Western Australia

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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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:

Part 1 — Preliminary matters

1. Short title

This is the *Mental Health Act 2011*.

2. Commencement

This Act comes into operation as follows —

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

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

3. Terms used

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

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

advance health directive means any of the following —

(a) an advance health directive made under the Guardianship Act Part 9B;

(b) an instrument recognised as such under the Guardianship Act section 110ZA;

(c) a directive given by a patient under the common law containing treatment decisions in respect of the patient's future treatment;

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

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

authorised hospital has the meaning given in section 423;

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

bodily restraint has the meaning given in section 189;

carer, of a patient, means the person who is the carer of the patient under the *Carers Recognition Act 2004* section 5;

CEO means the person lawfully holding, acting in or performing the functions of the office of chief executive officer of the Agency;

CEO of the Health Department means the person lawfully holding, acting in or performing the functions of the office of chief executive officer of the Health Department;

Chief Mental Health Advocate means the person lawfully holding, acting in or performing the functions of the office of Chief Mental Health Advocate referred to in section 264;

Chief Psychiatrist means the person lawfully holding, acting in or performing the functions of the office of Chief Psychiatrist referred to in section 397(1);

child means a person under 18 years of age;

child and adolescent psychiatrist means a psychiatrist who has qualifications and clinical training in the treatment of mental illness in children;

CL(MIA) Act means the *Criminal Law (Mentally Impaired Accused) Act 1996*;

community treatment order has the meaning given in section 23(1);

Director of HaDSCO means the person lawfully holding, acting in or performing the functions of the office of Director of the Health and Disability Services Complaints Office referred to in the *Health and Disability Services (Complaints) Act 1995* section 7(1);

electroconvulsive therapy has the meaning given in section 151;

emergency psychiatric treatment has the meaning given in section 163;

enduring guardian has the meaning given in the Guardianship Act section 3(1);

general hospital means a hospital (as defined in the *Hospitals and Health Services Act 1927* section 2(1)) where overnight accommodation is provided to patients except any of these hospitals —

(a) an authorised hospital;

(b) a maternity home;

(c) a nursing home;

guardian has the meaning given in the Guardianship Act section 3(1);

Guardianship Act means the *Guardianship and Administration Act 1990*;

Health Department means the agency (as defined in the *Public Sector Management Act 1994* section 3(1)) principally assisting the Minister to whom the administration of the *Hospitals and Health Services Act 1927* is committed in its administration;

hospital means —

(a) an authorised hospital; or

(b) a general hospital;

identified person has the meaning given in section 263;

informed consent has the meaning given in Part 4 Division 1;

in-patient treatment order has the meaning given in section 22(1);

involuntary patient has the meaning given in section 21(1);

involuntary treatment order has the meaning given in section 21(2);

legal practitioner means an Australian legal practitioner as defined in the *Legal Profession Act 2008* section 3;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

mental health advocate means —

(a) the Chief Mental Health Advocate; or

(b) a person lawfully holding, acting in or performing the functions of the office of mental health advocate referred to in section 265(1);

Mental Health Care Charter means the Charter of Mental Health Care Principles in Schedule 1;

mental health practitioner has the meaning given in section 421(1);

mental health service means any of the following —

(a) a hospital;

(b) a psychiatric out-patients clinic;

(c) a community mental health service;

(d) a health service that provides treatment or care to people who have or may have a mental illness;

(e) a private psychiatric hostel;

(f) an agency that provides community support services to people who have or may have a mental illness;

mental illness has the meaning given in section 4;

mentally impaired accused has the meaning given in the CL(MIA) Act section 23;

Mentally Impaired Accused Review Board means the Mentally Impaired Accused Review Board established by the CL(MIA) Act section 41;

neurosurgeon means a person —

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

(b) who has clinical training in neurosurgery;

nominated person, of a patient, means the person nominated under section 235(1) to be the patient's nominated person;

nomination means a nomination made under section 235(1);

patient means a person to whom treatment is being, or is proposed to be, provided;

patient's psychiatrist means —

(a) if the patient is a voluntary patient — the treating psychiatrist; or

(b) if the patient is an involuntary patient in respect of whom an in-patient treatment order is in force — the treating psychiatrist; or

(c) if the patient is an involuntary patient in respect of whom a community treatment order is in force — the supervising psychiatrist; or

(d) if the patient is 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 — the treating psychiatrist;

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

police officer includes an Aboriginal police liaison officer who is authorised under section 137(2) to exercise the powers of a police officer under this Act;

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

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

psychiatrist means a person whose name is contained in the register of specialist psychiatrists kept by the Medical Board of Australia under the *Health Practitioner Regulation National Law (Western Australia)* section 223;

psychologist means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the psychology profession;

psychosurgery has the meaning given in section 166;

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

regulate includes prohibit;

staff member, of a mental health service, means a person who —

(a) is employed in a mental health service under a contract of employment or contract of training; or

(b) provides services to a mental health service under a contract for services;

sterilisation procedure has the meaning given in section 208;

supervising psychiatrist has the meaning given in section 102;

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

treatment means the provision of a psychiatric, medical, psychological, social or other therapeutic intervention intended, whether alone or with one or more other therapeutic interventions, to alleviate or prevent the deterioration of —

(a) a mental illness; or

(b) a condition that is a consequence of a mental illness;

treatment decision, in relation to a patient, means a decision to consent or refuse consent to the provision of treatment;

treatment in the community means treatment that can be provided to a patient without detaining the patient at a hospital under an in-patient treatment order;

treatment, support and discharge plan has the meaning given in section 148;

voluntary patient means is a person who is being provided with treatment but is not —

(a) an involuntary patient; or

(b) 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;

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

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

4. Mental illness

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

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

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

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

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

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

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

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

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

(f) the person is sexually promiscuous;

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

(h) the person has an intellectual disability;

(i) the person uses alcohol or other drugs;

(j) the person is involved in, or has been involved in, family or professional conflict;

(k) the person engages in anti-social behaviour;

(l) the person has at any time been —

(i) provided with treatment; or

(ii) admitted to or detained at a hospital for the purpose of providing the person with treatment.

(3) A decision whether or not a person has a mental illness must be made in accordance with internationally accepted standards prescribed by the regulations for this subsection.

5. Act binds Crown

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

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.

Part 3 — Mental Health Care Charter

7. Regard to be had to Charter

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

8. Compliance with Charter by mental health services

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

Part 4 — Informed consent to admission and treatment

Division 1 — Giving and withdrawing consent

9. What this Division is about

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

(a) the admission of a person; or

(b) the provision of treatment to a person.

10. People who can give informed consent

Informed consent can be given by —

(a) the person proposed to be admitted or provided with the treatment; or

(b) if the person does not have the capacity to consent to the admission or the provision of the treatment, the person who is authorised by law to consent on the person's behalf.

11. Requirements for informed consent

(1) A person gives informed consent only if the requirements of sections 12 to 16 are satisfied.

(2) A purported waiver of any of those requirements has no effect.

(3) Failure to offer resistance does not by itself constitute consent.

12. Capacity to give informed consent

(1) The person must have the capacity to give informed consent to the admission or the provision of the treatment.

(2) Subsection (1) means that the person must have the capacity to —

(a) understand the information and advice required by section 15(1) to be provided to the person; and

(b) understand the nature and effect of the admission or treatment; and

(c) freely and voluntarily make decisions about the admission or treatment; and

(d) communicate those decisions in some way.

13. Consent must be given freely and voluntarily

(1) Consent must be given freely and voluntarily.

(2) Without limiting subsection (1), consent is freely and voluntarily given if it is not obtained by —

(a) force, threat, intimidation, inducement or deception; or

(b) the exercise of authority.

14. Form of consent

Consent must be —

(a) in the approved form; and

(b) signed by the person.

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

(1) Before a person is asked whether or not the person gives consent, the person must be provided with these things —

(a) a clear explanation of the nature, purpose and likely duration of the admission or treatment that includes sufficient information to enable the person to make a reasonable decision about whether or not to give consent to the admission or treatment;

(b) an adequate description (without exaggeration, concealment or distortion) of the expected benefits and possible discomforts and risks of the admission or treatment;

(c) an adequate description of the alternatives to the admission or treatment that are reasonably available;

(d) information about any financial advantage that may be gained by any medical practitioner or mental health service in respect of the admission or treatment, except information about the fees and charges payable by or on behalf of the person for the admission or treatment;

(e) information about any research relationship between any medical practitioner and any mental health service that may be relevant to the admission or treatment;

(f) advice that the person may obtain independent legal and medical advice about the admission or treatment before consent is given and that the person may request assistance to obtain that advice;

(g) if the person requests assistance to obtain legal or medical advice referred to in paragraph (f), reasonable assistance to obtain the advice;

(h) an opportunity to ask questions about the admission or treatment;

(i) clear answers that the person is likely to understand to all relevant questions the person asks;

(j) advice that the person may refuse to give consent to the admission or treatment and that, if the person does give consent, the person can withdraw consent at any time.

(2) Any information or advice provided under subsection (1) must be provided in a language, form of communication and terms the person is likely to understand.

16. Adequate time for consideration

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

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

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

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

(b) when the person gives consent.

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

18. Another person may be present when consent withdrawn

(1) A person who —

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

(b) wants to withdraw consent,

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

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

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

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

(a) if the patient is a voluntary patient —

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

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

or

(b) if the patient is an involuntary patient or mentally impaired accused — a record to that effect.

(2) If consent given to the admission of a patient to, or the provision of treatment to a patient by, a mental health service is withdrawn, the person in charge of the service must ensure that the patient's medical record includes —

(a) a record that consent has been withdrawn; and

(b) if a request was made under section 18(1), a record of the request having been made and whether or not it was complied with.

(3) A record made under this section must be in the approved form.

(4) A failure to comply with this section in relation to any consent or withdrawal of consent does not affect the validity of the consent or withdrawal.

Division 2 — Miscellaneous matters

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

(1) This section applies if —

(a) a person has an enduring guardian who is authorised to consent on the person's behalf to the admission of, or the provision of treatment to, the person;

(b) a person has a guardian who is authorised to consent on the person's behalf to the admission of, or the provision of treatment to, the person;

(c) a person has a person responsible under the Guardianship Act section 110ZD(2) who is authorised to consent on the person's behalf to the admission of, or the provision of treatment to, the person.

(2) For the purposes of a provision of this Act specified in subsection (4), it is relevant whether or not the person —

(a) has the personal capacity to give informed consent to admission or provision of treatment; or

(b) has personally given informed consent to admission or provision of treatment.

(3) For the purposes of a provision of this Act specified in subsection (4), it is irrelevant whether or not the enduring guardian, guardian or person responsible —

(a) has the capacity to give informed consent on the person's behalf to admission or provision of treatment; or

(b) has given informed consent on the person's behalf to admission or provision of treatment.

(4) For subsections (2) and (3), these provisions are specified —

(a) section 25(1)(c)(i), which relates to the making of an in-patient treatment order in respect of a person;

(b) section 25(2)(c)(i), which relates to the making of a community treatment order in respect of a person;

(c) section 157(a)(ii), which relates to the performance of electroconvulsive therapy on a voluntary patient who has reached 18 years of age;

(d) section 171(1)(b), which relates to the performance of psychosurgery on a person who has reached 18 years of 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.

(2) A psychiatrist cannot make an involuntary treatment order except in accordance with this Act.

(3) A psychiatrist may make an in-patient treatment order in respect of a person if satisfied, having regard to the criteria specified in section 25(1), that the person is in need of an in-patient treatment order.

(4) Before deciding whether or not to make an in-patient treatment order in respect of a person, a psychiatrist must consider whether the objects of this Act would be better achieved by making a community treatment order in respect of the person.

(5) A psychiatrist may make a community treatment order in respect of a person if satisfied, having regard to the criteria specified in section 25(2), that the person is in need of a community treatment order.

(6) A psychiatrist must not make an involuntary treatment order in respect of a child unless satisfied that making the order is in the best interests of the child.

(7) An involuntary treatment order made in respect of a person —

(a) must be in force for as brief a period as practicable; and

(b) must be reviewed regularly; and

(c) must cease to be in force as soon as the person no longer meets the criteria for the order.

25. Criteria for involuntary treatment order

(1) A person is in need of an in-patient treatment order only if all of these criteria are satisfied —

(a) the person has a mental illness for which the person is in need of treatment;

(b) there is a significant risk to the health, safety or welfare of the person or to the safety of another person;

(c) that —

(i) because of the nature of the mental illness, the person does not have the capacity required by section 12 to give informed consent to the provision of treatment; or

(ii) the person has unreasonably refused treatment;

(d) that, because of the person's mental or physical condition or another reason, treatment in the community cannot reasonably be provided to the person;

(e) the person cannot be adequately provided with treatment in a way that would involve less restriction on the person's freedom of choice and movement than making an in-patient treatment order.

(2) A person is in need of a community treatment order only if all of these criteria are satisfied —

(a) the person has a mental illness for which the person is in need of treatment;

(b) there is —

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

(ii) a significant risk of the person suffering serious physical or mental deterioration;

(c) that —

(i) because of the nature of the mental illness, the person does not have the capacity required by section 12 to give informed consent to the provision of treatment; or

(ii) the person has unreasonably refused treatment;

(d) that treatment in the community can reasonably be provided to the person;

(e) the person cannot be adequately provided with treatment in a way that would involve less restriction on the

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

Note for section 25:

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

Note for Division 1:

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

Division 2 — Referrals for examination

Subdivision 1 — Person suspected of needing involuntary treatment order

26. Referral to psychiatrist

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

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

(3) The practitioner —

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

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

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

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

Notes for section 26:

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

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

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

(2) Immediately before the end of the period of detention ordered under subsection (1) or any further period of detention ordered under this subsection in respect of the person, a medical practitioner or authorised mental health practitioner may make an order in the approved form authorising the person's continued detention for up to 6 hours from the end of that period to enable the person to be taken to the hospital or other place.

(3) A person cannot be detained under this section for a continuous period of more than 72 hours.

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

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

(b) as a consequence, the practitioner is satisfied that, because of the person's mental or physical condition, the

person still needs to be detained to enable the person to 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

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

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

28. Making transport order

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

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

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

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

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

29. Effect of referral on community treatment order

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

(a) beginning when the referral is made; and

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

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

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

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

Notes for section 29:

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).

30. 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 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.

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

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

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

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

Subdivision 2 — Voluntary patient in authorised hospital

31. Application of this Subdivision

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

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

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

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

(b) for another reason.

(2) The person in charge —

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

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

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

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

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

Notes for section 33:

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

34. Effect of referral on community treatment order

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

(a) beginning when the referral is made; and

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

(i) a psychiatrist makes an order under section 49(1)(a) or (d) or 50(1)(a)(i) or (iii);

(ii) the referral is revoked under section 35(1);

(iii) the person can no longer be detained because of section 47(3) or 50(1)(b).

Notes for section 34:

1. If a psychiatrist makes an in-patient treatment order under section 49(1)(a) or 50(1)(a)(i) 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) or 50(1)(a)(iii) 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 49(1)(c) in respect of the person, the community treatment order remains suspended until the period of the suspension ends under section 34(b) or the community treatment order is revoked under section 108(2)(b) or 117(2)(b).

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.

Subdivision 3 — Requirements for referral

36. Application of this Subdivision

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

37. No referral without assessment

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

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

38. Time limit for referral

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

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

39. Form of referral

The referral must be in the approved form and must —

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

(b) specify the authorised hospital or other place where the examination will be conducted; and

(c) specify the date and time the assessment required by section 37 was completed; and

(d) certify that, having regard to the criteria specified in section 25, the practitioner reasonably suspects that the person being referred is in need of an involuntary 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.

40. Providing information contained in referral to person referred

(1) Subject to subsection (2), the practitioner must provide the person being referred with the information referred to in section 39(a) to (e).

(2) The practitioner must not provide the person being referred any information referred to in section 39(e) that was provided to the practitioner by someone other than the person being referred on condition that the information not be provided to the person being referred.

(3) The information provided under subsection (1) must be in the approved form.

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

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

Subdivision 4 — Conduct of assessment

42. Application of this Subdivision

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

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

43. How assessment must be conducted

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

(2) The practitioner and the person being assessed —

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

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

44. Information that practitioner may have regard to

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

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

(b) anyone else.

(2) However, information provided by someone other than the person being assessed does not by itself constitute sufficient grounds for suspecting that the person being assessed is in need 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

charge of each authorised hospital to which the person is transferred under section 78, 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 person is received at that hospital; and

(b) at all reasonable times while the person is detained under subsection (1)(b) at that hospital.

(4) If, by the later of the end of the 24-hour period referred to in subsection (1)(b)(i) and the end of any further period referred to in subsection (1)(b)(ii) —

(a) the examination has not been completed; or

(b) the examination has been completed but an order has not been made under section 49(1) in respect of the person,

the person cannot be detained any longer.

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

47. Detention for examination on referral made under s. 33(2)

(1) If referred under section 33(2), the person 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 —

(a) for up to 24 hours after the time when —

(i) if section 33(1)(a) applies — the order for the assessment of the person was made under section 32(2)(a); or

(ii) if section 33(1)(b) applies — the person was referred under section 33(2);

and then

(b) 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 in charge of the authorised hospital at which the person is detained under subsection (1), and the person in charge of each authorised hospital to which the person is transferred under section 78, 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 person is detained under subsection (1) at that hospital; and

(b) at all reasonable times while the person is detained under subsection (1) at that hospital.

(3) If, by the later of the end of the 24-hour period referred to in subsection (1)(a)(i) or (ii) and the end of any further period referred to in subsection (1)(b) —

(a) the examination has not been completed; or

(b) the examination has been completed but an order has not been made under section 49(1) in respect of the person,

the person cannot be detained any longer.

48. Conducting examination

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

49. What psychiatrist must do on completing examination

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

(a) an in-patient treatment order authorising the person's detention at the hospital for the period specified in the order in accordance with section 82(a) or (b);

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

(c) an order authorising the person's continued detention, whether at the hospital or at another authorised hospital to which the person is transferred under section 78, for a further examination to be conducted by a psychiatrist;

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

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

(3) If the psychiatrist makes an order under subsection (1)(c), the person can continue to be detained, whether at the hospital or at another hospital to which the person is transferred under section 78 —

(a) for the period specified in the order, which must not be more than 72 hours after the time when the person was —

(i) received at the hospital under section 46(1)(a); or

(ii) detained at the hospital under section 47(1);

and then

(b) 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.

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

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

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

Notes for section 49:

1. Part 6 Division 4 applies in relation to the release of a person who is detained at an authorised hospital under an order made under section 49(1)(c).

2. Part 6 Division 5 applies if a person in respect of whom an order made under section 49(1)(c) is in force absconds from the authorised hospital where the person can be detained under the order.

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

(1) An order made under section 49(1)(c) authorises the continued detention of the person until the first of these things occurs —

(a) a psychiatrist conducts the further examination and makes one of these orders —

(i) an in-patient treatment order authorising the person's detention at the hospital for the period specified in the order in accordance with section 82(a) or (b);

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

(iii) an order that the person cannot be detained any longer;

(b) the later of —

(i) the expiry of the 72-hour period specified in the order under section 49(3)(a); and

(ii) the expiry of 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) An order made under subsection (1)(a) must specify the date and time it is made.

Subdivision 2 — Examination at place that is not authorised hospital

51. Application of this Subdivision

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

52. Detention for examination on referral made under s. 26(3)(a)

(1) The person —

(a) must be received at the place unless subsection (2) applies; and

(b) can be detained at the place for up to 24 hours after the time when the person is received at the place to enable the examination to be conducted.

(2) The person must not be received at the place more than 72 hours after the time when the referral was made.

(3) The person in charge of the place 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 person is received at the place; and

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

(4) If, by the end of the 24-hour period referred to in subsection (1)(b) —

(a) the examination has not been completed; or

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

the person cannot be detained any longer.

53. Detention at place in declared area

(1) In this section —

declared area means an area declared under subsection (7).

(2) This section applies if —

(a) the person is referred to a place in a declared area; and

(b) it is not practicable to complete the examination of the person within the 24-hour period referred to in section 52(1)(b).

(3) A medical practitioner or authorised mental health practitioner at the place may make an order in the approved form authorising the person's continued detention at the place for up to an additional 48 hours from the end of the 24-hour period to enable the examination to be completed.

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

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

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

(5) The practitioner 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.

(6) If, by the end of the additional 48-hour period —

(a) the examination has not been completed; or

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

the person cannot be detained any longer.

(7) The Minister may, by notice published in the *Gazette*, declare an area of the State to be a declared area for the purposes of this section.

54. Conducting examination

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

55. What psychiatrist must do on completing examination

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

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

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

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

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

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

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

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

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

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

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

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

Notes for section 55:

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

2. Part 6 Division 5 applies if a person in respect of whom an order made under section 55(1)(c) is in force absconds from the authorised hospital where the person can be detained under the order.

56. Detention to enable person to be taken to hospital

(1) A medical practitioner or authorised mental health practitioner may make an order in the approved form authorising the person's continued detention for up to 6 hours from the time the order under section 55(1)(a) or (c) is made if satisfied that, because of the person's mental or physical condition, the person needs to be detained to enable the person to be taken to the hospital.

(2) Immediately before the end of the period of detention ordered under subsection (1) or any further period of detention ordered under this subsection in respect of the person, a medical practitioner or authorised mental health practitioner may make an order in the approved form authorising the person's continued detention for up to 6 hours from the end of that period to enable the person to be taken to the hospital.

(3) A person cannot be detained under this section for a continuous period of more than 72 hours.

(4) A medical practitioner or authorised mental health practitioner must not make an order under subsection (2) in respect of the person unless —

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

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

(5) Division 2 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; and

(b) the person has not been apprehended under a transport order made under section 57(1); and

(c) an order authorising the person's continued detention from the end of that period has not been made under subsection (2),

the person cannot be detained any longer.

(9) If, by the later of —

(a) the end of 72 hours after the order under section 55(1)(a) or (c) 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 57(1) in respect of the person,

the person has not been taken to the hospital, the person cannot be detained any longer.

57. Making transport order

(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.

(2) The psychiatrist must not make the transport order unless satisfied that —

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

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

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

Subdivision 3 — In-patient treatment order authorising detention at general hospital

58. Application of this Subdivision

This Subdivision applies in relation to a person (an ***involuntary in-patient***) in respect of whom there is in force an in-patient treatment order made under section 55(1)(a) authorising the involuntary in-patient's detention at a general hospital.

59. Treating psychiatrist must report regularly to Chief Psychiatrist

(1) At the end of each successive 14-day period that the involuntary in-patient is detained at the hospital, the treating psychiatrist must report to the Chief Psychiatrist about these matters —

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

(b) any treatment (as defined in section 3(1)) being provided to the involuntary in-patient at the hospital;

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

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

60. Transfer from general hospital to authorised hospital

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

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

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

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

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

Note for section 60:

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

Subdivision 4 — Order for further examination at authorised hospital

61. Application of this Subdivision

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

62. Detention at hospital

(1) The person —

(a) must be received at the hospital unless subsection (2) applies; and

(b) can be detained, whether at the hospital or at another authorised hospital to which the person is transferred under section 78 —

(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 hospital after the later of —

(a) the end of 72 hours after the time when the order under section 55(1)(c) 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 57(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 charge of each authorised hospital to which the person is transferred under section 78, 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 person is received at that hospital; and

(b) at all reasonable times while the person is detained under subsection (1)(b) at that hospital.

(4) If, by the later of the end of the 24-hour period referred to in subsection (1)(b)(i) and the end of any further period referred to in subsection (1)(b)(ii) —

(a) the examination has not been completed; or

(b) the examination has been completed but an order has not been made under section 64(1) in respect of the person,

the person cannot be detained any longer.

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

63. Conducting examination at hospital

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

64. What psychiatrist must do on completing examination at hospital

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

(a) an in-patient treatment order authorising the person's detention at the hospital for the period specified in the order in accordance with section 82(a) or (b);

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

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

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

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

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

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

65. Chief Mental Health Advocate: notification

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

Subdivision 5 — Examination without referral

66. Application of this Subdivision

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

(a) because of a referral made under section 26(2) or (3)(a) or 33(2); or

(b) because of an order made under section 49(1)(c) or 55(1)(c); or

(c) under section 84(1).

67. Conducting examination

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

68. What psychiatrist may do on completing examination

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

(2) As soon as practicable after making the order, the psychiatrist must —

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

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

69. Confirmation of community treatment order

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

(a) another medical practitioner; or

(b) an authorised mental health practitioner.

(2) The confirmation must be in the approved form.

(3) The supervising psychiatrist —

(a) must inform the person about whether or not the order has been confirmed; and

(b) if it has been confirmed —

(i) put the confirmation on the person's medical record; and

(ii) give a copy of the confirmation to the person.

(4) If the order is not confirmed in accordance with subsection (1), it ceases to be in force.

Subdivision 6 — Conduct of examination

70. Application of this Subdivision

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

(a) by a psychiatrist because of a referral made under section 26(2) or (3)(a) or 33(2);

(b) by a psychiatrist because of an order made under section 55(1)(c);

(c) by a psychiatrist in circumstances in which Subdivision 5 applies;

(d) by a supervising psychiatrist as required by section 106(2)(a);

(e) by a medical practitioner or authorised mental health practitioner as required by section 106(2)(b);

(f) by a supervising psychiatrist as required by section 109(2);

(g) by a psychiatrist as required by section 109(7) or 145(5).

71. How examination must be conducted

(1) Subject to this section, an examination must be conducted in the least restrictive way and environment practicable.

(2) For an examination referred to in section 70(a), (b), (c) or (e), the psychiatrist or practitioner and the person being examined must be in one another's physical presence.

(3) For any other examination referred to in section 70 —

(a) the psychiatrist and the person being examined need not be in one another's physical presence; but

(b) if they are not, each of them must be able to see and hear the other while the other is speaking (for example, by being able to see one another through a window and hear one another using a telephone or to see and hear one another using an audio-visual system).

72. Information psychiatrist or practitioner may have regard to

(1) The psychiatrist or practitioner may have regard to any information about the person being examined provided by the person or another person.

(2) However, information provided by someone other than the person being examined does not by itself constitute sufficient grounds for being satisfied that the person being examined is in need of, is still in need of, or is no longer in need of an involuntary treatment order.

Subdivision 7 — Application to mentally impaired accused

73. Mentally Impaired Accused Review Board: notification

As soon as practicable after making an involuntary treatment order in respect of a mentally impaired accused, the psychiatrist who made the order must give a copy of the order to the 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.

Note for section 75:

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

76. Terms used

In this Division —

appropriate psychiatrist, in relation to a person detained, means —

(a) the treating psychiatrist; or

(b) if the person detained does not have a treating psychiatrist or the treating psychiatrist is not reasonably available, another psychiatrist at the hospital where the person is detained;

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

77. Detention authorised

(1) This section applies to these things —

(a) a referral made under section 26(2) or 33(2) in respect of a person detained;

(b) an order referred to in section 49(1)(c) or 55(1)(c) in force in respect of a person detained.

(2) The referral or order authorises —

(a) as necessary, the person detained's reception at or admission to —

(i) the hospital specified in the referral or order; and

(ii) any authorised hospital to which the person detained is transferred under section 60(1) or 78(2);

and

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

78. Transfer between authorised hospitals

(1) This section applies in relation to a person detained who is detained at an authorised hospital.

(2) The appropriate psychiatrist may make an order (a ***transfer order***) in the approved form authorising the person detained's transfer from the authorised hospital to another authorised hospital specified in the order.

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

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

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

Note for section 78:

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

79. Making transport order

(1) If the appropriate psychiatrist makes a transfer order in respect of a person detained, that psychiatrist or another psychiatrist may make a transport order in respect of the person.

(2) The psychiatrist must not make the transport order unless satisfied that no other safe means of taking the person detained to the hospital is reasonably available.

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

Division 3 — Period of detention at hospital under in-patient treatment order

80. Application of this Division

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

Notes for section 80:

1. An in-patient treatment order authorising a person's detention at a general hospital can be made only under section 55(1)(a).
2. The period for which a person can be detained under section 46(1)(b) or 47(1), or under an order made under section 49(1)(c) or 55(1)(c), is authorised under Part 5 Divisions 2 and 3.

81. Terms used

In this Division —

continuation order means a continuation order made under section 84(2)(a);

detention period, for an in-patient treatment order, means —

(a) the period for which the involuntary in-patient can be detained under the order as specified in the order in accordance with section 82(a) or (b); or

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

82. Period that must be specified in in-patient treatment order

The period specified in an in-patient treatment order as the period for which the involuntary in-patient can be detained under the order must not exceed —

(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

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

83. Period for which detention is authorised

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

(a) a psychiatrist makes an order under section 84(2)(b) or 85(1)(a) in respect of the involuntary in-patient;

(b) a psychiatrist revokes the order under section 84(2)(c) or 85(1)(b);

(c) the expiry of the detention period unless the period for which the involuntary in-patient can be detained under the order has been continued under a continuation order.

84. Examination before end of each detention period

(1) The treating psychiatrist must ensure that, as near as practicable to (but not earlier than 7 days before) the end of the detention period, the involuntary in-patient is examined by a psychiatrist.

(2) On completing the examination, the psychiatrist who conducted it must make one of these orders in the approved form —

(a) if satisfied, having regard to the criteria specified in section 25, that the involuntary in-patient is still in need of the in-patient treatment order — a continuation order continuing the period for which the involuntary in-patient can be detained under the in-patient treatment order from the end of the detention period for the further period (not exceeding 3 months after the continuation order is made) that is specified in the continuation order;

(b) if satisfied, having regard to the criteria specified in section 25, that the involuntary in-patient is no longer in need of the in-patient treatment order but is in need of a community treatment order — a community treatment order in respect of the involuntary in-patient;

(c) if satisfied, having regard to the criteria in section 25, that the involuntary in-patient is no longer in need of an involuntary treatment order — an order revoking the in-patient treatment order.

(3) A continuation order must specify the date on which it is made.

(4) As soon as practicable after making an order under subsection (2), the psychiatrist who made it must —

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

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

85. Release may be ordered at any time

(1) During the detention period, a psychiatrist may make either of these orders in the approved form —

(a) if satisfied, having regard to the criteria specified in section 25, that the involuntary in-patient is no longer in need of the in-patient treatment order but is in need of a community treatment order — a community treatment order in respect of the involuntary in-patient;

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

(2) The psychiatrist may make an order under subsection (1) without examining the involuntary in-patient.

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

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

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

Division 4 — Release from detention at hospital or other place

86. Application of this Division

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

(a) a person who is detained at an authorised hospital or other place because of a referral made under section 26(2) or (3)(a) or 33(2);

(b) a person who is detained at an authorised hospital under an order made under section 49(1)(c) or 55(1)(c);

(c) a person who is detained at a hospital under an in-patient treatment order;

(d) an involuntary community patient who is detained at a place under section 116(2)(b).

87. Person detained must be allowed to leave

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

(a) must be informed in writing by a psychiatrist that the person detained cannot be detained because of the referral or under the order any longer; and

(b) must be allowed to leave the hospital or other place unless the person detained's detention at the hospital or other place is authorised —

(i) because of another referral, or under an order, referred to in section 86; or

(ii) under section 88.

88. Release of person detained into custody

If the person detained —

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

(b) is subject to an order made under the law of the Commonwealth or a State or Territory requiring the person detained to be kept in custody,

the person detained must not be allowed to leave the hospital or other place until the person has been delivered into that custody.

Division 5 — Absconding from hospital or other place

89. Persons who abscond

(1) For the purposes of this Division, a person absconds from a hospital or other place if —

(a) in the case of a person in respect of whom a referral is made under section 26(2) or (3)(a) or 33(2) — the person leaves the authorised hospital or other place where the person can be detained because of the referral;

(b) in the case of a person in respect of whom an order made under section 49(1)(c) or 55(1)(c) is in force — the person leaves the authorised hospital where the person can be detained under the order;

(c) in the case of a person in respect of whom an in-patient treatment order is in force — the person is absent without leave as described in subsection (2);

(d) in the case of an involuntary community patient who is detained under section 116(2)(b) — the person leaves the place where the patient can be detained under that provision.

(2) For subsection (1)(c), a person in respect of whom an in-patient treatment order is in force is absent without leave —

(a) if the person is away from the hospital where the person can be detained under the order without being granted leave of absence under section 94(1); or

(b) if, on the cancellation under section 99(1) of leave of absence granted to the person under section 94(1) or on

the expiry of such leave, the person does not return to either of these hospitals —

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

(ii) the hospital to which the person's transfer has been ordered under section 60(1) or 78(2).

90. Making apprehension and return order

(1) If a person absconds from a hospital or other place —

(a) the person in charge of the hospital or other place; or

(b) a psychiatrist,

may make an order (an ***apprehension and return order***) in respect of the person.

(2) An apprehension and return order must be in the approved form and must specify these things —

(a) the name of the person who has absconded;

(b) the hospital or other place from which the person has absconded and to which the person must be returned;

(c) the date and time when the order is made.

(3) As soon as practicable after making an apprehension and return order, the person who made the order must —

(a) put the order on the medical record of the person who has absconded; and

(b) give a copy of the order to the police officer or person prescribed who will carry out the order.

91. Operation of apprehension and return order

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

(a) apprehend the person and, for that purpose, exercise the powers under section 132(1);

(b) if the person is apprehended, return the person to the hospital or other place specified in the order.

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

Subdivision 1 — Preliminary matters

92. Application of this Subdivision

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

Note for section 92:

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

93. Term used: leave of absence

In this Division —

leave of absence —

(a) means leave of absence granted under section 94(1); and

(b) includes leave of absence as extended or varied under section 95(1).

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

94. Granting leave

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

(a) will —

(i) enable the involuntary in-patient to obtain medical or surgical treatment; or

(ii) be likely to benefit the involuntary in-patient's health in some other way;

and

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

(2) Before deciding whether or not to make the order, the psychiatrist must consult the involuntary in-patient's carer about —

(a) whether or not to make the order; and

(b) what period and conditions would be appropriate to specify in the order if it were to be made.

(3) Before deciding whether or not to make the order, the psychiatrist must consider whether it would be more appropriate to make an order under section 85(1) in respect of the involuntary in-patient.

(4) The order authorises the involuntary in-patient's absence from the hospital —

(a) for the period; and

(b) subject to the conditions,

the psychiatrist considers appropriate and specifies in the order.

(5) The conditions imposed under subsection (4)(b) may include conditions about the involuntary in-patient doing any of these things —

(a) residing at a specified place;

(b) taking specified medication;

(c) attending at a specified place to enable the involuntary in-patient to be provided with specified treatment.

(6) As soon as practicable after making the order, the psychiatrist must —

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

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

95. Extending or varying leave granted

(1) A psychiatrist may make an order in the approved form —

(a) extending the period of an involuntary in-patient's leave of absence; or

(b) varying the conditions subject to which an involuntary in-patient's leave of absence is granted.

(2) As soon as practicable after making the order, the psychiatrist must —

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

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

96. Involuntary in-patient must comply with conditions of leave

While on leave of absence, an involuntary in-patient must comply with the conditions to which the leave of absence is subject.

97. Monitoring involuntary in-patient on leave

(1) If an involuntary in-patient is away from a hospital on leave of absence for more than 28 consecutive days, the treating psychiatrist must consider whether it would be appropriate to make an order under section 85(1) in respect of the involuntary in-patient.

(2) For the purpose of subsection (1), the treating psychiatrist may make any inquiries the psychiatrist considers appropriate.

98. Releasing involuntary in-patient on leave on advice of practitioner

(1) This section applies if, while an involuntary in-patient is away from a hospital on leave of absence, the treating psychiatrist is given a written opinion from —

(a) another medical practitioner; or

(b) a mental health practitioner,

to the effect that the involuntary in-patient is no longer in need of an in-patient treatment order.

(2) The treating psychiatrist may make an order under section 85(1) in respect of the involuntary in-patient on the basis of the opinion and without examining the involuntary in-patient.

(3) As soon as practicable after being given the opinion and whether or not the treating psychiatrist acts under subsection (2) on the basis of the opinion, the treating psychiatrist must put the opinion on the involuntary in-patient's medical record.

99. Cancelling leave

(1) If, while an involuntary in-patient is away from a hospital on leave of absence, a psychiatrist forms the reasonable belief that it is inappropriate for the involuntary in-patient to continue to be away from the hospital, the psychiatrist may make an order in the approved form cancelling the leave of absence.

(2) As soon as practicable after making the order, the psychiatrist must —

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

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

Subdivision 3 — Transport to and from general hospital

100. Application of this Subdivision

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

(a) who is granted leave of absence to enable the involuntary in-patient to obtain medical or surgical treatment at a general hospital; or

(b) who, because of the cancellation under section 99(1) of leave of absence granted to the involuntary patient for a purpose referred to in paragraph (a) or because of the expiry of such leave, must return to —

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

(ii) another authorised hospital to which the involuntary in-patient's transfer has been ordered under section 78(2).

101. Making transport order

(1) A psychiatrist may make a transport order in respect of the involuntary in-patient.

(2) The practitioner must not make the transport order unless satisfied that no other safe means of taking the involuntary in-patient to the hospital is reasonably available.

(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 —

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

(b) suitable arrangements can be made for the care of the person in the community;

(c) a psychiatrist is available and willing to be the supervising psychiatrist under the order;

(d) a medical practitioner or mental health practitioner is available and willing to be the treating practitioner under the order.

Note for section 103:

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

104. Terms of order

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

(a) the name of the psychiatrist who will be the supervising psychiatrist under the order;

(b) an outline of the treatment that will be provided under the order to the involuntary community patient, including details of —

(i) where and when the treatment will be provided; and

(ii) anything else related to the treatment that the psychiatrist making the order considers appropriate;

(c) the name of the medical practitioner or mental health practitioner who will be the treating practitioner under the order;

(d) the period for which the order will remain in force (see subsection (2));

(e) a requirement that the involuntary community patient notify the supervising psychiatrist or treating practitioner of any change in the patient's residential address;

(f) a requirement that the involuntary community patient notify the supervising psychiatrist or treating practitioner of any interstate or overseas travel by the patient —

(i) at least 7 days before the patient's departure; or

(ii) if the patient cannot comply with subparagraph (i) because the patient needs to travel urgently — as soon as it is practicable for the patient to give notice of the travel.

(2) For subsection (1)(d), the period specified in a community treatment order when it is made must not exceed 3 months after it is made.

Notes for section 104:

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

2. Under section 438, the terms of a community treatment order may require the involuntary community patient to be provided with treatment by a mental health service in another State or a Territory.

Division 3 — Operation of order

105. Duration of order

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

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

(b) a psychiatrist makes an in-patient treatment order under any other provision of this Act in respect of the involuntary community patient;

(c) the supervising psychiatrist revokes the order under section 108(2)(b) or 117(2)(b);

(d) the expiry of a treatment period unless the period for which the order will remain in force has been continued under a continuation order.

Note for section 105:

A community treatment order may be suspended under section 29.

106. Monthly examination of patient

(1) In this section —

first treatment period, for a community treatment order, means the period for which the order will remain in force as specified in the order under section 104(2);

review period, for a community treatment order, means —

(a) the period of one month after the beginning of the first treatment period for the order; or

(b) the period of one month after the involuntary community patient was last examined under subsection (2) for the purposes of the order.

(2) As near as practicable to (but not earlier than 14 days before) the end of each review period for a community treatment order, the involuntary community patient must be examined by —

(a) the supervising psychiatrist; or

(b) subject to subsection (3), another medical practitioner or a mental health practitioner —

(i) if the supervising psychiatrist is unavailable; or

(ii) if requested by the supervising psychiatrist under section 107(1).

(3) The involuntary community patient cannot be examined under subsection (2)(b) by a practitioner who is not the supervising psychiatrist if more than 2 months has elapsed since the patient was last examined under subsection (2)(a) by the supervising psychiatrist.

(4) Part 5 Division 3 Subdivision 6 applies in relation to the conduct of an examination under subsection (2).

(5) If the involuntary community patient is examined under subsection (2)(b) by a practitioner who is not the supervising psychiatrist, the practitioner must provide the supervising psychiatrist with a written report of the examination that includes a recommendation about whether the patient is still in need of an involuntary treatment order.

(6) The supervising psychiatrist must put on the involuntary community patient's medical record —

(a) a record of each examination of the involuntary community patient that the psychiatrist conducts under subsection (2)(a); and

(b) each report of an examination of the involuntary community patient provided to the psychiatrist under subsection (5).

107. Supervising psychiatrist may request practitioner to examine involuntary community patient

(1) For the purpose of section 106(2)(b)(ii), the supervising psychiatrist may request another medical practitioner or a mental health practitioner to examine the involuntary community patient.

(2) The request must be in the approved form and may specify requirements for either or both of these things —

(a) carrying out the examination;

(b) preparing the report.

108. What supervising psychiatrist may do after examination

(1) This section applies —

(a) on completion of the examination of the involuntary community patient by the supervising psychiatrist under section 106(2)(a); or

(b) on provision of a report about the involuntary community patient to the supervising psychiatrist under section 106(5).

(2) The supervising psychiatrist must consider whether the involuntary community patient is still in need of an involuntary treatment order and may make either of these orders in the approved form —

(a) if satisfied, having regard to the criteria specified in section 25, that the involuntary community patient is still in need of an involuntary treatment order but not satisfied of the things referred to in section 103(a) to (d) — an in-patient treatment order authorising the patient's detention at the authorised hospital specified in the order for the period specified in the order in accordance with section 82(a) or (b); or

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

(3) The supervising psychiatrist may make an order under subsection (2) on the basis of a report provided to the psychiatrist under section 106(5) without examining the involuntary community patient.

(4) As soon as practicable after making an order under subsection (2), the supervising psychiatrist must —

(a) put the order on the involuntary community patient's medical record; and

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

109. Continuation order

(1) As near as practicable to (but not earlier than 7 days before) the end of a treatment period, the supervising psychiatrist may make an order (a ***continuation order***) in the approved form continuing the period for which the community treatment order will remain in force from the end of the treatment period for the further period (not exceeding 3 months after the continuation order is made) that is specified in the continuation order.

(2) The supervising psychiatrist must not make the continuation order unless the supervising psychiatrist has examined the involuntary community patient in accordance with Part 5 Division 3 Subdivision 6.

(3) As soon as practicable after making the continuation order, the supervising psychiatrist must —

(a) put the order on the involuntary community patient's medical record; and

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

(4) If the supervising psychiatrist makes the continuation order, the involuntary community patient may request the supervising psychiatrist in writing to obtain the opinion of another psychiatrist about whether it was appropriate to have continued the period for which the community treatment order will remain in force (but not whether the period of the continuation was appropriate).

(5) The supervising psychiatrist must comply with the request.

(6) In obtaining the opinion of another psychiatrist, the supervising psychiatrist must have regard to the guidelines published under section 427(1)(a).

(7) A psychiatrist must not give an opinion for the purposes of subsection (4) unless the psychiatrist has examined the involuntary community patient in accordance with Part 5 Division 3 Subdivision 6.

(8) An opinion for the purposes of subsection (4) must be given in writing.

(9) As soon as practicable after obtaining the opinion, the supervising psychiatrist must —

(a) put the opinion on the involuntary community patient's medical record; and

(b) give a copy of the opinion to the involuntary community patient.

(10) If the opinion —

(a) has not been obtained within 14 days after the involuntary community patient's request is received by the supervising psychiatrist; or

(b) does not confirm that it was appropriate to have continued the period for which the community treatment order will remain in force,

the continuation order does not come into force or ceases to be in force.

(11) Subsection (10) does not apply if the opinion was not obtained within the 14-day period because the involuntary community patient did not attend an examination to be conducted by the psychiatrist who was to have given the opinion.

110. Varying order

(1) At any time while a community treatment order is in force, subject to subsection (2), the supervising psychiatrist may make an order in the approved form varying the terms of the order in any way that is consistent with section 104 and the supervising psychiatrist considers appropriate.

(2) The supervising psychiatrist cannot make an order under subsection (1) varying the period for which the community treatment will remain in force.

(3) As soon as practicable after making the order, the supervising psychiatrist must —

(a) put the order on the involuntary community patient's medical record; and

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

111. Making in-patient treatment order or revoking community treatment order

(1) At any time while a community treatment order is in force, the supervising psychiatrist may make either of these orders in the approved form —

(a) if satisfied, having regard to the criteria specified in section 25(1), that the involuntary community patient is in need of an in-patient treatment order — an in-patient treatment order authorising the patient's detention at an authorised hospital;

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

(2) The supervising psychiatrist may make an order under subsection (1) without doing any of these things —

(a) examining the involuntary community patient;

(b) giving the involuntary community patient notice of a breach of the community treatment order under section 113(1)(b);

(c) making an order to attend under section 114(1)(a).

(3) As soon as practicable after making an order under subsection (1), the supervising psychiatrist must —

(a) put the order on the involuntary community patient's medical record; and

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

Note for Division 3:

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

Division 4 — Breach of order

112. When involuntary community patient will be in breach

An involuntary community patient breaches a community treatment order if —

(a) the involuntary community patient has not complied with the order; and

(b) all reasonable steps have been taken to obtain the involuntary community patient's compliance; and

(c) the supervising psychiatrist reasonably believes that —

(i) despite the steps that have been taken, the non-compliance is continuing; and

(ii) there is a serious risk that the involuntary community patient will suffer mental or physical deterioration if the non-compliance continues.

113. What supervising psychiatrist must do if order breached

(1) If an involuntary community patient breaches a community treatment order, the supervising psychiatrist must —

(a) record the breach in accordance with subsection (2); and

(b) give notice of the breach in accordance with subsection (3) to the involuntary community patient.

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

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

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

(c) a statement that the supervising psychiatrist holds the beliefs referred to in section 112(c);

(d) the facts on which those beliefs are based;

(e) the grounds for those beliefs.

(3) The notice must be in the approved form and must include these things —

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

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

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

(4) As soon as practicable after taking action under subsection (1), the supervising psychiatrist must put these things on the involuntary community patient's medical record —

(a) the record of the breach;

(b) a copy of the notice of the breach.

114. Order to attend if non-compliance continues

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

(a) may make an order (an ***order to attend***) in the approved form requiring the involuntary community patient to attend at the time and place specified in the order to be provided with treatment; and

(b) if the supervising psychiatrist makes an order to attend, must give the involuntary community patient a copy of the order.

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

(3) As soon as practicable after taking action under subsection (1)(b), the supervising psychiatrist must put the order to attend on the involuntary community patient's medical record.

115. Making transport order

(1) If the involuntary community patient does not comply with the order to attend, a medical practitioner or mental health practitioner may make a transport order in respect of the patient.

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

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

116. Detention at place specified in order to attend

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

(a) attends a place in compliance with an order to attend; or

(b) is transported to a place under a transport order made under section 115(1).

(2) The involuntary community patient —

(a) must be received at the place; and

(b) can be detained at the place until the first of these things occurs —

(i) treatment is provided to the involuntary community patient;

(ii) the supervising psychiatrist makes an order under section 117(2)(a) in respect of the patient;

(iii) the expiry of 6 hours after the time when the patient was received at the place.

(3) If, by the end of the 6-hour period referred to in subsection (2)(b)(iii) —

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

(b) the supervising psychiatrist has not made an order under section 117(2)(a) in respect of the involuntary community patient,

the involuntary community patient cannot be detained any longer.

Notes for section 116:

1. Part 6 Division 4 applies in relation to the release of an involuntary community patient who is detained at a place under section 116(2)(b).

2. Part 6 Division 5 applies if an involuntary community patient absconds from the place where the patient can be detained under section 116(2)(b).

117. Other action supervising psychiatrist may take if non-compliance with orders

(1) This section applies in these circumstances —

(a) an involuntary community patient has breached a community treatment order under section 112;

(b) the supervising psychiatrist has given the involuntary community patient a notice under section 113(1)(b);

(c) since the involuntary community patient was given the notice —

(i) the patient's non-compliance with the community treatment order has continued; or

(ii) the supervising psychiatrist has made an order to attend under section 114(1)(a) with which the patient has not complied despite being given a copy of the order under section 114(1)(b).

(2) The supervising psychiatrist may make either of these orders in the approved form —

(a) if satisfied, having regard to the criteria specified in section 25, that the involuntary community patient is still in need of an involuntary treatment order but not satisfied of the things referred to in section 103(a) to (d) — an in-patient treatment order authorising the patient's detention at the authorised hospital specified in the order for the period specified in the order in accordance with section 82(a) or (b);

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

(3) The supervising psychiatrist may make an order under subsection (2) without examining the involuntary community patient.

(4) As soon as practicable after making an order under subsection (2), the supervising psychiatrist must —

(a) put the order on the involuntary community patient's medical record; and

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

Division 5 — Transport to authorised hospital

118. Application of this Division

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

119. Making transport order

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

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

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

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

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

Division 6 — Supervising psychiatrist and treating practitioner

120. Supervising psychiatrist

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

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

(a) the psychiatrist who made the order; or

(b) another psychiatrist.

121. Change of supervising psychiatrist

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

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

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

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

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

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

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

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

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

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

122. Treating practitioner

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

(2) The treating practitioner under a community treatment order —

(a) must be a medical practitioner or mental health practitioner; and

(b) can be the supervising psychiatrist under the order or another psychiatrist.

123. Change of treating practitioner

The supervising psychiatrist under a community treatment order —

(a) may transfer a practitioner's responsibility as the treating practitioner under the order to another practitioner who the supervising psychiatrist is satisfied is available and willing to be the treating practitioner under the order; and

(b) on transferring that responsibility, must inform the 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 —

(a) if the order is made under section 28(1) — the 72-hour period referred to in section 27(9)(a); or

(b) if the order is made under section 57(1) — the 72-hour period referred to in section 56(9)(a); or

(c) if the order is made under section 79(1) and the person is being detained under section 46(1)(b) — the 24-hour period referred to in section 46(1)(b)(i); or

(d) if the order is made under section 79(1) and the person is being detained under section 47(1) after an assessment of the person because of an order made under section 32(2)(a) — the 24-hour period referred to in section 47(1)(a)(i); or

(e) if the order is made under section 79(1) and the person is being detained under section 47(1) after an assessment of the person in the course of treatment while admitted to a hospital as a voluntary patient — the 24-hour period referred to in section 47(1)(a)(ii); or

(f) if the order is made under section 79(1) and the person is being detained under section 49(1)(c) after having been received at a hospital under section 46(1)(a) — the 72-hour period referred to in section 49(3)(a)(i); or

(g) if the order is made under section 79(1) and the person is being detained under section 49(1)(c) after having been detained at a hospital under section 47(1) — the 72-hour period referred to in section 49(3)(a)(ii); or

(h) if the order is made under section 79(1) and the person is being detained under section 55(1)(c) — the 24-hour period referred to in section 62(1)(b)(i); or

(i) if the order is made under section 79(1) and the person is being detained under an in-patient treatment order — the 72-hour period after the transport order is made; or

(j) if the order is made under section 101(1), 115(1) or 119(1) — the 72-hour period after the transport order is made.

126. Making transport order

(1) A transport order must be in the approved form and must specify these things —

(a) the name of the person to be transported;

(b) the hospital or other place to which the person must be transported;

(c) the initial transport period;

(d) the date and time the order is made.

(2) As soon as practicable after making a transport order, the psychiatrist or practitioner who made the order must —

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

(b) give a copy of the order to each of these people —

(i) the person;

(ii) the police officer or person prescribed who will carry out the order.

127. Operation of transport order

(1) A transport order made in respect of a person authorises a police officer, or a person prescribed by the regulations for this section, to do these things —

(a) apprehend the person and, for that purpose, exercise the powers under section 132(1);

(b) if the person is apprehended, transport the person to the hospital or other place specified in the order as soon as practicable and, in any event, by the later of —

(i) the end of the initial transport period; and

(ii) the end of the further period specified in any extension order made under section 128(3) in respect of the transport order;

(c) for the purpose of transporting the person, detain the person until the first of these things occurs —

(i) the person is received at the hospital or other place;

(ii) the later of the expiry of the initial transport period and the expiry of any further period referred to in paragraph (b)(ii).

(2) The psychiatrist or practitioner who makes a transport order can only authorise a police officer to carry out the order if a no less restrictive means of carrying out the order is reasonably available.

128. Extending transport order

(1) This section applies if —

(a) the person being transported under a transport order is in an area of the State in Schedule 2; and

(b) the police officer or person prescribed who is transporting the person forms the opinion that the initial transport period is likely to expire before the person is received at the hospital or other place to which the person is being transported.

(2) The police officer or person prescribed may orally request a medical practitioner or mental health practitioner to extend the period for which the transport order will remain in force.

(3) The practitioner may make an order (an ***extension order***) orally extending the period for which the transport order will remain in force from the end of the initial transport period for the further period (not exceeding 72 hours) that is specified in the extension order.

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

(a) record in the approved form that the order was made; and

(b) put the record on the person's medical record; and

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

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

129. Revoking transport order

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

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

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

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

(c) give another copy to the police officer or person prescribed who was to have carried out, or was carrying 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

(ii) the person in charge of the place at which the assessment will be conducted.

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

131. Authorised person may search patient or other person

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

(a) a person who is detained under this Act at an authorised hospital or other place to enable an examination to be conducted by a psychiatrist;

(b) a patient who is 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;

(c) any other person who presents at an authorised hospital.

(2) A person prescribed by the regulations for this section may —

(a) search the person and any article found on or with the person; and

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

(3) Sections 133 and 136 apply in relation to the search of a person under subsection (2)(a).

(4) Sections 134 and 136 apply in relation to the seizure of an article under subsection (2)(b).

132. Apprehension of persons

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

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

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

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

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

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

133. Search of persons

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

(2) In this section —

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

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

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

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

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

(c) frisk search the person;

(d) search any article removed under paragraph (b).

134. Seizure of articles

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

(2) Any of these articles may be seized —

(a) an intoxicant;

(b) an article, including a drug that is prescribed for the person, that could endanger the health or safety of the person or the safety of another person;

(c) an article that could be used by the person to cause damage to property;

(d) an article that is likely to materially assist in the determination under this Act of any matter relating to the person.

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

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

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

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

(a) the seizure; and

(b) how the article was dealt with.

135. Return of seized articles

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

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

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

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

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

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

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

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

136. Use of reasonable force and assistance

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

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

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

Division 2 — Other matters

137. Exercise of powers by Aboriginal police liaison officers

(1) In this section —

Aboriginal police liaison officer means a person who holds office under the *Police Act 1892* Part IIIA as an Aboriginal police liaison officer.

(2) The Commissioner of Police may authorise an Aboriginal police liaison officer to exercise the powers of a police officer under this Act if the Commissioner is satisfied that the Aboriginal police liaison officer has received appropriate training in the exercise of those powers.

Part 10 — Provision of treatment generally

Division 1 — Preliminary matters

138. Term used: treatment

In this Part —

treatment does not include —

(a) any of these treatments —

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

(ii) psychosurgery;

(iii) electroconvulsive therapy;

(iv) emergency psychiatric treatment;

or

(b) any of these interventions —

(i) a sterilisation procedure;

(ii) bodily restraint;

(iii) seclusion.

Division 2 — Voluntary patients

139. Informed consent necessary

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

Division 3 — Involuntary patients and mentally impaired accused

140. Application of this Division

This Division applies in relation to —

(a) an involuntary patient; or

(b) a patient who is 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.

141. Informed consent not necessary

(1) The patient can be provided with treatment without informed consent being given to the provision of the treatment.

(2) Sections 144 to 146 apply if treatment is being provided under subsection (1) to the patient.

142. Patient's wishes

(1) In deciding what treatment will be provided to the patient, the patient's psychiatrist must have regard to the patient's wishes in relation to the provision of treatment, to the extent those wishes can be ascertained.

(2) For the purpose of ascertaining the patient's wishes, the patient's psychiatrist must have regard to the following —

(a) any treatment decision in any advance health directive made by the patient;

(b) the terms of any enduring power of guardianship made by the patient;

(c) any other things that the patient's psychiatrist considers may be relevant in ascertaining the patient's wishes.

(3) The patient's psychiatrist must ensure that the patient's medical record includes —

(a) a record of the patient's wishes, to the extent those wishes could be ascertained; and

(b) the things to which the patient's psychiatrist had regard in ascertaining the patient's wishes; and

(c) if a decision made by the patient's psychiatrist to provide the patient with treatment is inconsistent with the patient's wishes, the reasons for making the decision.

(4) The patient's psychiatrist must give a copy of the reasons referred to in subsection (3)(c) to each of these people —

(a) the patient;

(b) if the patient has an enduring guardian or guardian, the enduring guardian or guardian;

(c) if the patient has a nominated person, the nominated person unless section 233 applies;

(d) if the patient has a carer, the carer unless section 244(3) or 246(3) applies;

(e) the Chief Psychiatrist.

143. Provision of treatment to Aboriginal or Torres Strait Islanders

Treatment provided to a patient who is an Aboriginal or Torres Strait Islander must be provided in collaboration with Aboriginal health workers and with traditional healers from the patient's community unless it would not be practicable or appropriate to do so.

144. Record of treatment

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

145. Second opinion may be requested

(1) This section applies to —

(a) the patient if the patient has the capacity to give informed consent to the provision of the treatment if that consent were required; or

(b) if the patient does not have that capacity, the person who is authorised by law to give that consent on the patient's behalf if that consent were required.

(2) If a person to whom this section applies is dissatisfied with the treatment being provided to the patient, the person may request —

(a) the patient's psychiatrist; or

(b) the Chief Psychiatrist,

to obtain the opinion of a psychiatrist who is not the patient's psychiatrist about whether it is appropriate to provide the treatment to the patient.

(3) The patient's psychiatrist or the Chief Psychiatrist must comply with the request.

(4) In obtaining the opinion of another psychiatrist, the patient's psychiatrist or the Chief Psychiatrist must have regard to the guidelines published under section 427(1)(a).

(5) A psychiatrist must not give an opinion for the purposes of subsection (2) unless the psychiatrist has examined the patient in accordance with Part 5 Division 3 Subdivision 6.

(6) The opinion must be given in writing.

(7) As soon as practicable after the patient's psychiatrist obtains the opinion, the patient's psychiatrist must —

(a) put the opinion on the patient's medical record; and

(b) give a copy of the opinion to the person who requested the opinion.

(8) As soon as practicable after the Chief Psychiatrist obtains the opinion, the Chief Psychiatrist must give —

(a) the opinion to the patient's psychiatrist; and

(b) a copy of the opinion to the person who requested it.

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

146. Chief Psychiatrist may request reconsideration

(1) If, after the opinion has been obtained, the person who requested that it be obtained remains dissatisfied with the treatment being provided to the patient, the Chief Psychiatrist may request the patient's psychiatrist to —

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

(b) report to the Chief Psychiatrist —

(i) the outcome of the reconsideration; and

(ii) the reasons for the outcome.

(2) Subsection (1) does not limit the powers of the Chief Psychiatrist under section 405.

Division 4 — Treatment, support and discharge planning

147. Application of this Division

This Division applies in relation —

(a) a patient who is admitted to an authorised hospital, whether as —

(i) an involuntary patient whose detention at the authorised hospital is authorised under an in-patient treatment order; or

(ii) 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) a patient in respect of whom a community treatment order is made; or

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

148. Treatment, support and discharge plan

(1) The treatment, care and support provided to a patient must be governed as far as practicable by a treatment, support and discharge plan.

(2) The treatment, support and discharge plan for a patient referred to in section 147(a) must outline —

(a) the treatment and support that will be provided to the patient while admitted to the authorised hospital; and

(b) the treatment and support that will be provided to the patient after the patient is discharged from the hospital.

(3) The treatment, support and discharge plan for a patient referred in section 147(b) must outline —

(a) the treatment and support that will be provided to the patient under the community treatment order as set out in that order; and

(b) the treatment and support that will be provided to the patient when the patient is no longer subject to the community treatment order.

(4) The treatment, support and discharge plan for a patient referred in section 147(c) must outline the treatment and support that will be provided to the patient after the patient is released.

149. Preparation and review of plan

(1) A patient's psychiatrist must ensure that a treatment, support and discharge plan for the patient —

(a) is prepared as soon as practicable after the patient is admitted, the community treatment order is made or the patient is released, as the case requires; and

(b) is reviewed regularly; and

(c) is revised as necessary.

(2) The plan must be prepared, reviewed and revised having regard to the guidelines published under section 427(1)(b).

(3) The patient's psychiatrist must ensure that —

(a) the plan (as prepared and as revised) is put on the patient's medical record; and

(b) a copy of the plan (as prepared and as revised) is given to each of these people —

(i) the patient;

(ii) the person referred to in section 150(c);

(iii) if the patient has a nominated person, the nominated person unless section 233 applies;

(iv) if the patient has a carer, the patient's carer unless section 244(3) or 246(3) applies.

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

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

(a) the patient —

(i) whether or not the patient has the capacity to consent to the implementation of the plan; and

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

(b) if the patient is a child, the child's parent or guardian;

(c) if the patient does not have the capacity to consent to the implementation of the plan —

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

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

(d) if the patient has a nominated person, the nominated person unless section 233 applies;

(e) if the patient has a carer, the patient's carer unless section 244(3) or 246(3) applies.

Part 11 — Regulation of certain kinds of treatment and other interventions

Division 1 — Electroconvulsive therapy

151. Electroconvulsive therapy (ECT): meaning of

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

152. ECT prohibited: general offence

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

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

153. ECT prohibited: child under 12 years of age

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

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

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

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

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

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

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

(a) the person is a medical practitioner; and

(b) the person who is authorised by law to consent on the child's behalf has given informed consent to the electroconvulsive therapy being performed; and

(c) the treating psychiatrist has recommended in writing that the electroconvulsive therapy be performed; and

(d) if the treating psychiatrist is not a child and adolescent psychiatrist, the treating psychiatrist has obtained the written opinion of a child and adolescent psychiatrist confirming the recommendation.

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

155. Requirements for ECT: voluntary patient: child between 12 and 18 years of age with capacity to consent

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

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

(b) has sufficient maturity and understanding to make reasonable decisions about matters relating to himself or herself.

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

(a) the person is a medical practitioner; and

(b) the child has given informed consent to the psychosurgery being performed; and

(c) the treating psychiatrist has recommended in writing that the electroconvulsive therapy be performed; and

(d) if the treating psychiatrist is not a child and adolescent psychiatrist, the treating psychiatrist has obtained the written opinion of a child and adolescent psychiatrist confirming the recommendation.

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

156. Confirmation of recommendation by child and adolescent psychiatrist

(1) A child and adolescent psychiatrist must not confirm a recommendation for the purposes of section 154(2)(d) or 155(2)(d) unless the child and adolescent psychiatrist —

(a) has examined the child in accordance with Part 5 Division 3 Subdivision 6; and

(b) is satisfied that the performance of the electroconvulsive therapy has clinical merit and is appropriate in the circumstances.

(2) If, after examining the child under subsection (1)(a), the child and adolescent psychiatrist is not satisfied of the matters referred to in subsection (1)(b), the child and adolescent psychiatrist must —

(a) refuse to confirm the recommendation; and

(b) advise the Chief Psychiatrist in writing of the refusal and the reasons for that refusal.

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

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

(a) unless —

(i) the person is a medical practitioner; and

(ii) the patient has given informed consent to the electroconvulsive therapy being performed;

or

(b) unless section section 160 applies.

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

Note for section 157:

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

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

(1) This section applies in relation to —

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

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

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

(ii) 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.

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

(a) unless —

(i) the person is a medical practitioner; and

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

or

(b) unless section 160 applies.

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

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

(1) This section applies in relation to —

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

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

(i) has reached 18 years of age; and

(ii) 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.

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

(a) unless —

(i) the person is a medical practitioner; and

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

or

(b) unless section section 160 applies.

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

160. Emergency ECT

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

(a) the person has reached 18 years of age; and

(b) one of the following applies —

(i) the person is —

(I) an involuntary patient; or

(II) 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;

(ii) informed consent to the electroconvulsive therapy being performed has been given;

and

(c) the person needs to be provided with electroconvulsive therapy —

(i) to save the person's life; or

(ii) to prevent the person from behaving in a way that is likely to result in serious physical injury to the person or another person;

and

(d) the Chief Psychiatrist has approved the electroconvulsive therapy being performed.

161. Mentally Impaired Accused Review Board: report

(1) As soon as practicable after a course of electroconvulsive therapy is performed on a mentally impaired accused, the treating psychiatrist must report the performance of the course to the Mentally Impaired Accused Review Board.

(2) The report must be in writing and must be accompanied by a copy of the Mental Health Tribunal's approval.

162. Statistics about ECT

(1) This section applies in relation to a mental health service where electroconvulsive therapy is performed.

(2) In this section —

month means any of the 12 months of the year;

serious adverse event, in relation to a course of treatments with electroconvulsive therapy, includes any of the following —

(a) premature consciousness during a treatment;

(b) anaesthetic complications, such as arrhythmia, during recovery from a treatment;

(c) an acute and persistent confused state during recovery from a treatment;

(d) muscle tears or vertebral column damage;

(e) severe and persistent headaches;

(f) persistent memory deficit.

(3) As soon as practicable after the end of each month, the person in charge of the mental health service must report to the Chief Psychiatrist on these matters —

(a) the number of people who completed a course of electroconvulsive therapy at the mental health service during the month;

(b) the number of those people who were children;

(c) the number of those people who were voluntary patients;

(d) the number of those voluntary patients who were children;

(e) the number of those people who were involuntary patients;

(f) the number of those involuntary patients who were children;

(g) the number of those people who were mentally impaired accused;

(h) the number of those mentally impaired accused who were children;

(i) the number of treatments with electroconvulsive therapy in each of those courses;

(j) the number of the completed courses of electroconvulsive therapy that were performed under section 160;

(k) details of any serious adverse event that occurred, or is suspected of having occurred, during or after any of those courses.

(4) For the purpose of subsection (3)(a), a person is taken to have completed a course of electroconvulsive therapy during a month if the person received the last treatment in the course during the month, whether or not the person received any of the other treatments in the course during the month.

(5) The report must be in the approved form.

Division 2 — Emergency psychiatric treatment

163. Emergency psychiatric treatment: meaning of

(1) Emergency psychiatric treatment is treatment that needs to be provided to a person —

(a) to save the person's life; or

(b) to prevent the person from behaving in a way that is likely to result in serious physical injury to the person or another person.

(2) Emergency psychiatric treatment does not include any of these treatments —

(a) treatment that is prohibited by section 173(1);

(b) psychosurgery;

(c) electroconvulsive therapy.

(3) Emergency psychiatric treatment does not include any of these interventions —

(a) a sterilisation procedure;

(b) bodily restraint;

(c) seclusion.

164. Informed consent not required

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

165. Record of emergency psychiatric treatment

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

(a) record the treatment provided in accordance with subsection (2); and

(b) put the record on the person's medical record; and

(c) give a copy of the record to the Chief Psychiatrist; and

(d) if the person is a mentally impaired accused, give another copy to the Mentally Impaired Accused Review Board.

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

(a) the name of the person provided with the treatment;

(b) the name and qualifications of the practitioner who provided the treatment;

(c) the names of any other people involved in providing the treatment;

(d) the date, time and place the treatment was provided;

(e) particulars of the circumstances in which the treatment was provided;

(f) particulars of the treatment provided.

Division 3 — Psychosurgery

166. Psychosurgery: meaning of

Psychosurgery is —

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

(i) the person's thoughts or emotions; or

(ii) the person's behaviour, except behaviour secondary to a paroxysmal cerebral dysrhythmia;

or

(b) the use of intracerebral electrodes to stimulate a person's brain without creating a lesion with the intention that the stimulation, whether alone or with other such stimulation at the same or other times, will influence or alter temporarily —

(i) the person's thoughts or emotions; or

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

167. Psychosurgery prohibited: general offence

(1) A person must not perform psychosurgery on another person except in accordance with this Division.

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

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

168. Psychosurgery prohibited: child under 12 years of age

(1) A person must not perform psychosurgery on a child under 12 years of age.

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

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

169. Requirements for psychosurgery: child between 12 and 18 years of age with no capacity to consent

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

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

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

(2) A person must not perform psychosurgery on the child unless —

(a) the person is a neurosurgeon; and

(b) the person who is authorised by law to consent on the child's behalf has given informed consent to the psychosurgery being performed; and

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

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

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

170. Requirements for psychosurgery: child who is between 12 and 18 years of age with capacity to consent

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

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

(b) has sufficient maturity and understanding to make reasonable decisions about matters relating to himself or herself.

(2) A person must not perform psychosurgery on the child unless —

(a) the person is a neurosurgeon; and

(b) the child has given informed consent to the psychosurgery being performed; and

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

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

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

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

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

(a) the person is a neurosurgeon; and

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

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

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

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

Note for section 171:

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

172. Mentally Impaired Accused Review Board: report

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

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

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

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

Division 4 — Deep sleep and insulin coma therapy

173. Deep sleep and insulin coma therapy prohibited

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

(a) deep sleep therapy;

(b) insulin coma therapy;

(c) insulin sub-coma therapy.

Penalty: imprisonment for 5 years.

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

Division 5 — Seclusion at authorised hospitals

174. Terms used

In this Division —

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

seclusion has the meaning given in section 175;

seclusion order —

(a) means a seclusion order made under section 178(1) or (3); and

(b) includes a seclusion order as extended under section 181(1).

175. Seclusion: meaning of

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

176. Seclusion at authorised hospital must be authorised

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

(a) an oral authorisation; or

(b) a seclusion order.

Penalty: a fine of $6 000.

177. Giving oral authorisation

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

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

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

(c) 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 at the authorised hospital.

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

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

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

Penalty: a fine of $6 000.

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

178. Making seclusion order

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

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

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

(c) 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 at the authorised hospital.

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

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

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

(a) the name and qualifications of the practitioner or person in charge who made the order;

(b) the date and time the order is made;

(c) if the order is made under subsection (3), the date and time the oral authorisation was given;

(d) the period for which the person can be secluded under the order, including (if the order is made under subsection (3)) the period for which the person was secluded under the oral authorisation;

(e) the room or area where the person can be secluded;

(f) with reference to the criteria specified in section 179(2), the reasons for authorising the seclusion;

(g) if a mental health practitioner made the order, with reference to the criteria specified in section 179(3), the reasons for the urgency;

(h) particulars of any observations made about the person —

(i) if the order is made under subsection (1) — when the person is secluded under the order; or

(ii) if the order is made under subsection (3) — when the person was secluded under the oral authorisation;

(i) particulars of any directions given by a medical practitioner or mental health practitioner about the treatment and care to be provided to the person while secluded.

(5) As soon as practicable after a person is secluded under a seclusion order made under subsection (1) by a person who is not a medical practitioner, the person who made the order must inform a medical practitioner that the person has been secluded.

Penalty: a fine of $6 000.

(6) As soon as practicable after making a seclusion order under subsection (1) or (3) in respect of a person, the practitioner or person in charge who made the order must —

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

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

179. Criteria for authorising seclusion

(1) This section applies for the purposes of section 177(1) and 178(1).

(2) The practitioner or person in charge must be satisfied of these things —

(a) the patient needs to be secluded to prevent the patient from —

(i) being injured or injuring another person; or

(ii) persistently damaging property; and

(b) there is no less restrictive way of preventing the injury or damage.

(3) A mental health practitioner must not make the seclusion order unless also satisfied that —

(a) the patient needs to be secluded urgently; and

(b) a medical practitioner or the person in charge of a ward is not reasonably available to make the order.

180. Treating psychiatrist (if any) to be informed

(1) This section applies if —

(a) a person secluded under this Division has a treating psychiatrist; and

(b) the seclusion is authorised by a person who is not the treating psychiatrist; and

(c) the treating psychiatrist is not informed of the seclusion under section 177(4) or 178(5).

(2) As soon as practicable after the person is secluded, the practitioner who authorised the seclusion must inform the treating psychiatrist that the person has been secluded.

181. Extending seclusion order

(1) A medical practitioner may make an order in the approved form extending the period for which a person can be secluded under a seclusion order.

(2) The order must specify —

(a) the period of the extension; and

(b) the reasons for the extension.

(3) As soon as practicable after making the order, the practitioner must —

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

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

182. Revoking seclusion order

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

(2) An order made under subsection (1) must be in the approved form and must specify the date and time the seclusion order is revoked.

(3) As soon as practicable after making the order under subsection (1), the practitioner or person in charge must —

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

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

183. Expiry of seclusion order

(1) This section applies if a seclusion order ceases to be in force in respect of a person because of the expiry of the period for which the person can be secluded under the order.

(2) A medical practitioner or mental health practitioner must —

(a) record in the approved form the date and time the seclusion order expired; and

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

184. Requirements relating to seclusion

(1) While a person is secluded under this Division —

(a) the treating psychiatrist; or

(b) if the person does not have a treating psychiatrist, the practitioner or person in charge who authorised the seclusion,

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

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

(a) a mental health practitioner observes the person every 15 minutes;

(b) a medical practitioner examines the person every 2 hours;

(c) the person is provided with these things —

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

(ii) sufficient food and drink;

(iii) access to toilet facilities;

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

185. Other information that must be recorded

(1) Whenever a person is secluded under this Division, the practitioner or person in charge who authorised the seclusion must ensure that —

(a) the things specified in subsection (2) are recorded in the approved form; and

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

(2) For subsection (1)(a), these things are specified —

(a) if a medical practitioner was informed of the seclusion under section 177(4) or 178(5) —

(i) the practitioner's name and qualifications; and

(ii) the date and time the practitioner was informed; and

(iii) if the practitioner physically attended on the person, the date and time of the attendance;

(b) the name and qualifications of the treating psychiatrist (if any);

(c) if the treating psychiatrist was informed of the seclusion under section 180(2), the date and time the treating psychiatrist was informed;

(d) any observations made about the person by a mental health practitioner while observing the person under section 184(2)(a);

(e) the dates, times and results of the examinations of the person conducted under section 184(2)(b).

186. Person must be examined within 6 hours after seclusion

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

(a) the treating psychiatrist; or

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

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

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

(a) record in the approved form these things —

(i) the practitioner's name and qualifications;

(ii) the date and time the examination was conducted;

(iii) the results of the examination, including any complication of or deterioration in the person's

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

and

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

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

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

(a) the treating psychiatrist; or

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

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

(c) the Chief Psychiatrist; and

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

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

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

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

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

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

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

Division 6 — Bodily restraint

188. Terms used

In this Division —

bodily restraint has the meaning given in section 189;

bodily restraint order —

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

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

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

189. Bodily restraint: meaning of

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

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

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

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

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

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

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

190. Bodily restraint must be authorised

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

(a) an oral authorisation; or

(b) a bodily restraint order.

Penalty: a fine of $6 000.

191. Giving oral authorisation

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

(a) a person who is a patient;

(b) a person who is referred under section 26(2) or (3)(a) or 33(2) for an examination to be conducted by a psychiatrist;

(c) 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.

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

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

(a) whether physical or mechanical restraint can be used to restrain the person; and

(b) if mechanical restraint can be used —

(i) the device that can be used to restrain the person; and

(ii) the way in which the device can be applied to the person's body.

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

Penalty: a fine of $6 000.

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

192. Making bodily restraint order

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

(a) a person who is a patient;

(b) a person who is referred under section 26(2) or (3)(a) or 33(2) for an examination to be conducted by a psychiatrist;

(c) 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.

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

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

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

(a) the name and qualifications of the practitioner who made the order;

(b) the date and time it is made;

(c) if the order is made under subsection (3), the date and time the oral authorisation was given;

(d) the period for which the person can be restrained under the order, including (if the order is made under subsection (3)) the period for which the person was restrained under the oral authorisation;

(e) whether physical or mechanical restraint can be used to restrain the person;

(f) if mechanical restraint can be used —

(i) the device that can be used to restrain the person; and

(ii) the way in which the device can be applied to the person's body;

(g) with reference to the criteria specified in section 193(2) —

(i) the reasons for authorising the use of bodily restraint on the person; and

(ii) if mechanical restraint is authorised — the reasons for authorising the use and application of the device specified under paragraph (f);

(h) if a mental health practitioner made the order, with reference to the criteria specified in section 193(3), the reasons for the urgency;

(i) particulars of any observations made about the person —

(i) if the order is made under subsection (1) — when the person is restrained under the order; or

(ii) if the order is made under subsection (3) — when the person was restrained under the oral authorisation;

(j) particulars of any directions given by a medical practitioner or mental health practitioner about the

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

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

Penalty: a fine of $6 000.

(6) As soon as practicable after making a bodily restraint order under subsection (1) or (3) in respect of a 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.

193. Criteria for authorising bodily restraint

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

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

(a) the person needs to be restrained to —

(i) provide the person with treatment; or

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

(iii) prevent the person from persistently damaging property;

and

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

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

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

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

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

194. Treating psychiatrist (if any) must be informed

(1) This section applies if —

(a) a person restrained under this Division has a treating psychiatrist; and

(b) the restraint is authorised by a practitioner who is not the treating psychiatrist; and

(c) the treating psychiatrist is not informed of the restraint under section 191(4) or 192(5).

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

195. Varying bodily restraint order

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

(a) extending or reducing the period for which the person can be restrained under the order; or

(b) varying the device that is authorised for use to restrict the person's movement or the way in which the device is authorised to be applied to the person's body.

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

(a) the period needs to be extended urgently; and

(b) a medical practitioner is not reasonably available to make an order under subsection (1)(a) extending the period.

(3) An order made under subsection (1) must be in the approved form and must specify these things —

(a) the variation of the bodily restraint order;

(b) the reasons for the variation.

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

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

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

196. Revoking bodily restraint order

(1) A medical practitioner or mental health practitioner may make an order revoking a bodily restraint order in force in respect of a person.

(2) An order made under subsection (1) must be in the approved form and must specify the date and time the bodily restraint order is revoked.

(3) As soon as practicable after making the order under subsection (1), the practitioner must —

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

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

197. Expiry of bodily restraint order

(1) This section applies if a bodily restraint order ceases to be in force in respect of a person because of the expiry of the period for which the person can be restrained under the order.

(2) A medical practitioner or mental health practitioner must —

(a) record in the approved form the date and time the bodily restraint order expired; and

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

198. Requirements relating to bodily restraint

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

(a) the treating psychiatrist; or

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

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

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

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

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

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

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

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

(f) the person is provided with these things —

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

(ii) sufficient food and drink;

(iii) access to toilet facilities;

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

199. Other information that must be recorded

(1) Whenever a person is restrained under this Division —

(a) the treating psychiatrist; or

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

must ensure that —

(c) the things specified in subsection (2) are recorded in the approved form; and

(d) the record is put on the person's medical record.

(2) For subsection (1)(c), these things are specified —

(a) if a medical practitioner was informed of the restraint under section 191(4) or 192(5) —

(i) the practitioner's name and qualifications; and

(ii) the date and time the practitioner was informed; and

(iii) the date and time the practitioner attended on the person under section 198(2)(c);

(b) the name and qualifications of the treating psychiatrist (if any);

(c) if the treating psychiatrist was informed of the restraint under section 194(2), the date and time the treating psychiatrist was informed;

(d) any observations made about the person by any of these practitioners —

(i) a mental health practitioner while attending on the person under section 198(2)(a);

(ii) a medical practitioner while attending on the person under section 198(2)(b);

(iii) a medical practitioner while examining the person under section 198(2)(c) or (d);

(e) if a psychiatrist conducts a review under section 198(2)(e) —

(i) the psychiatrist's name and qualifications; and

(ii) the date and time the review was conducted; and

(iii) the outcome of the review.

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

(1) Whenever a person is released from bodily restraint under this Division —

(a) the treating psychiatrist; or

(b) if the person does not have a treating psychiatrist, the person in charge of the mental health service or other place where the person was restrained,

must ensure that the person is examined by a medical practitioner as soon as practicable and, in any event, within 6 hours after being released unless the person is discharged from or otherwise leaves the mental health service or other place before the end of that period.

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

(a) record in the approved form these things —

(i) the practitioner's name and qualifications;

(ii) the date and time the examination was conducted;

(iii) the results of the examination, including any complication of or deterioration in the person's mental or physical condition that is a result of, or may be the result of, the person being restrained;

and

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

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

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

(a) the treating psychiatrist; or

(b) if the person does not have a treating psychiatrist, the person in charge of the mental health service or other place where the person was restrained,

must give the documents specified in subsection (2) relating to the restraint to —

(c) the Chief Psychiatrist; and

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

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

(a) a copy of the bodily restraint order made under section 192(1) or (3);

(b) a copy of any order made under section 195(1);

(c) a copy of any order made under section 196(1) or record made under section 197(2)(a);

(d) a copy of the records made under section 199(1)(c) and 200(2)(a).

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

Part 12 — People in authorised hospitals: health care generally

Division 1 — Examination to assess person's physical condition

202. Physical examination on arrival at authorised hospital

(1) This section applies in relation to a person who is —

(a) admitted to an authorised hospital as —

(i) a voluntary patient; or

(ii) an involuntary patient in respect of whom there is in force an in-patient treatment order authorising the patient's detention at the hospital; 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) received at an authorised hospital under section 46(1)(a) or 62(1)(a).

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

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

(a) the person may be examined;

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

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

(a) the practitioner's name and qualifications;

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

(c) the results of the examination.

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

203. Application of this Division

This Division applies in relation to a patient who is being detained at an authorised hospital as —

(a) an involuntary patient in respect of whom there is in force an in-patient treatment order authorising the patient's detention at the hospital; or

(b) 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.

204. Terms used

In this Division —

non-urgent medical treatment means treatment (as defined in the Guardianship Act section 3(1)) that is not —

(a) urgent medical treatment; or

(b) treatment as defined in section 3;

urgent medical treatment means urgent treatment as defined in the Guardianship Act section 110ZH.

205. Urgent medical treatment: treating psychiatrist may consent

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

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

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

206. Urgent medical treatment: report to Chief Psychiatrist

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

(a) the Chief Psychiatrist; and

(b) if the patient is a mentally impaired accused, the Mentally Impaired Accused Review Board,

that the treatment was provided.

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

(a) the name of the patient provided with the treatment;

(b) the name and qualifications of the practitioner who provided the treatment;

(c) the names of any other people involved in providing the treatment;

(d) the date, time and place the treatment was provided;

(e) particulars of the circumstances in which the treatment was provided;

(f) particulars of the treatment provided.

207. Non-urgent medical treatment: Chief Psychiatrist may consent

(1) If the patient needs to be provided with non-urgent medical treatment but does not have the capacity to give informed consent to the provision of the treatment, the Chief Psychiatrist can give informed consent on the patient's behalf in accordance with the Guardianship Act section 110ZD.

(2) If the patient is provided with non-urgent medical treatment with the consent of the Chief Psychiatrist given under subsection (1), the person in charge of the authorised hospital must ensure that the patient's medical record includes a record of the consent having been given.

Division 3 — Sterilisation procedure

208. Sterilisation procedure: meaning of

(1) A sterilisation procedure is the provision of medical or surgical treatment that is intended to make a person, or to ensure a person is, permanently infertile.

(2) A sterilisation procedure does not include the provision of medical or surgical treatment that is not intended to make a person, or to ensure a person is, permanently infertile but incidentally has or may have that result.

209. Requirements for sterilisation procedure

A person must not perform a sterilisation procedure on a person who has a mental illness unless —

(a) if the person is a child who does not have sufficient maturity or understanding to make reasonable decisions about matters relating to himself or herself — the Family Court has authorised the sterilisation procedure to be performed; or

(b) if the person —

(i) is a child who has sufficient maturity and understanding to make reasonable decisions about matters relating to himself or herself; or

(ii) has reached 18 years of age and has the capacity required by section 12 to give informed consent to the sterilisation procedure being performed,

the person has given informed consent to it being performed; or

(c) if the person has reached 18 years of age but does not have the capacity required by section 12 to give informed consent to the sterilisation procedure being performed — the person's enduring guardian or guardian has given consent in accordance with the Guardianship Act Part 5 Division 3 to it being performed.

Penalty: imprisonment for 5 years.

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

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

(a) the Chief Psychiatrist; and

(b) if the person is a mentally impaired accused, the Mentally Impaired Accused Review Board,

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.

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

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

(1) If the patient has reached 18 years of age, the person responsible under section 214 must ensure that at least one of these people is provided with an explanation, as described in the regulations, of the patient's rights under this Act —

(a) if the patient has an enduring guardian or guardian, the enduring guardian or guardian;

(b) if the patient has a nominated person, the nominated person unless section 233 applies;

(c) if the person has a carer, the carer unless section 244(3) or 246(3) applies.

(2) If the patient is a child, the person responsible under section 214 must ensure that at least one of these people is provided with an explanation, as described in the regulations, of the rights of the patient as a patient —

(a) the child's parent or guardian;

(b) if the child has a nominated person, the nominated person unless section 233 applies;

(c) if the child has a carer, the carer unless section 244(3) or 246(3) applies.

(3) The explanation must be provided to a person referred to in subsection (1)(a) to (c) or (2)(a) to (c) in a language, form of communication and terms that the person is likely to understand.

(4) This section applies despite any requirement under section 243(2) or 245(2) relating to the patient's consent or unreasonable refusal to give consent.

214. Person responsible for ensuring explanation is provided

For sections 212 and 213, the person responsible is —

(a) if section 211(a) applies in relation to the patient — the person in charge of the authorised hospital; or

(b) if section 211(b) applies in relation to the patient — the psychiatrist who makes the in-patient treatment order; or

(c) if section 211(c) applies in relation to the patient — the psychiatrist who grants the leave of absence; or

(d) if section 211(d) applies in relation to the patient — the psychiatrist who makes the community treatment order.

Subdivision 2 — Access to records about patients and former patients

215. Term used: relevant document

In this Subdivision —

relevant document, in relation to a person, means —

(a) the person's medical record; or

(b) any other document relating to the person.

216. Right to access medical record etc.

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

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

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

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

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

217. Restrictions on access

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

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

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

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

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

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

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

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

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

218. Providing access to medical practitioner or legal practitioner

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

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

(2) The person may nominate —

(a) a medical practitioner; or

(b) a legal practitioner,

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

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

219. Disclosure by medical practitioner or legal practitioner

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

Penalty: a fine of $6 000.

Subdivision 3 — Duties of staff of mental health services toward patients

220. Duty to report certain incidents

(1) In this section —

reportable incident, in relation to a person, means —

(a) unlawful sexual contact with the person; or

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

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

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

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

(b) the Chief Psychiatrist.

Penalty: a fine of $6 000.

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

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

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

Division 2 — Additional rights of in-patients in authorised hospitals

Subdivision 1 — Admission of voluntary patients

222. Admission by medical practitioner

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

223. Confirmation of admission by psychiatrist

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

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

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

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

psychiatrist is satisfied that the person is likely to benefit from being admitted.

(3) If a medical practitioner refuses to admit, or a psychiatrist refuses to confirm the admission of, a person to an authorised hospital as a voluntary patient, the medical practitioner or psychiatrist must —

(a) inform the person of the reasons for the refusal; and

(b) advise the person that the person may make a complaint about the refusal —

(i) under Part 16 to the person in charge of the authorised hospital or to the Director of HaDSCO or

(ii) to the Chief Psychiatrist.

(4) Any information or advice provided under subsection (3) to a person must be provided in a language, form of communication and terms the person is likely to understand.

Subdivision 2 — Rights of in-patients generally

225. Application of this Subdivision

This Subdivision applies in relation to a patient who is admitted to an authorised hospital, whether as —

(a) a voluntary patient; or

(b) an involuntary patient whose detention at the authorised hospital is authorised under an in-patient treatment order; or

(c) 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.

226. Personal possessions

(1) In this section —

personal possessions, of a patient, means any of these items —

(a) articles of clothing, jewellery or footwear belonging to the patient;

(b) articles for personal use by the patient;

(c) aids for daily living, or medical prostheses, that are usually used by the patient as means of assistance or to maintain the patient's dignity.

(2) Subject to subsections (3) and (4), the person in charge of an authorised hospital must ensure that each patient —

(a) is provided with a secure facility in which to store the patient's personal possessions; and

(b) is allowed to use those possessions.

(3) Subsection (2) does not apply in relation to an item (including an aid for daily living or medical prosthesis) that, in the opinion of the person in charge, may, in all the circumstances, pose a risk of harm to the patient or another person.

(4) Subsection (2) does not apply in relation to an item that is not an aid for daily living or medical prosthesis that, in the opinion of the person in charge, is not an appropriate item to store at the authorised hospital.

(5) Any personal possessions of a patient left at an authorised hospital for more than 6 months after the patient has been discharged from the hospital may be sold or otherwise disposed of by the person in charge of the hospital, but only after —

(a) the person in charge has given the patient at least one month's notice of the proposed disposal; and

(b) the patient has not claimed those possessions within that period.

227. Interview with psychiatrist

(1) A patient may, at any time while admitted to the authorised hospital, request an interview with a psychiatrist.

(2) The person in charge of the authorised hospital must ensure —

(a) that the request is complied with; and

(b) that the patient's medical record includes a record of the request having been made and whether or not the request was complied with.

(3) The psychiatrist who interviews a patient in compliance with a request made under subsection (1) must record on the patient's medical record —

(a) the date on which, and the time at which, the interview occurred; and

(b) the matters discussed during the interview.

228. Freedom of lawful communication

(1) This section applies subject to section 229.

(2) A patient has the right of freedom of lawful communication.

(3) A patient's freedom of lawful communication includes the freedom to do any of these things —

(a) communicate to the extent that is reasonable with other people in the authorised hospital;

(b) send and receive —

(i) uncensored private communications; and

(ii) uncensored communications from the patient's legal practitioner;

(c) receive visits from, and be otherwise contacted by, a mental health advocate at any time;

(d) receive visits from the patient's legal practitioner at all reasonable times;

(e) receive visits from other people at all reasonable times;

(f) access postal and telephone services, newspapers, radio and television at reasonable times.

229. Restrictions on freedom of communication

(1) Subject to subsections (2) and (3), a psychiatrist may make an order in the approved form —

(a) prohibiting a patient from exercising a right under section 228; or

(b) limiting the extent to which a patient can exercise a right under section 228.

(2) A psychiatrist cannot make an order under subsection (1) prohibiting, or limiting the extent of, a patient's right under section 228(3)(c) to receive visits from and be otherwise contacted by a mental health advocate.

(3) A psychiatrist cannot make an order under subsection (1) in respect of a patient unless satisfied that making the order is in the best interests of the patient.

(4) As soon as practicable after making an order under subsection (1) in respect of a patient, a psychiatrist must —

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

(b) record the reasons for making the order on the patient's medical record; and

(c) give a copy of the order to each of these people —

(i) the patient;

(ii) if the patient has a nominated person, the nominated person;

(iii) if the patient has a carer, the carer.

(5) Before the end of each 24-hour period that an order made under subsection (1) is in force, a psychiatrist must review the order and must confirm, amend or revoke it.

(6) The psychiatrist must —

(a) record the confirmation, amendment or revocation, and the reasons for the confirmation, amendment or revocation, on the patient's medical record; and

(b) advise the patient of the confirmation, amendment or revocation and those reasons.

(7) If, by the end of any 24-hour period referred to in subsection (5), the order has not been reviewed, the order ceases to be in force.

(8) Within 24 hours after making an order under subsection (1) in respect of a patient, a psychiatrist must advise the Chief Mental Health Advocate that the order has been made.

Division 3 — Nominated persons

Subdivision 1 — Purpose and effect of nomination

230. Role of nominated person

(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;

(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;

(b) being involved in —

(i) the consideration of the options that are available for the patient's treatment and care; and

(ii) the preparation and review of any treatment, support and discharge plan for the patient.

(3) To avoid doubt, a nomination does not authorise a patient's nominated person to consent on behalf of the patient to the admission of, or the provision of treatment to, the patient.

231. Effect of nomination

(1) A patient is entitled to uncensored communication with the patient's nominated person, including by receiving visits, making and receiving telephone calls, and sending and receiving mail and electronic communications.

(2) A patient's nominated person is entitled —

(a) to be provided with the information referred to in section 230(2)(a); and

(b) to be involved in the matters referred to in section 230(2)(b),

unless section 233 applies.

(3) A patient's nominated person may indicate the extent to which the nominated person wants to be provided with that information or to be involved in those matters.

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

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

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

(a) provided with information referred to in section 230(2)(a); or

(b) involved in a matter referred to in section 230(2)(b),

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

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

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

234. Nominated person cannot be identified or contacted

(1) Without limiting a requirement under this Act —

(a) to provide a patient's nominated person with information referred to in section 230(2)(a); or

(b) to involve a patient's nominated person in a matter referred to in section 230(2)(b),

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

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

(a) a record of when and how the nominated person was provided with that information or was involved in that matter; or

(b) if the nominated person could not be identified, or could not be provided with that information or involved in that matter, a record of the efforts made to do so.

Subdivision 2 — Making and ending nomination

235. Who can make nomination

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

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

236. Who can be nominated

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

(a) has reached 18 years of age; and

(b) has full legal capacity.

237. Formal requirements

(1) A nomination is not valid unless —

(a) it is in the approved form;

(b) it states the name and contact details of the person being nominated;

(c) it states the date on which it takes effect;

(d) it is signed by the person making the nomination or by another person in the presence of, and at the direction of, the person making the nomination;

(e) the signature referred to in paragraph (d) is witnessed by 2 persons referred to in subsection (2);

(f) it is signed by the person being nominated to indicate that the person accepts the nomination;

(g) the signature referred to in paragraph (f) is witnessed by 2 persons referred to in subsection (2).

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

238. Only one nominated person

(1) A person cannot have more than one nominated person at any time.

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

239. Resignation of nominated person

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

(2) The resignation takes effect on the later of the following —

(a) receipt by the person who made the nomination;

(b) the day specified in the resignation.

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

If a patient's nominated person —

(a) resigns the nomination; or

(b) becomes aware that the patient has revoked the nomination,

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

Note for Division 3:

Part 18 Division 9 confers jurisdiction on the Mental Health Tribunal to hear 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 —

(i) the consideration of the options that are available for the patient's treatment and care; and

(ii) the provision of support to the patient; and

(iii) the preparation and review of any treatment, support and discharge plan for the patient.

(2) A patient's carer may indicate the extent to which the carer wants to be provided with that information or to be involved in those matters.

(3) To avoid doubt, a patient's carer is not authorised to consent on behalf of the patient to the admission of, or the provision of treatment to, the patient.

243. Voluntary patient with capacity to consent

(1) This section applies in relation to a voluntary patient who has the capacity to give consent to the patient's carer being provided with the information referred to in section 242(1)(a) or being involved in the matters referred to in section 242(1)(b).

(2) The carer is entitled to be provided with that information, or to be involved in those matters, with the patient's consent.

244. Voluntary patient with no capacity to consent

(1) This section applies in relation to a voluntary patient who does not have the capacity to give consent to the patient's carer being provided with the information referred to in section 242(1)(a) or being involved in the matters referred to in section 242(1)(b).

(2) The carer is entitled to be provided with that information, or to be involved in those matters, unless subsection (3) applies.

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

245. Involuntary patient or mentally impaired accused with capacity to consent

(1) This section applies in relation to a patient who is —

(a) an involuntary patient; or

(b) a mentally impaired accused,

who has the capacity to give consent to the patient's carer being provided with the information referred to in section 242(1)(a) or being involved in the matters referred to in section 242(1)(b).

(2) The carer is entitled to be provided with that information, or to be involved in those matters —

(a) with the patient's consent; or

(b) if the patient has unreasonably refused to give consent, unless subsection (3) applies.

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

246. Involuntary patient or mentally impaired accused with no capacity to consent

(1) This section applies in relation to a patient who is —

(a) an involuntary patient; or

(b) a mentally impaired accused,

who does not have the capacity to consent to the patient's carer being provided with the information referred to in section 242(1)(a) or being involved in the matters referred to in section 242(1)(b).

(2) The carer is entitled to be provided with that information, or to be involved in those matters, unless subsection (3) applies.

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

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

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

(a) provided with information referred to in section 242(1)(a); or

(b) involved in a matter referred to in section 242(1)(b),

the patient's psychiatrist must ensure that the carer is provided with that information or is involved in that matter.

Division 3 — Obtaining patient's consent to carer's involvement

248. When being admitted to hospital

(1) This section applies when a patient is being admitted to a hospital, whether as —

(a) a voluntary patient; or

(b) an involuntary patient whose detention at the authorised hospital is authorised under an in-patient treatment order; or

(c) 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.

(2) The person in charge of the hospital must ensure that the patient is asked —

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

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

(i) provided with the information referred to in section 242(1)(a) in connection with the patient's admission; and

(ii) involved in the matters referred to in section 242(1)(b) while the patient is admitted.

(3) The person in charge of the hospital must ensure that the patient's medical record includes a record of the patient's answers to the questions asked under subsection (2).

249. Periodically while admitted

(1) This section applies in relation to a patient who is admitted to a hospital and who —

(a) has refused to give consent when asked under section 248(2)(b)(i) or (ii); or

(b) has refused to give consent when asked under subsection (2); or

(c) gave consent when asked under section 248(2)(b)(i) or (ii) or subsection (2) but has since then withdrawn the consent.

(2) The person in charge of the hospital must ensure that the patient is asked periodically whether or not the patient gives the consent that the patient has refused to give or has withdrawn.

(3) The patient in charge of the hospital must ensure that the patient's medical record includes a record of —

(a) each time the patient is asked under subsection (2); and

(b) the patient's answers at that time to the questions asked under subsection (2).

250. When community treatment order being made

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

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

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

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

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

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

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

251. When treatment, support and discharge plan being prepared

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

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

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

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

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

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

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

252. Patient can withdraw or give consent at any time

To avoid doubt —

(a) a patient who gives consent when asked under section 248(2)(b)(i) or (ii), 250(2)(b)(i) or (ii) or 251(2)(b)(i) or (ii) can withdraw consent at any time; and

(b) a patient who refuses to give consent when asked under section 248(2)(b)(i) or (ii), 250(2)(b)(i) or (ii) or 251(2)(b)(i) or (ii) can give consent at any time.

Part 15 — Children who have a mental illness

253. Best interests of child is paramount consideration

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

254. Child's wishes

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

255. Views of child's parent or guardian

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

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

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

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

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

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

257. Children who are in-patients: segregation from in-patients who have reached 18 years of age

A child must not be admitted to a mental health service unless the person in charge of the mental health service is satisfied that —

(a) the mental health service can provide the child with treatment, care and support that is appropriate having regard to the child's age, maturity, gender, culture and spiritual beliefs; and

(b) if, having regard to the child's age and maturity, it would be appropriate to do so, the treatment, care and support can be provided to the child in a part of the mental health service that is separate from any part of the mental health service in which persons who have reached 18 years of age are provided with treatment and care.

Part 16 — Complaints about mental health services

258. Terms used

In this Part —

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

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

mental health service means —

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

(b) a service provided specifically for carers,

but does not include a service referred to in paragraph (a) or (b) if it is —

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

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

(e) prescribed by the regulations for this paragraph;

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

259. Making complaint

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

(2) The complaint may be made —

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

(b) under the applied Part.

Note for section 259:

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

260. Service provider must have complaints procedure

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

(a) there is a procedure (a ***complaints procedure***) for investigating any complaint made to the person in charge about any mental health service provided by the service provider; and

(b) the complaints procedure is reviewed regularly and revised as necessary.

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

(a) copies of the most up to date version of the service provider's complaints procedure are freely available at the service provider's premises; and

(b) a copy of that version is published on the service provider's website; and

(c) a person who requests a copy of the service provider's complaints procedure is provided with a copy of that version.

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

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

(a) a reference to a disability were a reference to a mental illness; and

(b) a reference to a person with a disability were a reference to a person with a mental illness; and

(c) a reference to a disability service were a reference to a mental health service.

(2) The matters that may be alleged in a complaint made under the applied Part section 32(1) include a failure to comply with the Mental Health Care Charter.

(3) Subsection (2) does not limit any of the matters set out in the applied Part section 33(2).

Note for section 261:

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

262. Providing CEO with information about complaints

(1) In this section —

complaint information means information in relation to —

(a) a complaint or class of complaints made under this Part about a service provider; or

(b) complaints made under this Part about a service provider or class of service providers; or

(c) complaints made under this Part by or on behalf of a person who has a mental illness or class of persons who have a mental illness.

(2) The CEO may request the person in charge of a service provider to disclose complaint information, including personal information, to the CEO.

(3) The CEO may request the Director of HaDSCO to disclose complaint information, except personal information, to the CEO.

(4) The Director of HaDSCO may disclose complaint information, including personal information, to the CEO.

(5) Information may be disclosed in compliance with a request made under subsection (2) or (3), or under subsection (4), despite any written law relating to secrecy or confidentiality.

(6) If information is disclosed in good faith in compliance with a request made under subsection (2) or (3) or under subsection (4) —

(a) no civil or criminal liability is incurred in respect of the disclosure; and

(b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and

(c) the disclosure is not to be regarded as a breach of professional ethics or standards or any principles of conduct applicable to a person's employment or as unprofessional conduct.

(7) The regulations may include provisions about —

(a) the receipt and storage of information disclosed under this section; and

(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 —

(i) has or may have a mental illness; and

(ii) is being provided with treatment or care by a body or organisation that is prescribed by the regulations for the purposes of this subparagraph.

Division 2 — Mental health advocates: appointment, functions and powers

Subdivision 1 — Appointment

264. Chief Mental Health Advocate

The Minister may appoint a person to be the Chief Mental Health Advocate.

265. Other mental health advocates

(1) The Chief Mental Health Advocate may appoint one or more persons to be mental health advocates.

(2) Subject to subsections (3) and (4), anyone can be appointed under subsection (1).

(3) At least one mental health advocate appointed under subsection (1) must have qualifications, training or experience in dealing with children and young people.

(4) A mental health advocate appointed under subsection (1) may have qualifications, training or experience in dealing with a particular group in the community (for example, geriatrics or people with a particular ethnic background).

266. Functions of Chief Mental Health Advocate

The Chief Mental Health Advocate has these functions —

(a) ensuring that identified persons are visited or otherwise contacted in accordance with section 271;

(b) as an advocate for patients of mental health services, promoting compliance with Mental Health Care Charter by mental health services;

(c) preparing and publishing information about the role of mental health advocates and how to contact the Chief Mental Health Advocate;

(d) developing standards and protocols for the performance by mental health advocates of their functions under this Act;

(e) ensuring that mental health advocates receive adequate training in relation to the performance of their functions under this Act;

(f) providing advice and assistance to mental health advocates appointed under section 265(1) in relation to the performance of their functions under this Act;

(g) ensuring compliance with any directions given by the Minister under section 269(1) or by the Chief Mental Health Advocate under section 269(2);

(h) any other functions conferred on the Chief Mental Health Advocate by this Act.

267. Functions of mental health advocates

(1) Each mental health advocate has these functions —

(a) visiting or otherwise contacting identified persons in accordance with section 271;

(b) inquiring into, and reporting in accordance with section 274 on, the extent to which identified persons have been informed by mental health services of their rights under this Act and the extent to which those rights have been observed;

(c) hearing, inquiring into and seeking to resolve complaints made by or on behalf of identified persons about their detention at, or their treatment or care by, mental health services;

(d) referring any issues arising out of the performance of a function under paragraph (b) or (c) to the appropriate persons to deal with those issues;

(e) assisting identified persons to protect and enforce their rights under this Act;

(f) assisting identified persons to access legal services;

(g) in consultation with the medical practitioners and mental health practitioners who are responsible for their treatment and care, assisting identified persons to access other services.

(2) The performance by a mental health advocate of the function under subsection (1)(d) includes assisting an identified person to make a complaint under Part 16.

(3) The performance by a mental health advocate of the function under subsection (1)(e) includes —

(a) assisting an identified person in relation to any application made under this Act in respect of the identified person to the Mental Health Tribunal or the State Administrative Tribunal; and

(b) if authorised under this Act, representing an identified person in any proceedings under this Act in respect of the identified person before the Mental Health Tribunal or the State Administrative Tribunal.

268. Powers generally

A mental health advocate may do anything necessary or convenient for the performance of the functions conferred on the mental health advocate.

269. Direction and control

(1) In performing the functions conferred on the Chief Mental Health Advocate by this Act, the Chief Mental Health Advocate is subject to the general direction and control of the Minister.

(2) In performing the functions conferred on mental health advocates appointed under section 265(1), a mental health advocate appointed under that section is subject to the general direction and control of the Chief Mental Health Advocate.

Subdivision 2 — Contacting identified person or person with sufficient interest

270. Request for mental health advocate to contact identified person

(1) A request for an indentified person to be contacted by a mental health advocate may be made by —

(a) the identified person; or

(b) if the identified person has a treating psychiatrist, the treating psychiatrist; or

(c) a person who has a sufficient interest in the detention of the identified person at, or the treatment and care being provided to an identified person by, a mental health service.

(2) The request may be made to —

(a) the person in charge of the mental health service at which the identified person is being detained or that is providing treatment or care to the identified person; or

(b) the Chief Mental Health Advocate.

(3) As soon as practicable after receiving a request made under subsection (2)(a), a person in charge of a mental health service must notify the Chief Mental Health Advocate of the request.

271. Duty to contact identified person

(1) A person who is detained under section 27(1) or (2), 32(2)(b), 46(1)(b), 47(1), 52(1)(b), 53(3), 56(1) or (2) or 62(1)(b) 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.

(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 —

(a) if, when the order is made, the person has reached 18 years of age — by a mental health advocate within 7 days after the involuntary treatment order is made; or

(b) if, when the order is made, the person is a child — by a youth advocate within 24 hours after the involuntary treatment order is made.

(3) A person in respect of whom —

(a) an involuntary treatment order made before the day on which this section commences is in force; or

(b) an involuntary treatment order made on or after the day on which this section is in force and has been in force for more than 7 days,

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.

(4) A person —

(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.

(5) A person who is a voluntary patient but is not a person in respect of whom section 271(4)(a) or (b) applies must be visited or otherwise contacted by a mental health advocate within a reasonable time after a request is made under section 270(1) for the person to be contacted.

(6) Despite subsections (4) and (5), a voluntary patient who is a child must be visited or otherwise contacted by a youth advocate within 24 hours after a request is made under section 270(1) for the child to be contacted.

Subdivision 3 — Specific powers of mental health advocates

272. Specific powers of mental health advocates

(1) The powers of a mental health advocate include these powers —

(a) making inquiries about any of these things —

(i) the admission of an identified person to a mental health service;

(ii) the detention of an identified person at a mental health service;

(iii) the provision of treatment or care to an identified person by a mental health service;

(b) requiring a staff member of a mental health service to do any of these things —

(i) answer questions or provide information in response to any inquiry made about a matter referred to in paragraph (a)(i) to (iii);

(ii) make available any document that the mental health advocate may inspect, or take copies of or extracts from, under paragraph (c) or (d);

(iii) give reasonable assistance to the mental health advocate;

(c) subject to subsection (2), inspecting and taking copies of or extracts from any of these documents —

(i) the identified person's medical record;

(ii) any other documents about the identified person;

(d) inspecting and taking copies of or extracts from any other documents if those documents are required under an enactment prescribed by the regulations for the purposes of this paragraph to be kept by a mental health service;

(e) subject to subsection (2), seeing and speaking with the identified person.

(2) A mental health advocate cannot exercise a power under subsection (1)(c) or (e) in relation to an identified person who is a voluntary patient without the consent of —

(a) the identified person; or

(b) if the identified person does not have the capacity to give consent, the person who is authorised by law to consent to the admission of the identified person to, or the provision of treatment or care to the identified person by, the mental health service.

(3) Before a staff member of a mental health service complies with any requirement of a mental health advocate under subsection (1)(b)(i) or (ii), the person in charge of the mental health service must advise the mental health advocate of any information the disclosure of which to an identified person would, in the opinion of the person in charge —

(a) have a serious adverse effect on the health or safety of the identified person or another person; or

(b) reveal personal information about an individual who is not the identified person; or

(c) reveal information that was provided in confidence and continues to retain its confidential character.

(4) The person in charge of a mental health service must record on an identified person's medical record any advice given to a

mental health advocate under subsection (3) about the disclosure of information to the identified person.

(5) Subsection (3)(b) does not apply if the personal information is about an individual who has given consent to the disclosure of the information.

273. Interfering with exercise of powers: offences

(1) A person commits an offence if the person —

(a) without reasonable excuse, proof of which is on the person, does not answer a question or provide information when required under section 272(1)(b)(i); or

(b) in purporting to comply with a requirement under section 272(1)(b)(i), gives an answer or provides information that the person knows is false or misleading in a material particular; or

(c) in purporting to comply with a requirement under section 272(1)(b)(ii), makes available a document that the person knows is false or misleading in a material particular without —

(i) indicating that the document is false or misleading and, to the extent the person can, how the document is false or misleading; and

(ii) if the person has or can reasonably obtain the correct information — providing the correct information;

or

(d) without reasonable excuse, proof of which is on the person, does not give reasonable assistance when required under section 272(1)(b)(iii); or

(e) without reasonable excuse, proof of which is on the person, obstructs or hinders —

(i) a mental health advocate exercising a power under section 272; or

(ii) a person assisting a mental health advocate under section 272(1)(b)(iii).

Penalty: a fine of $6 000.

(2) It is enough for a prosecution notice lodged against a person for an offence under subsection (1)(b) or (c) to state that the answer, information or document was false or misleading to the person's knowledge without stating which.

274. Dealing with issues arising out of inquiries and investigations

(1) A mental health advocate may attempt to resolve any issue that arises in the course of an inquiry into or investigation of a matter under section 267(1)(b) or (c) by dealing directly with the relevant staff members of the mental health service concerned.

(2) If the mental health advocate cannot resolve the issue or considers it appropriate to do so, the mental health advocate may refer the issue to the Chief Mental Health Advocate.

(3) If an issue is referred to the Chief Mental Health Advocate under subsection (2), the Chief Mental Health Advocate may provide a report about the issue to —

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

(b) if it is —

(i) an issue relating to the environmental conditions at a private hospital or private psychiatric hostel — the CEO; or

(ii) another issue — the Chief Psychiatrist.

(4) If an issue is reported to the CEO or Chief Psychiatrist under subsection (3), the CEO or Chief Psychiatrist must advise the Chief Mental Health Advocate —

(a) whether or not the CEO or Chief Psychiatrist considers further inquiry into or investigation of the issue is warranted; and

(b) if so, the outcome of the further inquiry or investigation, including any recommendations made, directions given or other action taken under this Act or another written law.

(5) This section does not limit the powers that a mental health advocate has for dealing with any issue that arises in the course of an inquiry into or investigation of a matter under section 267(1)(b) or (c).

Division 3 — Mental health advocates: terms and conditions of appointment

Subdivision 1 — Chief Mental Health Advocate

275. Term of appointment

The Chief Mental Health Advocate —

(a) holds office for the period (not exceeding 5 years) specified in the instrument of appointment; and

(b) is eligible for reappointment.

276. Remuneration and other terms and conditions

Subject to this Subdivision, the Chief Mental Health Advocate has the terms and conditions of service, including as to remuneration and other allowances, determined by the Minister on the recommendation of the Public Sector Commissioner.

277. Resignation

(1) The Chief Mental Health Advocate 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.

278. Removal from office

The Minister may remove a person from the office of Chief Mental Health Advocate on any of these grounds —

(a) mental or physical incapacity;

(b) incompetence;

(c) neglect of duty;

(d) misconduct.

Subdivision 2 — Other mental health advocates

279. Term of appointment

A mental health advocate appointed under section 265(1) —

(a) holds office for the period (not exceeding 3 years) specified in the instrument of appointment; and

(b) is eligible for reappointment.

280. Resignation

(1) A mental health advocate appointed under section 265(1) may resign from office by writing signed and given to the Chief Mental Health Advocate.

(2) The resignation takes effect on the later of the following —

(a) receipt by the Chief Mental Health Advocate;

(b) the day specified in the resignation.

281. Removal from office

The Chief Mental Health Advocate may remove a person from the office of mental health advocate referred to in section 265(1) on any of these grounds —

(a) mental or physical incapacity;

(b) incompetence;

(c) neglect of duty;

(d) misconduct.

Subdivision 3 — Other matters relating to appointment, functions and powers

282. Conflict of interest

(1) A mental health advocate may —

(a) be employed by; or

(b) have a disqualifying interest in,

a body or organisation that provides treatment or care for identified persons.

(2) However, the mental health advocate cannot perform any functions as a mental health advocate in relation to an identified person who is being provided with treatment or care by the body or organisation.

(3) For subsection (1)(b), a mental health advocate has a disqualifying interest in a body or organisation if —

(a) the mental health advocate; or

(b) another person with whom the mental health advocate is closely associated,

has a financial interest in the body or organisation, except a financial interest prescribed by the regulations for this subsection.

(4) For subsection (3)(b), a person is closely associated with a mental health advocate if the person —

(a) is the spouse, de facto partner or child of the mental health advocate;

(b) is in partnership with the mental health advocate;

(c) is an employer of the mental health advocate;

(d) is a beneficiary under a trust, or an object of a discretionary trust, of which the mental health advocate is a trustee;

(e) is a body corporate of which the mental health advocate is an officer;

(f) is a body corporate in which the mental health advocate holds shares that have a total nominal value exceeding —

(i) the amount prescribed by the regulations for this paragraph; or

(ii) the percentage prescribed by the regulations for this paragraph of the total nominal value of the issued share capital of the body corporate;

(g) has a relationship specified in paragraphs (a) to (f) with the mental health advocate's spouse or de facto partner.

283. Identity cards

(1) The CEO must ensure that each mental health advocate is issued with an identity card in the form approved by the CEO.

(2) A mental health advocate must display his or her identity card whenever dealing with a person in respect of whom the mental health advocate has exercised, is exercising or is about to exercise a power under this Act.

(3) In any proceedings, the production by a mental health advocate of his or her identity card is conclusive evidence of his or her appointment under section 264 or 265(1), as the case requires.

(4) A person who ceases to be a mental health advocate must return his or her identity card to the CEO as soon as practicable unless the person has a reasonable excuse.

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

with under subsection (2), within 21 days after receiving the report.

(2) If —

(a) at the commencement of the period referred to in subsection (1) a House of Parliament is not sitting; and

(b) the Minister is of the opinion that the House will not sit during that period,

the Minister must transmit a copy of the report to the Clerk of that House.

(3) A copy of a report transmitted under subsection (2) to the Clerk of a House is taken to have been laid before that House.

(4) The laying of a copy of a report that is taken to have occurred under subsection (3) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

288. Inclusion in Agency's annual report

Without limiting section 286 or 287, the requirements of those sections in respect of a financial year are taken to have been complied with if —

(a) the report prepared under section 286 for the financial year is included in the Agency's annual report under the *Financial Management Act 2006* section 61 for that year; and

(b) the Minister causes a copy of the Agency's annual report to be laid before each House of Parliament, or to be dealt with under section 83 of that Act, within the 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;

registrar means a person lawfully holding, acting in or performing the functions of the office of registrar of the Mental Health Tribunal referred to in section 379;

Tribunal means the Mental Health Tribunal established by section 290.

Division 2 — Establishment, jurisdiction and constitution

290. Establishment

The Mental Health Tribunal is established.

291. Jurisdiction

The Tribunal has the jurisdiction conferred on it by this Part.

292. Constitution

When exercising its jurisdiction, subject to this Part, the Tribunal must be constituted by the members specified by the Head of the Tribunal.

293. Contemporaneous exercise of jurisdiction

The Tribunal constituted in accordance with this Part may exercise its jurisdiction even if the Tribunal differently constituted under this Part is exercising its jurisdiction at the same time.

Division 3 — Involuntary treatment orders: review

294. Initial review after order made

(1) In this section —

initial review period, for an involuntary treatment order, means —

(a) if, when the order is made, the involuntary patient has reached 18 years of age — 35 days after the order is made; or

(b) if, when the order is made, the involuntary patient is a child — 10 days after the order is made.

(2) Unless subsection (4) or (5) applies, as soon as practicable after an involuntary treatment order is made and, in any event, by the end of the initial review period, the Tribunal must review the order to decide whether or not the involuntary patient is still in need of the involuntary treatment order.

(3) It is sufficient compliance with subsection (2) if the review is commenced in accordance with that subsection and is completed as soon as practicable after the end of the initial review period.

(4) The Tribunal is not required to review the order under subsection (2) if the involuntary patient has not been an involuntary patient continuously since the order was made.

(5) The Tribunal is not required to review the order under subsection (2) if —

(a) the Tribunal has —

(i) previously reviewed under subsection (2) or section 298(1)(a), (b) or (c) or 299 an involuntary treatment order made in respect of the involuntary patient; or

(ii) previously reviewed under section 298(1)(c) the terms of a community treatment order that a psychiatrist has been directed under section 304(2)(b) to make in respect of the involuntary patient;

and

(b) the involuntary patient has been an involuntary patient continuously since the previous review.

295. Periodic reviews while order in force

(1) In this section —

last review, in relation to an involuntary treatment order, means —

(a) the last review under this Division of the order; or

(b) if the order has not been reviewed under this Division because it was made after another involuntary treatment order was last reviewed under this Division, the last review under this Division of that other order;

periodic review period, for an involuntary order, means —

(a) if, when the order was made, the involuntary patient had reached 18 years of age — 3 months after the last review under this Division of the order; or

(b) if, when the order was made, the involuntary patient was a child — 28 days after the last review under this Division of the order; or

(c) if the order is a community treatment order and the involuntary patient has been an involuntary community patient continuously for more than 12 months since the order was made — 6 months after the last review under this Division of the order;

prescribed number of days, before the end of a periodic review period, means —

(a) if, when the order being reviewed was made, the involuntary patient had reached 18 years of age — 14 days before the end of that period; or

(a) if, when the order was made, the involuntary patient was a child — 7 days before the end of that period.

(2) Unless subsection (4) applies, as near as practicable to (but not earlier than the prescribed number of days before) the end of each periodic review period for an involuntary treatment order, the Tribunal must review the order to decide whether or not the involuntary patient is still in need of the involuntary treatment order.

(3) It is sufficient compliance with subsection (2) if a review is commenced in accordance with that subsection and is completed as soon as practicable after the end of the periodic review period.

(4) The Tribunal is not required to review the order under subsection (2) if the involuntary patient has not been an involuntary patient continuously since the order was last reviewed under this Division.

296. Involuntary patient for continuous period

For sections 294 and 295, a person has been an involuntary patient continuously for a period if —

(a) one, or a series of 2 or more, involuntary treatment orders were in force in respect of the person for the whole period; or

(b) during the period, an involuntary treatment order ceased to be in force in respect of the person and another involuntary treatment order came into force in respect of the person within 7 days after the cessation.

297. Review period may be extended

(1) In this section —

relevant decision, in relation to the review of an involuntary treatment order under section 294(2) or 295(2), means a decision of the Tribunal the making of which involves a consideration of substantially the same issues as would be raised in the review.

(2) If, within 28 days before the end of the initial review period or a periodic review period for an involuntary treatment order, the Tribunal has made a relevant decision, the Tribunal may make an order extending the review period for the further period (not exceeding 21 days) specified in the order.

298. Application for review

(1) A person specified in subsection (2) may apply to the Tribunal for a review of any of these things —

(a) an involuntary treatment order, to decide whether or not it is appropriate that the involuntary patient continue to be an involuntary patient;

(b) an involuntary in-patient order, to decide whether or not it is appropriate that the involuntary in-patient continue to be detained in an authorised hospital;

(c) a community treatment order, to decide whether or not the terms of the order are appropriate;

(d) a transfer order made under section 60(1) or 78(2) in respect of an involuntary in-patient, or a refusal to make such an order, to decide whether or not it is appropriate for the involuntary patient to be or to have been transferred from an authorised hospital to another authorised hospital;

(e) the transfer under section 121 of a psychiatrist's responsibility as the supervising psychiatrist under a community treatment order, or a refusal to transfer the responsibility, to decide whether or not it is appropriate for the responsibility to be or to have been transferred to another psychiatrist;

(f) the transfer under section 123 of a practitioner's responsibility as the treating practitioner under a community treatment order, or a refusal to transfer the responsibility, to decide whether or not it is appropriate for the responsibility to be or to have been transferred to another practitioner.

(2) An application may be made under subsection (1) by any of these people —

(a) the involuntary patient;

(b) a mental health advocate;

(c) any other person who, in the Tribunal's opinion, has a sufficient interest in the matter.

(3) The application must be in writing.

(4) The application may be made at any time except within 28 days after the Tribunal has made a decision the making of which involved a consideration of substantially the same issues as would be raised by the application.

299. Review on Tribunal's own initiative

The Tribunal may, on its own initiative, review the case of an involuntary patient whenever the Tribunal considers it appropriate.

300. Suspending order pending review

The Tribunal may, on the application of a party to a proceeding under this Division or on its own initiative —

(a) suspend the operation of the involuntary treatment order being reviewed in the proceeding; or

(b) restrain the taking of any action, or any further action, under the involuntary treatment order being reviewed in the proceeding,

until the Tribunal has made a decision on the review.

301. Parties to proceeding

The parties to a proceeding under this Division are —

(a) the involuntary patient; and

(b) if the proceeding relates to an in-patient treatment order, the treating psychiatrist; and

(c) if the proceeding relates to a community treatment order, the supervising psychiatrist; and

(d) if the proceeding relates to an application made under section 298 and the applicant is not a person referred to in paragraph (a), (b) or (c), the applicant; and

(e) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

302. Constitution of Tribunal

(1) For a proceeding under section 294, 295 or 299 or a proceeding in relation to an application made under section 298, the Tribunal must be constituted by these 3 members —

(a) a member who is a legal practitioner;

(b) a member who is a psychiatrist or a child and adolescent psychiatrist if the involuntary patient is a child, unless subsection (2) or (3) applies;

(c) a member who is not —

(i) a legal practitioner; or

(ii) a medical practitioner; or

(iii) a mental health practitioner.

(2) If —

(a) the involuntary patient is a child; and

(b) none of the members who are child and adolescent psychiatrists are available for the proceeding but another member who is a medical practitioner or mental health practitioner who has experience in dealing with children who have a mental illness is available for the proceeding; and

(c) the proceeding does not involve a matter requiring a clinical judgment to be made about the involuntary patient's treatment,

the Tribunal may be constituted for the proceeding with that other member.

(3) If —

(a) the involuntary patient is not a child; and

(b) none of the members who are psychiatrists are available for the proceeding but another member who is a medical practitioner or mental health practitioner is available for the proceeding; and

(c) the proceeding does not involve a matter requiring a clinical judgment to be made about the involuntary patient's treatment,

the Tribunal may be constituted for the proceeding with that other member.

303. Things to which Tribunal must have regard

In making a decision on a review under this Division in respect of an involuntary patient, the Tribunal must have regard to these things —

(a) the patient's psychiatric condition;

(b) the patient's medical and psychiatric history;

(c) the patient's social circumstances;

(d) the patient's treatment, support and discharge plan.

304. What Tribunal may do on completing review

(1) On completing a review under this Division, subject to this Act, the Tribunal may make any orders and give any directions the Tribunal considers appropriate.

(2) Those orders and directions include the following —

(a) an order revoking an involuntary treatment order;

(b) a direction to the psychiatrist named in the order to make, within a reasonable period specified in the direction, a community treatment order in terms that are consistent with section 104 and specified in the direction;

(c) an order varying the terms of a community treatment order in any way that is consistent with section 104.

(3) The Tribunal cannot make an order or give a direction under subsection (1) in relation to an involuntary patient's treatment, support or discharge plan, but may recommend that the treating psychiatrist review the treatment, support or discharge plan.

305. Review of direction given to psychiatrist

(1) A psychiatrist who is directed under section 304(2)(b) to make a community treatment order may, during the period within which the order must be made, apply to the Tribunal for a review of the direction.

(2) Sections 300 to 303 and section 304(1) and (2)(a) and (c) apply (with the necessary changes) in relation to an application made under subsection (1) as if it were an application made under section 298(1)(c).

Division 4 — Voluntary in-patients: review of admission to authorised hospitals

306. Application of this Division

This Division applies in relation to a person (a ***voluntary in-patient***) who is admitted to an authorised hospital and has been admitted there for a continuous period of more that 12 months.

307. Application for review

(1) A person specified in subsection (2) may apply to the Tribunal for a review of the voluntary in-patient's admission to the authorised hospital to decide whether or not there is still a need for the voluntary in-patient to be admitted to the authorised hospital.

(2) An application may be made under subsection (1) by any of these people —

(a) the voluntary in-patient;

(b) a mental health advocate;

(c) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

308. Parties to proceeding

The parties to a proceeding in relation to the application are —

(a) the voluntary in-patient; and

(b) the treating psychiatrist; and

(c) if the applicant is not a person referred to in paragraph (a) or (b), the applicant; and

(d) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

309. Constitution of Tribunal

(1) For a proceeding in relation to the application, the Tribunal must be constituted by these 3 members —

(a) a member who is a legal practitioner;

(b) a member who is a psychiatrist or a child and adolescent psychiatrist if the voluntary patient is a child, unless subsection (2) or (3) applies;

(c) a member who is not —

(i) a legal practitioner; or

(ii) a medical practitioner; or

(iii) a mental health practitioner.

(2) If —

(a) the voluntary in-patient is a child; and

(b) none of the members who are child and adolescent psychiatrists are available for the proceeding but another member who is a medical practitioner or mental health practitioner who has experience in dealing with children

who have a mental illness is available for the proceeding; and

(c) the proceeding does not involve a matter requiring a clinical judgment to be made about the voluntary patient's treatment,

the Tribunal may be constituted for the proceeding with that other member.

(3) If —

(a) the voluntary in-patient is not a child; and

(b) none of the members who are psychiatrists are available for the proceeding but another member who is a medical practitioner or mental health practitioner is available for the proceeding; and

(c) the proceeding does not involve a matter requiring a clinical judgment to be made about the voluntary patient's treatment,

the Tribunal may be constituted for the proceeding with that other member.

310. Things to which Tribunal must have regard

In making a decision on a review under this Division in respect of a voluntary inpatient, the Tribunal must have regard to these things —

(a) the in-patient's psychiatric condition;

(b) the in-patient's medical and psychiatric history;

(c) the in-patient's social circumstances.

311. What Tribunal may do on completing review

On completing a review under this Division of a voluntary in-patient's admission to an authorised hospital, the Tribunal may recommend that the treating psychiatrist consider whether

or not there is still a need for the voluntary in-patient to be admitted to the authorised hospital.

Division 5 — Electroconvulsive therapy: approvals

312. Application of this Division

This Division applies for the purposes of sections 158(2)(a)(ii) and 159(2)(a)(ii).

313. Application for approval

(1) The treating psychiatrist may apply for approval to perform electroconvulsive therapy on a patient.

(2) The application must —

(a) be in writing; and

(b) set out the reasons why the treating psychiatrist is recommending that the electroconvulsive therapy be performed; and

(c) set out a treatment plan in relation to the electroconvulsive therapy, including —

(i) the name, qualifications and experience of the medical practitioner who it is proposed will perform the electroconvulsive therapy; and

(ii) the name and address of the place where it is proposed to perform the electroconvulsive therapy; and

(iii) the maximum number of treatments with electroconvulsive therapy that it is proposed will be performed; and

(iv) the maximum period over which it is proposed to perform that number of treatments; and

(v) the maximum period that it is proposed will elapse between each 2 treatments.

314. Parties to proceeding

The parties to a proceeding in relation to the application are —

(a) the patient; and

(b) the treating psychiatrist; and

(c) any other person who, in the Tribunal's opinion, has a sufficient interest in the matter.

315. Constitution of Tribunal

For a proceeding in relation to the application, the Tribunal must be constituted by these 3 members —

(a) a member who is a legal practitioner;

(b) a member who is a psychiatrist or a child and adolescent psychiatrist if the patient is a child;

(c) a member who is not —

(i) a legal practitioner; or

(ii) a medical practitioner; or

(iii) a mental health practitioner.

316. Things Tribunal must be satisfied of

The Tribunal must not approve the electroconvulsive therapy being performed on the patient unless satisfied of these things —

(a) performing the electroconvulsive therapy has clinical merit and is appropriate in the circumstances;

(b) the medical practitioner who it is proposed will perform the electroconvulsive therapy is suitably qualified and experienced;

(c) the place where it is proposed to perform the electroconvulsive therapy is a suitable place.

317. Things to which Tribunal must have regard

(1) In deciding whether or not to approve the electroconvulsive therapy being performed on the patient, the Tribunal must have regard to these things —

(a) the patient's wishes, to the extent those wishes can be ascertained;

(b) if the patient is a child —

(i) the views of the child's parent or guardian; and

(ii) the views of any youth advocate who is in contact with the child;

(c) if the patient has reached 18 years of age and does not have the capacity to give informed consent to the electroconvulsive therapy being performed, the person who is authorised by law to give that consent on the patient's behalf if that consent were required;

(d) if the patient has a nominated person, the views of the nominated person;

(e) if the patient has a carer, the views of the carer;

(f) the consequences for the treatment and care of the patient if the electroconvulsive therapy is not performed;

(g) the nature and degree of any significant risk of performing the electroconvulsive therapy;

(h) whether the electroconvulsive therapy is likely to promote and maintain the health and wellbeing of the patient;

(i) whether any alternative treatment is available;

(j) the nature and degree of any significant risk of providing any alternative treatment that is available.

(2) For the purpose of ascertaining the patient's wishes, the Tribunal must have regard to the following —

(a) any treatment decision in any advance health directive made by the patient;

(b) the terms of any enduring power of guardianship made by the patient;

(c) any other things that the Tribunal considers may be relevant in ascertaining the patient's wishes.

318. Decision on application

The Tribunal may decide the application by —

(a) approving the electroconvulsive therapy being performed in accordance with the treatment plan set out in the application; or

(b) approving the electroconvulsive therapy being performed in accordance with the treatment plan set out in the application subject to the maximum number of treatments with electroconvulsive therapy to be performed being reduced to the number specified by the Tribunal; or

(c) refusing to approve the electroconvulsive therapy being performed.

Division 6 — Psychosurgery: approvals

319. Application of this Division

This Division applies for the purposes of sections 169(2)(c), 170(2)(c) and 171(1)(c).

320. Application for approval

(1) The treating psychiatrist may apply to the Tribunal for approval for psychosurgery to be performed on a patient.

(2) The application must —

(a) be in writing; and

(b) set out the reasons why the treating psychiatrist is recommending that the psychosurgery be performed; and

(c) set out a treatment plan in relation to the psychosurgery, including —

(i) a detailed description of the psychosurgery proposed to be performed;

(ii) the name, qualifications and experience of the neurosurgeon who it is proposed will perform the psychosurgery;

(iii) the name and address of the place where it is proposed to perform the psychosurgery.

321. Parties to proceeding

The parties to a proceeding in relation to the application are —

(a) the patient; and

(b) the treating psychiatrist; and

(c) any other person who, in the Tribunal's opinion, has a sufficient interest in the matter.

322. Constitution of Tribunal

For a proceeding in relation to the application, the Tribunal must be constituted by these 5 members —

(a) a member who is a legal practitioner;

(b) a neurosurgeon who was appointed as a member after consultation by the Minister with the Minister responsible for administering the *Health Act 1911* held after consultation by that Minister with the Royal Australasian College of Surgeons;

(c) 2 members who are psychiatrists, one of whom must be a child and adolescent psychiatrist if the patient is a child;

(d) a member who is not —

(i) a legal practitioner; or

(ii) a medical practitioner; or

(iii) a mental health practitioner.

323. Things Tribunal must be satisfied of

The Tribunal must not approve the psychosurgery being performed on the patient unless satisfied of these things —

(a) informed consent to the psychosurgery being performed has been given as required by section 169(2)(b), 170(2)(b) or 171(1)(b);

(b) performing the psychosurgery has clinical merit and is appropriate in the circumstances;

(c) all alternatives to performing psychosurgery that are reasonably available and likely to be of a sufficient and lasting benefit to the patient have been appropriately trialled with the patient but have not resulted in a sufficient and lasting benefit to the patient;

(d) the neurosurgeon who it is proposed will perform the psychosurgery is suitably qualified and experienced;

(e) the place where it is proposed to perform the psychosurgery is a suitable place.

324. Things to which Tribunal must have regard

In deciding whether or not to approve the psychosurgery therapy being performed on the patient, the Tribunal must have regard to these things —

(a) if the patient is a child —

(i) the views of the child's parent or guardian; and

(ii) the views of any youth advocate who is in contact with the child;

(b) if the patient has a nominated person, the views of the nominated person;

(c) if the patient has a carer, the views of the carer;

(d) the consequences for the treatment and care of the patient if the psychosurgery is not performed;

(e) the nature and degree of any significant risk of performing the psychosurgery;

(f) whether the psychosurgery is likely to promote and maintain the health and wellbeing of the patient.

325. Decision on application

The Tribunal may decide the application by —

(a) approving the psychosurgery being performed in accordance with the application; or

(b) refusing to approve the psychosurgery being performed.

Division 7 — Non-clinical matters: compliance notices

326. Terms used

In this Division —

prescribed requirement means a requirement under this Act —

(a) to do any of these things —

(i) give a patient or other person a document or other information;

(ii) include a document or other information on a patient's medical record;

(iii) comply with a request made by a patient or other person;

or

(b) to ensure that a thing referred to in paragraph (a) is done;

service provider, in relation to a prescribed requirement, means —

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

(b) the medical practitioner or mental health practitioner,

who is required under this Act to comply with the requirement.

327. Tribunal may serve compliance notice on service provider

(1) The Tribunal may —

(a) on the application of a person referred to in section 328; or

(b) on its own initiative,

serve a service provider with a compliance notice if it appears to the Tribunal that the service provider has not complied with a prescribed requirement.

(2) The compliance notice may require the service provider —

(a) to take specified action within the specified period for the purpose of complying with the prescribed requirement; and

(b) to report to the Tribunal in the specified manner within the specified period that —

(i) the service provider has taken the action specified under paragraph (a) within the period specified under paragraph (a); or

(ii) if the service provider has not taken the specified action or has not taken that action within the specified period, the reasons for not doing so.

(3) Before deciding whether or not to serve a compliance notice on a service provider, the Tribunal must consider whether it would be appropriate to refer the matter to one or more of the following —

(a) the CEO;

(b) the CEO of the Health Department;

(c) the Chief Psychiatrist;

(d) the National Health Practitioner Board established under the *Health Practitioner Regulation National Law (WA) Act 2010* section 31 for a health profession or another

person or body that has functions relating to the professional registration of persons.

(4) If the Tribunal decides that it would be appropriate to refer the matter to a person or body referred to in subsection (3), the Tribunal —

(a) may refer the matter instead of, or in addition to, serving a compliance notice on the service provider; and

(b) if the Tribunal refers the matter under paragraph (a), must advise the service provider in writing of the referral.

328. Application for service of compliance notice

An application for the service by the Tribunal of a compliance notice on a service provider may be made under section 327(1)(a) by any of these people —

(a) the patient or other person to whom the prescribed requirement relates;

(b) any other person who, in the Tribunal's opinion, has a sufficient interest in the matter.

329. Parties to proceeding

The parties to a proceeding under section 327 are —

(a) the patient or other person to whom the prescribed requirement relates; and

(b) the service provider on whom the prescribed requirement is imposed; and

(c) if the proceeding relates to an application made under section 327(1)(a) and the applicant is not the patient or other person to whom the prescribed requirement relates, the applicant; and

(d) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

330. Constitution of Tribunal

For a proceeding under section 327, the Tribunal must be constituted by these 3 members —

(a) a member who is a legal practitioner;

(b) a member who is a medical practitioner or mental health practitioner;

(c) a member who is not —

(i) a legal practitioner; or

(ii) a medical practitioner; or

(iii) a mental health practitioner.

Division 8 — Restrictions on patients' freedom of communication: review of orders

331. Application for review

(1) A person specified in subsection (2) may apply to the Tribunal for a review 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) An application may be made under subsection (1) by any of these people —

(a) the patient;

(b) a mental health advocate;

(c) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

332. Parties to proceeding

The parties to a proceeding in relation to the application are —

(a) the patient; and

(b) the person who made the decision under section 229; and

(c) if the applicant is not the patient, the applicant; and

(d) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

333. Constitution of Tribunal

(1) For a proceeding in relation to the application, the Tribunal must be constituted by these 3 members —

(a) a member who is a legal practitioner;

(b) a member who is a psychiatrist or a child and adolescent psychiatrist if the patient is a child, unless subsection (2) or (3) applies;

(c) a member who is not —

(i) a legal practitioner; or

(ii) a medical practitioner; or

(iii) a mental health practitioner.

(2) If —

(a) the patient is a child; and

(b) none of the members who are child and adolescent psychiatrists are available for the proceeding but another member who is a medical practitioner or mental health practitioner who has experience in dealing with children who have a mental illness is available for the proceeding; and

(c) the proceeding does not involve a matter requiring a clinical judgment to be made about the voluntary patient's treatment,

the Tribunal may be constituted for the proceeding with that other member.

(3) If —

(a) the patient is not a child; and

(b) none of the members who are psychiatrists are available for the proceeding but another member who is a medical practitioner or mental health practitioner is available for the proceeding; and

(c) the proceeding does not involve a matter requiring a clinical judgment to be made about the patient's treatment,

the Tribunal may be constituted for the proceeding with that other member.

334. Decision on application

The Tribunal may decide the application by —

(a) confirming the order as made or amended; or

(b) amending, or further amending, the order as made or amended; or

(c) revoking the order.

Division 9 — Jurisdiction in relation to nominated persons

335. Application for decision

A person who, in the opinion of the Tribunal, has a sufficient interest in the matter may apply to the Tribunal for a decision under this Division.

336. Declaration about validity of nomination

(1) The Tribunal may declare that a nomination is valid or invalid.

(2) Instead of declaring a nomination to be invalid because of a failure to comply with section 237, the Tribunal —

(a) may declare the nomination to be valid; and

(b) may make an order varying the terms of the nomination in the manner the Tribunal considers most likely to give effect to the intention of the person who made the nomination.

(3) A declaration made under subsection (1) or (2)(a) has effect according to its terms.

337. Revocation of nomination

The Tribunal may revoke a nomination if satisfied that the nominated person is not an appropriate person to perform the role of the nominated person because —

(a) the person is likely, in performing that role, to adversely affect to a significant degree the interests of the person who made the nomination;

(b) the person is not capable of performing that role because of mental or physical incapacity;

(c) the person is not willing, or is not reasonably able, to perform that role.

338. Parties to proceeding

The parties to a proceeding in relation to an application under this Division are —

(a) the person who made the nomination; and

(b) the nominated person; and

(c) if the applicant is not a person referred to in paragraph (a) or (b), the applicant; and

(d) any other person who, in the opinion of the Tribunal, has a sufficient interest in the matter.

339. Constitution of Tribunal

For a proceeding in relation to an application under this Division, the Tribunal must be constituted by these 3 members —

(a) a member who is a legal practitioner;

(b) a member who is a psychiatrist;

(c) a member who is not —

(i) a legal practitioner; or

(ii) a medical practitioner; or

(iii) a mental health practitioner.

Division 10 — Procedural matters

Subdivision 1 — Proceedings generally

340. Lodgment of documents

An application or other document required to be made or given to the Tribunal must be lodged at the office of the Tribunal.

341. Sittings

The Tribunal sits at the times, and in the places in the State, determined by the Head of the Tribunal.

342. Conduct of proceedings

(1) A proceeding must be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matter before the Tribunal permits.

(2) In a proceeding, the Tribunal is bound by the rules of natural justice.

(3) Subject to this Part, the practice and procedure of the Tribunal in a proceeding is —

(a) as provided for in the rules made under section 369; or

(b) if no provision is made in the rules, as determined by the Tribunal.

343. Presiding member

The presiding member in a proceeding is —

(a) the Head of the Tribunal; or

(b) if the Tribunal constituted for the proceeding does not include the Head of the Tribunal, the member of the Tribunal as so constituted who is a legal practitioner.

344. Deciding questions in proceedings

(1) In this section —

question of law includes a question of mixed law and fact.

(2) Subject to subsection (3), a question in a proceeding before the Tribunal must be resolved according to the opinion of the majority of the members constituting the Tribunal for the proceeding.

(3) A question of law in a proceeding before the Tribunal must be resolved according to the opinion of the member of the Tribunal constituted for the proceeding who is a legal practitioner.

345. No fees payable

No fees are payable in relation to —

(a) any application made under this Part; or

(b) any proceeding of the Tribunal under this Part.

346. Each party to bear own costs

Subject to section 347(1)(b), each party to a proceeding must bear the party's own costs.

347. Frivolous, vexatious or improper proceedings

(1) The Tribunal may, if satisfied that a proceeding is frivolous or vexatious or has been brought for an improper purpose —

(a) dismiss the proceeding; and

(b) make any order as to costs that the Tribunal considers appropriate; and

(c) on the application of a party, order that the party who instituted the proceeding cannot institute a proceeding of

a kind specified in the order without the leave of the Tribunal.

(2) An order made under subsection (1)(c) has effect despite any other provision of this Part.

(3) The Tribunal may amend or revoke an order made under subsection (1)(c).

Subdivision 2 — Notice of proceedings

348. Notice of applications

(1) If the person concerned in an application has reached 18 years of age, the Tribunal must give each of these people a copy of the application —

(a) if the person has an enduring guardian or guardian, the enduring guardian or guardian;

(b) if the person has a nominated person, the nominated person;

(c) if the person has a carer, the carer.

(2) If the person concerned in an application is a child, the Tribunal must give each of these people a copy of the application —

(a) the child's parent or guardian;

(b) if the child has a nominated person, the nominated person;

(c) if the child has a carer, the carer;

(d) the Chief Mental Health Advocate.

349. Notice of hearings

(1) If the person concerned in a proceeding has reached 18 years of age, each of these people must be given notice of the time and place of any hearing —

(a) if the person has an enduring guardian or guardian, the enduring guardian or guardian;

(b) if the person has a nominated person, the nominated person;

(c) if the person has a carer, the carer.

(2) If the person concerned in a proceeding is a child, each of these people must be given notice of the time and place of any hearing —

(a) the child's parent or guardian;

(b) if the child has a nominated person, the nominated person;

(c) if the child has a carer, the carer;

(d) the Chief Mental Health Advocate.

Subdivision 3 — Appearance and representation

350. Party who has reached 18 years of age

(1) At a hearing in a proceeding, a party who has reached 18 years of age —

(a) may appear in person; or

(b) if the Tribunal makes an order under subsection (2) in respect of the party, must be represented by another person.

(2) The Tribunal may make an order that the person must be represented at the hearing if, in the Tribunal's opinion, it would not be in the person's best interests for the person to appear in person at the hearing.

(3) Even though the person is represented at the hearing, the person is entitled to express in person his or her views about any matter arising in the course of the hearing that may affect the person.

351. Party who is child with capacity to consent

(1) At a hearing in a proceeding, a party who is a child who has sufficient maturity and understanding to make reasonable decisions about matters relating to himself or herself —

(a) may appear in person; or

(b) may be represented by any of these people —

(i) the child's parent or guardian unless the Tribunal makes an order under section 357(2);

(ii) a youth advocate;

(iii) any other person who, in the Tribunal's opinion, can represent the child's interests.

(2) Even though the child is represented at the hearing, the child is entitled to express in person his or her views about any matter arising in the course of the hearing that may affect the child.

352. Party who is child with no capacity to consent

At a hearing in a proceeding, a party who is a child who does not have sufficient maturity or understanding to make reasonable decisions about matters relating to himself or herself must be represented by one of these people —

(a) the child's parent or guardian unless the Tribunal makes an order under section 357(2);

(b) a youth advocate;

(c) any other person who, in the Tribunal's opinion, can represent the child's interests.

353. Tribunal may make arrangements for representation

The Tribunal may make arrangements for a party to a proceeding to be represented at a hearing if the party wants the 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

the consideration of new material whether or not it existed when the reviewable decision was made.

(3) The purpose of a reviewable proceeding is to produce the correct and preferable decision at the time of the Tribunal's decision on the reviewable proceeding.

355. Closed hearings

(1) A hearing in a proceeding is not open to the public unless the Tribunal orders that the hearing or a part of the hearing is open to the public.

(2) The Tribunal may make an order —

(a) permitting a specified person to be present at; or

(b) excluding a specified person (including a witness) from,

a hearing in a proceeding or a part of a hearing in a proceeding.

356. Person chosen by person concerned may be present

(1) A person chosen by the person concerned in a proceeding may be present at a hearing unless the Tribunal makes an order excluding the person from the hearing or a part of the hearing.

(2) The Tribunal may make an order under subsection (1) on the application of any person if satisfied that it would not be in the person concerned's best interests for the person to be present at the hearing or the part of the hearing.

357. Parent or guardian may be excluded from hearing

(1) This section applies if a child is a party to a proceeding.

(2) The Tribunal may, on the application of —

(a) the child's treating psychiatrist; or

(b) if the child does not have a treating psychiatrist or the treating psychiatrist is not reasonably available, another psychiatrist,

make an order excluding the child's parent or guardian from a hearing in a proceeding or a part of a hearing in a proceeding if, in the Tribunal's opinion, it would not be in the child's best interests for the parent or guardian to be present at the hearing or the part of the hearing.

358. Evidence generally

(1) The Tribunal is not bound by the rules of evidence but may inform itself of a matter relevant to a proceeding in any manner the Tribunal considers appropriate.

(2) Evidence in a proceeding may be given orally or in writing.

(3) The Tribunal may require evidence in a proceeding to be given on oath or by affidavit.

(4) The presiding member in a proceeding may direct a person appearing as a witness in the proceeding —

(a) to answer a question relevant to the proceeding; or

(b) to produce a document relevant to the proceeding.

(5) A person appearing as a witness in a proceeding has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

359. Power to summon persons to attend and produce documents

The Tribunal may, by issuing a summons signed on behalf of the Tribunal by a member or the registrar and serving the summons on the person to whom it is addressed, require the person to attend before the Tribunal at the time and place specified in the summons —

(a) to give evidence in a proceeding; or

(b) to produce a document relevant to a proceeding that is in the person's custody or control and is specified in the summons; or

(c) to do both of those things.

360. Self-incrimination

(1) A person is not excused from complying with a direction given to the person under section 358(4) or a summons served on the person under section 359 on the ground that the answer to a question or the production of a document might tend to incriminate the person or expose the person to a criminal penalty.

(2) However, any answer given or document produced by a person in compliance with a direction given to the person under section 358(4) or a summons served on the person under section 359 is not admissible in evidence in any criminal proceedings against the person other than proceedings for an offence under section 362(d).

361. Powers in relation to documents produced

In relation to a document produced to the Tribunal in a proceeding, the Tribunal may do any of these things —

(a) inspect the document;

(b) retain the document for a reasonable period;

(c) take a copy of, or extract from, the document.

362. Offences relating to answering questions, producing documents and providing other information

A person commits an offence if the person —

(a) without reasonable excuse, proof of which is on the person, does not swear an oath or make an affirmation when required under section 358(3); or

(b) without reasonable excuse, proof of which is on the person, does not answer a question or produce a document when directed to do so under section 358(4); or

(c) without reasonable excuse, proof of which is on the person, does not attend before the Tribunal as required

by a summons served on the person under section 359; or

(d) gives an answer, produces a document or provides any other information to the Tribunal in a proceeding that the person knows is false or misleading in a material particular.

Penalty: a fine of $5 000.

363. Evidence and findings in other proceedings

In a proceeding, the Tribunal —

(a) may receive in evidence the transcript of evidence in a proceeding before a court or other person or body acting judicially and may draw any conclusion of fact from that evidence that the Tribunal considers appropriate; and

(b) may adopt a finding, decision or judgment of a court or other person or body acting judicially that is relevant to the proceeding.

364. Contempt of Tribunal

A person commits an offence if the person —

(a) wilfully insults the Tribunal, or a member of the Tribunal, constituted for a proceeding; or

(b) wilfully interrupts or obstructs the conduct of a hearing; or

(c) creates a disturbance, or takes part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting.

Penalty: a fine of $10 000.

365. Hearings to be recorded

The registrar must ensure that each hearing in a proceeding is recorded and the recording is kept in a form from which a transcript of the hearing can be prepared if required.

366. Suppression of publication

(1) In this section —

information about a proceeding means —

(a) an account of a proceeding or a part a proceeding; or

(b) any evidence in a proceeding; or

(c) the contents of a document, or of a part of a document, produced in a proceeding; or

(d) any other information about a proceeding.

(2) A person must not publish information about a proceeding that might identify —

(a) a party; or

(b) a person who is related to or associated with a party; or

(c) a witness in the proceeding; or

(d) a person who is or is alleged to be concerned in any other way in a matter to which the proceeding relates.

Penalty: a fine of $5 000.

(3) A person must not publish a list of proceedings identified by reference to the names of the parties to those proceedings except —

(a) by displaying in the Tribunal's premises a notice listing the proceedings; or

(b) as permitted by the regulations.

Penalty: a fine of $5 000.

(4) Subsections (2) and (3) do not apply in relation to any of these publications —

(a) the communication of a transcript of evidence or other document to a person concerned in a proceeding in a court or tribunal for use in connection with the proceeding;

(b) the communication of a transcript of evidence or other document to —

(i) a body that is responsible for disciplining members of the legal or medical profession; or

(ii) a person concerned in a proceeding before such a body;

(c) the communication of a transcript of evidence or other document to a body that grants assistance by way of legal aid for the purpose of making a decision as to whether such assistance should be granted or continued in a particular case;

(d) a publication genuinely intended primarily for the use of members of a profession, being —

(i) a separate volume of, or a volume in a part of a series of, law reports; or

(ii) a decision of a court or tribunal published from information stored electronically or otherwise; or

(iii) any other publication of a technical character.

(5) Without limiting subsection (2) or (3), the Tribunal may make an order in relation to a particular proceeding that —

(a) any evidence given before it; or

(b) the contents of a document, or of a part of a document, produced to it; or

(c) any other information,

must not be published or must not be published except in the manner or to a person specified by the Tribunal.

(6) A person who contravenes an order made under subsection (5) commits an offence.

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).

370. Content

(1) Rules made under section 369 may make provision for any matter that is —

(a) required or permitted by this Act to be provided for in the rules; or

(b) necessary or convenient for the Tribunal to operate efficiently, economically and expeditiously.

(2) Without limiting subsection (1), the rules may provide for any of these things —

(a) the organisation and management of the business of the Tribunal;

(b) custody and use of the Tribunal's seal;

(c) the practice and procedure of the Tribunal in a proceeding, including —

(i) the participation by a party, a party's representative or a witness in a hearing in a proceeding by telephone, video link or other means of communication; and

(ii) the conduct of all or part of a proceeding entirely on the basis of documents and without the parties, their representatives or any witnesses appearing at or participating in a hearing;

(d) documents to be lodged with or issued by the Tribunal, or to be served, in electronic form;

(e) the Tribunal's records.

371. Publication and tabling

(1) Rules made under section 369 —

(a) must be published in the *Gazette*; and

(b) take effect from the date of publication or from any later date or dates that are specified in the rules; and

(c) must be laid before each House of Parliament within 6 sitting days of the House next following the publication of the rules.

(2) If either House of Parliament passes a resolution, of which notice has been given at any time within 6 sitting days after the rules have been laid before it, disallowing the whole or a part of a rule, the rule or the part of it disallowed ceases to have effect.

(3) If the whole or a part of a rule is disallowed, the validity of any proceedings taken or of anything done under the rule or the part of it in the meantime is not affected.

(4) If such a resolution is passed, notice of the fact must be published in the *Gazette* as soon as practicable.

Division 12 — Tribunal members: appointment and related matters

372. Head of Tribunal

The Governor may appoint a person recommended by the Minister to be the Head of the Mental Health Tribunal.

373. Other members

(1) The Governor may appoint one or more persons recommended by the Minister to be members of the Mental Health Tribunal in addition to the Head of the Tribunal.

(2) Any number of persons that the Minister considers appropriate may be appointed under subsection (1), but —

(a) at least one must be a legal practitioner; and

(b) at least one must be a psychiatrist; and

(c) at least one must be a person who is not —

(i) a legal practitioner; or

(ii) a medical practitioner; or

(iii) a mental health practitioner.

374. Tenure of office

(1) The Head of the Tribunal may be appointed on a full-time or part-time basis.

(2) A member appointed under section 373(1) may be appointed on a full-time, part-time or sessional basis.

(3) A member —

(a) holds office for the period (not exceeding 5 years) specified in the instrument of appointment; and

(b) is eligible for reappointment.

375. Remuneration and other terms and conditions

(1) The Head of the Tribunal 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*.

(2) A member appointed under section 373(1) has the terms and conditions of service, including as to remuneration and other allowances, determined by the Minister on the recommendation of the Public Service Commissioner.

376. Resignation

(1) A member may resign from office by writing signed and given to the Governor.

(2) The resignation takes effect on the later of the following —

(a) receipt by the Governor;

(b) the day specified in the resignation.

377. Removal from office

The Governor may remove a person from the office of member on any of these grounds —

(a) mental or physical incapacity;

(b) incompetence;

(c) neglect of duty;

(d) misconduct;

(e) if the person was appointed to that office on the basis of having a particular status — ceasing to have that status;

(f) if the person was appointed to that office on the basis of not having a particular status — attaining that status.

378. Acting members

(1) The Minister may appoint a person to act in —

(a) the office of Head of the Mental Health Tribunal referred to in section 372; or

(b) the office of member of the Mental Health Tribunal referred to in section 373(1),

during a vacancy in the office.

(2) Subject to this section, the Minister may —

(a) determine the terms and conditions of an appointment under subsection (1)(a) or (b), including as to remuneration and allowances; and

(b) terminate an appointment under subsection (1)(a) or (b) at any time.

(3) A person appointed under subsection (1)(a) or (b) to act in a vacancy cannot act in the vacancy for more than 3 months.

(4) An appointment under subsection (1)(a) or (b) ends when the first of these things occurs —

(a) the vacancy is filled;

(b) the Minister terminates the appointment under subsection (2)(b);

(c) the expiry of the 3-month period referred to in subsection (3).

Division 13 — Registrar and other staff

379. Registrar

A registrar of the Mental Health Tribunal must be appointed under the *Public Sector Management Act 1994* Part 3.

380. Functions of registrar

In addition to the functions conferred on, or delegated to, the registrar under this Act, the registrar has these functions —

(a) keeping, in accordance with the regulations, particulars of each involuntary patient;

(b) ensuring that a proceeding for a review under Division 3 of an involuntary treatment order is brought before the Tribunal within the period specified under that Division or, if no period is specified, as soon as practicable;

(c) ensuring that any other proceeding is brought before the Board as soon as practicable;

(d) receiving any document that must be given under this Act to the Tribunal and arranging it to be dealt with as soon as practicable;

(e) ensuring that any document that must given under this Act by the Tribunal is given in accordance with this Act and as soon as practicable.

381. Head of Tribunal may give registrar directions

(1) The Head of the Tribunal may give the registrar directions with respect to the performance of the registrar's functions under this Act, either generally or in relation to a particular matter.

(2) The registrar must comply with a direction given under subsection (1).

382. Other staff

The staff necessary to assist the registrar in the performance of the registrar's functions under this Act must be appointed under the *Public Sector Management Act 1994* Part 3.

Division 14 — Annual reports

383. Annual report: preparation

Within 3 months after 30 June in each year, the Head of the Tribunal must prepare and give to the Minister a report as to the general activities of the Tribunal during the financial year ending on that day.

384. Annual report: tabling

(1) The Minister must cause a copy of a report referred to in section 383 to be laid before each House of Parliament, or dealt with under subsection (2), within 21 days after receiving the report.

(2) If —

(a) at the commencement of the period referred to in subsection (1) a House of Parliament is not sitting; and

(b) the Minister is of the opinion that the House will not sit during that period,

the Minister must transmit a copy of the report to the Clerk of that House.

(3) A copy of a report transmitted under subsection (2) to the Clerk of a House is taken to have been laid before that House.

(4) The laying of a copy of a report that is taken to have occurred under subsection (3) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

385. Inclusion in Agency's annual report

Without limiting section 383 or 384, the requirements of those sections in respect of a financial year are taken to have been complied with if —

(a) the report prepared under section 383 for the financial year is included in the Agency's annual report under the *Financial Management Act 2006* section 61 for that year; and

(b) the Minister causes a copy of the Agency's annual report to be laid before each House of Parliament, or to be dealt with under section 83 of that Act, within the period required by section 64 of that Act.

Division 15 — Other matters

386. Seal

The Tribunal must have a seal.

387. Judicial notice of certain matters

(1) A court or other person or body acting judicially must take judicial notice of the following —

(a) the signature of a person who was or is a member;

(b) the signature of a person who is or was the registrar;

(c) the fact that a person referred to in paragraph (a) or (b) is or was a member or the registrar;

(d) a seal of the Tribunal affixed to a document.

(2) A court or other person acting judicially must presume that the seal of the Tribunal affixed to a document was properly affixed 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 —

(a) the person in respect of whom the decision being reviewed was made is a child; and

(b) none of the members who are child and adolescent psychiatrists are available but another member who is a medical practitioner or mental health practitioner who has experience in dealing with children who have a mental illness is available; and

(c) the proceeding does not involve a matter requiring a clinical judgment to be made about the child's treatment,

the State Administrative Tribunal may be constituted with that other member.

(3) If —

(a) the person in respect of whom the decision being reviewed was made is not a child; and

(b) none of the members who are psychiatrists are available but another member who is a medical practitioner or mental health practitioner is available; and

(c) the proceeding does not involve a matter requiring a clinical judgment to be made about the person,

the Tribunal may be constituted with that other member.

390. Constitution for ECT matters

For the purpose of exercising jurisdiction under section 388 on an application for review of a decision under Part 18 Division 5, the State Administrative Tribunal must be constituted by these 5 members —

(a) a judicial member;

(b) 2 members who are psychiatrists, one of whom must be a child and adolescent psychiatrist if the person in respect of whom the decision being reviewed was made is a child;

(c) 2 members, neither of whom is —

(i) a legally qualified member; or

(ii) a medical practitioner; or

(iii) a mental health practitioner.

391. Constitution for psychosurgical matters

For the purpose of exercising jurisdiction under section 388 on an application for review of a decision under Part 18 Division 6, the State Administrative Tribunal must be constituted by these 5 members —

(a) a judicial member;

(b) a neurosurgeon who was appointed as a member after consultation by the Minister responsible for administering the *State Administrative Tribunal Act 2004* with the Minister responsible for administering the *Health Act 1911* held after consultation by that Minister with the Royal Australasian College of Surgeons;

(c) a member who is a psychiatrist or a child and adolescent psychiatrist if the person in respect of whom the decision being reviewed was made is a child;

(d) 2 members, neither of whom is —

(i) a legally qualified member; or

(ii) a medical practitioner; or

(iii) a mental health practitioner.

392. Determination of questions of law before Mental Health Tribunal

(1) In this section —

question of law does not include a question of mixed law and fact.

(2) The Mental Health Tribunal may apply to the State Administrative Tribunal for a determination on a question of law that arises in a proceeding before the Mental Health Tribunal.

Division 2 — Procedural matters

393. No fees payable

No fees are payable in relation to —

(a) any application made under this Part; or

(b) any proceeding of the State Administrative Tribunal under this Part.

394. Appearance and representation

(1) At a hearing in a proceeding under this Part, a party to the proceeding —

(a) may appear before the State Administrative Tribunal in person; or

(b) if the State Administrative Tribunal makes an order under subsection (2) in respect of the party, must be represented by another person.

(2) The State Administrative Tribunal may make an order that the party must be represented at the hearing if, in the State Administrative Tribunal's opinion, it would not be in the party's best interests for the party to appear in person at the hearing.

(3) The State Administrative Tribunal may make arrangements for a party to a proceeding under this Part to be represented at a hearing in the proceeding if the party wants the State Administrative Tribunal to make such an arrangement on the party's behalf.

395. Closed hearings

(1) A hearing in a proceeding under this Part is not open to the public unless the State Administrative Tribunal orders that the hearing or a part of the hearing is open to the public.

(2) The State Administrative Tribunal may make an order —

(a) permitting a specified person to be present at; or

(b) excluding a specified person (including a witness) from,

a hearing in a proceeding under this Part or a part of a hearing in a proceeding under this Part.

396. Suppression of publication

(1) In this section —

information about a proceeding means —

(a) an account of a proceeding, or a part a proceeding, under this Part; or

(b) any evidence in a proceeding under this Part; or

(c) the contents of a document, or of a part of a document, produced in a proceeding under this Part; or

(d) any other information about a proceeding under this Part.

(2) A person must not publish information about a proceeding that might identify —

(a) a party to the proceeding; or

(b) a person who is related to or associated with a party to the proceeding; or

(c) a witness in the proceeding; or

(d) a person who is or is alleged to be concerned in any other way in a matter to which the proceeding relates.

Penalty: a fine of $5 000.

(3) A person must not publish a list of proceedings under this Part identified by reference to the names of the parties to those proceedings except —

(a) by displaying in the State Administrative Tribunal's premises a notice listing the proceedings; or

(b) as permitted by the regulations.

Penalty: a fine of $5 000.

(4) Subsections (2) and (3) do not apply in relation to any of these publications —

(a) the communication of a transcript of evidence or other document to a person concerned in a proceeding in a court or tribunal for use in connection with the proceeding;

(b) the communication of a transcript of evidence or other document to —

(i) a body that is responsible for disciplining members of the legal or medical profession; or

(ii) a person concerned in a proceeding before such a body;

(c) the communication of a transcript of evidence or other document to a body that grants assistance by way of legal aid for the purpose of making a decision as to whether such assistance should be granted or continued in a particular case;

(d) a publication genuinely intended primarily for the use of members of a profession, being —

(i) a separate volume of, or a volume in a part of a series of, law reports; or

(ii) a decision of a court or tribunal published from information stored electronically or otherwise; or

(iii) any other publication of a technical character.

(5) Without limiting subsection (2) or (3), the State Administrative Tribunal may make an order in relation to a particular proceeding that —

(a) any evidence given before it; or

(b) the contents of a document, or of a part of a document, produced to it; or

(c) any other information,

must not be published or must not be published except in the manner or to a person specified by the State Administrative Tribunal.

(6) A person who contravenes an order made under subsection (5) commits an offence.

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;

(c) neglect of duty;

(d) misconduct.

Subdivision 2 — Functions and powers generally

401. Responsibility for treatment and care

(1) The Chief Psychiatrist is responsible for overseeing the treatment and care of these people —

(a) all voluntary patients who are being provided with treatment or care by a mental health service referred to in paragraph (b), (c) or (d) of the definition of ***mental health service*** in section 3;

(b) all involuntary patients;

(c) all mentally impaired accused who must be detained at an authorised hospital —

(i) because of a determination made under the CL(MIA) Act section 25(1)(b) or amended under section 26 of that Act; or

(ii) under the CL(MIA) Act section 25(2)(a);

(d) all persons who have been referred under section 26(2) or (3)(a) or 33(2) for an examination to be conducted by a psychiatrist;

(e) all persons 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.

(2) The Chief Psychiatrist must discharge that responsibility by —

(a) publishing under section 427(2) standards for the treatment and care to be provided by mental health services to the persons referred to in subsection (1); and

(b) overseeing compliance with those standards.

402. Other functions

In addition to the functions conferred by section 401, the Chief Psychiatrist has these functions —

(a) reporting to the CEO on matters concerning the Chief Psychiatrist's responsibilities under section 401(1);

(b) advising the CEO of recommendations about those matters that the Chief Psychiatrist considers it would be appropriate for the CEO to make to the Minister;

(c) any other functions conferred on the Chief Psychiatrist by this Act.

403. Direction and control

In performing the functions conferred on the Chief Psychiatrist by this Act or another written law, the Chief Psychiatrist is subject to the general direction and control of the CEO.

404. Powers generally

In addition to the specific powers conferred on the Chief Psychiatrist by this Act or another written law, the Chief Psychiatrist may do anything necessary or convenient for the performance of the functions conferred on the Chief Psychiatrist.

Subdivision 3 — Specific powers relating to treatment and care

405. Review of treatment

(1) The Chief Psychiatrist —

(a) may review any decision of a psychiatrist about the provision of treatment to an involuntary patient, but only after giving the psychiatrist written notice of the proposed review; and

(b) on the review, may decide to —

(i) affirm the decision; or

(ii) vary the decision; or

(iii) revoke the decision; or

(iv) substitute another decision.

(2) The Chief Psychiatrist —

(a) must advise the psychiatrist in writing of the decision under subsection (1)(b) and the reasons for the decision; and

(b) may give the psychiatrist written directions about implementing that decision.

(3) The psychiatrist must comply with any directions given under subsection (2)(b).

(4) This section does not affect the operation of Part 10 Division 3 or 4 in relation to the provision of treatment to an involuntary patient.

406. Visits to mental health services

(1) The Chief Psychiatrist may visit —

(a) an authorised hospital whenever the Chief Psychiatrist considers it appropriate to do so; and

(b) a mental health service that is not an authorised hospital whenever the Chief Psychiatrist reasonably suspects that proper standards of treatment and care have not been, or are not being, maintained by the mental health service.

(2) The Chief Psychiatrist may visit a mental health service under subsection (1) at any time without notice.

(3) While visiting a mental health service under subsection (1), the Chief Psychiatrist may do any of these things —

(a) inspect any part of the mental health service;

(b) interview any person specified in section 401(1) who is being provided with treatment or care by the mental health service;

(c) require a staff member of the mental health service to do any of these things —

(i) answer questions or provide information about the provision of treatment or care by the mental health service to any person specified in section 401(1);

(ii) produce any medical records or other documents relating to the treatment or care that has been, or is being, provided by the mental health service to any person specified in section 401(1);

(iii) give reasonable assistance to the Chief Psychiatrist;

(d) inspect, or take copies of or extracts from, any medical records or other documents produced under paragraph (c)(ii).

407. Interfering with visits to mental health services: offence

(1) A person commits an offence if the person —

(a) without reasonable excuse, proof of which is on the person, does not answer a question or provide information when required under section 406(3)(c)(i); or

(b) in purporting to comply with a requirement under section 406(3)(c)(i), gives an answer or provides information that the person knows is false or misleading in a material particular; or

(c) in purporting to comply with a requirement under section 406(3)(c)(ii), makes available a document that the person knows is false or misleading in a material particular without —

(i) indicating that the document is false or misleading and, to the extent the person can, how the document is false or misleading; and

(ii) if the person has or can reasonably obtain the correct information — providing the correct information;

or

(d) without reasonable excuse, proof of which is on the person, does not give reasonable assistance when required under section 406(3)(c)(iii); or

(e) without reasonable excuse, proof of which is on the person, obstructs or hinders —

(i) the Chief Psychiatrist exercising a power under section 406; or

(ii) a person assisting the Chief Psychiatrist under section 406(3)(c)(iii).

Penalty: a fine of $6 000.

(2) It is enough for a prosecution notice lodged against a person for an offence under subsection (1)(b) or (c) to state that the answer, information or document was false or misleading to the person's knowledge without stating which.

408. Requesting information from mental health services

(1) In this section —

relevant information means information that, in the Chief Psychiatrist's opinion, is or is likely to be relevant to the treatment or care that has been, or is being, provided to a person or class of persons specified in section 401(1).

(2) The Chief Psychiatrist may request a mental health service that holds relevant information to disclose the information to the Chief Psychiatrist.

(3) Information may be disclosed in compliance with a request under subsection (2) despite any written law relating to secrecy or confidentiality.

(4) If information is disclosed in good faith in compliance with a request under subsection (2) —

(a) no civil or criminal liability is incurred in respect of the disclosure; and

(b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and

(c) the disclosure is not to be regarded as a breach of professional ethics or standards or any principles of conduct applicable to a person's employment or as unprofessional conduct.

(5) The regulations may include provisions about —

(a) the receipt and storage of information disclosed under this section; and

(b) the restriction of access to such information.

Subdivision 4 — Notifiable incidents

409. Term used: notifiable incident

In this Subdivision —

notifiable incident, in relation to a person referred to in section 401(1), means any of these events —

(a) the death of the person, wherever it occurs;

(b) an error in any medication prescribed for, or administered or supplied to, the person that has had, or is likely to have, an adverse effect on the person;

(c) any other incident in connection with the provision of treatment or care to the person that has had, or is likely to have, an adverse effect on the person;

(d) a reportable incident, as defined in section 220(1), in relation to the person;

(e) any other event that the Chief Psychiatrist declares, by notice published in the *Gazette*, to be a notifiable incident for the purposes of this definition.

410. Person in charge of mental health service must report notifiable incidents

(1) The person in charge of a mental health service must report to the Chief Psychiatrist the occurrence of a notifiable incident in relation to a person referred to in section 401(1) who is being provided with treatment or care by the mental health service as soon as practicable after the person in charge becomes aware of the occurrence.

Penalty: a fine of $6 000.

(2) The report must be in the approved form and must include these things in relation to the notifiable incident —

(a) the date on which, and the time at which, the incident occurred;

(b) the location where the incident occurred;

(c) the name, and status under section 401(1), of the person in relation to whom the incident occurred;

(d) the names of any staff members of the mental health service who were involved in the incident;

(e) the names of any other people who were involved in the incident;

(f) the names of any staff members of the mental health service who witnessed the incident;

(g) the names of any other people who witnessed the incident;

(h) a description of the incident and the circumstances in which it occurred;

(i) any other information about the incident that the person in charge considers relevant to include.

411. Action Chief Psychiatrist may take in relation to notifiable incident

(1) On receipt of a report under section 410(1) in relation to a notifiable incident, the Chief Psychiatrist may do one of the following —

(a) investigate the incident;

(b) refer the incident to all or any of the following —

(i) the CEO;

(ii) the CEO of the Health Department;

(iii) the National Health Practitioner Board established under the *Health Practitioner Regulation National Law (WA) Act 2010* section 31 for a health profession or another person or body that has functions relating to the professional registration of persons;

(c) take no action in relation to the incident.

(2) Despite having decided to investigate a notifiable incident under subsection (1)(a), the Chief Psychiatrist may decide at any time during the investigation to refer the incident to a person or body under subsection (1)(b).

(3) If the Chief Psychiatrist decides to refer a notifiable incident to a person or body under subsection (1)(b) or to take no action in relation to a notifiable incident under subsection (1)(c), the Chief Psychiatrist cannot investigate or further investigate the incident under subsection (1)(a).

412. Chief Psychiatrist must advise person in charge of decision

The Chief Psychiatrist must advise the person in charge of the mental health service in relation to which a notifiable incident was reported under section 410(1) in writing of any decision that the Chief Psychiatrist makes under section 411 in respect of the incident.

413. Powers of Chief Psychiatrist for investigation under s. 411(1)(a)

(1) For the purpose of conducting an investigation under section 411(1)(a), the Chief Psychiatrist may —

(a) make any inquiries the Chief Psychiatrist considers appropriate; and

(b) exercise any of the powers that the Chief Psychiatrist has under section 406 or 408.

(2) For the purpose of subsection (1)(b), sections 406, 407 and 408 apply with the necessary changes.

414. Chief Psychiatrist must advise person in charge of outcome of investigation

On completing the investigation of a notifiable incident under section 411(1)(a), the Chief Psychiatrist must advise the person in charge of the mental health service in relation to which the incident was notified under section 410(1) in writing of the outcome of the investigation.

Subdivision 5 — Annual reports

415. Annual report: preparation

(1) Within 3 months after 30 June in each year, the Chief Psychiatrist must prepare and give to the Minister a report about the performance during the financial year ending on that day of the functions conferred on the Chief Psychiatrist by this Act or another written law.

(2) The report must include statistics about these matters —

(a) electroconvulsive therapy that was performed during the year and reported on under section 162(3);

(b) electroconvulsive therapy that the Chief Psychiatrist approved during the year under section 160(d);

(c) emergency psychiatric treatment that was provided during the year and reported on under section 165(1)(c);

(d) bodily restraint that was applied during the year and reported on under section 201(1)(c);

(e) seclusion that was imposed during the year and reported on under section 187(1)(c);

(f) urgent medical treatment that was provided during the year and reported on under section 206(1)(a);

(g) non-urgent medical treatment to which the Chief Psychiatrist gave informed consent under section 207(1) during the year;

(h) notifiable incidents that occurred during the year and were reported on under section 410(1) and the action taken under section 411 in relation to those notifiable incidents.

416. Annual report: tabling

(1) The Minister must cause a copy of a report referred to in section 415 to be laid before each House of Parliament, or dealt with under subsection (2), within 21 days after receiving the report.

(2) If —

(a) at the commencement of the period referred to in subsection (1) a House of Parliament is not sitting; and

(b) the Minister is of the opinion that the House will not sit during that period,

the Minister must transmit a copy of the report to the Clerk of that House.

(3) A copy of a report transmitted under subsection (2) to the Clerk of a House is taken to have been laid before that House.

(4) The laying of a copy of a report that is taken to have occurred under subsection (3) must be recorded in the Minutes, or Votes

and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

417. Inclusion in Agency's annual report

Without limiting section 415 or 416, the requirements of those sections in respect of a financial year are taken to have been complied with if —

(a) the report prepared under section 415 for the financial year is included in the Agency's annual report under the *Financial Management Act 2006* section 61 for that year; and

(b) the Minister causes a copy of the Agency's annual report to be laid before each House of Parliament, or to be dealt with under section 83 of that Act, within the period required by section 64 of that Act.

Subdivision 6 — Miscellaneous matters

418. Compliance with request for information about patient or person detained

(1) A person may request the Chief Psychiatrist to advise the person whether or not a particular individual is admitted to or detained at a mental health service.

(2) If, in the Chief Psychiatrist's opinion, the person making the request has a sufficient interest in the matter, the Chief Psychiatrist may provide the person with the following information (as applicable) —

(a) the date of the individual's admission to, or detention at, the mental health service;

(b) the date of the individual's discharge or release from the mental health service;

(c) if the individual died while admitted to, or detained at, the mental health service, the date of death.

419. Request for list of mentally impaired accused

(1) The Chief Psychiatrist may request the Mentally Impaired Accused Review Board in writing to give the Chief Psychiatrist a list of mentally impaired accused.

(2) The Mentally Impaired Accused Review Board must comply with any request made under subsection (1).

420. Delegation

(1) The Chief Psychiatrist may delegate to another psychiatrist any power or duty of the Chief Psychiatrist under another provision of this Act.

(2) The delegation must be in writing signed by the Chief Psychiatrist.

(3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

(4) This section does not limit the ability of the Chief Psychiatrist to perform a function through an officer or agent.

Division 2 — Mental health practitioners and authorised mental health practitioners

421. Mental health practitioners

(1) A mental health practitioner is —

(a) a psychologist; or

(b) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing and midwifery profession; or

(c) a person registered as an occupational therapist under the *Occupational Therapists Act 2005*; or

(d) a person with a qualification recognised under subsection (2),

who has at least 3 years' experience in the management of people who have a mental illness.

(2) For subsection (1)(d), the Chief Psychiatrist may, by order published in the *Gazette*, recognise —

(a) a degree awarded by an Australian University on the completion of a course in social work; or

(b) another qualification the Chief Psychiatrist considers to be at least equivalent to a degree referred to in paragraph (a).

(3) The Chief Psychiatrist may, by order published in the *Gazette*, amend or revoke an order published under subsection (2).

422. Authorised mental health practitioners

(1) The Chief Psychiatrist may, by order published in the *Gazette*, designate a mental health practitioner as an authorised mental health practitioner if satisfied that the practitioner has the qualifications, training and experience appropriate for performing the functions of an authorised mental health practitioner under this Act.

(2) The order may specify any limits within which, or any conditions subject to which, those functions may be performed by the authorised mental health practitioner designated as such by the order.

(3) The Chief Psychiatrist may, by order published in the *Gazette*, amend or revoke an order published under subsection (1).

(4) The regulations may provide for matters relating to authorised mental health practitioners, including the following —

(a) the qualifications, training and experience to which the Chief Psychiatrist must have regard when deciding whether to make, amend or revoke an order under this section;

(b) the performance by authorised mental health practitioners of their functions under this Act;

(c) any matter about which an authorised mental health practitioner must notify the Chief Psychiatrist;

(d) the grounds on which the designation of an authorised mental health practitioner must or may be revoked.

Division 3 — Authorised hospitals

423. Authorised hospital: meaning of

An authorised hospital is —

(a) a public hospital, or part of a public hospital, in respect of which an order is in force under section 424; or

(b) a private hospital the licence for which is endorsed under the *Hospitals and Health Services Act 1927* section 26DA(2).

424. Authorisation of public hospitals

(1) The Governor may, by order published in the *Gazette*, authorise a public hospital, or a part of a public hospital, for —

(a) the reception of persons under this Act; and

(b) the admission of involuntary patients.

(2) The Governor may, by order published in the *Gazette*, amend or revoke an order made under subsection (1).

(3) If an authorisation of a hospital or a part of a hospital is revoked under subsection (2), every person received at and every involuntary patient admitted to the hospital or that part of the hospital must be transferred in accordance with the regulations 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).

(3) The Chief Psychiatrist may publish guidelines or standards for such other purposes relating to the treatment and care of persons who have a mental illness as the Chief Psychiatrist considers appropriate.

428. Application, adoption or incorporation of other documents

Guidelines published under section 427 may apply, adopt or incorporate (with or without changes) the whole or part of a document that is in force or existing at a particular time or from time to time.

429. Publication on Agency's website

It is sufficient compliance with section 427 if a copy of the 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;

State in-patient means a person in respect of whom an in-patient treatment order is in force.

(2) For section 434(1), a State in-patient absconds from an authorised hospital if the in-patient is absent without leave from the authorised hospital as described in section 89(2).

(3) For section 436(1), an interstate in-patient absconds from an interstate mental health service if the in-patient leaves the interstate mental health service without lawful authority.

Division 2 — Intergovernmental agreements

431. Agreements with other States and Territories

(1) The Minister may enter into an agreement with a Minister responsible for administering a corresponding law about any matter in connection with the administration of this Part or the corresponding law.

(2) The Minister may, by notice published in the *Gazette*, declare that an agreement entered into before the commencement of this section has effect for the purposes of this Part.

(3) The Minister may, by notice published in the *Gazette*, revoke a declaration made under subsection (2).

432. Agreement must be in place

A person cannot perform a function under this Part in connection with an interstate mental health service in, or an interstate in-patient or interstate community patient in or from, another State or a Territory unless there is an intergovernmental agreement in relation to that State or Territory.

433. Performance of functions under corresponding laws or intergovernmental agreements

A person who is authorised to perform a function under this Act may perform in the State or another State or a Territory any

similar function conferred on the person under a corresponding law of, or an intergovernmental agreement in relation to, that State or Territory.

Division 3 — Transfer to or from interstate mental health service

434. Transfer to interstate mental health service

(1) The person in charge of an authorised hospital may, with the written approval of the Chief Psychiatrist, make an order (a ***transfer order***) in the approved form authorising the transfer of a State in-patient who is detained at, or who has absconded as described in section 430(2) from, the authorised hospital to the interstate mental health service specified in the order.

(2) As soon as practicable after making the transfer order, the person in charge of the mental health service must —

(a) put the order and the Chief Psychiatrist's approval on the State in-patient's medical record; and

(b) give a copy of each of those documents to each of these people —

(i) the State in-patient;

(ii) if the State in-patient is a child, the patient's parent or guardian;

(iii) if the State in-patient does not have the capacity to give consent to the provision of treatment under the in-patient treatment order, the person who is authorised by law to give that consent on the patient's behalf if that consent were required;

(iv) if the State in-patient has a nominated person, the nominated person;

(v) if the State in-patient has a carer, the carer;

and

(c) transmit a copy of each of those documents to the person in charge of the interstate mental health service.

435. Transport order

(1) If the person in charge of an authorised hospital makes a transfer order under section 434(1) in respect of a State in-patient, the person in charge may also make a transport order in respect of the in-patient.

(2) The person in charge of the authorised hospital must not make the transport order unless satisfied that no other safe means of taking the State in-patient to the interstate mental health service is reasonably available.

(3) Part 8 applies in relation to the transport order as if —

(a) the transport order were made under section 79(1); and

(b) a reference to a police officer included a reference to a police officer of the State or Territory in which the interstate mental health service is located; and

(c) a reference to a person prescribed by the regulations for section 127 included a reference to a person who is authorised under a corresponding law of, or an intergovernmental agreement in relation to, that State or Territory to perform functions similar to those of a person so prescribed.

436. Transfer from interstate mental health service

(1) The person in charge of an authorised hospital may, with the written consent of the Chief Psychiatrist, make an order (a ***transfer approval order***) in the approved form approving the transfer of an interstate in-patient who is detained at, or who has absconded as described in section 430(3) from, an interstate mental health service to the authorised hospital.

(2) As soon as practicable after making the transfer approval order, the person in charge of the authorised hospital must transmit a

copy of each of the order and the Chief Psychiatrist's consent to the person in charge of the interstate mental health service.

(3) On admission to the authorised hospital, the interstate in-patient treatment order is taken to be an in-patient treatment order made under this Act.

(4) As soon as practicable after the interstate in-patient is admitted to the authorised hospital, the person in charge of the authorised hospital must put the transfer approval order and the Chief Psychiatrist's consent on the patient's medical record.

437. Transport of interstate in-patient to authorised hospital

(1) This section applies in relation to an interstate in-patient in respect of whom a transfer approval order is in force under section 436(1).

(2) A person who is authorised under a corresponding law or an interstate agreement to transport the interstate in-patient from an interstate mental health service to an authorised hospital may exercise in the State any of the powers the person has under the corresponding law or interstate agreement for that purpose.

Division 4 — Community treatment orders

438. Community treatment order: treatment interstate

The terms of a community treatment order may include a requirement that the involuntary community patient be provided with treatment by an interstate mental health service.

439. Transport order

(1) If the involuntary community patient fails to comply with the requirement referred to in section 438, a medical practitioner or mental health practitioner may make a transport order in respect of the patient.

(2) The practitioner must not make the transport order unless satisfied that no other safe means of ensuring the involuntary community patient attends the interstate mental health service is reasonably available.

(3) Part 8 applies in relation to the transport order as if —

(a) the transport order were made under section 115(1); and

(b) a reference to a police officer included a reference to a police officer of the State or Territory in which the interstate mental health service is located; and

(c) a reference to a person prescribed by the regulations for section 127 included a reference to a person who is authorised under a corresponding law of, or an intergovernmental agreement in relation to, that State or Territory to perform functions similar to those of a person so prescribed.

440. Interstate community treatment order: treatment in State

If the terms of an interstate community treatment order made under a corresponding law include a requirement that the interstate community patient be provided with treatment by a mental health service in the State, the interstate community treatment order is taken to be a community treatment order that, despite any other provision of this Act, has the same terms as and is in force for the same period as the interstate community treatment order.

441. Interstate community treatment orders: supervision in State

A person who is authorised under a corresponding law of another State or a Territory to perform a function in relation to an interstate community treatment order made under the corresponding law may perform that function in relation to the 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;

(iv) inspect, or take copies of or extracts from, any documents produced under subparagraph (iii);

(v) require a person on the premises to give reasonable assistance to the person appointed under section 442.

444. Interfering with investigation

(1) A person commits an offence if the person —

(a) without reasonable excuse, proof of which is on the person, does not answer a question or provide information when required under section 443(b)(ii); or

(b) in purporting to comply with a requirement under section 443(b)(ii), gives an answer or provides information that the person knows is false or misleading in a material particular; or

(c) in purporting to comply with a requirement under section 443(b)(iii), makes available a document that the person knows is false or misleading in a material particular without —

(i) indicating that the document is false or misleading and, to the extent the person can, how the document is false or misleading; and

(ii) if the person has or can reasonably obtain the correct information — providing the correct information;

or

(d) without reasonable excuse, proof of which is on the person, does not give reasonable assistance when required under section 443(b)(v); or

(e) without reasonable excuse, proof of which is on the person, obstructs or hinders —

(i) a person appointed under section 442 exercising a power under section 443; or

(ii) a person assisting such a person under section 443(b)(v).

Penalty: a fine of $6 000.

(2) It is enough for a prosecution notice lodged against a person for an offence under subsection (1)(b) or (c) to state that the answer, information or document was false or misleading to the person's knowledge without stating which.

445. Conduct of inquiry generally

(1) An inquiry must be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the subject matter of the inquiry permits.

(2) In conducting an inquiry, the person appointed under section 442 to conduct the inquiry is bound by the rules of natural justice.

(3) Subject to this Part, the practice and procedure for conducting an inquiry is as determined by the person appointed under section 442 to conduct the inquiry.

446. Evidence generally

(1) A person appointed under section 442 to conduct an inquiry is not bound by the rules of evidence but may inform himself or herself of a matter relevant to the inquiry in any manner the person considers appropriate.

(2) Evidence in an inquiry may be given orally or in writing.

(3) The person appointed under section 442 to conduct an inquiry may require evidence in the inquiry to be given on oath or by affidavit.

(4) The person appointed under section 442 to conduct an inquiry may direct a person appearing as a witness in the inquiry —

(a) to answer a question relevant to the inquiry; or

(b) to produce a document relevant to the inquiry.

(5) A person appearing as a witness in an inquiry has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

447. Power to summon persons to attend and produce documents

The person appointed under section 442 to conduct an inquiry may, by issuing a signed summons and having the summons served on the person to whom it is addressed, require the person to attend at the time and place specified in the summons —

(a) to give evidence in the inquiry; or

(b) to produce a document relevant to the inquiry that is in the person's custody or control and is specified in the summons; or

(c) to do both of those things.

448. Self-incrimination

(1) A person is not excused from complying with a direction given to the person under section 446(4) or a summons served on the person under section 447 on the ground that the answer to a question or the production of a document might tend to incriminate the person or expose the person to a criminal penalty.

(2) However, any answer given or document produced by a person in compliance with a direction given to the person under section 446(4) or a summons served on the person under section 447 is not admissible in evidence in any criminal proceedings against the person other than proceedings for an offence under section 450(d).

449. Powers in relation to documents produced

In relation to a document produced in an inquiry, the person appointed under section 442 to conduct the inquiry may do any of these things —

(a) inspect the document;

(b) retain the document for a reasonable period;

(c) take a copy of, or extract from, the document.

450. Offences relating to answering questions, producing documents and providing other information

A person commits an offence if the person —

(a) without reasonable excuse, proof of which is on the person, does not swear an oath or make an affirmation when required under section 446(3); or

(b) without reasonable excuse, proof of which is on the person, does not answer a question or produce a document when directed to do so under section 446(4); or

(c) without reasonable excuse, proof of which is on the person, does not attend as required by a summons served on the person under section 447; or

(d) gives an answer, produces a document or provides any other information in an inquiry that the person knows is false or misleading in a material particular.

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;

substantial holding has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

(2) A medical practitioner or mental health practitioner cannot exercise a power under this Act in respect of a person if —

(a) the practitioner is —

(i) a relative of the person; or

(ii) the person's enduring guardian or guardian; or

(iii) in partnership with the person; or

(iv) the employer or employee of the person; or

(v) the person's supervisor or subordinate;

or

(b) the exercise of the power involves —

(i) a private hospital the licence for which is held by the practitioner or a related person; or

(ii) a public hospital of whose board the practitioner is a member.

452. Obstructing or hindering person performing functions

A person who, without reasonable excuse, proof of which is on the person, obstructs or hinders a person performing a function under this Act commits an offence.

Penalty: a fine of $6 000.

453. Amendment of referrals and orders

(1) For this section, a referral or order made under this Act contains a formal defect if it contains —

(a) a clerical error or an error because of an accidental omission; or

(b) an evident material error in the description of a person.

(2) If a referral or order made under this Act contains a formal defect —

(a) the validity of any thing done, or omitted to be done, in reliance on the referral or order is not affected; but

(b) the person who does an act, or makes an omission, in reliance on the referral or order may request the person who made the referral or order to rectify the defect.

(3) If —

(a) a request made under subsection (2)(b) to rectify a referral or order is not complied with; and

(b) the person in respect of whom the referral or order was made was at the time of making, or has since that time become, an involuntary patient,

the person who made the request may, by order, revoke the involuntary treatment order with effect on and from the time specified in the order.

(4) Subsection (3) does not prevent another referral or order being made under this Act in respect of a person to whom an order made under that subsection relates even though that order has not yet come into effect.

454. Medical records to be kept by mental health services

(1) The person in charge of a mental health service must ensure that a medical record is kept in respect of —

(a) each person who is admitted to the mental health service; and

(b) each person who is provided with treatment or care by the mental health service.

(2) The record must be in the approved form and must include the following information —

(a) the name, address and date of birth of the person;

(b) the nature of any illness, or mental or physical disability, from which the person suffers;

(c) particulars of —

(i) any treatment provided to the person by the mental health service; and

(ii) the authority for providing the treatment, including details of any order made under this Act under which the treatment was provided;

(d) if the person dies at the mental health service, the date and cause of death;

(e) any other information prescribed by the regulations for this subsection.

455. Confidentiality

(1) In this section —

relevant written law means any of these written laws —

(a) this Act;

(b) the *Mental Health Act 1996*;

(c) the *Mental Health Act 1962*.

(2) A person must not disclose to another person, whether directly or indirectly, any personal information about an individual that was obtained because of any function the person has or had under a relevant written law unless the disclosure is authorised by subsection (3).

Penalty: a fine of $5 000.

(3) The disclosure is authorised if it is made in any of these circumstances —

(a) in the course of duty;

(b) under this Act or another law;

(c) to a court or other person or body acting judicially in the course of proceedings before the court or other person or body;

(d) under an order of a court or other person or body acting judicially;

(e) for the purposes of the investigation of a suspected offence or disciplinary matter or the conduct of proceedings against a person for an offence or disciplinary matter;

(f) with the consent of the individual, or each individual, to whom the personal information relates.

(4) If the disclosure is authorised under subsection (3) —

(a) no civil or criminal liability is incurred in respect of the disclosure; and

(b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and

(c) the disclosure is not to be regarded as a breach of professional ethics or standards or any principles of conduct applicable to a person's employment or as unprofessional conduct.

456. Protection from liability

(1) An action in tort does not lie against a person other than the State for anything that the person has done in good faith in the performance or purported performance of a function under this Act.

(2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.

(3) Despite subsection (1), the State is not relieved from any liability that it might have for an act done by a person against whom this section provides that an action does not lie.

(4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

457. Relationship with *Freedom of Information Act 1992*

This Act has effect despite the *Freedom of Information Act 1992*.

458. Regulations

The Governor may make regulations prescribing matters —

(a) required or permitted to be prescribed by this Act; or

(b) necessary or convenient to be prescribed for giving effect to this Act.

459. Review of this Act after 5 years

(1) The Minister must review the operation and effectiveness of this Act as soon as practicable after the expiry of 5 years from the commencement of section 6.

(2) The Minister must —

(a) prepare a report about the outcome of the review; and

(b) as soon as practicable after preparing the report, cause a copy of the report to be laid before each House of 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.

10. A mental health service is to respect the right of people experiencing mental illness to involve carers and other support persons at all times, including when discussing and considering treatment.

11. A mental health service is to be accountable, committed to continuous improvement and open to solving problems in partnership with people.

12. A mental health service is to encourage positive attitudes to mental health, including that people experiencing mental illness can and do recover and make meaningful contributions to the community.

13. A mental health service is to recognise the range of issues that impact upon mental health and wellbeing, including relationships, accommodation, education and employment.

14. A mental health service is to recognise the needs of children and other dependants of people experiencing mental illness.

Schedule 2 — Prescribed areas for purpose of extending transport orders

[s. 128(1)(a)]