
22 religious, cultural or racial group;

23 (d) the person has, or does not have, a particular political,
24 economic or social status;

25 (e) the person has a particular sexual preference or
26 orientation;

27 (f) the person is sexually promiscuous;

28 (g) the person engages in indecent, immoral or illegal
29 conduct;

30 (h) the person has an intellectual disability;

- 1 (i) the person uses alcohol or other drugs;
2 (j) the person is involved in, or has been involved in, family
3 or professional conflict;
4 (k) the person engages in anti-social behaviour;
5 (l) the person has at any time been —
6 (i) provided with treatment; or
7 (ii) admitted to or detained at a hospital for the
8 purpose of providing the person with treatment.
- 9 (3) A decision whether or not a person has a mental illness must be
10 made in accordance with internationally accepted standards
11 prescribed by the regulations for this subsection.

12 **5. Act binds Crown**

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

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Part 2 — Objects

6. Objects

- (1) The objects of this Act are as follows —
- (a) to ensure people who have a mental illness receive the best possible treatment and care with —
 - (i) the least possible restriction of their freedom;
and
 - (ii) the least possible interference with their rights and dignity;
 - (b) to recognise the role of carers 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 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 3 — Mental Health Care Charter**

2 **7. 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 Mental Health Care
5 Charter.

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

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

1 **Part 4 — Informed consent to admission and treatment**

2 **Division 1 — Giving and withdrawing consent**

3 **9. What this Division is about**

4 This Division is about giving informed consent and
5 withdrawing consent to —

- 6 (a) the admission of a person; or
7 (b) the provision of treatment to a person.

8 **10. People who can give informed consent**

9 Informed consent can be given by —

- 10 (a) the person proposed to be admitted or provided with the
11 treatment; or
12 (b) if the person does not have the capacity to consent to the
13 admission or the provision of the treatment, the person
14 who is authorised by law to consent on the person's
15 behalf.

16 **11. Requirements for informed consent**

- 17 (1) A person gives informed consent only if the requirements of
18 sections 12 to 16 are satisfied.
19 (2) A purported waiver of any of those requirements has no effect.
20 (3) Failure to offer resistance does not by itself constitute consent.

21 **12. Capacity to give informed consent**

- 22 (1) The person must have the capacity to give informed consent to
23 the admission or the provision of the treatment.
24 (2) Subsection (1) means that the person must have the capacity
25 to —
26 (a) understand the information and advice required by
27 section 15(1) to be provided to the person; and

- 1 (b) understand the nature and effect of the admission or
2 treatment; and
3 (c) freely and voluntarily make decisions about the
4 admission or treatment; and
5 (d) communicate those decisions in some way.

6 **13. Consent must be given freely and voluntarily**

- 7 (1) Consent must be given freely and voluntarily.
8 (2) Without limiting subsection (1), consent is freely and
9 voluntarily given if it is not obtained by —
10 (a) force, threat, intimidation, inducement or deception; or
11 (b) the exercise of authority.

12 **14. Form of consent**

- 13 Consent must be —
14 (a) in the approved form; and
15 (b) signed by the person.

16 **15. Information, advice and assistance must be provided before**
17 **consent given**

- 18 (1) Before a person is asked whether or not the person gives
19 consent, the person must be provided with these things —
20 (a) a clear explanation of the nature, purpose and likely
21 duration of the admission or treatment that includes
22 sufficient information to enable the person to make a
23 reasonable decision about whether or not to give consent
24 to the admission or treatment;
25 (b) an adequate description (without exaggeration,
26 concealment or distortion) of the expected benefits and
27 possible discomforts and risks of the admission or
28 treatment;

- 1 (c) an adequate description of the alternatives to the
2 admission or treatment that are reasonably available;
- 3 (d) information about any financial advantage that may be
4 gained by any medical practitioner or mental health
5 service in respect of the admission or treatment, except
6 information about the fees and charges payable by or on
7 behalf of the person for the admission or treatment;
- 8 (e) information about any research relationship between any
9 medical practitioner and any mental health service that
10 may be relevant to the admission or treatment;
- 11 (f) advice that the person may obtain independent legal and
12 medical advice about the admission or treatment before
13 consent is given and that the person may request
14 assistance to obtain that advice;
- 15 (g) if the person requests assistance to obtain legal or
16 medical advice referred to in paragraph (f), reasonable
17 assistance to obtain the advice;
- 18 (h) an opportunity to ask questions about the admission or
19 treatment;
- 20 (i) clear answers that the person is likely to understand to
21 all relevant questions the person asks;
- 22 (j) advice that the person may refuse to give consent to the
23 admission or treatment and that, if the person does give
24 consent, the person can withdraw consent at any time.
- 25 (2) Any information or advice provided under subsection (1) must
26 be provided in a language, form of communication and terms
27 the person is likely to understand.

28 **16. Adequate time for consideration**

29 Before a person is asked whether or not the person gives
30 consent, the person must be given adequate time to consider the
31 information and advice provided under section 15(1).

1 **17. Another person may be present when information provided**
2 **or consent given**

3 (1) The person may request that another person be present at either
4 or both of these times —

5 (a) when the person is provided with the information and
6 advice referred to in section 15(1);

7 (b) when the person gives consent.

8 (2) A request made under subsection (1) must be complied with.

9 **18. Another person may be present when consent withdrawn**

10 (1) A person who —

11 (a) has given consent to the admission of, or the provision
12 of treatment to, a person; and

13 (b) wants to withdraw consent,

14 may request that another person be present when the person
15 withdraws consent.

16 (2) A request made under subsection (1) must be complied with.

17 **19. What must be recorded on patient's medical record**

18 (1) The person in charge of a mental health service to which a
19 patient is admitted, or by which a patient will be provided with
20 treatment, must ensure that the patient's medical record
21 includes —

22 (a) if the patient is a voluntary patient —

23 (i) a record that the requirements of sections 12
24 to 16 have been satisfied; and

25 (ii) if a request was made under section 17(1) — a
26 record of the request having been made and
27 whether or not it was complied with;

28 or

- 1 (b) if the patient is an involuntary patient or mentally
2 impaired accused — a record to that effect.
- 3 (2) If consent given to the admission of a patient to, or the provision
4 of treatment to a patient by, a mental health service is
5 withdrawn, the person in charge of the service must ensure that
6 the patient's medical record includes —
- 7 (a) a record that consent has been withdrawn; and
8 (b) if a request was made under section 18(1), a record of
9 the request having been made and whether or not it was
10 complied with.
- 11 (3) A record made under this section must be in the approved form.
- 12 (4) A failure to comply with this section in relation to any consent
13 or withdrawal of consent does not affect the validity of the
14 consent or withdrawal.

15 **Division 2 — Miscellaneous matters**

16 **20. Personal capacity, consent or refusal relevant in certain**
17 **circumstances**

- 18 (1) This section applies if —
- 19 (a) a person has an enduring guardian who is authorised to
20 consent on the person's behalf to the admission of, or
21 the provision of treatment to, the person;
- 22 (b) a person has a guardian who is authorised to consent on
23 the person's behalf to the admission of, or the provision
24 of treatment to, the person;
- 25 (c) a person has a person responsible under the
26 Guardianship Act section 110ZD(2) who is authorised to
27 consent on the person's behalf to the admission of, or
28 the provision of treatment to, the person.
- 29 (2) For the purposes of a provision of this Act specified in
30 subsection (4), it is relevant whether or not the person —

- 1 (a) has the personal capacity to give informed consent to
2 admission or provision of treatment; or
3 (b) has personally given informed consent to admission or
4 provision of treatment.
- 5 (3) For the purposes of a provision of this Act specified in
6 subsection (4), it is irrelevant whether or not the enduring
7 guardian, guardian or person responsible —
- 8 (a) has the capacity to give informed consent on the
9 person's behalf to admission or provision of treatment;
10 or
11 (b) has given informed consent on the person's behalf to
12 admission or provision of treatment.
- 13 (4) For subsections (2) and (3), these provisions are specified —
- 14 (a) section 25(1)(c)(i), which relates to the making of an
15 in-patient treatment order in respect of a person;
16 (b) section 25(2)(c)(i), which relates to the making of a
17 community treatment order in respect of a person;
18 (c) section 157(a)(ii), which relates to the performance of
19 electroconvulsive therapy on a voluntary patient who
20 has reached 18 years of age;
21 (d) section 171(1)(b), which relates to the performance of
22 psychosurgery on a person who has reached 18 years of
23 age.

Part 5 — Involuntary patients

Division 1 — When a person will be an involuntary patient

21. Involuntary patient

(1) An involuntary patient is a person in respect of whom an involuntary treatment order is in force.

(2) An involuntary treatment order is —

(a) an in-patient treatment order; or

(b) a community treatment order.

22. In-patient treatment order

(1) An in-patient treatment order is an order made under this Act under which a person can be admitted to a hospital, and detained there, to enable the person to be provided with treatment.

(2) An in-patient treatment order authorising a person's detention at an authorised hospital may be made under section 49(1)(a), 50(1)(a)(i), 64(1)(a), 108(2)(a) or 117(2)(a).

(3) An in-patient treatment order authorising a person's detention at a general hospital may be made only under section 55(1)(a).

23. Community treatment order

(1) A community treatment order is an order made under this Act under which a person can be provided with treatment in the community.

(2) A community treatment order may be made under section 49(1)(b), 50(1)(a)(ii), 55(1)(b), 64(1)(b), 68(1), 84(2)(b) or 85(1)(a).

24. Making involuntary treatment order

(1) Only a psychiatrist may make an involuntary treatment order.

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

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

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

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

1 person's freedom of choice and movement than making
2 a community treatment order.

3 Note for section 25:

4 For the purposes of section 25(1)(c)(ii) and (2)(c)(ii), in considering whether a
5 person has the capacity to give informed consent to treatment, see section 20.

6 Note for Division 1:

7 Part 18 Division 3 confers jurisdiction on the Mental Health Tribunal to
8 conduct reviews relating to involuntary patients.

9 **Division 2 — Referrals for examination**

10 **Subdivision 1 — Person suspected of needing involuntary**
11 **treatment order**

12 **26. Referral to psychiatrist**

13 (1) If, having regard to the criteria specified in section 25, a medical
14 practitioner or authorised mental health practitioner reasonably
15 suspects that a person is in need of an involuntary treatment
16 order, the practitioner may take action under subsection (2)
17 or (3) in respect of the person.

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

20 (3) The practitioner —

21 (a) may refer the person for an examination to be conducted
22 by a psychiatrist at a place that is not an authorised
23 hospital if, in the practitioner's opinion, it is an
24 appropriate place at which to conduct the examination;
25 and

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

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

- 1 (5) Sections 27 to 29 apply in relation to a person who is referred
2 under subsection (2) or (3)(a).

3 Notes for section 26:

- 4 1. Part 6 Division 4 applies in relation to the release of a person who is
5 detained at an authorised hospital or other place because of a referral
6 made under section 26(2) or (3)(a).
7 2. Part 6 Division 5 applies if a person in respect of whom a referral is
8 made under section 26(2) or (3)(a) absconds from the authorised
9 hospital or other place where the person can be detained because of
10 the referral.

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

- 13 (1) A medical practitioner or authorised mental health practitioner
14 may make an order in the approved form authorising the
15 person's detention for up to 6 hours from the time the referral is
16 made if satisfied that, because of the person's mental or physical
17 condition, the person needs to be detained to enable the person
18 to be taken to the hospital or other place.
- 19 (2) Immediately before the end of the period of detention ordered
20 under subsection (1) or any further period of detention ordered
21 under this subsection in respect of the person, a medical
22 practitioner or authorised mental health practitioner may make
23 an order in the approved form authorising the person's
24 continued detention for up to 6 hours from the end of that period
25 to enable the person to be taken to the hospital or other place.
- 26 (3) A person cannot be detained under this section for a continuous
27 period of more than 72 hours.
- 28 (4) A practitioner must not make an order under subsection (2) in
29 respect of the person unless —
30 (a) immediately before making the order, the practitioner
31 assesses the person; and
32 (b) as a consequence, the practitioner is satisfied that,
33 because of the person's mental or physical condition, the

1 person still needs to be detained to enable the person to
2 be taken to the hospital or other place.

- (5) Subdivision 4 applies in relation to the conduct of an assessment required by subsection (4)(a).
- (6) As soon as practicable after making an order under this section in respect of the person, a practitioner must —
- (a) put the order on the person’s medical record; and
 - (b) give a copy of the order to the person.
- (7) A practitioner who makes an order under this section in respect of the person must ensure that the person has the opportunity and the means to contact the person’s nominated person, the person’s carer and the Chief Mental Health Advocate —
- (a) as soon as practicable after the order is made; and
 - (b) at all reasonable times during the period of detention under the order.
- (8) If, by the end of a period of detention ordered under this section in respect of the person —
- (a) the person has not been taken to the hospital or other place; and
 - (b) an order authorising the person’s continued detention from the end of the period has not been made under subsection (2); and
 - (c) the person has not been apprehended under a transport order made under section 28(1),
- the person cannot be detained any longer.
- (9) If, by the later of —
- (a) the end of 72 hours after the time when the referral was made; and
 - (b) the end of the further period specified in any extension order made under section 128(3) in respect of any

1 transport order made under section 28(1) in respect of
2 the person,

3 the person has not been taken to the hospital or other place, the
4 person cannot be detained any longer.

5 **28. Making transport order**

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

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

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

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

15 (3) Part 8 applies in relation to the transport order.

16 **29. Effect of referral on community treatment order**

17 If a person in respect of whom a referral is made under
18 section 26(2) or (3)(a) is subject to a community treatment
19 order, the order is suspended for the period —

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

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

22 (i) a psychiatrist makes an order under
23 section 49(1)(a) or (d), 50(1)(a)(i)
24 or (iii), 55(1)(a) or (d) or 64(1)(a) or (c) in
25 respect of the person;

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

27 (iii) the person can no longer be detained because
28 section 27(8) or (9), 46(4), 52(4) or 62(4)
29 applies.

1. If a psychiatrist makes an in-patient treatment order under section 49(1)(a), 50(1)(a)(i), 55(1)(a) or 64(1)(a) in respect of the person, the community treatment order is automatically revoked under section 105(b).
2. If a psychiatrist makes an order under section 49(1)(d), 50(1)(a)(iii), 55(1)(d) or 64(1)(c) that the person cannot be detained any longer, the community treatment order is no longer suspended.
3. If a psychiatrist makes an order under section 55(1)(c) in respect of the person, the community treatment order remains suspended until the period of the suspension ends under section 29(b) or the community treatment order is revoked under section 108(2)(b) or 117(2)(b).

- (1) A medical practitioner or authorised mental health practitioner may make an order in the approved form revoking a referral made under section 26(2) or (3)(a) if satisfied that the person in respect of whom the referral is made is no longer in need of an involuntary treatment order.
- (2) The practitioner must not revoke a referral made by another practitioner unless —
 - (a) the practitioner has consulted the other practitioner about whether or not to revoke the referral; or
 - (b) despite all reasonable efforts to do so, the other practitioner cannot be contacted.
- (3) The order must —
 - (a) set out the reasons why the practitioner is satisfied that the person is no longer in need of an involuntary treatment order; and
 - (b) include —
 - (i) if the other practitioner was consulted — a record to that effect; or
 - (ii) if the other practitioner could not be contacted — a record of the efforts made to do so.

1 (4) As soon as practicable after making the order, the practitioner
2 must —

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

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

5 (5) A person in respect of whom a referral is revoked under
6 subsection (1) cannot be detained any longer.

7 **Subdivision 2 — Voluntary patient in authorised hospital**

8 **31. Application of this Subdivision**

9 This Subdivision applies in relation to a person (a **voluntary**
10 **in-patient**) who is admitted to an authorised hospital as a
11 voluntary patient.

12 **32. Detention by person in charge of ward to enable voluntary**
13 **in-patient to be assessed**

14 (1) This section applies if, having regard to the criteria specified in
15 section 25, the person in charge of the voluntary in-patient's
16 ward reasonably suspects that the voluntary in-patient is in need
17 of an involuntary treatment order —

18 (a) because the voluntary in-patient wants to be discharged
19 from the hospital against medical advice; or

20 (b) for another reason.

21 (2) The person in charge —

22 (a) may make an order in the approved form for an
23 assessment of the voluntary in-patient by a medical
24 practitioner or authorised mental health practitioner at
25 the hospital; and

26 (b) if the person in charge orders an assessment, may make
27 an order in the approved form authorising the voluntary
28 in-patient's detention at the hospital for up to 6 hours
29 from the time the order for an assessment is made to
30 enable the assessment to be conducted.

- (3) As soon as practicable after making an order under subsection (2), the person in charge must —
- (a) put the order on the voluntary in-patient's medical record; and
 - (b) give a copy of the order to the voluntary in-patient.
- (4) The person in charge must ensure that the voluntary in-patient has the opportunity and the means to contact the patient's nominated person, the patient's carer and the Chief Mental Health Advocate —
- (a) as soon as practicable after the order is made; and
 - (b) at all reasonable times during the period of detention under the order.
- (5) Subdivision 4 applies in relation to the conduct of an assessment ordered under subsection (2)(a).
- (6) If, by the end of the 6-hour period —
- (a) the assessment has not been completed; or
 - (b) the assessment has been completed but a referral has not been made under section 33(2) in respect of the voluntary in-patient,
- the voluntary in-patient cannot be detained any longer.

21 **33. Referral to psychiatrist**

- (1) This section applies if the voluntary in-patient is assessed by a medical practitioner or authorised mental health practitioner —
- (a) because of an order made under section 32(2)(a); or
- (b) in the course of the voluntary in-patient’s treatment while admitted to the hospital as a voluntary patient.
- (2) If, having regard to the criteria specified in section 25, the practitioner reasonably suspects that the voluntary in-patient is in need of an involuntary treatment order, the practitioner may

1 refer the in-patient for an examination to be conducted by a
2 psychiatrist at the hospital.

3 (3) Subdivision 3 applies in relation to the referral of a patient
4 under subsection (2).

5 Notes for section 33:

- 6 1. Part 6 Division 4 applies in relation to the release of a person who is
7 detained at an authorised hospital because of a referral made under
8 section 33(2).
9 2. Part 6 Division 5 applies if a person in respect of whom a referral is
10 made under section 33(2) absconds from the authorised hospital
11 where the person can be detained because of the referral.

12 **34. Effect of referral on community treatment order**

13 If a person in respect of whom a referral is made under
14 section 33(2) is subject to a community treatment order, the
15 order is suspended for the period —

- 16 (a) beginning when the referral is made; and
17 (b) ending when the first of these things occurs —
18 (i) a psychiatrist makes an order under
19 section 49(1)(a) or (d) or 50(1)(a)(i) or (iii);
20 (ii) the referral is revoked under section 35(1);
21 (iii) the person can no longer be detained because of
22 section 47(3) or 50(1)(b).

23 Notes for section 34:

- 24 1. If a psychiatrist makes an in-patient treatment order under
25 section 49(1)(a) or 50(1)(a)(i) in respect of the person, the community
26 treatment order is automatically revoked under section 105(b).
27 2. If a psychiatrist makes an order under section 49(1)(d) or 50(1)(a)(iii)
28 that the person cannot be detained any longer, the community
29 treatment order is no longer suspended.
30 3. If a psychiatrist makes an order under section 49(1)(c) in respect of the
31 person, the community treatment order remains suspended until the
32 period of the suspension ends under section 34(b) or the community
33 treatment order is revoked under section 108(2)(b) or 117(2)(b).

1 35. Revoking referral

- (1) A medical practitioner or authorised mental health practitioner may make an order in the approved form revoking a referral made under section 33(2) if satisfied that the voluntary in-patient in respect of whom the referral is made is no longer in need of an involuntary treatment order.
- (2) The practitioner must not revoke a referral by another practitioner unless —
- (a) the practitioner has consulted the other practitioner about whether or not to revoke the referral; or
 - (b) despite all reasonable efforts to do so, the other practitioner cannot be contacted.
- (3) The order must —
- (a) set out the reasons why the practitioner is satisfied that the voluntary in-patient is no longer in need of an involuntary treatment order; and
 - (b) include —
 - (i) if the other practitioner was consulted — a record to that effect; or
 - (ii) if the other practitioner could not be contacted — a record of the efforts made to do so.
- (4) As soon as practicable after making the order, the practitioner must —
- (a) put the order on the voluntary in-patient’s medical record; and
 - (b) give a copy of the order to the voluntary in-patient.
- (5) A voluntary in-patient in respect of whom a referral is revoked under subsection (1) cannot be detained any longer.

1 **Subdivision 3 — Requirements for referral**

2 **36. Application of this Subdivision**

3 This Subdivision applies in relation to the referral of a person
4 for an examination by a psychiatrist that is made by a medical
5 practitioner or authorised mental health practitioner under
6 section 26(2) or (3)(a) or 33(2).

7 **37. No referral without assessment**

8 (1) The practitioner must not refer the person unless the practitioner
9 has assessed the person.

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

12 **38. Time limit for referral**

13 (1) A referral cannot be made under section 26(2) or (3)(a) more
14 than 48 hours after the time when the assessment required by
15 section 37 is completed.

16 (2) A referral can only be made under section 33(2) immediately
17 after the time when the assessment required by section 37 is
18 completed.

19 **39. Form of referral**

20 The referral must be in the approved form and must —

- 21 (a) specify the date and time it is made; and
22 (b) specify the authorised hospital or other place where the
23 examination will be conducted; and
24 (c) specify the date and time the assessment required by
25 section 37 was completed; and
26 (d) certify that, having regard to the criteria specified in
27 section 25, the practitioner reasonably suspects that the
28 person being referred is in need of an involuntary
29 treatment order; and

- (e) specify the information on which the suspicion is based;
and
- (f) in respect of so much of that information as was
obtained by the practitioner during the assessment,
distinguish between —
- (i) the information obtained from the person being
referred, including by observing the person and
asking the person questions; and
- (ii) the information provided by anyone else.

10 **40. Providing information contained in referral to person**
11 **referred**

- 12 (1) Subject to subsection (2), the practitioner must provide the
13 person being referred with the information referred to in
14 section 39(a) to (e).
- 15 (2) The practitioner must not provide the person being referred any
16 information referred to in section 39(e) that was provided to the
17 practitioner by someone other than the person being referred on
18 condition that the information not be provided to the person
19 being referred.
- 20 (3) The information provided under subsection (1) must be in the
21 approved form.

22 **41. Copy of referral must be put on person's medical record**

23 The practitioner must put a copy of the referral on the person's
24 medical record.

25 **Subdivision 4 — Conduct of assessment**

26 **42. Application of this Subdivision**

27 This Subdivision applies in relation to the conduct of an
28 assessment by a medical practitioner or authorised mental health

1 practitioner that is required by, or has been ordered under,
2 section 27(4)(a), 32(2)(a), 37(1) or 56(4)(a).

3 **43. How assessment must be conducted**

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

6 (2) The practitioner and the person being assessed —

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

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

12 **44. Information that practitioner may have regard to**

13 (1) The practitioner may have regard to any information about the
14 person being assessed that is obtained by the practitioner during
15 the assessment from —

16 (a) the person being assessed, including information
17 obtained by observing the person and asking the person
18 questions; and

19 (b) anyone else.

20 (2) However, information provided by someone other than the
21 person being assessed does not by itself constitute sufficient
22 grounds for suspecting that the person being assessed is in need
23 of an involuntary treatment order.

Division 3 — Examinations

Subdivision 1 — Examination at authorised hospital

45. Application of this Subdivision

This Subdivision applies in relation to a person who is referred under section 26(2) or 33(2) for an examination by a psychiatrist at an authorised hospital.

46. Detention for examination on referral made under s. 26(2)

(1) If referred under section 26(2), the person —

- (a) must be received at the authorised hospital unless subsection (2) applies; and
- (b) can be detained, whether at the authorised hospital or at any other authorised hospital to which the person is transferred under section 78, to enable the examination to be conducted —
 - (i) for up to 24 hours after the time when the person is received at the hospital; and then
 - (ii) for the further period specified in any extension order made under section 128(3) in respect of any transport order made under section 79(1) in respect of the person.

(2) The person must not be received at the authorised hospital after the later of —

- (a) the end of 72 hours after the time when the referral was made; and
- (b) the end of the further period specified in any extension order made under section 128(3) in respect of any transport order made under section 28(1) in respect of the person.

(3) The person in charge of the authorised hospital at which the person is received under subsection (1)(a), and the person in

- 1 charge of each authorised hospital to which the person is
2 transferred under section 78, must ensure that the person has the
3 opportunity and the means to contact the person's nominated
4 person, the person's carer and the Chief Mental Health
5 Advocate —
- 6 (a) as soon as practicable after the person is received at that
7 hospital; and
- 8 (b) at all reasonable times while the person is detained
9 under subsection (1)(b) at that hospital.
- 10 (4) If, by the later of the end of the 24-hour period referred to in
11 subsection (1)(b)(i) and the end of any further period referred to
12 in subsection (1)(b)(ii) —
- 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 49(1) in respect of the person,
- 16 the person cannot be detained any longer.
- 17 (5) Reception at an authorised hospital under this section is not
18 admission to the hospital under this Act.
- 19 **47. Detention for examination on referral made under s. 33(2)**
- 20 (1) If referred under section 33(2), the person can be detained,
21 whether at the authorised hospital or at any other authorised
22 hospital to which the person is transferred under section 78, to
23 enable the examination to be conducted —
- 24 (a) for up to 24 hours after the time when —
- 25 (i) if section 33(1)(a) applies — the order for the
26 assessment of the person was made under
27 section 32(2)(a); or
- 28 (ii) if section 33(1)(b) applies — the person was
29 referred under section 33(2);
- 30 and then

- 1 (b) for the further period specified in any extension order
2 made under section 128(3) in respect of any transport
3 order made under section 79(1) in respect of the person.
- 4 (2) The person in charge of the authorised hospital at which the
5 person is detained under subsection (1), and the person in
6 charge of each authorised hospital to which the person is
7 transferred under section 78, must ensure that the person has the
8 opportunity and the means to contact the person's nominated
9 person, the person's carer and the Chief Mental Health
10 Advocate —
- 11 (a) as soon as practicable after the person is detained under
12 subsection (1) at that hospital; and
- 13 (b) at all reasonable times while the person is detained
14 under subsection (1) at that hospital.
- 15 (3) If, by the later of the end of the 24-hour period referred to in
16 subsection (1)(a)(i) or (ii) and the end of any further period
17 referred to in subsection (1)(b) —
- 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 49(1) in respect of the person,
- 21 the person cannot be detained any longer.
- 22 **48. Conducting examination**
- 23 Subdivision 6 applies in relation to the conduct of the
24 examination.
- 25 **49. What psychiatrist must do on completing examination**
- 26 (1) On completing the examination, the psychiatrist must make one
27 of these orders in the approved form —
- 28 (a) an in-patient treatment order authorising the person's
29 detention at the hospital for the period specified in the
30 order in accordance with section 82(a) or (b);

- 1 (b) a community treatment order in respect of the person;
- 2 (c) an order authorising the person's continued detention,
- 3 whether at the hospital or at another authorised hospital
- 4 to which the person is transferred under section 78, for a
- 5 further examination to be conducted by a psychiatrist;
- 6 (d) an order that the person cannot be detained any longer.
- 7 (2) An order made under subsection (1) must specify the date and
- 8 time it is made.
- 9 (3) If the psychiatrist makes an order under subsection (1)(c), the
- 10 person can continue to be detained, whether at the hospital or at
- 11 another hospital to which the person is transferred under
- 12 section 78 —
- 13 (a) for the period specified in the order, which must not be
- 14 more than 72 hours after the time when the person
- 15 was —
- 16 (i) received at the hospital under section 46(1)(a); or
- 17 (ii) detained at the hospital under section 47(1);
- 18 and then
- 19 (b) for the further period specified in any extension order
- 20 made under section 128(3) in respect of any transport
- 21 order made under section 79(1) in respect of the person.
- 22 (4) As soon as practicable after making an order under
- 23 subsection (1), the psychiatrist must —
- 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 49:
- 27 1. Part 6 Division 4 applies in relation to the release of a person who is
- 28 detained at an authorised hospital under an order made under
- 29 section 49(1)(c).
- 30 2. Part 6 Division 5 applies if a person in respect of whom an order made
- 31 under section 49(1)(c) is in force absconds from the authorised
- 32 hospital where the person can be detained under the order.

1 **50. Effect of order for continued detention made under**
2 **s. 49(1)(c)**

- 3 (1) An order made under section 49(1)(c) authorises the continued
4 detention of the person until the first of these things occurs —
5 (a) a psychiatrist conducts the further examination and
6 makes one of these orders —
7 (i) an in-patient treatment order authorising the
8 person's detention at the hospital for the period
9 specified in the order in accordance with
10 section 82(a) or (b);
11 (ii) a community treatment order in respect of the
12 person;
13 (iii) an order that the person cannot be detained any
14 longer;
15 (b) the later of —
16 (i) the expiry of the 72-hour period specified in the
17 order under section 49(3)(a); and
18 (ii) the expiry of the further period specified in any
19 extension order made under section 128(3) in
20 respect of any transport order made under
21 section 79(1) in respect of the person.
22 (2) An order made under subsection (1)(a) must specify the date
23 and time it is made.

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

25 **51. Application of this Subdivision**

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

- 1 **52. Detention for examination on referral made under**
2 **s. 26(3)(a)**
- 3 (1) The person —
- 4 (a) must be received at the place unless subsection (2)
- 5 applies; and
- 6 (b) can be detained at the place for up to 24 hours after the
- 7 time when the person is received at the place to enable
- 8 the examination to be conducted.
- 9 (2) The person must not be received at the place more than 72 hours
- 10 after the time when the referral was made.
- 11 (3) The person in charge of the place must ensure that the person
- 12 has the opportunity and the means to contact the person's
- 13 nominated person, the person's carer and the Chief Mental
- 14 Health Advocate —
- 15 (a) as soon as practicable after the person is received at the
- 16 place; and
- 17 (b) at all reasonable times while the person is detained
- 18 under subsection (1)(b) at the place.
- 19 (4) If, by the end of the 24-hour period referred to in
- 20 subsection (1)(b) —
- 21 (a) the examination has not been completed; or
- 22 (b) the examination has been completed but an order has not
- 23 been made under section 55(1) in respect of the person,
- 24 the person cannot be detained any longer.
- 25 **53. Detention at place in declared area**
- 26 (1) In this section —
- 27 **declared area** means an area declared under subsection (7).
- 28 (2) This section applies if —
- 29 (a) the person is referred to a place in a declared area; and

- 1 (b) it is not practicable to complete the examination of the
2 person within the 24-hour period referred to in
3 section 52(1)(b).
- 4 (3) A medical practitioner or authorised mental health practitioner
5 at the place may make an order in the approved form
6 authorising the person's continued detention at the place for up
7 to an additional 48 hours from the end of the 24-hour period to
8 enable the examination to be completed.
- 9 (4) As soon as practicable after making the order, the practitioner
10 must —
11 (a) put the order on the person's medical record; and
12 (b) give a copy of the order to the person.
- 13 (5) The practitioner must ensure that the person has the opportunity
14 and the means to contact the person's nominated person, the
15 person's carer and the Chief Mental Health Advocate —
16 (a) as soon as practicable after the order is made; and
17 (b) at all reasonable times during the period of detention
18 under the order.
- 19 (6) If, by the end of the additional 48-hour period —
20 (a) the examination has not been completed; or
21 (b) the examination has been completed but an order has not
22 been made under section 55(1) in respect of the person,
23 the person cannot be detained any longer.
- 24 (7) The Minister may, by notice published in the *Gazette*, declare
25 an area of the State to be a declared area for the purposes of this
26 section.
- 27 **54. Conducting examination**
28 Subdivision 6 applies in relation to the conduct of the
29 examination.

1 **55. What psychiatrist must do on completing examination**

2 (1) On completing the examination, the psychiatrist must make one
3 of these orders in the approved form —

4 (a) subject to subsection (2), an in-patient treatment order
5 authorising the person's detention at the general hospital
6 specified in the order for the period specified in the
7 order in accordance with section 82(a) or (b);

8 (b) a community treatment order in respect of the person;

9 (c) an order authorising the person's reception at an
10 authorised hospital, and the person's detention there or
11 at another authorised hospital to which the person is
12 transferred under section 78, to enable an examination to
13 be conducted by a psychiatrist;

14 (d) an order that the person cannot be detained any longer.

15 (2) The psychiatrist must not make an order under subsection (1)(a)
16 unless —

17 (a) the psychiatrist is satisfied that attempting to take the
18 person to an authorised hospital poses a significant risk
19 to the person's physical health; and

20 (b) the Chief Psychiatrist consents to the order being made.

21 (3) An order made under subsection (1) must specify the date and
22 time it is made.

23 (4) As soon as practicable after making an order under
24 subsection (1), the psychiatrist must —

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

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

27 Notes for section 55:

28 1. Part 6 Division 4 applies in relation to the release of a person who is
29 detained at an authorised hospital under an order made under
30 section 55(1)(c).

- 1 (6) As soon as practicable after making an order under this section
2 in respect of the person, a practitioner must —
- 3 (a) put the order on the person's medical record; and
4 (b) give a copy of the order to the person.
- 5 (7) A practitioner who makes an order under this section in respect
6 of the person must ensure that the person has the opportunity
7 and the means to contact the person's nominated person, the
8 person's carer and the Chief Mental Health Advocate —
- 9 (a) as soon as practicable after the order is made; and
10 (b) at all reasonable times during the period of detention
11 under the order.
- 12 (8) If, by the end of a period of detention ordered under this section
13 in respect of the person —
- 14 (a) the person has not been taken to the hospital; and
15 (b) the person has not been apprehended under a transport
16 order made under section 57(1); and
17 (c) an order authorising the person's continued detention
18 from the end of that period has not been made under
19 subsection (2),
- 20 the person cannot be detained any longer.
- 21 (9) If, by the later of —
- 22 (a) the end of 72 hours after the order under section 55(1)(a)
23 or (c) was made; and
24 (b) the end of the further period specified in any extension
25 order made under section 128(3) in respect of any
26 transport order made under section 57(1) in respect of
27 the person,
- 28 the person has not been taken to the hospital, the person cannot
29 be detained any longer.

(1) If an order is made under section 55(1)(a) or (c) in respect of a person, a psychiatrist may make a transport order in respect of the person.

7 (a) because of the person's mental or physical condition, the
8 person needs to be taken to the hospital; and

11 (3) Part 8 applies in relation to the transport order.

14 **58. Application of this Subdivision**

19 **59. Treating psychiatrist must report regularly to Chief**
20 **Psychiatrist**

24 (a) the involuntary in-patient's mental and physical
25 condition;

28 (c) any other medical or surgical treatment being provided
29 to the involuntary in-patient at the hospital.

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

2 **60. Transfer from general hospital to authorised hospital**

3 (1) Once the treating psychiatrist is satisfied that attempting to take
4 the involuntary in-patient to an authorised hospital no longer
5 poses a significant risk to the involuntary in-patient's physical
6 health, then as soon as practicable, the psychiatrist must make
7 an order (a **transfer order**) in the approved form authorising the
8 involuntary in-patient's transfer to the authorised hospital
9 specified in the order.

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

15 (3) As soon as practicable after making the transfer order, the
16 psychiatrist must —

17 (a) put the order on the involuntary in-patient's medical
18 record; and

19 (b) give a copy of the order to the involuntary in-patient.

20 Note for section 60:

21 The involuntary in-patient may be transported to the hospital under a transport
22 order made under section 79(1).

23 **Subdivision 4 — Order for further examination at**
24 **authorised hospital**

25 **61. Application of this Subdivision**

26 This Subdivision applies in relation to a person in respect of
27 whom an order is made under section 55(1)(c) that the person be
28 received at an authorised hospital, and detained there, to enable
29 an examination to be conducted by a psychiatrist.

1 **62. Detention at hospital**

2 (1) The person —

- 3 (a) must be received at the hospital unless subsection (2)
- 4 applies; and
- 5 (b) can be detained, whether at the hospital or at another
- 6 authorised hospital to which the person is transferred
- 7 under section 78 —
- 8 (i) for up to 24 hours after the time when the person
- 9 is received at the hospital; and then
- 10 (ii) for the further period specified in any extension
- 11 order made under section 128(3) in respect of
- 12 any transport order made under section 79(1) in
- 13 respect of the person.

14 (2) The person must not be received at the hospital after the later

15 of —

- 16 (a) the end of 72 hours after the time when the order under
- 17 section 55(1)(c) was made; and
- 18 (b) the end of the further period specified in any extension
- 19 order made under section 128(3) in respect of any
- 20 transport order made under section 57(1) in respect of
- 21 the person.

22 (3) The person in charge of the authorised hospital at which the

23 person is received under subsection (1)(a), and the person in

24 charge of each authorised hospital to which the person is

25 transferred under section 78, must ensure that the person has the

26 opportunity and the means to contact the person's nominated

27 person, the person's carer and the Chief Mental Health

28 Advocate —

- 29 (a) as soon as practicable after the person is received at that
- 30 hospital; and
- 31 (b) at all reasonable times while the person is detained
- 32 under subsection (1)(b) at that hospital.

- 1 (4) If, by the later of the end of the 24-hour period referred to in
2 subsection (1)(b)(i) and the end of any further period referred to
3 in subsection (1)(b)(ii) —
4 (a) the examination has not been completed; or
5 (b) the examination has been completed but an order has not
6 been made under section 64(1) in respect of the person,
7 the person cannot be detained any longer.
- 8 (5) Reception at an authorised hospital under this section is not
9 admission to the hospital under this Act.
- 10 **63. Conducting examination at hospital**
- 11 Subdivision 6 applies in relation to the conduct of the
12 examination.
- 13 **64. What psychiatrist must do on completing examination at**
14 **hospital**
- 15 (1) On completing the examination, the psychiatrist must make one
16 of these orders in the approved form —
17 (a) an in-patient treatment order authorising the person's
18 detention at the hospital for the period specified in the
19 order in accordance with section 82(a) or (b);
20 (b) a community treatment order in respect of the person;
21 (c) an order that the person cannot be detained any longer.
- 22 (2) An order made under subsection (1) must specify the date and
23 time it is made.
- 24 (3) As soon as practicable after making an order under
25 subsection (1), the psychiatrist must —
26 (a) put the order on the person's medical record; and
27 (b) give a copy of the order to the person.

1 **65. Chief Mental Health Advocate: notification**

2 The person in charge of an authorised hospital must ensure that,
3 as soon as practicable after a person is detained at the hospital
4 under an order made under section 64(1)(a), the Chief Mental
5 Health Advocate is notified of the person's detention.

6 **Subdivision 5 — Examination without referral**

7 **66. Application of this Subdivision**

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

- 10 (a) because of a referral made under section 26(2) or (3)(a)
11 or 33(2); or
12 (b) because of an order made under section 49(1)(c)
13 or 55(1)(c); or
14 (c) under section 84(1).

15 **67. Conducting examination**

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

18 **68. What psychiatrist may do on completing examination**

- 19 (1) On completing the examination, the psychiatrist may make a
20 community treatment order in the approved form in respect of
21 the person.
22 (2) As soon as practicable after making the order, the psychiatrist
23 must —
24 (a) put the order on the person's medical record; and
25 (b) give a copy of the order to the person.

26 **69. Confirmation of community treatment order**

- 27 (1) Within 72 hours after the community treatment order is made, it
28 must be confirmed by —

- 1 (a) another medical practitioner; or
2 (b) an authorised mental health practitioner.
- 3 (2) The confirmation must be in the approved form.
- 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) If the order is not confirmed in accordance with subsection (1),
12 it ceases to be in force.

13 **Subdivision 6 — Conduct of examination**

14 **70. Application of this Subdivision**

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

- 17 (a) by a psychiatrist because of a referral made under
18 section 26(2) or (3)(a) or 33(2);
19 (b) by a psychiatrist because of an order made under
20 section 55(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 106(2)(a);
25 (e) by a medical practitioner or authorised mental health
26 practitioner as required by section 106(2)(b);
27 (f) by a supervising psychiatrist as required by
28 section 109(2);
29 (g) by a psychiatrist as required by section 109(7) or 145(5).

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

- 2 (1) Subject to this section, an examination must be conducted in the
3 least restrictive way and environment practicable.
- 4 (2) For an examination referred to in section 70(a), (b), (c) or (e),
5 the psychiatrist or practitioner and the person being examined
6 must be in one another's physical presence.
- 7 (3) For any other examination referred to in section 70 —
8 (a) the psychiatrist and the person being examined need not
9 be in one another's physical presence; but
10 (b) if they are not, each of them must be able to see and hear
11 the other while the other is speaking (for example, by
12 being able to see one another through a window and
13 hear one another using a telephone or to see and hear
14 one another using an audio-visual system).

15 **72. Information psychiatrist or practitioner may have regard to**

- 16 (1) The psychiatrist or practitioner may have regard to any
17 information about the person being examined provided by the
18 person or another person.
- 19 (2) However, information provided by someone other than the
20 person being examined does not by itself constitute sufficient
21 grounds for being satisfied that the person being examined is in
22 need of, is still in need of, or is no longer in need of an
23 involuntary treatment order.

24 **Subdivision 7 — Application to mentally impaired accused**

25 **73. Mentally Impaired Accused Review Board: notification**

26 As soon as practicable after making an involuntary treatment
27 order in respect of a mentally impaired accused, the psychiatrist
28 who made the order must give a copy of the order to the
29 Mentally Impaired Accused Review Board.

Part 6 — Detention for examination or treatment

Division 1 — Preliminary matters

74. Application of this Part: mentally impaired accused

This Part does not apply in relation to a mentally impaired accused —

- (a) who is being detained at an authorised hospital —
 - (i) under the CL(MIA) Act section 25(2)(a); or
 - (ii) because of a determination made under the CL(MIA) Act section 25(1)(b) or amended under section 26 of that Act;
- and
- (b) in respect of whom an order referred to in section 75 was in force when the accused was detained at the hospital under the CL(MIA) Act.

Division 2 — Detention at hospitals

75. Application of this Division

This Division applies in relation to each of these people (a *person detained*) —

- (a) a person who can be detained at an authorised hospital under section 46(1)(b) or 47(1) because of a referral made under section 26(2) or 33(2);
- (b) a person in respect of whom there is in force an order made under section 49(1)(c) or 55(1)(c) authorising the person's detention at an authorised hospital to enable an examination to be conducted by a psychiatrist;
- (c) a person in respect of whom there is in force an in-patient treatment order made under section 49(1)(a), 50(1)(a)(i), 55(1)(a) or 64(1)(a) authorising the person's detention at a hospital.

1 Note for section 75:
2 An in-patient treatment order authorising a person's detention at a general
3 hospital can be made only under section 55(1)(a).

4 **76. Terms used**

5 In this Division —
6 ***appropriate psychiatrist***, in relation to a person detained,
7 means —

- 8 (a) the treating psychiatrist; or
9 (b) if the person detained does not have a treating
10 psychiatrist or the treating psychiatrist is not reasonably
11 available, another psychiatrist at the hospital where the
12 person is detained;

13 ***transfer order*** means a transfer order made under section 60(1)
14 or 78(2).

15 **77. Detention authorised**

16 (1) This section applies to these things —

- 17 (a) a referral made under section 26(2) or 33(2) in respect of
18 a person detained;
19 (b) an order referred to in section 49(1)(c) or 55(1)(c) in
20 force in respect of a person detained.

21 (2) The referral or order authorises —

- 22 (a) as necessary, the person detained's reception at or
23 admission to —
24 (i) the hospital specified in the referral or order; and
25 (ii) any authorised hospital to which the person
26 detained is transferred under section 60(1)
27 or 78(2);

28 and

- 1 (b) the person detained's detention at those hospitals for the
2 period authorised by this Act for which the person can
3 be detained because of the referral or under the order.

4 **78. Transfer between authorised hospitals**

- 5 (1) This section applies in relation to a person detained who is
6 detained at an authorised hospital.
- 7 (2) The appropriate psychiatrist may make an order (a **transfer**
8 **order**) in the approved form authorising the person detained's
9 transfer from the authorised hospital to another authorised
10 hospital specified in the order.
- 11 (3) As soon as practicable after making the transfer order, the
12 psychiatrist must —
- 13 (a) put the order on the person detained's medical record;
14 and
- 15 (b) give a copy of the order to the person detained.

16 Note for section 78:

17 Section 60 applies in relation to the transfer of a person detained who is an
18 in-voluntary in-patient from a general hospital to an authorised hospital.

19 **79. Making transport order**

- 20 (1) If the appropriate psychiatrist makes a transfer order in respect
21 of a person detained, that psychiatrist or another psychiatrist
22 may make a transport order in respect of the person.
- 23 (2) The psychiatrist must not make the transport order unless
24 satisfied that no other safe means of taking the person detained
25 to the hospital is reasonably available.
- 26 (3) Part 8 applies in relation to the transport order.

80. Application of this Division

Notes for section 80:

- ## 81. Terms used

(b) the further period for which the involuntary in-patient can be detained under the order as specified in a continuation order.

(a) if, when the order is made, the involuntary in-patient has reached 18 years of age — 21 days after the order is made; or

- 1 (b) if, when the order is made, the involuntary in-patient is a
2 child — 14 days after the order is made.

3 **83. Period for which detention is authorised**

4 An in-patient treatment order authorises the involuntary
5 in-patient's detention until the first of these things occurs —

- 6 (a) a psychiatrist makes an order under section 84(2)(b)
7 or 85(1)(a) in respect of the involuntary in-patient;
8 (b) a psychiatrist revokes the order under section 84(2)(c)
9 or 85(1)(b);
10 (c) the expiry of the detention period unless the period for
11 which the involuntary in-patient can be detained under
12 the order has been continued under a continuation order.

13 **84. Examination before end of each detention period**

- 14 (1) The treating psychiatrist must ensure that, as near as practicable
15 to (but not earlier than 7 days before) the end of the detention
16 period, the involuntary in-patient is examined by a psychiatrist.
- 17 (2) On completing the examination, the psychiatrist who conducted
18 it must make one of these orders in the approved form —
- 19 (a) if satisfied, having regard to the criteria specified in
20 section 25, that the involuntary in-patient is still in need
21 of the in-patient treatment order — a continuation order
22 continuing the period for which the involuntary
23 in-patient can be detained under the in-patient treatment
24 order from the end of the detention period for the further
25 period (not exceeding 3 months after the continuation
26 order is made) that is specified in the continuation order;
- 27 (b) if satisfied, having regard to the criteria specified in
28 section 25, that the involuntary in-patient is no longer in
29 need of the in-patient treatment order but is in need of a
30 community treatment order — a community treatment
31 order in respect of the involuntary in-patient;

- 1 (c) if satisfied, having regard to the criteria in section 25,
2 that the involuntary in-patient is no longer in need of an
3 involuntary treatment order — an order revoking the
4 in-patient treatment order.
- 5 (3) A continuation order must specify the date on which it is made.
- 6 (4) As soon as practicable after making an order under
7 subsection (2), the psychiatrist who made it must —
- 8 (a) put the order on the involuntary in-patient’s medical
9 record; and
- 10 (b) give a copy of the order to the involuntary in-patient.
- 11 **85. Release may be ordered at any time**
- 12 (1) During the detention period, a psychiatrist may make either of
13 these orders in the approved form —
- 14 (a) if satisfied, having regard to the criteria specified in
15 section 25, that the involuntary in-patient is no longer in
16 need of the in-patient treatment order but is in need of a
17 community treatment order — a community treatment
18 order in respect of the involuntary in-patient;
- 19 (b) if satisfied, having regard to the criteria specified in
20 section 25, that the involuntary in-patient is no longer in
21 need of an involuntary treatment order — an order
22 revoking the in-patient treatment order.
- 23 (2) The psychiatrist may make an order under subsection (1)
24 without examining the involuntary in-patient.
- 25 (3) As soon as practicable after making an order under
26 subsection (1), the psychiatrist must —
- 27 (a) put the order on the involuntary in-patient’s medical
28 record; and
- 29 (b) give a copy of the order to the involuntary in-patient.

1 **Division 4 — Release from detention at hospital or other place**

2 **86. Application of this Division**

3 This Division applies in relation to any of these people
4 (a *person detained*) —

- 5 (a) a person who is detained at an authorised hospital or
6 other place because of a referral made under
7 section 26(2) or (3)(a) or 33(2);
- 8 (b) a person who is detained at an authorised hospital under
9 an order made under section 49(1)(c) or 55(1)(c);
- 10 (c) a person who is detained at a hospital under an in-patient
11 treatment order;
- 12 (d) an involuntary community patient who is detained at a
13 place under section 116(2)(b).

14 **87. Person detained must be allowed to leave**

15 As soon as practicable after the time when the person detained
16 cannot be detained because of the referral or under the order any
17 longer, the person —

- 18 (a) must be informed in writing by a psychiatrist that the
19 person detained cannot be detained because of the
20 referral or under the order any longer; and
- 21 (b) must be allowed to leave the hospital or other place
22 unless the person detained's detention at the hospital or
23 other place is authorised —
- 24 (i) because of another referral, or under an order,
25 referred to in section 86; or
- 26 (ii) under section 88.

27 **88. Release of person detained into custody**

28 If the person detained —

- 29 (a) cannot be detained because of the referral or under the
30 order any longer; but

- 1 (b) is subject to an order made under the law of the
2 Commonwealth or a State or Territory requiring the
3 person detained to be kept in custody,
4 the person detained must not be allowed to leave the hospital or
5 other place until the person has been delivered into that custody.

6 **Division 5 — Absconding from hospital or other place**

7 **89. Persons who abscond**

- 8 (1) For the purposes of this Division, a person absconds from a
9 hospital or other place if —
10 (a) in the case of a person in respect of whom a referral is
11 made under section 26(2) or (3)(a) or 33(2) — the
12 person leaves the authorised hospital or other place
13 where the person can be detained because of the referral;
14 (b) in the case of a person in respect of whom an order
15 made under section 49(1)(c) or 55(1)(c) is in force —
16 the person leaves the authorised hospital where the
17 person can be detained under the order;
18 (c) in the case of a person in respect of whom an in-patient
19 treatment order is in force — the person is absent
20 without leave as described in subsection (2);
21 (d) in the case of an involuntary community patient who is
22 detained under section 116(2)(b) — the person leaves
23 the place where the patient can be detained under that
24 provision.
25 (2) For subsection (1)(c), a person in respect of whom an in-patient
26 treatment order is in force is absent without leave —
27 (a) if the person is away from the hospital where the person
28 can be detained under the order without being granted
29 leave of absence under section 94(1); or
30 (b) if, on the cancellation under section 99(1) of leave of
31 absence granted to the person under section 94(1) or on

- 1 the expiry of such leave, the person does not return to
2 either of these hospitals —
- 3 (i) the hospital from which the person was granted
4 the leave of absence;
- 5 (ii) the hospital to which the person's transfer has
6 been ordered under section 60(1) or 78(2).

7 **90. Making apprehension and return order**

- 8 (1) If a person absconds from a hospital or other place —
- 9 (a) the person in charge of the hospital or other place; or
10 (b) a psychiatrist,
- 11 may make an order (an ***apprehension and return order***) in
12 respect of the person.
- 13 (2) An apprehension and return order must be in the approved form
14 and must specify these things —
- 15 (a) the name of the person who has absconded;
16 (b) the hospital or other place from which the person has
17 absconded and to which the person must be returned;
18 (c) the date and time when the order is made.
- 19 (3) As soon as practicable after making an apprehension and return
20 order, the person who made the order must —
- 21 (a) put the order on the medical record of the person who
22 has absconded; and
23 (b) give a copy of the order to the police officer or person
24 prescribed who will carry out the order.

25 **91. Operation of apprehension and return order**

26 An apprehension and return order made in respect of a person
27 authorises a police officer, or a person prescribed by the
28 regulations for this section, to do these things —

- 1 (a) apprehend the person and, for that purpose, exercise the
2 powers under section 132(1);
- 3 (b) if the person is apprehended, return the person to the
4 hospital or other place specified in the order.

5 **Division 6 — Leave of absence from detention at hospital under**
6 **in-patient treatment order**

7 **Subdivision 1 — Preliminary matters**

8 **92. Application of this Subdivision**

9 This Division applies in relation to a person (an *involuntary*
10 *in-patient*) in respect of whom there is in force an in-patient
11 treatment order authorising the involuntary in-patient's
12 detention at a hospital.

13 Note for section 92:

14 An in-patient treatment order authorising a person's detention at a general
15 hospital can be made only under section 55(1)(a).

16 **93. Term used: leave of absence**

17 In this Division —

18 *leave of absence* —

- 19 (a) means leave of absence granted under section 94(1); and
20 (b) includes leave of absence as extended or varied under
21 section 95(1).

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

23 **94. Granting leave**

- 24 (1) A psychiatrist may make an order in the approved form granting
25 an involuntary in-patient leave of absence from a hospital if
26 satisfied that granting the leave of absence —
27 (a) will —

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- 1 (i) enable the involuntary in-patient to obtain
2 medical or surgical treatment; or
3 (ii) be likely to benefit the involuntary in-patient's
4 health in some other way;
5 and
6 (b) is not inconsistent with the involuntary in-patient's need
7 to be provided with treatment for a reason specified in
8 section 25(1)(b).
- 9 (2) Before deciding whether or not to make the order, the
10 psychiatrist must consult the involuntary in-patient's carer
11 about —
12 (a) whether or not to make the order; and
13 (b) what period and conditions would be appropriate to
14 specify in the order if it were to be made.
- 15 (3) Before deciding whether or not to make the order, the
16 psychiatrist must consider whether it would be more appropriate
17 to make an order under section 85(1) in respect of the
18 involuntary in-patient.
- 19 (4) The order authorises the involuntary in-patient's absence from
20 the hospital —
21 (a) for the period; and
22 (b) subject to the conditions,
23 the psychiatrist considers appropriate and specifies in the order.
- 24 (5) The conditions imposed under subsection (4)(b) may include
25 conditions about the involuntary in-patient doing any of these
26 things —
27 (a) residing at a specified place;
28 (b) taking specified medication;
29 (c) attending at a specified place to enable the involuntary
30 in-patient to be provided with specified treatment.

- 1 (6) As soon as practicable after making the order, the psychiatrist
2 must —
- 3 (a) put the order on the involuntary in-patient’s medical
4 record; and
- 5 (b) give a copy of the order to the involuntary in-patient.
- 6 **95. Extending or varying leave granted**
- 7 (1) A psychiatrist may make an order in the approved form —
- 8 (a) extending the period of an involuntary in-patient’s leave
9 of absence; or
- 10 (b) varying the conditions subject to which an involuntary
11 in-patient’s leave of absence is granted.
- 12 (2) As soon as practicable after making the order, the psychiatrist
13 must —
- 14 (a) put the order on the involuntary in-patient’s medical
15 record; and
- 16 (b) give a copy of the order to the involuntary in-patient.
- 17 **96. Involuntary in-patient must comply with conditions of leave**
- 18 While on leave of absence, an involuntary in-patient must
19 comply with the conditions to which the leave of absence is
20 subject.
- 21 **97. Monitoring involuntary in-patient on leave**
- 22 (1) If an involuntary in-patient is away from a hospital on leave of
23 absence for more than 28 consecutive days, the treating
24 psychiatrist must consider whether it would be appropriate to
25 make an order under section 85(1) in respect of the involuntary
26 in-patient.
- 27 (2) For the purpose of subsection (1), the treating psychiatrist may
28 make any inquiries the psychiatrist considers appropriate.

- 1 **98. Releasing involuntary in-patient on leave on advice of**
2 **practitioner**
- 3 (1) This section applies if, while an involuntary in-patient is away
4 from a hospital on leave of absence, the treating psychiatrist is
5 given a written opinion from —
6 (a) another medical practitioner; or
7 (b) a mental health practitioner,
8 to the effect that the involuntary in-patient is no longer in need
9 of an in-patient treatment order.
- 10 (2) The treating psychiatrist may make an order under section 85(1)
11 in respect of the involuntary in-patient on the basis of the
12 opinion and without examining the involuntary in-patient.
- 13 (3) As soon as practicable after being given the opinion and
14 whether or not the treating psychiatrist acts under subsection (2)
15 on the basis of the opinion, the treating psychiatrist must put the
16 opinion on the involuntary in-patient's medical record.
- 17 **99. Cancelling leave**
- 18 (1) If, while an involuntary in-patient is away from a hospital on
19 leave of absence, a psychiatrist forms the reasonable belief that
20 it is inappropriate for the involuntary in-patient to continue to be
21 away from the hospital, the psychiatrist may make an order in
22 the approved form cancelling the leave of absence.
- 23 (2) As soon as practicable after making the order, the psychiatrist
24 must —
25 (a) put the order on the involuntary in-patient's medical
26 record; and
27 (b) give a copy of the order to the involuntary in-patient.

1 **Subdivision 3 — Transport to and from general hospital**

2 **100. Application of this Subdivision**

3 This Subdivision applies in relation to an involuntary
4 in-patient —

- 5 (a) who is granted leave of absence to enable the
6 involuntary in-patient to obtain medical or surgical
7 treatment at a general hospital; or
- 8 (b) who, because of the cancellation under section 99(1) of
9 leave of absence granted to the involuntary patient for a
10 purpose referred to in paragraph (a) or because of the
11 expiry of such leave, must return to —
- 12 (i) the authorised hospital from which the leave was
13 granted; or
- 14 (ii) another authorised hospital to which the
15 involuntary in-patient's transfer has been ordered
16 under section 78(2).

17 **101. Making transport order**

- 18 (1) A psychiatrist may make a transport order in respect of the
19 involuntary in-patient.
- 20 (2) The practitioner must not make the transport order unless
21 satisfied that no other safe means of taking the involuntary
22 in-patient to the hospital is reasonably available.
- 23 (3) Part 8 applies in relation to the transport order.

Part 7 — Community treatment orders

Division 1 — Preliminary matters

102. Terms used

In this Part —

community treatment order includes a community treatment order as varied under section 109(1), 110(1), 121(1)(a) or 123(a);

continuation order means a continuation order made under section 109(1);

involuntary community patient, in relation to a community treatment order, means the person in respect of whom the order is in force;

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 period for which the order will remain in force as specified in the order under section 104(2); or
- (b) the further period for which the order will remain in force as specified in a continuation order.

Division 2 — Making order

103. 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 —

- 1 (a) treatment of the person in the community would not be
2 inconsistent with the person's need to be provided with
3 treatment for a reason specified in section 25(2)(b);
- 4 (b) suitable arrangements can be made for the care of the
5 person in the community;
- 6 (c) a psychiatrist is available and willing to be the
7 supervising psychiatrist under the order;
- 8 (d) a medical practitioner or mental health practitioner is
9 available and willing to be the treating practitioner under
10 the order.

11 Note for section 103:

12 Under section 122(2)(b), the supervising psychiatrist can also be the treating
13 practitioner.

14 **104. Terms of order**

- 15 (1) The terms of a community treatment order must include these
16 things —
- 17 (a) the name of the psychiatrist who will be the supervising
18 psychiatrist under the order;
- 19 (b) an outline of the treatment that will be provided under
20 the order to the involuntary community patient,
21 including details of —
- 22 (i) where and when the treatment will be provided;
23 and
- 24 (ii) anything else related to the treatment that the
25 psychiatrist making the order considers
26 appropriate;
- 27 (c) the name of the medical practitioner or mental health
28 practitioner who will be the treating practitioner under
29 the order;
- 30 (d) the period for which the order will remain in force (see
31 subsection (2));

- 1 (e) a requirement that the involuntary community patient
2 notify the supervising psychiatrist or treating
3 practitioner of any change in the patient's residential
4 address;
- 5 (f) a requirement that the involuntary community patient
6 notify the supervising psychiatrist or treating
7 practitioner of any interstate or overseas travel by the
8 patient —
- 9 (i) at least 7 days before the patient's departure; or
10 (ii) if the patient cannot comply with
11 subparagraph (i) because the patient needs to
12 travel urgently — as soon as it is practicable for
13 the patient to give notice of the travel.
- 14 (2) For subsection (1)(d), the period specified in a community
15 treatment order when it is made must not exceed 3 months after
16 it is made.
- 17 Notes for section 104:
- 18 1. Under section 122(2)(b), the supervising psychiatrist can also be the
19 treating practitioner.
- 20 2. Under section 438, the terms of a community treatment order may require
21 the involuntary community patient to be provided with treatment by a
22 mental health service in another State or a Territory.

23 **Division 3 — Operation of order**

24 **105. Duration of order**

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

- 27 (a) the supervising psychiatrist makes an in-patient
28 treatment order under section 108(2)(a), 111(1)(a)
29 or 117(2)(a) in respect of the involuntary community
30 patient;

- 1 (b) a psychiatrist makes an in-patient treatment order under
2 any other provision of this Act in respect of the
3 involuntary community patient;
4 (c) the supervising psychiatrist revokes the order under
5 section 108(2)(b) or 117(2)(b);
6 (d) the expiry of a treatment period unless the period for
7 which the order will remain in force has been continued
8 under a continuation order.

9 Note for section 105:

10 A community treatment order may be suspended under section 29.

11 **106. Monthly examination of patient**

- 12 (1) In this section —
13 ***first treatment period***, for a community treatment order, means
14 the period for which the order will remain in force as specified
15 in the order under section 104(2);
16 ***review period***, for a community treatment order, means —
17 (a) the period of one month after the beginning of the first
18 treatment period for the order; or
19 (b) the period of one month after the involuntary
20 community patient was last examined under
21 subsection (2) for the purposes of the order.
22 (2) As near as practicable to (but not earlier than 14 days before)
23 the end of each review period for a community treatment order,
24 the involuntary community patient must be examined by —
25 (a) the supervising psychiatrist; or
26 (b) subject to subsection (3), another medical practitioner or
27 a mental health practitioner —
28 (i) if the supervising psychiatrist is unavailable; or
29 (ii) if requested by the supervising psychiatrist under
30 section 107(1).

- 1 (3) The involuntary community patient cannot be examined under
2 subsection (2)(b) by a practitioner who is not the supervising
3 psychiatrist if more than 2 months has elapsed since the patient
4 was last examined under subsection (2)(a) by the supervising
5 psychiatrist.
- 6 (4) Part 5 Division 3 Subdivision 6 applies in relation to the
7 conduct of an examination under subsection (2).
- 8 (5) If the involuntary community patient is examined under
9 subsection (2)(b) by a practitioner who is not the supervising
10 psychiatrist, the practitioner must provide the supervising
11 psychiatrist with a written report of the examination that
12 includes a recommendation about whether the patient is still in
13 need of an involuntary treatment order.
- 14 (6) The supervising psychiatrist must put on the involuntary
15 community patient's medical record —
- 16 (a) a record of each examination of the involuntary
17 community patient that the psychiatrist conducts under
18 subsection (2)(a); and
- 19 (b) each report of an examination of the involuntary
20 community patient provided to the psychiatrist under
21 subsection (5).
- 22 **107. Supervising psychiatrist may request practitioner to**
23 **examine involuntary community patient**
- 24 (1) For the purpose of section 106(2)(b)(ii), the supervising
25 psychiatrist may request another medical practitioner or a
26 mental health practitioner to examine the involuntary
27 community patient.
- 28 (2) The request must be in the approved form and may specify
29 requirements for either or both of these things —
- 30 (a) carrying out the examination;
- 31 (b) preparing the report.

- 1 **108. What supervising psychiatrist may do after examination**
- 2 (1) This section applies —
- 3 (a) on completion of the examination of the involuntary
- 4 community patient by the supervising psychiatrist under
- 5 section 106(2)(a); or
- 6 (b) on provision of a report about the involuntary
- 7 community patient to the supervising psychiatrist under
- 8 section 106(5).
- 9 (2) The supervising psychiatrist must consider whether the
- 10 involuntary community patient is still in need of an involuntary
- 11 treatment order and may make either of these orders in the
- 12 approved form —
- 13 (a) if satisfied, having regard to the criteria specified in
- 14 section 25, that the involuntary community patient is
- 15 still in need of an involuntary treatment order but not
- 16 satisfied of the things referred to in section 103(a)
- 17 to (d) — an in-patient treatment order authorising the
- 18 patient's detention at the authorised hospital specified in
- 19 the order for the period specified in the order in
- 20 accordance with section 82(a) or (b); or
- 21 (b) if satisfied, having regard to the criteria specified in
- 22 section 25, that the involuntary community patient is no
- 23 longer in need of an involuntary treatment order — an
- 24 order revoking the community treatment order.
- 25 (3) The supervising psychiatrist may make an order under
- 26 subsection (2) on the basis of a report provided to the
- 27 psychiatrist under section 106(5) without examining the
- 28 involuntary community patient.
- 29 (4) As soon as practicable after making an order under
- 30 subsection (2), the supervising psychiatrist must —
- 31 (a) put the order on the involuntary community patient's
- 32 medical record; and

- 1 (b) give a copy of the order to the involuntary community
2 patient.

3 **109. Continuation order**

- 4 (1) As near as practicable to (but not earlier than 7 days before) the
5 end of a treatment period, the supervising psychiatrist may
6 make an order (a **continuation order**) in the approved form
7 continuing the period for which the community treatment order
8 will remain in force from the end of the treatment period for the
9 further period (not exceeding 3 months after the continuation
10 order is made) that is specified in the continuation order.
- 11 (2) The supervising psychiatrist must not make the continuation
12 order unless the supervising psychiatrist has examined the
13 involuntary community patient in accordance with Part 5
14 Division 3 Subdivision 6.
- 15 (3) As soon as practicable after making the continuation order, the
16 supervising psychiatrist must —
- 17 (a) put the order on the involuntary community patient's
18 medical record; and
- 19 (b) give a copy of the order to the involuntary community
20 patient.
- 21 (4) If the supervising psychiatrist makes the continuation order, the
22 involuntary community patient may request the supervising
23 psychiatrist in writing to obtain the opinion of another
24 psychiatrist about whether it was appropriate to have continued
25 the period for which the community treatment order will remain
26 in force (but not whether the period of the continuation was
27 appropriate).
- 28 (5) The supervising psychiatrist must comply with the request.
- 29 (6) In obtaining the opinion of another psychiatrist, the supervising
30 psychiatrist must have regard to the guidelines published under
31 section 427(1)(a).

- 1 (7) A psychiatrist must not give an opinion for the purposes of
2 subsection (4) unless the psychiatrist has examined the
3 involuntary community patient in accordance with Part 5
4 Division 3 Subdivision 6.
- 5 (8) An opinion for the purposes of subsection (4) must be given in
6 writing.
- 7 (9) As soon as practicable after obtaining the opinion, the
8 supervising psychiatrist must —
- 9 (a) put the opinion on the involuntary community patient's
10 medical record; and
- 11 (b) give a copy of the opinion to the involuntary community
12 patient.
- 13 (10) If the opinion —
- 14 (a) has not been obtained within 14 days after the
15 involuntary community patient's request is received by
16 the supervising psychiatrist; or
- 17 (b) does not confirm that it was appropriate to have
18 continued the period for which the community treatment
19 order will remain in force,
- 20 the continuation order does not come into force or ceases to be
21 in force.
- 22 (11) Subsection (10) does not apply if the opinion was not obtained
23 within the 14-day period because the involuntary community
24 patient did not attend an examination to be conducted by the
25 psychiatrist who was to have given the opinion.
- 26 **110. Varying order**
- 27 (1) At any time while a community treatment order is in force,
28 subject to subsection (2), the supervising psychiatrist may make
29 an order in the approved form varying the terms of the order in
30 any way that is consistent with section 104 and the supervising
31 psychiatrist considers appropriate.

- 1 (2) The supervising psychiatrist cannot make an order under
2 subsection (1) varying the period for which the community
3 treatment will remain in force.
- 4 (3) As soon as practicable after making the order, the supervising
5 psychiatrist must —
- 6 (a) put the order on the involuntary community patient's
7 medical record; and
- 8 (b) give a copy of the order to the involuntary community
9 patient.
- 10 **111. Making in-patient treatment order or revoking community**
11 **treatment order**
- 12 (1) At any time while a community treatment order is in force, the
13 supervising psychiatrist may make either of these orders in the
14 approved form —
- 15 (a) if satisfied, having regard to the criteria specified in
16 section 25(1), that the involuntary community patient is
17 in need of an in-patient treatment order — an in-patient
18 treatment order authorising the patient's detention at an
19 authorised hospital;
- 20 (b) if satisfied, having regard to the criteria specified in
21 section 25, that the involuntary community patient is no
22 longer in need of an involuntary treatment order — an
23 order revoking the community treatment order.
- 24 (2) The supervising psychiatrist may make an order under
25 subsection (1) without doing any of these things —
- 26 (a) examining the involuntary community patient;
- 27 (b) giving the involuntary community patient notice of a
28 breach of the community treatment order under
29 section 113(1)(b);
- 30 (c) making an order to attend under section 114(1)(a).

- 1 (3) As soon as practicable after making an order under
2 subsection (1), the supervising psychiatrist must —
- 3 (a) put the order on the involuntary community patient’s
4 medical record; and
- 5 (b) give a copy of the order to the involuntary community
6 patient.

7 Note for Division 3:
8 Part 18 Division 3 confers jurisdiction on the Mental Health Tribunal to
9 conduct reviews relating to involuntary patients.

10 **Division 4 — Breach of order**

11 **112. When involuntary community patient will be in breach**

12 An involuntary community patient breaches a community
13 treatment order if —

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

24 **113. What supervising psychiatrist must do if order breached**

- 25 (1) If an involuntary community patient breaches a community
26 treatment order, the supervising psychiatrist must —
- 27 (a) record the breach in accordance with subsection (2); and
- 28 (b) give notice of the breach in accordance with
29 subsection (3) to the involuntary community patient.

- 1 (2) The record must be in the approved form and must include these
2 things —
- 3 (a) details of the involuntary community patient's
4 non-compliance;
- 5 (b) the steps that have been taken to obtain the involuntary
6 community patient's compliance;
- 7 (c) a statement that the supervising psychiatrist holds the
8 beliefs referred to in section 112(c);
- 9 (d) the facts on which those beliefs are based;
- 10 (e) the grounds for those beliefs.
- 11 (3) The notice must be in the approved form and must include these
12 things —
- 13 (a) details of the involuntary community patient's
14 non-compliance;
- 15 (b) details of what the involuntary community patient must
16 do to comply;
- 17 (c) a statement that continued non-compliance with the
18 order may result in the involuntary community patient
19 being required to attend a place to enable the patient to
20 be provided with treatment.
- 21 (4) As soon as practicable after taking action under subsection (1),
22 the supervising psychiatrist must put these things on the
23 involuntary community patient's medical record —
- 24 (a) the record of the breach;
- 25 (b) a copy of the notice of the breach.

26 **114. Order to attend if non-compliance continues**

- 27 (1) If, having given the involuntary community patient notice of the
28 breach under section 113(1)(b), the supervising psychiatrist is
29 not satisfied that the patient is complying with the community
30 treatment order, the supervising psychiatrist —

- 1 (2) The involuntary community patient —
- 2 (a) must be received at the place; and
- 3 (b) can be detained at the place until the first of these things
- 4 occurs —
- 5 (i) treatment is provided to the involuntary
- 6 community patient;
- 7 (ii) the supervising psychiatrist makes an order under
- 8 section 117(2)(a) in respect of the patient;
- 9 (iii) the expiry of 6 hours after the time when the
- 10 patient was received at the place.
- 11 (3) If, by the end of the 6-hour period referred to in
- 12 subsection (2)(b)(iii) —
- 13 (a) treatment has not been provided to the involuntary
- 14 community patient; and
- 15 (b) the supervising psychiatrist has not made an order under
- 16 section 117(2)(a) in respect of the involuntary
- 17 community patient,
- 18 the involuntary community patient cannot be detained any
- 19 longer.
- 20 Notes for section 116:
- 21 1. Part 6 Division 4 applies in relation to the release of an involuntary
- 22 community patient who is detained at a place under section 116(2)(b).
- 23 2. Part 6 Division 5 applies if an involuntary community patient absconds
- 24 from the place where the patient can be detained under
- 25 section 116(2)(b).

26 **117. Other action supervising psychiatrist may take if**

27 **non-compliance with orders**

- 28 (1) This section applies in these circumstances —
- 29 (a) an involuntary community patient has breached a
- 30 community treatment order under section 112;
- 31 (b) the supervising psychiatrist has given the involuntary
- 32 community patient a notice under section 113(1)(b);

- 1 (c) since the involuntary community patient was given the
2 notice —
- 3 (i) the patient’s non-compliance with the
4 community treatment order has continued; or
- 5 (ii) the supervising psychiatrist has made an order to
6 attend under section 114(1)(a) with which the
7 patient has not complied despite being given a
8 copy of the order under section 114(1)(b).
- 9 (2) The supervising psychiatrist may make either of these orders in
10 the approved form —
- 11 (a) if satisfied, having regard to the criteria specified in
12 section 25, that the involuntary community patient is
13 still in need of an involuntary treatment order but not
14 satisfied of the things referred to in section 103(a)
15 to (d) — an in-patient treatment order authorising the
16 patient’s detention at the authorised hospital specified in
17 the order for the period specified in the order in
18 accordance with section 82(a) or (b);
- 19 (b) if satisfied, having regard to the criteria specified in
20 section 25, that the involuntary community patient is no
21 longer in need of an involuntary treatment order — an
22 order revoking the community treatment order.
- 23 (3) The supervising psychiatrist may make an order under
24 subsection (2) without examining the involuntary community
25 patient.
- 26 (4) As soon as practicable after making an order under
27 subsection (2), the supervising psychiatrist must —
- 28 (a) put the order on the involuntary community patient’s
29 medical record; and
- 30 (b) give a copy of the order to the involuntary community
31 patient.

1 **Division 5 — Transport to authorised hospital**

2 **118. Application of this Division**

3 This Division applies if the supervising psychiatrist makes an
4 in-patient treatment order under section 108(2)(a), 111(1)(a)
5 or 117(2)(a) authorising the involuntary community patient's
6 detention in an authorised hospital.

7 **119. Making transport order**

8 (1) A medical practitioner or mental health practitioner may make a
9 transport order in respect of the involuntary community patient.

10 (2) The practitioner must not make the transport order unless
11 satisfied that —

12 (a) because of the involuntary community patient's mental
13 or physical condition, the patient needs to be taken to
14 the hospital; and

15 (b) no other safe means of taking the involuntary
16 community patient is reasonably available.

17 (3) Part 8 applies in relation to the transport order.

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

19 **120. Supervising psychiatrist**

20 (1) The supervising psychiatrist under a community treatment order
21 is responsible for supervising the carrying out of the order.

22 (2) The supervising psychiatrist under a community treatment order
23 must be —

24 (a) the psychiatrist who made the order; or

25 (b) another psychiatrist.

1 **121. Change of supervising psychiatrist**

2 (1) The supervising psychiatrist under a community treatment
3 order —

4 (a) may transfer a psychiatrist's responsibility as the
5 supervising psychiatrist under the order to another
6 psychiatrist; and

7 (b) on transferring that responsibility, must inform the
8 patient in writing of the transfer.

9 (2) The Chief Psychiatrist or a person authorised under
10 subsection (3) —

11 (a) may transfer a psychiatrist's responsibility as the
12 supervising psychiatrist under a community treatment
13 order to another psychiatrist who is available and willing
14 to be the supervising psychiatrist under the order; and

15 (b) on transferring that responsibility, must inform the
16 involuntary community patient in writing of the transfer.

17 (3) The Chief Psychiatrist may authorise a person in writing to
18 exercise the power under subsection (2) in respect of all or any
19 of the involuntary community patients being provided with
20 treatment under community treatment orders —

21 (a) by the mental health service specified in the
22 authorisation; or

23 (b) who reside in an area of the State specified in the
24 authorisation.

25 (4) An authorisation under subsection (3) has effect for the period
26 specified in the authorisation.

27 **122. Treating practitioner**

28 (1) The treating practitioner under a community treatment order is
29 responsible for ensuring that the involuntary community patient
30 receives the treatment specified in the treatment plan outlined in
31 the order.

- 1 (2) The treating practitioner under a community treatment order —
2 (a) must be a medical practitioner or mental health
3 practitioner; and
4 (b) can be the supervising psychiatrist under the order or
5 another psychiatrist.

6 **123. Change of treating practitioner**

- 7 The supervising psychiatrist under a community treatment
8 order —
9 (a) may transfer a practitioner's responsibility as the
10 treating practitioner under the order to another
11 practitioner who the supervising psychiatrist is satisfied
12 is available and willing to be the treating practitioner
13 under the order; and
14 (b) on transferring that responsibility, must inform the
15 involuntary community patient in writing of the transfer.

Part 8 — Transport orders

124. Application of this Part

This Part applies in relation to each of the following —

- (a) a transport order made under section 28(1) to enable a person in respect of whom a referral is made to be taken to an authorised hospital or other place;
- (b) a transport order made under section 57(1) to enable a person in respect of whom an in-patient treatment order or referral is made to be taken from a declared place to an authorised hospital;
- (c) a transport order made under section 79(1) to enable a person detained at an authorised hospital to be transferred to another authorised hospital;
- (d) a transport order made under section 79(1) to enable a person detained at a general hospital to be transferred to an authorised hospital;
- (e) a transport order made under section 101(1) to enable an involuntary patient on leave of absence from an authorised hospital to be taken back to an authorised hospital;
- (f) a transport order made under section 115(1) to enable an involuntary community patient who is not complying with the community treatment order to be taken to a specified place;
- (g) a transport order made under section 119(1) to enable an involuntary community patient in respect of whom an in-patient treatment order is made to be taken to an authorised hospital.

125. Term used: initial transport period

initial transport period, for a transport order made in respect of a person, means —

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- 1 (a) if the order is made under section 28(1) — the 72-hour
2 period referred to in section 27(9)(a); or
- 3 (b) if the order is made under section 57(1) — the 72-hour
4 period referred to in section 56(9)(a); or
- 5 (c) if the order is made under section 79(1) and the person
6 is being detained under section 46(1)(b) — the 24-hour
7 period referred to in section 46(1)(b)(i); or
- 8 (d) if the order is made under section 79(1) and the person
9 is being detained under section 47(1) after an assessment
10 of the person because of an order made under
11 section 32(2)(a) — the 24-hour period referred to in
12 section 47(1)(a)(i); or
- 13 (e) if the order is made under section 79(1) and the person
14 is being detained under section 47(1) after an assessment
15 of the person in the course of treatment while admitted
16 to a hospital as a voluntary patient — the 24-hour period
17 referred to in section 47(1)(a)(ii); or
- 18 (f) if the order is made under section 79(1) and the person
19 is being detained under section 49(1)(c) after having
20 been received at a hospital under section 46(1)(a) — the
21 72-hour period referred to in section 49(3)(a)(i); or
- 22 (g) if the order is made under section 79(1) and the person
23 is being detained under section 49(1)(c) after having
24 been detained at a hospital under section 47(1) — the
25 72-hour period referred to in section 49(3)(a)(ii); or
- 26 (h) if the order is made under section 79(1) and the person
27 is being detained under section 55(1)(c) — the 24-hour
28 period referred to in section 62(1)(b)(i); or
- 29 (i) if the order is made under section 79(1) and the person
30 is being detained under an in-patient treatment order —
31 the 72-hour period after the transport order is made; or
- 32 (j) if the order is made under section 101(1), 115(1)
33 or 119(1) — the 72-hour period after the transport order
34 is made.

1 **126. Making transport order**

- 2 (1) A transport order must be in the approved form and must
3 specify these things —
4 (a) the name of the person to be transported;
5 (b) the hospital or other place to which the person must be
6 transported;
7 (c) the initial transport period;
8 (d) the date and time the order is made.
- 9 (2) As soon as practicable after making a transport order, the
10 psychiatrist or practitioner who made the order must —
11 (a) put the order on the person's medical record; and
12 (b) give a copy of the order to each of these people —
13 (i) the person;
14 (ii) the police officer or person prescribed who will
15 carry out the order.

16 **127. Operation of transport order**

- 17 (1) A transport order made in respect of a person authorises a police
18 officer, or a person prescribed by the regulations for this
19 section, to do these things —
20 (a) apprehend the person and, for that purpose, exercise the
21 powers under section 132(1);
22 (b) if the person is apprehended, transport the person to the
23 hospital or other place specified in the order as soon as
24 practicable and, in any event, by the later of —
25 (i) the end of the initial transport period; and
26 (ii) the end of the further period specified in any
27 extension order made under section 128(3) in
28 respect of the transport order;
29 (c) for the purpose of transporting the person, detain the
30 person until the first of these things occurs —

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- 1 (i) the person is received at the hospital or other
2 place;
- 3 (ii) the later of the expiry of the initial transport
4 period and the expiry of any further period
5 referred to in paragraph (b)(ii).
- 6 (2) The psychiatrist or practitioner who makes a transport order can
7 only authorise a police officer to carry out the order if a no less
8 restrictive means of carrying out the order is reasonably
9 available.
- 10 **128. Extending transport order**
- 11 (1) This section applies if —
- 12 (a) the person being transported under a transport order is in
13 an area of the State in Schedule 2; and
- 14 (b) the police officer or person prescribed who is
15 transporting the person forms the opinion that the initial
16 transport period is likely to expire before the person is
17 received at the hospital or other place to which the
18 person is being transported.
- 19 (2) The police officer or person prescribed may orally request a
20 medical practitioner or mental health practitioner to extend the
21 period for which the transport order will remain in force.
- 22 (3) The practitioner may make an order (an **extension order**) orally
23 extending the period for which the transport order will remain in
24 force from the end of the initial transport period for the further
25 period (not exceeding 72 hours) that is specified in the
26 extension order.
- 27 (4) As soon as practicable after making the extension order, the
28 practitioner must —
- 29 (a) record in the approved form that the order was made;
30 and
- 31 (b) put the record on the person's medical record; and

1 (c) give a copy of the record to the police officer or person
2 prescribed.

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

4 **129. Revoking transport order**

5 (1) A medical practitioner or mental health practitioner may make
6 an order (a **revocation order**) in the approved form revoking a
7 transport order made in respect of a person if satisfied that the
8 transport order is no longer needed.

9 (2) As soon as practicable after making the revocation order, the
10 practitioner must —

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

12 (b) give a copy of the order to the person; and

13 (c) give another copy to the police officer or person
14 prescribed who was to have carried out, or was carrying
15 out, the transport order.

**Part 9 — Powers of police officers and other
authorised persons**

Division 1 — Apprehension, search and seizure

**130. Police officer may apprehend 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) 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 serious damage to property.
- (2) For the purpose of apprehending a person under subsection (1), a police officer may exercise the powers under section 132(1).
- (3) A police officer must take all reasonable steps to ensure that a medical practitioner or mental health practitioner is present when the police officer apprehends a person under subsection (1).
- (4) As soon as practicable after apprehending a person under subsection (1), a police officer must —
- (a) arrange for the person to be assessed by a medical practitioner or authorised mental health practitioner for the purpose of deciding whether or not to refer the person under section 26(2) or (3)(a) for an examination to be conducted by a psychiatrist; and
 - (b) release the person into the care of —
 - (i) the medical practitioner or authorised mental health practitioner who will assess the person; or

- 1 (ii) the person in charge of the place at which the
2 assessment will be conducted.
- 3 (5) This section does not prevent a police officer from charging a
4 person apprehended under subsection (1) with an offence.
- 5 **131. Authorised person may search patient or other person**
- 6 (1) This section applies in relation to any of these people —
- 7 (a) a person who is detained under this Act at an authorised
8 hospital or other place to enable an examination to be
9 conducted by a psychiatrist;
- 10 (b) a patient who is admitted to an authorised hospital,
11 whether as —
- 12 (i) a voluntary patient; or
- 13 (ii) an involuntary patient whose detention at the
14 authorised hospital is authorised under an
15 in-patient treatment order; or
- 16 (iii) a mentally impaired accused who must be
17 detained at the hospital because of a
18 determination made under the CL(MIA) Act
19 section 25(1)(b) or amended under section 26 of
20 that Act;
- 21 (c) any other person who presents at an authorised hospital.
- 22 (2) A person prescribed by the regulations for this section may —
- 23 (a) search the person and any article found on or with the
24 person; and
- 25 (b) seize any article found on or with the person.
- 26 (3) Sections 133 and 136 apply in relation to the search of a person
27 under subsection (2)(a).
- 28 (4) Sections 134 and 136 apply in relation to the seizure of an
29 article under subsection (2)(b).

1 **132. Apprehension of persons**

2 (1) For the purpose of apprehending a person under
3 section 91(a), 127(1)(a) or 130(1), a police officer or other
4 person may do any of these things —

5 (a) enter any premises where the person is reasonably
6 suspected to be;

7 (b) search the person and any article found on or with the
8 person;

9 (c) seize any article found on or with the person.

10 (2) Sections 133 and 136 apply in relation to the search of a person
11 under subsection (1)(b).

12 (3) Sections 134 and 136 apply in relation to the seizure of an
13 article under subsection (1)(c).

14 **133. Search of persons**

15 (1) This section applies in relation to a search of a person under
16 section 131(2)(a) or 132(1)(b).

17 (2) In this section —

18 *frisk search*, a person, means to quickly and methodically run
19 the hands over the outside of the person's clothing.

20 (3) The search must be conducted by a person who is the same sex
21 as the person being searched unless it is not reasonably
22 practicable to do so.

23 (4) The person conducting the search may do all or any of these
24 things —

25 (a) scan the person with an electronic or mechanical device,
26 whether hand held or not, to detect any thing;

27 (b) remove the person's headwear, gloves, footwear or outer
28 clothing (such as a coat or jacket), but not the person's
29 inner clothing or underwear, in order to facilitate a frisk
30 search;

- 1 (c) frisk search the person;
2 (d) search any article removed under paragraph (b).

3 **134. Seizure of articles**

4 (1) This section applies in relation to the seizure of an article on or
5 with a person under section 131(2)(b) or 132(1)(c).

6 (2) Any of these articles may be seized —

- 7 (a) an intoxicant;
8 (b) an article, including a drug that is prescribed for the
9 person, that could endanger the health or safety of the
10 person or the safety of another person;
11 (c) an article that could be used by the person to cause
12 damage to property;
13 (d) an article that is likely to materially assist in the
14 determination under this Act of any matter relating to
15 the person.

16 (3) Any alcohol or substance containing alcohol that is seized may
17 be destroyed.

18 (4) Any other intoxicant that is seized may be destroyed if it is
19 reasonable to suspect that, if it were returned to the person, the
20 person is likely to use it to become intoxicated.

21 (5) Any article that is seized and is not destroyed under
22 subsection (3) or (4) must be dealt with under section 135.

23 (6) A police officer or other person who seizes an article
24 section 131(2)(b) or 132(1)(c) must record —

- 25 (a) the seizure; and
26 (b) how the article was dealt with.

27 **135. Return of seized articles**

28 (1) Any article that is seized section 131(2)(b) or 132(1)(c) but is
29 not destroyed under section 134(3) or (4) must be kept in

1 safekeeping until it can be dealt with under subsection (2)
2 or (3).

3 (2) Any article seized under section 131(2)(b) from a person who is
4 detained at or admitted to an authorised hospital or other place,
5 or who otherwise presents at an authorised hospital, must —

6 (a) if the person is released or discharged from the
7 authorised hospital or other place into the care of
8 another person — be given to that other person at that
9 time; or

10 (b) if the person is released or discharged from the
11 authorised hospital or other place otherwise than into the
12 care of another person or otherwise leaves the authorised
13 hospital or other place — be returned to the person at
14 that time.

15 (3) Any article seized under section 132(1)(c) from a person who is
16 apprehended under section 127(1)(a) or 130(1) must —

17 (a) if the person is released into the care of another
18 person — be given to that other person at that time; or

19 (b) if the person is otherwise released — be returned to the
20 person at that time.

21 **136. Use of reasonable force and assistance**

22 (1) A person exercising a power under this Division may use
23 reasonable force and assistance to do so.

24 (2) A person assisting a person exercising a power under this
25 Division must obey any lawful and reasonable direction of that
26 person.

27 Penalty for an offence under subsection (2): a fine of \$6 000.

28 **Division 2 — Other matters**

29 **137. Exercise of powers by Aboriginal police liaison officers**

30 (1) In this section —

- 1 ***Aboriginal police liaison officer*** means a person who holds
2 office under the *Police Act 1892* Part IIIA as an Aboriginal
3 police liaison officer.
- 4 (2) The Commissioner of Police may authorise an Aboriginal police
5 liaison officer to exercise the powers of a police officer under
6 this Act if the Commissioner is satisfied that the Aboriginal
7 police liaison officer has received appropriate training in the
8 exercise of those powers.

1 **Part 10 — Provision of treatment generally**

2 **Division 1 — Preliminary matters**

3 **138. Term used: treatment**

4 In this Part —

5 ***treatment*** does not include —

6 (a) any of these treatments —

7 (i) treatment that is prohibited by section 173(1);

8 (ii) psychosurgery;

9 (iii) electroconvulsive therapy;

10 (iv) emergency psychiatric treatment;

11 or

12 (b) any of these interventions —

13 (i) a sterilisation procedure;

14 (ii) bodily restraint;

15 (iii) seclusion.

16 **Division 2 — Voluntary patients**

17 **139. Informed consent necessary**

18 A voluntary patient cannot be provided with treatment without
19 informed consent being given to the provision of the treatment.

20 **Division 3 — Involuntary patients and mentally**
21 **impaired accused**

22 **140. Application of this Division**

23 This Division applies in relation to —

24 (a) an involuntary patient; or

- 1 (b) a patient who is a mentally impaired accused who must
2 be detained at an authorised hospital because of a
3 determination made under the CL(MIA) Act
4 section 25(1)(b) or amended under section 26 of that
5 Act.

6 **141. Informed consent not necessary**

- 7 (1) The patient can be provided with treatment without informed
8 consent being given to the provision of the treatment.
- 9 (2) Sections 144 to 146 apply if treatment is being provided under
10 subsection (1) to the patient.

11 **142. Patient's wishes**

- 12 (1) In deciding what treatment will be provided to the patient, the
13 patient's psychiatrist must have regard to the patient's wishes in
14 relation to the provision of treatment, to the extent those wishes
15 can be ascertained.
- 16 (2) For the purpose of ascertaining the patient's wishes, the
17 patient's psychiatrist must have regard to the following —
- 18 (a) any treatment decision in any advance health directive
19 made by the patient;
- 20 (b) the terms of any enduring power of guardianship made
21 by the patient;
- 22 (c) any other things that the patient's psychiatrist considers
23 may be relevant in ascertaining the patient's wishes.
- 24 (3) The patient's psychiatrist must ensure that the patient's medical
25 record includes —
- 26 (a) a record of the patient's wishes, to the extent those
27 wishes could be ascertained; and
- 28 (b) the things to which the patient's psychiatrist had regard
29 in ascertaining the patient's wishes; and

- 1 (c) if a decision made by the patient's psychiatrist to
2 provide the patient with treatment is inconsistent with
3 the patient's wishes, the reasons for making the
4 decision.
- 5 (4) The patient's psychiatrist must give a copy of the reasons
6 referred to in subsection (3)(c) to each of these people —
- 7 (a) the patient;
- 8 (b) if the patient has an enduring guardian or guardian, the
9 enduring guardian or guardian;
- 10 (c) if the patient has a nominated person, the nominated
11 person unless section 233 applies;
- 12 (d) if the patient has a carer, the carer unless section 244(3)
13 or 246(3) applies;
- 14 (e) the Chief Psychiatrist.
- 15 **143. Provision of treatment to Aboriginal or Torres Strait**
16 **Islanders**
- 17 Treatment provided to a patient who is an Aboriginal or Torres
18 Strait Islander must be provided in collaboration with
19 Aboriginal health workers and with traditional healers from the
20 patient's community unless it would not be practicable or
21 appropriate to do so.
- 22 **144. Record of treatment**
- 23 The patient's psychiatrist must ensure that the patient's medical
24 record includes a record of the treatment provided to the patient.
- 25 **145. Second opinion may be requested**
- 26 (1) This section applies to —
- 27 (a) the patient if the patient has the capacity to give
28 informed consent to the provision of the treatment if that
29 consent were required; or

- 1 (b) if the patient does not have that capacity, the person who
2 is authorised by law to give that consent on the patient's
3 behalf if that consent were required.
- 4 (2) If a person to whom this section applies is dissatisfied with the
5 treatment being provided to the patient, the person may
6 request —
- 7 (a) the patient's psychiatrist; or
8 (b) the Chief Psychiatrist,
- 9 to obtain the opinion of a psychiatrist who is not the patient's
10 psychiatrist about whether it is appropriate to provide the
11 treatment to the patient.
- 12 (3) The patient's psychiatrist or the Chief Psychiatrist must comply
13 with the request.
- 14 (4) In obtaining the opinion of another psychiatrist, the patient's
15 psychiatrist or the Chief Psychiatrist must have regard to the
16 guidelines published under section 427(1)(a).
- 17 (5) A psychiatrist must not give an opinion for the purposes of
18 subsection (2) unless the psychiatrist has examined the patient
19 in accordance with Part 5 Division 3 Subdivision 6.
- 20 (6) The opinion must be given in writing.
- 21 (7) As soon as practicable after the patient's psychiatrist obtains the
22 opinion, the patient's psychiatrist must —
- 23 (a) put the opinion on the patient's medical record; and
24 (b) give a copy of the opinion to the person who requested
25 the opinion.
- 26 (8) As soon as practicable after the Chief Psychiatrist obtains the
27 opinion, the Chief Psychiatrist must give —
- 28 (a) the opinion to the patient's psychiatrist; and
29 (b) a copy of the opinion to the person who requested it.

- 1 (9) As soon as practicable after receiving the opinion from the
2 Chief Psychiatrist, the patient's psychiatrist must put the
3 opinion on the patient's medical record.

4 **146. Chief Psychiatrist may request reconsideration**

- 5 (1) If, after the opinion has been obtained, the person who
6 requested that it be obtained remains dissatisfied with the
7 treatment being provided to the patient, the Chief Psychiatrist
8 may request the patient's psychiatrist to —
9 (a) reconsider the decision to provide the treatment; and
10 (b) report to the Chief Psychiatrist —
11 (i) the outcome of the reconsideration; and
12 (ii) the reasons for the outcome.
13 (2) Subsection (1) does not limit the powers of the Chief
14 Psychiatrist under section 405.

15 **Division 4 — Treatment, support and discharge planning**

16 **147. Application of this Division**

17 This Division applies in relation —

- 18 (a) a patient who is admitted to an authorised hospital,
19 whether as —
20 (i) an involuntary patient whose detention at the
21 authorised hospital is authorised under an
22 in-patient treatment order; or
23 (ii) a mentally impaired accused who must be
24 detained at the hospital because of a
25 determination made under the CL(MIA) Act
26 section 25(1)(b) or amended under section 26 of
27 that Act;
28 or
29 (b) a patient in respect of whom a community treatment
30 order is made; or

- 1 (c) a patient who is a mentally impaired accused who is
2 released under the CL(MIA) Act section 35(1)
3 unconditionally or on conditions.

4 **148. Treatment, support and discharge plan**

- 5 (1) The treatment, care and support provided to a patient must be
6 governed as far as practicable by a treatment, support and
7 discharge plan.
- 8 (2) The treatment, support and discharge plan for a patient referred
9 to in section 147(a) must outline —
- 10 (a) the treatment and support that will be provided to the
11 patient while admitted to the authorised hospital; and
- 12 (b) the treatment and support that will be provided to the
13 patient after the patient is discharged from the hospital.
- 14 (3) The treatment, support and discharge plan for a patient referred
15 in section 147(b) 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 provided to the
20 patient when the patient is no longer subject to the
21 community treatment order.
- 22 (4) The treatment, support and discharge plan for a patient referred
23 in section 147(c) must outline the treatment and support that
24 will be provided to the patient after the patient is released.

25 **149. Preparation and review of plan**

- 26 (1) A patient's psychiatrist must ensure that a treatment, support
27 and discharge plan for the patient —
- 28 (a) is prepared as soon as practicable after the patient is
29 admitted, the community treatment order is made or the
30 patient is released, as the case requires; and

- 1 (b) is reviewed regularly; and
2 (c) is revised as necessary.
- 3 (2) The plan must be prepared, reviewed and revised having regard
4 to the guidelines published under section 427(1)(b).
- 5 (3) The patient's psychiatrist must ensure that —
6 (a) the plan (as prepared and as revised) is put on the
7 patient's medical record; and
8 (b) a copy of the plan (as prepared and as revised) is given
9 to each of these people —
10 (i) the patient;
11 (ii) the person referred to in section 150(c);
12 (iii) if the patient has a nominated person, the
13 nominated person unless section 233 applies;
14 (iv) if the patient has a carer, the patient's carer
15 unless section 244(3) or 246(3) applies.

16 **150. Who should be involved in preparation and review of plan**

17 A patient's psychiatrist must ensure that each of these people is
18 involved in the preparation and review of the treatment, support
19 and discharge plan for the patient —

- 20 (a) the patient —
21 (i) whether or not the patient has the capacity to
22 consent to the implementation of the plan; and
23 (ii) whether or not the plan can be implemented
24 without the patient's consent;
25 (b) if the patient is a child, the child's parent or guardian;
26 (c) if the patient does not have the capacity to consent to the
27 implementation of the plan —
28 (i) if the plan cannot be implemented without the
29 patient's consent — the person who is authorised
30 by law to consent on the patient's behalf; or

- 1 (ii) if the plan can be implemented without the
- 2 patient's consent — the person who would be
- 3 authorised by law to consent on the patient's
- 4 behalf if the plan could not have been
- 5 implemented without consent;
- 6 (d) if the patient has a nominated person, the nominated
- 7 person unless section 233 applies;
- 8 (e) if the patient has a carer, the patient's carer unless
- 9 section 244(3) or 246(3) applies.

1 **Part 11 — Regulation of certain kinds of treatment**
2 **and other interventions**

3 **Division 1 — Electroconvulsive therapy**

4 **151. Electroconvulsive therapy (ECT): meaning of**

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

9 **152. ECT prohibited: general offence**

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

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

13 **153. ECT prohibited: child under 12 years of age**

14 A person must not perform electroconvulsive therapy on a child
15 under 12 years of age.

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

17 **154. Requirements for ECT: voluntary patient: child between 12**
18 **and 18 years of age with no capacity to consent**

19 (1) This section applies in relation to a child who —

20 (a) has reached 12 years of age but is under 18 years of age;
21 and

22 (b) does not have sufficient maturity or understanding to
23 make reasonable decisions about matters relating to
24 himself or herself.

25 (2) A person must not perform electroconvulsive therapy on the
26 child unless —

27 (a) the person is a medical practitioner; and

- 1 (b) the person who is authorised by law to consent on the
2 child's behalf has given informed consent to the
3 electroconvulsive therapy being performed; and
- 4 (c) the treating psychiatrist has recommended in writing
5 that the electroconvulsive therapy be performed; and
- 6 (d) if the treating psychiatrist is not a child and adolescent
7 psychiatrist, the treating psychiatrist has obtained the
8 written opinion of a child and adolescent psychiatrist
9 confirming the recommendation.
- 10 Penalty: a fine of \$15 000 and imprisonment for 2 years.
- 11 **155. Requirements for ECT: voluntary patient: child between 12**
12 **and 18 years of age with capacity to consent**
- 13 (1) This section applies in relation to a child who —
- 14 (a) has reached 12 years of age but is under 18 years of age;
15 and
- 16 (b) has sufficient maturity and understanding to make
17 reasonable decisions about matters relating to himself or
18 herself.
- 19 (2) A person must not perform electroconvulsive therapy on the
20 child unless —
- 21 (a) the person is a medical practitioner; and
- 22 (b) the child has given informed consent to the
23 psychosurgery being performed; and
- 24 (c) the treating psychiatrist has recommended in writing
25 that the electroconvulsive therapy be performed; and
- 26 (d) if the treating psychiatrist is not a child and adolescent
27 psychiatrist, the treating psychiatrist has obtained the
28 written opinion of a child and adolescent psychiatrist
29 confirming the recommendation.
- 30 Penalty: a fine of \$15 000 and imprisonment for 2 years.

1 **156. Confirmation of recommendation by child and adolescent**
2 **psychiatrist**

- 3 (1) A child and adolescent psychiatrist must not confirm a
4 recommendation for the purposes of section 154(2)(d)
5 or 155(2)(d) unless the child and adolescent psychiatrist —
6 (a) has examined the child in accordance with Part 5
7 Division 3 Subdivision 6; and
8 (b) is satisfied that the performance of the electroconvulsive
9 therapy has clinical merit and is appropriate in the
10 circumstances.
- 11 (2) If, after examining the child under subsection (1)(a), the child
12 and adolescent psychiatrist is not satisfied of the matters
13 referred to in subsection (1)(b), the child and adolescent
14 psychiatrist must —
15 (a) refuse to confirm the recommendation; and
16 (b) advise the Chief Psychiatrist in writing of the refusal
17 and the reasons for that refusal.

18 **157. Requirements for ECT: voluntary patient who has reached**
19 **18 years of age**

- 20 A person must not perform electroconvulsive therapy on a
21 voluntary patient who has reached 18 years of age —
22 (a) unless —
23 (i) the person is a medical practitioner; and
24 (ii) the patient has given informed consent to the
25 electroconvulsive therapy being performed;
26 or
27 (b) unless section section 160 applies.
28 Penalty: a fine of \$15 000 and imprisonment for 2 years.

1 Note for section 157:

2 For the purposes of section 157(a)(ii), in considering whether a voluntary
3 patient who has reached 18 years of age has given informed consent to
4 electroconvulsive therapy being performed, see section 20.

5 **158. Requirements for ECT: involuntary patient or mentally**
6 **impaired accused: child between 12 and 18 years of age**

7 (1) This section applies in relation to —

8 (a) an involuntary patient who has reached 12 years of age
9 but has not reached 18 years of age; or

10 (b) a patient who is a mentally impaired accused who —

11 (i) has reached 12 years of age but has not reached
12 18 years of age; and

13 (ii) must be detained at an authorised hospital
14 because of a determination made under the
15 CL(MIA) Act section 25(1)(b) or amended under
16 section 26 of that Act.

17 (2) A person must not perform electroconvulsive therapy on the
18 patient —

19 (a) unless —

20 (i) the person is a medical practitioner; and

21 (ii) the Mental Health Tribunal has given its
22 approval under Part 18 Division 5 to the
23 electroconvulsive therapy being performed;

24 or

25 (b) unless section 160 applies.

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

27 **159. Requirements for ECT: involuntary patient or mentally**
28 **impaired accused who has reached 18 years of age**

29 (1) This section applies in relation to —

30 (a) an involuntary patient who has reached 18 years of age;
31 or

- 1 (b) a patient who is a mentally impaired accused who —
2 (i) has reached 18 years of age; and
3 (ii) must be detained at an authorised hospital
4 because of a determination made under the
5 CL(MIA) Act section 25(1)(b) or amended under
6 section 26 of that Act.

- 7 (2) A person must not perform electroconvulsive therapy on the
8 patient —

- 9 (a) unless —
10 (i) the person is a medical practitioner; and
11 (ii) the Mental Health Tribunal has given its
12 approval under Part 18 Division 5 to the
13 electroconvulsive therapy being performed;

14 or

- 15 (b) unless section section 160 applies.

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

17 **160. Emergency ECT**

18 A medical practitioner who performs electroconvulsive therapy
19 on a person does not commit an offence under this Division
20 if —

- 21 (a) the person has reached 18 years of age; and
22 (b) one of the following applies —
23 (i) the person is —
24 (I) an involuntary patient; or
25 (II) a mentally impaired accused who must
26 be detained at an authorised hospital
27 because of a determination made under
28 the CL(MIA) Act section 25(1)(b) or
29 amended under section 26 of that Act;

- 1 (ii) informed consent to the electroconvulsive
- 2 therapy being performed has been given;
- 3 and
- 4 (c) the person needs to be provided with electroconvulsive
- 5 therapy —
- 6 (i) to save the person’s life; or
- 7 (ii) to prevent the person from behaving in a way
- 8 that is likely to result in serious physical injury to
- 9 the person or another person;
- 10 and
- 11 (d) the Chief Psychiatrist has approved the
- 12 electroconvulsive therapy being performed.

13 **161. Mentally Impaired Accused Review Board: report**

- 14 (1) As soon as practicable after a course of electroconvulsive
- 15 therapy is performed on a mentally impaired accused, the
- 16 treating psychiatrist must report the performance of the course
- 17 to the Mentally Impaired Accused Review Board.
- 18 (2) The report must be in writing and must be accompanied by a
- 19 copy of the Mental Health Tribunal’s approval.

20 **162. Statistics about ECT**

- 21 (1) This section applies in relation to a mental health service where
- 22 electroconvulsive therapy is performed.
- 23 (2) In this section —
- 24 *month* means any of the 12 months of the year;
- 25 *serious adverse event*, in relation to a course of treatments with
- 26 electroconvulsive therapy, includes any of the following —
- 27 (a) premature consciousness during a treatment;
- 28 (b) anaesthetic complications, such as arrhythmia, during
- 29 recovery from a treatment;

- 1 (c) an acute and persistent confused state during recovery
2 from a treatment;
- 3 (d) muscle tears or vertebral column damage;
- 4 (e) severe and persistent headaches;
- 5 (f) persistent memory deficit.
- 6 (3) As soon as practicable after the end of each month, the person in
7 charge of the mental health service must report to the Chief
8 Psychiatrist on these matters —
- 9 (a) the number of people who completed a course of
10 electroconvulsive therapy at the mental health service
11 during the month;
- 12 (b) the number of those people who were children;
- 13 (c) the number of those people who were voluntary patients;
- 14 (d) the number of those voluntary patients who were
15 children;
- 16 (e) the number of those people who were involuntary
17 patients;
- 18 (f) the number of those involuntary patients who were
19 children;
- 20 (g) the number of those people who were mentally impaired
21 accused;
- 22 (h) the number of those mentally impaired accused who
23 were children;
- 24 (i) the number of treatments with electroconvulsive therapy
25 in each of those courses;
- 26 (j) the number of the completed courses of
27 electroconvulsive therapy that were performed under
28 section 160;
- 29 (k) details of any serious adverse event that occurred, or is
30 suspected of having occurred, during or after any of
31 those courses.

- 1 (4) For the purpose of subsection (3)(a), a person is taken to have
2 completed a course of electroconvulsive therapy during a month
3 if the person received the last treatment in the course during the
4 month, whether or not the person received any of the other
5 treatments in the course during the month.
- 6 (5) The report must be in the approved form.

7 **Division 2 — Emergency psychiatric treatment**

8 **163. Emergency psychiatric treatment: meaning of**

- 9 (1) Emergency psychiatric treatment is treatment that needs to be
10 provided to a person —
11 (a) to save the person’s life; or
12 (b) to prevent the person from behaving in a way that is
13 likely to result in serious physical injury to the person or
14 another person.
- 15 (2) Emergency psychiatric treatment does not include any of these
16 treatments —
17 (a) treatment that is prohibited by section 173(1);
18 (b) psychosurgery;
19 (c) electroconvulsive therapy.
- 20 (3) Emergency psychiatric treatment does not include any of these
21 interventions —
22 (a) a sterilisation procedure;
23 (b) bodily restraint;
24 (c) seclusion.

25 **164. Informed consent not required**

26 A medical practitioner may provide a person with emergency
27 psychiatric treatment without informed consent being given to
28 the provision of the treatment.

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

2 (1) As soon as practicable after providing emergency psychiatric
3 treatment to a person under section 164, a medical practitioner
4 must —

- 5 (a) record the treatment provided in accordance with
6 subsection (2); and
7 (b) put the record on the person's medical record; and
8 (c) give a copy of the record to the Chief Psychiatrist; and
9 (d) if the person is a mentally impaired accused, give
10 another copy to the Mentally Impaired Accused Review
11 Board.

12 (2) The record must be in the approved form and must include these
13 things —

- 14 (a) the name of the person provided with the treatment;
15 (b) the name and qualifications of the practitioner who
16 provided the treatment;
17 (c) the names of any other people involved in providing the
18 treatment;
19 (d) the date, time and place the treatment was provided;
20 (e) particulars of the circumstances in which the treatment
21 was provided;
22 (f) particulars of the treatment provided.

23 **Division 3 — Psychosurgery**

24 **166. Psychosurgery: meaning of**

25 Psychosurgery is —

- 26 (a) the use of a surgical technique or procedure or
27 intracerebral electrodes to create in a person's brain a
28 lesion intended, whether alone or with one or more other
29 lesions created at the same or other times, to alter
30 permanently —

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

13 **167. Psychosurgery prohibited: general offence**

- 14 (1) A person must not perform psychosurgery on another person
- 15 except in accordance with this Division.
- 16 Penalty: a fine of \$30 000 and imprisonment for 5 years.
- 17 (2) An offence under subsection (1) is a crime.

18 **168. Psychosurgery prohibited: child under 12 years of age**

- 19 (1) A person must not perform psychosurgery on a child under
- 20 12 years of age.
- 21 Penalty: a fine of \$30 000 and imprisonment for 5 years.
- 22 (2) An offence under subsection (1) is a crime.

23 **169. Requirements for psychosurgery: child between 12 and**

24 **18 years of age with no capacity to consent**

- 25 (1) This section applies in relation to a child who —
- 26 (a) has reached 12 years of age but is under 18 years of age;
- 27 and

- 1 (b) does not have sufficient maturity or understanding to
2 make reasonable decisions about matters relating to
3 himself or herself.
- 4 (2) A person must not perform psychosurgery on the child
5 unless —
- 6 (a) the person is a neurosurgeon; and
7 (b) the person who is authorised by law to consent on the
8 child's behalf has given informed consent to the
9 psychosurgery being performed; and
10 (c) the Mental Health Tribunal has given its approval under
11 Part 18 Division 6 to the psychosurgery being
12 performed.
- 13 Penalty: a fine of \$30 000 and imprisonment for 5 years.
- 14 (3) An offence under subsection (1) is a crime.
- 15 **170. Requirements for psychosurgery: child who is between 12**
16 **and 18 years of age with capacity to consent**
- 17 (1) This section applies in relation to a child who —
- 18 (a) has reached 12 years of age but is under 18 years of age;
19 and
20 (b) has sufficient maturity and understanding to make
21 reasonable decisions about matters relating to himself or
22 herself.
- 23 (2) A person must not perform psychosurgery on the child
24 unless —
- 25 (a) the person is a neurosurgeon; and
26 (b) the child has given informed consent to the
27 psychosurgery being performed; and
28 (c) the Mental Health Tribunal has given its approval under
29 Part 18 Division 6 to the psychosurgery being
30 performed.

1 Penalty: a fine of \$30 000 and imprisonment for 5 years.

2 (3) An offence under subsection (1) is a crime.

3 **171. Requirements for psychosurgery: person who has reached**
4 **18 years of age**

5 (1) A person must not perform psychosurgery on a person who has
6 reached 18 years of age (a *patient*) unless —

7 (a) the person is a neurosurgeon; and

8 (b) the patient has given informed consent to the
9 psychosurgery being performed; and

10 (c) the Mental Health Tribunal has given its approval under
11 Part 18 Division 6 to the psychosurgery being
12 performed.

13 Penalty: a fine of \$30 000 and imprisonment for 5 years.

14 (2) An offence under subsection (1) is a crime.

15 Note for section 171:

16 For the purposes of section 171(1)(b), in considering whether a person who
17 has reached 18 years of age has given informed consent to psychosurgery
18 being performed, see section 20.

19 **172. Mentally Impaired Accused Review Board: report**

20 (1) As soon as practicable after psychosurgery is performed on a
21 mentally impaired accused, the treating psychiatrist must report
22 to the Mentally Impaired Accused Review Board that the
23 psychosurgery was performed.

24 (2) The report must be in the approved form and must be
25 accompanied by —

26 (a) a copy of the consent form required by section 14 for
27 informed consent;

28 (b) a copy of the Mental Health Tribunal's approval.

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

2 **173. Deep sleep and insulin coma therapy prohibited**

3 (1) A person must not perform any of these things on another
4 person —

- 5 (a) deep sleep therapy;
6 (b) insulin coma therapy;
7 (c) insulin sub-coma therapy.

8 Penalty: imprisonment for 5 years.

9 (2) An offence under subsection (1) is a crime.

10 **Division 5 — Seclusion at authorised hospitals**

11 **174. Terms used**

12 In this Division —

13 **oral authorisation** means an authorisation given orally under
14 section 177(1);

15 **seclusion** has the meaning given in section 175;

16 **seclusion order** —

- 17 (a) means a seclusion order made under section 178(1)
18 or (3); and
19 (b) includes a seclusion order as extended under
20 section 181(1).

21 **175. Seclusion: meaning of**

22 Seclusion is the confinement of a person at any time of the day
23 or night alone in a room or area from which it is not within the
24 person's control to leave.

25 **176. Seclusion at authorised hospital must be authorised**

26 A person must not keep another person in seclusion at an
27 authorised hospital except in accordance with —

1 (a) an oral authorisation; or

2 (b) a seclusion order.

3 Penalty: a fine of \$6 000.

4 **177. Giving oral authorisation**

5 (1) A medical practitioner or mental health practitioner at an
6 authorised hospital or the person in charge of a ward at an
7 authorised hospital may authorise orally the seclusion of any of
8 these people —

9 (a) a person who is a patient at the authorised hospital;

10 (b) a person who is referred under section 26(2) or 33(2) for
11 an examination to be conducted by a psychiatrist at the
12 authorised hospital;

13 (c) a person in respect of whom there is in force an order
14 made under section 49(1)(c) or 55(1)(c) to enable an
15 examination to be conducted by a psychiatrist at the
16 authorised hospital.

17 (2) The practitioner or person in charge must not give the oral
18 authorisation unless satisfied of the matters specified in
19 section 179.

20 (3) When giving the oral authorisation, the practitioner or person in
21 charge must specify the room or area where the person can be
22 secluded.

23 (4) As soon as practicable after a person is secluded under an oral
24 authorisation given by a mental health practitioner, the
25 practitioner must inform a medical practitioner that the person
26 has been secluded.

27 Penalty: a fine of \$6 000.

28 (5) If the practitioner or person in charge does not make a seclusion
29 order confirming the oral authorisation as required by
30 section 178(3), the person cannot be secluded any longer and
31 must be released from seclusion.

1 **178. Making seclusion order**

2 (1) Subject to subsection (3), a medical practitioner or mental
3 health practitioner at an authorised hospital or the person in
4 charge of a ward at an authorised hospital may make a seclusion
5 order authorising the seclusion of any of these people —

- 6 (a) a person who is a patient at the authorised hospital;
7 (b) a person who is referred under section 26(2) or 33(2) for
8 an examination to be conducted by a psychiatrist at the
9 authorised hospital;
10 (c) a person in respect of whom there is in force an order
11 made under section 49(1)(c) or 55(1)(c) to enable an
12 examination to be conducted by a psychiatrist at the
13 authorised hospital.

14 (2) The practitioner or person in charge must not make a seclusion
15 order under subsection (1) unless satisfied of the matters
16 specified in section 179.

17 (3) As soon as practicable after giving an oral authorisation in
18 respect of a person, the practitioner or person in charge who
19 gave the oral authorisation must make a seclusion order
20 confirming the oral authorisation.

21 (4) A seclusion order made under subsection (1) or (3) must be in
22 the approved form and must specify these things —

- 23 (a) the name and qualifications of the practitioner or person
24 in charge who made the order;
25 (b) the date and time the order is made;
26 (c) if the order is made under subsection (3), the date and
27 time the oral authorisation was given;
28 (d) the period for which the person can be secluded under
29 the order, including (if the order is made under
30 subsection (3)) the period for which the person was
31 secluded under the oral authorisation;
32 (e) the room or area where the person can be secluded;

- 1 (f) with reference to the criteria specified in section 179(2),
2 the reasons for authorising the seclusion;
 - 3 (g) if a mental health practitioner made the order, with
4 reference to the criteria specified in section 179(3), the
5 reasons for the urgency;
 - 6 (h) particulars of any observations made about the
7 person —
 - 8 (i) if the order is made under subsection (1) —
9 when the person is secluded under the order; or
 - 10 (ii) if the order is made under subsection (3) —
11 when the person was secluded under the oral
12 authorisation;
 - 13 (i) particulars of any directions given by a medical
14 practitioner or mental health practitioner about the
15 treatment and care to be provided to the person while
16 secluded.
- 17 (5) As soon as practicable after a person is secluded under a
18 seclusion order made under subsection (1) by a person who is
19 not a medical practitioner, the person who made the order must
20 inform a medical practitioner that the person has been secluded.
21 Penalty: a fine of \$6 000.
- 22 (6) As soon as practicable after making a seclusion order under
23 subsection (1) or (3) in respect of a person, the practitioner or
24 person in charge who made the order must —
 - 25 (a) put the order on the person’s medical record; and
 - 26 (b) give a copy of the order to the person.

27 **179. Criteria for authorising seclusion**

- 28 (1) This section applies for the purposes of section 177(1)
29 and 178(1).
- 30 (2) The practitioner or person in charge must be satisfied of these
31 things —

- 1 (a) the patient needs to be secluded to prevent the patient
2 from —
3 (i) being injured or injuring another person; or
4 (ii) persistently damaging property; and
5 (b) there is no less restrictive way of preventing the injury
6 or damage.
- 7 (3) A mental health practitioner must not make the seclusion order
8 unless also satisfied that —
9 (a) the patient needs to be secluded urgently; and
10 (b) a medical practitioner or the person in charge of a ward
11 is not reasonably available to make the order.

12 **180. Treating psychiatrist (if any) to be informed**

- 13 (1) This section applies if —
14 (a) a person secluded under this Division has a treating
15 psychiatrist; and
16 (b) the seclusion is authorised by a person who is not the
17 treating psychiatrist; and
18 (c) the treating psychiatrist is not informed of the seclusion
19 under section 177(4) or 178(5).
- 20 (2) As soon as practicable after the person is secluded, the
21 practitioner who authorised the seclusion must inform the
22 treating psychiatrist that the person has been secluded.

23 **181. Extending seclusion order**

- 24 (1) A medical practitioner may make an order in the approved form
25 extending the period for which a person can be secluded under a
26 seclusion order.
- 27 (2) The order must specify —
28 (a) the period of the extension; and
29 (b) the reasons for the extension.

- 1 (3) As soon as practicable after making the order, the practitioner
2 must —
3 (a) put the order on the person’s medical record; and
4 (b) give a copy of the order to the person.

5 **182. Revoking seclusion order**

- 6 (1) A medical practitioner or mental health practitioner or the
7 person in charge of a ward at a hospital may make an order
8 revoking a seclusion order in force in respect of a person.
- 9 (2) An order made under subsection (1) must be in the approved
10 form and must specify the date and time the seclusion order is
11 revoked.
- 12 (3) As soon as practicable after making the order under
13 subsection (1), the practitioner or person in charge must —
14 (a) put the order on the person’s medical record; and
15 (b) give a copy of the order to the person.

16 **183. Expiry of seclusion order**

- 17 (1) This section applies if a seclusion order ceases to be in force in
18 respect of a person because of the expiry of the period for which
19 the person can be secluded under the order.
- 20 (2) A medical practitioner or mental health practitioner must —
21 (a) record in the approved form the date and time the
22 seclusion order expired; and
23 (b) put the record on the person’s medical record.

24 **184. Requirements relating to seclusion**

- 25 (1) While a person is secluded under this Division —
26 (a) the treating psychiatrist; or

- 1 (b) if the person does not have a treating psychiatrist, the
2 practitioner or person in charge who authorised the
3 seclusion,
4 must ensure that the requirements specified in subsection (2) are
5 complied with.
- 6 (2) For subsection (1), these requirements are specified —
- 7 (a) a mental health practitioner observes the person every
8 15 minutes;
- 9 (b) a medical practitioner examines the person every
10 2 hours;
- 11 (c) the person is provided with these things —
- 12 (i) the bedding and clothing appropriate in the
13 circumstances;
- 14 (ii) sufficient food and drink;
- 15 (iii) access to toilet facilities;
- 16 (iv) any other care appropriate to the person's needs.

17 **185. Other information that must be recorded**

- 18 (1) Whenever a person is secluded under this Division, the
19 practitioner or person in charge who authorised the seclusion
20 must ensure that —
- 21 (a) the things specified in subsection (2) are recorded in the
22 approved form; and
- 23 (b) the record is put on the person's medical record.
- 24 (2) For subsection (1)(a), these things are specified —
- 25 (a) if a medical practitioner was informed of the seclusion
26 under section 177(4) or 178(5) —
- 27 (i) the practitioner's name and qualifications; and
- 28 (ii) the date and time the practitioner was informed;
29 and

- 1 (iii) if the practitioner physically attended on the
2 person, the date and time of the attendance;
- 3 (b) the name and qualifications of the treating psychiatrist
4 (if any);
- 5 (c) if the treating psychiatrist was informed of the seclusion
6 under section 180(2), the date and time the treating
7 psychiatrist was informed;
- 8 (d) any observations made about the person by a mental
9 health practitioner while observing the person under
10 section 184(2)(a);
- 11 (e) the dates, times and results of the examinations of the
12 person conducted under section 184(2)(b).

13 **186. Person must be examined within 6 hours after seclusion**

- 14 (1) Whenever a person is released from seclusion under this
15 Division —

- 16 (a) the treating psychiatrist; or
- 17 (b) if the person does not have a treating psychiatrist, the
18 person in charge of the authorised hospital where the
19 person was secluded,

20 must ensure that the person is examined by a medical
21 practitioner within 6 hours after being released unless the person
22 is discharged from or otherwise leaves the hospital before the
23 end of that period.

- 24 (2) As soon as practicable after examining a person for the purposes
25 of subsection (1), a medical practitioner must —

- 26 (a) record in the approved form these things —
- 27 (i) the practitioner's name and qualifications;
- 28 (ii) the date and time the examination was
29 conducted;
- 30 (iii) the results of the examination, including any
31 complication of or deterioration in the person's

1 mental or physical condition that is a result of, or
2 may be the result of, the person being secluded;

3 and

4 (b) put the record on the person's medical record.

5 **187. Chief Psychiatrist and Mentally Impaired Accused Review**
6 **Board: report**

7 (1) As soon as practicable after a person has been released from
8 seclusion under this Division —

9 (a) the treating psychiatrist; or

10 (b) if the person does not have a treating psychiatrist, the
11 person in charge of the authorised hospital where the
12 person was secluded,

13 must give the documents specified in subsection (2) relating to
14 the seclusion to —

15 (c) the Chief Psychiatrist; and

16 (d) if the person is a mentally impaired accused, the
17 Mentally Impaired Accused Review Board.

18 (2) For subsection (1), these documents are specified —

19 (a) a copy of the seclusion order made under section 178(1)
20 or (3);

21 (b) a copy of any order made under section 181(1);

22 (c) a copy of any order made under section 182(1) or record
23 made under section 183(2)(a);

24 (d) a copy of the records made under section 185(1)(a)
25 and 186(2)(a).

26 (3) As soon as practicable after complying with subsection (1), the
27 treating psychiatrist or person in charge must include a record of
28 having complied on the person's medical record.

1 **Division 6 — Bodily restraint**

2 **188. Terms used**

3 In this Division —

4 ***bodily restraint*** has the meaning given in section 189;

5 ***bodily restraint order*** —

6 (a) means a bodily restraint order made under
7 section 192(1) or (3); and

8 (b) includes a bodily restraint order as varied under
9 section 195(1);

10 ***oral authorisation*** means an authorisation given orally under
11 section 191(1).

12 **189. Bodily restraint: meaning of**

13 (1) Bodily restraint is the physical or mechanical restraint of a
14 person.

15 (2) Physical restraint is the restraint of a person by the application
16 of bodily force to the person's body to restrict the person's
17 movement.

18 (3) Mechanical restraint is the restraint of a person by the
19 application of a device (for example, a belt, harness, manacle,
20 sheet or strap) to a person's body to restrict the person's
21 movement.

22 (4) Mechanical restraint does not include either of these forms of
23 restraint —

24 (a) the appropriate use of a medical or surgical appliance in
25 the treatment of a physical illness or injury;

26 (b) the appropriate use of furniture that restricts a person's
27 capacity to get off the furniture (for example, a bed
28 fitted with cot sides or a chair fitted with a table across
29 the arms).

- 1 (5) Bodily restraint does not include physical or mechanical
2 restraint by a police officer acting in the course of duty.

3 **190. Bodily restraint must be authorised**

4 A person must not use bodily restraint on another person except
5 in accordance with —

- 6 (a) an oral authorisation; or
7 (b) a bodily restraint order.

8 Penalty: a fine of \$6 000.

9 **191. Giving oral authorisation**

10 (1) A medical practitioner or mental health practitioner may
11 authorise orally the bodily restraint of any of these people —

- 12 (a) a person who is a patient;
13 (b) a person who is referred under section 26(2) or (3)(a)
14 or 33(2) for an examination to be conducted by a
15 psychiatrist;
16 (c) a person in respect of whom there is in force an order
17 made under section 49(1)(c) or 55(1)(c) to enable an
18 examination to be conducted by a psychiatrist.

19 (2) The practitioner must not give the oral authorisation unless
20 satisfied of the matters specified in section 193.

21 (3) When giving the oral authorisation, the practitioner must
22 specify —

- 23 (a) whether physical or mechanical restraint can be used to
24 restrain the person; and
25 (b) if mechanical restraint can be used —
26 (i) the device that can be used to restrain the person;
27 and
28 (ii) the way in which the device can be applied to the
29 person's body.

- 1 (4) As soon as practicable after a person is restrained under an oral
2 authorisation given by a mental health practitioner, the
3 practitioner must inform a medical practitioner that the person
4 has been restrained.

5 Penalty: a fine of \$6 000.

- 6 (5) If the practitioner does not make a bodily restraint order
7 confirming the oral authorisation as required by section 192(3),
8 the person cannot be restrained any longer and must be released
9 from the bodily restraint.

10 **192. Making bodily restraint order**

- 11 (1) Subject to subsection (3), a medical practitioner or mental
12 health practitioner may make a bodily restraint order authorising
13 the bodily restraint of any of these people —

- 14 (a) a person who is a patient;
15 (b) a person who is referred under section 26(2) or (3)(a)
16 or 33(2) for an examination to be conducted by a
17 psychiatrist;
18 (c) a person in respect of whom there is in force an order
19 made under section 49(1)(c) or 55(1)(c) to enable an
20 examination to be conducted by a psychiatrist.

- 21 (2) A practitioner must not make a bodily restraint order under
22 subsection (1) unless satisfied of the matters specified in
23 section 193.

- 24 (3) As soon as practicable after giving an oral authorisation in
25 respect of a person, a practitioner must make a bodily restraint
26 order confirming the oral authorisation.

- 27 (4) A bodily restraint order made under subsection (1) or (3) must
28 be in the approved form and must specify these things —

- 29 (a) the name and qualifications of the practitioner who
30 made the order;
31 (b) the date and time it is made;

- 1 (c) if the order is made under subsection (3), the date and
2 time the oral authorisation was given;
- 3 (d) the period for which the person can be restrained under
4 the order, including (if the order is made under
5 subsection (3)) the period for which the person was
6 restrained under the oral authorisation;
- 7 (e) whether physical or mechanical restraint can be used to
8 restrain the person;
- 9 (f) if mechanical restraint can be used —
- 10 (i) the device that can be used to restrain the person;
11 and
- 12 (ii) the way in which the device can be applied to the
13 person's body;
- 14 (g) with reference to the criteria specified in
15 section 193(2) —
- 16 (i) the reasons for authorising the use of bodily
17 restraint on the person; and
- 18 (ii) if mechanical restraint is authorised — the
19 reasons for authorising the use and application of
20 the device specified under paragraph (f);
- 21 (h) if a mental health practitioner made the order, with
22 reference to the criteria specified in section 193(3), the
23 reasons for the urgency;
- 24 (i) particulars of any observations made about the
25 person —
- 26 (i) if the order is made under subsection (1) —
27 when the person is restrained under the order; or
- 28 (ii) if the order is made under subsection (3) —
29 when the person was restrained under the oral
30 authorisation;
- 31 (j) particulars of any directions given by a medical
32 practitioner or mental health practitioner about the

1 treatment and care to be provided to the person while
2 restrained.

3 (5) As soon as practicable after a person is restrained under a bodily
4 restraint order made under subsection (1) by a mental health
5 practitioner, the practitioner must inform a medical practitioner
6 that the person has been restrained.

7 Penalty: a fine of \$6 000.

8 (6) As soon as practicable after making a bodily restraint order
9 under subsection (1) or (3) in respect of a person, a practitioner
10 must —

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

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

13 **193. Criteria for authorising bodily restraint**

14 (1) This section applies for the purposes of sections 191(2)
15 and 192(2).

16 (2) A practitioner must be satisfied of these things —

17 (a) the person needs to be restrained to —

18 (i) provide the person with treatment; or

19 (ii) prevent the person from being physically injured
20 or physically injuring another person; or

21 (iii) prevent the person from persistently damaging
22 property;

23 and

24 (b) there is no less restrictive way of providing the
25 treatment or preventing the injury or damage; and

26 (c) the use of bodily restraint on the person is unlikely to
27 pose a significant risk to the person's physical health.

28 (3) A mental health practitioner must also be satisfied that —

29 (a) the person needs to be restrained urgently; and

- 1 (b) a medical practitioner is not reasonably available to
2 authorise the restraint of the person.

3 **194. Treating psychiatrist (if any) must be informed**

- 4 (1) This section applies if —

- 5 (a) a person restrained under this Division has a treating
6 psychiatrist; and
7 (b) the restraint is authorised by a practitioner who is not the
8 treating psychiatrist; and
9 (c) the treating psychiatrist is not informed of the restraint
10 under section 191(4) or 192(5).

- 11 (2) As soon as practicable after the person is restrained, the
12 practitioner who authorised the restraint must inform the
13 treating psychiatrist that the person has been restrained.

14 **195. Varying bodily restraint order**

- 15 (1) A medical practitioner or mental health practitioner may make
16 an order in the approved form varying a bodily restraint order in
17 force in respect of a person by —

- 18 (a) extending or reducing the period for which the person
19 can be restrained under the order; or
20 (b) varying the device that is authorised for use to restrict
21 the person's movement or the way in which the device is
22 authorised to be applied to the person's body.

- 23 (2) A mental health practitioner must not make an order under
24 subsection (1)(a) extending the period for which the person can
25 be restrained under the bodily restraint order unless satisfied
26 that —

- 27 (a) the period needs to be extended urgently; and
28 (b) a medical practitioner is not reasonably available to
29 make an order under subsection (1)(a) extending the
30 period.

- 1 (3) An order made under subsection (1) must be in the approved
2 form and must specify these things —
- 3 (a) the variation of the bodily restraint order;
- 4 (b) the reasons for the variation.
- 5 (4) As soon as practicable after making the order under
6 subsection (1), the practitioner must —
- 7 (a) put the order on the person’s medical record; and
- 8 (b) give a copy of the order to the person.
- 9 **196. Revoking bodily restraint order**
- 10 (1) A medical practitioner or mental health practitioner may make
11 an order revoking a bodily restraint order in force in respect of a
12 person.
- 13 (2) An order made under subsection (1) must be in the approved
14 form and must specify the date and time the bodily restraint
15 order is revoked.
- 16 (3) As soon as practicable after making the order under
17 subsection (1), the practitioner must —
- 18 (a) put the order on the person’s medical record; and
- 19 (b) give a copy of the order to the person.
- 20 **197. Expiry of bodily restraint order**
- 21 (1) This section applies if a bodily restraint order ceases to be in
22 force in respect of a person because of the expiry of the period
23 for which the person can be restrained under the order.
- 24 (2) A medical practitioner or mental health practitioner must —
- 25 (a) record in the approved form the date and time the bodily
26 restraint order expired; and
- 27 (b) put the record on the person’s medical record.

1 **198. Requirements relating to bodily restraint**

2 (1) While a person is restrained under this Division —

3 (a) the treating psychiatrist; or

4 (b) if the person does not have a treating psychiatrist, the
5 practitioner who authorised the restraint,

6 must ensure that the requirements specified in subsection (2) are
7 complied with.

8 (2) For subsection (1), these requirements are specified —

9 (a) a mental health practitioner is in physical attendance on
10 the person at all times;

11 (b) if the restraint was authorised by a medical practitioner,
12 a medical practitioner is in physical attendance on the
13 person for the first 15 minutes that the person is
14 restrained;

15 (c) if the restraint was authorised by a mental health
16 practitioner, the medical practitioner who is informed of
17 the restraint under section 191(4) or 192(5) physically
18 attends on the person as soon as practicable after being
19 informed for the purpose of examining the person;

20 (d) after the attendance on the person by a medical
21 practitioner under paragraph (b) or (c), a medical
22 practitioner examines the person every 30 minutes;

23 (e) if the person remains restrained for more than 6 hours, a
24 psychiatrist reviews the use of bodily restraint on the
25 person;

26 (f) the person is provided with these things —

27 (i) the bedding and clothing appropriate in the
28 circumstances;

29 (ii) sufficient food and drink;

30 (iii) access to toilet facilities;

31 (iv) any other care appropriate to the person's needs.

1 **199. Other information that must be recorded**

- 2 (1) Whenever a person is restrained under this Division —
- 3 (a) the treating psychiatrist; or
- 4 (b) if the person does not have a treating psychiatrist, the
- 5 practitioner who authorised the restraint,
- 6 must ensure that —
- 7 (c) the things specified in subsection (2) are recorded in the
- 8 approved form; and
- 9 (d) the record is put on the person's medical record.
- 10 (2) For subsection (1)(c), these things are specified —
- 11 (a) if a medical practitioner was informed of the restraint
- 12 under section 191(4) or 192(5) —
- 13 (i) the practitioner's name and qualifications; and
- 14 (ii) the date and time the practitioner was informed;
- 15 and
- 16 (iii) the date and time the practitioner attended on the
- 17 person under section 198(2)(c);
- 18 (b) the name and qualifications of the treating psychiatrist
- 19 (if any);
- 20 (c) if the treating psychiatrist was informed of the restraint
- 21 under section 194(2), the date and time the treating
- 22 psychiatrist was informed;
- 23 (d) any observations made about the person by any of these
- 24 practitioners —
- 25 (i) a mental health practitioner while attending on
- 26 the person under section 198(2)(a);
- 27 (ii) a medical practitioner while attending on the
- 28 person under section 198(2)(b);
- 29 (iii) a medical practitioner while examining the
- 30 person under section 198(2)(c) or (d);

- 1 (e) if a psychiatrist conducts a review under
2 section 198(2)(e) —
3 (i) the psychiatrist's name and qualifications; and
4 (ii) the date and time the review was conducted; and
5 (iii) the outcome of the review.

6 **200. Person must be examined within 6 hours after bodily**
7 **restraint**

- 8 (1) Whenever a person is released from bodily restraint under this
9 Division —
10 (a) the treating psychiatrist; or
11 (b) if the person does not have a treating psychiatrist, the
12 person in charge of the mental health service or other
13 place where the person was restrained,
14 must ensure that the person is examined by a medical
15 practitioner as soon as practicable and, in any event, within
16 6 hours after being released unless the person is discharged
17 from or otherwise leaves the mental health service or other
18 place before the end of that period.
- 19 (2) As soon as practicable after examining a person for the purposes
20 of subsection (1), a medical practitioner must —
21 (a) record in the approved form these things —
22 (i) the practitioner's name and qualifications;
23 (ii) the date and time the examination was
24 conducted;
25 (iii) the results of the examination, including any
26 complication of or deterioration in the person's
27 mental or physical condition that is a result of, or
28 may be the result of, the person being restrained;
29 and
30 (b) put the record on the person's medical record.

- 1 **201. Chief Psychiatrist and Mentally Impaired Accused Review**
2 **Board: report**
- 3 (1) As soon as practicable after a person has been released from
4 restraint under this Division —
- 5 (a) the treating psychiatrist; or
6 (b) if the person does not have a treating psychiatrist, the
7 person in charge of the mental health service or other
8 place where the person was restrained,
- 9 must give the documents specified in subsection (2) relating to
10 the restraint to —
- 11 (c) the Chief Psychiatrist; and
12 (d) if the person is a mentally impaired accused, the
13 Mentally Impaired Accused Review Board.
- 14 (2) For subsection (1), these documents are specified —
- 15 (a) a copy of the bodily restraint order made under
16 section 192(1) or (3);
17 (b) a copy of any order made under section 195(1);
18 (c) a copy of any order made under section 196(1) or record
19 made under section 197(2)(a);
20 (d) a copy of the records made under section 199(1)(c)
21 and 200(2)(a).
- 22 (3) As soon as practicable after complying with subsection (1), the
23 treating psychiatrist or person in charge must include a record of
24 having complied on the person's medical record.

5 (1) This section applies in relation to a person who is —
6 (a) admitted to an authorised hospital as —
7 (i) a voluntary patient; or
8 (ii) an involuntary patient in respect of whom there
9 is in force an in-patient treatment order
10 authorising the patient's detention at the hospital;
11 or
12 (iii) a mentally impaired accused who must be
13 detained at the hospital because of a
14 determination made under the CL(MIA) Act
15 section 25(1)(b) or amended under section 26 of
16 that Act;
17 or
18 (b) received at an authorised hospital under section 46(1)(a)
19 or 62(1)(a).
20 (2) The person in charge of the hospital must ensure that, as soon as
21 practicable after the person is admitted or received, a medical
22 practitioner physically attends on the person for the purpose of
23 examining the person to assess the person's physical condition.
24 (3) For the purposes of subsection (2), these things may be done in
25 relation to a person referred to in subsection (1)(a)(ii) or (iii)
26 or (b) without consent —
27 (a) the person may be examined;
28 (b) samples of the person's blood, tissue and excreta may be
29 taken.

- 1 (4) As soon as practicable after examining a person for the purposes
2 of subsection (2), a medical practitioner must record these
3 things on the person's medical record —
4 (a) the practitioner's name and qualifications;
5 (b) the date and time the examination was conducted;
6 (c) the results of the examination.

7 **Division 2 — Medical treatment for involuntary in-patients and**
8 **mentally impaired accused**

9 **203. Application of this Division**

- 10 This Division applies in relation to a patient who is being
11 detained at an authorised hospital as —
12 (a) an involuntary patient in respect of whom there is in
13 force an in-patient treatment order authorising the
14 patient's detention at the hospital; or
15 (b) a mentally impaired accused who must be detained at
16 the hospital because of a determination made under the
17 CL(MIA) Act section 25(1)(b) or amended under
18 section 26 of that Act.

19 **204. Terms used**

- 20 In this Division —
21 ***non-urgent medical treatment*** means treatment (as defined in
22 the Guardianship Act section 3(1)) that is not —
23 (a) urgent medical treatment; or
24 (b) treatment as defined in section 3;
25 ***urgent medical treatment*** means urgent treatment as defined in
26 the Guardianship Act section 110ZH.

27 **205. Urgent medical treatment: treating psychiatrist may consent**

- 28 (1) If the patient needs to be provided with urgent medical
29 treatment but does not have the capacity to give informed

1 consent to the provision of the treatment, the treating
2 psychiatrist can give informed consent on the patient's behalf in
3 accordance with the Guardianship Act section 110ZD.

4 (2) If the patient is provided with urgent medical treatment with the
5 consent of the treating psychiatrist given under subsection (1),
6 the person in charge of the authorised hospital must ensure that
7 the patient's medical record includes a record of the consent
8 having been given.

9 **206. Urgent medical treatment: report to Chief Psychiatrist**

10 (1) As soon as practicable after the patient is provided with urgent
11 medical treatment, the person in charge of the authorised
12 hospital must report to —

- 13 (a) the Chief Psychiatrist; and
14 (b) if the patient is a mentally impaired accused, the
15 Mentally Impaired Accused Review Board,

16 that the treatment was provided.

17 (2) The report must be in the approved form and must include these
18 things —

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

- 1 **207. Non-urgent medical treatment: Chief Psychiatrist may**
2 **consent**
- 3 (1) If the patient needs to be provided with non-urgent medical
4 treatment but does not have the capacity to give informed
5 consent to the provision of the treatment, the Chief Psychiatrist
6 can give informed consent on the patient's behalf in accordance
7 with the Guardianship Act section 110ZD.
- 8 (2) If the patient is provided with non-urgent medical treatment
9 with the consent of the Chief Psychiatrist given under
10 subsection (1), the person in charge of the authorised hospital
11 must ensure that the patient's medical record includes a record
12 of the consent having been given.

13 **Division 3 — Sterilisation procedure**

- 14 **208. Sterilisation procedure: meaning of**
- 15 (1) A sterilisation procedure is the provision of medical or surgical
16 treatment that is intended to make a person, or to ensure a
17 person is, permanently infertile.
- 18 (2) A sterilisation procedure does not include the provision of
19 medical or surgical treatment that is not intended to make a
20 person, or to ensure a person is, permanently infertile but
21 incidentally has or may have that result.
- 22 **209. Requirements for sterilisation procedure**
- 23 A person must not perform a sterilisation procedure on a person
24 who has a mental illness unless —
- 25 (a) if the person is a child who does not have sufficient
26 maturity or understanding to make reasonable decisions
27 about matters relating to himself or herself — the
28 Family Court has authorised the sterilisation procedure
29 to be performed; or
- 30 (b) if the person —

- 1 (i) is a child who has sufficient maturity and
2 understanding to make reasonable decisions
3 about matters relating to himself or herself; or
4 (ii) has reached 18 years of age and has the capacity
5 required by section 12 to give informed consent
6 to the sterilisation procedure being performed,
7 the person has given informed consent to it being
8 performed; or
9 (c) if the person has reached 18 years of age but does not
10 have the capacity required by section 12 to give
11 informed consent to the sterilisation procedure being
12 performed — the person's enduring guardian or
13 guardian has given consent in accordance with the
14 Guardianship Act Part 5 Division 3 to it being
15 performed.

16 Penalty: imprisonment for 5 years.

17 **210. Chief Psychiatrist and Mentally Impaired Accused Review**
18 **Board: report**

19 As soon as practicable after a sterilisation procedure is
20 performed on a person who has a mental illness, the treating
21 psychiatrist must report to —

- 22 (a) the Chief Psychiatrist; and
23 (b) if the person is a mentally impaired accused, the
24 Mentally Impaired Accused Review Board,

25 that the procedure was performed.

Part 13 — Protection of patients' rights

Division 1 — Patients' rights generally

Subdivision 1 — Explanation of rights

211. Application of this Division

This Division applies when —

- (a) a patient is being admitted to an authorised hospital, whether as —
 - (i) a voluntary patient; or
 - (ii) an involuntary patient whose detention at the authorised hospital is authorised under an in-patient treatment order; or
 - (iii) a mentally impaired accused who must be detained at the hospital because of a determination made under the CL(MIA) Act section 25(1)(b) or amended under section 26 of that Act;
- or
- (b) an in-patient treatment order is made in respect of a patient; or
- (c) a patient who in respect of whom an in-patient treatment order is in force is granted leave of absence under section 94(1); or
- (d) a community treatment order is made in respect of a patient.

212. Rights to be explained to patient

- (1) The person responsible under section 214 must ensure that the patient is provided with an explanation, as described in the regulations, of the patient's rights under this Act.

- 1 (2) The explanation must be provided to the patient in a language,
2 form of communication and terms that the patient is likely to
3 understand.

4 **213. Patient's rights to be explained to another person**

- 5 (1) If the patient has reached 18 years of age, the person responsible
6 under section 214 must ensure that at least one of these people
7 is provided with an explanation, as described in the regulations,
8 of the patient's rights under this Act —
- 9 (a) if the patient has an enduring guardian or guardian, the
10 enduring guardian or guardian;
- 11 (b) if the patient has a nominated person, the nominated
12 person unless section 233 applies;
- 13 (c) if the person has a carer, the carer unless section 244(3)
14 or 246(3) applies.
- 15 (2) If the patient is a child, the person responsible under section 214
16 must ensure that at least one of these people is provided with an
17 explanation, as described in the regulations, of the rights of the
18 patient as a patient —
- 19 (a) the child's parent or guardian;
- 20 (b) if the child has a nominated person, the nominated
21 person unless section 233 applies;
- 22 (c) if the child has a carer, the carer unless section 244(3)
23 or 246(3) applies.
- 24 (3) The explanation must be provided to a person referred to in
25 subsection (1)(a) to (c) or (2)(a) to (c) in a language, form of
26 communication and terms that the person is likely to
27 understand.
- 28 (4) This section applies despite any requirement under
29 section 243(2) or 245(2) relating to the patient's consent or
30 unreasonable refusal to give consent.

1 **214. Person responsible for ensuring explanation is provided**

2 For sections 212 and 213, the person responsible is —

- 3 (a) if section 211(a) applies in relation to the patient — the
4 person in charge of the authorised hospital; or
- 5 (b) if section 211(b) applies in relation to the patient — the
6 psychiatrist who makes the in-patient treatment order; or
- 7 (c) if section 211(c) applies in relation to the patient — the
8 psychiatrist who grants the leave of absence; or
- 9 (d) if section 211(d) applies in relation to the patient — the
10 psychiatrist who makes the community treatment order.

11 **Subdivision 2 — Access to records about patients and**
12 **former patients**

13 **215. Term used: relevant document**

14 In this Subdivision —

15 **relevant document**, in relation to a person, means —

- 16 (a) the person's medical record; or
- 17 (b) any other document relating to the person.

18 **216. Right to access medical record etc.**

19 (1) A person who is or was provided with treatment or care by a
20 mental health service is entitled to inspect, and to be provided
21 with a copy of, any relevant document relating to the person that
22 is in the possession or control of —

- 23 (a) the person in charge of the mental health service; or
- 24 (b) a staff member of the mental health service,

25 unless section 217(1)(a) or (b) or (3) applies.

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

1 **217. Restrictions on access**

2 (1) A person is not entitled to have access under section 216(1) to a
3 relevant document, or a part of a relevant document, relating to
4 the person —

5 (a) if a medical practitioner reasonably believes that
6 disclosure of the information in the document, or that
7 part of the document, to the person would pose a
8 significant risk to the health, safety or welfare of the
9 person or to the safety of another person; or

10 (b) if disclosure of the information in the document, or that
11 part of the document, to the person would reveal —

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

14 (ii) information of a confidential nature that was
15 obtained in confidence.

16 (2) Subsection (1)(b) does not apply if the personal information is
17 about an individual who has given consent to the disclosure of
18 the information.

19 (3) A person is not entitled to have access under section 216(1) to a
20 relevant document, or a part of a relevant document, relating to
21 the person if the person —

22 (a) is or was a mentally impaired accused detained at the
23 authorised hospital because of a determination made
24 under the CL(MIA) Act section 25(1)(b) or amended
25 under section 26 of that Act; and

26 (b) the relevant document came into existence under, or for
27 the purposes of, the *Prisons Act 1981*.

28 **218. Providing access to medical practitioner or legal**
29 **practitioner**

30 (1) This section applies if a person is refused access under
31 section 216(1) to a relevant document, or a part of a relevant

1 document, relating to the person for a reason referred to in
2 section 217(1)(a).

3 (2) The person may nominate —

4 (a) a medical practitioner; or

5 (b) a legal practitioner,

6 to inspect, and to be provided a copy of, the relevant document
7 or that part of the relevant document.

8 (3) The practitioner nominated under subsection (2) is entitled to
9 inspect, and to be provided with a copy of, the relevant
10 document.

11 **219. Disclosure by medical practitioner or legal practitioner**

12 A person who inspects, or is provided with a copy of, a relevant
13 document or a part of a relevant document in the exercise or
14 purported exercise of a right under section 218(2) must not
15 disclose the information in the document, or that part of the
16 document, to the person who was refused access under
17 section 216(1) to the document or that part of the document.

18 Penalty: a fine of \$6 000.

19 **Subdivision 3 — Duties of staff of mental health services**
20 **toward patients**

21 **220. Duty to report certain incidents**

22 (1) In this section —

23 **reportable incident**, in relation to a person, means —

24 (a) unlawful sexual contact with the person; or

25 (b) the unreasonable use of force on the person.

26 (2) A staff member of a mental health service who reasonably
27 suspects that a reportable incident has occurred in relation to a
28 person specified in section 401(1) who is being provided with

1 treatment or care by the mental health service must report the
2 suspicion to —

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

4 (b) the Chief Psychiatrist.

5 Penalty: a fine of \$6 000.

6 **221. Duty not to ill-treat or wilfully neglect patients**

7 A staff member of a mental health service must not ill-treat or
8 wilfully neglect a person specified in section 401(1) who is
9 being provided with treatment or care by the mental health
10 service.

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

12 **Division 2 — Additional rights of in-patients in**
13 **authorised hospitals**

14 **Subdivision 1 — Admission of voluntary patients**

15 **222. Admission by medical practitioner**

16 A person can only be admitted to an authorised hospital as a
17 voluntary patient by a medical practitioner.

18 **223. Confirmation of admission by psychiatrist**

19 The admission of a person to an authorised hospital as a
20 voluntary patient must be confirmed by a psychiatrist.

21 **224. Refusal to admit, or confirm admission, of person**

22 (1) A medical practitioner must refuse to admit a person to an
23 authorised hospital as a voluntary patient unless the medical
24 practitioner is satisfied that the person is likely to benefit from
25 being admitted.

26 (2) A psychiatrist must refuse to confirm the admission of a person
27 to an authorised hospital as a voluntary patient unless the

- 1 psychiatrist is satisfied that the person is likely to benefit from
2 being admitted.
- 3 (3) If a medical practitioner refuses to admit, or a psychiatrist
4 refuses to confirm the admission of, a person to an authorised
5 hospital as a voluntary patient, the medical practitioner or
6 psychiatrist must —
- 7 (a) inform the person of the reasons for the refusal; and
8 (b) advise the person that the person may make a complaint
9 about the refusal —
- 10 (i) under Part 16 to the person in charge of the
11 authorised hospital or to the Director of
12 HaDSCO or
13 (ii) to the Chief Psychiatrist.
- 14 (4) Any information or advice provided under subsection (3) to a
15 person must be provided in a language, form of communication
16 and terms the person is likely to understand.

17 **Subdivision 2 — Rights of in-patients generally**

18 **225. Application of this Subdivision**

- 19 This Subdivision applies in relation to a patient who is admitted
20 to an authorised hospital, whether as —
- 21 (a) a voluntary patient; or
22 (b) an involuntary patient whose detention at the authorised
23 hospital is authorised under an in-patient treatment
24 order; or
25 (c) a mentally impaired accused who must be detained at
26 the hospital because of a determination made under the
27 CL(MIA) Act section 25(1)(b) or amended under
28 section 26 of that Act.

29 **226. Personal possessions**

- 30 (1) In this section —

- 1 **personal possessions**, of a patient, means any of these items —
- 2 (a) articles of clothing, jewellery or footwear belonging to
- 3 the patient;
- 4 (b) articles for personal use by the patient;
- 5 (c) aids for daily living, or medical prostheses, that are
- 6 usually used by the patient as means of assistance or to
- 7 maintain the patient's dignity.
- 8 (2) Subject to subsections (3) and (4), the person in charge of an
- 9 authorised hospital must ensure that each patient —
- 10 (a) is provided with a secure facility in which to store the
- 11 patient's personal possessions; and
- 12 (b) is allowed to use those possessions.
- 13 (3) Subsection (2) does not apply in relation to an item (including
- 14 an aid for daily living or medical prosthesis) that, in the opinion
- 15 of the person in charge, may, in all the circumstances, pose a
- 16 risk of harm to the patient or another person.
- 17 (4) Subsection (2) does not apply in relation to an item that is not an
- 18 aid for daily living or medical prosthesis that, in the opinion of
- 19 the person in charge, is not an appropriate item to store at the
- 20 authorised hospital.
- 21 (5) Any personal possessions of a patient left at an authorised
- 22 hospital for more than 6 months after the patient has been
- 23 discharged from the hospital may be sold or otherwise disposed
- 24 of by the person in charge of the hospital, but only after —
- 25 (a) the person in charge has given the patient at least one
- 26 month's notice of the proposed disposal; and
- 27 (b) the patient has not claimed those possessions within that
- 28 period.
- 29 **227. Interview with psychiatrist**
- 30 (1) A patient may, at any time while admitted to the authorised
- 31 hospital, request an interview with a psychiatrist.

- 1 (2) The person in charge of the authorised hospital must ensure —
2 (a) that the request is complied with; and
3 (b) that the patient's medical record includes a record of the
4 request having been made and whether or not the
5 request was complied with.
- 6 (3) The psychiatrist who interviews a patient in compliance with a
7 request made under subsection (1) must record on the patient's
8 medical record —
9 (a) the date on which, and the time at which, the interview
10 occurred; and
11 (b) the matters discussed during the interview.
- 12 **228. Freedom of lawful communication**
- 13 (1) This section applies subject to section 229.
- 14 (2) A patient has the right of freedom of lawful communication.
- 15 (3) A patient's freedom of lawful communication includes the
16 freedom to do any of these things —
17 (a) communicate to the extent that is reasonable with other
18 people in the authorised hospital;
19 (b) send and receive —
20 (i) uncensored private communications; and
21 (ii) uncensored communications from the patient's
22 legal practitioner;
23 (c) receive visits from, and be otherwise contacted by, a
24 mental health advocate at any time;
25 (d) receive visits from the patient's legal practitioner at all
26 reasonable times;
27 (e) receive visits from other people at all reasonable times;
28 (f) access postal and telephone services, newspapers, radio
29 and television at reasonable times.

1 **229. Restrictions on freedom of communication**

- 2 (1) Subject to subsections (2) and (3), a psychiatrist may make an
3 order in the approved form —
- 4 (a) prohibiting a patient from exercising a right under
5 section 228; or
- 6 (b) limiting the extent to which a patient can exercise a right
7 under section 228.
- 8 (2) A psychiatrist cannot make an order under subsection (1)
9 prohibiting, or limiting the extent of, a patient's right under
10 section 228(3)(c) to receive visits from and be otherwise
11 contacted by a mental health advocate.
- 12 (3) A psychiatrist cannot make an order under subsection (1) in
13 respect of a patient unless satisfied that making the order is in
14 the best interests of the patient.
- 15 (4) As soon as practicable after making an order under
16 subsection (1) in respect of a patient, a psychiatrist must —
- 17 (a) put the order on the patient's medical record; and
- 18 (b) record the reasons for making the order on the patient's
19 medical record; and
- 20 (c) give a copy of the order to each of these people —
- 21 (i) the patient;
- 22 (ii) if the patient has a nominated person, the
23 nominated person;
- 24 (iii) if the patient has a carer, the carer.
- 25 (5) Before the end of each 24-hour period that an order made under
26 subsection (1) is in force, a psychiatrist must review the order
27 and must confirm, amend or revoke it.
- 28 (6) The psychiatrist must —

- 12 **Division 3 — Nominated persons**
13 **Subdivision 1 — Purpose and effect of nomination**

(1) The role of a nominated person is to assist the person who made the nomination at any time the person is a patient by ensuring that the person's rights under this Act are observed and the person's interests as a patient are taken into account.

(2) Without limiting subsection (1), the role of a patient's nominated person includes the following —

(a) receiving information about these matters —

(i) the mental illness for which the patient is being provided with treatment;

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

(iii) the treatment proposed to be provided to the patient and any other treatment options that are available;

- 1 (iv) the services available to meet the patient's needs;
2 (v) the patient's rights under this Act and how those
3 rights may be accessed and exercised;
4 (b) being involved in —
5 (i) the consideration of the options that are available
6 for the patient's treatment and care; and
7 (ii) the preparation and review of any treatment,
8 support and discharge plan for the patient.
- 9 (3) To avoid doubt, a nomination does not authorise a patient's
10 nominated person to consent on behalf of the patient to the
11 admission of, or the provision of treatment to, the patient.
- 12 **231. Effect of nomination**
- 13 (1) A patient is entitled to uncensored communication with the
14 patient's nominated person, including by receiving visits,
15 making and receiving telephone calls, and sending and receiving
16 mail and electronic communications.
- 17 (2) A patient's nominated person is entitled —
18 (a) to be provided with the information referred to in
19 section 230(2)(a); and
20 (b) to be involved in the matters referred to in
21 section 230(2)(b),
22 unless section 233 applies.
- 23 (3) A patient's nominated person may indicate the extent to which
24 the nominated person wants to be provided with that
25 information or to be involved in those matters.
- 26 (4) A patient's nominated person may exercise, on behalf of the
27 patient, the rights conferred under this Act on the patient.

1 **232. Patient's psychiatrist must ensure nominated person**
2 **provided with information etc.**

3 If no other provision is made under this Act about who must
4 ensure that a patient's nominated person is —

- 5 (a) provided with information referred to in
6 section 230(2)(a); or
7 (b) involved in a matter referred to in section 230(2)(b),

8 the patient's psychiatrist must ensure that the nominated person
9 is provided with that information or is involved in that matter.

10 **233. Provision of information etc. not in patient's bests interests**

11 A patient's nominated person is not entitled to be provided with
12 particular information, or to be involved in a particular matter, if
13 the patient's psychiatrist reasonably believes that it would not
14 be in the patient's best interests for the nominated person to be
15 provided with that information or to be involved in that matter.

16 **234. Nominated person cannot be identified or contacted**

17 (1) Without limiting a requirement under this Act —

- 18 (a) to provide a patient's nominated person with
19 information referred to in section 230(2)(a); or
20 (b) to involve a patient's nominated person in a matter
21 referred to in section 230(2)(b),

22 the requirement is taken to have been complied with if all
23 reasonable efforts have been made to identify the nominated
24 person and to provide the nominated person with the
25 information or involve the nominated person in the matter.

26 (2) A person who is required under this Act to ensure that a
27 patient's nominated person is provided with information
28 referred to in section 230(2)(a), or is involved in a matter
29 referred to in section 230(2)(b), must ensure that the patient's
30 medical record includes —

- 1 (a) a record of when and how the nominated person was
2 provided with that information or was involved in that
3 matter; or
4 (b) if the nominated person could not be identified, or could
5 not be provided with that information or involved in that
6 matter, a record of the efforts made to do so.

7 **Subdivision 2 — Making and ending nomination**

8 **235. Who can make nomination**

- 9 (1) A person, including a child, may nominate another person to be
10 the person's nominated person.
11 (2) A person cannot make a nomination under subsection (1) unless
12 the person understands the effect of making the nomination.

13 **236. Who can be nominated**

14 A person is eligible to be nominated under subsection (1) if the
15 person —

- 16 (a) has reached 18 years of age; and
17 (b) has full legal capacity.

18 **237. Formal requirements**

- 19 (1) A nomination is not valid unless —
20 (a) it is in the approved form;
21 (b) it states the name and contact details of the person being
22 nominated;
23 (c) it states the date on which it takes effect;
24 (d) it is signed by the person making the nomination or by
25 another person in the presence of, and at the direction of,
26 the person making the nomination;
27 (e) the signature referred to in paragraph (d) is witnessed by
28 2 persons referred to in subsection (2);

- 1 (f) it is signed by the person being nominated to indicate
2 that the person accepts the nomination;
3 (g) the signature referred to in paragraph (f) is witnessed by
4 2 persons referred to in subsection (2).
5 (2) For the purposes of subsection (1)(e) and (g), a witness must be
6 authorised by law to take declarations but cannot be a person
7 referred to in subsection (1)(d) or (f).

8 **238. Only one nominated person**

- 9 (1) A person cannot have more than one nominated person at any
10 time.
11 (2) A nomination is revoked if the person who made it makes
12 another nomination.

13 **239. Resignation of nominated person**

- 14 (1) A nominated person may resign the nomination by writing
15 signed and given to the person who made the nomination.
16 (2) The resignation takes effect on the later of the following —
17 (a) receipt by the person who made the nomination;
18 (b) the day specified in the resignation.

19 **240. Former nominated person to notify medical practitioners,**
20 **mental health practitioners and mental health services**

21 If a patient's nominated person —

- 22 (a) resigns the nomination; or
23 (b) becomes aware that the patient has revoked the
24 nomination,

25 the person must take all reasonable steps to notify any medical
26 practitioner, mental health practitioner or mental health service
27 that the person is aware is providing treatment or care to the
28 patient that the nomination no longer has effect.

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Part 13 Protection of patients' rights

Division 3 Nominated persons

s. 240

- 1 Note for Division 3:
- 2 Part 18 Division 9 confers jurisdiction on the Mental Health Tribunal to hear
- 3 and determine applications relating to nominated persons.

Part 14 — Recognition of carers' rights

Division 1 — Role of carers

241. Acknowledgment of and respect for role

The role of the carer of a patient in the provision of treatment, care and support to the patient should be acknowledged and respected.

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

242. Carer's rights

(1) This Division sets out when a patient's carer is entitled to be —

- (a) provided with information relevant to the carer about these matters —
 - (i) the mental illness for which the patient is being provided with treatment;
 - (ii) if the patient is an involuntary patient, the grounds on which, and the provision of this Act under which, the involuntary treatment order was made;
 - (iii) the treatment proposed to be provided to the patient and any other treatment options that are available;
 - (iv) the services available to meet the patient's needs;
 - (v) the patient's rights under this Act and how those rights may be accessed and exercised;
 - (vi) the carer's rights under this Act and how those rights may be accessed and exercised;

and

(b) involved in these matters —

- 1 (i) the consideration of the options that are available
2 for the patient's treatment and care; and
3 (ii) the provision of support to the patient; and
4 (iii) the preparation and review of any treatment,
5 support and discharge plan for the patient.
- 6 (2) A patient's carer may indicate the extent to which the carer
7 wants to be provided with that information or to be involved in
8 those matters.
- 9 (3) To avoid doubt, a patient's carer is not authorised to consent on
10 behalf of the patient to the admission of, or the provision of
11 treatment to, the patient.

12 **243. Voluntary patient with capacity to consent**

- 13 (1) This section applies in relation to a voluntary patient who has
14 the capacity to give consent to the patient's carer being provided
15 with the information referred to in section 242(1)(a) or being
16 involved in the matters referred to in section 242(1)(b).
- 17 (2) The carer is entitled to be provided with that information, or to
18 be involved in those matters, with the patient's consent.

19 **244. Voluntary patient with no capacity to consent**

- 20 (1) This section applies in relation to a voluntary patient who does
21 not have the capacity to give consent to the patient's carer being
22 provided with the information referred to in section 242(1)(a) or
23 being involved in the matters referred to in section 242(1)(b).
- 24 (2) The carer is entitled to be provided with that information, or to
25 be involved in those matters, unless subsection (3) applies.
- 26 (3) The carer is not entitled to be provided with particular
27 information, or to be involved in a particular matter, if the
28 patient's psychiatrist reasonably believes that it would not be in
29 the patient's best interests for the carer to be provided with that
30 information or to be involved in that matter.

- 1 **245. Involuntary patient or mentally impaired accused with**
2 **capacity to consent**
- 3 (1) This section applies in relation to a patient who is —
4 (a) an involuntary patient; or
5 (b) a mentally impaired accused,
6 who has the capacity to give consent to the patient's carer being
7 provided with the information referred to in section 242(1)(a) or
8 being involved in the matters referred to in section 242(1)(b).
- 9 (2) The carer is entitled to be provided with that information, or to
10 be involved in those matters —
11 (a) with the patient's consent; or
12 (b) if the patient has unreasonably refused to give consent,
13 unless subsection (3) applies.
- 14 (3) The carer is not entitled to be provided with particular
15 information, or to be involved in a particular matter, in the
16 circumstances described in subsection (2)(b) if the patient's
17 psychiatrist reasonably believes that it would not be in the
18 patient's best interests for the carer to be provided with that
19 information or to be involved in that matter.
- 20 **246. Involuntary patient or mentally impaired accused with no**
21 **capacity to consent**
- 22 (1) This section applies in relation to a patient who is —
23 (a) an involuntary patient; or
24 (b) a mentally impaired accused,
25 who does not have the capacity to consent to the patient's carer
26 being provided with the information referred to in
27 section 242(1)(a) or being involved in the matters referred to in
28 section 242(1)(b).
- 29 (2) The carer is entitled to be provided with that information, or to
30 be involved in those matters, unless subsection (3) applies.

- 1 (3) The carer is not entitled to be provided with particular
2 information, or to be involved in a particular matter, if the
3 patient's psychiatrist reasonably believes that it would not be in
4 the patient's best interests for the carer to be provided with that
5 information or to be involved in that matter.

6 **247. Patient's psychiatrist must ensure carer provided with**
7 **information etc.**

8 If no other provision is made under this Act about who must
9 ensure that a patient's carer is —

- 10 (a) provided with information referred to in
11 section 242(1)(a); or
12 (b) involved in a matter referred to in section 242(1)(b),
13 the patient's psychiatrist must ensure that the carer is provided
14 with that information or is involved in that matter.

15 **Division 3 — Obtaining patient's consent to carer's**
16 **involvement**

17 **248. When being admitted to hospital**

- 18 (1) This section applies when a patient is being admitted to a
19 hospital, whether as —
20 (a) a voluntary patient; or
21 (b) an involuntary patient whose detention at the authorised
22 hospital is authorised under an in-patient treatment
23 order; or
24 (c) a mentally impaired accused who must be detained at
25 the hospital because of a determination made under the
26 CL(MIA) Act section 25(1)(b) or amended under
27 section 26 of that Act.
- 28 (2) The person in charge of the hospital must ensure that the patient
29 is asked —
30 (a) whether or not the patient has a carer; and

- 1 (b) if the patient has a carer, whether or not the patient gives
2 consent to the carer being —
- 3 (i) provided with the information referred to in
4 section 242(1)(a) in connection with the patient's
5 admission; and
- 6 (ii) involved in the matters referred to in
7 section 242(1)(b) while the patient is admitted.
- 8 (3) The person in charge of the hospital must ensure that the
9 patient's medical record includes a record of the patient's
10 answers to the questions asked under subsection (2).
- 11 **249. Periodically while admitted**
- 12 (1) This section applies in relation to a patient who is admitted to a
13 hospital and who —
- 14 (a) has refused to give consent when asked under
15 section 248(2)(b)(i) or (ii); or
- 16 (b) has refused to give consent when asked under
17 subsection (2); or
- 18 (c) gave consent when asked under section 248(2)(b)(i)
19 or (ii) or subsection (2) but has since then withdrawn the
20 consent.
- 21 (2) The person in charge of the hospital must ensure that the patient
22 is asked periodically whether or not the patient gives the
23 consent that the patient has refused to give or has withdrawn.
- 24 (3) The patient in charge of the hospital must ensure that the
25 patient's medical record includes a record of —
- 26 (a) each time the patient is asked under subsection (2); and
27 (b) the patient's answers at that time to the questions asked
28 under subsection (2).

1 **250. When community treatment order being made**

2 (1) This section applies when a community treatment order is being
3 made in respect of a patient.

4 (2) The supervising psychiatrist must ensure that the patient is
5 asked —

6 (a) whether or not the patient has a carer; and

7 (b) if the patient has a carer, whether or not the patient gives
8 consent to the carer being —

9 (i) provided with the information referred to in
10 section 242(1)(a) in connection with the
11 community treatment order; and

12 (ii) involved in the matters referred to in
13 section 242(1)(b) while the patient is subject to
14 the community treatment order.

15 (3) The supervising psychiatrist must ensure that the patient's
16 medical record includes a record of the patient's answers to the
17 questions asked under subsection (2).

18 **251. When treatment, support and discharge plan being**
19 **prepared**

20 (1) This section applies when a treatment, support and discharge
21 plan for a patient is being prepared or reviewed.

22 (2) For the purposes of section 150(e), the treating psychiatrist must
23 ensure that the patient is asked —

24 (a) whether or not the patient has a carer; and

25 (b) if the patient has a carer, whether or not the patient gives
26 consent to the carer being —

27 (i) involved in the preparation or review of the plan;
28 and

29 (ii) given a copy of the plan once it has been
30 prepared or reviewed.

1 (3) The treating psychiatrist must ensure that the patient's medical
2 record includes a record of the patient's answers to the
3 questions asked under subsection (2).

4 **252. Patient can withdraw or give consent at any time**

5 To avoid doubt —

- 6 (a) a patient who gives consent when asked under
7 section 248(2)(b)(i) or (ii), 250(2)(b)(i) or (ii)
8 or 251(2)(b)(i) or (ii) can withdraw consent at any time;
9 and
10 (b) a patient who refuses to give consent when asked under
11 section 248(2)(b)(i) or (ii), 250(2)(b)(i) or (ii)
12 or 251(2)(b)(i) or (ii) can give consent at any time.

1 **Part 15 — Children who have a mental illness**

2 **253. Best interests of child is paramount consideration**

3 In performing a function under this Act in relation to a child, a
4 person or body must regard the best interests of the child as the
5 paramount consideration.

6 **254. Child's wishes**

7 In performing a function under this Act in relation to a child, a
8 person or body must have regard to the child's wishes, to the
9 extent those wishes can be ascertained.

10 **255. Views of child's parent or guardian**

11 In performing a function under this Act in relation to a child, a
12 person or body must have regard to the views of the child's
13 parent or guardian.

14 **256. Children who are voluntary patients: admission to or**
15 **discharge from mental health service**

16 (1) This section applies in relation to a child who is a voluntary
17 patient.

18 (2) An application for the admission of the child to, or the discharge
19 of the child from a mental health service may be made by —

20 (a) if the child does not have sufficient maturity or
21 understanding to make reasonable decisions about
22 matters relating to himself or herself — the child's
23 parent or guardian; or

24 (b) if the child has sufficient maturity and understanding to
25 make reasonable decisions about matters relating to
26 himself or herself — the child.

- 1 **257. Children who are in-patients: segregation from in-patients**
2 **who have reached 18 years of age**
- 3 A child must not be admitted to a mental health service unless
4 the person in charge of the mental health service is satisfied
5 that —
- 6 (a) the mental health service can provide the child with
7 treatment, care and support that is appropriate having
8 regard to the child’s age, maturity, gender, culture and
9 spiritual beliefs; and
- 10 (b) if, having regard to the child’s age and maturity, it
11 would be appropriate to do so, the treatment, care and
12 support can be provided to the child in a part of the
13 mental health service that is separate from any part of
14 the mental health service in which persons who have
15 reached 18 years of age are provided with treatment and
16 care.

1 **Part 16 — Complaints about mental health services**

2 **258. Terms used**

3 In this Part —

4 ***applied Part*** means the *Disability Services Act 1993* Part 6 as
5 applied by section 261(1);

6 ***complaints procedure***, for a service provider, means the
7 procedure referred to in section 260 for investigating a
8 complaint about a mental health service provided by the service
9 provider;

10 ***mental health service*** means —

11 (a) a service provided specifically for people who have a
12 mental illness; or

13 (b) a service provided specifically for carers,
14 but does not include a service referred to in paragraph (a) or (b)
15 if it is —

16 (c) provided wholly or partly from funds provided by the
17 Health Department; or

18 (d) provided wholly from funds provided by the
19 Commonwealth; or

20 (e) prescribed by the regulations for this paragraph;

21 ***service provider*** means a body or organisation that provides a
22 mental health service.

23 **259. Making complaint**

24 (1) A person may make a complaint about a mental health service
25 that has been, or is being, provided to the person or another
26 person.

27 (2) The complaint may be made —

28 (a) in accordance with the service provider's complaints
29 procedure; or

1 (b) under the applied Part.

2 Note for section 259:

3 A complaint about a service provided wholly or partly from funds provided by
4 the Health Department may be made under the *Disability Services Act 1993*
5 or the *Health and Disability Services (Complaints) Act 1995*.

6 **260. Service provider must have complaints procedure**

7 (1) The person in charge of a service provider must ensure that —

- 8 (a) there is a procedure (a **complaints procedure**) for
9 investigating any complaint made to the person in
10 charge about any mental health service provided by the
11 service provider; and
12 (b) the complaints procedure is reviewed regularly and
13 revised as necessary.

14 (2) The person in charge of a service provider must ensure that —

- 15 (a) copies of the most up to date version of the service
16 provider's complaints procedure are freely available at
17 the service provider's premises; and
18 (b) a copy of that version is published on the service
19 provider's website; and
20 (c) a person who requests a copy of the service provider's
21 complaints procedure is provided with a copy of that
22 version.

23 **261. Complaints under *Disability Services Act 1993* Part 6**

24 (1) The *Disability Services Act 1993* Part 6 applies (with the
25 necessary changes) in relation to a complaint about a mental
26 health service that has been, or is being, provided to a person as
27 if —

- 28 (a) a reference to a disability were a reference to a mental
29 illness; and
30 (b) a reference to a person with a disability were a reference
31 to a person with a mental illness; and

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1 (c) a reference to a disability service were a reference to a
2 mental health service.

3 (2) The matters that may be alleged in a complaint made under the
4 applied Part section 32(1) include a failure to comply with the
5 Mental Health Care Charter.

6 (3) Subsection (2) does not limit any of the matters set out in the
7 applied Part section 33(2).

8 Note for section 261:

9 A complaint about a service provided wholly or partly from funds provided by
10 the Health Department may be made to the Director of HaDSCO under the
11 *Disability Services Act 1993* or the *Health and Disability Services (Complaints)*
12 *Act 1995*.

13 **262. Providing CEO with information about complaints**

14 (1) In this section —

15 ***complaint information*** means information in relation to —

16 (a) a complaint or class of complaints made under this Part
17 about a service provider; or

18 (b) complaints made under this Part about a service provider
19 or class of service providers; or

20 (c) complaints made under this Part by or on behalf of a
21 person who has a mental illness or class of persons who
22 have a mental illness.

23 (2) The CEO may request the person in charge of a service provider
24 to disclose complaint information, including personal
25 information, to the CEO.

26 (3) The CEO may request the Director of HaDSCO to disclose
27 complaint information, except personal information, to the
28 CEO.

29 (4) The Director of HaDSCO may disclose complaint information,
30 including personal information, to the CEO.

- 1 (5) Information may be disclosed in compliance with a request
2 made under subsection (2) or (3), or under subsection (4),
3 despite any written law relating to secrecy or confidentiality.
- 4 (6) If information is disclosed in good faith in compliance with a
5 request made under subsection (2) or (3) or under
6 subsection (4) —
- 7 (a) no civil or criminal liability is incurred in respect of the
8 disclosure; and
- 9 (b) the disclosure is not to be regarded as a breach of any
10 duty of confidentiality or secrecy imposed by law; and
- 11 (c) the disclosure is not to be regarded as a breach of
12 professional ethics or standards or any principles of
13 conduct applicable to a person's employment or as
14 unprofessional conduct.
- 15 (7) The regulations may include provisions about —
- 16 (a) the receipt and storage of information disclosed under
17 this section; and
- 18 (b) the restriction of access to such information.

Part 17 — Mental health advocacy services

Division 1 — Preliminary matters

263. Term used: identified person

In this Part —

identified person means any of these people —

- (a) a person who has been referred under section 26(2) or (3)(a) or 33(2) for an examination to be conducted by a psychiatrist;
- (b) a person in respect of whom there is in force an order made under section 49(1)(c) or 55(1)(c) to enable an examination to be conducted by a psychiatrist;
- (c) a voluntary patient who is admitted to a hospital;
- (d) a voluntary patient who is being provided with treatment or care by a mental health service referred to in paragraph (b), (c) or (d) of the definition of ***mental health service*** in section 3;
- (e) an involuntary patient;
- (f) a person in respect of whom a hospital order made under the CL(MIA) Act section 5(2) is in force;
- (g) a mentally impaired accused who must be detained at an authorised hospital because of a determination made under the CL(MIA) Act section 25(1)(b) or amended under section 26 of that Act;
- (h) a mentally impaired accused who has been released on conditions under a release order made under the CL(MIA) Act section 35(1);
- (i) a person who is, for the purposes of the *Hospitals and Health Services Act 1927* Part IIIB, a resident of a private psychiatric hostel;
- (j) a person who —

- 1 (i) has or may have a mental illness; and
2 (ii) is being provided with treatment or care by a
3 body or organisation that is prescribed by the
4 regulations for the purposes of this subparagraph.

5 **Division 2 — Mental health advocates: appointment, functions**
6 **and powers**

7 **Subdivision 1 — Appointment**

8 **264. Chief Mental Health Advocate**

9 The Minister may appoint a person to be the Chief Mental
10 Health Advocate.

11 **265. Other mental health advocates**

- 12 (1) The Chief Mental Health Advocate may appoint one or more
13 persons to be mental health advocates.
- 14 (2) Subject to subsections (3) and (4), anyone can be appointed
15 under subsection (1).
- 16 (3) At least one mental health advocate appointed under
17 subsection (1) must have qualifications, training or experience
18 in dealing with children and young people.
- 19 (4) A mental health advocate appointed under subsection (1) may
20 have qualifications, training or experience in dealing with a
21 particular group in the community (for example, geriatrics or
22 people with a particular ethnic background).

23 **266. Functions of Chief Mental Health Advocate**

24 The Chief Mental Health Advocate has these functions —

- 25 (a) ensuring that identified persons are visited or otherwise
26 contacted in accordance with section 271;

- 1 (b) as an advocate for patients of mental health services,
2 promoting compliance with Mental Health Care Charter
3 by mental health services;
- 4 (c) preparing and publishing information about the role of
5 mental health advocates and how to contact the Chief
6 Mental Health Advocate;
- 7 (d) developing standards and protocols for the performance
8 by mental health advocates of their functions under this
9 Act;
- 10 (e) ensuring that mental health advocates receive adequate
11 training in relation to the performance of their functions
12 under this Act;
- 13 (f) providing advice and assistance to mental health
14 advocates appointed under section 265(1) in relation to
15 the performance of their functions under this Act;
- 16 (g) ensuring compliance with any directions given by the
17 Minister under section 269(1) or by the Chief Mental
18 Health Advocate under section 269(2);
- 19 (h) any other functions conferred on the Chief Mental
20 Health Advocate by this Act.

21 **267. Functions of mental health advocates**

- 22 (1) Each mental health advocate has these functions —
- 23 (a) visiting or otherwise contacting identified persons in
24 accordance with section 271;
 - 25 (b) inquiring into, and reporting in accordance with
26 section 274 on, the extent to which identified persons
27 have been informed by mental health services of their
28 rights under this Act and the extent to which those rights
29 have been observed;
 - 30 (c) hearing, inquiring into and seeking to resolve complaints
31 made by or on behalf of identified persons about their
32 detention at, or their treatment or care by, mental health
33 services;

- 1 (d) referring any issues arising out of the performance of a
2 function under paragraph (b) or (c) to the appropriate
3 persons to deal with those issues;
- 4 (e) assisting identified persons to protect and enforce their
5 rights under this Act;
- 6 (f) assisting identified persons to access legal services;
- 7 (g) in consultation with the medical practitioners and mental
8 health practitioners who are responsible for their
9 treatment and care, assisting identified persons to access
10 other services.
- 11 (2) The performance by a mental health advocate of the function
12 under subsection (1)(d) includes assisting an identified person to
13 make a complaint under Part 16.
- 14 (3) The performance by a mental health advocate of the function
15 under subsection (1)(e) includes —
- 16 (a) assisting an identified person in relation to any
17 application made under this Act in respect of the
18 identified person to the Mental Health Tribunal or the
19 State Administrative Tribunal; and
- 20 (b) if authorised under this Act, representing an identified
21 person in any proceedings under this Act in respect of
22 the identified person before the Mental Health Tribunal
23 or the State Administrative Tribunal.
- 24 **268. Powers generally**
- 25 A mental health advocate may do anything necessary or
26 convenient for the performance of the functions conferred on
27 the mental health advocate.
- 28 **269. Direction and control**
- 29 (1) In performing the functions conferred on the Chief Mental
30 Health Advocate by this Act, the Chief Mental Health Advocate
31 is subject to the general direction and control of the Minister.

- 1 (2) In performing the functions conferred on mental health
2 advocates appointed under section 265(1), a mental health
3 advocate appointed under that section is subject to the general
4 direction and control of the Chief Mental Health Advocate.

5 **Subdivision 2 — Contacting identified person or person with**
6 **sufficient interest**

7 **270. Request for mental health advocate to contact identified**
8 **person**

- 9 (1) A request for an indetified person to be contacted by a mental
10 health advocate may be made by —
11 (a) the identified person; or
12 (b) if the identified person has a treating psychiatrist, the
13 treating psychiatrist; or
14 (c) a person who has a sufficient interest in the detention of
15 the identified person at, or the treatment and care being
16 provided to an identified person by, a mental health
17 service.
18 (2) The request may be made to —
19 (a) the person in charge of the mental health service at
20 which the identified person is being detained or that is
21 providing treatment or care to the identified person; or
22 (b) the Chief Mental Health Advocate.
23 (3) As soon as practicable after receiving a request made under
24 subsection (2)(a), a person in charge of a mental health service
25 must notify the Chief Mental Health Advocate of the request.

26 **271. Duty to contact identified person**

- 27 (1) A person who is detained under section 27(1)
28 or (2), 32(2)(b), 46(1)(b), 47(1), 52(1)(b), 53(3), 56(1) or (2)
29 or 62(1)(b) must be visited or otherwise contacted by a mental

(2) A person in respect of whom an involuntary treatment order is made on or after the day on which this section commences must be visited or otherwise contacted —

- (3) A person in respect of whom —

- must be visited or otherwise contacted by a mental health advocate as soon as practicable after a request is made under section 270(1) for the person to be contacted.

- (a) who is, for the purposes of the *Hospitals and Health Services Act 1927* Part IIIB, a resident of a private psychiatric hostel; or
- (b) who is being provided with treatment or care by a body or organisation prescribed for the purposes of paragraph (j)(ii) of the definition of **identified person** in section 263,

must be visited or otherwise contacted by a mental health advocate as soon as practicable after a request is made under section 270(1) for the person to be contacted.

- 1 (5) A person who is a voluntary patient but is not a person in
2 respect of whom section 271(4)(a) or (b) applies must be visited
3 or otherwise contacted by a mental health advocate within a
4 reasonable time after a request is made under section 270(1) for
5 the person to be contacted.
- 6 (6) Despite subsections (4) and (5), a voluntary patient who is a
7 child must be visited or otherwise contacted by a youth
8 advocate within 24 hours after a request is made under
9 section 270(1) for the child to be contacted.

10 **Subdivision 3 — Specific powers of mental health advocates**

11 **272. Specific powers of mental health advocates**

- 12 (1) The powers of a mental health advocate include these powers —
13 (a) making inquiries about any of these things —
14 (i) the admission of an identified person to a mental
15 health service;
16 (ii) the detention of an identified person at a mental
17 health service;
18 (iii) the provision of treatment or care to an identified
19 person by a mental health service;
20 (b) requiring a staff member of a mental health service to do
21 any of these things —
22 (i) answer questions or provide information in
23 response to any inquiry made about a matter
24 referred to in paragraph (a)(i) to (iii);
25 (ii) make available any document that the mental
26 health advocate may inspect, or take copies of or
27 extracts from, under paragraph (c) or (d);
28 (iii) give reasonable assistance to the mental health
29 advocate;
30 (c) subject to subsection (2), inspecting and taking copies of
31 or extracts from any of these documents —

- 1 (i) the identified person's medical record;
- 2 (ii) any other documents about the identified person;
- 3 (d) inspecting and taking copies of or extracts from any
- 4 other documents if those documents are required under
- 5 an enactment prescribed by the regulations for the
- 6 purposes of this paragraph to be kept by a mental health
- 7 service;
- 8 (e) subject to subsection (2), seeing and speaking with the
- 9 identified person.
- 10 (2) A mental health advocate cannot exercise a power under
- 11 subsection (1)(c) or (e) in relation to an identified person who is
- 12 a voluntary patient without the consent of —
- 13 (a) the identified person; or
- 14 (b) if the identified person does not have the capacity to
- 15 give consent, the person who is authorised by law to
- 16 consent to the admission of the identified person to, or
- 17 the provision of treatment or care to the identified
- 18 person by, the mental health service.
- 19 (3) Before a staff member of a mental health service complies with
- 20 any requirement of a mental health advocate under
- 21 subsection (1)(b)(i) or (ii), the person in charge of the mental
- 22 health service must advise the mental health advocate of any
- 23 information the disclosure of which to an identified person
- 24 would, in the opinion of the person in charge —
- 25 (a) have a serious adverse effect on the health or safety of
- 26 the identified person or another person; or
- 27 (b) reveal personal information about an individual who is
- 28 not the identified person; or
- 29 (c) reveal information that was provided in confidence and
- 30 continues to retain its confidential character.
- 31 (4) The person in charge of a mental health service must record on
- 32 an identified person's medical record any advice given to a

1 mental health advocate under subsection (3) about the
2 disclosure of information to the identified person.

3 (5) Subsection (3)(b) does not apply if the personal information is
4 about an individual who has given consent to the disclosure of
5 the information.

6 **273. Interfering with exercise of powers: offences**

7 (1) A person commits an offence if the person —

8 (a) without reasonable excuse, proof of which is on the
9 person, does not answer a question or provide
10 information when required under section 272(1)(b)(i); or

11 (b) in purporting to comply with a requirement under
12 section 272(1)(b)(i), gives an answer or provides
13 information that the person knows is false or misleading
14 in a material particular; or

15 (c) in purporting to comply with a requirement under
16 section 272(1)(b)(ii), makes available a document that
17 the person knows is false or misleading in a material
18 particular without —

19 (i) indicating that the document is false or
20 misleading and, to the extent the person can, how
21 the document is false or misleading; and

22 (ii) if the person has or can reasonably obtain the
23 correct information — providing the correct
24 information;

25 or

26 (d) without reasonable excuse, proof of which is on the
27 person, does not give reasonable assistance when
28 required under section 272(1)(b)(iii); or

29 (e) without reasonable excuse, proof of which is on the
30 person, obstructs or hinders —

31 (i) a mental health advocate exercising a power
32 under section 272; or

- 1 (ii) a person assisting a mental health advocate under
2 section 272(1)(b)(iii).

3 Penalty: a fine of \$6 000.

- 4 (2) It is enough for a prosecution notice lodged against a person for
5 an offence under subsection (1)(b) or (c) to state that the
6 answer, information or document was false or misleading to the
7 person's knowledge without stating which.

8 **274. Dealing with issues arising out of inquiries and**
9 **investigations**

- 10 (1) A mental health advocate may attempt to resolve any issue that
11 arises in the course of an inquiry into or investigation of a
12 matter under section 267(1)(b) or (c) by dealing directly with
13 the relevant staff members of the mental health service
14 concerned.
- 15 (2) If the mental health advocate cannot resolve the issue or
16 considers it appropriate to do so, the mental health advocate
17 may refer the issue to the Chief Mental Health Advocate.
- 18 (3) If an issue is referred to the Chief Mental Health Advocate
19 under subsection (2), the Chief Mental Health Advocate may
20 provide a report about the issue to —
- 21 (a) the person in charge of the mental health service
22 concerned; and
- 23 (b) if it is —
- 24 (i) an issue relating to the environmental conditions
25 at a private hospital or private psychiatric
26 hostel — the CEO; or
- 27 (ii) another issue — the Chief Psychiatrist.
- 28 (4) If an issue is reported to the CEO or Chief Psychiatrist under
29 subsection (3), the CEO or Chief Psychiatrist must advise the
30 Chief Mental Health Advocate —

- 1 (a) whether or not the CEO or Chief Psychiatrist considers
2 further inquiry into or investigation of the issue is
3 warranted; and
- 4 (b) if so, the outcome of the further inquiry or investigation,
5 including any recommendations made, directions given
6 or other action taken under this Act or another written
7 law.
- 8 (5) This section does not limit the powers that a mental health
9 advocate has for dealing with any issue that arises in the course
10 of an inquiry into or investigation of a matter under
11 section 267(1)(b) or (c).

12 **Division 3 — Mental health advocates: terms and conditions of**
13 **appointment**

14 **Subdivision 1 — Chief Mental Health Advocate**

15 **275. Term of appointment**

16 The Chief Mental Health Advocate —

- 17 (a) holds office for the period (not exceeding 5 years)
18 specified in the instrument of appointment; and
19 (b) is eligible for reappointment.

20 **276. Remuneration and other terms and conditions**

21 Subject to this Subdivision, the Chief Mental Health Advocate
22 has the terms and conditions of service, including as to
23 remuneration and other allowances, determined by the Minister
24 on the recommendation of the Public Sector Commissioner.

25 **277. Resignation**

- 26 (1) The Chief Mental Health Advocate may resign from office by
27 writing signed and given to the Minister.
- 28 (2) The resignation takes effect on the later of the following —

- 1 (a) receipt by the Minister;
2 (b) the day specified in the resignation.

3 **278. Removal from office**

4 The Minister may remove a person from the office of Chief
5 Mental Health Advocate on any of these grounds —

- 6 (a) mental or physical incapacity;
7 (b) incompetence;
8 (c) neglect of duty;
9 (d) misconduct.

10 **Subdivision 2 — Other mental health advocates**

11 **279. Term of appointment**

12 A mental health advocate appointed under section 265(1) —

- 13 (a) holds office for the period (not exceeding 3 years)
14 specified in the instrument of appointment; and
15 (b) is eligible for reappointment.

16 **280. Resignation**

17 (1) A mental health advocate appointed under section 265(1) may
18 resign from office by writing signed and given to the Chief
19 Mental Health Advocate.

20 (2) The resignation takes effect on the later of the following —

- 21 (a) receipt by the Chief Mental Health Advocate;
22 (b) the day specified in the resignation.

23 **281. Removal from office**

24 The Chief Mental Health Advocate may remove a person from
25 the office of mental health advocate referred to in section 265(1)
26 on any of these grounds —

- 27 (a) mental or physical incapacity;

- 1 (b) incompetence;
- 2 (c) neglect of duty;
- 3 (d) misconduct.

4 **Subdivision 3 — Other matters relating to appointment, functions**
5 **and powers**

6 **282. Conflict of interest**

7 (1) A mental health advocate may —

- 8 (a) be employed by; or
- 9 (b) have a disqualifying interest in,

10 a body or organisation that provides treatment or care for
11 identified persons.

12 (2) However, the mental health advocate cannot perform any
13 functions as a mental health advocate in relation to an identified
14 person who is being provided with treatment or care by the body
15 or organisation.

16 (3) For subsection (1)(b), a mental health advocate has a
17 disqualifying interest in a body or organisation if —

- 18 (a) the mental health advocate; or
- 19 (b) another person with whom the mental health advocate is
20 closely associated,

21 has a financial interest in the body or organisation, except a
22 financial interest prescribed by the regulations for this
23 subsection.

24 (4) For subsection (3)(b), a person is closely associated with a
25 mental health advocate if the person —

- 26 (a) is the spouse, de facto partner or child of the mental
27 health advocate;
- 28 (b) is in partnership with the mental health advocate;
- 29 (c) is an employer of the mental health advocate;

- 1 (d) is a beneficiary under a trust, or an object of a
2 discretionary trust, of which the mental health advocate
3 is a trustee;
- 4 (e) is a body corporate of which the mental health advocate
5 is an officer;
- 6 (f) is a body corporate in which the mental health advocate
7 holds shares that have a total nominal value
8 exceeding —
- 9 (i) the amount prescribed by the regulations for this
10 paragraph; or
- 11 (ii) the percentage prescribed by the regulations for
12 this paragraph of the total nominal value of the
13 issued share capital of the body corporate;
- 14 (g) has a relationship specified in paragraphs (a) to (f) with
15 the mental health advocate's spouse or de facto partner.

16 **283. Identity cards**

- 17 (1) The CEO must ensure that each mental health advocate is issued
18 with an identity card in the form approved by the CEO.
- 19 (2) A mental health advocate must display his or her identity card
20 whenever dealing with a person in respect of whom the mental
21 health advocate has exercised, is exercising or is about to
22 exercise a power under this Act.
- 23 (3) In any proceedings, the production by a mental health advocate
24 of his or her identity card is conclusive evidence of his or her
25 appointment under section 264 or 265(1), as the case requires.
- 26 (4) A person who ceases to be a mental health advocate must return
27 his or her identity card to the CEO as soon as practicable unless
28 the person has a reasonable excuse.
- 29 Penalty for an offence under subsection (4): a fine of \$2 000.

Division 4 — Staff and facilities

284. Staff

Staff must be appointed or made available under the *Public Sector Management Act 1994* Part 3 to enable the Chief Mental Health Advocate to perform his or her functions.

285. Use of government staff and facilities

(1) The Chief Mental Health Advocate may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee employed —

- (a) in the Public Service;
- (b) in a State agency; or
- (c) otherwise in the service of the State.

(2) The Chief Mental Health Advocate may by arrangement with —

- (a) a department of the Public Service; or
- (b) a State agency,

make use of any facilities of the department or agency.

(3) An arrangement under subsection (1) or (2) must be made on terms agreed to by the parties.

Division 5 — Annual reports

286. Annual report: preparation

Within 3 months after 30 June in each year, the Chief Mental Health Advocate must prepare and give to the Minister a report as to the general activities of mental health advocates during the financial year ending on that day.

287. Annual report: tabling

(1) The Minister must cause a copy of a report referred to in section 286 to be laid before each House of Parliament, or dealt

1 with under subsection (2), within 21 days after receiving the
2 report.

3 (2) If —

- 4 (a) at the commencement of the period referred to in
5 subsection (1) a House of Parliament is not sitting; and
6 (b) the Minister is of the opinion that the House will not sit
7 during that period,

8 the Minister must transmit a copy of the report to the Clerk of
9 that House.

10 (3) A copy of a report transmitted under subsection (2) to the Clerk
11 of a House is taken to have been laid before that House.

12 (4) The laying of a copy of a report that is taken to have occurred
13 under subsection (3) must be recorded in the Minutes, or Votes
14 and Proceedings, of the House on the first sitting day of the
15 House after the receipt of the copy by the Clerk.

16 **288. Inclusion in Agency's annual report**

17 Without limiting section 286 or 287, the requirements of those
18 sections in respect of a financial year are taken to have been
19 complied with if —

- 20 (a) the report prepared under section 286 for the financial
21 year is included in the Agency's annual report under the
22 *Financial Management Act 2006* section 61 for that
23 year; and
24 (b) the Minister causes a copy of the Agency's annual
25 report to be laid before each House of Parliament, or to
26 be dealt with under section 83 of that Act, within the
27 period required by section 64 of that Act.

Part 18 — Mental Health Tribunal

Division 1 — Preliminary matters

289. 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;

Head of the Tribunal means the person lawfully holding, acting in or performing the functions of the office of Head of the Mental Health Tribunal referred to in section 372;

hearing, in relation to a proceeding, means a hearing in the proceeding;

involuntary community patient means a person in respect of whom a community treatment order is in force;

involuntary in-patient means a person in respect of whom an in-patient treatment order is in force;

member means —

(a) the Head 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 373(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;

presiding member, in a proceeding, has the meaning given in section 343;

proceeding means a proceeding of the Tribunal under this Part;

1 **registrar** means a person lawfully holding, acting in or
2 performing the functions of the office of registrar of the Mental
3 Health Tribunal referred to in section 379;

4 **Tribunal** means the Mental Health Tribunal established by
5 section 290.

6 **Division 2 — Establishment, jurisdiction and constitution**

7 **290. Establishment**

8 The Mental Health Tribunal is established.

9 **291. Jurisdiction**

10 The Tribunal has the jurisdiction conferred on it by this Part.

11 **292. Constitution**

12 When exercising its jurisdiction, subject to this Part, the
13 Tribunal must be constituted by the members specified by the
14 Head of the Tribunal.

15 **293. Contemporaneous exercise of jurisdiction**

16 The Tribunal constituted in accordance with this Part may
17 exercise its jurisdiction even if the Tribunal differently
18 constituted under this Part is exercising its jurisdiction at the
19 same time.

20 **Division 3 — Involuntary treatment orders: review**

21 **294. Initial review after order made**

22 (1) In this section —

23 **initial review period**, for an involuntary treatment order,
24 means —

- 25 (a) if, when the order is made, the involuntary patient has
26 reached 18 years of age — 35 days after the order is
27 made; or

- 1 (b) if, when the order is made, the involuntary patient is a
2 child — 10 days after the order is made.
- 3 (2) Unless subsection (4) or (5) applies, as soon as practicable after
4 an involuntary treatment order is made and, in any event, by the
5 end of the initial review period, the Tribunal must review the
6 order to decide whether or not the involuntary patient is still in
7 need of the involuntary treatment order.
- 8 (3) It is sufficient compliance with subsection (2) if the review is
9 commenced in accordance with that subsection and is
10 completed as soon as practicable after the end of the initial
11 review period.
- 12 (4) The Tribunal is not required to review the order under
13 subsection (2) if the involuntary patient has not been an
14 involuntary patient continuously since the order was made.
- 15 (5) The Tribunal is not required to review the order under
16 subsection (2) if —
17 (a) the Tribunal has —
18 (i) previously reviewed under subsection (2) or
19 section 298(1)(a), (b) or (c) or 299 an
20 involuntary treatment order made in respect of
21 the involuntary patient; or
22 (ii) previously reviewed under section 298(1)(c) the
23 terms of a community treatment order that a
24 psychiatrist has been directed under
25 section 304(2)(b) to make in respect of the
26 involuntary patient;
27 and
28 (b) the involuntary patient has been an involuntary patient
29 continuously since the previous review.

30 **295. Periodic reviews while order in force**

- 31 (1) In this section —

1 **last review**, in relation to an involuntary treatment order,
2 means —

- 3 (a) the last review under this Division of the order; or
4 (b) if the order has not been reviewed under this Division
5 because it was made after another involuntary treatment
6 order was last reviewed under this Division, the last
7 review under this Division of that other order;

8 **periodic review period**, for an involuntary order, means —

- 9 (a) if, when the order was made, the involuntary patient had
10 reached 18 years of age — 3 months after the last
11 review under this Division of the order; or
12 (b) if, when the order was made, the involuntary patient was
13 a child — 28 days after the last review under this
14 Division of the order; or
15 (c) if the order is a community treatment order and the
16 involuntary patient has been an involuntary community
17 patient continuously for more than 12 months since the
18 order was made — 6 months after the last review under
19 this Division of the order;

20 **prescribed number of days**, before the end of a periodic review
21 period, means —

- 22 (a) if, when the order being reviewed was made, the
23 involuntary patient had reached 18 years of age —
24 14 days before the end of that period; or
25 (a) if, when the order was made, the involuntary patient was
26 a child — 7 days before the end of that period.

- 27 (2) Unless subsection (4) applies, as near as practicable to (but not
28 earlier than the prescribed number of days before) the end of
29 each periodic review period for an involuntary treatment order,
30 the Tribunal must review the order to decide whether or not the
31 involuntary patient is still in need of the involuntary treatment
32 order.

1 (3) It is sufficient compliance with subsection (2) if a review is
2 commenced in accordance with that subsection and is
3 completed as soon as practicable after the end of the periodic
4 review period.

5 (4) The Tribunal is not required to review the order under
6 subsection (2) if the involuntary patient has not been an
7 involuntary patient continuously since the order was last
8 reviewed under this Division.

9 **296. Involuntary patient for continuous period**

10 For sections 294 and 295, a person has been an involuntary
11 patient continuously for a period if —

- 12 (a) one, or a series of 2 or more, involuntary treatment
13 orders were in force in respect of the person for the
14 whole period; or
15 (b) during the period, an involuntary treatment order ceased
16 to be in force in respect of the person and another
17 involuntary treatment order came into force in respect of
18 the person within 7 days after the cessation.

19 **297. Review period may be extended**

20 (1) In this section —

21 **relevant decision**, in relation to the review of an involuntary
22 treatment order under section 294(2) or 295(2), means a
23 decision of the Tribunal the making of which involves a
24 consideration of substantially the same issues as would be raised
25 in the review.

26 (2) If, within 28 days before the end of the initial review period or a
27 periodic review period for an involuntary treatment order, the
28 Tribunal has made a relevant decision, the Tribunal may make
29 an order extending the review period for the further period (not
30 exceeding 21 days) specified in the order.

1 **298. Application for review**

- 2 (1) A person specified in subsection (2) may apply to the Tribunal
3 for a review of any of these things —
- 4 (a) an involuntary treatment order, to decide whether or not
5 it is appropriate that the involuntary patient continue to
6 be an involuntary patient;
- 7 (b) an involuntary in-patient order, to decide whether or not
8 it is appropriate that the involuntary in-patient continue
9 to be detained in an authorised hospital;
- 10 (c) a community treatment order, to decide whether or not
11 the terms of the order are appropriate;
- 12 (d) a transfer order made under section 60(1) or 78(2) in
13 respect of an involuntary in-patient, or a refusal to make
14 such an order, to decide whether or not it is appropriate
15 for the involuntary patient to be or to have been
16 transferred from an authorised hospital to another
17 authorised hospital;
- 18 (e) the transfer under section 121 of a psychiatrist’s
19 responsibility as the supervising psychiatrist under a
20 community treatment order, or a refusal to transfer the
21 responsibility, to decide whether or not it is appropriate
22 for the responsibility to be or to have been transferred to
23 another psychiatrist;
- 24 (f) the transfer under section 123 of a practitioner’s
25 responsibility as the treating practitioner under a
26 community treatment order, or a refusal to transfer the
27 responsibility, to decide whether or not it is appropriate
28 for the responsibility to be or to have been transferred to
29 another practitioner.
- 30 (2) An application may be made under subsection (1) by any of
31 these people —
- 32 (a) the involuntary patient;
- 33 (b) a mental health advocate;

1 (c) any other person who, in the Tribunal's opinion, has a
2 sufficient interest in the matter.

3 (3) The application must be in writing.

4 (4) The application may be made at any time except within 28 days
5 after the Tribunal has made a decision the making of which
6 involved a consideration of substantially the same issues as
7 would be raised by the application.

8 **299. Review on Tribunal's own initiative**

9 The Tribunal may, on its own initiative, review the case of an
10 involuntary patient whenever the Tribunal considers it
11 appropriate.

12 **300. Suspending order pending review**

13 The Tribunal may, on the application of a party to a proceeding
14 under this Division or on its own initiative —

15 (a) suspend the operation of the involuntary treatment order
16 being reviewed in the proceeding; or

17 (b) restrain the taking of any action, or any further action,
18 under the involuntary treatment order being reviewed in
19 the proceeding,

20 until the Tribunal has made a decision on the review.

21 **301. Parties to proceeding**

22 The parties to a proceeding under this Division are —

23 (a) the involuntary patient; and

24 (b) if the proceeding relates to an in-patient treatment order,
25 the treating psychiatrist; and

26 (c) if the proceeding relates to a community treatment
27 order, the supervising psychiatrist; and

- 1 (d) if the proceeding relates to an application made under
2 section 298 and the applicant is not a person referred to
3 in paragraph (a), (b) or (c), the applicant; and
4 (e) any other person who, in the opinion of the Tribunal, has
5 a sufficient interest in the matter.

6 **302. Constitution of Tribunal**

- 7 (1) For a proceeding under section 294, 295 or 299 or a proceeding
8 in relation to an application made under section 298, the
9 Tribunal must be constituted by these 3 members —
10 (a) a member who is a legal practitioner;
11 (b) a member who is a psychiatrist or a child and adolescent
12 psychiatrist if the involuntary patient is a child, unless
13 subsection (2) or (3) applies;
14 (c) a member who is not —
15 (i) a legal practitioner; or
16 (ii) a medical practitioner; or
17 (iii) a mental health practitioner.
18 (2) If —
19 (a) the involuntary patient is a child; and
20 (b) none of the members who are child and adolescent
21 psychiatrists are available for the proceeding but another
22 member who is a medical practitioner or mental health
23 practitioner who has experience in dealing with children
24 who have a mental illness is available for the
25 proceeding; and
26 (c) the proceeding does not involve a matter requiring
27 a clinical judgment to be made about the involuntary
28 patient's treatment,
29 the Tribunal may be constituted for the proceeding with that
30 other member.

- 1 (3) If —
- 2 (a) the involuntary patient is not a child; and
- 3 (b) none of the members who are psychiatrists are available
- 4 for the proceeding but another member who is a medical
- 5 practitioner or mental health practitioner is available for
- 6 the proceeding; and
- 7 (c) the proceeding does not involve a matter requiring
- 8 a clinical judgment to be made about the involuntary
- 9 patient's treatment,
- 10 the Tribunal may be constituted for the proceeding with that
- 11 other member.

12 **303. Things to which Tribunal must have regard**

13 In making a decision on a review under this Division in respect

14 of an involuntary patient, the Tribunal must have regard to these

15 things —

- 16 (a) the patient's psychiatric condition;
- 17 (b) the patient's medical and psychiatric history;
- 18 (c) the patient's social circumstances;
- 19 (d) the patient's treatment, support and discharge plan.

20 **304. What Tribunal may do on completing review**

21 (1) On completing a review under this Division, subject to this Act,

22 the Tribunal may make any orders and give any directions the

23 Tribunal considers appropriate.

- 24 (2) Those orders and directions include the following —
- 25 (a) an order revoking an involuntary treatment order;
- 26 (b) a direction to the psychiatrist named in the order to
- 27 make, within a reasonable period specified in the
- 28 direction, a community treatment order in terms that are
- 29 consistent with section 104 and specified in the
- 30 direction;

1 (c) an order varying the terms of a community treatment
2 order in any way that is consistent with section 104.

3 (3) The Tribunal cannot make an order or give a direction under
4 subsection (1) in relation to an involuntary patient's treatment,
5 support or discharge plan, but may recommend that the treating
6 psychiatrist review the treatment, support or discharge plan.

7 **305. Review of direction given to psychiatrist**

8 (1) A psychiatrist who is directed under section 304(2)(b) to make a
9 community treatment order may, during the period within which
10 the order must be made, apply to the Tribunal for a review of
11 the direction.

12 (2) Sections 300 to 303 and section 304(1) and (2)(a) and (c) apply
13 (with the necessary changes) in relation to an application made
14 under subsection (1) as if it were an application made under
15 section 298(1)(c).

16 **Division 4 — Voluntary in-patients: review of admission to**
17 **authorised hospitals**

18 **306. Application of this Division**

19 This Division applies in relation to a person (a ***voluntary in-***
20 ***patient***) who is admitted to an authorised hospital and has been
21 admitted there for a continuous period of more than 12 months.

22 **307. Application for review**

23 (1) A person specified in subsection (2) may apply to the Tribunal
24 for a review of the voluntary in-patient's admission to the
25 authorised hospital to decide whether or not there is still a need
26 for the voluntary in-patient to be admitted to the authorised
27 hospital.

28 (2) An application may be made under subsection (1) by any of
29 these people —

- 1 (a) the voluntary in-patient;
2 (b) a mental health advocate;
3 (c) any other person who, in the opinion of the Tribunal, has
4 a sufficient interest in the matter.

5 **308. Parties to proceeding**

6 The parties to a proceeding in relation to the application are —

- 7 (a) the voluntary in-patient; and
8 (b) the treating psychiatrist; and
9 (c) if the applicant is not a person referred to in
10 paragraph (a) or (b), the applicant; and
11 (d) any other person who, in the opinion of the Tribunal, has
12 a sufficient interest in the matter.

13 **309. Constitution of Tribunal**

14 (1) For a proceeding in relation to the application, the Tribunal
15 must be constituted by these 3 members —

- 16 (a) a member who is a legal practitioner;
17 (b) a member who is a psychiatrist or a child and adolescent
18 psychiatrist if the voluntary patient is a child, unless
19 subsection (2) or (3) applies;
20 (c) a member who is not —
21 (i) a legal practitioner; or
22 (ii) a medical practitioner; or
23 (iii) a mental health practitioner.

24 (2) If —

- 25 (a) the voluntary in-patient is a child; and
26 (b) none of the members who are child and adolescent
27 psychiatrists are available for the proceeding but another
28 member who is a medical practitioner or mental health
29 practitioner who has experience in dealing with children

1 who have a mental illness is available for the
2 proceeding; and

3 (c) the proceeding does not involve a matter requiring a
4 clinical judgment to be made about the voluntary
5 patient's treatment,

6 the Tribunal may be constituted for the proceeding with that
7 other member.

8 (3) If —

9 (a) the voluntary in-patient is not a child; and

10 (b) none of the members who are psychiatrists are available
11 for the proceeding but another member who is a medical
12 practitioner or mental health practitioner is available for
13 the proceeding; and

14 (c) the proceeding does not involve a matter requiring a
15 clinical judgment to be made about the voluntary
16 patient's treatment,

17 the Tribunal may be constituted for the proceeding with that
18 other member.

19 **310. Things to which Tribunal must have regard**

20 In making a decision on a review under this Division in respect
21 of a voluntary inpatient, the Tribunal must have regard to these
22 things —

23 (a) the in-patient's psychiatric condition;

24 (b) the in-patient's medical and psychiatric history;

25 (c) the in-patient's social circumstances.

26 **311. What Tribunal may do on completing review**

27 On completing a review under this Division of a voluntary
28 in-patient's admission to an authorised hospital, the Tribunal
29 may recommend that the treating psychiatrist consider whether

1 or not there is still a need for the voluntary in-patient to be
2 admitted to the authorised hospital.

3 **Division 5 — Electroconvulsive therapy: approvals**

4 **312. Application of this Division**

5 This Division applies for the purposes of sections 158(2)(a)(ii)
6 and 159(2)(a)(ii).

7 **313. Application for approval**

8 (1) The treating psychiatrist may apply for approval to perform
9 electroconvulsive therapy on a patient.

10 (2) The application must —

11 (a) be in writing; and

12 (b) set out the reasons why the treating psychiatrist is
13 recommending that the electroconvulsive therapy be
14 performed; and

15 (c) set out a treatment plan in relation to the
16 electroconvulsive therapy, including —

17 (i) the name, qualifications and experience of the
18 medical practitioner who it is proposed will
19 perform the electroconvulsive therapy; and

20 (ii) the name and address of the place where it is
21 proposed to perform the electroconvulsive
22 therapy; and

23 (iii) the maximum number of treatments with
24 electroconvulsive therapy that it is proposed will
25 be performed; and

26 (iv) the maximum period over which it is proposed to
27 perform that number of treatments; and

28 (v) the maximum period that it is proposed will
29 elapse between each 2 treatments.

1 **314. Parties to proceeding**

2 The parties to a proceeding in relation to the application are —

- 3 (a) the patient; and
4 (b) the treating psychiatrist; and
5 (c) any other person who, in the Tribunal’s opinion, has a
6 sufficient interest in the matter.

7 **315. Constitution of Tribunal**

8 For a proceeding in relation to the application, the Tribunal
9 must be constituted by these 3 members —

- 10 (a) a member who is a legal practitioner;
11 (b) a member who is a psychiatrist or a child and adolescent
12 psychiatrist if the patient is a child;
13 (c) a member who is not —
14 (i) a legal practitioner; or
15 (ii) a medical practitioner; or
16 (iii) a mental health practitioner.

17 **316. Things Tribunal must be satisfied of**

18 The Tribunal must not approve the electroconvulsive therapy
19 being performed on the patient unless satisfied of these
20 things —

- 21 (a) performing the electroconvulsive therapy has clinical
22 merit and is appropriate in the circumstances;
23 (b) the medical practitioner who it is proposed will perform
24 the electroconvulsive therapy is suitably qualified and
25 experienced;
26 (c) the place where it is proposed to perform the
27 electroconvulsive therapy is a suitable place.

1 **317. Things to which Tribunal must have regard**

- 2 (1) In deciding whether or not to approve the electroconvulsive
3 therapy being performed on the patient, the Tribunal must have
4 regard to these things —
- 5 (a) the patient’s wishes, to the extent those wishes can be
6 ascertained;
- 7 (b) if the patient is a child —
- 8 (i) the views of the child’s parent or guardian; and
- 9 (ii) the views of any youth advocate who is in
10 contact with the child;
- 11 (c) if the patient has reached 18 years of age and does not
12 have the capacity to give informed consent to the
13 electroconvulsive therapy being performed, the person
14 who is authorised by law to give that consent on the
15 patient’s behalf if that consent were required;
- 16 (d) if the patient has a nominated person, the views of the
17 nominated person;
- 18 (e) if the patient has a carer, the views of the carer;
- 19 (f) the consequences for the treatment and care of the
20 patient if the electroconvulsive therapy is not performed;
- 21 (g) the nature and degree of any significant risk of
22 performing the electroconvulsive therapy;
- 23 (h) whether the electroconvulsive therapy is likely to
24 promote and maintain the health and wellbeing of the
25 patient;
- 26 (i) whether any alternative treatment is available;
- 27 (j) the nature and degree of any significant risk of
28 providing any alternative treatment that is available.
- 29 (2) For the purpose of ascertaining the patient’s wishes, the
30 Tribunal must have regard to the following —
- 31 (a) any treatment decision in any advance health directive
32 made by the patient;

- 1 (b) the terms of any enduring power of guardianship made
2 by the patient;
3 (c) any other things that the Tribunal considers may be
4 relevant in ascertaining the patient's wishes.

5 **318. Decision on application**

6 The Tribunal may decide the application by —

- 7 (a) approving the electroconvulsive therapy being
8 performed in accordance with the treatment plan set out
9 in the application; or
10 (b) approving the electroconvulsive therapy being
11 performed in accordance with the treatment plan set out
12 in the application subject to the maximum number of
13 treatments with electroconvulsive therapy to be
14 performed being reduced to the number specified by the
15 Tribunal; or
16 (c) refusing to approve the electroconvulsive therapy being
17 performed.

18 **Division 6 — Psychosurgery: approvals**

19 **319. Application of this Division**

20 This Division applies for the purposes of sections 169(2)(c),
21 170(2)(c) and 171(1)(c).

22 **320. Application for approval**

- 23 (1) The treating psychiatrist may apply to the Tribunal for approval
24 for psychosurgery to be performed on a patient.
25 (2) The application must —
26 (a) be in writing; and
27 (b) set out the reasons why the treating psychiatrist is
28 recommending that the psychosurgery be performed;
29 and

- 1 (c) set out a treatment plan in relation to the psychosurgery,
2 including —
3 (i) a detailed description of the psychosurgery
4 proposed to be performed;
5 (ii) the name, qualifications and experience of the
6 neurosurgeon who it is proposed will perform the
7 psychosurgery;
8 (iii) the name and address of the place where it is
9 proposed to perform the psychosurgery.

10 **321. Parties to proceeding**

- 11 The parties to a proceeding in relation to the application are —
12 (a) the patient; and
13 (b) the treating psychiatrist; and
14 (c) any other person who, in the Tribunal's opinion, has a
15 sufficient interest in the matter.

16 **322. Constitution of Tribunal**

- 17 For a proceeding in relation to the application, the Tribunal
18 must be constituted by these 5 members —
19 (a) a member who is a legal practitioner;
20 (b) a neurosurgeon who was appointed as a member after
21 consultation by the Minister with the Minister
22 responsible for administering the *Health Act 1911* held
23 after consultation by that Minister with the Royal
24 Australasian College of Surgeons;
25 (c) 2 members who are psychiatrists, one of whom must be
26 a child and adolescent psychiatrist if the patient is a
27 child;
28 (d) a member who is not —
29 (i) a legal practitioner; or
30 (ii) a medical practitioner; or

1 (iii) a mental health practitioner.

2 **323. Things Tribunal must be satisfied of**

3 The Tribunal must not approve the psychosurgery being
4 performed on the patient unless satisfied of these things —

- 5 (a) informed consent to the psychosurgery being performed
6 has been given as required by section 169(2)(b),
7 170(2)(b) or 171(1)(b);
- 8 (b) performing the psychosurgery has clinical merit and is
9 appropriate in the circumstances;
- 10 (c) all alternatives to performing psychosurgery that are
11 reasonably available and likely to be of a sufficient and
12 lasting benefit to the patient have been appropriately
13 trialled with the patient but have not resulted in a
14 sufficient and lasting benefit to the patient;
- 15 (d) the neurosurgeon who it is proposed will perform the
16 psychosurgery is suitably qualified and experienced;
- 17 (e) the place where it is proposed to perform the
18 psychosurgery is a suitable place.

19 **324. Things to which Tribunal must have regard**

20 In deciding whether or not to approve the psychosurgery
21 therapy being performed on the patient, the Tribunal must have
22 regard to these things —

- 23 (a) if the patient is a child —
- 24 (i) the views of the child's parent or guardian; and
25 (ii) the views of any youth advocate who is in
26 contact with the child;
- 27 (b) if the patient has a nominated person, the views of the
28 nominated person;
- 29 (c) if the patient has a carer, the views of the carer;
- 30 (d) the consequences for the treatment and care of the
31 patient if the psychosurgery is not performed;

- 1 (e) the nature and degree of any significant risk of
2 performing the psychosurgery;
3 (f) whether the psychosurgery is likely to promote and
4 maintain the health and wellbeing of the patient.

5 **325. Decision on application**

6 The Tribunal may decide the application by —

- 7 (a) approving the psychosurgery being performed in
8 accordance with the application; or
9 (b) refusing to approve the psychosurgery being performed.

10 **Division 7 — Non-clinical matters: compliance notices**

11 **326. Terms used**

12 In this Division —

13 ***prescribed requirement*** means a requirement under this Act —

- 14 (a) to do any of these things —
15 (i) give a patient or other person a document or
16 other information;
17 (ii) include a document or other information on a
18 patient's medical record;
19 (iii) comply with a request made by a patient or other
20 person;

21 or

- 22 (b) to ensure that a thing referred to in paragraph (a) is
23 done;

24 ***service provider***, in relation to a prescribed requirement,
25 means —

- 26 (a) the person in charge of a mental health service; or
27 (b) the medical practitioner or mental health practitioner,
28 who is required under this Act to comply with the requirement.

1 **327. Tribunal may serve compliance notice on service provider**

2 (1) The Tribunal may —

- 3 (a) on the application of a person referred to in section 328;
4 or
5 (b) on its own initiative,

6 serve a service provider with a compliance notice if it appears to
7 the Tribunal that the service provider has not complied with a
8 prescribed requirement.

9 (2) The compliance notice may require the service provider —

- 10 (a) to take specified action within the specified period for
11 the purpose of complying with the prescribed
12 requirement; and
13 (b) to report to the Tribunal in the specified manner within
14 the specified period that —
15 (i) the service provider has taken the action
16 specified under paragraph (a) within the period
17 specified under paragraph (a); or
18 (ii) if the service provider has not taken the specified
19 action or has not taken that action within the
20 specified period, the reasons for not doing so.

21 (3) Before deciding whether or not to serve a compliance notice on
22 a service provider, the Tribunal must consider whether it would
23 be appropriate to refer the matter to one or more of the
24 following —

- 25 (a) the CEO;
26 (b) the CEO of the Health Department;
27 (c) the Chief Psychiatrist;
28 (d) the National Health Practitioner Board established under
29 the *Health Practitioner Regulation National Law (WA)*
30 *Act 2010* section 31 for a health profession or another

- 1 person or body that has functions relating to the
2 professional registration of persons.
- 3 (4) If the Tribunal decides that it would be appropriate to refer the
4 matter to a person or body referred to in subsection (3), the
5 Tribunal —
- 6 (a) may refer the matter instead of, or in addition to, serving
7 a compliance notice on the service provider; and
- 8 (b) if the Tribunal refers the matter under paragraph (a),
9 must advise the service provider in writing of the
10 referral.

11 **328. Application for service of compliance notice**

12 An application for the service by the Tribunal of a compliance
13 notice on a service provider may be made under
14 section 327(1)(a) by any of these people —

- 15 (a) the patient or other person to whom the prescribed
16 requirement relates;
- 17 (b) any other person who, in the Tribunal's opinion, has a
18 sufficient interest in the matter.

19 **329. Parties to proceeding**

20 The parties to a proceeding under section 327 are —

- 21 (a) the patient or other person to whom the prescribed
22 requirement relates; and
- 23 (b) the service provider on whom the prescribed
24 requirement is imposed; and
- 25 (c) if the proceeding relates to an application made under
26 section 327(1)(a) and the applicant is not the patient or
27 other person to whom the prescribed requirement
28 relates, the applicant; and
- 29 (d) any other person who, in the opinion of the Tribunal, has
30 a sufficient interest in the matter.

1 **330. Constitution of Tribunal**

2 For a proceeding under section 327, the Tribunal must be
3 constituted by these 3 members —

- 4 (a) a member who is a legal practitioner;
- 5 (b) a member who is a medical practitioner or mental health
6 practitioner;
- 7 (c) a member who is not —
- 8 (i) a legal practitioner; or
- 9 (ii) a medical practitioner; or
- 10 (iii) a mental health practitioner.

11 **Division 8 — Restrictions on patients' freedom of**
12 **communication: review of orders**

13 **331. Application for review**

14 (1) A person specified in subsection (2) may apply to the Tribunal
15 for a review of a decision under section 229 to make or amend
16 an order prohibiting a patient from exercising, or limiting the
17 extent to which a patient can exercise, a right under section 228.

18 (2) An application may be made under subsection (1) by any of
19 these people —

20 (a) the patient;

21 (b) a mental health advocate;

22 (c) any other person who, in the opinion of the Tribunal, has
23 a sufficient interest in the matter.

24 **332. Parties to proceeding**

25 The parties to a proceeding in relation to the application are —

- 26 (a) the patient; and
- 27 (b) the person who made the decision under section 229;
28 and

- 1 (c) if the applicant is not the patient, the applicant; and
2 (d) any other person who, in the opinion of the Tribunal, has
3 a sufficient interest in the matter.

4 **333. Constitution of Tribunal**

5 (1) For a proceeding in relation to the application, the Tribunal
6 must be constituted by these 3 members —

- 7 (a) a member who is a legal practitioner;
8 (b) a member who is a psychiatrist or a child and adolescent
9 psychiatrist if the patient is a child, unless subsection (2)
10 or (3) applies;
11 (c) a member who is not —
12 (i) a legal practitioner; or
13 (ii) a medical practitioner; or
14 (iii) a mental health practitioner.

15 (2) If —

- 16 (a) the patient is a child; and
17 (b) none of the members who are child and adolescent
18 psychiatrists are available for the proceeding but another
19 member who is a medical practitioner or mental health
20 practitioner who has experience in dealing with children
21 who have a mental illness is available for the
22 proceeding; and
23 (c) the proceeding does not involve a matter requiring a
24 clinical judgment to be made about the voluntary
25 patient's treatment,

26 the Tribunal may be constituted for the proceeding with that
27 other member.

28 (3) If —

- 29 (a) the patient is not a child; and

- 1 (b) none of the members who are psychiatrists are available
2 for the proceeding but another member who is a medical
3 practitioner or mental health practitioner is available for
4 the proceeding; and
5 (c) the proceeding does not involve a matter requiring a
6 clinical judgment to be made about the patient's
7 treatment,

8 the Tribunal may be constituted for the proceeding with that
9 other member.

10 **334. Decision on application**

11 The Tribunal may decide the application by —

- 12 (a) confirming the order as made or amended; or
13 (b) amending, or further amending, the order as made or
14 amended; or
15 (c) revoking the order.

16 **Division 9 — Jurisdiction in relation to nominated persons**

17 **335. Application for decision**

18 A person who, in the opinion of the Tribunal, has a sufficient
19 interest in the matter may apply to the Tribunal for a decision
20 under this Division.

21 **336. Declaration about validity of nomination**

- 22 (1) The Tribunal may declare that a nomination is valid or invalid.
23 (2) Instead of declaring a nomination to be invalid because of a
24 failure to comply with section 237, the Tribunal —
25 (a) may declare the nomination to be valid; and
26 (b) may make an order varying the terms of the nomination
27 in the manner the Tribunal considers most likely to give
28 effect to the intention of the person who made the
29 nomination.

- 1 (3) A declaration made under subsection (1) or (2)(a) has effect
2 according to its terms.

3 **337. Revocation of nomination**

4 The Tribunal may revoke a nomination if satisfied that the
5 nominated person is not an appropriate person to perform the
6 role of the nominated person because —

- 7 (a) the person is likely, in performing that role, to adversely
8 affect to a significant degree the interests of the person
9 who made the nomination;
10 (b) the person is not capable of performing that role because
11 of mental or physical incapacity;
12 (c) the person is not willing, or is not reasonably able, to
13 perform that role.

14 **338. Parties to proceeding**

15 The parties to a proceeding in relation to an application under
16 this Division are —

- 17 (a) the person who made the nomination; and
18 (b) the nominated person; and
19 (c) if the applicant is not a person referred to in
20 paragraph (a) or (b), the applicant; and
21 (d) any other person who, in the opinion of the Tribunal, has
22 a sufficient interest in the matter.

23 **339. Constitution of Tribunal**

24 For a proceeding in relation to an application under this
25 Division, the Tribunal must be constituted by these
26 3 members —

- 27 (a) a member who is a legal practitioner;
28 (b) a member who is a psychiatrist;
29 (c) a member who is not —

- 1 (i) a legal practitioner; or
2 (ii) a medical practitioner; or
3 (iii) a mental health practitioner.

4 **Division 10 — Procedural matters**

5 **Subdivision 1 — Proceedings generally**

6 **340. Lodgment of documents**

7 An application or other document required to be made or given
8 to the Tribunal must be lodged at the office of the Tribunal.

9 **341. Sittings**

10 The Tribunal sits at the times, and in the places in the State,
11 determined by the Head of the Tribunal.

12 **342. Conduct of proceedings**

- 13 (1) A proceeding must be conducted with as little formality and
14 technicality, and with as much expedition, as a proper
15 consideration of the matter before the Tribunal permits.
- 16 (2) In a proceeding, the Tribunal is bound by the rules of natural
17 justice.
- 18 (3) Subject to this Part, the practice and procedure of the Tribunal
19 in a proceeding is —
- 20 (a) as provided for in the rules made under section 369; or
21 (b) if no provision is made in the rules, as determined by the
22 Tribunal.

23 **343. Presiding member**

24 The presiding member in a proceeding is —
25 (a) the Head of the Tribunal; or

- 1 (b) if the Tribunal constituted for the proceeding does not
2 include the Head of the Tribunal, the member of the
3 Tribunal as so constituted who is a legal practitioner.

4 **344. Deciding questions in proceedings**

- 5 (1) In this section —
6 **question of law** includes a question of mixed law and fact.
7 (2) Subject to subsection (3), a question in a proceeding before the
8 Tribunal must be resolved according to the opinion of the
9 majority of the members constituting the Tribunal for the
10 proceeding.
11 (3) A question of law in a proceeding before the Tribunal must be
12 resolved according to the opinion of the member of the Tribunal
13 constituted for the proceeding who is a legal practitioner.

14 **345. No fees payable**

- 15 No fees are payable in relation to —
16 (a) any application made under this Part; or
17 (b) any proceeding of the Tribunal under this Part.

18 **346. Each party to bear own costs**

- 19 Subject to section 347(1)(b), each party to a proceeding must
20 bear the party's own costs.

21 **347. Frivolous, vexatious or improper proceedings**

- 22 (1) The Tribunal may, if satisfied that a proceeding is frivolous or
23 vexatious or has been brought for an improper purpose —
24 (a) dismiss the proceeding; and
25 (b) make any order as to costs that the Tribunal considers
26 appropriate; and
27 (c) on the application of a party, order that the party who
28 instituted the proceeding cannot institute a proceeding of

1 a kind specified in the order without the leave of the
2 Tribunal.

3 (2) An order made under subsection (1)(c) has effect despite any
4 other provision of this Part.

5 (3) The Tribunal may amend or revoke an order made under
6 subsection (1)(c).

7 **Subdivision 2 — Notice of proceedings**

8 **348. Notice of applications**

9 (1) If the person concerned in an application has reached 18 years
10 of age, the Tribunal must give each of these people a copy of
11 the application —

12 (a) if the person has an enduring guardian or guardian, the
13 enduring guardian or guardian;

14 (b) if the person has a nominated person, the nominated
15 person;

16 (c) if the person has a carer, the carer.

17 (2) If the person concerned in an application is a child, the Tribunal
18 must give each of these people a copy of the application —

19 (a) the child's parent or guardian;

20 (b) if the child has a nominated person, the nominated
21 person;

22 (c) if the child has a carer, the carer;

23 (d) the Chief Mental Health Advocate.

24 **349. Notice of hearings**

25 (1) If the person concerned in a proceeding has reached 18 years of
26 age, each of these people must be given notice of the time and
27 place of any hearing —

28 (a) if the person has an enduring guardian or guardian, the
29 enduring guardian or guardian;

- 1 (b) if the person has a nominated person, the nominated
2 person;
3 (c) if the person has a carer, the carer.
- 4 (2) If the person concerned in a proceeding is a child, each of these
5 people must be given notice of the time and place of any
6 hearing —
7 (a) the child's parent or guardian;
8 (b) if the child has a nominated person, the nominated
9 person;
10 (c) if the child has a carer, the carer;
11 (d) the Chief Mental Health Advocate.

12 **Subdivision 3 — Appearance and representation**

13 **350. Party who has reached 18 years of age**

- 14 (1) At a hearing in a proceeding, a party who has reached 18 years
15 of age —
16 (a) may appear in person; or
17 (b) if the Tribunal makes an order under subsection (2) in
18 respect of the party, must be represented by another
19 person.
- 20 (2) The Tribunal may make an order that the person must be
21 represented at the hearing if, in the Tribunal's opinion, it would
22 not be in the person's best interests for the person to appear in
23 person at the hearing.
- 24 (3) Even though the person is represented at the hearing, the person
25 is entitled to express in person his or her views about any matter
26 arising in the course of the hearing that may affect the person.

1 **351. Party who is child with capacity to consent**

- 2 (1) At a hearing in a proceeding, a party who is a child who has
3 sufficient maturity and understanding to make reasonable
4 decisions about matters relating to himself or herself —
5 (a) may appear in person; or
6 (b) may be represented by any of these people —
7 (i) the child’s parent or guardian unless the Tribunal
8 makes an order under section 357(2);
9 (ii) a youth advocate;
10 (iii) any other person who, in the Tribunal’s opinion,
11 can represent the child’s interests.
- 12 (2) Even though the child is represented at the hearing, the child is
13 entitled to express in person his or her views about any matter
14 arising in the course of the hearing that may affect the child.

15 **352. Party who is child with no capacity to consent**

- 16 At a hearing in a proceeding, a party who is a child who does
17 not have sufficient maturity or understanding to make
18 reasonable decisions about matters relating to himself or herself
19 must be represented by one of these people —
20 (a) the child’s parent or guardian unless the Tribunal makes
21 an order under section 357(2);
22 (b) a youth advocate;
23 (c) any other person who, in the Tribunal’s opinion, can
24 represent the child’s interests.

25 **353. Tribunal may make arrangements for representation**

- 26 The Tribunal may make arrangements for a party to a
27 proceeding to be represented at a hearing if the party wants the
28 Tribunal to make such an arrangement on the party’s behalf.

Subdivision 4 — Hearings and evidence

354. 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 voluntary patient; or
- (c) the psychiatrist who made the decision under section 229 to make 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 voluntary patient; or
- (c) the decision under section 229 to make 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 4 of a voluntary patient's admission; or
- (c) a review under Division 8 of a decision under section 229 to make or amend an order prohibiting a patient from exercising, or limiting the extent to which a patient can exercise, a right under section 228.

(2) The review proceeding is a hearing de novo and is not confined to matters that were before the decision-maker but may involve

1 the consideration of new material whether or not it existed when
2 the reviewable decision was made.

3 (3) The purpose of a reviewable proceeding is to produce the
4 correct and preferable decision at the time of the Tribunal's
5 decision on the reviewable proceeding.

6 **355. Closed hearings**

7 (1) A hearing in a proceeding is not open to the public unless the
8 Tribunal orders that the hearing or a part of the hearing is open
9 to the public.

10 (2) The Tribunal may make an order —
11 (a) permitting a specified person to be present at; or
12 (b) excluding a specified person (including a witness) from,
13 a hearing in a proceeding or a part of a hearing in a proceeding.

14 **356. Person chosen by person concerned may be present**

15 (1) A person chosen by the person concerned in a proceeding may
16 be present at a hearing unless the Tribunal makes an order
17 excluding the person from the hearing or a part of the hearing.

18 (2) The Tribunal may make an order under subsection (1) on the
19 application of any person if satisfied that it would not be in the
20 person concerned's best interests for the person to be present at
21 the hearing or the part of the hearing.

22 **357. Parent or guardian may be excluded from hearing**

23 (1) This section applies if a child is a party to a proceeding.

24 (2) The Tribunal may, on the application of —
25 (a) the child's treating psychiatrist; or
26 (b) if the child does not have a treating psychiatrist or the
27 treating psychiatrist is not reasonably available, another
28 psychiatrist,

1 make an order excluding the child's parent or guardian from a
2 hearing in a proceeding or a part of a hearing in a proceeding if,
3 in the Tribunal's opinion, it would not be in the child's best
4 interests for the parent or guardian to be present at the hearing
5 or the part of the hearing.

6 **358. Evidence generally**

- 7 (1) The Tribunal is not bound by the rules of evidence but may
8 inform itself of a matter relevant to a proceeding in any manner
9 the Tribunal considers appropriate.
- 10 (2) Evidence in a proceeding may be given orally or in writing.
- 11 (3) The Tribunal may require evidence in a proceeding to be given
12 on oath or by affidavit.
- 13 (4) The presiding member in a proceeding may direct a person
14 appearing as a witness in the proceeding —
15 (a) to answer a question relevant to the proceeding; or
16 (b) to produce a document relevant to the proceeding.
- 17 (5) A person appearing as a witness in a proceeding has the same
18 protection and immunity as a witness has in a proceeding in the
19 Supreme Court.

20 **359. Power to summon persons to attend and produce documents**

- 21 The Tribunal may, by issuing a summons signed on behalf of
22 the Tribunal by a member or the registrar and serving the
23 summons on the person to whom it is addressed, require the
24 person to attend before the Tribunal at the time and place
25 specified in the summons —
26 (a) to give evidence in a proceeding; or
27 (b) to produce a document relevant to a proceeding that is in
28 the person's custody or control and is specified in the
29 summons; or
30 (c) to do both of those things.

1 **360. Self-incrimination**

2 (1) A person is not excused from complying with a direction given
3 to the person under section 358(4) or a summons served on the
4 person under section 359 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 358(4) or a summons served on the person under
11 section 359 is not admissible in evidence in any criminal
12 proceedings against the person other than proceedings for an
13 offence under section 362(d).

14 **361. Powers in relation to documents produced**

15 In relation to a document produced to the Tribunal in a
16 proceeding, the Tribunal may do any of these things —

- 17 (a) inspect the document;
18 (b) retain the document for a reasonable period;
19 (c) take a copy of, or extract from, the document.

20 **362. Offences relating to answering questions, producing**
21 **documents and providing other information**

22 A person commits an offence if the person —

- 23 (a) without reasonable excuse, proof of which is on the
24 person, does not swear an oath or make an affirmation
25 when required under section 358(3); or
26 (b) without reasonable excuse, proof of which is on the
27 person, does not answer a question or produce a
28 document when directed to do so under section 358(4);
29 or
30 (c) without reasonable excuse, proof of which is on the
31 person, does not attend before the Tribunal as required

1 by a summons served on the person under section 359;
2 or

3 (d) gives an answer, produces a document or provides any
4 other information to the Tribunal in a proceeding that
5 the person knows is false or misleading in a material
6 particular.

7 Penalty: a fine of \$5 000.

8 **363. Evidence and findings in other proceedings**

9 In a proceeding, the Tribunal —

- 10 (a) may receive in evidence the transcript of evidence in a
11 proceeding before a court or other person or body acting
12 judicially and may draw any conclusion of fact from that
13 evidence that the Tribunal considers appropriate; and
14 (b) may adopt a finding, decision or judgment of a court or
15 other person or body acting judicially that is relevant to
16 the proceeding.

17 **364. Contempt of Tribunal**

18 A person commits an offence if the person —

- 19 (a) wilfully insults the Tribunal, or a member of the
20 Tribunal, constituted for a proceeding; or
21 (b) wilfully interrupts or obstructs the conduct of a hearing;
22 or
23 (c) creates a disturbance, or takes part in creating or
24 continuing a disturbance, in or near a place where the
25 Tribunal is sitting.

26 Penalty: a fine of \$10 000.

27 **365. Hearings to be recorded**

28 The registrar must ensure that each hearing in a proceeding is
29 recorded and the recording is kept in a form from which a
30 transcript of the hearing can be prepared if required.

1 **366. Suppression of publication**

2 (1) In this section —

3 ***information about a proceeding*** means —

- 4 (a) an account of a proceeding or a part a proceeding; or
5 (b) any evidence in a proceeding; or
6 (c) the contents of a document, or of a part of a document,
7 produced in a proceeding; or
8 (d) any other information about a proceeding.

9 (2) A person must not publish information about a proceeding that
10 might identify —

- 11 (a) a party; or
12 (b) a person who is related to or associated with a party; or
13 (c) a witness in the proceeding; or
14 (d) a person who is or is alleged to be concerned in any
15 other way in a matter to which the proceeding relates.

16 Penalty: a fine of \$5 000.

17 (3) A person must not publish a list of proceedings identified by
18 reference to the names of the parties to those proceedings
19 except —

- 20 (a) by displaying in the Tribunal’s premises a notice listing
21 the proceedings; or
22 (b) as permitted by the regulations.

23 Penalty: a fine of \$5 000.

24 (4) Subsections (2) and (3) do not apply in relation to any of these
25 publications —

- 26 (a) the communication of a transcript of evidence or other
27 document to a person concerned in a proceeding in a
28 court or tribunal for use in connection with the
29 proceeding;

- 1 (b) the communication of a transcript of evidence or other
2 document to —
- 3 (i) a body that is responsible for disciplining
4 members of the legal or medical profession; or
- 5 (ii) a person concerned in a proceeding before such a
6 body;
- 7 (c) the communication of a transcript of evidence or other
8 document to a body that grants assistance by way of
9 legal aid for the purpose of making a decision as to
10 whether such assistance should be granted or continued
11 in a particular case;
- 12 (d) a publication genuinely intended primarily for the use of
13 members of a profession, being —
- 14 (i) a separate volume of, or a volume in a part of a
15 series of, law reports; or
- 16 (ii) a decision of a court or tribunal published from
17 information stored electronically or otherwise; or
- 18 (iii) any other publication of a technical character.
- 19 (5) Without limiting subsection (2) or (3), the Tribunal may make
20 an order in relation to a particular proceeding that —
- 21 (a) any evidence given before it; or
- 22 (b) the contents of a document, or of a part of a document,
23 produced to it; or
- 24 (c) any other information,
- 25 must not be published or must not be published except in the
26 manner or to a person specified by the Tribunal.
- 27 (6) A person who contravenes an order made under subsection (5)
28 commits an offence.
- 29 Penalty for an offence under subsection (6): a fine of \$5 000.

Subdivision 5 — Decisions in proceedings

367. Reasons for decision

- (1) A party to a proceeding may, within 14 days after the Tribunal makes a decision in the proceeding, request the Tribunal to provide the party with reasons for the decision.
- (2) The Tribunal must comply with the request.
- (3) Any reasons provided by the Tribunal in compliance with the request must be in a language, form of communication and terms that the party is likely to understand.

368. Giving effect to Tribunal's decisions

- (1) In this section —
decision, of the Tribunal, does not include —
 - (a) a recommendation made by the Tribunal under section 304(3) about an involuntary patient's treatment support and discharge plan; or
 - (b) a recommendation made by the Tribunal under section 311 about a voluntary in-patient's admission to an authorised hospital.
- (2) A person who does not give effect to a decision of the Tribunal according to its terms commits an offence.
Penalty for an offence under subsection (2): a fine of \$10 000.

Division 11 — Rules

369. Power to make

The Head of the Tribunal may make rules for the Tribunal, but only after consultation with the members appointed under section 373(1).

1 **370. Content**

- 2 (1) Rules made under section 369 may make provision for any
3 matter that is —
- 4 (a) required or permitted by this Act to be provided for in
5 the rules; or
- 6 (b) necessary or convenient for the Tribunal to operate
7 efficiently, economically and expeditiously.
- 8 (2) Without limiting subsection (1), the rules may provide for any
9 of these things —
- 10 (a) the organisation and management of the business of the
11 Tribunal;
- 12 (b) custody and use of the Tribunal's seal;
- 13 (c) the practice and procedure of the Tribunal in a
14 proceeding, including —
- 15 (i) the participation by a party, a party's
16 representative or a witness in a hearing in a
17 proceeding by telephone, video link or other
18 means of communication; and
- 19 (ii) the conduct of all or part of a proceeding entirely
20 on the basis of documents and without the
21 parties, their representatives or any witnesses
22 appearing at or participating in a hearing;
- 23 (d) documents to be lodged with or issued by the Tribunal,
24 or to be served, in electronic form;
- 25 (e) the Tribunal's records.

26 **371. Publication and tabling**

- 27 (1) Rules made under section 369 —
- 28 (a) must be published in the *Gazette*; and
- 29 (b) take effect from the date of publication or from any later
30 date or dates that are specified in the rules; and

- 1 (c) must be laid before each House of Parliament within
2 6 sitting days of the House next following the
3 publication of the rules.
- 4 (2) If either House of Parliament passes a resolution, of which
5 notice has been given at any time within 6 sitting days after the
6 rules have been laid before it, disallowing the whole or a part of
7 a rule, the rule or the part of it disallowed ceases to have effect.
- 8 (3) If the whole or a part of a rule is disallowed, the validity of any
9 proceedings taken or of anything done under the rule or the part
10 of it in the meantime is not affected.
- 11 (4) If such a resolution is passed, notice of the fact must be
12 published in the *Gazette* as soon as practicable.

13 **Division 12 — Tribunal members: appointment and**
14 **related matters**

15 **372. Head of Tribunal**

16 The Governor may appoint a person recommended by the
17 Minister to be the Head of the Mental Health Tribunal.

18 **373. Other members**

- 19 (1) The Governor may appoint one or more persons recommended
20 by the Minister to be members of the Mental Health Tribunal in
21 addition to the Head of the Tribunal.
- 22 (2) Any number of persons that the Minister considers appropriate
23 may be appointed under subsection (1), but —
- 24 (a) at least one must be a legal practitioner; and
25 (b) at least one must be a psychiatrist; and
26 (c) at least one must be a person who is not —
- 27 (i) a legal practitioner; or
28 (ii) a medical practitioner; or
29 (iii) a mental health practitioner.

1 **374. Tenure of office**

2 (1) The Head of the Tribunal may be appointed on a full-time or
3 part-time basis.

4 (2) A member appointed under section 373(1) may be appointed on
5 a full-time, part-time or sessional basis.

6 (3) A member —

7 (a) holds office for the period (not exceeding 5 years)
8 specified in the instrument of appointment; and

9 (b) is eligible for reappointment.

10 **375. Remuneration and other terms and conditions**

11 (1) The Head of the Tribunal has the terms and conditions of
12 service, including as to remuneration and other allowances,
13 determined by the Salaries and Allowances Tribunal under the
14 *Salaries and Allowances Act 1975*.

15 (2) A member appointed under section 373(1) has the terms and
16 conditions of service, including as to remuneration and other
17 allowances, determined by the Minister on the recommendation
18 of the Public Service Commissioner.

19 **376. Resignation**

20 (1) A member may resign from office by writing signed and given
21 to the Governor.

22 (2) The resignation takes effect on the later of the following —

23 (a) receipt by the Governor;

24 (b) the day specified in the resignation.

25 **377. Removal from office**

26 The Governor may remove a person from the office of member
27 on any of these grounds —

28 (a) mental or physical incapacity;

- 1 (b) incompetence;
- 2 (c) neglect of duty;
- 3 (d) misconduct;
- 4 (e) if the person was appointed to that office on the basis of
- 5 having a particular status — ceasing to have that status;
- 6 (f) if the person was appointed to that office on the basis of
- 7 not having a particular status — attaining that status.

8 **378. Acting members**

- 9 (1) The Minister may appoint a person to act in —
 - 10 (a) the office of Head of the Mental Health Tribunal
 - 11 referred to in section 372; or
 - 12 (b) the office of member of the Mental Health Tribunal
 - 13 referred to in section 373(1),
 - 14 during a vacancy in the office.
- 15 (2) Subject to this section, the Minister may —
 - 16 (a) determine the terms and conditions of an appointment
 - 17 under subsection (1)(a) or (b), including as to
 - 18 remuneration and allowances; and
 - 19 (b) terminate an appointment under subsection (1)(a) or (b)
 - 20 at any time.
- 21 (3) A person appointed under subsection (1)(a) or (b) to act in a
- 22 vacancy cannot act in the vacancy for more than 3 months.
- 23 (4) An appointment under subsection (1)(a) or (b) ends when the
- 24 first of these things occurs —
 - 25 (a) the vacancy is filled;
 - 26 (b) the Minister terminates the appointment under
 - 27 subsection (2)(b);
 - 28 (c) the expiry of the 3-month period referred to in
 - 29 subsection (3).

1 **Division 13 — Registrar and other staff**

2 **379. Registrar**

3 A registrar of the Mental Health Tribunal must be appointed
4 under the *Public Sector Management Act 1994* Part 3.

5 **380. Functions of registrar**

6 In addition to the functions conferred on, or delegated to, the
7 registrar under this Act, the registrar has these functions —

- 8 (a) keeping, in accordance with the regulations, particulars
9 of each involuntary patient;
- 10 (b) ensuring that a proceeding for a review under Division 3
11 of an involuntary treatment order is brought before the
12 Tribunal within the period specified under that Division
13 or, if no period is specified, as soon as practicable;
- 14 (c) ensuring that any other proceeding is brought before the
15 Board as soon as practicable;
- 16 (d) receiving any document that must be given under this
17 Act to the Tribunal and arranging it to be dealt with as
18 soon as practicable;
- 19 (e) ensuring that any document that must given under this
20 Act by the Tribunal is given in accordance with this Act
21 and as soon as practicable.

22 **381. Head of Tribunal may give registrar directions**

- 23 (1) The Head of the Tribunal may give the registrar directions with
24 respect to the performance of the registrar's functions under this
25 Act, either generally or in relation to a particular matter.
- 26 (2) The registrar must comply with a direction given under
27 subsection (1).

1 **382. Other staff**

2 The staff necessary to assist the registrar in the performance of
3 the registrar's functions under this Act must be appointed under
4 the *Public Sector Management Act 1994* Part 3.

5 **Division 14 — Annual reports**

6 **383. Annual report: preparation**

7 Within 3 months after 30 June in each year, the Head 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 **384. Annual report: tabling**

12 (1) The Minister must cause a copy of a report referred to in
13 section 383 to be laid before each House of Parliament, or dealt
14 with under subsection (2), within 21 days after receiving the
15 report.

16 (2) If —

- 17 (a) at the commencement of the period referred to in
18 subsection (1) a House of Parliament is not sitting; and
19 (b) the Minister is of the opinion that the House will not sit
20 during that period,

21 the Minister must transmit a copy of the report to the Clerk of
22 that House.

23 (3) A copy of a report transmitted under subsection (2) to the Clerk
24 of a House is taken to have been laid before that House.

25 (4) The laying of a copy of a report that is taken to have occurred
26 under subsection (3) must be recorded in the Minutes, or Votes
27 and Proceedings, of the House on the first sitting day of the
28 House after the receipt of the copy by the Clerk.

1 **385. Inclusion in Agency's annual report**

2 Without limiting section 383 or 384, the requirements of those
3 sections in respect of a financial year are taken to have been
4 complied with if —

- 5 (a) the report prepared under section 383 for the financial
6 year is included in the Agency's annual report under the
7 *Financial Management Act 2006* section 61 for that
8 year; and
9 (b) the Minister causes a copy of the Agency's annual
10 report to be laid before each House of Parliament, or to
11 be dealt with under section 83 of that Act, within the
12 period required by section 64 of that Act.

13 **Division 15 — Other matters**

14 **386. Seal**

15 The Tribunal must have a seal.

16 **387. Judicial notice of certain matters**

17 (1) A court or other person or body acting judicially must take
18 judicial notice of the following —

- 19 (a) the signature of a person who was or is a member;
20 (b) the signature of a person who is or was the registrar;
21 (c) the fact that a person referred to in paragraph (a) or (b)
22 is or was a member or the registrar;
23 (d) a seal of the Tribunal affixed to a document.

24 (2) A court or other person acting judicially must presume that the
25 seal of the Tribunal affixed to a document was properly affixed
26 unless the contrary is proved.

Part 19 — Review by State Administrative Tribunal

Division 1 — Jurisdiction and constitution

388. Review of decisions of Mental Health Tribunal

(1) In this section —

decision, of the Mental Health Tribunal, includes an order, direction or declaration made by the Mental Health Tribunal.

(2) 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.

(3) 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.

389. Constitution generally

(1) For the purpose of exercising jurisdiction under section 388, except as provided by sections 390 and 391, the State Administrative Tribunal must be constituted by these 3 members —

(a) a judicial member;

(b) a member who is a psychiatrist or a child and adolescent psychiatrist if the person in respect of whom the decision being reviewed is made is a child, unless subsection (2) or (3) applies;

(c) a member who is not —

(i) a legally qualified member; or

(ii) a medical practitioner; or

(iii) a mental health practitioner.

(2) If —

- 1 (a) the person in respect of whom the decision being
2 reviewed was made is a child; and
- 3 (b) none of the members who are child and adolescent
4 psychiatrists are available but another member who is a
5 medical practitioner or mental health practitioner who
6 has experience in dealing with children who have a
7 mental illness is available; and
- 8 (c) the proceeding does not involve a matter requiring
9 a clinical judgment to be made about the child's
10 treatment,

11 the State Administrative Tribunal may be constituted with that
12 other member.

13 (3) If —

- 14 (a) the person in respect of whom the decision being
15 reviewed was made is not a child; and
- 16 (b) none of the members who are psychiatrists are available
17 but another member who is a medical practitioner or
18 mental health practitioner is available; and
- 19 (c) the proceeding does not involve a matter requiring
20 a clinical judgment to be made about the person,

21 the Tribunal may be constituted with that other member.

22 **390. Constitution for ECT matters**

23 For the purpose of exercising jurisdiction under section 388 on
24 an application for review of a decision under Part 18 Division 5,
25 the State Administrative Tribunal must be constituted by these
26 5 members —

- 27 (a) a judicial member;
- 28 (b) 2 members who are psychiatrists, one of whom must be
29 a child and adolescent psychiatrist if the person in
30 respect of whom the decision being reviewed was made
31 is a child;

- 1 (c) 2 members, neither of whom is —
2 (i) a legally qualified member; or
3 (ii) a medical practitioner; or
4 (iii) a mental health practitioner.

5 **391. Constitution for psychosurgical matters**

6 For the purpose of exercising jurisdiction under section 388 on
7 an application for review of a decision under Part 18 Division 6,
8 the State Administrative Tribunal must be constituted by these
9 5 members —

- 10 (a) a judicial member;
11 (b) a neurosurgeon who was appointed as a member after
12 consultation by the Minister responsible for
13 administering the *State Administrative Tribunal*
14 *Act 2004* with the Minister responsible for administering
15 the *Health Act 1911* held after consultation by that
16 Minister with the Royal Australasian College of
17 Surgeons;
18 (c) a member who is a psychiatrist or a child and adolescent
19 psychiatrist if the person in respect of whom the
20 decision being reviewed was made is a child;
21 (d) 2 members, neither of whom is —
22 (i) a legally qualified member; or
23 (ii) a medical practitioner; or
24 (iii) a mental health practitioner.

25 **392. Determination of questions of law before Mental Health**
26 **Tribunal**

- 27 (1) In this section —
28 ***question of law*** does not include a question of mixed law and
29 fact.

- 1 (2) The Mental Health Tribunal may apply to the State
2 Administrative Tribunal for a determination on a question of
3 law that arises in a proceeding before the Mental Health
4 Tribunal.

5 **Division 2 — Procedural matters**

6 **393. No fees payable**

7 No fees are payable in relation to —

- 8 (a) any application made under this Part; or
9 (b) any proceeding of the State Administrative Tribunal
10 under this Part.

11 **394. Appearance and representation**

12 (1) At a hearing in a proceeding under this Part, a party to the
13 proceeding —

- 14 (a) may appear before the State Administrative Tribunal in
15 person; or
16 (b) if the State Administrative Tribunal makes an order
17 under subsection (2) in respect of the party, must be
18 represented by another person.

19 (2) The State Administrative Tribunal may make an order that the
20 party must be represented at the hearing if, in the State
21 Administrative Tribunal's opinion, it would not be in the party's
22 best interests for the party to appear in person at the hearing.

23 (3) The State Administrative Tribunal may make arrangements for
24 a party to a proceeding under this Part to be represented at a
25 hearing in the proceeding if the party wants the State
26 Administrative Tribunal to make such an arrangement on the
27 party's behalf.

1 **395. Closed hearings**

- 2 (1) A hearing in a proceeding under this Part is not open to the
3 public unless the State Administrative Tribunal orders that the
4 hearing or a part of the hearing is open to the public.
- 5 (2) The State Administrative Tribunal may make an order —
6 (a) permitting a specified person to be present at; or
7 (b) excluding a specified person (including a witness) from,
8 a hearing in a proceeding under this Part or a part of a hearing in
9 a proceeding under this Part.

10 **396. Suppression of publication**

- 11 (1) In this section —
12 **information about a proceeding** means —
13 (a) an account of a proceeding, or a part a proceeding, under
14 this Part; or
15 (b) any evidence in a proceeding under this Part; or
16 (c) the contents of a document, or of a part of a document,
17 produced in a proceeding under this Part; or
18 (d) any other information about a proceeding under this
19 Part.
- 20 (2) A person must not publish information about a proceeding that
21 might identify —
22 (a) a party to the proceeding; or
23 (b) a person who is related to or associated with a party to
24 the proceeding; or
25 (c) a witness in the proceeding; or
26 (d) a person who is or is alleged to be concerned in any
27 other way in a matter to which the proceeding relates.
28 Penalty: a fine of \$5 000.

- 1 (3) A person must not publish a list of proceedings under this Part
2 identified by reference to the names of the parties to those
3 proceedings except —
- 4 (a) by displaying in the State Administrative Tribunal's
5 premises a notice listing the proceedings; or
- 6 (b) as permitted by the regulations.
- 7 Penalty: a fine of \$5 000.
- 8 (4) Subsections (2) and (3) do not apply in relation to any of these
9 publications —
- 10 (a) the communication of a transcript of evidence or other
11 document to a person concerned in a proceeding in a
12 court or tribunal for use in connection with the
13 proceeding;
- 14 (b) the communication of a transcript of evidence or other
15 document to —
- 16 (i) a body that is responsible for disciplining
17 members of the legal or medical profession; or
- 18 (ii) a person concerned in a proceeding before such a
19 body;
- 20 (c) the communication of a transcript of evidence or other
21 document to a body that grants assistance by way of
22 legal aid for the purpose of making a decision as to
23 whether such assistance should be granted or continued
24 in a particular case;
- 25 (d) a publication genuinely intended primarily for the use of
26 members of a profession, being —
- 27 (i) a separate volume of, or a volume in a part of a
28 series of, law reports; or
- 29 (ii) a decision of a court or tribunal published from
30 information stored electronically or otherwise; or
- 31 (iii) any other publication of a technical character.

- 1 (5) Without limiting subsection (2) or (3), the State Administrative
2 Tribunal may make an order in relation to a particular
3 proceeding that —
4 (a) any evidence given before it; or
5 (b) the contents of a document, or of a part of a document,
6 produced to it; or
7 (c) any other information,
8 must not be published or must not be published except in the
9 manner or to a person specified by the State Administrative
10 Tribunal.
11 (6) A person who contravenes an order made under subsection (5)
12 commits an offence.
13 Penalty for an offence under subsection (6): a fine of \$5 000.

Part 20 — Administration

Division 1 — Chief Psychiatrist

Subdivision 1 — Appointment, terms and conditions

397. Appointment

(1) The Minister may appoint a psychiatrist recommended by the CEO 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.

398. Remuneration and other terms and conditions

The Chief Psychiatrist has the terms and conditions of service, including as to remuneration and other allowances, determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975*.

399. 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.

400. Removal from office

The Minister may remove a person from the office of Chief Psychiatrist on any of these grounds —

(a) mental or physical incapacity;

(b) incompetence;

- 1 (c) neglect of duty;
2 (d) misconduct.

3 **Subdivision 2 — Functions and powers generally**

4 **401. Responsibility for treatment and care**

- 5 (1) The Chief Psychiatrist is responsible for overseeing the
6 treatment and care of these people —
- 7 (a) all voluntary patients who are being provided with
8 treatment or care by a mental health service referred to
9 in paragraph (b), (c) or (d) of the definition of **mental**
10 **health service** in section 3;
- 11 (b) all involuntary patients;
- 12 (c) all mentally impaired accused who must be detained at
13 an authorised hospital —
- 14 (i) because of a determination made under the
15 CL(MIA) Act section 25(1)(b) or amended under
16 section 26 of that Act; or
- 17 (ii) under the CL(MIA) Act section 25(2)(a);
- 18 (d) all persons who have been referred under section 26(2)
19 or (3)(a) or 33(2) for an examination to be conducted by
20 a psychiatrist;
- 21 (e) all persons in respect of whom there is in force an order
22 made under section 49(1)(c) or 55(1)(c) to enable an
23 examination to be conducted by a psychiatrist.
- 24 (2) The Chief Psychiatrist must discharge that responsibility by —
- 25 (a) publishing under section 427(2) standards for the
26 treatment and care to be provided by mental health
27 services to the persons referred to in subsection (1); and
28 (b) overseeing compliance with those standards.

1 **402. Other functions**

2 In addition to the functions conferred by section 401, the Chief
3 Psychiatrist has these functions —

- 4 (a) reporting to the CEO on matters concerning the Chief
5 Psychiatrist's responsibilities under section 401(1);
6 (b) advising the CEO of recommendations about those
7 matters that the Chief Psychiatrist considers it would be
8 appropriate for the CEO to make to the Minister;
9 (c) any other functions conferred on the Chief Psychiatrist
10 by this Act.

11 **403. Direction and control**

12 In performing the functions conferred on the Chief Psychiatrist
13 by this Act or another written law, the Chief Psychiatrist is
14 subject to the general direction and control of the CEO.

15 **404. Powers generally**

16 In addition to the specific powers conferred on the Chief
17 Psychiatrist by this Act or another written law, the Chief
18 Psychiatrist may do anything necessary or convenient for the
19 performance of the functions conferred on the Chief
20 Psychiatrist.

21 **Subdivision 3 — Specific powers relating to treatment and care**

22 **405. Review of treatment**

- 23 (1) The Chief Psychiatrist —
24 (a) may review any decision of a psychiatrist about the
25 provision of treatment to an involuntary patient, but only
26 after giving the psychiatrist written notice of the
27 proposed review; and
28 (b) on the review, may decide to —
29 (i) affirm the decision; or

- 1 (ii) vary the decision; or
2 (iii) revoke the decision; or
3 (iv) substitute another decision.
- 4 (2) The Chief Psychiatrist —
- 5 (a) must advise the psychiatrist in writing of the decision
6 under subsection (1)(b) and the reasons for the decision;
7 and
8 (b) may give the psychiatrist written directions about
9 implementing that decision.
- 10 (3) The psychiatrist must comply with any directions given under
11 subsection (2)(b).
- 12 (4) This section does not affect the operation of Part 10 Division 3
13 or 4 in relation to the provision of treatment to an involuntary
14 patient.

15 **406. Visits to mental health services**

- 16 (1) The Chief Psychiatrist may visit —
- 17 (a) an authorised hospital whenever the Chief Psychiatrist
18 considers it appropriate to do so; and
19 (b) a mental health service that is not an authorised hospital
20 whenever the Chief Psychiatrist reasonably suspects that
21 proper standards of treatment and care have not been, or
22 are not being, maintained by the mental health service.
- 23 (2) The Chief Psychiatrist may visit a mental health service under
24 subsection (1) at any time without notice.
- 25 (3) While visiting a mental health service under subsection (1), the
26 Chief Psychiatrist may do any of these things —
- 27 (a) inspect any part of the mental health service;
28 (b) interview any person specified in section 401(1) who is
29 being provided with treatment or care by the mental
30 health service;

- 1 (c) require a staff member of the mental health service to do
2 any of these things —
- 3 (i) answer questions or provide information about
4 the provision of treatment or care by the mental
5 health service to any person specified in
6 section 401(1);
- 7 (ii) produce any medical records or other documents
8 relating to the treatment or care that has been, or
9 is being, provided by the mental health service to
10 any person specified in section 401(1);
- 11 (iii) give reasonable assistance to the Chief
12 Psychiatrist;
- 13 (d) inspect, or take copies of or extracts from, any medical
14 records or other documents produced under
15 paragraph (c)(ii).

16 **407. Interfering with visits to mental health services: offence**

- 17 (1) A person commits an offence if the person —
- 18 (a) without reasonable excuse, proof of which is on the
19 person, does not answer a question or provide
20 information when required under section 406(3)(c)(i); or
- 21 (b) in purporting to comply with a requirement under
22 section 406(3)(c)(i), gives an answer or provides
23 information that the person knows is false or misleading
24 in a material particular; or
- 25 (c) in purporting to comply with a requirement under
26 section 406(3)(c)(ii), makes available a document that
27 the person knows is false or misleading in a material
28 particular without —
- 29 (i) indicating that the document is false or
30 misleading and, to the extent the person can, how
31 the document is false or misleading; and

- 1 (ii) if the person has or can reasonably obtain the
2 correct information — providing the correct
3 information;
4 or
5 (d) without reasonable excuse, proof of which is on the
6 person, does not give reasonable assistance when
7 required under section 406(3)(c)(iii); or
8 (e) without reasonable excuse, proof of which is on the
9 person, obstructs or hinders —
10 (i) the Chief Psychiatrist exercising a power under
11 section 406; or
12 (ii) a person assisting the Chief Psychiatrist under
13 section 406(3)(c)(iii).

14 Penalty: a fine of \$6 000.

- 15 (2) It is enough for a prosecution notice lodged against a person for
16 an offence under subsection (1)(b) or (c) to state that the
17 answer, information or document was false or misleading to the
18 person's knowledge without stating which.

19 **408. Requesting information from mental health services**

- 20 (1) In this section —
21 **relevant information** means information that, in the Chief
22 Psychiatrist's opinion, is or is likely to be relevant to the
23 treatment or care that has been, or is being, provided to a person
24 or class of persons specified in section 401(1).
25 (2) The Chief Psychiatrist may request a mental health service that
26 holds relevant information to disclose the information to the
27 Chief Psychiatrist.
28 (3) Information may be disclosed in compliance with a request
29 under subsection (2) despite any written law relating to secrecy
30 or confidentiality.

- 1 (4) If information is disclosed in good faith in compliance with a
2 request under subsection (2) —
- 3 (a) no civil or criminal liability is incurred in respect of the
4 disclosure; and
- 5 (b) the disclosure is not to be regarded as a breach of any
6 duty of confidentiality or secrecy imposed by law; and
- 7 (c) the disclosure is not to be regarded as a breach of
8 professional ethics or standards or any principles of
9 conduct applicable to a person's employment or as
10 unprofessional conduct.
- 11 (5) The regulations may include provisions about —
- 12 (a) the receipt and storage of information disclosed under
13 this section; and
- 14 (b) the restriction of access to such information.

15 **Subdivision 4 — Notifiable incidents**

16 **409. Term used: notifiable incident**

17 In this Subdivision —

18 ***notifiable incident***, in relation to a person referred to in
19 section 401(1), means any of these events —

- 20 (a) the death of the person, wherever it occurs;
- 21 (b) an error in any medication prescribed for, or
22 administered or supplied to, the person that has had, or
23 is likely to have, an adverse effect on the person;
- 24 (c) any other incident in connection with the provision of
25 treatment or care to the person that has had, or is likely
26 to have, an adverse effect on the person;
- 27 (d) a reportable incident, as defined in section 220(1), in
28 relation to the person;

- 1 (e) any other event that the Chief Psychiatrist declares, by
2 notice published in the *Gazette*, to be a notifiable
3 incident for the purposes of this definition.

4 **410. Person in charge of mental health service must report**
5 **notifiable incidents**

- 6 (1) The person in charge of a mental health service must report to
7 the Chief Psychiatrist the occurrence of a notifiable incident in
8 relation to a person referred to in section 401(1) who is being
9 provided with treatment or care by the mental health service as
10 soon as practicable after the person in charge becomes aware of
11 the occurrence.

12 Penalty: a fine of \$6 000.

- 13 (2) The report must be in the approved form and must include these
14 things in relation to the notifiable incident —

- 15 (a) the date on which, and the time at which, the incident
16 occurred;
17 (b) the location where the incident occurred;
18 (c) the name, and status under section 401(1), of the person
19 in relation to whom the incident occurred;
20 (d) the names of any staff members of the mental health
21 service who were involved in the incident;
22 (e) the names of any other people who were involved in the
23 incident;
24 (f) the names of any staff members of the mental health
25 service who witnessed the incident;
26 (g) the names of any other people who witnessed the
27 incident;
28 (h) a description of the incident and the circumstances in
29 which it occurred;
30 (i) any other information about the incident that the person
31 in charge considers relevant to include.

1 **411. Action Chief Psychiatrist may take in relation to notifiable**
2 **incident**

- 3 (1) On receipt of a report under section 410(1) in relation to a
4 notifiable incident, the Chief Psychiatrist may do one of the
5 following —
6 (a) investigate the incident;
7 (b) refer the incident to all or any of the following —
8 (i) the CEO;
9 (ii) the CEO of the Health Department;
10 (iii) the National Health Practitioner Board
11 established under the *Health Practitioner*
12 *Regulation National Law (WA) Act 2010*
13 section 31 for a health profession or another
14 person or body that has functions relating to the
15 professional registration of persons;
16 (c) take no action in relation to the incident.
17 (2) Despite having decided to investigate a notifiable incident under
18 subsection (1)(a), the Chief Psychiatrist may decide at any time
19 during the investigation to refer the incident to a person or body
20 under subsection (1)(b).
21 (3) If the Chief Psychiatrist decides to refer a notifiable incident to
22 a person or body under subsection (1)(b) or to take no action in
23 relation to a notifiable incident under subsection (1)(c), the
24 Chief Psychiatrist cannot investigate or further investigate the
25 incident under subsection (1)(a).

26 **412. Chief Psychiatrist must advise person in charge of decision**

27 The Chief Psychiatrist must advise the person in charge of the
28 mental health service in relation to which a notifiable incident
29 was reported under section 410(1) in writing of any decision
30 that the Chief Psychiatrist makes under section 411 in respect of
31 the incident.

1 **413. Powers of Chief Psychiatrist for investigation under**
2 **s. 411(1)(a)**

- 3 (1) For the purpose of conducting an investigation under
4 section 411(1)(a), the Chief Psychiatrist may —
5 (a) make any inquiries the Chief Psychiatrist considers
6 appropriate; and
7 (b) exercise any of the powers that the Chief Psychiatrist
8 has under section 406 or 408.
9 (2) For the purpose of subsection (1)(b), sections 406, 407 and 408
10 apply with the necessary changes.

11 **414. Chief Psychiatrist must advise person in charge of outcome**
12 **of investigation**

13 On completing the investigation of a notifiable incident under
14 section 411(1)(a), the Chief Psychiatrist must advise the person
15 in charge of the mental health service in relation to which the
16 incident was notified under section 410(1) in writing of the
17 outcome of the investigation.

18 **Subdivision 5 — Annual reports**

19 **415. Annual report: preparation**

- 20 (1) Within 3 months after 30 June in each year, the Chief
21 Psychiatrist must prepare and give to the Minister a report about
22 the performance during the financial year ending on that day of
23 the functions conferred on the Chief Psychiatrist by this Act or
24 another written law.
25 (2) The report must include statistics about these matters —
26 (a) electroconvulsive therapy that was performed during the
27 year and reported on under section 162(3);
28 (b) electroconvulsive therapy that the Chief Psychiatrist
29 approved during the year under section 160(d);

- 1 (c) emergency psychiatric treatment that was provided
2 during the year and reported on under section 165(1)(c);
- 3 (d) bodily restraint that was applied during the year and
4 reported on under section 201(1)(c);
- 5 (e) seclusion that was imposed during the year and reported
6 on under section 187(1)(c);
- 7 (f) urgent medical treatment that was provided during the
8 year and reported on under section 206(1)(a);
- 9 (g) non-urgent medical treatment to which the Chief
10 Psychiatrist gave informed consent under section 207(1)
11 during the year;
- 12 (h) notifiable incidents that occurred during the year and
13 were reported on under section 410(1) and the action
14 taken under section 411 in relation to those notifiable
15 incidents.

16 **416. Annual report: tabling**

- 17 (1) The Minister must cause a copy of a report referred to in
18 section 415 to be laid before each House of Parliament, or dealt
19 with under subsection (2), within 21 days after receiving the
20 report.
- 21 (2) If —
- 22 (a) at the commencement of the period referred to in
23 subsection (1) a House of Parliament is not sitting; and
- 24 (b) the Minister is of the opinion that the House will not sit
25 during that period,
- 26 the Minister must transmit a copy of the report to the Clerk of
27 that House.
- 28 (3) A copy of a report transmitted under subsection (2) to the Clerk
29 of a House is taken to have been laid before that House.
- 30 (4) The laying of a copy of a report that is taken to have occurred
31 under subsection (3) must be recorded in the Minutes, or Votes

1 and Proceedings, of the House on the first sitting day of the
2 House after the receipt of the copy by the Clerk.

3 **417. Inclusion in Agency's annual report**

4 Without limiting section 415 or 416, the requirements of those
5 sections in respect of a financial year are taken to have been
6 complied with if —

- 7 (a) the report prepared under section 415 for the financial
8 year is included in the Agency's annual report under the
9 *Financial Management Act 2006* section 61 for that
10 year; and
11 (b) the Minister causes a copy of the Agency's annual
12 report to be laid before each House of Parliament, or to
13 be dealt with under section 83 of that Act, within the
14 period required by section 64 of that Act.

15 **Subdivision 6 — Miscellaneous matters**

16 **418. Compliance with request for information about patient or**
17 **person detained**

- 18 (1) A person may request the Chief Psychiatrist to advise the person
19 whether or not a particular individual is admitted to or detained
20 at a mental health service.
- 21 (2) If, in the Chief Psychiatrist's opinion, the person making the
22 request has a sufficient interest in the matter, the Chief
23 Psychiatrist may provide the person with the following
24 information (as applicable) —
- 25 (a) the date of the individual's admission to, or detention at,
26 the mental health service;
- 27 (b) the date of the individual's discharge or release from the
28 mental health service;
- 29 (c) if the individual died while admitted to, or detained at,
30 the mental health service, the date of death.

1 **419. Request for list of mentally impaired accused**

2 (1) The Chief Psychiatrist may request the Mentally Impaired
3 Accused Review Board in writing to give the Chief Psychiatrist
4 a list of mentally impaired accused.

5 (2) The Mentally Impaired Accused Review Board must comply
6 with any request made under subsection (1).

7 **420. Delegation**

8 (1) The Chief Psychiatrist may delegate to another psychiatrist any
9 power or duty of the Chief Psychiatrist under another provision
10 of this Act.

11 (2) The delegation must be in writing signed by the Chief
12 Psychiatrist.

13 (3) A person to whom a power or duty is delegated under this
14 section cannot delegate that power or duty.

15 (4) This section does not limit the ability of the Chief Psychiatrist to
16 perform a function through an officer or agent.

17 **Division 2 — Mental health practitioners and authorised**
18 **mental health practitioners**

19 **421. Mental health practitioners**

20 (1) A mental health practitioner is —

21 (a) a psychologist; or

22 (b) a person registered under the *Health Practitioner*
23 *Regulation National Law (Western Australia)* in the
24 nursing and midwifery profession; or

25 (c) a person registered as an occupational therapist under
26 the *Occupational Therapists Act 2005*; or

27 (d) a person with a qualification recognised under
28 subsection (2),

- 1 who has at least 3 years' experience in the management of
2 people who have a mental illness.
- 3 (2) For subsection (1)(d), the Chief Psychiatrist may, by order
4 published in the *Gazette*, recognise —
- 5 (a) a degree awarded by an Australian University on the
6 completion of a course in social work; or
- 7 (b) another qualification the Chief Psychiatrist considers to
8 be at least equivalent to a degree referred to in
9 paragraph (a).
- 10 (3) The Chief Psychiatrist may, by order published in the *Gazette*,
11 amend or revoke an order published under subsection (2).
- 12 **422. Authorised mental health practitioners**
- 13 (1) The Chief Psychiatrist may, by order published in the *Gazette*,
14 designate a mental health practitioner as an authorised mental
15 health practitioner if satisfied that the practitioner has the
16 qualifications, training and experience appropriate for
17 performing the functions of an authorised mental health
18 practitioner under this Act.
- 19 (2) The order may specify any limits within which, or any
20 conditions subject to which, those functions may be performed
21 by the authorised mental health practitioner designated as such
22 by the order.
- 23 (3) The Chief Psychiatrist may, by order published in the *Gazette*,
24 amend or revoke an order published under subsection (1).
- 25 (4) The regulations may provide for matters relating to authorised
26 mental health practitioners, including the following —
- 27 (a) the qualifications, training and experience to which the
28 Chief Psychiatrist must have regard when deciding
29 whether to make, amend or revoke an order under this
30 section;

- 1 (b) the performance by authorised mental health
2 practitioners of their functions under this Act;
- 3 (c) any matter about which an authorised mental health
4 practitioner must notify the Chief Psychiatrist;
- 5 (d) the grounds on which the designation of an authorised
6 mental health practitioner must or may be revoked.

7 **Division 3 — Authorised hospitals**

8 **423. Authorised hospital: meaning of**

9 An authorised hospital is —

- 10 (a) a public hospital, or part of a public hospital, in respect
11 of which an order is in force under section 424; or
- 12 (b) a private hospital the licence for which is endorsed
13 under the *Hospitals and Health Services Act 1927*
14 section 26DA(2).

15 **424. Authorisation of public hospitals**

- 16 (1) The Governor may, by order published in the *Gazette*, authorise
17 a public hospital, or a part of a public hospital, for —
- 18 (a) the reception of persons under this Act; and
19 (b) the admission of involuntary patients.
- 20 (2) The Governor may, by order published in the *Gazette*, amend or
21 revoke an order made under subsection (1).
- 22 (3) If an authorisation of a hospital or a part of a hospital is revoked
23 under subsection (2), every person received at and every
24 involuntary patient admitted to the hospital or that part of the
25 hospital must be transferred in accordance with the regulations
26 to an authorised hospital.

Division 4 — Approved forms

425. Approval of forms by Chief Psychiatrist

- (1) The Chief Psychiatrist may approve forms for use under this Act.
- (2) An approved form may be a statutory declaration.

426. Publication of approved forms and related guidelines

- (1) The Chief Psychiatrist —
 - (a) must publish all approved forms; and
 - (b) may publish guidelines about how to complete any of the approved forms.
- (2) It is sufficient compliance with subsection (1) if copies of the forms and guidelines are published on an internet website maintained by the Agency.

Division 5 — Guidelines and standards

427. Publication of guidelines and standards for various purposes

- (1) The Chief Psychiatrist must publish guidelines for each of these purposes —
 - (a) ensuring as far as practicable the independence of psychiatrists from whom opinions referred to in section 109(4) or 145(2) are obtained;
 - (b) the preparation, review and revision of treatment, support and discharge plans;
 - (c) ensuring compliance with this Act by mental health services.
- (2) The Chief Psychiatrist must publish standards for the treatment and care to be provided by mental health services to the persons specified in section 401(1).

1 (3) The Chief Psychiatrist may publish guidelines or standards for
2 such other purposes relating to the treatment and care of persons
3 who have a mental illness as the Chief Psychiatrist considers
4 appropriate.

5 **428. Application, adoption or incorporation of other documents**

6 Guidelines published under section 427 may apply, adopt or
7 incorporate (with or without changes) the whole or part of a
8 document that is in force or existing at a particular time or from
9 time to time.

10 **429. Publication on Agency's website**

11 It is sufficient compliance with section 427 if a copy of the
12 guidelines is published on a website maintained by the Agency.

Part 21 — Interstate arrangements

Division 1 — Preliminary matters

430. 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 431(1); or
- (b) an agreement in respect of which a declaration under section 431(2) is in force;

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 in-patient treatment order means an order made under a corresponding law under which a person can be admitted to 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 at which a person can be detained, and provided with treatment, under an interstate in-patient treatment order; or
- (b) a place in another State or a Territory at which a person can be provided with treatment under an interstate community treatment order;

interstate community patient means a person in respect of whom an interstate community treatment order is in force;

interstate in-patient means a person in respect of whom an interstate in-patient treatment order is in force;

1 **State in-patient** means a person in respect of whom an
2 in-patient treatment order is in force.

3 (2) For section 434(1), a State in-patient absconds from an
4 authorised hospital if the in-patient is absent without leave from
5 the authorised hospital as described in section 89(2).

6 (3) For section 436(1), an interstate in-patient absconds from an
7 interstate mental health service if the in-patient leaves the
8 interstate mental health service without lawful authority.

9 **Division 2 — Intergovernmental agreements**

10 **431. Agreements with other States and Territories**

11 (1) The Minister may enter into an agreement with a Minister
12 responsible for administering a corresponding law about any
13 matter in connection with the administration of this Part or the
14 corresponding law.

15 (2) The Minister may, by notice published in the *Gazette*, declare
16 that an agreement entered into before the commencement of this
17 section has effect for the purposes of this Part.

18 (3) The Minister may, by notice published in the *Gazette*, revoke a
19 declaration made under subsection (2).

20 **432. Agreement must be in place**

21 A person cannot perform a function under this Part in
22 connection with an interstate mental health service in, or an
23 interstate in-patient or interstate community patient in or from,
24 another State or a Territory unless there is an intergovernmental
25 agreement in relation to that State or Territory.

26 **433. Performance of functions under corresponding laws or**
27 **intergovernmental agreements**

28 A person who is authorised to perform a function under this Act
29 may perform in the State or another State or a Territory any

1 similar function conferred on the person under a corresponding
2 law of, or an intergovernmental agreement in relation to, that
3 State or Territory.

4 **Division 3 — Transfer to or from interstate mental**
5 **health service**

6 **434. Transfer to interstate mental health service**

- 7 (1) The person in charge of an authorised hospital may, with the
8 written approval of the Chief Psychiatrist, make an order (a
9 **transfer order**) in the approved form authorising the transfer of
10 a State in-patient who is detained at, or who has absconded as
11 described in section 430(2) from, the authorised hospital to the
12 interstate mental health service specified in the order.
- 13 (2) As soon as practicable after making the transfer order, the
14 person in charge of the mental health service must —
- 15 (a) put the order and the Chief Psychiatrist's approval on
16 the State in-patient's medical record; and
 - 17 (b) give a copy of each of those documents to each of these
18 people —
 - 19 (i) the State in-patient;
 - 20 (ii) if the State in-patient is a child, the patient's
21 parent or guardian;
 - 22 (iii) if the State in-patient does not have the capacity
23 to give consent to the provision of treatment
24 under the in-patient treatment order, the person
25 who is authorised by law to give that consent on
26 the patient's behalf if that consent were required;
 - 27 (iv) if the State in-patient has a nominated person, the
28 nominated person;
 - 29 (v) if the State in-patient has a carer, the carer;
 - 30 and

- 1 (c) transmit a copy of each of those documents to the person
2 in charge of the interstate mental health service.

3 **435. Transport order**

- 4 (1) If the person in charge of an authorised hospital makes a
5 transfer order under section 434(1) in respect of a State
6 in-patient, the person in charge may also make a transport order
7 in respect of the in-patient.
- 8 (2) The person in charge of the authorised hospital must not make
9 the transport order unless satisfied that no other safe means of
10 taking the State in-patient to the interstate mental health service
11 is reasonably available.
- 12 (3) Part 8 applies in relation to the transport order as if —
- 13 (a) the transport order were made under section 79(1); and
14 (b) a reference to a police officer included a reference to a
15 police officer of the State or Territory in which the
16 interstate mental health service is located; and
17 (c) a reference to a person prescribed by the regulations for
18 section 127 included a reference to a person who is
19 authorised under a corresponding law of, or an
20 intergovernmental agreement in relation to, that State or
21 Territory to perform functions similar to those of a
22 person so prescribed.

23 **436. Transfer from interstate mental health service**

- 24 (1) The person in charge of an authorised hospital may, with the
25 written consent of the Chief Psychiatrist, make an order
26 (a **transfer approval order**) in the approved form approving the
27 transfer of an interstate in-patient who is detained at, or who has
28 absconded as described in section 430(3) from, an interstate
29 mental health service to the authorised hospital.
- 30 (2) As soon as practicable after making the transfer approval order,
31 the person in charge of the authorised hospital must transmit a

1 copy of each of the order and the Chief Psychiatrist's consent to
2 the person in charge of the interstate mental health service.

3 (3) On admission to the authorised hospital, the interstate in-patient
4 treatment order is taken to be an in-patient treatment order made
5 under this Act.

6 (4) As soon as practicable after the interstate in-patient is admitted
7 to the authorised hospital, the person in charge of the authorised
8 hospital must put the transfer approval order and the Chief
9 Psychiatrist's consent on the patient's medical record.

10 **437. Transport of interstate in-patient to authorised hospital**

11 (1) This section applies in relation to an interstate in-patient in
12 respect of whom a transfer approval order is in force under
13 section 436(1).

14 (2) A person who is authorised under a corresponding law or an
15 interstate agreement to transport the interstate in-patient from an
16 interstate mental health service to an authorised hospital may
17 exercise in the State any of the powers the person has under the
18 corresponding law or interstate agreement for that purpose.

19 **Division 4 — Community treatment orders**

20 **438. Community treatment order: treatment interstate**

21 The terms of a community treatment order may include a
22 requirement that the involuntary community patient be provided
23 with treatment by an interstate mental health service.

24 **439. Transport order**

25 (1) If the involuntary community patient fails to comply with the
26 requirement referred to in section 438, a medical practitioner or
27 mental health practitioner may make a transport order in respect
28 of the patient.

- 1 (2) The practitioner must not make the transport order unless
2 satisfied that no other safe means of ensuring the involuntary
3 community patient attends the interstate mental health service is
4 reasonably available.
- 5 (3) Part 8 applies in relation to the transport order as if —
6 (a) the transport order were made under section 115(1); and
7 (b) a reference to a police officer included a reference to a
8 police officer of the State or Territory in which the
9 interstate mental health service is located; and
10 (c) a reference to a person prescribed by the regulations for
11 section 127 included a reference to a person who is
12 authorised under a corresponding law of, or an
13 intergovernmental agreement in relation to, that State or
14 Territory to perform functions similar to those of a
15 person so prescribed.

16 **440. Interstate community treatment order: treatment in State**

17 If the terms of an interstate community treatment order made
18 under a corresponding law include a requirement that the
19 interstate community patient be provided with treatment by a
20 mental health service in the State, the interstate community
21 treatment order is taken to be a community treatment order that,
22 despite any other provision of this Act, has the same terms as
23 and is in force for the same period as the interstate community
24 treatment order.

25 **441. Interstate community treatment orders: supervision in State**

26 A person who is authorised under a corresponding law of
27 another State or a Territory to perform a function in relation to
28 an interstate community treatment order made under the
29 corresponding law may perform that function in relation to the
30 order in the State.

Part 22 — Ministerial inquiries

442. Appointment of person to conduct inquiry

The Minister may appoint a person to inquire into, and report to the Minister on, any matter relating to —

- (a) the treatment, care or other services provided (whether under this Act or otherwise) to a person who has a mental illness; or
- (b) the administration of this Act.

443. Powers of investigation

The person appointed under section 442 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 442 considers may be relevant to the inquiry;
 - (iii) require a person on the premises to produce any documents that the person appointed under section 442 considers may be relevant to the inquiry;

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- 1 (iv) inspect, or take copies of or extracts from, any
2 documents produced under subparagraph (iii);
3 (v) require a person on the premises to give
4 reasonable assistance to the person appointed
5 under section 442.

6 **444. Interfering with investigation**

- 7 (1) A person commits an offence if the person —
8 (a) without reasonable excuse, proof of which is on the
9 person, does not answer a question or provide
10 information when required under section 443(b)(ii); or
11 (b) in purporting to comply with a requirement under
12 section 443(b)(ii), gives an answer or provides
13 information that the person knows is false or misleading
14 in a material particular; or
15 (c) in purporting to comply with a requirement under
16 section 443(b)(iii), makes available a document that the
17 person knows is false or misleading in a material
18 particular without —
19 (i) indicating that the document is false or
20 misleading and, to the extent the person can, how
21 the document is false or misleading; and
22 (ii) if the person has or can reasonably obtain the
23 correct information — providing the correct
24 information;
25 or
26 (d) without reasonable excuse, proof of which is on the
27 person, does not give reasonable assistance when
28 required under section 443(b)(v); or
29 (e) without reasonable excuse, proof of which is on the
30 person, obstructs or hinders —
31 (i) a person appointed under section 442 exercising
32 a power under section 443; or

- 1 (ii) a person assisting such a person under
2 section 443(b)(v).

3 Penalty: a fine of \$6 000.

- 4 (2) It is enough for a prosecution notice lodged against a person for
5 an offence under subsection (1)(b) or (c) to state that the
6 answer, information or document was false or misleading to the
7 person's knowledge without stating which.

8 **445. Conduct of inquiry generally**

- 9 (1) An inquiry must be conducted with as little formality and
10 technicality, and with as much expedition, as a proper
11 consideration of the subject matter of the inquiry permits.
- 12 (2) In conducting an inquiry, the person appointed under
13 section 442 to conduct the inquiry is bound by the rules of
14 natural justice.
- 15 (3) Subject to this Part, the practice and procedure for conducting
16 an inquiry is as determined by the person appointed under
17 section 442 to conduct the inquiry.

18 **446. Evidence generally**

- 19 (1) A person appointed under section 442 to conduct an inquiry is
20 not bound by the rules of evidence but may inform himself or
21 herself of a matter relevant to the inquiry in any manner the
22 person considers appropriate.
- 23 (2) Evidence in an inquiry may be given orally or in writing.
- 24 (3) The person appointed under section 442 to conduct an inquiry
25 may require evidence in the inquiry to be given on oath or by
26 affidavit.
- 27 (4) The person appointed under section 442 to conduct an inquiry
28 may direct a person appearing as a witness in the inquiry —
29 (a) to answer a question relevant to the inquiry; or

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1 (b) to produce a document relevant to the inquiry.

2 (5) A person appearing as a witness in an inquiry has the same
3 protection and immunity as a witness has in a proceeding in the
4 Supreme Court.

5 **447. Power to summon persons to attend and produce documents**

6 The person appointed under section 442 to conduct an inquiry
7 may, by issuing a signed summons and having the summons
8 served on the person to whom it is addressed, require the person
9 to attend at the time and place specified in the summons —

10 (a) to give evidence in the inquiry; or

11 (b) to produce a document relevant to the inquiry that is in
12 the person's custody or control and is specified in the
13 summons; or

14 (c) to do both of those things.

15 **448. Self-incrimination**

16 (1) A person is not excused from complying with a direction given
17 to the person under section 446(4) or a summons served on the
18 person under section 447 on the ground that the answer to a
19 question or the production of a document might tend to
20 incriminate the person or expose the person to a criminal
21 penalty.

22 (2) However, any answer given or document produced by a person
23 in compliance with a direction given to the person under
24 section 446(4) or a summons served on the person under
25 section 447 is not admissible in evidence in any criminal
26 proceedings against the person other than proceedings for an
27 offence under section 450(d).

1 **449. Powers in relation to documents produced**

2 In relation to a document produced in an inquiry, the person
3 appointed under section 442 to conduct the inquiry may do any
4 of these things —

- 5 (a) inspect the document;
- 6 (b) retain the document for a reasonable period;
- 7 (c) take a copy of, or extract from, the document.

8 **450. Offences relating to answering questions, producing**
9 **documents and providing other information**

10 A person commits an offence if the person —

- 11 (a) without reasonable excuse, proof of which is on the
12 person, does not swear an oath or make an affirmation
13 when required under section 446(3); or
- 14 (b) without reasonable excuse, proof of which is on the
15 person, does not answer a question or produce a
16 document when directed to do so under section 446(4);
17 or
- 18 (c) without reasonable excuse, proof of which is on the
19 person, does not attend as required by a summons served
20 on the person under section 447; or
- 21 (d) gives an answer, produces a document or provides any
22 other information in an inquiry that the person knows is
23 false or misleading in a material particular.

24 Penalty: a fine of \$5 000.

Part 23 — Miscellaneous matters

451. 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 person who is listed in the definition of **nearest relative** in the Guardianship Act section 3(1);

relevant interest, in relation to a share, has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

1 **substantial holding** has the meaning given in the *Corporations*
2 *Act 2001* (Commonwealth) section 9.

3 (2) A medical practitioner or mental health practitioner cannot
4 exercise a power under this Act in respect of a person if —

5 (a) the practitioner is —

6 (i) a relative of the person; or

7 (ii) the person's enduring guardian or guardian; or

8 (iii) in partnership with the person; or

9 (iv) the employer or employee of the person; or

10 (v) the person's supervisor or subordinate;

11 or

12 (b) the exercise of the power involves —

13 (i) a private hospital the licence for which is held by
14 the practitioner or a related person; or

15 (ii) a public hospital of whose board the practitioner
16 is a member.

17 **452. Obstructing or hindering person performing functions**

18 A person who, without reasonable excuse, proof of which is on
19 the person, obstructs or hinders a person performing a function
20 under this Act commits an offence.

21 Penalty: a fine of \$6 000.

22 **453. Amendment of referrals and orders**

23 (1) For this section, a referral or order made under this Act contains
24 a formal defect if it contains —

25 (a) a clerical error or an error because of an accidental
26 omission; or

27 (b) an evident material error in the description of a person.

28 (2) If a referral or order made under this Act contains a formal
29 defect —

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- 1 (a) the validity of any thing done, or omitted to be done, in
2 reliance on the referral or order is not affected; but
- 3 (b) the person who does an act, or makes an omission, in
4 reliance on the referral or order may request the person
5 who made the referral or order to rectify the defect.
- 6 (3) If —
- 7 (a) a request made under subsection (2)(b) to rectify a
8 referral or order is not complied with; and
- 9 (b) the person in respect of whom the referral or order was
10 made was at the time of making, or has since that time
11 become, an involuntary patient,
- 12 the person who made the request may, by order, revoke the
13 involuntary treatment order with effect on and from the time
14 specified in the order.
- 15 (4) Subsection (3) does not prevent another referral or order being
16 made under this Act in respect of a person to whom an order
17 made under that subsection relates even though that order has
18 not yet come into effect.
- 19 **454. Medical records to be kept by mental health services**
- 20 (1) The person in charge of a mental health service must ensure that
21 a medical record is kept in respect of —
- 22 (a) each person who is admitted to the mental health
23 service; and
- 24 (b) each person who is provided with treatment or care by
25 the mental health service.
- 26 (2) The record must be in the approved form and must include the
27 following information —
- 28 (a) the name, address and date of birth of the person;
29 (b) the nature of any illness, or mental or physical disability,
30 from which the person suffers;

- 1 (c) particulars of —
2 (i) any treatment provided to the person by the
3 mental health service; and
4 (ii) the authority for providing the treatment,
5 including details of any order made under this
6 Act under which the treatment was provided;
7 (d) if the person dies at the mental health service, the date
8 and cause of death;
9 (e) any other information prescribed by the regulations for
10 this subsection.

11 **455. Confidentiality**

- 12 (1) In this section —
13 **relevant written law** means any of these written laws —
14 (a) this Act;
15 (b) the *Mental Health Act 1996*;
16 (c) the *Mental Health Act 1962*.
17 (2) A person must not disclose to another person, whether directly
18 or indirectly, any personal information about an individual that
19 was obtained because of any function the person has or had
20 under a relevant written law unless the disclosure is authorised
21 by subsection (3).
22 Penalty: a fine of \$5 000.
23 (3) The disclosure is authorised if it is made in any of these
24 circumstances —
25 (a) in the course of duty;
26 (b) under this Act or another law;
27 (c) to a court or other person or body acting judicially in the
28 course of proceedings before the court or other person or
29 body;

s. 456

- 1 (d) under an order of a court or other person or body acting
2 judicially;
- 3 (e) for the purposes of the investigation of a suspected
4 offence or disciplinary matter or the conduct of
5 proceedings against a person for an offence or
6 disciplinary matter;
- 7 (f) with the consent of the individual, or each individual, to
8 whom the personal information relates.
- 9 (4) If the disclosure is authorised under subsection (3) —
- 10 (a) no civil or criminal liability is incurred in respect of the
11 disclosure; and
- 12 (b) the disclosure is not to be regarded as a breach of any
13 duty of confidentiality or secrecy imposed by law; and
- 14 (c) the disclosure is not to be regarded as a breach of
15 professional ethics or standards or any principles of
16 conduct applicable to a person's employment or as
17 unprofessional conduct.
- 18 **456. Protection from liability**
- 19 (1) An action in tort does not lie against a person other than the
20 State for anything that the person has done in good faith in the
21 performance or purported performance of a function under this
22 Act.
- 23 (2) The protection given by subsection (1) applies even though the
24 thing done as described in that subsection may have been
25 capable of being done whether or not this Act had been enacted.
- 26 (3) Despite subsection (1), the State is not relieved from any
27 liability that it might have for an act done by a person against
28 whom this section provides that an action does not lie.
- 29 (4) In this section, a reference to the doing of anything includes a
30 reference to an omission to do anything.

1 **457. Relationship with *Freedom of Information Act 1992***

2 This Act has effect despite the *Freedom of Information*
3 *Act 1992*.

4 **458. Regulations**

5 The Governor may make regulations prescribing matters —

- 6 (a) required or permitted to be prescribed by this Act; or
7 (b) necessary or convenient to be prescribed for giving
8 effect to this Act.

9 **459. Review of this Act after 5 years**

10 (1) The Minister must review the operation and effectiveness of this
11 Act as soon as practicable after the expiry of 5 years from the
12 commencement of section 6.

13 (2) The Minister must —

- 14 (a) prepare a report about the outcome of the review; and
15 (b) as soon as practicable after preparing the report, cause a
16 copy of the report to be laid before each House of
17 Parliament.

Schedule 1 — Charter of Mental Health Care Principles

[s. 7, 8, 261(2) and 266(b)]

1. A mental health service is to be respectful of human rights and treat people with dignity, equality, courtesy and compassion, and is to be free from discrimination and stigma.
2. A mental health service is to be sensitive and responsive to diverse individual circumstances, including those relating to gender, age, culture, spiritual beliefs, family and lifestyle choices.
3. A mental health service is to respect privacy and confidentiality.
4. A mental health service is to be safe and accessible, is to provide treatment and care that is timely, of high quality and in accordance with the national standards for mental health services that are agreed from time to time by or on behalf of the Commonwealth, State and Territory Ministers responsible for mental health, and is to be committed to achieving the best possible outcomes.
5. A mental health service is to provide treatment and care to Aboriginals and Torres Strait Islanders that is appropriate to and consistent with their cultural beliefs, mores and practices, having regard to the views of their families and communities.
6. A mental health service is to clearly explain and provide information about diagnosis and treatment (including any risks, side effects and options) in a language, form of communication and terms that are likely to be understood and is to facilitate informed consent.
7. A mental health service is to clearly explain and provide information about rights, including those relating to advocacy and access to personal information.
8. A mental health service is to address the other physical health needs and co-occurring issues of people experiencing mental illness.
9. A mental health service is to involve people in decision making at all times and encourage self responsibility, cooperation and choice, including people's capacity to make their own decisions.

- 1 10. A mental health service is to respect the right of people experiencing
2 mental illness to involve carers and other support persons at all times,
3 including when discussing and considering treatment.
- 4 11. A mental health service is to be accountable, committed to continuous
5 improvement and open to solving problems in partnership with
6 people.
- 7 12. A mental health service is to encourage positive attitudes to mental
8 health, including that people experiencing mental illness can and do
9 recover and make meaningful contributions to the community.
- 10 13. A mental health service is to recognise the range of issues that impact
11 upon mental health and wellbeing, including relationships,
12 accommodation, education and employment.
- 13 14. A mental health service is to recognise the needs of children and other
14 dependants of people experiencing mental illness.
- 15

3 [s. 128(1)(a)]
