

**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:

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**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;

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

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

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

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

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

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

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

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

7 **4. Mental illness**

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

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

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

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

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

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

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

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

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

27 (f) the person is sexually promiscuous;

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

30 (h) the person has an intellectual disability;

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

12   **5. Act binds Crown**

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

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**Part 2 — Objects**

**6.        Objects**

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

1 **Part 3 — Mental Health Care Charter**

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

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

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

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

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

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

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

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

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

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

9 Informed consent can be given by —

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

16 **11. Requirements for informed consent**

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

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

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

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

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

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

12 **14. Form of consent**

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

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

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

**Mental Health Bill 2011**

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

**Division 1** Giving and withdrawing consent

**s. 16**

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

28 **16. Adequate time for consideration**

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

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

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

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

7 (b) when the person gives consent.

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

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

10 (1) A person who —

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

13 (b) wants to withdraw consent,

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

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

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

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

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

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

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

28 or

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

15 **Division 2 — Miscellaneous matters**

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

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

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

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**Part 5 — Involuntary patients**

**Division 1 — When a person will be an involuntary patient**

**21. Involuntary patient**

- (1) An involuntary patient is a person in respect of whom an involuntary treatment order is in force.
- (2) An involuntary treatment order is —
  - (a) an in-patient treatment order; or
  - (b) a community treatment order.

**22. In-patient treatment order**

- (1) An in-patient treatment order is an order made under this Act under which a person can be admitted to a hospital, and detained there, to enable the person to be provided with treatment.
- (2) An in-patient treatment order authorising a person’s detention at an authorised hospital may be made under section 49(1)(a), 50(1)(a)(i), 64(1)(a), 108(2)(a) or 117(2)(a).
- (3) An in-patient treatment order authorising a person’s detention at a general hospital may be made only under section 55(1)(a).

**23. Community treatment order**

- (1) A community treatment order is an order made under this Act under which a person can be provided with treatment in the community.
- (2) A community treatment order may be made under section 49(1)(b), 50(1)(a)(ii), 55(1)(b), 64(1)(b), 68(1), 84(2)(b) or 85(1)(a).

**24. Making involuntary treatment order**

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

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

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

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

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**Part 5** Involuntary patients

**Division 1** When a person will be an involuntary patient

**s. 25**

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



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

3 Notes for section 26:

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

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

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

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

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

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

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

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

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



1                                    transport order made under section 28(1) in respect of  
2                                    the person,  
3                                    the person has not been taken to the hospital or other place, the  
4                                    person cannot be detained any longer.

5    **28.    Making transport order**

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

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

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

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

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

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

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

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

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

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

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

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



- 1 (4) As soon as practicable after making the order, the practitioner  
2 must —
- 3 (a) put the order on the person’s medical record; and  
4 (b) give a copy of the order to the person.
- 5 (5) A person in respect of whom a referral is revoked under  
6 subsection (1) cannot be detained any longer.

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

8 **31. Application of this Subdivision**

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

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

- 14 (1) This section applies if, having regard to the criteria specified in  
15 section 25, the person in charge of the voluntary in-patient’s  
16 ward reasonably suspects that the voluntary in-patient is in need  
17 of an involuntary treatment order —
- 18 (a) because the voluntary in-patient wants to be discharged  
19 from the hospital against medical advice; or  
20 (b) for another reason.
- 21 (2) The person in charge —
- 22 (a) may make an order in the approved form for an  
23 assessment of the voluntary in-patient by a medical  
24 practitioner or authorised mental health practitioner at  
25 the hospital; and
- 26 (b) if the person in charge orders an assessment, may make  
27 an order in the approved form authorising the voluntary  
28 in-patient’s detention at the hospital for up to 6 hours  
29 from the time the order for an assessment is made to  
30 enable the assessment to be conducted.



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

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

5 Notes for section 33:

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

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

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

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

23 Notes for section 34:

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



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**Subdivision 3 — Requirements for referral**

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**36. Application of this Subdivision**

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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).

7

**37. No referral without assessment**

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

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

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**38. Time limit for referral**

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(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.

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

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**39. Form of referral**

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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



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

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

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

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

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

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

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

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

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

19 (b) anyone else.

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

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**Division 3 — Examinations**

**Subdivision 1 — Examination at authorised hospital**

**45. Application of this Subdivision**

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

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

- (1) If referred under section 26(2), the person —
  - (a) must be received at the authorised hospital unless subsection (2) applies; and
  - (b) can be detained, whether at the authorised hospital or at any other authorised hospital to which the person is transferred under section 78, to enable the examination to be conducted —
    - (i) for up to 24 hours after the time when the person is received at the hospital; and then
    - (ii) for the further period specified in any extension order made under section 128(3) in respect of any transport order made under section 79(1) in respect of the person.
- (2) The person must not be received at the authorised hospital after the later of —
  - (a) the end of 72 hours after the time when the referral was made; and
  - (b) the end of the further period specified in any extension order made under section 128(3) in respect of any transport order made under section 28(1) in respect of the person.
- (3) The person in charge of the authorised hospital at which the person is received under subsection (1)(a), and the person in

- 1 charge of each authorised hospital to which the person is  
2 transferred under section 78, must ensure that the person has the  
3 opportunity and the means to contact the person's nominated  
4 person, the person's carer and the Chief Mental Health  
5 Advocate —
- 6 (a) as soon as practicable after the person is received at that  
7 hospital; and
- 8 (b) at all reasonable times while the person is detained  
9 under subsection (1)(b) at that hospital.
- 10 (4) If, by the later of the end of the 24-hour period referred to in  
11 subsection (1)(b)(i) and the end of any further period referred to  
12 in subsection (1)(b)(ii) —
- 13 (a) the examination has not been completed; or  
14 (b) the examination has been completed but an order has not  
15 been made under section 49(1) in respect of the person,  
16 the person cannot be detained any longer.
- 17 (5) Reception at an authorised hospital under this section is not  
18 admission to the hospital under this Act.

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

- 20 (1) If referred under section 33(2), the person can be detained,  
21 whether at the authorised hospital or at any other authorised  
22 hospital to which the person is transferred under section 78, to  
23 enable the examination to be conducted —
- 24 (a) for up to 24 hours after the time when —
- 25 (i) if section 33(1)(a) applies — the order for the  
26 assessment of the person was made under  
27 section 32(2)(a); or
- 28 (ii) if section 33(1)(b) applies — the person was  
29 referred under section 33(2);  
30 and then

- 1                    (b) for the further period specified in any extension order  
2                    made under section 128(3) in respect of any transport  
3                    order made under section 79(1) in respect of the person.
- 4                    (2) The person in charge of the authorised hospital at which the  
5                    person is detained under subsection (1), and the person in  
6                    charge of each authorised hospital to which the person is  
7                    transferred under section 78, must ensure that the person has the  
8                    opportunity and the means to contact the person's nominated  
9                    person, the person's carer and the Chief Mental Health  
10                    Advocate —
- 11                    (a) as soon as practicable after the person is detained under  
12                    subsection (1) at that hospital; and
- 13                    (b) at all reasonable times while the person is detained  
14                    under subsection (1) at that hospital.
- 15                    (3) If, by the later of the end of the 24-hour period referred to in  
16                    subsection (1)(a)(i) or (ii) and the end of any further period  
17                    referred to in subsection (1)(b) —
- 18                    (a) the examination has not been completed; or
- 19                    (b) the examination has been completed but an order has not  
20                    been made under section 49(1) in respect of the person,
- 21                    the person cannot be detained any longer.

22                    **48. Conducting examination**

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

25                    **49. What psychiatrist must do on completing examination**

- 26                    (1) On completing the examination, the psychiatrist must make one  
27                    of these orders in the approved form —
- 28                    (a) an in-patient treatment order authorising the person's  
29                    detention at the hospital for the period specified in the  
30                    order in accordance with section 82(a) or (b);

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- 1 (b) a community treatment order in respect of the person;  
2 (c) an order authorising the person's continued detention,  
3 whether at the hospital or at another authorised hospital  
4 to which the person is transferred under section 78, for a  
5 further examination to be conducted by a psychiatrist;  
6 (d) an order that the person cannot be detained any longer.
- 7 (2) An order made under subsection (1) must specify the date and  
8 time it is made.
- 9 (3) If the psychiatrist makes an order under subsection (1)(c), the  
10 person can continue to be detained, whether at the hospital or at  
11 another hospital to which the person is transferred under  
12 section 78 —
- 13 (a) for the period specified in the order, which must not be  
14 more than 72 hours after the time when the person  
15 was —
- 16 (i) received at the hospital under section 46(1)(a); or  
17 (ii) detained at the hospital under section 47(1);  
18 and then
- 19 (b) for the further period specified in any extension order  
20 made under section 128(3) in respect of any transport  
21 order made under section 79(1) in respect of the person.
- 22 (4) As soon as practicable after making an order under  
23 subsection (1), the psychiatrist must —
- 24 (a) put the order on the person's medical record; and  
25 (b) give a copy of the order to the person.

26 Notes for section 49:

- 27 1. Part 6 Division 4 applies in relation to the release of a person who is  
28 detained at an authorised hospital under an order made under  
29 section 49(1)(c).
- 30 2. Part 6 Division 5 applies if a person in respect of whom an order made  
31 under section 49(1)(c) is in force absconds from the authorised  
32 hospital where the person can be detained under the order.

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

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

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

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

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

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

15                    (b)    the later of —

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

18                            (ii)   the expiry of the further period specified in any  
19                            extension order made under section 128(3) in  
20                            respect of any transport order made under  
21                            section 79(1) in respect of the person.

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

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

25    **51.      Application of this Subdivision**

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

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

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

27    **54.      Conducting examination**

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

- 1 **55. What psychiatrist must do on completing examination**
- 2 (1) On completing the examination, the psychiatrist must make one
- 3 of these orders in the approved form —
- 4 (a) subject to subsection (2), an in-patient treatment order
- 5 authorising the person’s detention at the general hospital
- 6 specified in the order for the period specified in the
- 7 order in accordance with section 82(a) or (b);
- 8 (b) a community treatment order in respect of the person;
- 9 (c) an order authorising the person’s reception at an
- 10 authorised hospital, and the person’s detention there or
- 11 at another authorised hospital to which the person is
- 12 transferred under section 78, to enable an examination to
- 13 be conducted by a psychiatrist;
- 14 (d) an order that the person cannot be detained any longer.
- 15 (2) The psychiatrist must not make an order under subsection (1)(a)
- 16 unless —
- 17 (a) the psychiatrist is satisfied that attempting to take the
- 18 person to an authorised hospital poses a significant risk
- 19 to the person’s physical health; and
- 20 (b) the Chief Psychiatrist consents to the order being made.
- 21 (3) An order made under subsection (1) must specify the date and
- 22 time it is made.
- 23 (4) As soon as practicable after making an order under
- 24 subsection (1), the psychiatrist must —
- 25 (a) put the order on the person’s medical record; and
- 26 (b) give a copy of the order to the person.
- 27 Notes for section 55:
- 28 1. Part 6 Division 4 applies in relation to the release of a person who is
- 29 detained at an authorised hospital under an order made under
- 30 section 55(1)(c).

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

4      **56.      Detention to enable person to be taken to hospital**

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

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

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

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

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

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

30                    (5)      Division 2 Subdivision 4 applies in relation to the conduct of an  
31                                       assessment required by subsection (4)(a).

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



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

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

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

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

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

- 17 (a) put the order on the involuntary in-patient's medical  
18 record; and  
19 (b) give a copy of the order to the involuntary in-patient.

20 Note for section 60:

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

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

25 **61. Application of this Subdivision**

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



- 1 (4) If, by the later of the end of the 24-hour period referred to in  
2 subsection (1)(b)(i) and the end of any further period referred to  
3 in subsection (1)(b)(ii) —  
4 (a) the examination has not been completed; or  
5 (b) the examination has been completed but an order has not  
6 been made under section 64(1) in respect of the person,  
7 the person cannot be detained any longer.

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

10 **63. Conducting examination at hospital**

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

13 **64. What psychiatrist must do on completing examination at**  
14 **hospital**

- 15 (1) On completing the examination, the psychiatrist must make one  
16 of these orders in the approved form —  
17 (a) an in-patient treatment order authorising the person's  
18 detention at the hospital for the period specified in the  
19 order in accordance with section 82(a) or (b);  
20 (b) a community treatment order in respect of the person;  
21 (c) an order that the person cannot be detained any longer.  
22 (2) An order made under subsection (1) must specify the date and  
23 time it is made.  
24 (3) As soon as practicable after making an order under  
25 subsection (1), the psychiatrist must —  
26 (a) put the order on the person's medical record; and  
27 (b) give a copy of the order to the person.

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

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

6                      **Subdivision 5 — Examination without referral**

7      **66.      Application of this Subdivision**

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

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

15      **67.      Conducting examination**

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

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

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

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

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

- 1 (a) another medical practitioner; or  
2 (b) an authorised mental health practitioner.
- 3 (2) The confirmation must be in the approved form.
- 4 (3) The supervising psychiatrist —  
5 (a) must inform the person about whether or not the order  
6 has been confirmed; and  
7 (b) if it has been confirmed —  
8 (i) put the confirmation on the person’s medical  
9 record; and  
10 (ii) give a copy of the confirmation to the person.
- 11 (4) If the order is not confirmed in accordance with subsection (1),  
12 it ceases to be in force.

13 **Subdivision 6 — Conduct of examination**

14 **70. Application of this Subdivision**

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

- 17 (a) by a psychiatrist because of a referral made under  
18 section 26(2) or (3)(a) or 33(2);  
19 (b) by a psychiatrist because of an order made under  
20 section 55(1)(c);  
21 (c) by a psychiatrist in circumstances in which  
22 Subdivision 5 applies;  
23 (d) by a supervising psychiatrist as required by  
24 section 106(2)(a);  
25 (e) by a medical practitioner or authorised mental health  
26 practitioner as required by section 106(2)(b);  
27 (f) by a supervising psychiatrist as required by  
28 section 109(2);  
29 (g) by a psychiatrist as required by section 109(7) or 145(5).

- 1    **71.      How examination must be conducted**
- 2        (1)    Subject to this section, an examination must be conducted in the  
3        least restrictive way and environment practicable.
- 4        (2)    For an examination referred to in section 70(a), (b), (c) or (e),  
5        the psychiatrist or practitioner and the person being examined  
6        must be in one another’s physical presence.
- 7        (3)    For any other examination referred to in section 70 —
- 8            (a)    the psychiatrist and the person being examined need not  
9            be in one another’s physical presence; but
- 10          (b)    if they are not, each of them must be able to see and hear  
11          the other while the other is speaking (for example, by  
12          being able to see one another through a window and  
13          hear one another using a telephone or to see and hear  
14          one another using an audio-visual system).
- 15    **72.      Information psychiatrist or practitioner may have regard to**
- 16        (1)    The psychiatrist or practitioner may have regard to any  
17        information about the person being examined provided by the  
18        person or another person.
- 19        (2)    However, information provided by someone other than the  
20        person being examined does not by itself constitute sufficient  
21        grounds for being satisfied that the person being examined is in  
22        need of, is still in need of, or is no longer in need of an  
23        involuntary treatment order.
- 24            **Subdivision 7 — Application to mentally impaired accused**
- 25    **73.      Mentally Impaired Accused Review Board: notification**
- 26            As soon as practicable after making an involuntary treatment  
27            order in respect of a mentally impaired accused, the psychiatrist  
28            who made the order must give a copy of the order to the  
29            Mentally Impaired Accused Review Board.

1 **Part 6 — Detention for examination or treatment**

2 **Division 1 — Preliminary matters**

3 **74. Application of this Part: mentally impaired accused**

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

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

15 **Division 2 — Detention at hospitals**

16 **75. Application of this Division**

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

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

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

4      **76.      Terms used**

5            In this Division —

6            ***appropriate psychiatrist***, in relation to a person detained,  
7            means —

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

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

15      **77.      Detention authorised**

16            (1)    This section applies to these things —

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

21            (2)    The referral or order authorises —

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

28            and

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

4 **78. Transfer between authorised hospitals**

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

16 Note for section 78:

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

19 **79. Making transport order**

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



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

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

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

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

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

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

- 1           (c) if satisfied, having regard to the criteria in section 25,  
2           that the involuntary in-patient is no longer in need of an  
3           involuntary treatment order — an order revoking the  
4           in-patient treatment order.
- 5       (3) A continuation order must specify the date on which it is made.
- 6       (4) As soon as practicable after making an order under  
7       subsection (2), the psychiatrist who made it must —
- 8           (a) put the order on the involuntary in-patient’s medical  
9           record; and
- 10          (b) give a copy of the order to the involuntary in-patient.

11       **85. Release may be ordered at any time**

- 12       (1) During the detention period, a psychiatrist may make either of  
13       these orders in the approved form —
- 14           (a) if satisfied, having regard to the criteria specified in  
15           section 25, that the involuntary in-patient is no longer in  
16           need of the in-patient treatment order but is in need of a  
17           community treatment order — a community treatment  
18           order in respect of the involuntary in-patient;
- 19           (b) if satisfied, having regard to the criteria specified in  
20           section 25, that the involuntary in-patient is no longer in  
21           need of an involuntary treatment order — an order  
22           revoking the in-patient treatment order.
- 23       (2) The psychiatrist may make an order under subsection (1)  
24       without examining the involuntary in-patient.
- 25       (3) As soon as practicable after making an order under  
26       subsection (1), the psychiatrist must —
- 27           (a) put the order on the involuntary in-patient’s medical  
28           record; and
- 29           (b) give a copy of the order to the involuntary in-patient.

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

2 **86. Application of this Division**

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

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

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

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

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

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

28 If the person detained —

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

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

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

7 **89. Persons who abscond**

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

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

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

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

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

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

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

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

7                   **Subdivision 1 — Preliminary matters**

8       **92. Application of this Subdivision**

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

13           Note for section 92:

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

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

17           In this Division —  
18           *leave of absence* —

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

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

23       **94. Granting leave**

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

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**Part 6** Detention for examination or treatment

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

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

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

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

2   **100.    Application of this Subdivision**

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

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

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

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

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

17   **101.    Making transport order**

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

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

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

1 **Part 7 — Community treatment orders**

2 **Division 1 — Preliminary matters**

3 **102. Terms used**

4 In this Part —

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

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

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

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

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

19 *treatment period*, for a community treatment order, means —

20 (a) the period for which the order will remain in force as  
21 specified in the order under section 104(2); or

22 (b) the further period for which the order will remain in  
23 force as specified in a continuation order.

24 **Division 2 — Making order**

25 **103. Things psychiatrist must be satisfied of before making order**

26 A psychiatrist must not make a community treatment order in  
27 respect of a person unless satisfied of these things —

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

11           Note for section 103:

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

14           **104. Terms of order**

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

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**Part 7** Community treatment orders

**Division 3** Operation of order

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

23 **Division 3 — Operation of order**

24 **105. Duration of order**

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

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

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

9 Note for section 105:

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

11 **106. Monthly examination of patient**

12 (1) In this section —

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

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

- 17 (a) the period of one month after the beginning of the first  
18 treatment period for the order; or
- 19 (b) the period of one month after the involuntary  
20 community patient was last examined under  
21 subsection (2) for the purposes of the order.

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

- 25 (a) the supervising psychiatrist; or
- 26 (b) subject to subsection (3), another medical practitioner or  
27 a mental health practitioner —
- 28 (i) if the supervising psychiatrist is unavailable; or
- 29 (ii) if requested by the supervising psychiatrist under  
30 section 107(1).

- 1 (3) The involuntary community patient cannot be examined under  
2 subsection (2)(b) by a practitioner who is not the supervising  
3 psychiatrist if more than 2 months has elapsed since the patient  
4 was last examined under subsection (2)(a) by the supervising  
5 psychiatrist.
- 6 (4) Part 5 Division 3 Subdivision 6 applies in relation to the  
7 conduct of an examination under subsection (2).
- 8 (5) If the involuntary community patient is examined under  
9 subsection (2)(b) by a practitioner who is not the supervising  
10 psychiatrist, the practitioner must provide the supervising  
11 psychiatrist with a written report of the examination that  
12 includes a recommendation about whether the patient is still in  
13 need of an involuntary treatment order.
- 14 (6) The supervising psychiatrist must put on the involuntary  
15 community patient's medical record —
- 16 (a) a record of each examination of the involuntary  
17 community patient that the psychiatrist conducts under  
18 subsection (2)(a); and
- 19 (b) each report of an examination of the involuntary  
20 community patient provided to the psychiatrist under  
21 subsection (5).

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

- 24 (1) For the purpose of section 106(2)(b)(ii), the supervising  
25 psychiatrist may request another medical practitioner or a  
26 mental health practitioner to examine the involuntary  
27 community patient.
- 28 (2) The request must be in the approved form and may specify  
29 requirements for either or both of these things —
- 30 (a) carrying out the examination;
- 31 (b) preparing the report.

1 **108. What supervising psychiatrist may do after examination**

2 (1) This section applies —

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

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

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

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

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

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

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

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

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

3 **109. Continuation order**

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

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

26 **110. Varying order**

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

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



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

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

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

- 1           (a) may make an order (an *order to attend*) in the approved  
2           form requiring the involuntary community patient to  
3           attend at the time and place specified in the order to be  
4           provided with treatment; and
- 5           (b) if the supervising psychiatrist makes an order to attend,  
6           must give the involuntary community patient a copy of  
7           the order.
- 8           (2) The order to attend must include a warning that, if the  
9           involuntary community patient does not comply with the order,  
10          a transport order authorising the patient's apprehension and  
11          transport to the place specified in the order to attend may be  
12          made.
- 13          (3) As soon as practicable after taking action under  
14          subsection (1)(b), the supervising psychiatrist must put the order  
15          to attend on the involuntary community patient's medical  
16          record.

17   **115. Making transport order**

- 18          (1) If the involuntary community patient does not comply with the  
19          order to attend, a medical practitioner or mental health  
20          practitioner may make a transport order in respect of the patient.
- 21          (2) The practitioner must not make the transport order unless  
22          satisfied that no other safe means of ensuring the involuntary  
23          community patient attends the place is reasonably available.
- 24          (3) Part 8 applies in relation to the transport order.

25   **116. Detention at place specified in order to attend**

- 26          (1) This section applies in relation to an involuntary community  
27          patient who —
- 28               (a) attends a place in compliance with an order to attend; or  
29               (b) is transported to a place under a transport order made  
30               under section 115(1).

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

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

27 **non-compliance with orders**

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



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

2 **118. Application of this Division**

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

7 **119. Making transport order**

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

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

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

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

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

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

19 **120. Supervising psychiatrist**

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

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

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

25 (b) another psychiatrist.

1 **121. Change of supervising psychiatrist**

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

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

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

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

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

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

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

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

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

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

27 **122. Treating practitioner**

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

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

6 **123. Change of treating practitioner**

7 The supervising psychiatrist under a community treatment  
8 order —

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

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## **Part 8 — Transport orders**

### **124. Application of this Part**

This Part applies in relation to each of the following —

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

### **125. Term used: initial transport period**

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

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

1     **126.     Making transport order**

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

16     **127.     Operation of transport order**

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

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

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

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

4 **129. Revoking transport order**

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

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

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

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

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

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

3 **Division 1 — Apprehension, search and seizure**

4 **130. Police officer may apprehend person suspected of having**  
5 **mental illness**

- 6 (1) A police officer may apprehend a person if the officer  
7 reasonably suspects that the person —
- 8 (a) has a mental illness; and  
9 (b) needs to be apprehended to —
- 10 (i) protect the health or safety of the person or the  
11 safety of another person; or  
12 (ii) prevent the person causing serious damage to  
13 property.
- 14 (2) For the purpose of apprehending a person under subsection (1),  
15 a police officer may exercise the powers under section 132(1).
- 16 (3) A police officer must take all reasonable steps to ensure that a  
17 medical practitioner or mental health practitioner is present  
18 when the police officer apprehends a person under  
19 subsection (1).
- 20 (4) As soon as practicable after apprehending a person under  
21 subsection (1), a police officer must —
- 22 (a) arrange for the person to be assessed by a medical  
23 practitioner or authorised mental health practitioner for  
24 the purpose of deciding whether or not to refer the  
25 person under section 26(2) or (3)(a) for an examination  
26 to be conducted by a psychiatrist; and  
27 (b) release the person into the care of —
- 28 (i) the medical practitioner or authorised mental  
29 health practitioner who will assess the person; or



1 **132. Apprehension of persons**

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

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

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

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

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

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

14 **133. Search of persons**

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

17 (2) In this section —

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

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

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

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

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

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

3 **134. Seizure of articles**

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

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

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

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

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

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

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

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

27 **135. Return of seized articles**

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

- 1 safekeeping until it can be dealt with under subsection (2)  
2 or (3).
- 3 (2) Any article seized under section 131(2)(b) from a person who is  
4 detained at or admitted to an authorised hospital or other place,  
5 or who otherwise presents at an authorised hospital, must —
- 6 (a) if the person is released or discharged from the  
7 authorised hospital or other place into the care of  
8 another person — be given to that other person at that  
9 time; or
- 10 (b) if the person is released or discharged from the  
11 authorised hospital or other place otherwise than into the  
12 care of another person or otherwise leaves the authorised  
13 hospital or other place — be returned to the person at  
14 that time.
- 15 (3) Any article seized under section 132(1)(c) from a person who is  
16 apprehended under section 127(1)(a) or 130(1) must —
- 17 (a) if the person is released into the care of another  
18 person — be given to that other person at that time; or
- 19 (b) if the person is otherwise released — be returned to the  
20 person at that time.

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

- 22 (1) A person exercising a power under this Division may use  
23 reasonable force and assistance to do so.
- 24 (2) A person assisting a person exercising a power under this  
25 Division must obey any lawful and reasonable direction of that  
26 person.
- 27 Penalty for an offence under subsection (2): a fine of \$6 000.

28 **Division 2 — Other matters**

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

- 30 (1) In this section —

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

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

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

2 **Division 1 — Preliminary matters**

3 **138. Term used: treatment**

4 In this Part —

5 *treatment* does not include —

6 (a) any of these treatments —

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

8 (ii) psychosurgery;

9 (iii) electroconvulsive therapy;

10 (iv) emergency psychiatric treatment;

11 or

12 (b) any of these interventions —

13 (i) a sterilisation procedure;

14 (ii) bodily restraint;

15 (iii) seclusion.

16 **Division 2 — Voluntary patients**

17 **139. Informed consent necessary**

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

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

22 **140. Application of this Division**

23 This Division applies in relation to —

24 (a) an involuntary patient; or

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

6 **141. Informed consent not necessary**

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

11 **142. Patient's wishes**

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

- 1 (c) if a decision made by the patient's psychiatrist to  
2 provide the patient with treatment is inconsistent with  
3 the patient's wishes, the reasons for making the  
4 decision.
- 5 (4) The patient's psychiatrist must give a copy of the reasons  
6 referred to in subsection (3)(c) to each of these people —
- 7 (a) the patient;
- 8 (b) if the patient has an enduring guardian or guardian, the  
9 enduring guardian or guardian;
- 10 (c) if the patient has a nominated person, the nominated  
11 person unless section 233 applies;
- 12 (d) if the patient has a carer, the carer unless section 244(3)  
13 or 246(3) applies;
- 14 (e) the Chief Psychiatrist.

15 **143. Provision of treatment to Aboriginal or Torres Strait**  
16 **Islanders**

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

22 **144. Record of treatment**

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

25 **145. Second opinion may be requested**

- 26 (1) This section applies to —
- 27 (a) the patient if the patient has the capacity to give  
28 informed consent to the provision of the treatment if that  
29 consent were required; or

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

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

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

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

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

16 **147. Application of this Division**

17 This Division applies in relation —

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

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

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

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

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

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

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

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

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

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

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



- 1 (b) the person who is authorised by law to consent on the
- 2 child's behalf has given informed consent to the
- 3 electroconvulsive therapy being performed; and
- 4 (c) the treating psychiatrist has recommended in writing
- 5 that the electroconvulsive therapy be performed; and
- 6 (d) if the treating psychiatrist is not a child and adolescent
- 7 psychiatrist, the treating psychiatrist has obtained the
- 8 written opinion of a child and adolescent psychiatrist
- 9 confirming the recommendation.

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

11 **155. Requirements for ECT: voluntary patient: child between 12**  
12 **and 18 years of age with capacity to consent**

- 13 (1) This section applies in relation to a child who —
- 14 (a) has reached 12 years of age but is under 18 years of age;
- 15 and
- 16 (b) has sufficient maturity and understanding to make
- 17 reasonable decisions about matters relating to himself or
- 18 herself.
- 19 (2) A person must not perform electroconvulsive therapy on the
- 20 child unless —
- 21 (a) the person is a medical practitioner; and
- 22 (b) the child has given informed consent to the
- 23 psychosurgery being performed; and
- 24 (c) the treating psychiatrist has recommended in writing
- 25 that the electroconvulsive therapy be performed; and
- 26 (d) if the treating psychiatrist is not a child and adolescent
- 27 psychiatrist, the treating psychiatrist has obtained the
- 28 written opinion of a child and adolescent psychiatrist
- 29 confirming the recommendation.

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

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

3 (1) A child and adolescent psychiatrist must not confirm a  
4 recommendation for the purposes of section 154(2)(d)  
5 or 155(2)(d) unless the child and adolescent psychiatrist —

6 (a) has examined the child in accordance with Part 5  
7 Division 3 Subdivision 6; and

8 (b) is satisfied that the performance of the electroconvulsive  
9 therapy has clinical merit and is appropriate in the  
10 circumstances.

11 (2) If, after examining the child under subsection (1)(a), the child  
12 and adolescent psychiatrist is not satisfied of the matters  
13 referred to in subsection (1)(b), the child and adolescent  
14 psychiatrist must —

15 (a) refuse to confirm the recommendation; and

16 (b) advise the Chief Psychiatrist in writing of the refusal  
17 and the reasons for that refusal.

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

20 A person must not perform electroconvulsive therapy on a  
21 voluntary patient who has reached 18 years of age —

22 (a) unless —

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

24 (ii) the patient has given informed consent to the  
25 electroconvulsive therapy being performed;

26 or

27 (b) unless section section 160 applies.

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

1 Note for section 157:

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

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

7 (1) This section applies in relation to —

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

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

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

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

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

19 (a) unless —

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

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

24 or

25 (b) unless section 160 applies.

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

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

29 (1) This section applies in relation to —

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

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- 1 (b) a patient who is a mentally impaired accused who —  
2 (i) has reached 18 years of age; and  
3 (ii) must be detained at an authorised hospital  
4 because of a determination made under the  
5 CL(MIA) Act section 25(1)(b) or amended under  
6 section 26 of that Act.
- 7 (2) A person must not perform electroconvulsive therapy on the  
8 patient —  
9 (a) unless —  
10 (i) the person is a medical practitioner; and  
11 (ii) the Mental Health Tribunal has given its  
12 approval under Part 18 Division 5 to the  
13 electroconvulsive therapy being performed;  
14 or  
15 (b) unless section section 160 applies.

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

17 **160. Emergency ECT**

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

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

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

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

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

20 **162. Statistics about ECT**

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

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

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

6 (5) The report must be in the approved form.

7 **Division 2 — Emergency psychiatric treatment**

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

9 (1) Emergency psychiatric treatment is treatment that needs to be  
10 provided to a person —

11 (a) to save the person’s life; or

12 (b) to prevent the person from behaving in a way that is  
13 likely to result in serious physical injury to the person or  
14 another person.

15 (2) Emergency psychiatric treatment does not include any of these  
16 treatments —

17 (a) treatment that is prohibited by section 173(1);

18 (b) psychosurgery;

19 (c) electroconvulsive therapy.

20 (3) Emergency psychiatric treatment does not include any of these  
21 interventions —

22 (a) a sterilisation procedure;

23 (b) bodily restraint;

24 (c) seclusion.

25 **164. Informed consent not required**

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

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

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

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

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

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

23 **Division 3 — Psychosurgery**

24 **166. Psychosurgery: meaning of**

25 Psychosurgery is —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (a) the person is a neurosurgeon; and

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

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

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

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

15 Note for section 171:

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

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

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

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

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

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

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

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

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

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

8 Penalty: imprisonment for 5 years.

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

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

11 **174. Terms used**

12 In this Division —

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

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

16 *seclusion order* —

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

21 **175. Seclusion: meaning of**

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

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

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

1 (a) an oral authorisation; or

2 (b) a seclusion order.

3 Penalty: a fine of \$6 000.

4 **177. Giving oral authorisation**

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

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

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

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

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

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

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

27 Penalty: a fine of \$6 000.

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

1 **178. Making seclusion order**

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

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

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

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

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

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

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

27 **179. Criteria for authorising seclusion**

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

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

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

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

23 **181. Extending seclusion order**

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

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

5       **182. Revoking seclusion order**

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

16       **183. Expiry of seclusion order**

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

24       **184. Requirements relating to seclusion**

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

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

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

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

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

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

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

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

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

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

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



1 **Division 6 — Bodily restraint**

2 **188. Terms used**

3 In this Division —

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

5 *bodily restraint order* —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 Penalty: a fine of \$6 000.

9 **191. Giving oral authorisation**

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

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

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

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

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

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

5 Penalty: a fine of \$6 000.

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

10 **192. Making bodily restraint order**

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

14 (a) a person who is a patient;

15 (b) a person who is referred under section 26(2) or (3)(a)  
16 or 33(2) for an examination to be conducted by a  
17 psychiatrist;

18 (c) a person in respect of whom there is in force an order  
19 made under section 49(1)(c) or 55(1)(c) to enable an  
20 examination to be conducted by a psychiatrist.

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

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

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

29 (a) the name and qualifications of the practitioner who  
30 made the order;

31 (b) the date and time it is made;

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

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

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

7 Penalty: a fine of \$6 000.

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

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

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

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

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

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

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

18 (i) provide the person with treatment; or

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

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

23 and

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

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

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

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

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

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

- 4 (1) This section applies if —  
5 (a) a person restrained under this Division has a treating  
6 psychiatrist; and  
7 (b) the restraint is authorised by a practitioner who is not the  
8 treating psychiatrist; and  
9 (c) the treating psychiatrist is not informed of the restraint  
10 under section 191(4) or 192(5).  
11 (2) As soon as practicable after the person is restrained, the  
12 practitioner who authorised the restraint must inform the  
13 treating psychiatrist that the person has been restrained.

14 **195. Varying bodily restraint order**

- 15 (1) A medical practitioner or mental health practitioner may make  
16 an order in the approved form varying a bodily restraint order in  
17 force in respect of a person by —  
18 (a) extending or reducing the period for which the person  
19 can be restrained under the order; or  
20 (b) varying the device that is authorised for use to restrict  
21 the person's movement or the way in which the device is  
22 authorised to be applied to the person's body.  
23 (2) A mental health practitioner must not make an order under  
24 subsection (1)(a) extending the period for which the person can  
25 be restrained under the bodily restraint order unless satisfied  
26 that —  
27 (a) the period needs to be extended urgently; and  
28 (b) a medical practitioner is not reasonably available to  
29 make an order under subsection (1)(a) extending the  
30 period.

- 1       (3) An order made under subsection (1) must be in the approved  
2       form and must specify these things —  
3           (a) the variation of the bodily restraint order;  
4           (b) the reasons for the variation.
- 5       (4) As soon as practicable after making the order under  
6       subsection (1), the practitioner must —  
7           (a) put the order on the person’s medical record; and  
8           (b) give a copy of the order to the person.

9       **196. Revoking bodily restraint order**

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

20       **197. Expiry of bodily restraint order**

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

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

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

3 (a) the treating psychiatrist; or

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

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

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

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

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

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

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

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

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

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

29 (ii) sufficient food and drink;

30 (iii) access to toilet facilities;

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

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

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

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

6 must ensure that —

- 7 (c) the things specified in subsection (2) are recorded in the  
8 approved form; and  
9 (d) the record is put on the person’s medical record.

10 (2) For subsection (1)(c), these things are specified —

- 11 (a) if a medical practitioner was informed of the restraint  
12 under section 191(4) or 192(5) —  
13 (i) the practitioner’s name and qualifications; and  
14 (ii) the date and time the practitioner was informed;  
15 and  
16 (iii) the date and time the practitioner attended on the  
17 person under section 198(2)(c);  
18 (b) the name and qualifications of the treating psychiatrist  
19 (if any);  
20 (c) if the treating psychiatrist was informed of the restraint  
21 under section 194(2), the date and time the treating  
22 psychiatrist was informed;  
23 (d) any observations made about the person by any of these  
24 practitioners —  
25 (i) a mental health practitioner while attending on  
26 the person under section 198(2)(a);  
27 (ii) a medical practitioner while attending on the  
28 person under section 198(2)(b);  
29 (iii) a medical practitioner while examining the  
30 person under section 198(2)(c) or (d);

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**Part 11** Regulation of certain kinds of treatment and other interventions

**Division 6** Bodily restraint

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

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

8 (1) Whenever a person is released from bodily restraint under this  
9 Division —

- 10 (a) the treating psychiatrist; or  
11 (b) if the person does not have a treating psychiatrist, the  
12 person in charge of the mental health service or other  
13 place where the person was restrained,

14 must ensure that the person is examined by a medical  
15 practitioner as soon as practicable and, in any event, within  
16 6 hours after being released unless the person is discharged  
17 from or otherwise leaves the mental health service or other  
18 place before the end of that period.

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

- 21 (a) record in the approved form these things —  
22 (i) the practitioner’s name and qualifications;  
23 (ii) the date and time the examination was  
24 conducted;  
25 (iii) the results of the examination, including any  
26 complication of or deterioration in the person’s  
27 mental or physical condition that is a result of, or  
28 may be the result of, the person being restrained;  
29 and  
30 (b) put the record on the person’s medical record.

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

1 **Part 12 — People in authorised hospitals: health**  
2 **care generally**

3 **Division 1 — Examination to assess person's physical condition**

4 **202. Physical examination on arrival at authorised hospital**

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

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

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

9       **203. Application of this Division**

10       This Division applies in relation to a patient who is being  
11       detained at an authorised hospital as —

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

19       **204. Terms used**

20       In this Division —

21       ***non-urgent medical treatment*** means treatment (as defined in  
22       the Guardianship Act section 3(1)) that is not —

- 23           (a) urgent medical treatment; or  
24           (b) treatment as defined in section 3;

25       ***urgent medical treatment*** means urgent treatment as defined in  
26       the Guardianship Act section 110ZH.

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

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

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**Part 12** People in authorised hospitals: health care generally

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

**s. 206**

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

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

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

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

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

16 that the treatment was provided.

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

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

1 **207. Non-urgent medical treatment: Chief Psychiatrist may**  
2 **consent**

3 (1) If the patient needs to be provided with non-urgent medical  
4 treatment but does not have the capacity to give informed  
5 consent to the provision of the treatment, the Chief Psychiatrist  
6 can give informed consent on the patient's behalf in accordance  
7 with the Guardianship Act section 110ZD.

8 (2) If the patient is provided with non-urgent medical treatment  
9 with the consent of the Chief Psychiatrist given under  
10 subsection (1), the person in charge of the authorised hospital  
11 must ensure that the patient's medical record includes a record  
12 of the consent having been given.

13 **Division 3 — Sterilisation procedure**

14 **208. Sterilisation procedure: meaning of**

15 (1) A sterilisation procedure is the provision of medical or surgical  
16 treatment that is intended to make a person, or to ensure a  
17 person is, permanently infertile.

18 (2) A sterilisation procedure does not include the provision of  
19 medical or surgical treatment that is not intended to make a  
20 person, or to ensure a person is, permanently infertile but  
21 incidentally has or may have that result.

22 **209. Requirements for sterilisation procedure**

23 A person must not perform a sterilisation procedure on a person  
24 who has a mental illness unless —

25 (a) if the person is a child who does not have sufficient  
26 maturity or understanding to make reasonable decisions  
27 about matters relating to himself or herself — the  
28 Family Court has authorised the sterilisation procedure  
29 to be performed; or

30 (b) if the person —

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

16 Penalty: imprisonment for 5 years.

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

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

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

25 that the procedure was performed.

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**Part 13 — Protection of patients' rights**

**Division 1 — Patients' rights generally**

**Subdivision 1 — Explanation of rights**

**211. Application of this Division**

This Division applies when —

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

or

- (b) an in-patient treatment order is made in respect of a patient; or
- (c) a patient who in respect of whom an in-patient treatment order is in force is granted leave of absence under section 94(1); or
- (d) a community treatment order is made in respect of a patient.

**212. Rights to be explained to patient**

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

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

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

5 (1) If the patient has reached 18 years of age, the person responsible  
6 under section 214 must ensure that at least one of these people  
7 is provided with an explanation, as described in the regulations,  
8 of the patient's rights under this Act —

9 (a) if the patient has an enduring guardian or guardian, the  
10 enduring guardian or guardian;

11 (b) if the patient has a nominated person, the nominated  
12 person unless section 233 applies;

13 (c) if the person has a carer, the carer unless section 244(3)  
14 or 246(3) applies.

15 (2) If the patient is a child, the person responsible under section 214  
16 must ensure that at least one of these people is provided with an  
17 explanation, as described in the regulations, of the rights of the  
18 patient as a patient —

19 (a) the child's parent or guardian;

20 (b) if the child has a nominated person, the nominated  
21 person unless section 233 applies;

22 (c) if the child has a carer, the carer unless section 244(3)  
23 or 246(3) applies.

24 (3) The explanation must be provided to a person referred to in  
25 subsection (1)(a) to (c) or (2)(a) to (c) in a language, form of  
26 communication and terms that the person is likely to  
27 understand.

28 (4) This section applies despite any requirement under  
29 section 243(2) or 245(2) relating to the patient's consent or  
30 unreasonable refusal to give consent.

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

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

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

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

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

14             In this Subdivision —

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

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

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

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

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

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

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

1 **217. Restrictions on access**

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

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

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

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

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

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

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

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

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

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

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



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

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

5 Penalty: a fine of \$6 000.

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

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

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

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

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

15 **222. Admission by medical practitioner**

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

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

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

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

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

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

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

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

18       **225.   Application of this Subdivision**

19           This Subdivision applies in relation to a patient who is admitted  
20           to an authorised hospital, whether as —

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

29       **226.   Personal possessions**

- 30       (1)   In this section —

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

29            **227. Interview with psychiatrist**

- 30            (1) A patient may, at any time while admitted to the authorised
- 31            hospital, request an interview with a psychiatrist.

- 1       (2) The person in charge of the authorised hospital must ensure —  
2           (a) that the request is complied with; and  
3           (b) that the patient's medical record includes a record of the  
4           request having been made and whether or not the  
5           request was complied with.
- 6       (3) The psychiatrist who interviews a patient in compliance with a  
7       request made under subsection (1) must record on the patient's  
8       medical record —  
9           (a) the date on which, and the time at which, the interview  
10          occurred; and  
11          (b) the matters discussed during the interview.

12       **228. Freedom of lawful communication**

- 13       (1) This section applies subject to section 229.
- 14       (2) A patient has the right of freedom of lawful communication.
- 15       (3) A patient's freedom of lawful communication includes the  
16       freedom to do any of these things —  
17           (a) communicate to the extent that is reasonable with other  
18           people in the authorised hospital;  
19           (b) send and receive —  
20               (i) uncensored private communications; and  
21               (ii) uncensored communications from the patient's  
22               legal practitioner;  
23           (c) receive visits from, and be otherwise contacted by, a  
24           mental health advocate at any time;  
25           (d) receive visits from the patient's legal practitioner at all  
26           reasonable times;  
27           (e) receive visits from other people at all reasonable times;  
28           (f) access postal and telephone services, newspapers, radio  
29           and television at reasonable times.

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

- 1 (a) record the confirmation, amendment or revocation, and  
2 the reasons for the confirmation, amendment or  
3 revocation, on the patient's medical record; and  
4 (b) advise the patient of the confirmation, amendment or  
5 revocation and those reasons.
- 6 (7) If, by the end of any 24-hour period referred to in  
7 subsection (5), the order has not been reviewed, the order ceases  
8 to be in force.
- 9 (8) Within 24 hours after making an order under subsection (1) in  
10 respect of a patient, a psychiatrist must advise the Chief Mental  
11 Health Advocate that the order has been made.

12 **Division 3 — Nominated persons**

13 **Subdivision 1 — Purpose and effect of nomination**

14 **230. Role of nominated person**

- 15 (1) The role of a nominated person is to assist the person who made  
16 the nomination at any time the person is a patient by ensuring  
17 that the person's rights under this Act are observed and the  
18 person's interests as a patient are taken into account.
- 19 (2) Without limiting subsection (1), the role of a patient's  
20 nominated person includes the following —
- 21 (a) receiving information about these matters —
- 22 (i) the mental illness for which the patient is being  
23 provided with treatment;
- 24 (ii) if the patient is an involuntary patient, the  
25 grounds on which, and the provision of this Act  
26 under which, the involuntary treatment order was  
27 made;
- 28 (iii) the treatment proposed to be provided to the  
29 patient and any other treatment options that are  
30 available;

- 1 (iv) the services available to meet the patient's needs;  
2 (v) the patient's rights under this Act and how those  
3 rights may be accessed and exercised;  
4 (b) being involved in —  
5 (i) the consideration of the options that are available  
6 for the patient's treatment and care; and  
7 (ii) the preparation and review of any treatment,  
8 support and discharge plan for the patient.  
9 (3) To avoid doubt, a nomination does not authorise a patient's  
10 nominated person to consent on behalf of the patient to the  
11 admission of, or the provision of treatment to, the patient.

12 **231. Effect of nomination**

- 13 (1) A patient is entitled to uncensored communication with the  
14 patient's nominated person, including by receiving visits,  
15 making and receiving telephone calls, and sending and receiving  
16 mail and electronic communications.  
17 (2) A patient's nominated person is entitled —  
18 (a) to be provided with the information referred to in  
19 section 230(2)(a); and  
20 (b) to be involved in the matters referred to in  
21 section 230(2)(b),  
22 unless section 233 applies.  
23 (3) A patient's nominated person may indicate the extent to which  
24 the nominated person wants to be provided with that  
25 information or to be involved in those matters.  
26 (4) A patient's nominated person may exercise, on behalf of the  
27 patient, the rights conferred under this Act on the patient.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **235. Who can make nomination**

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

13 **236. Who can be nominated**

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

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

18 **237. Formal requirements**

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

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

8    **238.    Only one nominated person**

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

13    **239.    Resignation of nominated person**

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

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

21            If a patient's nominated person —

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

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

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**Part 13** Protection of patients' rights

**Division 3** Nominated persons

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

1                    **Part 14 — Recognition of carers' rights**

2                    **Division 1 — Role of carers**

3 **241.      Acknowledgment of and respect for role**

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

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

9 **242.      Carer's rights**

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

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

27                          and

28                          (b) involved in these matters —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1    **250.    When community treatment order being made**
- 2       (1) This section applies when a community treatment order is being  
3       made in respect of a patient.
- 4       (2) The supervising psychiatrist must ensure that the patient is  
5       asked —
- 6           (a) whether or not the patient has a carer; and
- 7           (b) if the patient has a carer, whether or not the patient gives  
8       consent to the carer being —
- 9               (i) provided with the information referred to in  
10              section 242(1)(a) in connection with the  
11              community treatment order; and
- 12              (ii) involved in the matters referred to in  
13              section 242(1)(b) while the patient is subject to  
14              the community treatment order.
- 15       (3) The supervising psychiatrist must ensure that the patient's  
16       medical record includes a record of the patient's answers to the  
17       questions asked under subsection (2).
- 18    **251.    When treatment, support and discharge plan being**  
19    **prepared**
- 20       (1) This section applies when a treatment, support and discharge  
21       plan for a patient is being prepared or reviewed.
- 22       (2) For the purposes of section 150(e), the treating psychiatrist must  
23       ensure that the patient is asked —
- 24           (a) whether or not the patient has a carer; and
- 25           (b) if the patient has a carer, whether or not the patient gives  
26       consent to the carer being —
- 27               (i) involved in the preparation or review of the plan;  
28              and
- 29              (ii) given a copy of the plan once it has been  
30              prepared or reviewed.

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

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

5       To avoid doubt —

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

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

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

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

6 **254. Child’s wishes**

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

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

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

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

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

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

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

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

1 **257. Children who are in-patients: segregation from in-patients**  
2 **who have reached 18 years of age**

3 A child must not be admitted to a mental health service unless  
4 the person in charge of the mental health service is satisfied  
5 that —

- 6 (a) the mental health service can provide the child with  
7 treatment, care and support that is appropriate having  
8 regard to the child’s age, maturity, gender, culture and  
9 spiritual beliefs; and
- 10 (b) if, having regard to the child’s age and maturity, it  
11 would be appropriate to do so, the treatment, care and  
12 support can be provided to the child in a part of the  
13 mental health service that is separate from any part of  
14 the mental health service in which persons who have  
15 reached 18 years of age are provided with treatment and  
16 care.

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

2                      **258.      Terms used**

3                      In this Part —

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

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

10                     *mental health service* means —

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

13                     (b) a service provided specifically for carers,

14                     but does not include a service referred to in paragraph (a) or (b)  
15                     if it is —

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

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

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

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

23                     **259.      Making complaint**

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

27                     (2) The complaint may be made —

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

1 (b) under the applied Part.

2 Note for section 259:

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

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

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

8 (a) there is a procedure (a *complaints procedure*) for  
9 investigating any complaint made to the person in  
10 charge about any mental health service provided by the  
11 service provider; and

12 (b) the complaints procedure is reviewed regularly and  
13 revised as necessary.

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

15 (a) copies of the most up to date version of the service  
16 provider's complaints procedure are freely available at  
17 the service provider's premises; and

18 (b) a copy of that version is published on the service  
19 provider's website; and

20 (c) a person who requests a copy of the service provider's  
21 complaints procedure is provided with a copy of that  
22 version.

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

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

28 (a) a reference to a disability were a reference to a mental  
29 illness; and

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

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- 1                      (c) a reference to a disability service were a reference to a  
2                      mental health service.
- 3                      (2) The matters that may be alleged in a complaint made under the  
4                      applied Part section 32(1) include a failure to comply with the  
5                      Mental Health Care Charter.
- 6                      (3) Subsection (2) does not limit any of the matters set out in the  
7                      applied Part section 33(2).
- 8                      Note for section 261:
- 9                      A complaint about a service provided wholly or partly from funds provided by  
10                     the Health Department may be made to the Director of HaDSCO under the  
11                     *Disability Services Act 1993* or the *Health and Disability Services (Complaints)*  
12                     *Act 1995*.
- 13                     **262.      Providing CEO with information about complaints**
- 14                     (1) In this section —
- 15                     ***complaint information*** means information in relation to —
- 16                     (a) a complaint or class of complaints made under this Part  
17                     about a service provider; or
- 18                     (b) complaints made under this Part about a service provider  
19                     or class of service providers; or
- 20                     (c) complaints made under this Part by or on behalf of a  
21                     person who has a mental illness or class of persons who  
22                     have a mental illness.
- 23                     (2) The CEO may request the person in charge of a service provider  
24                     to disclose complaint information, including personal  
25                     information, to the CEO.
- 26                     (3) The CEO may request the Director of HaDSCO to disclose  
27                     complaint information, except personal information, to the  
28                     CEO.
- 29                     (4) The Director of HaDSCO may disclose complaint information,  
30                     including personal information, to the CEO.

- 1       (5) Information may be disclosed in compliance with a request  
2           made under subsection (2) or (3), or under subsection (4),  
3           despite any written law relating to secrecy or confidentiality.
- 4       (6) If information is disclosed in good faith in compliance with a  
5           request made under subsection (2) or (3) or under  
6           subsection (4) —
- 7           (a) no civil or criminal liability is incurred in respect of the  
8               disclosure; and
- 9           (b) the disclosure is not to be regarded as a breach of any  
10               duty of confidentiality or secrecy imposed by law; and
- 11           (c) the disclosure is not to be regarded as a breach of  
12               professional ethics or standards or any principles of  
13               conduct applicable to a person’s employment or as  
14               unprofessional conduct.
- 15       (7) The regulations may include provisions about —
- 16           (a) the receipt and storage of information disclosed under  
17               this section; and
- 18           (b) the restriction of access to such information.

1 **Part 17 — Mental health advocacy services**

2 **Division 1 — Preliminary matters**

3 **263. Term used: identified person**

4 In this Part —

5 *identified person* means any of these people —

- 6 (a) a person who has been referred under section 26(2)  
7 or (3)(a) or 33(2) for an examination to be conducted by  
8 a psychiatrist;
- 9 (b) a person in respect of whom there is in force an order  
10 made under section 49(1)(c) or 55(1)(c) to enable an  
11 examination to be conducted by a psychiatrist;
- 12 (c) a voluntary patient who is admitted to a hospital;
- 13 (d) a voluntary patient who is being provided with treatment  
14 or care by a mental health service referred to in  
15 paragraph (b), (c) or (d) of the definition of *mental*  
16 *health service* in section 3;
- 17 (e) an involuntary patient;
- 18 (f) a person in respect of whom a hospital order made under  
19 the CL(MIA) Act section 5(2) is in force;
- 20 (g) a mentally impaired accused who must be detained at an  
21 authorised hospital because of a determination made  
22 under the CL(MIA) Act section 25(1)(b) or amended  
23 under section 26 of that Act;
- 24 (h) a mentally impaired accused who has been released on  
25 conditions under a release order made under the  
26 CL(MIA) Act section 35(1);
- 27 (i) a person who is, for the purposes of the *Hospitals and*  
28 *Health Services Act 1927* Part IIIB, a resident of a  
29 private psychiatric hostel;
- 30 (j) a person who —



**Mental Health Bill 2011**

**Part 17** Mental health advocacy services

**Division 2** Mental health advocates: appointment, functions and powers

**s. 267**

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- 1 (b) as an advocate for patients of mental health services,  
2 promoting compliance with Mental Health Care Charter  
3 by mental health services;
- 4 (c) preparing and publishing information about the role of  
5 mental health advocates and how to contact the Chief  
6 Mental Health Advocate;
- 7 (d) developing standards and protocols for the performance  
8 by mental health advocates of their functions under this  
9 Act;
- 10 (e) ensuring that mental health advocates receive adequate  
11 training in relation to the performance of their functions  
12 under this Act;
- 13 (f) providing advice and assistance to mental health  
14 advocates appointed under section 265(1) in relation to  
15 the performance of their functions under this Act;
- 16 (g) ensuring compliance with any directions given by the  
17 Minister under section 269(1) or by the Chief Mental  
18 Health Advocate under section 269(2);
- 19 (h) any other functions conferred on the Chief Mental  
20 Health Advocate by this Act.

21 **267. Functions of mental health advocates**

- 22 (1) Each mental health advocate has these functions —
- 23 (a) visiting or otherwise contacting identified persons in  
24 accordance with section 271;
- 25 (b) inquiring into, and reporting in accordance with  
26 section 274 on, the extent to which identified persons  
27 have been informed by mental health services of their  
28 rights under this Act and the extent to which those rights  
29 have been observed;
- 30 (c) hearing, inquiring into and seeking to resolve complaints  
31 made by or on behalf of identified persons about their  
32 detention at, or their treatment or care by, mental health  
33 services;

- 1 (d) referring any issues arising out of the performance of a  
2 function under paragraph (b) or (c) to the appropriate  
3 persons to deal with those issues;
- 4 (e) assisting identified persons to protect and enforce their  
5 rights under this Act;
- 6 (f) assisting identified persons to access legal services;
- 7 (g) in consultation with the medical practitioners and mental  
8 health practitioners who are responsible for their  
9 treatment and care, assisting identified persons to access  
10 other services.
- 11 (2) The performance by a mental health advocate of the function  
12 under subsection (1)(d) includes assisting an identified person to  
13 make a complaint under Part 16.
- 14 (3) The performance by a mental health advocate of the function  
15 under subsection (1)(e) includes —
- 16 (a) assisting an identified person in relation to any  
17 application made under this Act in respect of the  
18 identified person to the Mental Health Tribunal or the  
19 State Administrative Tribunal; and
- 20 (b) if authorised under this Act, representing an identified  
21 person in any proceedings under this Act in respect of  
22 the identified person before the Mental Health Tribunal  
23 or the State Administrative Tribunal.

24 **268. Powers generally**

25 A mental health advocate may do anything necessary or  
26 convenient for the performance of the functions conferred on  
27 the mental health advocate.

28 **269. Direction and control**

- 29 (1) In performing the functions conferred on the Chief Mental  
30 Health Advocate by this Act, the Chief Mental Health Advocate  
31 is subject to the general direction and control of the Minister.

- 1 (2) In performing the functions conferred on mental health  
2 advocates appointed under section 265(1), a mental health  
3 advocate appointed under that section is subject to the general  
4 direction and control of the Chief Mental Health Advocate.

5 **Subdivision 2 — Contacting identified person or person with**  
6 **sufficient interest**

7 **270. Request for mental health advocate to contact identified**  
8 **person**

- 9 (1) A request for an identified person to be contacted by a mental  
10 health advocate may be made by —  
11 (a) the identified person; or  
12 (b) if the identified person has a treating psychiatrist, the  
13 treating psychiatrist; or  
14 (c) a person who has a sufficient interest in the detention of  
15 the identified person at, or the treatment and care being  
16 provided to an identified person by, a mental health  
17 service.
- 18 (2) The request may be made to —  
19 (a) the person in charge of the mental health service at  
20 which the identified person is being detained or that is  
21 providing treatment or care to the identified person; or  
22 (b) the Chief Mental Health Advocate.
- 23 (3) As soon as practicable after receiving a request made under  
24 subsection (2)(a), a person in charge of a mental health service  
25 must notify the Chief Mental Health Advocate of the request.

26 **271. Duty to contact identified person**

- 27 (1) A person who is detained under section 27(1)  
28 or (2), 32(2)(b), 46(1)(b), 47(1), 52(1)(b), 53(3), 56(1) or (2)  
29 or 62(1)(b) must be visited or otherwise contacted by a mental

- 1 health advocate as soon as practicable after a request is made  
2 under section 270(1) for the person to be contacted.
- 3 (2) A person in respect of whom an involuntary treatment order is  
4 made on or after the day on which this section commences must  
5 be visited or otherwise contacted —
- 6 (a) if, when the order is made, the person has reached  
7 18 years of age — by a mental health advocate within  
8 7 days after the involuntary treatment order is made; or
- 9 (b) if, when the order is made, the person is a child — by a  
10 youth advocate within 24 hours after the involuntary  
11 treatment order is made.
- 12 (3) A person in respect of whom —
- 13 (a) an involuntary treatment order made before the day on  
14 which this section commences is in force; or
- 15 (b) an involuntary treatment order made on or after the day  
16 on which this section is in force and has been in force  
17 for more than 7 days,
- 18 must be visited or otherwise contacted by a mental health  
19 advocate as soon as practicable after a request is made under  
20 section 270(1) for the person to be contacted.
- 21 (4) A person —
- 22 (a) who is, for the purposes of the *Hospitals and Health*  
23 *Services Act 1927* Part IIIB, a resident of a private  
24 psychiatric hostel; or
- 25 (b) who is being provided with treatment or care by a body  
26 or organisation prescribed for the purposes of  
27 paragraph (j)(ii) of the definition of *identified person* in  
28 section 263,
- 29 must be visited or otherwise contacted by a mental health  
30 advocate as soon as practicable after a request is made under  
31 section 270(1) for the person to be contacted.

1 (5) A person who is a voluntary patient but is not a person in  
2 respect of whom section 271(4)(a) or (b) applies must be visited  
3 or otherwise contacted by a mental health advocate within a  
4 reasonable time after a request is made under section 270(1) for  
5 the person to be contacted.

6 (6) Despite subsections (4) and (5), a voluntary patient who is a  
7 child must be visited or otherwise contacted by a youth  
8 advocate within 24 hours after a request is made under  
9 section 270(1) for the child to be contacted.

10 **Subdivision 3 — Specific powers of mental health advocates**

11 **272. Specific powers of mental health advocates**

- 12 (1) The powers of a mental health advocate include these powers —
- 13 (a) making inquiries about any of these things —
- 14 (i) the admission of an identified person to a mental  
15 health service;
- 16 (ii) the detention of an identified person at a mental  
17 health service;
- 18 (iii) the provision of treatment or care to an identified  
19 person by a mental health service;
- 20 (b) requiring a staff member of a mental health service to do  
21 any of these things —
- 22 (i) answer questions or provide information in  
23 response to any inquiry made about a matter  
24 referred to in paragraph (a)(i) to (iii);
- 25 (ii) make available any document that the mental  
26 health advocate may inspect, or take copies of or  
27 extracts from, under paragraph (c) or (d);
- 28 (iii) give reasonable assistance to the mental health  
29 advocate;
- 30 (c) subject to subsection (2), inspecting and taking copies of  
31 or extracts from any of these documents —



1 mental health advocate under subsection (3) about the  
2 disclosure of information to the identified person.

3 (5) Subsection (3)(b) does not apply if the personal information is  
4 about an individual who has given consent to the disclosure of  
5 the information.

6 **273. Interfering with exercise of powers: offences**

7 (1) A person commits an offence if the person —

8 (a) without reasonable excuse, proof of which is on the  
9 person, does not answer a question or provide  
10 information when required under section 272(1)(b)(i); or

11 (b) in purporting to comply with a requirement under  
12 section 272(1)(b)(i), gives an answer or provides  
13 information that the person knows is false or misleading  
14 in a material particular; or

15 (c) in purporting to comply with a requirement under  
16 section 272(1)(b)(ii), makes available a document that  
17 the person knows is false or misleading in a material  
18 particular without —

19 (i) indicating that the document is false or  
20 misleading and, to the extent the person can, how  
21 the document is false or misleading; and

22 (ii) if the person has or can reasonably obtain the  
23 correct information — providing the correct  
24 information;

25 or

26 (d) without reasonable excuse, proof of which is on the  
27 person, does not give reasonable assistance when  
28 required under section 272(1)(b)(iii); or

29 (e) without reasonable excuse, proof of which is on the  
30 person, obstructs or hinders —

31 (i) a mental health advocate exercising a power  
32 under section 272; or

1                                   (ii) a person assisting a mental health advocate under  
2                                   section 272(1)(b)(iii).

3                                   Penalty: a fine of \$6 000.

4                   (2) It is enough for a prosecution notice lodged against a person for  
5                   an offence under subsection (1)(b) or (c) to state that the  
6                   answer, information or document was false or misleading to the  
7                   person's knowledge without stating which.

8   **274. Dealing with issues arising out of inquiries and**  
9   **investigations**

10           (1) A mental health advocate may attempt to resolve any issue that  
11           arises in the course of an inquiry into or investigation of a  
12           matter under section 267(1)(b) or (c) by dealing directly with  
13           the relevant staff members of the mental health service  
14           concerned.

15           (2) If the mental health advocate cannot resolve the issue or  
16           considers it appropriate to do so, the mental health advocate  
17           may refer the issue to the Chief Mental Health Advocate.

18           (3) If an issue is referred to the Chief Mental Health Advocate  
19           under subsection (2), the Chief Mental Health Advocate may  
20           provide a report about the issue to —

21                   (a) the person in charge of the mental health service  
22                   concerned; and

23                   (b) if it is —

24                           (i) an issue relating to the environmental conditions  
25                           at a private hospital or private psychiatric  
26                           hostel — the CEO; or

27                           (ii) another issue — the Chief Psychiatrist.

28           (4) If an issue is reported to the CEO or Chief Psychiatrist under  
29           subsection (3), the CEO or Chief Psychiatrist must advise the  
30           Chief Mental Health Advocate —

- 1 (a) whether or not the CEO or Chief Psychiatrist considers  
2 further inquiry into or investigation of the issue is  
3 warranted; and
- 4 (b) if so, the outcome of the further inquiry or investigation,  
5 including any recommendations made, directions given  
6 or other action taken under this Act or another written  
7 law.
- 8 (5) This section does not limit the powers that a mental health  
9 advocate has for dealing with any issue that arises in the course  
10 of an inquiry into or investigation of a matter under  
11 section 267(1)(b) or (c).

12 **Division 3 — Mental health advocates: terms and conditions of**  
13 **appointment**

14 **Subdivision 1 — Chief Mental Health Advocate**

15 **275. Term of appointment**

16 The Chief Mental Health Advocate —

- 17 (a) holds office for the period (not exceeding 5 years)  
18 specified in the instrument of appointment; and  
19 (b) is eligible for reappointment.

20 **276. Remuneration and other terms and conditions**

21 Subject to this Subdivision, the Chief Mental Health Advocate  
22 has the terms and conditions of service, including as to  
23 remuneration and other allowances, determined by the Minister  
24 on the recommendation of the Public Sector Commissioner.

25 **277. Resignation**

- 26 (1) The Chief Mental Health Advocate may resign from office by  
27 writing signed and given to the Minister.
- 28 (2) The resignation takes effect on the later of the following —



- 1 (b) incompetence;  
2 (c) neglect of duty;  
3 (d) misconduct.

4 **Subdivision 3 — Other matters relating to appointment, functions**  
5 **and powers**

6 **282. Conflict of interest**

- 7 (1) A mental health advocate may —  
8 (a) be employed by; or  
9 (b) have a disqualifying interest in,  
10 a body or organisation that provides treatment or care for  
11 identified persons.
- 12 (2) However, the mental health advocate cannot perform any  
13 functions as a mental health advocate in relation to an identified  
14 person who is being provided with treatment or care by the body  
15 or organisation.
- 16 (3) For subsection (1)(b), a mental health advocate has a  
17 disqualifying interest in a body or organisation if —  
18 (a) the mental health advocate; or  
19 (b) another person with whom the mental health advocate is  
20 closely associated,  
21 has a financial interest in the body or organisation, except a  
22 financial interest prescribed by the regulations for this  
23 subsection.
- 24 (4) For subsection (3)(b), a person is closely associated with a  
25 mental health advocate if the person —  
26 (a) is the spouse, de facto partner or child of the mental  
27 health advocate;  
28 (b) is in partnership with the mental health advocate;  
29 (c) is an employer of the mental health advocate;

- 1 (d) is a beneficiary under a trust, or an object of a  
2 discretionary trust, of which the mental health advocate  
3 is a trustee;
- 4 (e) is a body corporate of which the mental health advocate  
5 is an officer;
- 6 (f) is a body corporate in which the mental health advocate  
7 holds shares that have a total nominal value  
8 exceeding —
- 9 (i) the amount prescribed by the regulations for this  
10 paragraph; or
- 11 (ii) the percentage prescribed by the regulations for  
12 this paragraph of the total nominal value of the  
13 issued share capital of the body corporate;
- 14 (g) has a relationship specified in paragraphs (a) to (f) with  
15 the mental health advocate’s spouse or de facto partner.

16 **283. Identity cards**

- 17 (1) The CEO must ensure that each mental health advocate is issued  
18 with an identity card in the form approved by the CEO.
- 19 (2) A mental health advocate must display his or her identity card  
20 whenever dealing with a person in respect of whom the mental  
21 health advocate has exercised, is exercising or is about to  
22 exercise a power under this Act.
- 23 (3) In any proceedings, the production by a mental health advocate  
24 of his or her identity card is conclusive evidence of his or her  
25 appointment under section 264 or 265(1), as the case requires.
- 26 (4) A person who ceases to be a mental health advocate must return  
27 his or her identity card to the CEO as soon as practicable unless  
28 the person has a reasonable excuse.
- 29 Penalty for an offence under subsection (4): a fine of \$2 000.

1

**Division 4 — Staff and facilities**

2

**284. Staff**

3

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.

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**285. Use of government staff and facilities**

7

(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 —

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10

(a) in the Public Service;

11

(b) in a State agency; or

12

(c) otherwise in the service of the State.

13

(2) The Chief Mental Health Advocate may by arrangement with —

14

(a) a department of the Public Service; or

15

(b) a State agency,

16

make use of any facilities of the department or agency.

17

(3) An arrangement under subsection (1) or (2) must be made on terms agreed to by the parties.

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19

**Division 5 — Annual reports**

20

**286. Annual report: preparation**

21

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.

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**287. Annual report: tabling**

26

(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

27

1           with under subsection (2), within 21 days after receiving the  
2           report.

3           (2) If —

4                 (a) at the commencement of the period referred to in  
5                 subsection (1) a House of Parliament is not sitting; and

6                 (b) the Minister is of the opinion that the House will not sit  
7                 during that period,

8           the Minister must transmit a copy of the report to the Clerk of  
9           that House.

10          (3) A copy of a report transmitted under subsection (2) to the Clerk  
11          of a House is taken to have been laid before that House.

12          (4) The laying of a copy of a report that is taken to have occurred  
13          under subsection (3) must be recorded in the Minutes, or Votes  
14          and Proceedings, of the House on the first sitting day of the  
15          House after the receipt of the copy by the Clerk.

16      **288. Inclusion in Agency's annual report**

17          Without limiting section 286 or 287, the requirements of those  
18          sections in respect of a financial year are taken to have been  
19          complied with if —

20                 (a) the report prepared under section 286 for the financial  
21                 year is included in the Agency's annual report under the  
22                 *Financial Management Act 2006* section 61 for that  
23                 year; and

24                 (b) the Minister causes a copy of the Agency's annual  
25                 report to be laid before each House of Parliament, or to  
26                 be dealt with under section 83 of that Act, within the  
27                 period required by section 64 of that Act.

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## **Part 18 — Mental Health Tribunal**

### **Division 1 — Preliminary matters**

#### **289. Terms used**

In this Part —

***application*** means an application made to the Tribunal under this Part;

***decision***, of the Tribunal, includes an order, direction or declaration made by the Tribunal;

***Head of the Tribunal*** means the person lawfully holding, acting in or performing the functions of the office of Head of the Mental Health Tribunal referred to in section 372;

***hearing***, in relation to a proceeding, means a hearing in the proceeding;

***involuntary community patient*** means a person in respect of whom a community treatment order is in force;

***involuntary in-patient*** means a person in respect of whom an in-patient treatment order is in force;

***member*** means —

- (a) the Head of the Tribunal; or
- (b) a person lawfully holding, acting in or performing the functions of the office of member of the Mental Health Tribunal referred to in section 373(1);

***party***, in relation to a proceeding, means a party to the proceeding;

***person concerned***, in an application or proceeding, means the patient or other person whom the application or proceeding concerns;

***presiding member***, in a proceeding, has the meaning given in section 343;

***proceeding*** means a proceeding of the Tribunal under this Part;

1            **registrar** means a person lawfully holding, acting in or  
2            performing the functions of the office of registrar of the Mental  
3            Health Tribunal referred to in section 379;  
4            **Tribunal** means the Mental Health Tribunal established by  
5            section 290.

6            **Division 2 — Establishment, jurisdiction and constitution**

7            **290. Establishment**

8            The Mental Health Tribunal is established.

9            **291. Jurisdiction**

10          The Tribunal has the jurisdiction conferred on it by this Part.

11          **292. Constitution**

12          When exercising its jurisdiction, subject to this Part, the  
13          Tribunal must be constituted by the members specified by the  
14          Head of the Tribunal.

15          **293. Contemporaneous exercise of jurisdiction**

16          The Tribunal constituted in accordance with this Part may  
17          exercise its jurisdiction even if the Tribunal differently  
18          constituted under this Part is exercising its jurisdiction at the  
19          same time.

20          **Division 3 — Involuntary treatment orders: review**

21          **294. Initial review after order made**

22          (1) In this section —

23          **initial review period**, for an involuntary treatment order,  
24          means —

25                  (a) if, when the order is made, the involuntary patient has  
26                  reached 18 years of age — 35 days after the order is  
27                  made; or

- 1 (b) if, when the order is made, the involuntary patient is a  
2 child — 10 days after the order is made.
- 3 (2) Unless subsection (4) or (5) applies, as soon as practicable after  
4 an involuntary treatment order is made and, in any event, by the  
5 end of the initial review period, the Tribunal must review the  
6 order to decide whether or not the involuntary patient is still in  
7 need of the involuntary treatment order.
- 8 (3) It is sufficient compliance with subsection (2) if the review is  
9 commenced in accordance with that subsection and is  
10 completed as soon as practicable after the end of the initial  
11 review period.
- 12 (4) The Tribunal is not required to review the order under  
13 subsection (2) if the involuntary patient has not been an  
14 involuntary patient continuously since the order was made.
- 15 (5) The Tribunal is not required to review the order under  
16 subsection (2) if —  
17 (a) the Tribunal has —  
18 (i) previously reviewed under subsection (2) or  
19 section 298(1)(a), (b) or (c) or 299 an  
20 involuntary treatment order made in respect of  
21 the involuntary patient; or  
22 (ii) previously reviewed under section 298(1)(c) the  
23 terms of a community treatment order that a  
24 psychiatrist has been directed under  
25 section 304(2)(b) to make in respect of the  
26 involuntary patient;  
27 and  
28 (b) the involuntary patient has been an involuntary patient  
29 continuously since the previous review.

30 **295. Periodic reviews while order in force**

- 31 (1) In this section —

- 1           ***last review***, in relation to an involuntary treatment order,  
2           means —
- 3           (a) the last review under this Division of the order; or  
4           (b) if the order has not been reviewed under this Division  
5           because it was made after another involuntary treatment  
6           order was last reviewed under this Division, the last  
7           review under this Division of that other order;
- 8           ***periodic review period***, for an involuntary order, means —
- 9           (a) if, when the order was made, the involuntary patient had  
10           reached 18 years of age — 3 months after the last  
11           review under this Division of the order; or  
12           (b) if, when the order was made, the involuntary patient was  
13           a child — 28 days after the last review under this  
14           Division of the order; or  
15           (c) if the order is a community treatment order and the  
16           involuntary patient has been an involuntary community  
17           patient continuously for more than 12 months since the  
18           order was made — 6 months after the last review under  
19           this Division of the order;
- 20           ***prescribed number of days***, before the end of a periodic review  
21           period, means —
- 22           (a) if, when the order being reviewed was made, the  
23           involuntary patient had reached 18 years of age —  
24           14 days before the end of that period; or  
25           (a) if, when the order was made, the involuntary patient was  
26           a child — 7 days before the end of that period.
- 27           (2) Unless subsection (4) applies, as near as practicable to (but not  
28           earlier than the prescribed number of days before) the end of  
29           each periodic review period for an involuntary treatment order,  
30           the Tribunal must review the order to decide whether or not the  
31           involuntary patient is still in need of the involuntary treatment  
32           order.

1 (3) It is sufficient compliance with subsection (2) if a review is  
2 commenced in accordance with that subsection and is  
3 completed as soon as practicable after the end of the periodic  
4 review period.

5 (4) The Tribunal is not required to review the order under  
6 subsection (2) if the involuntary patient has not been an  
7 involuntary patient continuously since the order was last  
8 reviewed under this Division.

9 **296. Involuntary patient for continuous period**

10 For sections 294 and 295, a person has been an involuntary  
11 patient continuously for a period if —

12 (a) one, or a series of 2 or more, involuntary treatment  
13 orders were in force in respect of the person for the  
14 whole period; or

15 (b) during the period, an involuntary treatment order ceased  
16 to be in force in respect of the person and another  
17 involuntary treatment order came into force in respect of  
18 the person within 7 days after the cessation.

19 **297. Review period may be extended**

20 (1) In this section —

21 *relevant decision*, in relation to the review of an involuntary  
22 treatment order under section 294(2) or 295(2), means a  
23 decision of the Tribunal the making of which involves a  
24 consideration of substantially the same issues as would be raised  
25 in the review.

26 (2) If, within 28 days before the end of the initial review period or a  
27 periodic review period for an involuntary treatment order, the  
28 Tribunal has made a relevant decision, the Tribunal may make  
29 an order extending the review period for the further period (not  
30 exceeding 21 days) specified in the order.

- 1    **298.    Application for review**
- 2       (1)   A person specified in subsection (2) may apply to the Tribunal
- 3       for a review of any of these things —
- 4           (a)   an involuntary treatment order, to decide whether or not
- 5               it is appropriate that the involuntary patient continue to
- 6               be an involuntary patient;
- 7           (b)   an involuntary in-patient order, to decide whether or not
- 8               it is appropriate that the involuntary in-patient continue
- 9               to be detained in an authorised hospital;
- 10          (c)   a community treatment order, to decide whether or not
- 11               the terms of the order are appropriate;
- 12          (d)   a transfer order made under section 60(1) or 78(2) in
- 13               respect of an involuntary in-patient, or a refusal to make
- 14               such an order, to decide whether or not it is appropriate
- 15               for the involuntary patient to be or to have been
- 16               transferred from an authorised hospital to another
- 17               authorised hospital;
- 18          (e)   the transfer under section 121 of a psychiatrist’s
- 19               responsibility as the supervising psychiatrist under a
- 20               community treatment order, or a refusal to transfer the
- 21               responsibility, to decide whether or not it is appropriate
- 22               for the responsibility to be or to have been transferred to
- 23               another psychiatrist;
- 24          (f)   the transfer under section 123 of a practitioner’s
- 25               responsibility as the treating practitioner under a
- 26               community treatment order, or a refusal to transfer the
- 27               responsibility, to decide whether or not it is appropriate
- 28               for the responsibility to be or to have been transferred to
- 29               another practitioner.
- 30       (2)   An application may be made under subsection (1) by any of
- 31       these people —
- 32           (a)   the involuntary patient;
- 33           (b)   a mental health advocate;

1 (c) any other person who, in the Tribunal's opinion, has a  
2 sufficient interest in the matter.

3 (3) The application must be in writing.

4 (4) The application may be made at any time except within 28 days  
5 after the Tribunal has made a decision the making of which  
6 involved a consideration of substantially the same issues as  
7 would be raised by the application.

8 **299. Review on Tribunal's own initiative**

9 The Tribunal may, on its own initiative, review the case of an  
10 involuntary patient whenever the Tribunal considers it  
11 appropriate.

12 **300. Suspending order pending review**

13 The Tribunal may, on the application of a party to a proceeding  
14 under this Division or on its own initiative —

15 (a) suspend the operation of the involuntary treatment order  
16 being reviewed in the proceeding; or

17 (b) restrain the taking of any action, or any further action,  
18 under the involuntary treatment order being reviewed in  
19 the proceeding,

20 until the Tribunal has made a decision on the review.

21 **301. Parties to proceeding**

22 The parties to a proceeding under this Division are —

23 (a) the involuntary patient; and

24 (b) if the proceeding relates to an in-patient treatment order,  
25 the treating psychiatrist; and

26 (c) if the proceeding relates to a community treatment  
27 order, the supervising psychiatrist; and

- 1 (d) if the proceeding relates to an application made under  
2 section 298 and the applicant is not a person referred to  
3 in paragraph (a), (b) or (c), the applicant; and  
4 (e) any other person who, in the opinion of the Tribunal, has  
5 a sufficient interest in the matter.

6 **302. Constitution of Tribunal**

- 7 (1) For a proceeding under section 294, 295 or 299 or a proceeding  
8 in relation to an application made under section 298, the  
9 Tribunal must be constituted by these 3 members —  
10 (a) a member who is a legal practitioner;  
11 (b) a member who is a psychiatrist or a child and adolescent  
12 psychiatrist if the involuntary patient is a child, unless  
13 subsection (2) or (3) applies;  
14 (c) a member who is not —  
15 (i) a legal practitioner; or  
16 (ii) a medical practitioner; or  
17 (iii) a mental health practitioner.  
18 (2) If —  
19 (a) the involuntary patient is a child; and  
20 (b) none of the members who are child and adolescent  
21 psychiatrists are available for the proceeding but another  
22 member who is a medical practitioner or mental health  
23 practitioner who has experience in dealing with children  
24 who have a mental illness is available for the  
25 proceeding; and  
26 (c) the proceeding does not involve a matter requiring  
27 a clinical judgment to be made about the involuntary  
28 patient's treatment,  
29 the Tribunal may be constituted for the proceeding with that  
30 other member.

- 1 (3) If —
- 2 (a) the involuntary patient is not a child; and
- 3 (b) none of the members who are psychiatrists are available
- 4 for the proceeding but another member who is a medical
- 5 practitioner or mental health practitioner is available for
- 6 the proceeding; and
- 7 (c) the proceeding does not involve a matter requiring
- 8 a clinical judgment to be made about the involuntary
- 9 patient's treatment,
- 10 the Tribunal may be constituted for the proceeding with that
- 11 other member.

12 **303. Things to which Tribunal must have regard**

13 In making a decision on a review under this Division in respect

14 of an involuntary patient, the Tribunal must have regard to these

15 things —

- 16 (a) the patient's psychiatric condition;
- 17 (b) the patient's medical and psychiatric history;
- 18 (c) the patient's social circumstances;
- 19 (d) the patient's treatment, support and discharge plan.

20 **304. What Tribunal may do on completing review**

- 21 (1) On completing a review under this Division, subject to this Act,
- 22 the Tribunal may make any orders and give any directions the
- 23 Tribunal considers appropriate.
- 24 (2) Those orders and directions include the following —
- 25 (a) an order revoking an involuntary treatment order;
- 26 (b) a direction to the psychiatrist named in the order to
- 27 make, within a reasonable period specified in the
- 28 direction, a community treatment order in terms that are
- 29 consistent with section 104 and specified in the
- 30 direction;

1 (c) an order varying the terms of a community treatment  
2 order in any way that is consistent with section 104.

3 (3) The Tribunal cannot make an order or give a direction under  
4 subsection (1) in relation to an involuntary patient's treatment,  
5 support or discharge plan, but may recommend that the treating  
6 psychiatrist review the treatment, support or discharge plan.

7 **305. Review of direction given to psychiatrist**

8 (1) A psychiatrist who is directed under section 304(2)(b) to make a  
9 community treatment order may, during the period within which  
10 the order must be made, apply to the Tribunal for a review of  
11 the direction.

12 (2) Sections 300 to 303 and section 304(1) and (2)(a) and (c) apply  
13 (with the necessary changes) in relation to an application made  
14 under subsection (1) as if it were an application made under  
15 section 298(1)(c).

16 **Division 4 — Voluntary in-patients: review of admission to**  
17 **authorised hospitals**

18 **306. Application of this Division**

19 This Division applies in relation to a person (a *voluntary in-*  
20 *patient*) who is admitted to an authorised hospital and has been  
21 admitted there for a continuous period of more than 12 months.

22 **307. Application for review**

23 (1) A person specified in subsection (2) may apply to the Tribunal  
24 for a review of the voluntary in-patient's admission to the  
25 authorised hospital to decide whether or not there is still a need  
26 for the voluntary in-patient to be admitted to the authorised  
27 hospital.

28 (2) An application may be made under subsection (1) by any of  
29 these people —

- 1 (a) the voluntary in-patient;  
2 (b) a mental health advocate;  
3 (c) any other person who, in the opinion of the Tribunal, has  
4 a sufficient interest in the matter.

5 **308. Parties to proceeding**

6 The parties to a proceeding in relation to the application are —

- 7 (a) the voluntary in-patient; and  
8 (b) the treating psychiatrist; and  
9 (c) if the applicant is not a person referred to in  
10 paragraph (a) or (b), the applicant; and  
11 (d) any other person who, in the opinion of the Tribunal, has  
12 a sufficient interest in the matter.

13 **309. Constitution of Tribunal**

14 (1) For a proceeding in relation to the application, the Tribunal  
15 must be constituted by these 3 members —

- 16 (a) a member who is a legal practitioner;  
17 (b) a member who is a psychiatrist or a child and adolescent  
18 psychiatrist if the voluntary patient is a child, unless  
19 subsection (2) or (3) applies;  
20 (c) a member who is not —  
21 (i) a legal practitioner; or  
22 (ii) a medical practitioner; or  
23 (iii) a mental health practitioner.

24 (2) If —

- 25 (a) the voluntary in-patient is a child; and  
26 (b) none of the members who are child and adolescent  
27 psychiatrists are available for the proceeding but another  
28 member who is a medical practitioner or mental health  
29 practitioner who has experience in dealing with children

1                   who have a mental illness is available for the  
2                   proceeding; and  
3           (c)   the proceeding does not involve a matter requiring a  
4                   clinical judgment to be made about the voluntary  
5                   patient’s treatment,  
6           the Tribunal may be constituted for the proceeding with that  
7           other member.

8   (3)   If —  
9           (a)   the voluntary in-patient is not a child; and  
10          (b)   none of the members who are psychiatrists are available  
11               for the proceeding but another member who is a medical  
12               practitioner or mental health practitioner is available for  
13               the proceeding; and  
14          (c)   the proceeding does not involve a matter requiring a  
15               clinical judgment to be made about the voluntary  
16               patient’s treatment,  
17          the Tribunal may be constituted for the proceeding with that  
18          other member.

19   **310.   Things to which Tribunal must have regard**

20           In making a decision on a review under this Division in respect  
21           of a voluntary inpatient, the Tribunal must have regard to these  
22           things —  
23           (a)   the in-patient’s psychiatric condition;  
24           (b)   the in-patient’s medical and psychiatric history;  
25           (c)   the in-patient’s social circumstances.

26   **311.   What Tribunal may do on completing review**

27           On completing a review under this Division of a voluntary  
28           in-patient’s admission to an authorised hospital, the Tribunal  
29           may recommend that the treating psychiatrist consider whether

1 or not there is still a need for the voluntary in-patient to be  
2 admitted to the authorised hospital.

3 **Division 5 — Electroconvulsive therapy: approvals**

4 **312. Application of this Division**

5 This Division applies for the purposes of sections 158(2)(a)(ii)  
6 and 159(2)(a)(ii).

7 **313. Application for approval**

- 8 (1) The treating psychiatrist may apply for approval to perform  
9 electroconvulsive therapy on a patient.
- 10 (2) The application must —
- 11 (a) be in writing; and
- 12 (b) set out the reasons why the treating psychiatrist is  
13 recommending that the electroconvulsive therapy be  
14 performed; and
- 15 (c) set out a treatment plan in relation to the  
16 electroconvulsive therapy, including —
- 17 (i) the name, qualifications and experience of the  
18 medical practitioner who it is proposed will  
19 perform the electroconvulsive therapy; and
- 20 (ii) the name and address of the place where it is  
21 proposed to perform the electroconvulsive  
22 therapy; and
- 23 (iii) the maximum number of treatments with  
24 electroconvulsive therapy that it is proposed will  
25 be performed; and
- 26 (iv) the maximum period over which it is proposed to  
27 perform that number of treatments; and
- 28 (v) the maximum period that it is proposed will  
29 elapse between each 2 treatments.

1 **314. Parties to proceeding**

2 The parties to a proceeding in relation to the application are —

- 3 (a) the patient; and  
4 (b) the treating psychiatrist; and  
5 (c) any other person who, in the Tribunal’s opinion, has a  
6 sufficient interest in the matter.

7 **315. Constitution of Tribunal**

8 For a proceeding in relation to the application, the Tribunal  
9 must be constituted by these 3 members —

- 10 (a) a member who is a legal practitioner;  
11 (b) a member who is a psychiatrist or a child and adolescent  
12 psychiatrist if the patient is a child;  
13 (c) a member who is not —  
14 (i) a legal practitioner; or  
15 (ii) a medical practitioner; or  
16 (iii) a mental health practitioner.

17 **316. Things Tribunal must be satisfied of**

18 The Tribunal must not approve the electroconvulsive therapy  
19 being performed on the patient unless satisfied of these  
20 things —

- 21 (a) performing the electroconvulsive therapy has clinical  
22 merit and is appropriate in the circumstances;  
23 (b) the medical practitioner who it is proposed will perform  
24 the electroconvulsive therapy is suitably qualified and  
25 experienced;  
26 (c) the place where it is proposed to perform the  
27 electroconvulsive therapy is a suitable place.

- 1     **317. Things to which Tribunal must have regard**
- 2         (1) In deciding whether or not to approve the electroconvulsive  
3             therapy being performed on the patient, the Tribunal must have  
4             regard to these things —
- 5                 (a) the patient’s wishes, to the extent those wishes can be  
6                     ascertained;
- 7                 (b) if the patient is a child —
- 8                         (i) the views of the child’s parent or guardian; and
- 9                         (ii) the views of any youth advocate who is in  
10                             contact with the child;
- 11                 (c) if the patient has reached 18 years of age and does not  
12                     have the capacity to give informed consent to the  
13                     electroconvulsive therapy being performed, the person  
14                     who is authorised by law to give that consent on the  
15                     patient’s behalf if that consent were required;
- 16                 (d) if the patient has a nominated person, the views of the  
17                     nominated person;
- 18                 (e) if the patient has a carer, the views of the carer;
- 19                 (f) the consequences for the treatment and care of the  
20                     patient if the electroconvulsive therapy is not performed;
- 21                 (g) the nature and degree of any significant risk of  
22                     performing the electroconvulsive therapy;
- 23                 (h) whether the electroconvulsive therapy is likely to  
24                     promote and maintain the health and wellbeing of the  
25                     patient;
- 26                 (i) whether any alternative treatment is available;
- 27                 (j) the nature and degree of any significant risk of  
28                     providing any alternative treatment that is available.
- 29         (2) For the purpose of ascertaining the patient’s wishes, the  
30             Tribunal must have regard to the following —
- 31                 (a) any treatment decision in any advance health directive  
32                     made by the patient;

- 1 (b) the terms of any enduring power of guardianship made  
2 by the patient;
- 3 (c) any other things that the Tribunal considers may be  
4 relevant in ascertaining the patient's wishes.

5 **318. Decision on application**

6 The Tribunal may decide the application by —

- 7 (a) approving the electroconvulsive therapy being  
8 performed in accordance with the treatment plan set out  
9 in the application; or
- 10 (b) approving the electroconvulsive therapy being  
11 performed in accordance with the treatment plan set out  
12 in the application subject to the maximum number of  
13 treatments with electroconvulsive therapy to be  
14 performed being reduced to the number specified by the  
15 Tribunal; or
- 16 (c) refusing to approve the electroconvulsive therapy being  
17 performed.

18 **Division 6 — Psychosurgery: approvals**

19 **319. Application of this Division**

20 This Division applies for the purposes of sections 169(2)(c),  
21 170(2)(c) and 171(1)(c).

22 **320. Application for approval**

- 23 (1) The treating psychiatrist may apply to the Tribunal for approval  
24 for psychosurgery to be performed on a patient.
- 25 (2) The application must —
- 26 (a) be in writing; and
- 27 (b) set out the reasons why the treating psychiatrist is  
28 recommending that the psychosurgery be performed;  
29 and

- 1 (c) set out a treatment plan in relation to the psychosurgery,  
2 including —  
3 (i) a detailed description of the psychosurgery  
4 proposed to be performed;  
5 (ii) the name, qualifications and experience of the  
6 neurosurgeon who it is proposed will perform the  
7 psychosurgery;  
8 (iii) the name and address of the place where it is  
9 proposed to perform the psychosurgery.

10 **321. Parties to proceeding**

11 The parties to a proceeding in relation to the application are —

- 12 (a) the patient; and  
13 (b) the treating psychiatrist; and  
14 (c) any other person who, in the Tribunal's opinion, has a  
15 sufficient interest in the matter.

16 **322. Constitution of Tribunal**

17 For a proceeding in relation to the application, the Tribunal  
18 must be constituted by these 5 members —

- 19 (a) a member who is a legal practitioner;  
20 (b) a neurosurgeon who was appointed as a member after  
21 consultation by the Minister with the Minister  
22 responsible for administering the *Health Act 1911* held  
23 after consultation by that Minister with the Royal  
24 Australasian College of Surgeons;  
25 (c) 2 members who are psychiatrists, one of whom must be  
26 a child and adolescent psychiatrist if the patient is a  
27 child;  
28 (d) a member who is not —  
29 (i) a legal practitioner; or  
30 (ii) a medical practitioner; or

1 (iii) a mental health practitioner.

2 **323. Things Tribunal must be satisfied of**

3 The Tribunal must not approve the psychosurgery being  
4 performed on the patient unless satisfied of these things —

- 5 (a) informed consent to the psychosurgery being performed  
6 has been given as required by section 169(2)(b),  
7 170(2)(b) or 171(1)(b);
- 8 (b) performing the psychosurgery has clinical merit and is  
9 appropriate in the circumstances;
- 10 (c) all alternatives to performing psychosurgery that are  
11 reasonably available and likely to be of a sufficient and  
12 lasting benefit to the patient have been appropriately  
13 trialled with the patient but have not resulted in a  
14 sufficient and lasting benefit to the patient;
- 15 (d) the neurosurgeon who it is proposed will perform the  
16 psychosurgery is suitably qualified and experienced;
- 17 (e) the place where it is proposed to perform the  
18 psychosurgery is a suitable place.

19 **324. Things to which Tribunal must have regard**

20 In deciding whether or not to approve the psychosurgery  
21 therapy being performed on the patient, the Tribunal must have  
22 regard to these things —

- 23 (a) if the patient is a child —
- 24 (i) the views of the child's parent or guardian; and  
25 (ii) the views of any youth advocate who is in  
26 contact with the child;
- 27 (b) if the patient has a nominated person, the views of the  
28 nominated person;
- 29 (c) if the patient has a carer, the views of the carer;
- 30 (d) the consequences for the treatment and care of the  
31 patient if the psychosurgery is not performed;

- 1 (e) the nature and degree of any significant risk of  
2 performing the psychosurgery;
- 3 (f) whether the psychosurgery is likely to promote and  
4 maintain the health and wellbeing of the patient.

5 **325. Decision on application**

6 The Tribunal may decide the application by —

- 7 (a) approving the psychosurgery being performed in  
8 accordance with the application; or
- 9 (b) refusing to approve the psychosurgery being performed.

10 **Division 7 — Non-clinical matters: compliance notices**

11 **326. Terms used**

12 In this Division —

13 ***prescribed requirement*** means a requirement under this Act —

- 14 (a) to do any of these things —
- 15 (i) give a patient or other person a document or  
16 other information;
- 17 (ii) include a document or other information on a  
18 patient’s medical record;
- 19 (iii) comply with a request made by a patient or other  
20 person;
- 21 or
- 22 (b) to ensure that a thing referred to in paragraph (a) is  
23 done;

24 ***service provider***, in relation to a prescribed requirement,  
25 means —

- 26 (a) the person in charge of a mental health service; or  
27 (b) the medical practitioner or mental health practitioner,  
28 who is required under this Act to comply with the requirement.

- 1 **327. Tribunal may serve compliance notice on service provider**
- 2 (1) The Tribunal may —
- 3 (a) on the application of a person referred to in section 328;
- 4 or
- 5 (b) on its own initiative,
- 6 serve a service provider with a compliance notice if it appears to
- 7 the Tribunal that the service provider has not complied with a
- 8 prescribed requirement.
- 9 (2) The compliance notice may require the service provider —
- 10 (a) to take specified action within the specified period for
- 11 the purpose of complying with the prescribed
- 12 requirement; and
- 13 (b) to report to the Tribunal in the specified manner within
- 14 the specified period that —
- 15 (i) the service provider has taken the action
- 16 specified under paragraph (a) within the period
- 17 specified under paragraph (a); or
- 18 (ii) if the service provider has not taken the specified
- 19 action or has not taken that action within the
- 20 specified period, the reasons for not doing so.
- 21 (3) Before deciding whether or not to serve a compliance notice on
- 22 a service provider, the Tribunal must consider whether it would
- 23 be appropriate to refer the matter to one or more of the
- 24 following —
- 25 (a) the CEO;
- 26 (b) the CEO of the Health Department;
- 27 (c) the Chief Psychiatrist;
- 28 (d) the National Health Practitioner Board established under
- 29 the *Health Practitioner Regulation National Law (WA)*
- 30 *Act 2010* section 31 for a health profession or another

- 1 person or body that has functions relating to the  
2 professional registration of persons.
- 3 (4) If the Tribunal decides that it would be appropriate to refer the  
4 matter to a person or body referred to in subsection (3), the  
5 Tribunal —
- 6 (a) may refer the matter instead of, or in addition to, serving  
7 a compliance notice on the service provider; and
- 8 (b) if the Tribunal refers the matter under paragraph (a),  
9 must advise the service provider in writing of the  
10 referral.

11 **328. Application for service of compliance notice**

12 An application for the service by the Tribunal of a compliance  
13 notice on a service provider may be made under  
14 section 327(1)(a) by any of these people —

- 15 (a) the patient or other person to whom the prescribed  
16 requirement relates;
- 17 (b) any other person who, in the Tribunal’s opinion, has a  
18 sufficient interest in the matter.

19 **329. Parties to proceeding**

20 The parties to a proceeding under section 327 are —

- 21 (a) the patient or other person to whom the prescribed  
22 requirement relates; and
- 23 (b) the service provider on whom the prescribed  
24 requirement is imposed; and
- 25 (c) if the proceeding relates to an application made under  
26 section 327(1)(a) and the applicant is not the patient or  
27 other person to whom the prescribed requirement  
28 relates, the applicant; and
- 29 (d) any other person who, in the opinion of the Tribunal, has  
30 a sufficient interest in the matter.

1   **330.    Constitution of Tribunal**

2           For a proceeding under section 327, the Tribunal must be  
3           constituted by these 3 members —

- 4           (a)   a member who is a legal practitioner;
- 5           (b)   a member who is a medical practitioner or mental health  
6           practitioner;
- 7           (c)   a member who is not —
- 8                 (i)   a legal practitioner; or
- 9                 (ii)  a medical practitioner; or
- 10              (iii) a mental health practitioner.

11                           **Division 8 — Restrictions on patients' freedom of**  
12                           **communication: review of orders**

13   **331.    Application for review**

- 14       (1)   A person specified in subsection (2) may apply to the Tribunal  
15       for a review of a decision under section 229 to make or amend  
16       an order prohibiting a patient from exercising, or limiting the  
17       extent to which a patient can exercise, a right under section 228.
- 18       (2)   An application may be made under subsection (1) by any of  
19       these people —
- 20           (a)   the patient;
- 21           (b)   a mental health advocate;
- 22           (c)   any other person who, in the opinion of the Tribunal, has  
23           a sufficient interest in the matter.

24   **332.    Parties to proceeding**

- 25           The parties to a proceeding in relation to the application are —
- 26           (a)   the patient; and
- 27           (b)   the person who made the decision under section 229;  
28           and

- 1 (c) if the applicant is not the patient, the applicant; and  
2 (d) any other person who, in the opinion of the Tribunal, has  
3 a sufficient interest in the matter.

4 **333. Constitution of Tribunal**

5 (1) For a proceeding in relation to the application, the Tribunal  
6 must be constituted by these 3 members —

- 7 (a) a member who is a legal practitioner;  
8 (b) a member who is a psychiatrist or a child and adolescent  
9 psychiatrist if the patient is a child, unless subsection (2)  
10 or (3) applies;  
11 (c) a member who is not —  
12 (i) a legal practitioner; or  
13 (ii) a medical practitioner; or  
14 (iii) a mental health practitioner.

15 (2) If —

- 16 (a) the patient is a child; and  
17 (b) none of the members who are child and adolescent  
18 psychiatrists are available for the proceeding but another  
19 member who is a medical practitioner or mental health  
20 practitioner who has experience in dealing with children  
21 who have a mental illness is available for the  
22 proceeding; and  
23 (c) the proceeding does not involve a matter requiring a  
24 clinical judgment to be made about the voluntary  
25 patient's treatment,

26 the Tribunal may be constituted for the proceeding with that  
27 other member.

28 (3) If —

- 29 (a) the patient is not a child; and

- 1 (b) none of the members who are psychiatrists are available  
2 for the proceeding but another member who is a medical  
3 practitioner or mental health practitioner is available for  
4 the proceeding; and
- 5 (c) the proceeding does not involve a matter requiring a  
6 clinical judgment to be made about the patient's  
7 treatment,

8 the Tribunal may be constituted for the proceeding with that  
9 other member.

10 **334. Decision on application**

11 The Tribunal may decide the application by —

- 12 (a) confirming the order as made or amended; or  
13 (b) amending, or further amending, the order as made or  
14 amended; or  
15 (c) revoking the order.

16 **Division 9 — Jurisdiction in relation to nominated persons**

17 **335. Application for decision**

18 A person who, in the opinion of the Tribunal, has a sufficient  
19 interest in the matter may apply to the Tribunal for a decision  
20 under this Division.

21 **336. Declaration about validity of nomination**

- 22 (1) The Tribunal may declare that a nomination is valid or invalid.
- 23 (2) Instead of declaring a nomination to be invalid because of a  
24 failure to comply with section 237, the Tribunal —
- 25 (a) may declare the nomination to be valid; and  
26 (b) may make an order varying the terms of the nomination  
27 in the manner the Tribunal considers most likely to give  
28 effect to the intention of the person who made the  
29 nomination.

- 1 (3) A declaration made under subsection (1) or (2)(a) has effect  
2 according to its terms.

3 **337. Revocation of nomination**

4 The Tribunal may revoke a nomination if satisfied that the  
5 nominated person is not an appropriate person to perform the  
6 role of the nominated person because —

- 7 (a) the person is likely, in performing that role, to adversely  
8 affect to a significant degree the interests of the person  
9 who made the nomination;  
10 (b) the person is not capable of performing that role because  
11 of mental or physical incapacity;  
12 (c) the person is not willing, or is not reasonably able, to  
13 perform that role.

14 **338. Parties to proceeding**

15 The parties to a proceeding in relation to an application under  
16 this Division are —

- 17 (a) the person who made the nomination; and  
18 (b) the nominated person; and  
19 (c) if the applicant is not a person referred to in  
20 paragraph (a) or (b), the applicant; and  
21 (d) any other person who, in the opinion of the Tribunal, has  
22 a sufficient interest in the matter.

23 **339. Constitution of Tribunal**

24 For a proceeding in relation to an application under this  
25 Division, the Tribunal must be constituted by these  
26 3 members —

- 27 (a) a member who is a legal practitioner;  
28 (b) a member who is a psychiatrist;  
29 (c) a member who is not —

- 1 (i) a legal practitioner; or  
2 (ii) a medical practitioner; or  
3 (iii) a mental health practitioner.

4 **Division 10 — Procedural matters**

5 **Subdivision 1 — Proceedings generally**

6 **340. Lodgment of documents**

7 An application or other document required to be made or given  
8 to the Tribunal must be lodged at the office of the Tribunal.

9 **341. Sittings**

10 The Tribunal sits at the times, and in the places in the State,  
11 determined by the Head of the Tribunal.

12 **342. Conduct of proceedings**

- 13 (1) A proceeding must be conducted with as little formality and  
14 technicality, and with as much expedition, as a proper  
15 consideration of the matter before the Tribunal permits.
- 16 (2) In a proceeding, the Tribunal is bound by the rules of natural  
17 justice.
- 18 (3) Subject to this Part, the practice and procedure of the Tribunal  
19 in a proceeding is —
- 20 (a) as provided for in the rules made under section 369; or  
21 (b) if no provision is made in the rules, as determined by the  
22 Tribunal.

23 **343. Presiding member**

24 The presiding member in a proceeding is —  
25 (a) the Head of the Tribunal; or

- 1 (b) if the Tribunal constituted for the proceeding does not  
2 include the Head of the Tribunal, the member of the  
3 Tribunal as so constituted who is a legal practitioner.

4 **344. Deciding questions in proceedings**

- 5 (1) In this section —

6 *question of law* includes a question of mixed law and fact.

- 7 (2) Subject to subsection (3), a question in a proceeding before the  
8 Tribunal must be resolved according to the opinion of the  
9 majority of the members constituting the Tribunal for the  
10 proceeding.

- 11 (3) A question of law in a proceeding before the Tribunal must be  
12 resolved according to the opinion of the member of the Tribunal  
13 constituted for the proceeding who is a legal practitioner.

14 **345. No fees payable**

15 No fees are payable in relation to —

- 16 (a) any application made under this Part; or  
17 (b) any proceeding of the Tribunal under this Part.

18 **346. Each party to bear own costs**

19 Subject to section 347(1)(b), each party to a proceeding must  
20 bear the party's own costs.

21 **347. Frivolous, vexatious or improper proceedings**

- 22 (1) The Tribunal may, if satisfied that a proceeding is frivolous or  
23 vexatious or has been brought for an improper purpose —

- 24 (a) dismiss the proceeding; and  
25 (b) make any order as to costs that the Tribunal considers  
26 appropriate; and  
27 (c) on the application of a party, order that the party who  
28 instituted the proceeding cannot institute a proceeding of

1 a kind specified in the order without the leave of the  
2 Tribunal.

3 (2) An order made under subsection (1)(c) has effect despite any  
4 other provision of this Part.

5 (3) The Tribunal may amend or revoke an order made under  
6 subsection (1)(c).

7 **Subdivision 2 — Notice of proceedings**

8 **348. Notice of applications**

9 (1) If the person concerned in an application has reached 18 years  
10 of age, the Tribunal must give each of these people a copy of  
11 the application —

12 (a) if the person has an enduring guardian or guardian, the  
13 enduring guardian or guardian;

14 (b) if the person has a nominated person, the nominated  
15 person;

16 (c) if the person has a carer, the carer.

17 (2) If the person concerned in an application is a child, the Tribunal  
18 must give each of these people a copy of the application —

19 (a) the child's parent or guardian;

20 (b) if the child has a nominated person, the nominated  
21 person;

22 (c) if the child has a carer, the carer;

23 (d) the Chief Mental Health Advocate.

24 **349. Notice of hearings**

25 (1) If the person concerned in a proceeding has reached 18 years of  
26 age, each of these people must be given notice of the time and  
27 place of any hearing —

28 (a) if the person has an enduring guardian or guardian, the  
29 enduring guardian or guardian;

- 1 (b) if the person has a nominated person, the nominated  
2 person;
- 3 (c) if the person has a carer, the carer.
- 4 (2) If the person concerned in a proceeding is a child, each of these  
5 people must be given notice of the time and place of any  
6 hearing —
- 7 (a) the child’s parent or guardian;
- 8 (b) if the child has a nominated person, the nominated  
9 person;
- 10 (c) if the child has a carer, the carer;
- 11 (d) the Chief Mental Health Advocate.

12 **Subdivision 3 — Appearance and representation**

13 **350. Party who has reached 18 years of age**

- 14 (1) At a hearing in a proceeding, a party who has reached 18 years  
15 of age —
- 16 (a) may appear in person; or
- 17 (b) if the Tribunal makes an order under subsection (2) in  
18 respect of the party, must be represented by another  
19 person.
- 20 (2) The Tribunal may make an order that the person must be  
21 represented at the hearing if, in the Tribunal’s opinion, it would  
22 not be in the person’s best interests for the person to appear in  
23 person at the hearing.
- 24 (3) Even though the person is represented at the hearing, the person  
25 is entitled to express in person his or her views about any matter  
26 arising in the course of the hearing that may affect the person.

1 **351. Party who is child with capacity to consent**

- 2 (1) At a hearing in a proceeding, a party who is a child who has  
3 sufficient maturity and understanding to make reasonable  
4 decisions about matters relating to himself or herself —
- 5 (a) may appear in person; or  
6 (b) may be represented by any of these people —
- 7 (i) the child’s parent or guardian unless the Tribunal  
8 makes an order under section 357(2);  
9 (ii) a youth advocate;  
10 (iii) any other person who, in the Tribunal’s opinion,  
11 can represent the child’s interests.
- 12 (2) Even though the child is represented at the hearing, the child is  
13 entitled to express in person his or her views about any matter  
14 arising in the course of the hearing that may affect the child.

15 **352. Party who is child with no capacity to consent**

- 16 At a hearing in a proceeding, a party who is a child who does  
17 not have sufficient maturity or understanding to make  
18 reasonable decisions about matters relating to himself or herself  
19 must be represented by one of these people —
- 20 (a) the child’s parent or guardian unless the Tribunal makes  
21 an order under section 357(2);  
22 (b) a youth advocate;  
23 (c) any other person who, in the Tribunal’s opinion, can  
24 represent the child’s interests.

25 **353. Tribunal may make arrangements for representation**

26 The Tribunal may make arrangements for a party to a  
27 proceeding to be represented at a hearing if the party wants the  
28 Tribunal to make such an arrangement on the party’s behalf.

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**Subdivision 4 — Hearings and evidence**

**354. Nature of review proceedings**

(1) In this section —

*decision-maker*, in relation to a review proceeding, means —

- (a) the psychiatrist who made the involuntary treatment order; or
- (b) the medical practitioner who admitted the voluntary patient; or
- (c) the psychiatrist who made the decision under section 229 to make or amend the order prohibiting, or limiting the extent of, the exercise of the right;

*reviewable decision*, in relation to a review proceeding, means —

- (a) the decision to make the involuntary treatment order; or
- (b) the decision to admit the voluntary patient; or
- (c) the decision under section 229 to make or amend the order prohibiting, or limiting the extent of, the exercise of the right;

*review proceeding* means —

- (a) a review under Division 3 of an involuntary treatment order; or
- (b) a review under Division 4 of a voluntary patient’s admission; or
- (c) a review under Division 8 of a decision under section 229 to make or amend an order prohibiting a patient from exercising, or limiting the extent to which a patient can exercise, a right under section 228.

(2) The review proceeding is a hearing de novo and is not confined to matters that were before the decision-maker but may involve

1 the consideration of new material whether or not it existed when  
2 the reviewable decision was made.

3 (3) The purpose of a reviewable proceeding is to produce the  
4 correct and preferable decision at the time of the Tribunal's  
5 decision on the reviewable proceeding.

6 **355. Closed hearings**

7 (1) A hearing in a proceeding is not open to the public unless the  
8 Tribunal orders that the hearing or a part of the hearing is open  
9 to the public.

10 (2) The Tribunal may make an order —  
11 (a) permitting a specified person to be present at; or  
12 (b) excluding a specified person (including a witness) from,  
13 a hearing in a proceeding or a part of a hearing in a proceeding.

14 **356. Person chosen by person concerned may be present**

15 (1) A person chosen by the person concerned in a proceeding may  
16 be present at a hearing unless the Tribunal makes an order  
17 excluding the person from the hearing or a part of the hearing.

18 (2) The Tribunal may make an order under subsection (1) on the  
19 application of any person if satisfied that it would not be in the  
20 person concerned's best interests for the person to be present at  
21 the hearing or the part of the hearing.

22 **357. Parent or guardian may be excluded from hearing**

23 (1) This section applies if a child is a party to a proceeding.

24 (2) The Tribunal may, on the application of —  
25 (a) the child's treating psychiatrist; or  
26 (b) if the child does not have a treating psychiatrist or the  
27 treating psychiatrist is not reasonably available, another  
28 psychiatrist,

1 make an order excluding the child’s parent or guardian from a  
2 hearing in a proceeding or a part of a hearing in a proceeding if,  
3 in the Tribunal’s opinion, it would not be in the child’s best  
4 interests for the parent or guardian to be present at the hearing  
5 or the part of the hearing.

6 **358. Evidence generally**

7 (1) The Tribunal is not bound by the rules of evidence but may  
8 inform itself of a matter relevant to a proceeding in any manner  
9 the Tribunal considers appropriate.

10 (2) Evidence in a proceeding may be given orally or in writing.

11 (3) The Tribunal may require evidence in a proceeding to be given  
12 on oath or by affidavit.

13 (4) The presiding member in a proceeding may direct a person  
14 appearing as a witness in the proceeding —

15 (a) to answer a question relevant to the proceeding; or

16 (b) to produce a document relevant to the proceeding.

17 (5) A person appearing as a witness in a proceeding has the same  
18 protection and immunity as a witness has in a proceeding in the  
19 Supreme Court.

20 **359. Power to summon persons to attend and produce documents**

21 The Tribunal may, by issuing a summons signed on behalf of  
22 the Tribunal by a member or the registrar and serving the  
23 summons on the person to whom it is addressed, require the  
24 person to attend before the Tribunal at the time and place  
25 specified in the summons —

26 (a) to give evidence in a proceeding; or

27 (b) to produce a document relevant to a proceeding that is in  
28 the person’s custody or control and is specified in the  
29 summons; or

30 (c) to do both of those things.

1 **360. Self-incrimination**

2 (1) A person is not excused from complying with a direction given  
3 to the person under section 358(4) or a summons served on the  
4 person under section 359 on the ground that the answer to a  
5 question or the production of a document might tend to  
6 incriminate the person or expose the person to a criminal  
7 penalty.

8 (2) However, any answer given or document produced by a person  
9 in compliance with a direction given to the person under  
10 section 358(4) or a summons served on the person under  
11 section 359 is not admissible in evidence in any criminal  
12 proceedings against the person other than proceedings for an  
13 offence under section 362(d).

14 **361. Powers in relation to documents produced**

15 In relation to a document produced to the Tribunal in a  
16 proceeding, the Tribunal may do any of these things —

- 17 (a) inspect the document;  
18 (b) retain the document for a reasonable period;  
19 (c) take a copy of, or extract from, the document.

20 **362. Offences relating to answering questions, producing**  
21 **documents and providing other information**

22 A person commits an offence if the person —

- 23 (a) without reasonable excuse, proof of which is on the  
24 person, does not swear an oath or make an affirmation  
25 when required under section 358(3); or  
26 (b) without reasonable excuse, proof of which is on the  
27 person, does not answer a question or produce a  
28 document when directed to do so under section 358(4);  
29 or  
30 (c) without reasonable excuse, proof of which is on the  
31 person, does not attend before the Tribunal as required

1 by a summons served on the person under section 359;  
2 or

3 (d) gives an answer, produces a document or provides any  
4 other information to the Tribunal in a proceeding that  
5 the person knows is false or misleading in a material  
6 particular.

7 Penalty: a fine of \$5 000.

8 **363. Evidence and findings in other proceedings**

9 In a proceeding, the Tribunal —

10 (a) may receive in evidence the transcript of evidence in a  
11 proceeding before a court or other person or body acting  
12 judicially and may draw any conclusion of fact from that  
13 evidence that the Tribunal considers appropriate; and

14 (b) may adopt a finding, decision or judgment of a court or  
15 other person or body acting judicially that is relevant to  
16 the proceeding.

17 **364. Contempt of Tribunal**

18 A person commits an offence if the person —

19 (a) wilfully insults the Tribunal, or a member of the  
20 Tribunal, constituted for a proceeding; or

21 (b) wilfully interrupts or obstructs the conduct of a hearing;  
22 or

23 (c) creates a disturbance, or takes part in creating or  
24 continuing a disturbance, in or near a place where the  
25 Tribunal is sitting.

26 Penalty: a fine of \$10 000.

27 **365. Hearings to be recorded**

28 The registrar must ensure that each hearing in a proceeding is  
29 recorded and the recording is kept in a form from which a  
30 transcript of the hearing can be prepared if required.

1 **366. Suppression of publication**

2 (1) In this section —

3 *information about a proceeding* means —

- 4 (a) an account of a proceeding or a part a proceeding; or
- 5 (b) any evidence in a proceeding; or
- 6 (c) the contents of a document, or of a part of a document,  
7 produced in a proceeding; or
- 8 (d) any other information about a proceeding.

9 (2) A person must not publish information about a proceeding that  
10 might identify —

- 11 (a) a party; or
- 12 (b) a person who is related to or associated with a party; or
- 13 (c) a witness in the proceeding; or
- 14 (d) a person who is or is alleged to be concerned in any  
15 other way in a matter to which the proceeding relates.

16 Penalty: a fine of \$5 000.

17 (3) A person must not publish a list of proceedings identified by  
18 reference to the names of the parties to those proceedings  
19 except —

- 20 (a) by displaying in the Tribunal's premises a notice listing  
21 the proceedings; or
- 22 (b) as permitted by the regulations.

23 Penalty: a fine of \$5 000.

24 (4) Subsections (2) and (3) do not apply in relation to any of these  
25 publications —

- 26 (a) the communication of a transcript of evidence or other  
27 document to a person concerned in a proceeding in a  
28 court or tribunal for use in connection with the  
29 proceeding;

- 1 (b) the communication of a transcript of evidence or other  
2 document to —
- 3 (i) a body that is responsible for disciplining  
4 members of the legal or medical profession; or
- 5 (ii) a person concerned in a proceeding before such a  
6 body;
- 7 (c) the communication of a transcript of evidence or other  
8 document to a body that grants assistance by way of  
9 legal aid for the purpose of making a decision as to  
10 whether such assistance should be granted or continued  
11 in a particular case;
- 12 (d) a publication genuinely intended primarily for the use of  
13 members of a profession, being —
- 14 (i) a separate volume of, or a volume in a part of a  
15 series of, law reports; or
- 16 (ii) a decision of a court or tribunal published from  
17 information stored electronically or otherwise; or
- 18 (iii) any other publication of a technical character.
- 19 (5) Without limiting subsection (2) or (3), the Tribunal may make  
20 an order in relation to a particular proceeding that —
- 21 (a) any evidence given before it; or
- 22 (b) the contents of a document, or of a part of a document,  
23 produced to it; or
- 24 (c) any other information,
- 25 must not be published or must not be published except in the  
26 manner or to a person specified by the Tribunal.
- 27 (6) A person who contravenes an order made under subsection (5)  
28 commits an offence.
- 29 Penalty for an offence under subsection (6): a fine of \$5 000.

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**Subdivision 5 — Decisions in proceedings**

2

**367. Reasons for decision**

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(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.

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(2) The Tribunal must comply with the request.

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(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.

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**368. Giving effect to Tribunal's decisions**

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(1) In this section —

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*decision*, of the Tribunal, does not include —

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(a) a recommendation made by the Tribunal under section 304(3) about an involuntary patient's treatment support and discharge plan; or

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(b) a recommendation made by the Tribunal under section 311 about a voluntary in-patient's admission to an authorised hospital.

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(2) A person who does not give effect to a decision of the Tribunal according to its terms commits an offence.

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Penalty for an offence under subsection (2): a fine of \$10 000.

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**Division 11 — Rules**

23

**369. Power to make**

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The Head of the Tribunal may make rules for the Tribunal, but only after consultation with the members appointed under section 373(1).

1 **370. Content**

- 2 (1) Rules made under section 369 may make provision for any  
3 matter that is —
- 4 (a) required or permitted by this Act to be provided for in  
5 the rules; or
- 6 (b) necessary or convenient for the Tribunal to operate  
7 efficiently, economically and expeditiously.
- 8 (2) Without limiting subsection (1), the rules may provide for any  
9 of these things —
- 10 (a) the organisation and management of the business of the  
11 Tribunal;
- 12 (b) custody and use of the Tribunal's seal;
- 13 (c) the practice and procedure of the Tribunal in a  
14 proceeding, including —
- 15 (i) the participation by a party, a party's  
16 representative or a witness in a hearing in a  
17 proceeding by telephone, video link or other  
18 means of communication; and
- 19 (ii) the conduct of all or part of a proceeding entirely  
20 on the basis of documents and without the  
21 parties, their representatives or any witnesses  
22 appearing at or participating in a hearing;
- 23 (d) documents to be lodged with or issued by the Tribunal,  
24 or to be served, in electronic form;
- 25 (e) the Tribunal's records.

26 **371. Publication and tabling**

- 27 (1) Rules made under section 369 —
- 28 (a) must be published in the *Gazette*; and
- 29 (b) take effect from the date of publication or from any later  
30 date or dates that are specified in the rules; and

- 1           (c) must be laid before each House of Parliament within  
2           6 sitting days of the House next following the  
3           publication of the rules.
- 4           (2) If either House of Parliament passes a resolution, of which  
5           notice has been given at any time within 6 sitting days after the  
6           rules have been laid before it, disallowing the whole or a part of  
7           a rule, the rule or the part of it disallowed ceases to have effect.
- 8           (3) If the whole or a part of a rule is disallowed, the validity of any  
9           proceedings taken or of anything done under the rule or the part  
10          of it in the meantime is not affected.
- 11          (4) If such a resolution is passed, notice of the fact must be  
12          published in the *Gazette* as soon as practicable.

13                   **Division 12 — Tribunal members: appointment and**  
14                   **related matters**

15   **372.    Head of Tribunal**

16           The Governor may appoint a person recommended by the  
17           Minister to be the Head of the Mental Health Tribunal.

18   **373.    Other members**

- 19           (1) The Governor may appoint one or more persons recommended  
20           by the Minister to be members of the Mental Health Tribunal in  
21           addition to the Head of the Tribunal.
- 22           (2) Any number of persons that the Minister considers appropriate  
23           may be appointed under subsection (1), but —
- 24               (a) at least one must be a legal practitioner; and  
25               (b) at least one must be a psychiatrist; and  
26               (c) at least one must be a person who is not —
- 27                   (i) a legal practitioner; or  
28                   (ii) a medical practitioner; or  
29                   (iii) a mental health practitioner.

1 **374. Tenure of office**

2 (1) The Head of the Tribunal may be appointed on a full-time or  
3 part-time basis.

4 (2) A member appointed under section 373(1) may be appointed on  
5 a full-time, part-time or sessional basis.

6 (3) A member —

7 (a) holds office for the period (not exceeding 5 years)  
8 specified in the instrument of appointment; and

9 (b) is eligible for reappointment.

10 **375. Remuneration and other terms and conditions**

11 (1) The Head of the Tribunal has the terms and conditions of  
12 service, including as to remuneration and other allowances,  
13 determined by the Salaries and Allowances Tribunal under the  
14 *Salaries and Allowances Act 1975*.

15 (2) A member appointed under section 373(1) has the terms and  
16 conditions of service, including as to remuneration and other  
17 allowances, determined by the Minister on the recommendation  
18 of the Public Service Commissioner.

19 **376. Resignation**

20 (1) A member may resign from office by writing signed and given  
21 to the Governor.

22 (2) The resignation takes effect on the later of the following —

23 (a) receipt by the Governor;

24 (b) the day specified in the resignation.

25 **377. Removal from office**

26 The Governor may remove a person from the office of member  
27 on any of these grounds —

28 (a) mental or physical incapacity;

- 1 (b) incompetence;  
2 (c) neglect of duty;  
3 (d) misconduct;  
4 (e) if the person was appointed to that office on the basis of  
5 having a particular status — ceasing to have that status;  
6 (f) if the person was appointed to that office on the basis of  
7 not having a particular status — attaining that status.

8 **378. Acting members**

- 9 (1) The Minister may appoint a person to act in —  
10 (a) the office of Head of the Mental Health Tribunal  
11 referred to in section 372; or  
12 (b) the office of member of the Mental Health Tribunal  
13 referred to in section 373(1),  
14 during a vacancy in the office.
- 15 (2) Subject to this section, the Minister may —  
16 (a) determine the terms and conditions of an appointment  
17 under subsection (1)(a) or (b), including as to  
18 remuneration and allowances; and  
19 (b) terminate an appointment under subsection (1)(a) or (b)  
20 at any time.
- 21 (3) A person appointed under subsection (1)(a) or (b) to act in a  
22 vacancy cannot act in the vacancy for more than 3 months.
- 23 (4) An appointment under subsection (1)(a) or (b) ends when the  
24 first of these things occurs —  
25 (a) the vacancy is filled;  
26 (b) the Minister terminates the appointment under  
27 subsection (2)(b);  
28 (c) the expiry of the 3-month period referred to in  
29 subsection (3).

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**Division 13 — Registrar and other staff**

2

**379. Registrar**

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A registrar of the Mental Health Tribunal must be appointed under the *Public Sector Management Act 1994* Part 3.

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**380. Functions of registrar**

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In addition to the functions conferred on, or delegated to, the registrar under this Act, the registrar has these functions —

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(a) keeping, in accordance with the regulations, particulars of each involuntary patient;

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(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;

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(c) ensuring that any other proceeding is brought before the Board as soon as practicable;

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(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;

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(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.

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**381. Head of Tribunal may give registrar directions**

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(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.

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(2) The registrar must comply with a direction given under subsection (1).

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1 **382. Other staff**

2 The staff necessary to assist the registrar in the performance of  
3 the registrar's functions under this Act must be appointed under  
4 the *Public Sector Management Act 1994* Part 3.

5 **Division 14 — Annual reports**

6 **383. Annual report: preparation**

7 Within 3 months after 30 June in each year, the Head of the  
8 Tribunal must prepare and give to the Minister a report as to the  
9 general activities of the Tribunal during the financial year  
10 ending on that day.

11 **384. Annual report: tabling**

12 (1) The Minister must cause a copy of a report referred to in  
13 section 383 to be laid before each House of Parliament, or dealt  
14 with under subsection (2), within 21 days after receiving the  
15 report.

16 (2) If —

- 17 (a) at the commencement of the period referred to in  
18 subsection (1) a House of Parliament is not sitting; and  
19 (b) the Minister is of the opinion that the House will not sit  
20 during that period,

21 the Minister must transmit a copy of the report to the Clerk of  
22 that House.

23 (3) A copy of a report transmitted under subsection (2) to the Clerk  
24 of a House is taken to have been laid before that House.

25 (4) The laying of a copy of a report that is taken to have occurred  
26 under subsection (3) must be recorded in the Minutes, or Votes  
27 and Proceedings, of the House on the first sitting day of the  
28 House after the receipt of the copy by the Clerk.

1 **385. Inclusion in Agency's annual report**

2 Without limiting section 383 or 384, the requirements of those  
3 sections in respect of a financial year are taken to have been  
4 complied with if —

5 (a) the report prepared under section 383 for the financial  
6 year is included in the Agency's annual report under the  
7 *Financial Management Act 2006* section 61 for that  
8 year; and

9 (b) the Minister causes a copy of the Agency's annual  
10 report to be laid before each House of Parliament, or to  
11 be dealt with under section 83 of that Act, within the  
12 period required by section 64 of that Act.

13 **Division 15 — Other matters**

14 **386. Seal**

15 The Tribunal must have a seal.

16 **387. Judicial notice of certain matters**

17 (1) A court or other person or body acting judicially must take  
18 judicial notice of the following —

19 (a) the signature of a person who was or is a member;

20 (b) the signature of a person who is or was the registrar;

21 (c) the fact that a person referred to in paragraph (a) or (b)  
22 is or was a member or the registrar;

23 (d) a seal of the Tribunal affixed to a document.

24 (2) A court or other person acting judicially must presume that the  
25 seal of the Tribunal affixed to a document was properly affixed  
26 unless the contrary is proved.

1 **Part 19 — Review by State Administrative Tribunal**

2 **Division 1 — Jurisdiction and constitution**

3 **388. Review of decisions of Mental Health Tribunal**

4 (1) In this section —

5 *decision*, of the Mental Health Tribunal, includes an order,  
6 direction or declaration made by the Mental Health Tribunal.

7 (2) A person in respect of whom the Mental Health Tribunal makes  
8 a decision who is dissatisfied with the decision may apply to the  
9 State Administrative Tribunal for a review of the decision.

10 (3) Any other person who, in the State Administrative Tribunal's  
11 opinion, has a sufficient interest in the matter may, with the  
12 leave of the State Administrative Tribunal, apply to the State  
13 Administrative Tribunal for a review of a decision of the Mental  
14 Health Tribunal.

15 **389. Constitution generally**

16 (1) For the purpose of exercising jurisdiction under section 388,  
17 except as provided by sections 390 and 391, the State  
18 Administrative Tribunal must be constituted by these  
19 3 members —

20 (a) a judicial member;

21 (b) a member who is a psychiatrist or a child and adolescent  
22 psychiatrist if the person in respect of whom the  
23 decision being reviewed is made is a child, unless  
24 subsection (2) or (3) applies;

25 (c) a member who is not —

26 (i) a legally qualified member; or

27 (ii) a medical practitioner; or

28 (iii) a mental health practitioner.

29 (2) If —

- 1 (a) the person in respect of whom the decision being  
2 reviewed was made is a child; and
- 3 (b) none of the members who are child and adolescent  
4 psychiatrists are available but another member who is a  
5 medical practitioner or mental health practitioner who  
6 has experience in dealing with children who have a  
7 mental illness is available; and
- 8 (c) the proceeding does not involve a matter requiring  
9 a clinical judgment to be made about the child's  
10 treatment,

11 the State Administrative Tribunal may be constituted with that  
12 other member.

13 (3) If —

- 14 (a) the person in respect of whom the decision being  
15 reviewed was made is not a child; and
- 16 (b) none of the members who are psychiatrists are available  
17 but another member who is a medical practitioner or  
18 mental health practitioner is available; and
- 19 (c) the proceeding does not involve a matter requiring  
20 a clinical judgment to be made about the person,

21 the Tribunal may be constituted with that other member.

22 **390. Constitution for ECT matters**

23 For the purpose of exercising jurisdiction under section 388 on  
24 an application for review of a decision under Part 18 Division 5,  
25 the State Administrative Tribunal must be constituted by these  
26 5 members —

- 27 (a) a judicial member;
- 28 (b) 2 members who are psychiatrists, one of whom must be  
29 a child and adolescent psychiatrist if the person in  
30 respect of whom the decision being reviewed was made  
31 is a child;

- 1 (c) 2 members, neither of whom is —  
2 (i) a legally qualified member; or  
3 (ii) a medical practitioner; or  
4 (iii) a mental health practitioner.

5 **391. Constitution for psychosurgical matters**

6 For the purpose of exercising jurisdiction under section 388 on  
7 an application for review of a decision under Part 18 Division 6,  
8 the State Administrative Tribunal must be constituted by these  
9 5 members —

- 10 (a) a judicial member;  
11 (b) a neurosurgeon who was appointed as a member after  
12 consultation by the Minister responsible for  
13 administering the *State Administrative Tribunal*  
14 *Act 2004* with the Minister responsible for administering  
15 the *Health Act 1911* held after consultation by that  
16 Minister with the Royal Australasian College of  
17 Surgeons;  
18 (c) a member who is a psychiatrist or a child and adolescent  
19 psychiatrist if the person in respect of whom the  
20 decision being reviewed was made is a child;  
21 (d) 2 members, neither of whom is —  
22 (i) a legally qualified member; or  
23 (ii) a medical practitioner; or  
24 (iii) a mental health practitioner.

25 **392. Determination of questions of law before Mental Health**  
26 **Tribunal**

- 27 (1) In this section —  
28 *question of law* does not include a question of mixed law and  
29 fact.

- 1 (2) The Mental Health Tribunal may apply to the State  
2 Administrative Tribunal for a determination on a question of  
3 law that arises in a proceeding before the Mental Health  
4 Tribunal.

5 **Division 2 — Procedural matters**

6 **393. No fees payable**

7 No fees are payable in relation to —

- 8 (a) any application made under this Part; or  
9 (b) any proceeding of the State Administrative Tribunal  
10 under this Part.

11 **394. Appearance and representation**

12 (1) At a hearing in a proceeding under this Part, a party to the  
13 proceeding —

- 14 (a) may appear before the State Administrative Tribunal in  
15 person; or  
16 (b) if the State Administrative Tribunal makes an order  
17 under subsection (2) in respect of the party, must be  
18 represented by another person.

19 (2) The State Administrative Tribunal may make an order that the  
20 party must be represented at the hearing if, in the State  
21 Administrative Tribunal's opinion, it would not be in the party's  
22 best interests for the party to appear in person at the hearing.

23 (3) The State Administrative Tribunal may make arrangements for  
24 a party to a proceeding under this Part to be represented at a  
25 hearing in the proceeding if the party wants the State  
26 Administrative Tribunal to make such an arrangement on the  
27 party's behalf.

1    **395.    Closed hearings**

- 2        (1)    A hearing in a proceeding under this Part is not open to the  
3        public unless the State Administrative Tribunal orders that the  
4        hearing or a part of the hearing is open to the public.
- 5        (2)    The State Administrative Tribunal may make an order —  
6            (a)    permitting a specified person to be present at; or  
7            (b)    excluding a specified person (including a witness) from,  
8        a hearing in a proceeding under this Part or a part of a hearing in  
9        a proceeding under this Part.

10   **396.    Suppression of publication**

- 11        (1)    In this section —  
12        *information about a proceeding* means —  
13            (a)    an account of a proceeding, or a part a proceeding, under  
14            this Part; or  
15            (b)    any evidence in a proceeding under this Part; or  
16            (c)    the contents of a document, or of a part of a document,  
17            produced in a proceeding under this Part; or  
18            (d)    any other information about a proceeding under this  
19            Part.
- 20        (2)    A person must not publish information about a proceeding that  
21        might identify —  
22            (a)    a party to the proceeding; or  
23            (b)    a person who is related to or associated with a party to  
24            the proceeding; or  
25            (c)    a witness in the proceeding; or  
26            (d)    a person who is or is alleged to be concerned in any  
27            other way in a matter to which the proceeding relates.
- 28        Penalty: a fine of \$5 000.

- 1 (3) A person must not publish a list of proceedings under this Part  
2 identified by reference to the names of the parties to those  
3 proceedings except —
- 4 (a) by displaying in the State Administrative Tribunal’s  
5 premises a notice listing the proceedings; or
- 6 (b) as permitted by the regulations.
- 7 Penalty: a fine of \$5 000.
- 8 (4) Subsections (2) and (3) do not apply in relation to any of these  
9 publications —
- 10 (a) the communication of a transcript of evidence or other  
11 document to a person concerned in a proceeding in a  
12 court or tribunal for use in connection with the  
13 proceeding;
- 14 (b) the communication of a transcript of evidence or other  
15 document to —
- 16 (i) a body that is responsible for disciplining  
17 members of the legal or medical profession; or
- 18 (ii) a person concerned in a proceeding before such a  
19 body;
- 20 (c) the communication of a transcript of evidence or other  
21 document to a body that grants assistance by way of  
22 legal aid for the purpose of making a decision as to  
23 whether such assistance should be granted or continued  
24 in a particular case;
- 25 (d) a publication genuinely intended primarily for the use of  
26 members of a profession, being —
- 27 (i) a separate volume of, or a volume in a part of a  
28 series of, law reports; or
- 29 (ii) a decision of a court or tribunal published from  
30 information stored electronically or otherwise; or
- 31 (iii) any other publication of a technical character.

- 1      (5) Without limiting subsection (2) or (3), the State Administrative  
2      Tribunal may make an order in relation to a particular  
3      proceeding that —  
4      (a) any evidence given before it; or  
5      (b) the contents of a document, or of a part of a document,  
6      produced to it; or  
7      (c) any other information,  
8      must not be published or must not be published except in the  
9      manner or to a person specified by the State Administrative  
10     Tribunal.  
11     (6) A person who contravenes an order made under subsection (5)  
12     commits an offence.  
13     Penalty for an offence under subsection (6): a fine of \$5 000.

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**Part 20 — Administration**

**Division 1 — Chief Psychiatrist**

**Subdivision 1 — Appointment, terms and conditions**

**397. Appointment**

- (1) The Minister may appoint a psychiatrist recommended by the CEO to be the Chief Psychiatrist.
- (2) The Chief Psychiatrist —
  - (a) holds office for the period (not exceeding 5 years) specified in the instrument of appointment; and
  - (b) is eligible for reappointment.

**398. Remuneration and other terms and conditions**

The Chief Psychiatrist has the terms and conditions of service, including as to remuneration and other allowances, determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975*.

**399. Resignation**

- (1) The Chief Psychiatrist may resign from office by writing signed and given to the Minister.
- (2) The resignation takes effect on the later of the following —
  - (a) receipt by the Minister;
  - (b) the day specified in the resignation.

**400. Removal from office**

The Minister may remove a person from the office of Chief Psychiatrist on any of these grounds —

- (a) mental or physical incapacity;
- (b) incompetence;

- 1                    (c) neglect of duty;  
2                    (d) misconduct.

3                    **Subdivision 2 — Functions and powers generally**

4                    **401. Responsibility for treatment and care**

5                    (1) The Chief Psychiatrist is responsible for overseeing the  
6                    treatment and care of these people —

- 7                    (a) all voluntary patients who are being provided with  
8                    treatment or care by a mental health service referred to  
9                    in paragraph (b), (c) or (d) of the definition of *mental*  
10                    *health service* in section 3;  
11                    (b) all involuntary patients;  
12                    (c) all mentally impaired accused who must be detained at  
13                    an authorised hospital —  
14                                       (i) because of a determination made under the  
15                                       CL(MIA) Act section 25(1)(b) or amended under  
16                                       section 26 of that Act; or  
17                                       (ii) under the CL(MIA) Act section 25(2)(a);  
18                    (d) all persons who have been referred under section 26(2)  
19                    or (3)(a) or 33(2) for an examination to be conducted by  
20                    a psychiatrist;  
21                    (e) all persons in respect of whom there is in force an order  
22                    made under section 49(1)(c) or 55(1)(c) to enable an  
23                    examination to be conducted by a psychiatrist.

24                    (2) The Chief Psychiatrist must discharge that responsibility by —

- 25                    (a) publishing under section 427(2) standards for the  
26                    treatment and care to be provided by mental health  
27                    services to the persons referred to in subsection (1); and  
28                    (b) overseeing compliance with those standards.

1 **402. Other functions**

2 In addition to the functions conferred by section 401, the Chief  
3 Psychiatrist has these functions —

- 4 (a) reporting to the CEO on matters concerning the Chief  
5 Psychiatrist's responsibilities under section 401(1);  
6 (b) advising the CEO of recommendations about those  
7 matters that the Chief Psychiatrist considers it would be  
8 appropriate for the CEO to make to the Minister;  
9 (c) any other functions conferred on the Chief Psychiatrist  
10 by this Act.

11 **403. Direction and control**

12 In performing the functions conferred on the Chief Psychiatrist  
13 by this Act or another written law, the Chief Psychiatrist is  
14 subject to the general direction and control of the CEO.

15 **404. Powers generally**

16 In addition to the specific powers conferred on the Chief  
17 Psychiatrist by this Act or another written law, the Chief  
18 Psychiatrist may do anything necessary or convenient for the  
19 performance of the functions conferred on the Chief  
20 Psychiatrist.

21 **Subdivision 3 — Specific powers relating to treatment and care**

22 **405. Review of treatment**

- 23 (1) The Chief Psychiatrist —  
24 (a) may review any decision of a psychiatrist about the  
25 provision of treatment to an involuntary patient, but only  
26 after giving the psychiatrist written notice of the  
27 proposed review; and  
28 (b) on the review, may decide to —  
29 (i) affirm the decision; or

- 1                   (ii) vary the decision; or  
2                   (iii) revoke the decision; or  
3                   (iv) substitute another decision.
- 4       (2) The Chief Psychiatrist —
- 5           (a) must advise the psychiatrist in writing of the decision  
6                   under subsection (1)(b) and the reasons for the decision;  
7                   and  
8           (b) may give the psychiatrist written directions about  
9                   implementing that decision.
- 10       (3) The psychiatrist must comply with any directions given under  
11           subsection (2)(b).
- 12       (4) This section does not affect the operation of Part 10 Division 3  
13           or 4 in relation to the provision of treatment to an involuntary  
14           patient.

15       **406. Visits to mental health services**

- 16       (1) The Chief Psychiatrist may visit —
- 17           (a) an authorised hospital whenever the Chief Psychiatrist  
18                   considers it appropriate to do so; and  
19           (b) a mental health service that is not an authorised hospital  
20                   whenever the Chief Psychiatrist reasonably suspects that  
21                   proper standards of treatment and care have not been, or  
22                   are not being, maintained by the mental health service.
- 23       (2) The Chief Psychiatrist may visit a mental health service under  
24           subsection (1) at any time without notice.
- 25       (3) While visiting a mental health service under subsection (1), the  
26           Chief Psychiatrist may do any of these things —
- 27           (a) inspect any part of the mental health service;  
28           (b) interview any person specified in section 401(1) who is  
29                   being provided with treatment or care by the mental  
30                   health service;

- 1 (c) require a staff member of the mental health service to do  
2 any of these things —
- 3 (i) answer questions or provide information about  
4 the provision of treatment or care by the mental  
5 health service to any person specified in  
6 section 401(1);
- 7 (ii) produce any medical records or other documents  
8 relating to the treatment or care that has been, or  
9 is being, provided by the mental health service to  
10 any person specified in section 401(1);
- 11 (iii) give reasonable assistance to the Chief  
12 Psychiatrist;
- 13 (d) inspect, or take copies of or extracts from, any medical  
14 records or other documents produced under  
15 paragraph (c)(ii).

16 **407. Interfering with visits to mental health services: offence**

- 17 (1) A person commits an offence if the person —
- 18 (a) without reasonable excuse, proof of which is on the  
19 person, does not answer a question or provide  
20 information when required under section 406(3)(c)(i); or
- 21 (b) in purporting to comply with a requirement under  
22 section 406(3)(c)(i), gives an answer or provides  
23 information that the person knows is false or misleading  
24 in a material particular; or
- 25 (c) in purporting to comply with a requirement under  
26 section 406(3)(c)(ii), makes available a document that  
27 the person knows is false or misleading in a material  
28 particular without —
- 29 (i) indicating that the document is false or  
30 misleading and, to the extent the person can, how  
31 the document is false or misleading; and

- 1                      (ii) if the person has or can reasonably obtain the  
2    correct information — providing the correct  
3    information;
- 4                      or
- 5                      (d) without reasonable excuse, proof of which is on the  
6    person, does not give reasonable assistance when  
7    required under section 406(3)(c)(iii); or
- 8                      (e) without reasonable excuse, proof of which is on the  
9    person, obstructs or hinders —
- 10    (i) the Chief Psychiatrist exercising a power under  
11    section 406; or
- 12    (ii) a person assisting the Chief Psychiatrist under  
13    section 406(3)(c)(iii).

14                      Penalty: a fine of \$6 000.

- 15                      (2) It is enough for a prosecution notice lodged against a person for  
16    an offence under subsection (1)(b) or (c) to state that the  
17    answer, information or document was false or misleading to the  
18    person’s knowledge without stating which.

19                      **408.      Requesting information from mental health services**

- 20                      (1) In this section —
- 21    ***relevant information*** means information that, in the Chief  
22    Psychiatrist’s opinion, is or is likely to be relevant to the  
23    treatment or care that has been, or is being, provided to a person  
24    or class of persons specified in section 401(1).
- 25                      (2) The Chief Psychiatrist may request a mental health service that  
26    holds relevant information to disclose the information to the  
27    Chief Psychiatrist.
- 28                      (3) Information may be disclosed in compliance with a request  
29    under subsection (2) despite any written law relating to secrecy  
30    or confidentiality.

- 1 (4) If information is disclosed in good faith in compliance with a  
2 request under subsection (2) —
- 3 (a) no civil or criminal liability is incurred in respect of the  
4 disclosure; and
- 5 (b) the disclosure is not to be regarded as a breach of any  
6 duty of confidentiality or secrecy imposed by law; and
- 7 (c) the disclosure is not to be regarded as a breach of  
8 professional ethics or standards or any principles of  
9 conduct applicable to a person’s employment or as  
10 unprofessional conduct.
- 11 (5) The regulations may include provisions about —
- 12 (a) the receipt and storage of information disclosed under  
13 this section; and
- 14 (b) the restriction of access to such information.

15 **Subdivision 4 — Notifiable incidents**

16 **409. Term used: notifiable incident**

17 In this Subdivision —

18 ***notifiable incident***, in relation to a person referred to in  
19 section 401(1), means any of these events —

- 20 (a) the death of the person, wherever it occurs;
- 21 (b) an error in any medication prescribed for, or  
22 administered or supplied to, the person that has had, or  
23 is likely to have, an adverse effect on the person;
- 24 (c) any other incident in connection with the provision of  
25 treatment or care to the person that has had, or is likely  
26 to have, an adverse effect on the person;
- 27 (d) a reportable incident, as defined in section 220(1), in  
28 relation to the person;

- 1 (e) any other event that the Chief Psychiatrist declares, by  
2 notice published in the *Gazette*, to be a notifiable  
3 incident for the purposes of this definition.

4 **410. Person in charge of mental health service must report**  
5 **notifiable incidents**

- 6 (1) The person in charge of a mental health service must report to  
7 the Chief Psychiatrist the occurrence of a notifiable incident in  
8 relation to a person referred to in section 401(1) who is being  
9 provided with treatment or care by the mental health service as  
10 soon as practicable after the person in charge becomes aware of  
11 the occurrence.

12 Penalty: a fine of \$6 000.

- 13 (2) The report must be in the approved form and must include these  
14 things in relation to the notifiable incident —

- 15 (a) the date on which, and the time at which, the incident  
16 occurred;
- 17 (b) the location where the incident occurred;
- 18 (c) the name, and status under section 401(1), of the person  
19 in relation to whom the incident occurred;
- 20 (d) the names of any staff members of the mental health  
21 service who were involved in the incident;
- 22 (e) the names of any other people who were involved in the  
23 incident;
- 24 (f) the names of any staff members of the mental health  
25 service who witnessed the incident;
- 26 (g) the names of any other people who witnessed the  
27 incident;
- 28 (h) a description of the incident and the circumstances in  
29 which it occurred;
- 30 (i) any other information about the incident that the person  
31 in charge considers relevant to include.

- 1 **411. Action Chief Psychiatrist may take in relation to notifiable**  
2 **incident**
- 3 (1) On receipt of a report under section 410(1) in relation to a  
4 notifiable incident, the Chief Psychiatrist may do one of the  
5 following —
- 6 (a) investigate the incident;
- 7 (b) refer the incident to all or any of the following —
- 8 (i) the CEO;
- 9 (ii) the CEO of the Health Department;
- 10 (iii) the National Health Practitioner Board  
11 established under the *Health Practitioner*  
12 *Regulation National Law (WA) Act 2010*  
13 section 31 for a health profession or another  
14 person or body that has functions relating to the  
15 professional registration of persons;
- 16 (c) take no action in relation to the incident.
- 17 (2) Despite having decided to investigate a notifiable incident under  
18 subsection (1)(a), the Chief Psychiatrist may decide at any time  
19 during the investigation to refer the incident to a person or body  
20 under subsection (1)(b).
- 21 (3) If the Chief Psychiatrist decides to refer a notifiable incident to  
22 a person or body under subsection (1)(b) or to take no action in  
23 relation to a notifiable incident under subsection (1)(c), the  
24 Chief Psychiatrist cannot investigate or further investigate the  
25 incident under subsection (1)(a).
- 26 **412. Chief Psychiatrist must advise person in charge of decision**
- 27 The Chief Psychiatrist must advise the person in charge of the  
28 mental health service in relation to which a notifiable incident  
29 was reported under section 410(1) in writing of any decision  
30 that the Chief Psychiatrist makes under section 411 in respect of  
31 the incident.

1 **413. Powers of Chief Psychiatrist for investigation under**  
2 **s. 411(1)(a)**

- 3 (1) For the purpose of conducting an investigation under  
4 section 411(1)(a), the Chief Psychiatrist may —
- 5 (a) make any inquiries the Chief Psychiatrist considers  
6 appropriate; and
- 7 (b) exercise any of the powers that the Chief Psychiatrist  
8 has under section 406 or 408.
- 9 (2) For the purpose of subsection (1)(b), sections 406, 407 and 408  
10 apply with the necessary changes.

11 **414. Chief Psychiatrist must advise person in charge of outcome**  
12 **of investigation**

13 On completing the investigation of a notifiable incident under  
14 section 411(1)(a), the Chief Psychiatrist must advise the person  
15 in charge of the mental health service in relation to which the  
16 incident was notified under section 410(1) in writing of the  
17 outcome of the investigation.

18 **Subdivision 5 — Annual reports**

19 **415. Annual report: preparation**

- 20 (1) Within 3 months after 30 June in each year, the Chief  
21 Psychiatrist must prepare and give to the Minister a report about  
22 the performance during the financial year ending on that day of  
23 the functions conferred on the Chief Psychiatrist by this Act or  
24 another written law.
- 25 (2) The report must include statistics about these matters —
- 26 (a) electroconvulsive therapy that was performed during the  
27 year and reported on under section 162(3);
- 28 (b) electroconvulsive therapy that the Chief Psychiatrist  
29 approved during the year under section 160(d);

- 1 (c) emergency psychiatric treatment that was provided  
2 during the year and reported on under section 165(1)(c);
- 3 (d) bodily restraint that was applied during the year and  
4 reported on under section 201(1)(c);
- 5 (e) seclusion that was imposed during the year and reported  
6 on under section 187(1)(c);
- 7 (f) urgent medical treatment that was provided during the  
8 year and reported on under section 206(1)(a);
- 9 (g) non-urgent medical treatment to which the Chief  
10 Psychiatrist gave informed consent under section 207(1)  
11 during the year;
- 12 (h) notifiable incidents that occurred during the year and  
13 were reported on under section 410(1) and the action  
14 taken under section 411 in relation to those notifiable  
15 incidents.

16 **416. Annual report: tabling**

- 17 (1) The Minister must cause a copy of a report referred to in  
18 section 415 to be laid before each House of Parliament, or dealt  
19 with under subsection (2), within 21 days after receiving the  
20 report.
- 21 (2) If —
- 22 (a) at the commencement of the period referred to in  
23 subsection (1) a House of Parliament is not sitting; and
- 24 (b) the Minister is of the opinion that the House will not sit  
25 during that period,
- 26 the Minister must transmit a copy of the report to the Clerk of  
27 that House.
- 28 (3) A copy of a report transmitted under subsection (2) to the Clerk  
29 of a House is taken to have been laid before that House.
- 30 (4) The laying of a copy of a report that is taken to have occurred  
31 under subsection (3) must be recorded in the Minutes, or Votes

1                      and Proceedings, of the House on the first sitting day of the  
2                      House after the receipt of the copy by the Clerk.

3      **417.      Inclusion in Agency’s annual report**

4                      Without limiting section 415 or 416, the requirements of those  
5                      sections in respect of a financial year are taken to have been  
6                      complied with if —

- 7                      (a)    the report prepared under section 415 for the financial  
8                      year is included in the Agency’s annual report under the  
9                      *Financial Management Act 2006* section 61 for that  
10                     year; and  
11                     (b)    the Minister causes a copy of the Agency’s annual  
12                     report to be laid before each House of Parliament, or to  
13                     be dealt with under section 83 of that Act, within the  
14                     period required by section 64 of that Act.

15                     **Subdivision 6 — Miscellaneous matters**

16      **418.      Compliance with request for information about patient or**  
17                     **person detained**

- 18                     (1)    A person may request the Chief Psychiatrist to advise the person  
19                     whether or not a particular individual is admitted to or detained  
20                     at a mental health service.  
21                     (2)    If, in the Chief Psychiatrist’s opinion, the person making the  
22                     request has a sufficient interest in the matter, the Chief  
23                     Psychiatrist may provide the person with the following  
24                     information (as applicable) —  
25                     (a)    the date of the individual’s admission to, or detention at,  
26                     the mental health service;  
27                     (b)    the date of the individual’s discharge or release from the  
28                     mental health service;  
29                     (c)    if the individual died while admitted to, or detained at,  
30                     the mental health service, the date of death.

1 **419. Request for list of mentally impaired accused**

2 (1) The Chief Psychiatrist may request the Mentally Impaired  
3 Accused Review Board in writing to give the Chief Psychiatrist  
4 a list of mentally impaired accused.

5 (2) The Mentally Impaired Accused Review Board must comply  
6 with any request made under subsection (1).

7 **420. Delegation**

8 (1) The Chief Psychiatrist may delegate to another psychiatrist any  
9 power or duty of the Chief Psychiatrist under another provision  
10 of this Act.

11 (2) The delegation must be in writing signed by the Chief  
12 Psychiatrist.

13 (3) A person to whom a power or duty is delegated under this  
14 section cannot delegate that power or duty.

15 (4) This section does not limit the ability of the Chief Psychiatrist to  
16 perform a function through an officer or agent.

17 **Division 2 — Mental health practitioners and authorised**  
18 **mental health practitioners**

19 **421. Mental health practitioners**

20 (1) A mental health practitioner is —

21 (a) a psychologist; or

22 (b) a person registered under the *Health Practitioner*  
23 *Regulation National Law (Western Australia)* in the  
24 nursing and midwifery profession; or

25 (c) a person registered as an occupational therapist under  
26 the *Occupational Therapists Act 2005*; or

27 (d) a person with a qualification recognised under  
28 subsection (2),

- 1           who has at least 3 years' experience in the management of  
2           people who have a mental illness.
- 3       (2)   For subsection (1)(d), the Chief Psychiatrist may, by order  
4           published in the *Gazette*, recognise —
- 5           (a)   a degree awarded by an Australian University on the  
6                completion of a course in social work; or
- 7           (b)   another qualification the Chief Psychiatrist considers to  
8                be at least equivalent to a degree referred to in  
9                paragraph (a).
- 10       (3)   The Chief Psychiatrist may, by order published in the *Gazette*,  
11           amend or revoke an order published under subsection (2).
- 12   **422.    Authorised mental health practitioners**
- 13       (1)   The Chief Psychiatrist may, by order published in the *Gazette*,  
14           designate a mental health practitioner as an authorised mental  
15           health practitioner if satisfied that the practitioner has the  
16           qualifications, training and experience appropriate for  
17           performing the functions of an authorised mental health  
18           practitioner under this Act.
- 19       (2)   The order may specify any limits within which, or any  
20           conditions subject to which, those functions may be performed  
21           by the authorised mental health practitioner designated as such  
22           by the order.
- 23       (3)   The Chief Psychiatrist may, by order published in the *Gazette*,  
24           amend or revoke an order published under subsection (1).
- 25       (4)   The regulations may provide for matters relating to authorised  
26           mental health practitioners, including the following —
- 27           (a)   the qualifications, training and experience to which the  
28                Chief Psychiatrist must have regard when deciding  
29                whether to make, amend or revoke an order under this  
30                section;

- 1 (b) the performance by authorised mental health  
2 practitioners of their functions under this Act;
- 3 (c) any matter about which an authorised mental health  
4 practitioner must notify the Chief Psychiatrist;
- 5 (d) the grounds on which the designation of an authorised  
6 mental health practitioner must or may be revoked.

7 **Division 3 — Authorised hospitals**

8 **423. Authorised hospital: meaning of**

9 An authorised hospital is —

- 10 (a) a public hospital, or part of a public hospital, in respect  
11 of which an order is in force under section 424; or
- 12 (b) a private hospital the licence for which is endorsed  
13 under the *Hospitals and Health Services Act 1927*  
14 section 26DA(2).

15 **424. Authorisation of public hospitals**

- 16 (1) The Governor may, by order published in the *Gazette*, authorise  
17 a public hospital, or a part of a public hospital, for —
- 18 (a) the reception of persons under this Act; and  
19 (b) the admission of involuntary patients.
- 20 (2) The Governor may, by order published in the *Gazette*, amend or  
21 revoke an order made under subsection (1).
- 22 (3) If an authorisation of a hospital or a part of a hospital is revoked  
23 under subsection (2), every person received at and every  
24 involuntary patient admitted to the hospital or that part of the  
25 hospital must be transferred in accordance with the regulations  
26 to an authorised hospital.



1 (3) The Chief Psychiatrist may publish guidelines or standards for  
2 such other purposes relating to the treatment and care of persons  
3 who have a mental illness as the Chief Psychiatrist considers  
4 appropriate.

5 **428. Application, adoption or incorporation of other documents**

6 Guidelines published under section 427 may apply, adopt or  
7 incorporate (with or without changes) the whole or part of a  
8 document that is in force or existing at a particular time or from  
9 time to time.

10 **429. Publication on Agency's website**

11 It is sufficient compliance with section 427 if a copy of the  
12 guidelines is published on a website maintained by the Agency.





1 similar function conferred on the person under a corresponding  
2 law of, or an intergovernmental agreement in relation to, that  
3 State or Territory.

4 **Division 3 — Transfer to or from interstate mental**  
5 **health service**

6 **434. Transfer to interstate mental health service**

- 7 (1) The person in charge of an authorised hospital may, with the  
8 written approval of the Chief Psychiatrist, make an order (a  
9 ***transfer order***) in the approved form authorising the transfer of  
10 a State in-patient who is detained at, or who has absconded as  
11 described in section 430(2) from, the authorised hospital to the  
12 interstate mental health service specified in the order.
- 13 (2) As soon as practicable after making the transfer order, the  
14 person in charge of the mental health service must —
- 15 (a) put the order and the Chief Psychiatrist's approval on  
16 the State in-patient's medical record; and
  - 17 (b) give a copy of each of those documents to each of these  
18 people —
    - 19 (i) the State in-patient;
    - 20 (ii) if the State in-patient is a child, the patient's  
21 parent or guardian;
    - 22 (iii) if the State in-patient does not have the capacity  
23 to give consent to the provision of treatment  
24 under the in-patient treatment order, the person  
25 who is authorised by law to give that consent on  
26 the patient's behalf if that consent were required;
    - 27 (iv) if the State in-patient has a nominated person, the  
28 nominated person;
    - 29 (v) if the State in-patient has a carer, the carer;
- 30 and

- 1 (c) transmit a copy of each of those documents to the person  
2 in charge of the interstate mental health service.

3 **435. Transport order**

- 4 (1) If the person in charge of an authorised hospital makes a  
5 transfer order under section 434(1) in respect of a State  
6 in-patient, the person in charge may also make a transport order  
7 in respect of the in-patient.
- 8 (2) The person in charge of the authorised hospital must not make  
9 the transport order unless satisfied that no other safe means of  
10 taking the State in-patient to the interstate mental health service  
11 is reasonably available.
- 12 (3) Part 8 applies in relation to the transport order as if —
- 13 (a) the transport order were made under section 79(1); and  
14 (b) a reference to a police officer included a reference to a  
15 police officer of the State or Territory in which the  
16 interstate mental health service is located; and  
17 (c) a reference to a person prescribed by the regulations for  
18 section 127 included a reference to a person who is  
19 authorised under a corresponding law of, or an  
20 intergovernmental agreement in relation to, that State or  
21 Territory to perform functions similar to those of a  
22 person so prescribed.

23 **436. Transfer from interstate mental health service**

- 24 (1) The person in charge of an authorised hospital may, with the  
25 written consent of the Chief Psychiatrist, make an order  
26 (a *transfer approval order*) in the approved form approving the  
27 transfer of an interstate in-patient who is detained at, or who has  
28 absconded as described in section 430(3) from, an interstate  
29 mental health service to the authorised hospital.
- 30 (2) As soon as practicable after making the transfer approval order,  
31 the person in charge of the authorised hospital must transmit a

1 copy of each of the order and the Chief Psychiatrist's consent to  
2 the person in charge of the interstate mental health service.

3 (3) On admission to the authorised hospital, the interstate in-patient  
4 treatment order is taken to be an in-patient treatment order made  
5 under this Act.

6 (4) As soon as practicable after the interstate in-patient is admitted  
7 to the authorised hospital, the person in charge of the authorised  
8 hospital must put the transfer approval order and the Chief  
9 Psychiatrist's consent on the patient's medical record.

10 **437. Transport of interstate in-patient to authorised hospital**

11 (1) This section applies in relation to an interstate in-patient in  
12 respect of whom a transfer approval order is in force under  
13 section 436(1).

14 (2) A person who is authorised under a corresponding law or an  
15 interstate agreement to transport the interstate in-patient from an  
16 interstate mental health service to an authorised hospital may  
17 exercise in the State any of the powers the person has under the  
18 corresponding law or interstate agreement for that purpose.

19 **Division 4 — Community treatment orders**

20 **438. Community treatment order: treatment interstate**

21 The terms of a community treatment order may include a  
22 requirement that the involuntary community patient be provided  
23 with treatment by an interstate mental health service.

24 **439. Transport order**

25 (1) If the involuntary community patient fails to comply with the  
26 requirement referred to in section 438, a medical practitioner or  
27 mental health practitioner may make a transport order in respect  
28 of the patient.

- 1 (2) The practitioner must not make the transport order unless  
2 satisfied that no other safe means of ensuring the involuntary  
3 community patient attends the interstate mental health service is  
4 reasonably available.
- 5 (3) Part 8 applies in relation to the transport order as if —
- 6 (a) the transport order were made under section 115(1); and  
7 (b) a reference to a police officer included a reference to a  
8 police officer of the State or Territory in which the  
9 interstate mental health service is located; and
- 10 (c) a reference to a person prescribed by the regulations for  
11 section 127 included a reference to a person who is  
12 authorised under a corresponding law of, or an  
13 intergovernmental agreement in relation to, that State or  
14 Territory to perform functions similar to those of a  
15 person so prescribed.

16 **440. Interstate community treatment order: treatment in State**

17 If the terms of an interstate community treatment order made  
18 under a corresponding law include a requirement that the  
19 interstate community patient be provided with treatment by a  
20 mental health service in the State, the interstate community  
21 treatment order is taken to be a community treatment order that,  
22 despite any other provision of this Act, has the same terms as  
23 and is in force for the same period as the interstate community  
24 treatment order.

25 **441. Interstate community treatment orders: supervision in State**

26 A person who is authorised under a corresponding law of  
27 another State or a Territory to perform a function in relation to  
28 an interstate community treatment order made under the  
29 corresponding law may perform that function in relation to the  
30 order in the State.

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**Part 22 — Ministerial inquiries**

**442. Appointment of person to conduct inquiry**

The Minister may appoint a person to inquire into, and report to the Minister on, any matter relating to —

- (a) the treatment, care or other services provided (whether under this Act or otherwise) to a person who has a mental illness; or
- (b) the administration of this Act.

**443. Powers of investigation**

The person appointed under section 442 to conduct an inquiry may, for the purpose of the inquiry —

- (a) enter —
  - (i) a mental health service at any time without notice; or
  - (ii) any other premises at any reasonable time and at any other time with the owner’s consent;
- and
- (b) on entering any premises under paragraph (a), do any of these things —
  - (i) inspect the premises and any thing on the premises;
  - (ii) require a person on the premises to answer questions, or provide information, that the person appointed under section 442 considers may be relevant to the inquiry;
  - (iii) require a person on the premises to produce any documents that the person appointed under section 442 considers may be relevant to the inquiry;

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- 1 (iv) inspect, or take copies of or extracts from, any
- 2 documents produced under subparagraph (iii);
- 3 (v) require a person on the premises to give
- 4 reasonable assistance to the person appointed
- 5 under section 442.

6 **444. Interfering with investigation**

- 7 (1) A person commits an offence if the person —
- 8 (a) without reasonable excuse, proof of which is on the
- 9 person, does not answer a question or provide
- 10 information when required under section 443(b)(ii); or
- 11 (b) in purporting to comply with a requirement under
- 12 section 443(b)(ii), gives an answer or provides
- 13 information that the person knows is false or misleading
- 14 in a material particular; or
- 15 (c) in purporting to comply with a requirement under
- 16 section 443(b)(iii), makes available a document that the
- 17 person knows is false or misleading in a material
- 18 particular without —
- 19 (i) indicating that the document is false or
- 20 misleading and, to the extent the person can, how
- 21 the document is false or misleading; and
- 22 (ii) if the person has or can reasonably obtain the
- 23 correct information — providing the correct
- 24 information;
- 25 or
- 26 (d) without reasonable excuse, proof of which is on the
- 27 person, does not give reasonable assistance when
- 28 required under section 443(b)(v); or
- 29 (e) without reasonable excuse, proof of which is on the
- 30 person, obstructs or hinders —
- 31 (i) a person appointed under section 442 exercising
- 32 a power under section 443; or



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- 1 (b) to produce a document relevant to the inquiry.
- 2 (5) A person appearing as a witness in an inquiry has the same  
3 protection and immunity as a witness has in a proceeding in the  
4 Supreme Court.

5 **447. Power to summon persons to attend and produce documents**

6 The person appointed under section 442 to conduct an inquiry  
7 may, by issuing a signed summons and having the summons  
8 served on the person to whom it is addressed, require the person  
9 to attend at the time and place specified in the summons —

- 10 (a) to give evidence in the inquiry; or  
11 (b) to produce a document relevant to the inquiry that is in  
12 the person's custody or control and is specified in the  
13 summons; or  
14 (c) to do both of those things.

15 **448. Self-incrimination**

- 16 (1) A person is not excused from complying with a direction given  
17 to the person under section 446(4) or a summons served on the  
18 person under section 447 on the ground that the answer to a  
19 question or the production of a document might tend to  
20 incriminate the person or expose the person to a criminal  
21 penalty.
- 22 (2) However, any answer given or document produced by a person  
23 in compliance with a direction given to the person under  
24 section 446(4) or a summons served on the person under  
25 section 447 is not admissible in evidence in any criminal  
26 proceedings against the person other than proceedings for an  
27 offence under section 450(d).

1   **449.   Powers in relation to documents produced**

2           In relation to a document produced in an inquiry, the person  
3           appointed under section 442 to conduct the inquiry may do any  
4           of these things —

- 5           (a) inspect the document;
- 6           (b) retain the document for a reasonable period;
- 7           (c) take a copy of, or extract from, the document.

8   **450.   Offences relating to answering questions, producing**  
9   **documents and providing other information**

10          A person commits an offence if the person —

- 11          (a) without reasonable excuse, proof of which is on the  
12             person, does not swear an oath or make an affirmation  
13             when required under section 446(3); or
- 14          (b) without reasonable excuse, proof of which is on the  
15             person, does not answer a question or produce a  
16             document when directed to do so under section 446(4);  
17             or
- 18          (c) without reasonable excuse, proof of which is on the  
19             person, does not attend as required by a summons served  
20             on the person under section 447; or
- 21          (d) gives an answer, produces a document or provides any  
22             other information in an inquiry that the person knows is  
23             false or misleading in a material particular.

24          Penalty: a fine of \$5 000.

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**Part 23 — Miscellaneous matters**

**451. Restrictions on powers of medical practitioners and mental health practitioners**

(1) In this section —

*company* means a company registered under the *Corporations Act 2001* (Commonwealth);

*prescribed financial market* has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

*related person*, in relation to a medical practitioner or mental health practitioner, means —

- (a) a relative of the practitioner; or
- (b) a company not listed on a prescribed financial market in Australia in respect of any share in which the practitioner, the practitioner’s spouse or de facto partner or a child of the practitioner has a relevant interest; or
- (c) a company listed on a prescribed financial market in Australia in which the aggregate of the interests of the practitioner, the practitioner’s spouse or de facto partner and the practitioner’s children amounts to a substantial holding; or
- (d) the trustee of a trust in which the practitioner, the practitioner’s spouse or de facto partner or a child of the practitioner has —
  - (i) a beneficial interest, whether vested or contingent; or
  - (ii) a potential beneficial interest because the trust is a discretionary trust;

*relative*, of a person, means a person who is listed in the definition of *nearest relative* in the Guardianship Act section 3(1);

*relevant interest*, in relation to a share, has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

- 1            *substantial holding* has the meaning given in the *Corporations*  
2            *Act 2001* (Commonwealth) section 9.
- 3            (2) A medical practitioner or mental health practitioner cannot  
4            exercise a power under this Act in respect of a person if —
- 5            (a) the practitioner is —
- 6                    (i) a relative of the person; or  
7                    (ii) the person’s enduring guardian or guardian; or  
8                    (iii) in partnership with the person; or  
9                    (iv) the employer or employee of the person; or  
10                  (v) the person’s supervisor or subordinate;
- 11            or
- 12            (b) the exercise of the power involves —
- 13                    (i) a private hospital the licence for which is held by  
14                    the practitioner or a related person; or  
15                    (ii) a public hospital of whose board the practitioner  
16                    is a member.
- 17            **452.    Obstructing or hindering person performing functions**
- 18            A person who, without reasonable excuse, proof of which is on  
19            the person, obstructs or hinders a person performing a function  
20            under this Act commits an offence.  
21            Penalty: a fine of \$6 000.
- 22            **453.    Amendment of referrals and orders**
- 23            (1) For this section, a referral or order made under this Act contains  
24            a formal defect if it contains —
- 25                    (a) a clerical error or an error because of an accidental  
26                    omission; or  
27                    (b) an evident material error in the description of a person.
- 28            (2) If a referral or order made under this Act contains a formal  
29            defect —



- 1 (c) particulars of —  
2 (i) any treatment provided to the person by the  
3 mental health service; and  
4 (ii) the authority for providing the treatment,  
5 including details of any order made under this  
6 Act under which the treatment was provided;  
7 (d) if the person dies at the mental health service, the date  
8 and cause of death;  
9 (e) any other information prescribed by the regulations for  
10 this subsection.

11 **455. Confidentiality**

- 12 (1) In this section —  
13 *relevant written law* means any of these written laws —  
14 (a) this Act;  
15 (b) the *Mental Health Act 1996*;  
16 (c) the *Mental Health Act 1962*.  
17 (2) A person must not disclose to another person, whether directly  
18 or indirectly, any personal information about an individual that  
19 was obtained because of any function the person has or had  
20 under a relevant written law unless the disclosure is authorised  
21 by subsection (3).  
22 Penalty: a fine of \$5 000.  
23 (3) The disclosure is authorised if it is made in any of these  
24 circumstances —  
25 (a) in the course of duty;  
26 (b) under this Act or another law;  
27 (c) to a court or other person or body acting judicially in the  
28 course of proceedings before the court or other person or  
29 body;

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- 1 (d) under an order of a court or other person or body acting  
2 judicially;
- 3 (e) for the purposes of the investigation of a suspected  
4 offence or disciplinary matter or the conduct of  
5 proceedings against a person for an offence or  
6 disciplinary matter;
- 7 (f) with the consent of the individual, or each individual, to  
8 whom the personal information relates.
- 9 (4) If the disclosure is authorised under subsection (3) —
- 10 (a) no civil or criminal liability is incurred in respect of the  
11 disclosure; and
- 12 (b) the disclosure is not to be regarded as a breach of any  
13 duty of confidentiality or secrecy imposed by law; and
- 14 (c) the disclosure is not to be regarded as a breach of  
15 professional ethics or standards or any principles of  
16 conduct applicable to a person's employment or as  
17 unprofessional conduct.

18 **456. Protection from liability**

- 19 (1) An action in tort does not lie against a person other than the  
20 State for anything that the person has done in good faith in the  
21 performance or purported performance of a function under this  
22 Act.
- 23 (2) The protection given by subsection (1) applies even though the  
24 thing done as described in that subsection may have been  
25 capable of being done whether or not this Act had been enacted.
- 26 (3) Despite subsection (1), the State is not relieved from any  
27 liability that it might have for an act done by a person against  
28 whom this section provides that an action does not lie.
- 29 (4) In this section, a reference to the doing of anything includes a  
30 reference to an omission to do anything.

1   **457.    Relationship with *Freedom of Information Act 1992***

2           This Act has effect despite the *Freedom of Information*  
3           *Act 1992*.

4   **458.    Regulations**

5           The Governor may make regulations prescribing matters —

- 6           (a)   required or permitted to be prescribed by this Act; or  
7           (b)   necessary or convenient to be prescribed for giving  
8           effect to this Act.

9   **459.    Review of this Act after 5 years**

10          (1)   The Minister must review the operation and effectiveness of this  
11          Act as soon as practicable after the expiry of 5 years from the  
12          commencement of section 6.

13          (2)   The Minister must —

- 14           (a)   prepare a report about the outcome of the review; and  
15           (b)   as soon as practicable after preparing the report, cause a  
16           copy of the report to be laid before each House of  
17           Parliament.

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

2 [s. 7, 8, 261(2) and 266(b)]

- 3 1. A mental health service is to be respectful of human rights and treat  
4 people with dignity, equality, courtesy and compassion, and is to be  
5 free from discrimination and stigma.
- 6 2. A mental health service is to be sensitive and responsive to diverse  
7 individual circumstances, including those relating to gender, age,  
8 culture, spiritual beliefs, family and lifestyle choices.
- 9 3. A mental health service is to respect privacy and confidentiality.
- 10 4. A mental health service is to be safe and accessible, is to provide  
11 treatment and care that is timely, of high quality and in accordance  
12 with the national standards for mental health services that are agreed  
13 from time to time by or on behalf of the Commonwealth, State and  
14 Territory Ministers responsible for mental health, and is to be  
15 committed to achieving the best possible outcomes.
- 16 5. A mental health service is to provide treatment and care to  
17 Aboriginals and Torres Strait Islanders that is appropriate to and  
18 consistent with their cultural beliefs, mores and practices, having  
19 regard to the views of their families and communities.
- 20 6. A mental health service is to clearly explain and provide information  
21 about diagnosis and treatment (including any risks, side effects and  
22 options) in a language, form of communication and terms that are  
23 likely to be understood and is to facilitate informed consent.
- 24 7. A mental health service is to clearly explain and provide information  
25 about rights, including those relating to advocacy and access to  
26 personal information.
- 27 8. A mental health service is to address the other physical health needs  
28 and co-occurring issues of people experiencing mental illness.
- 29 9. A mental health service is to involve people in decision making at all  
30 times and encourage self responsibility, cooperation and choice,  
31 including people's capacity to make their own decisions.

- 1        10.    A mental health service is to respect the right of people experiencing  
2            mental illness to involve carers and other support persons at all times,  
3            including when discussing and considering treatment.
- 4        11.    A mental health service is to be accountable, committed to continuous  
5            improvement and open to solving problems in partnership with  
6            people.
- 7        12.    A mental health service is to encourage positive attitudes to mental  
8            health, including that people experiencing mental illness can and do  
9            recover and make meaningful contributions to the community.
- 10       13.    A mental health service is to recognise the range of issues that impact  
11           upon mental health and wellbeing, including relationships,  
12           accommodation, education and employment.
- 13       14.    A mental health service is to recognise the needs of children and other  
14           dependants of people experiencing mental illness.
- 15



