



# **Mental Health Act 2000**

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

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Queensland

# Mental Health Act 2000

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# **Mental Health Act 2000**

[as amended by all amendments that commenced on or before 28 September 2007]

**An Act about treating and protecting people who have mental illnesses, and for other purposes**

## **Chapter 1      Preliminary**

### **Part 1            Introduction**

#### **1            Short title**

This Act may be cited as the *Mental Health Act 2000*.

#### **2            Commencement**

- (1) Section 590 and schedule 1, part 1, commence on assent.
- (2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

#### **3            Act binds all persons**

- (1) This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and all the other States.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

## **Part 2 Purpose and application of Act**

### **4 Purpose of Act**

The purpose of this Act is to provide for the involuntary assessment and treatment, and the protection, of persons (whether adults or minors) who have mental illnesses while at the same time—

- (a) safeguarding their rights and freedoms; and
- (b) balancing their rights and freedoms with the rights and freedoms of other persons.

### **5 How purpose of Act is to be achieved**

The purpose of this Act is to be achieved in the following ways—

- (a) providing for the detention, examination, admission, assessment and treatment of persons having, or believed to have, a mental illness;
- (b) establishing the Mental Health Review Tribunal to, among other things—
  - (i) carry out reviews relating to involuntary patients; and
  - (ii) hear applications to administer or perform particular treatments;<sup>1</sup>
- (c) establishing the Mental Health Court to, among other things, decide the state of mind of persons charged with criminal offences;<sup>2</sup>
- (d) providing for the making of arrangements for—
  - (i) the transfer to other States of involuntary patients; and

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1 For the tribunal's jurisdiction, see chapter 12 (Mental Health Review Tribunal), part 1 (Establishment, jurisdiction and powers).

2 For the Mental Health Court's jurisdiction, see chapter 11 (Mental Health Court), part 1 (Establishment, constitution, jurisdiction and powers).

- (ii) the transfer to Queensland of persons who have mental illnesses;
- (e) when making a decision under this Act about a forensic patient, taking into account—
  - (i) the protection of the community; and
  - (ii) the needs of a victim of the alleged offence to which the applicable forensic order relates.

## **6 Application of Act**

This Act does not prevent a person who has a mental illness being admitted to, or receiving assessment or treatment at, an authorised mental health service other than as an involuntary patient.

## **7 Attachment—flowcharts**

- (1) The attachment to this Act shows the way in which provisions of this Act apply in particular circumstances and how the provisions relate to each other.
- (2) The attachment does not form part of this Act.
- (3) If the provisions are amended, the attachment must be revised so that it is accurate.
- (4) The revision must be made in the first reprint of this Act after the amendments.

# **Part 3 Principles for administration of Act**

## **8 General principles for administration of Act**

The following principles apply to the administration of this Act in relation to a person who has a mental illness—

**(a) Same human rights**

- the right of all persons to the same basic human rights must be recognised and taken into account
- a person's right to respect for his or her human worth and dignity as an individual must be recognised and taken into account

**(b) Matters to be considered in making decisions**

- to the greatest extent practicable, a person is to be encouraged to take part in making decisions affecting the person's life, especially decisions about treatment
- to the greatest extent practicable, in making a decision about a person, the person's views and the effect on his or her family or carers are to be taken into account
- a person is presumed to have capacity to make decisions about the person's assessment, treatment and choosing of an allied person

**(c) Provision of support and information**

- to the greatest extent practicable, a person is to be provided with necessary support and information to enable the person to exercise rights under this Act, including, for example, facilitating access to independent help to represent the person's point of view

**(d) Achievement of maximum potential and self-reliance**

- to the greatest extent practicable, a person is to be helped to achieve maximum physical, social, psychological and emotional potential, quality of life and self-reliance

**(e) Acknowledgment of needs**

- a person's age-related, gender-related, religious, cultural, language, communication and other special needs must be taken into account

**(f) Maintenance of supportive relationships and community participation**

- the importance of a person's continued participation in community life and maintaining existing supportive relationships are to be taken into account to the greatest extent practicable, including, for example, by treatment in the community in which the person lives

**(g) Maintenance of environment and values**

- to the greatest extent practicable, a person's cultural and linguistic environment, and set of values (including religious beliefs) must be maintained

**(h) Provision of treatment**

- treatment provided under this Act must be administered to a person who has a mental illness only if it is appropriate to promote and maintain the person's mental health and wellbeing

**(i) Confidentiality**

- a person's right to confidentiality of information about the person must be recognised and taken into account.<sup>3</sup>

**9 Principles for exercising powers and performing functions**

A power or function under this Act relating to a person who has a mental illness must be exercised or performed so that—

- (a) the person's liberty and rights are adversely affected only if there is no less restrictive way to protect the person's health and safety or to protect others; and
- (b) any adverse effect on the person's liberty and rights is the minimum necessary in the circumstances.

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<sup>3</sup> See chapter 14 (Enforcement, evidence and legal proceedings), part 5 (Confidentiality).

## **Part 4 Interpretation**

### **Division 1 Dictionary and notes in text**

#### **10 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

#### **11 Notes in text**

A note in the text of this Act is part of the Act.

### **Division 2 Key definitions**

#### **12 What is *mental illness***

- (1) *Mental illness* is a condition characterised by a clinically significant disturbance of thought, mood, perception or memory.
- (2) However, a person must not be considered to have a mental illness merely because of any 1 or more of the following—
  - (a) the person holds or refuses to hold a particular religious, cultural, philosophical or political belief or opinion;
  - (b) the person is a member of a particular racial group;
  - (c) the person has a particular economic or social status;
  - (d) the person has a particular sexual preference or sexual orientation;
  - (e) the person engages in sexual promiscuity;
  - (f) the person engages in immoral or indecent conduct;
  - (g) the person takes drugs or alcohol;
  - (h) the person has an intellectual disability;
  - (i) the person engages in antisocial behaviour or illegal behaviour;

- (j) the person is or has been involved in family conflict;
  - (k) the person has previously been treated for mental illness or been subject to involuntary assessment or treatment.
- (3) Subsection (2) does not prevent a person mentioned in the subsection having a mental illness.

*Examples for subsection (3)—*

- 1 A person may have a mental illness caused by taking drugs or alcohol.
  - 2 A person may have a mental illness as well as an intellectual disability.
- (4) On an assessment, a decision that a person has a mental illness must be made in accordance with internationally accepted medical standards.<sup>4</sup>

### 13 What are the *assessment criteria*

- (1) The *assessment criteria* for a person, are all of the following, based on available information—
- (a) the person appears to have a mental illness;
  - (b) the person requires immediate assessment;
  - (c) the assessment can properly be made at an authorised mental health service;
  - (d) there is a risk that the person may—
    - (i) cause harm to himself or herself or someone else;  
or
    - (ii) suffer serious mental or physical deterioration;
  - (e) there is no less restrictive way of ensuring the person is assessed.
- (2) Also, for chapter 2, the *assessment criteria* for a person include—
- (a) lacking the capacity to consent to be assessed; or
  - (b) having unreasonably refused to be assessed.

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<sup>4</sup> See United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, principle 4, paragraph 1.

- (3) Despite the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*, the person's own consent only is relevant for subsection (2).

*Example for subsection (3)—*

If a guardian has been appointed under the *Guardianship and Administration Act 2000* for a person, the guardian's consent to the person's assessment is not effective.

## **14 What are the *treatment criteria***

- (1) The *treatment criteria* for a person, are all of the following—
- (a) the person has a mental illness;
  - (b) the person's illness requires immediate treatment;
  - (c) the proposed treatment is available at an authorised mental health service;
  - (d) because of the person's illness—
    - (i) there is an imminent risk that the person may cause harm to himself or herself or someone else; or
    - (ii) the person is likely to suffer serious mental or physical deterioration;
  - (e) there is no less restrictive way of ensuring the person receives appropriate treatment for the illness;
  - (f) the person—
    - (i) lacks the capacity to consent to be treated for the illness; or
    - (ii) has unreasonably refused proposed treatment for the illness.
- (2) Despite the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*, the person's own consent only is relevant for subsection (1)(f).

## Chapter 2      Involuntary assessment

### Part 1            Interpretation

#### 15      Definition of *authorised mental health service* for ch 2

In this chapter—

*authorised mental health service* means—

- (a) an authorised mental health service, other than a high security unit; or
- (b) a public hospital if there is no authorised mental health service readily accessible for a person's examination or assessment.

*Example of application of paragraph (b)—*

If there is no authorised mental health service in a remote or rural area of the State, the person may be assessed at a public hospital in the area.

### Part 2            Requirements for involuntary assessment

#### Division 1        Preliminary

#### 16      Assessment documents

For this chapter, the documents required to authorise a person's assessment at an authorised mental health service (*assessment documents*) are—

- (a) a request, that complies with this part, for the person's assessment at an authorised mental health service (a *request for assessment*); and

- (b) a recommendation, that complies with this part, for the person's assessment (a *recommendation for assessment*).

*Note—*

In some cases, before assessment documents can be made for a person, it may be necessary to obtain a justices or emergency examination order for the person under part 3, division 2 or 3.

## **Division 2                    Request for assessment**

### **17            Who may make request for assessment**

A request for assessment for a person must be made by someone who—

- (a) is an adult; and
- (b) reasonably believes the person has a mental illness of a nature, or to an extent, that involuntary assessment is necessary; and
- (c) has observed the person within 3 days before making the request.

### **18            Making request for assessment**

A request for assessment must be in the approved form.

## **Division 3                    Recommendation for assessment**

### **19            Who may make recommendation for assessment**

- (1) A recommendation for assessment for a person may only be made by a doctor or authorised mental health practitioner who has examined the person within the preceding 3 days.
- (2) However, a doctor or authorised mental health practitioner must not make a recommendation for assessment for a relative of the doctor or practitioner.
- (3) An examination mentioned in subsection (1) may be carried out using audiovisual link facilities.

**20 Making recommendation for assessment**

- (1) A recommendation for assessment must—
  - (a) be in the approved form; and
  - (b) state the facts on which it is based; and
  - (c) distinguish between the facts known because of personal observation and facts communicated by others.
- (2) A doctor or authorised mental health practitioner must not make a recommendation for assessment for a person unless the doctor or practitioner is satisfied the assessment criteria apply to the person.

**21 How long recommendation for assessment is in force**

A recommendation for assessment is in force for 7 days after it is made.

**Division 4 Miscellaneous provisions****22 When request for assessment may be made and when it is in force**

- (1) A request for assessment for a person may only be made within 7 days before or after a recommendation for assessment for the person is made.
- (2) A request for assessment for a person, whether made before or after the recommendation for assessment for the person, is in force only while the recommendation for assessment for the person is in force.

**23 Assessment documents must be made by different persons**

A request and recommendation for assessment must be made by different persons.

**24 Person making request must not be relative of practitioner making recommendation**

The person making a request for assessment for a person must not be an employee or relative of the doctor or authorised mental health practitioner making the recommendation for assessment for the person.

**Part 3 Procedures leading to involuntary assessment****Division 1 Provisions about taking persons to authorised mental health services for involuntary assessment****25 Taking person to authorised mental health service**

- (1) A health practitioner or ambulance officer may take a person for whom assessment documents are in force to an authorised mental health service for assessment.<sup>5</sup>
- (2) For subsection (1), the health practitioner or ambulance officer—
  - (a) may exercise the power with the help, and using the force, that is reasonable in the circumstances; and
  - (b) is a public official for the *Police Powers and Responsibilities Act 2000*.<sup>6</sup>
- (3) If asked by a health practitioner or ambulance officer, a police officer must, as soon as reasonably practicable, ensure reasonable help is given.

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5 For provisions about entering places, see chapter 14 (Enforcement, evidence and legal proceedings), part 2 (Entry to places).

6 For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16 (Helping public officials exercise powers under other Acts).

- (4) For giving the help, a police officer is taken to have responded to a request by a public official under the *Police Powers and Responsibilities Act 2000*, section 16(3).
- (5) In exercising the power under subsection (1), the health practitioner or ambulance officer must, to the extent that it is reasonable and practicable in the circumstances—
  - (a) tell the person that assessment documents are in force for the person; and
  - (b) explain to the person, in general terms, the nature and effect of the assessment documents.<sup>7</sup>
- (6) Failure to comply with subsection (5) does not affect the validity of the exercise of the power.

## **26 Administration of medication while being taken to authorised mental health service**

- (1) Despite the absence or refusal of the person's consent, medication may be administered to the person while being taken to the authorised mental health service.
- (2) However, the medication—
  - (a) may be administered to the person only if a doctor is satisfied it is necessary to ensure the safety of the person or others while being taken to the health service; and
  - (b) must be administered by a doctor or a registered nurse under the instruction of a doctor.
- (3) The doctor or nurse may administer the medication with the help, and using the force, that is reasonable in the circumstances.
- (4) For subsection (2)(b), the doctor's instruction must include the medication's name, the dose and route and frequency of administration.
- (5) A doctor or nurse who administers medication under this section must keep a written record of the matters mentioned in subsection (4).

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<sup>7</sup> See also section 542 (Official to identify himself or herself before exercising powers).

- (6) This section applies despite the *Guardianship and Administration Act 2000*, chapter 5, part 2, division 1.<sup>8</sup>

## **Division 2                      Justices examination orders**

### **27            Application for order**

- (1) A person may apply to a magistrate or justice of the peace for an order under this division (a *justices examination order*) for another person.
- (2) The application for the order must—
- (a) be made by—
    - (i) if made to a magistrate—filing an application in the approved form with the registrar of a Magistrates Court; or
    - (ii) if made to a justice of the peace—giving an application in the approved form to the justice; and
  - (b) be sworn and state the grounds on which it is made.
- (3) The application may be made even if the applicant has not made a request for assessment for the person.

*Note—*

A request for assessment for the person may be made by the applicant or someone else.

For the person to be taken to an authorised mental health service for assessment, assessment documents must be in force for the person, see section 25(1).

### **28            Making of order**

- (1) A magistrate or justice of the peace may make a justices examination order relating to a person only if the magistrate or justice reasonably believes—
- (a) the person has a mental illness; and

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<sup>8</sup> *Guardianship and Administration Act 2000*, chapter 5 (Health matters and special health matters), part 2 (Scheme for health care and special health care), division 1 (Health care—no consent)

- (b) the person should be examined by a doctor or authorised mental health practitioner to decide whether a recommendation for assessment for the person be made; and
  - (c) the examination can not be properly carried out unless the order is made.
- (2) The order must be in the approved form.

## **29 Procedures after making order**

- (1) If a justices examination order is made by a magistrate, the registrar of the Magistrates Court with whom the application for the order is filed must send the order and a copy of the application documents to the administrator of an authorised mental health service.
- (2) If a justices examination order is made by a justice of the peace, the justice must—
- (a) send the order and a copy of the application documents to the administrator of an authorised mental health service; and
  - (b) send a copy of the order to the registrar of the Magistrates Court stated in the order.
- (3) If the registrar or justice sends the documents to an authorised mental health service by facsimile, the registrar or justice must send the original of the order and a copy of the application documents to the health service.

## **30 Effect of order**

- (1) The justices examination order authorises a doctor or authorised mental health practitioner to examine the person to decide whether a recommendation for assessment for the person should be made.

*Note—*

If a recommendation for assessment for the person is made, the person may only be taken to an authorised mental health service for assessment if a request for assessment for the person is also made, see section 25(1).

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- (2) For subsection (1), the doctor or practitioner may enter a place stated in the order or another place the doctor or practitioner reasonably believes the person may be found.
- (3) The doctor or practitioner may exercise a power under this section with the help that is reasonable in the circumstances.
- (4) For subsections (1) and (2)—
  - (a) the doctor or practitioner is a public official for the *Police Powers and Responsibilities Act 2000*;<sup>9</sup> and
  - (b) a police officer may detain the person at the place for the examination to be carried out by a doctor or authorised mental health practitioner.<sup>10</sup>
- (5) If asked by the doctor or practitioner, a police officer must, as soon as reasonably practicable, ensure reasonable help is given.
- (6) For giving the help, a police officer is taken to have responded to a request by a public official under the *Police Powers and Responsibilities Act 2000*, section 16(3).
- (7) In exercising a power under this section, the doctor or practitioner must, to the extent that it is reasonable and practicable in the circumstances—
  - (a) explain to the person, in general terms, the nature and effect of the order; and
  - (b) produce the order to the person for inspection.<sup>11</sup>
- (8) Production by the doctor or practitioner of a facsimile copy of the order is sufficient compliance with subsection (7)(b).
- (9) Failure to comply with subsection (7) does not affect the validity of the exercise of the power.

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9 For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16 (Helping public officials exercise powers under other Acts).

10 For a police officer's entry and search powers, see the *Police Powers and Responsibilities Act 2000*, section 21 (General power to enter to arrest or detain someone or enforce warrant).

11 See also section 542 (Official to identify himself or herself before exercising powers).

- (10) A power under this section may be exercised at any reasonable time of the day or night.

### **31 Duration of order**

- (1) The justices examination order must state the time when it is to end.
- (2) The stated time must be not more than 7 days after the order is made.
- (3) The order ends at the stated time.

### **32 Notifications to director**

- (1) If a recommendation for assessment for the person is not made after the person's examination under the justices examination order, the examining doctor or authorised mental health practitioner must give to the director—
- (a) notice in the approved form; and
  - (b) a copy of the order and a copy of the application documents.
- (2) If, an examination of the person is not carried out under the justices examination order before it ends, the administrator of the authorised mental health service to whom the order was sent must give to the director—
- (a) notice in the approved form; and
  - (b) a copy of the order and a copy of the application documents.

## **Division 3                      Emergency examination orders**

### **Subdivision 1                Emergency examination orders by police officers and ambulance officers**

#### **33            Application of sdiv 1**

This subdivision applies if a police officer or an ambulance officer reasonably believes—

- (a) a person has a mental illness; and
- (b) because of the person's illness there is an imminent risk of significant physical harm being sustained by the person or someone else;<sup>12</sup> and
- (c) proceeding under division 2 would cause dangerous delay and significantly increase the risk of harm to the person or someone else; and
- (d) the person should be taken to an authorised mental health service for examination to decide whether a request and recommendation for assessment should be made for the person.

#### **34            Taking person to authorised mental health service**

The police officer or ambulance officer must take the person to an authorised mental health service for examination to decide whether assessment documents for the person should be made.

#### **35            Making of emergency examination order**

- (1) Immediately after taking the person to the authorised mental health service, the police officer or ambulance officer must make an order under this subdivision (an *emergency*

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<sup>12</sup> For a police officer's power to enter a place to prevent an offence, injury or domestic violence, see the *Police Powers and Responsibilities Act 2000*, section 609 (Entry of place to prevent offence, injury or domestic violence).

*examination order (police or ambulance officer)*) for the person.

- (2) The order must—
  - (a) be in the approved form; and
  - (b) state the time when it is made.
- (3) Immediately after making the order, the police officer or ambulance officer must give the order to a health service employee at the health service.
- (4) The person may be detained in the health service while the order is being made.

### **36 Detention and examination**

- (1) On the making of the order, the person may be detained for not longer than 6 hours (the *examination time*) in the authorised mental health service for examination by a doctor or authorised mental health practitioner.
- (2) In carrying out the examination, the doctor or practitioner must, to the extent that it is reasonable and practicable in the circumstances explain to the person, in general terms, the application of this subdivision to the person.<sup>13</sup>

## **Subdivision 2      Emergency examination orders by psychiatrists**

### **37 Application of sdiv 2**

This subdivision applies if a psychiatrist is satisfied—

- (a) a person has a mental illness; and
- (b) because of the person's illness there is an imminent risk of significant physical harm being sustained by the

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<sup>13</sup> See also section 542 (Official to identify himself or herself before exercising powers).

person or someone else;<sup>14</sup> and

- (c) proceeding under division 2 would cause dangerous delay and significantly increase the risk of harm to the person or someone else; and
- (d) the person should be taken to an authorised mental health service for examination to decide whether a request and recommendation for assessment should be made for the person.

### **38 Making of emergency examination order**

- (1) The psychiatrist may make an order under this subdivision (an *emergency examination order (psychiatrist)*) for the person.
- (2) The order must be in the approved form.

### **39 Taking of person to authorised mental health service for examination**

The psychiatrist, or a police officer or ambulance officer may take the person to an authorised mental health service for examination to decide whether assessment documents for the person should be made.<sup>15</sup>

### **40 Detention and examination**

- (1) On production of the examination order for the person to a health service employee at the authorised mental health service, the person may be detained for not longer than 6 hours (the *examination time*) in the health service for examination by a doctor or authorised mental health practitioner.
- (2) The examination time starts when the order is produced to the health service employee.

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14 For a police officer's power to enter a place to prevent an offence, injury or domestic violence, see the *Police Powers and Responsibilities Act 2000*, section 609 (Entry of place to prevent offence, injury or domestic violence).

15 For a police officer's power to enter a place to prevent an offence, injury or domestic violence, see the *Police Powers and Responsibilities Act 2000*, section 609 (Entry of place to prevent offence, injury or domestic violence).

- (3) For subsection (2), the health service employee must write on the order the time of its production.
- (4) In carrying out the examination, the doctor or practitioner must, to the extent that it is reasonable and practicable in the circumstances explain to the person, in general terms, the application of this subdivision to the person.<sup>16</sup>

### **Subdivision 3      General**

#### **41      Procedure if assessment documents not made**

If assessment documents are not made for a person the subject of an emergency examination order at the end of the examination time for the person, the administrator of the authorised mental health service to which the person was taken for examination must, as soon as practicable—

- (a) make arrangements for the person's return to the place from which the person was taken for the examination or for the person to be taken to another place the person reasonably asks to be taken; and
- (b) give to the director—
  - (i) notice in the approved form; and
  - (ii) a copy of the order.

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<sup>16</sup> See also section 542 (Official to identify himself or herself before exercising powers).

## **Part 4                      Detention as involuntary patient for involuntary assessment**

### **Division 1                      Preliminary**

#### **42                      Application of pt 4**

This part applies to a person for whom assessment documents are in force.<sup>17</sup>

#### **43                      Purpose of pt 4**

The purpose of this part is to provide for the person's detention for assessment in an authorised mental health service.

### **Division 2                      Involuntary assessment**

#### **44                      Detention for assessment**

- (1) The person may be detained in an authorised mental health service for assessment for the assessment period.

*Note—*

The assessment period is initially not longer than 24 hours or, if that period is extended or further extended under section 47, the extended period, see schedule 2 (Dictionary), definition *assessment period*.

- (2) The assessment period starts—
  - (a) if the person is not a patient in the health service—when the person is received at the health service for the assessment and the assessment documents are produced to a health service employee at the health service; or
  - (b) if the person is a patient in the health service—when assessment documents for the person—

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<sup>17</sup> Part 2 states the requirements for assessment documents.

- (i) are produced to a health practitioner at the health service; or
  - (ii) are made by health practitioners at the health service.
- (3) For subsection (2), the health service employee or health practitioner must write on the assessment documents the time when the assessment period starts.
- (4) On the production or making of the assessment documents for the person under subsection (2), the person becomes an involuntary patient.

#### **45 Patient and other persons to be told about assessment**

On becoming an involuntary patient, the administrator for the authorised mental health service must ensure the following persons are told about the patient's assessment under this division—

- (a) the patient;
- (b) the patient's allied person;
- (c) if the patient is a minor—a parent of the minor or the minor's guardian;
- (d) if the administrator reasonably believes the patient has a personal attorney—the attorney;
- (e) if the administrator reasonably believes the patient has a personal guardian—the guardian.

#### **46 Initial assessment**

- (1) As soon as practicable after the person becomes an involuntary patient, an authorised doctor for the authorised mental health service must make an assessment of the patient to decide whether the treatment criteria apply to the patient.

*Note—*

If, on the assessment, the authorised doctor is satisfied the treatment criteria apply to the person, the doctor may make an involuntary treatment order for the patient, see section 108.

- (2) The assessment may be carried out using audiovisual link facilities.

#### **47 Extension of assessment period**

- (1) An authorised doctor for the authorised mental health service may, from time to time, by written declaration, extend the assessment period for the patient for a further period of not longer than 24 hours.
- (2) However, the patient must not be detained for assessment for more than 72 hours.
- (3) The doctor may make a declaration under subsection (1) only if the doctor is satisfied the further period is necessary to carry out or finish the assessment.

#### **48 When patient ceases to be involuntary patient**

- (1) If an authorised doctor for the authorised mental health service has not made an involuntary treatment order for the patient at the end of the assessment period for the patient—
  - (a) the patient ceases to be an involuntary patient; and
  - (b) the doctor must tell the patient that the patient is no longer an involuntary patient.
- (2) However, the person may continue to be a patient of the authorised mental health service other than as an involuntary patient.
- (3) Subsection (4) applies if the person—
  - (a) was taken to the health service for—
    - (i) assessment under part 3, division 1; or
    - (ii) examination under part 3, division 3, and assessment documents were made for the person before the end of the examination time for the person; and
  - (b) is not an in-patient of the health service.
- (4) The administrator of the health service must, as soon as practicable, make arrangements for the person's return to the place from which the person was taken for the assessment or

examination or for the person to be taken to another place the person reasonably asks to be taken.

## **Chapter 3      Persons before a court or in custody requiring assessment or detention**

### **Part 1            Requirements for assessment**

#### **Division 1        Preliminary**

#### **49      Assessment documents**

For this chapter, the documents required to authorise a person's detention in an authorised mental health service for assessment (*assessment documents*) are—

- (a) a recommendation, that complies with division 2, for the person's assessment (a *recommendation for assessment*); and
- (b) an agreement, that complies with division 3, for the person's assessment (an *agreement for assessment*); and
- (c) for assessment of a person to whom—
  - (i) part 2 applies—a court assessment order for the person; or
  - (ii) part 3 applies—a custodian's assessment authority for the person.

## **Division 2                      Recommendations for assessment**

### **50            Who may make recommendation for assessment**

- (1) A recommendation for assessment for a person may only be made by a doctor or an authorised mental health practitioner who has examined the person within the preceding 3 days.
- (2) However, a doctor or authorised mental health practitioner must not make a recommendation for assessment for a relative of the doctor or health practitioner.
- (3) An examination mentioned in subsection (1) may be carried out using audiovisual link facilities.

### **51            Making recommendation for assessment**

- (1) A recommendation for assessment must—
  - (a) be in the approved form; and
  - (b) state the facts on which it is based; and
  - (c) distinguish between the facts known because of personal observation and facts communicated by others.
- (2) A doctor or authorised mental health practitioner must not make a recommendation for assessment for a person unless the doctor or practitioner is satisfied the assessment criteria apply to the person.

### **52            How long recommendation for assessment is in force**

A recommendation for assessment is in force for 7 days after it is made.

## **Division 3                      Agreements for assessment**

### **53            Who may give agreement for assessment**

- (1) An agreement for assessment for a person's assessment at an authorised mental health service may be given by the

administrator of the health service or, if the health service is a public sector mental health service, the director.

- (2) However, the administrator of a high security unit must not give an agreement for assessment for either of the following persons without the director's approval—
  - (a) a young person;<sup>18</sup>
  - (b) a person charged only with a simple offence.
- (3) The director must not give the approval unless the director is satisfied it is in the person's best interests to do so having regard to the following—
  - (a) the person's mental state and psychiatric history;
  - (b) the person's treatment and security requirements;
  - (c) any offence with which the person is charged or for which the person is serving a sentence of imprisonment or period of detention.

#### **54 When agreement for assessment may be given by administrator**

- (1) The administrator of an authorised mental health service may give an agreement for assessment for a person's assessment at the health service if the administrator is satisfied the health service has the capacity to carry out the assessment.
- (2) For subsection (1), the administrator of an authorised mental health service that is not a high security unit must be satisfied the person's assessment at the health service does not present an unreasonable risk to the safety of the person or others having regard to—
  - (a) the person's criminal and psychiatric history; and
  - (b) the person's current treatment and security requirements.

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18 For reviews of the detention of a young patient in high security unit, see chapter 6 (Tribunal reviews, notification orders and treatment applications), part 2 (Reviews by tribunal for young patients detained in high security units).

**55 When agreement for assessment may be given by director**

The director may give an agreement for assessment for a person's assessment at a public sector mental health service only if—

- (a) the administrator of the health service has refused to give an agreement under section 54; and
- (b) on reviewing the administrator's decision and considering the circumstances of the particular case, the director is satisfied about the matters mentioned in—
  - (i) section 54; and
  - (ii) if the person is a young person or charged only with a simple offence—section 53(3).

**56 How long agreement for assessment is in force**

An agreement for assessment is in force for 7 days after it is made.

**Part 2 Persons having a mental illness before court****Division 1 Court assessment orders****57 Application of div 1**

This division applies to a person charged with a simple or indictable offence who is before a court.

**58 Court may make court assessment order for person**

- (1) The court may make an order under this section (a *court assessment order*) for the person if—
  - (a) a recommendation and agreement for assessment that are in force for the person are given to the court; and

- (b) the court is satisfied the person should be detained in an authorised mental health service for assessment.
- (2) The court assessment order must state the authorised mental health service where the person's assessment is to be carried out.
- (3) On the making of the court assessment order for the person, the court must—
  - (a) adjourn the proceedings for the offence with which the person is charged; and
  - (b) remand the person in custody.

### **59 Court's powers if court assessment order is not made for person**

If the court is satisfied the person can be assessed other than as an in-patient of an authorised mental health service, the court must—

- (a) remand the person in custody or grant the person bail under the *Bail Act 1980*, part 2;<sup>19</sup> and
- (b) ensure arrangements are made for the person's assessment.

## **Division 2 Orders by Supreme and District Courts if person pleads guilty to indictable offence**

### **60 Definition for div 2**

In this division—

*offence* does not include an offence against a Commonwealth law.

### **61 Application of div 2**

This division applies if—

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<sup>19</sup> *Bail Act 1980*, part 2 (Grant and enlargement of bail and other release)

- (a) at the trial of a person charged with an indictable offence, the person pleads guilty and it is alleged or appears the person is mentally ill, or was, or may have been, mentally ill when the alleged offence was committed; or
- (b) on the appearance for sentence of a person who has pleaded guilty to a charge of an indictable offence before a court and has been committed by the court for sentence, it is alleged or appears the person is mentally ill, or was, or may have been, mentally ill when the alleged offence was committed.

## **62 Supreme or District Court may order plea of not guilty**

- (1) The Supreme or District Court before which the person appears may order a plea of not guilty be entered for the person for—
  - (a) the indictable offence the person is charged with; and
  - (b) if, under the Criminal Code, section 651, a charge of a summary offence laid against the person is to be heard and decided by the court—the summary offence.
- (2) On the making of the order, the court must—
  - (a) adjourn the trial; and
  - (b) refer the matter of the person's mental condition relating to the offence to the Mental Health Court;<sup>20</sup> and
  - (c) remand the person in custody or grant the person bail under the *Bail Act 1980*.
- (3) If the court remands the person in custody, it may also make a court assessment order for the person.

## **63 How reference to Mental Health Court is made**

- (1) The registrar of the Supreme or District Court must file notice of the reference in the approved form in the Mental Health Court Registry.

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<sup>20</sup> See chapter 7 (Examinations, references and orders for persons charged with offences), part 6 (Inquiries on references to Mental Health Court).



**65 Custodian's assessment authority**

- (1) The person's custodian may authorise the person's assessment (a *custodian's assessment authority*) at an authorised mental health service.
- (2) The assessment authority must state the authorised mental health service where the person's assessment is to be carried out.

**66 Making of custodian's assessment authority**

- (1) The person's custodian may make a custodian's assessment authority for the person only if a recommendation and agreement for assessment that are in force for the person are given to the custodian.
- (2) The assessment authority for the person must be in the approved form.

**Part 4 Detention as classified patient on completion of assessment documents****Division 1 Preliminary****67 Application of pt 4**

This part applies to a person for whom a court assessment order or custodian's assessment authority is in force.

## **Division 2                      Provisions about taking person to, and detaining person in, authorised mental health service**

### **68            Taking person to authorised mental health service**

- (1) The person must be taken to an in-patient facility of the authorised mental health service stated in the court assessment order or custodian's assessment authority as soon as practicable after the order or authority is made.
- (2) For subsection (1), a police officer, correctional officer or detention centre officer may take the person to the in-patient facility.
- (3) A correctional officer or detention centre officer may exercise the power under subsection (2) with the help, and using the force, that is reasonable in the circumstances.<sup>22</sup>

### **69            Classified patients**

- (1) On production of the following assessment documents for the person to a health service employee at the authorised mental health service, the person becomes a classified patient—
  - (a) the recommendation for assessment for the person;
  - (b) court assessment order or custodian's assessment authority.
- (2) The classified patient may be detained in the health service.
- (3) The patient is a classified patient until the patient ceases to be a classified patient under section 78, 94, 99, 100C, 253 or 287.<sup>23</sup>

### **70            Giving information about detention**

- (1) On the person becoming a classified patient, the administrator of the authorised mental health service must—

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22 For use of force by police officers, see the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).

23 For what happens on patient ceasing to be classified patient, see division 5.

*Mental Health Act 2000*

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- (a) give written notice to the director of the patient's detention as a classified patient; and
  - (b) ensure the following persons are told about the patient's detention as a classified patient—
    - (i) the patient;
    - (ii) the patient's allied person;
    - (iii) if the patient is a minor—a parent of the minor or the minor's guardian;
    - (iv) if the administrator reasonably believes the patient has a personal attorney—the attorney;
    - (v) if the administrator reasonably believes the patient has a personal guardian—the guardian; and
  - (c) give written notice to the tribunal of the patient's detention as a classified patient if—
    - (i) the health service is a high security unit and the patient is a young patient; or
    - (ii) an involuntary treatment order or forensic order is in force for the patient.
- (2) For a classified patient who is a person mentioned in section 64(1)(a), (b) or (c), the director must give written notice to the chief executive for justice of the patient's detention as a classified patient.
- (3) The chief executive for justice must give written notice to the following persons of the patient's detention as a classified patient—
- (a) the registrar of the court before which the patient is to appear for the offence;
  - (b) the commissioner of the police service or the director of public prosecutions as appropriate in the circumstances;
  - (c) if the patient is a child—the chief executive for young people.

## **Division 3                      Assessment and treatment as classified patient**

### **71            Initial assessment**

- (1) Within 3 days after the person becomes a classified patient, an authorised doctor for the authorised mental health service must make an assessment of the patient to decide whether the treatment criteria apply to the patient.

*Note—*

If, on the assessment, the authorised doctor is satisfied the treatment criteria apply to the person, the doctor may make an involuntary treatment order for the patient, see section 108.

- (2) If, on the assessment, the doctor decides the person has a mental illness, the doctor must also decide whether the patient needs to be detained in the health service as a classified patient for treatment for the illness.
- (3) The doctor may, under subsection (2), decide the patient needs to be detained in the health service even if the doctor reasonably believes limited community treatment may be authorised for the patient.<sup>24</sup>
- (4) Subsection (2) applies regardless of whether the patient consents to treatment for the illness.

### **72            Treatment plan for patient needing to be detained for treatment as classified patient**

If, on the assessment, the authorised doctor decides the patient needs to be detained in the authorised mental health service as a classified patient for treatment for a mental illness, the doctor must—

- (a) ensure a treatment plan is prepared for the patient;<sup>25</sup> and
- (b) talk to the patient about the patient's treatment under the treatment plan.

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<sup>24</sup> See section 129 (Authorising limited community treatment).

<sup>25</sup> See chapter 4 (Treatment of persons who have mental illnesses), part 2 (Treatment plans).

**73 Regular assessments of patient**

- (1) The administrator of the authorised mental health service must ensure an authorised psychiatrist for the health service carries out regular assessments of the patient as required under the patient's treatment plan.
- (2) The authorised psychiatrist must record details of each assessment in the patient's clinical file.
- (3) In carrying out an assessment, the psychiatrist must decide whether the treatment criteria continue to apply to the patient.
- (4) If, on an assessment, the psychiatrist decides the person has a mental illness, the psychiatrist must also decide whether the patient needs to continue to be detained in the health service as a classified patient for treatment for the illness.
- (5) The psychiatrist may, under subsection (4), decide the patient needs to continue to be detained in the health service even if limited community treatment has been authorised for the patient or the psychiatrist reasonably believes limited community treatment may be authorised for the patient.<sup>26</sup>
- (6) Subsection (4) applies regardless of whether the patient consents to treatment for the illness.

**74 Authorised doctor to report to director if patient does not need to be detained for treatment**

- (1) This section applies if, on an initial or regular assessment of a patient, an authorised doctor decides the patient does not need to continue to be detained in the authorised mental health service as a classified patient for treatment for the illness.
- (2) The doctor must give the director a report stating the decision and the reasons for the decision.

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26 See section 129 (Authorising limited community treatment).

## **Division 4                      Provisions about legal proceedings**

### **75            Suspension of particular proceedings**

On the person becoming a classified patient, proceedings for any offence, other than an offence against a Commonwealth law, against the person are suspended until the person ceases to be a classified patient.

### **76            What happens for proceedings for Commonwealth offences**

- (1) If, in a proceeding against a classified patient for an offence against a Commonwealth law, the court remands the patient in custody for the offence, the place of custody is to be the patient's treating health service.

*Note—*

A person has ceased to be a classified patient when, under part 5, the patient is returned to court or custody for the proceedings to continue.

- (2) To remove any doubt, it is declared that the patient continues to be a classified patient until the patient ceases, under section 78(1) or part 5, to be a classified patient.

### **77            Bail, remand and discontinuance of proceedings etc.**

This part does not prevent—

- (a) a court making an order granting a classified patient bail under the *Bail Act 1980*; or
- (b) a court remanding a classified patient in custody in relation to proceedings for an offence; or
- (c) a court adjourning proceedings for an offence until a stated date; or
- (d) the prosecution of a classified patient for an offence being discontinued at any time by the complainant or director of public prosecutions.

### **78            When patient ceases to be classified patient**

- (1) A patient ceases to be a classified patient if—

- (a) for an offence against any law—
    - (i) a court makes an order granting the patient bail under the *Bail Act 1980*; or
    - (ii) the prosecution of the patient for the offence is discontinued, other than under the decision of the Attorney-General under section 247(1)(b);<sup>27</sup> or
  - (b) for an offence against a Commonwealth law—proceedings for the offence are finally decided according to law and the patient is not awaiting the start or continuation of proceedings for another offence.
- (2) However, subsection (1) does not apply if the patient—
- (a) is held in lawful custody, or lawfully detained, without charge under an Act of the State or the Commonwealth prescribed under a regulation for section 64(3); or
  - (b) is serving a sentence of imprisonment or period of detention under a court order.
- (3) Also, the patient may continue to be an involuntary patient under another provision of this Act.

## **79 Notice of patient ceasing to be classified patient**

Within 7 days after a patient ceases, under section 78, to be a classified patient, the administrator of the patient's treating health service must give written notice of the ceasing to the following persons—

- (a) the patient;
- (b) the patient's allied person;
- (c) the director;
- (d) if an involuntary treatment or forensic order is in force for the patient—the tribunal.

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<sup>27</sup> Also, see section 253 (When patient ceases to be classified patient).

## **Division 5                      What happens on patient ceasing to be classified patient**

### **80            Application of div 5**

This division applies if, under section 78, 99, 253 or 287, a patient ceases to be a classified patient.

### **81            Release or other arrangements for admission for patients who cease to be involuntary patients**

- (1) This section applies if, on the ceasing to be a classified patient, the person is not an involuntary patient.
- (2) The administrator of the health service must immediately—
  - (a) release the person; or
  - (b) make arrangements for the person's admission to an authorised mental health service that is not a high security unit.

### **82            Continued detention of particular involuntary patients**

- (1) This section applies if, on the ceasing to be a classified patient, the patient—
  - (a) is an involuntary patient under an involuntary treatment order; and
  - (b) is detained in a high security unit.
- (2) The patient may continue to be detained in the high security unit for not longer than 3 days.
- (3) However, the director may approve the continued detention of the patient in the high security unit.
- (4) The director may give an approval under subsection (3) only if the director is satisfied it is in the patient's best interests to do so having regard to the following—
  - (a) the patient's mental state and psychiatric history;
  - (b) the patient's treatment and security requirements.

## **Part 5**                      **Return of classified patients to court or custody**

### **Division 1**                **Preliminary**

#### **83**      **Application of pt 5**

- (1) This part applies if, on receiving a report under section 74 or at any other time, the director is satisfied a classified patient does not need to be detained in an authorised mental health service for treatment for a mental illness.

*Note—*

If the director is satisfied the patient still needs to be detained in the health service, the director may approve that an authorised doctor for the health service authorise limited community treatment for the patient, see section 129.

- (2) Also, this part applies if, after the end of the period for an initial assessment under section 71(1)—
- (a) an involuntary treatment order is not made for the patient; and
  - (b) the patient asks that he or she no longer be detained in the health service.
- (3) However, subsection (2) does not apply if the patient is a forensic patient.

#### **84**      **Notice of application of pt 5**

If this part applies to the patient under section 83(2), the administrator of the authorised mental health service must give written notice of the application of this part to the director.

## **Division 2                      Patients under court assessment orders**

### **85            Application of div 2**

This division applies if—

- (a) the director receives a notice for the patient under section 84 or is satisfied this part applies to the patient under section 83(1); and
- (b) a court assessment order is in force for the patient.

### **86            Notices about patient not to be detained as classified patient**

- (1) The director must immediately give written notice to the chief executive for justice stating this division applies to the patient.
- (2) The chief executive for justice must immediately give written notice to the following persons of the application of this division to the patient—
  - (a) the registrar of the court in which proceedings for the offence that led to the patient becoming a classified patient are to be heard;
  - (b) the commissioner of the police service or director of public prosecutions as appropriate in the circumstances;
  - (c) if the patient is a child—the chief executive for young people.

### **87            Taking patient before court**

- (1) As soon as practicable after receiving the notice under section 86(2), but in any case within 3 days, the commissioner of the police service or director of public prosecutions must ensure the patient is brought before the appropriate court to be dealt with according to law.

- (2) A police officer may take the patient from the authorised mental health service to appear before the court.<sup>28</sup>

### **Division 3                      Patients under custodian's assessment authorities**

#### **88            Application of div 3**

This division applies if—

- (a) the director receives a notice for the patient under section 84 or is satisfied this part applies to the patient under section 83(1); and
- (b) a custodian's assessment authority is in force for the patient.

#### **89            Director to decide whether particular patients should be returned to court**

- (1) This section applies if the patient is awaiting the start or continuation of proceedings for the offence that led to the patient becoming a classified patient.
- (2) The director must decide whether the patient should—
  - (a) under section 90, be returned to custody; or
  - (b) under section 91, be brought before the appropriate court to be dealt with according to law.
- (3) The director must not make a decision under subsection (2)(b) unless the director is satisfied it is in the patient's best interests and it is proper and expedient to do so.

#### **90            When custodian is to take custody of patient**

- (1) This section applies to a patient—
  - (a) who—

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<sup>28</sup> For use of force by police officers, see the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).

- (i) is held in lawful custody, or lawfully detained, without charge under an Act of the State or the Commonwealth prescribed under a regulation for section 64(3); or
  - (ii) is serving a sentence of imprisonment or period of detention under a court order; or
- (b) for whom the director has made a decision under section 89(2)(a).
- (2) The director must immediately give written notice to the custodian who made the custodian's assessment authority for the patient that this section applies to the patient.
- (3) Within 1 day after receiving the director's notice, the custodian must cause a proper officer to take the patient from the authorised mental health service into the custodian's custody.
- (4) The proper officer may take the patient from the authorised mental health service into the custodian's custody.
- (5) A proper officer, other than a police officer, may exercise the power under subsection (4) with the help, and using the force, that is reasonable in the circumstances.<sup>29</sup>
- (6) In this section—  
*proper officer* means—
  - (a) a police officer; or
  - (b) a correctional officer; or
  - (c) a detention centre officer; or
  - (d) another person acting for the State or the Commonwealth who is prescribed under a regulation.

## **90A Giving information about return of patient to custody**

- (1) This section applies to a patient for whom the director has made a decision under section 89(2)(a).

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<sup>29</sup> For use of force by police officers, see the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).

- (2) The director must immediately give written notice to the chief executive for justice that this section applies to the patient.
- (3) The chief executive for justice must immediately give written notice to the following persons of the application of this section to the patient—
  - (a) the registrar of the court before which the patient is to appear for the offence;
  - (b) the commissioner of the police service or the director of public prosecutions as appropriate in the circumstances;
  - (c) if the patient is a child—the chief executive of the department in which the *Juvenile Justice Act 1992* is administered.

## **91 When patient to be brought before court**

- (1) This section applies to a patient for whom the director has made a decision under section 89(2)(b).
- (2) The director must immediately give written notice to the following persons stating that this section applies to the patient—
  - (a) the chief executive for justice;
  - (b) the custodian who made the custodian's assessment authority for the patient.
- (3) The chief executive for justice must immediately give written notice to the following persons of the application of this section to the patient—
  - (a) the registrar of the court in which proceedings for the offence that led to the patient becoming a classified patient are to be heard;
  - (b) the commissioner of the police service or director of public prosecutions as appropriate in the circumstances;
  - (c) if the patient is a child—the chief executive for young people.

**92 Taking patient before court**

- (1) As soon as practicable after receiving the notice under section 91(3), but in any case within 3 days, the commissioner of the police service or director of public prosecutions must ensure the patient is brought before the appropriate court to be dealt with according to law.
- (2) A police officer may take the patient from the authorised mental health service to appear before the court.<sup>30</sup>

**Division 4 Miscellaneous provisions****93 When administrator's custody of patient ends**

The administrator's custody of the patient ends when the patient is taken from the authorised mental health service under section 90 or 92.

**94 When patient ceases to be classified patient**

- (1) The patient ceases to be a classified patient when the administrator's custody of the patient ends.
- (2) However, the patient may continue to be an involuntary patient under another provision of this Act.

**95 Notice of patient ceasing to be classified patient**

Within 7 days after a patient ceases, under section 94, to be a classified patient, the administrator of the patient's treating health service must give written notice of the ceasing to the following persons—

- (a) the patient's allied person;
- (b) if an involuntary treatment or forensic order is in force for the patient—the tribunal.

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<sup>30</sup> For use of force by police officers, see the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).





- (2) However, the patient may continue to be an involuntary patient under another provision of this Act.

### **100D Notice of patient ceasing to be classified patient**

Within 7 days after a patient ceases, under section 100C, to be a classified patient, the administrator of the patient's treating health service must give written notice of the ceasing to the following persons—

- (a) the patient;
- (b) the patient's allied person;
- (c) if an involuntary treatment or forensic order is in force for the patient—the tribunal.

## **Part 7 Detention in authorised mental health service during trial**

### **101 Court may order person's detention in authorised mental health service**

- (1) This section applies if, after the start of the trial of a person charged with an indictable offence, a court—
- (a) decides the person should be remanded in custody during an adjournment of the trial; and
  - (b) because of the person's mental condition, is satisfied the person should be detained in an authorised mental health service for treatment or care during the adjournment.
- (2) The court may order that the person be detained for treatment or care, during the adjournment, in a stated authorised mental health service if there is in force an agreement under this part for the person's detention.

**102 Who may give agreement for detention**

- (1) An agreement for a person's detention in an authorised mental health service may be given by the administrator of the health service or the director.
- (2) However, an agreement must not be given for a young person's detention in a high security unit.

**103 When agreement for detention may be given by administrator**

- (1) The administrator of an authorised mental health service may give an agreement for a person's detention in the health service if the administrator is satisfied the health service has the capacity to detain the person for treatment or care.
- (2) For subsection (1), the administrator of an authorised mental health service that is not a high security unit must be satisfied the person's detention at the health service does not present an unreasonable risk to the safety of the person or others having regard to—
  - (a) the person's criminal and psychiatric history; and
  - (b) the person's current treatment and security requirements.

**104 When agreement for detention may be given by director**

The director may give an agreement for a person's detention in a public sector mental health service only if—

- (a) the administrator of the health service has refused to give an agreement under section 103; and
- (b) on reviewing the administrator's decision and considering the circumstances of the particular case, the director is satisfied about the matters mentioned in the section.

**105 How long agreement for detention is in force**

An agreement for detention for a person is in force for 7 days after it is made.

**106 Taking person to authorised mental health service and return to court**

- (1) A police officer, correctional officer or detention centre officer may—
  - (a) take the person to an in-patient facility of the authorised mental health service stated in the court's order; and
  - (b) at the end of the adjournment, take the person from the health service to appear before the court.
- (2) A correctional officer or detention centre officer may exercise the power under subsection (1) with the help, and using the force, that is reasonable in the circumstances.<sup>31</sup>

**107 Detention in authorised mental health service**

The person may be detained under the court's order in the authorised mental health service stated in the order.

**Chapter 4 Treatment of persons who have mental illnesses****Part 1 Involuntary treatment orders****Division 1 Making and effect of involuntary treatment orders****108 Making of involuntary treatment order**

- (1) If, on the assessment of a patient under chapter 2, part 4, or on an initial or regular assessment under chapter 3, part 4, an authorised doctor for an authorised mental health service is satisfied the treatment criteria apply to the patient, the doctor

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31 For use of force by police officers, see the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).

may make an order under this section (an *involuntary treatment order*) for the patient.

- (2) However, a psychiatrist must not make the order if the psychiatrist made the recommendation for assessment under chapter 2 or 3 for the patient.
- (3) The order must—
  - (a) be in the approved form; and
  - (b) state the following—
    - (i) the time when it is made;
    - (ii) the basis on which the doctor is satisfied the treatment criteria apply to the patient, including the facts indicating mental illness observed by the doctor;
    - (iii) the authorised mental health service responsible for ensuring the person receives treatment.
- (4) For an involuntary patient, other than a classified patient, the health service stated in the order must not be a high security unit without the director's prior agreement.

## **109 Category of order**

- (1) In making the involuntary treatment order, the authorised doctor must decide the category of the order.
- (2) The category of the order must be—
  - (a) if the patient needs to be treated as an in-patient of an authorised mental health service or the patient is a classified patient—in-patient; or
  - (b) if paragraph (a) does not apply—community.

*Note—*

In deciding the category of the order, the doctor must have regard to the general principles for the administration of this Act and the principles for exercising powers and performing functions under this Act, see sections 8 and 9.

**110 Treatment plan for patient**

The authorised doctor must ensure a treatment plan is prepared for the patient.<sup>32</sup>

**111 Authorised doctor must tell patient about order and treatment plan**

The authorised doctor must—

- (a) tell the patient—
  - (i) the order has been made for the patient; and
  - (ii) the category of the order; and
  - (iii) the basis on which the doctor is satisfied the treatment criteria apply to the patient; and
- (b) talk to the patient about the patient's treatment under the treatment plan.<sup>33</sup>

**112 Second examination in particular cases**

- (1) This section applies if the involuntary treatment order for the patient was made—
  - (a) by an authorised doctor who is not a psychiatrist; or
  - (b) solely on an assessment carried out using audiovisual link facilities.
- (2) Within 72 hours after the order is made, the patient must be examined by an authorised psychiatrist.
- (3) The psychiatrist's examination may be carried out using audiovisual link facilities only if the involuntary treatment order was made on an assessment carried out in person.
- (4) If the order was made by a psychiatrist as mentioned in subsection (1)(b), the same psychiatrist may carry out the examination.

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32 See part 2 (Treatment plans).

33 See section 537 (Compliance with particular provisions as soon as practicable).

For a doctor's obligations to give particular information to the patient's personal attorney or personal guardian, see the *Guardianship and Administration Act 2000*, section 76 (Health providers to give information).

- (5) If the psychiatrist is not satisfied the treatment criteria apply to the patient, the psychiatrist must revoke the order.
- (6) If the psychiatrist is satisfied the treatment criteria apply to the patient, the psychiatrist must confirm the order.
- (7) A revocation or confirmation must be endorsed on the order.
- (8) If the order is not revoked or confirmed at the end of the 72 hours after it is made—
  - (a) the patient ceases to be an involuntary patient; and
  - (b) an authorised doctor must tell the patient that the patient is no longer an involuntary patient.

### **113 Notice of making of involuntary treatment order**

- (1) Within 7 days after an involuntary treatment order for a patient is made, the administrator of the patient's treating health service must give written notice of the order to—
  - (a) the patient; and
  - (b) the tribunal; and
  - (c) the patient's allied person.
- (2) Subsection (1) applies to an involuntary treatment order to which section 112 applies only if the order is confirmed under the section.

### **114 Detention under in-patient order**

If the category of the involuntary treatment order is in-patient, the patient may be detained in the patient's treating health service.

### **115 Treatment under treatment plan**

The administrator of the treating health service must ensure the patient is treated as required under the patient's treatment plan.

**116 Regular assessments of patient**

- (1) The administrator of the treating health service must ensure an authorised psychiatrist for the health service carries out regular assessments of the patient as required under the patient's treatment plan.
- (2) The authorised psychiatrist must record details of each assessment in the patient's clinical file.
- (3) In carrying out an assessment, the psychiatrist must consider whether the treatment criteria continue to apply to the patient.

**117 Noncompliance with treatment under community category of involuntary treatment order**

- (1) This section applies if—
  - (a) the category of the involuntary treatment order for a patient is community; and
  - (b) in the opinion of an authorised doctor for a patient's treating health service—
    - (i) the patient has not complied with the patient's treatment plan; and
    - (ii) reasonable steps have been taken to obtain compliance with the treatment plan without success; and
    - (iii) there is a significant risk of deterioration in the patient's mental or physical condition because of the noncompliance.
- (2) The doctor must—
  - (a) make a written record of the doctor's opinion and the reasons for the opinion; and
  - (b) if practicable, tell the patient about the noncompliance and the consequences of a further noncompliance.
- (3) If the patient again fails to comply with the patient's treatment plan, the administrator of the health service may, by written notice given to the patient, order the patient attend a stated authorised mental health service on a day stated in the notice for treatment (the *stated day*).

- (4) If the patient does not comply with the notice—
  - (a) a health practitioner may take the patient to the health service for treatment as soon as practicable after the stated day;<sup>34</sup> and
  - (b) the patient may be detained in the health service until the treatment is provided.
- (5) For subsection (4)(a), the practitioner—
  - (a) may exercise the power with the help, and using the force, that is reasonable in the circumstances; and
  - (b) is a public official for the *Police Powers and Responsibilities Act 2000*.<sup>35</sup>
- (6) As soon as practicable after the person's treatment, the administrator of the health service must make arrangements for the person's return to the place from which the person was taken for the treatment or for the person to be taken to another place the person reasonably asks to be taken.

## **118 Duration of order**

- (1) An involuntary treatment order made by a psychiatrist, or an authorised doctor and confirmed by a psychiatrist under section 112(6), continues in force until it is revoked—
  - (a) by an authorised doctor for the patient's treating health service or the director; or
  - (b) on a review or appeal against a review decision.
- (2) However, the order ends if the patient does not receive treatment under the order for 6 months.
- (3) If the administrator of the patient's treating health service is satisfied the order has ended under subsection (2), the administrator must give written notice that the order has ended to—

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34 For provisions about entering places, see chapter 14 (Enforcement, evidence and legal proceedings), part 2 (Entry to places).

35 For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16 (Helping public officials exercise powers under other Acts).

- (a) the patient; and
- (b) the patient's allied person; and
- (c) the tribunal; and
- (d) if, immediately before the order ended, chapter 7, part 2,<sup>36</sup> applied to the patient—the director.

## **Division 2                      Changing category of involuntary treatment orders**

### **119      Change of category of order by authorised doctor**

- (1) An authorised doctor for the patient's treating health service must change the category of the involuntary treatment order for the patient—
  - (a) if the doctor is satisfied it is necessary to make the change because of the patient's treatment needs; or
  - (b) to give effect to an order of the tribunal.
- (2) Also, if the category of the order is community and the patient becomes a classified patient, an authorised doctor for the patient's treating health service must change the category of the involuntary treatment order for the patient to in-patient.
- (3) The doctor must—
  - (a) make a written record of the change and the reasons for it; and
  - (b) talk to the patient about the change and the reasons for it.<sup>37</sup>
- (4) However, the doctor need not comply with subsection (3)(b) if—
  - (a) it is not reasonably practicable to do so; or

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36 Chapter 7 (Examinations, references and orders for persons charged with offences), part 2 (Procedures for particular involuntary patients charged with offences)

37 For a doctor's obligations to give particular information to the patient's personal attorney or personal guardian, see the *Guardianship and Administration Act 2000*, section 76 (Health providers to give information).

- (b) the doctor reasonably believes that to do so would not be in the interests of the health or safety of the patient or the safety of others.
- (5) If the category of an involuntary treatment order is changed from community to in-patient, a health practitioner may take the patient to the authorised mental health service.<sup>38</sup>
- (6) For subsection (5), the practitioner—
  - (a) may exercise the power with the help, and using the force, that is reasonable in the circumstances; and
  - (b) is a public official for the *Police Powers and Responsibilities Act 2000*.<sup>39</sup>

## **120 Notice of change of involuntary treatment order**

- (1) If the category of an involuntary treatment order for a patient is changed, the administrator of the authorised mental health service concerned must, within 7 days after the change is made, give written notice of the change to the following persons—
  - (a) the patient;
  - (b) the tribunal;
  - (c) the patient’s allied person.
- (2) If the category of an involuntary treatment order for a patient is changed from community to in-patient, the notice to the tribunal must state the reasons for the change.<sup>40</sup>

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38 For provisions about entering places, see chapter 14 (Enforcement, evidence and legal proceedings), part 2 (Entry to places).

39 For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16 (Helping public officials exercise powers under other Acts).

40 For an order that the category of an involuntary treatment order for a patient be changed on a review, see section 191 (Decisions on review).

## **Division 3                      Revoking involuntary treatment orders**

### **121      Revocation of order by authorised doctor**

If an authorised doctor for an involuntary patient's treating health service is satisfied the treatment criteria no longer apply to the patient, the doctor must revoke the involuntary treatment order for the patient.

### **122      Revocation of order by director**

The director may, by written notice given to the administrator of an authorised mental health service, revoke an involuntary treatment order for a patient if the director is satisfied the treatment criteria no longer apply to the patient.

### **123      Notice of revocation of order**

Within 7 days after an involuntary treatment order for a patient is revoked by an authorised doctor or the director, the administrator of the patient's treating health service must give written notice of the revocation to the following persons—

- (a) the patient;
- (b) the patient's allied person;
- (c) the tribunal;
- (d) the director if—
  - (i) the order is revoked by an authorised doctor; and
  - (ii) the patient is a classified patient or, immediately before the revocation, chapter 7, part 2, applied to the patient.<sup>41</sup>

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41 For notices that must be given if chapter 7 (Examinations, references and orders for persons charged with offences), part 2 (Procedures for particular involuntary patients charged with offences) no longer applies to the patient, see section 245.

## Part 2 Treatment plans

### Division 1 Preparing and changing treatment plans

#### 124 Preparing treatment plan

- (1) A patient's treatment plan must state—
  - (a) in general terms, an outline of the proposed treatment, rehabilitation and other services to be provided in relation to the patient; and
  - (b) in specific terms, the method by which, the frequency with which, the place where, the duration of and the persons by whom, the services are to be provided; and
  - (c) the intervals for the patient's regular assessment.<sup>42</sup>
- (2) Also, for a patient under the community category of an involuntary treatment order, the treatment plan for the patient must—
  - (a) if the patient is to be treated at a health service other than an authorised mental health service—state the health service; and
  - (b) if the patient is to be treated by a health practitioner who is not an employee of a public sector mental health service—state the name of the practitioner.
- (3) However, the treatment plan may only state a health practitioner under subsection (2)(b) with the practitioner's agreement.
- (4) The treatment plan must take into account any existing plan of treatment, or advance health directive under the *Powers of Attorney Act 1998*,<sup>43</sup> for the patient.

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42 See section 116 (Regular assessments of patient).

43 For meaning of *advance health directive*, see the *Powers of Attorney Act 1998*, section 35.

**125 Change of treatment plan by, or authorised by, doctor**

- (1) An authorised doctor for a patient's treating health service may change the patient's treatment plan or authorise a health practitioner to change the patient's treatment plan.
- (2) Also, an authorised doctor for a patient's treating health service must change the patient's treatment plan to give effect to a decision or order of the tribunal or Mental Health Court.<sup>44</sup>
- (3) The doctor or health practitioner must—
  - (a) make a written record of the change and the reasons for it; and
  - (b) talk to the patient about the change and the reasons for it.<sup>45</sup>

**126 Change of treatment plan to give effect to director's transfer order**

If the director orders the transfer of an involuntary patient from one authorised mental health service to another authorised mental health service, the administrator for the health service to which the patient is transferred must ensure the patient's treatment plan is changed to give effect to the order.

**127 Other change of treatment plan—classified patients**

- (1) If the director revokes an approval given under section 129(2)(b), the administrator for the patient's treating health service must ensure the patient's treatment plan is changed to give effect to the revocation.
- (2) A health practitioner must talk to the patient about the change and the reasons for it.<sup>46</sup>

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44 See sections 193, 199, 206 and 294.

45 See section 537 (Compliance with particular provisions as soon as practicable).  
For a doctor's obligations to give particular information to the patient's personal attorney or personal guardian, see the *Guardianship and Administration Act 2000*, section 76 (Health providers to give information).

46 See section 537 (Compliance with particular provisions as soon as practicable).

- (3) Also, if, on the revocation, the patient is not in the health service, an authorised doctor for the health service must, under section 507,<sup>47</sup> require the patient to return to the health service.

## **Division 2                    Limited community treatment**

### **128    Application of div 2**

This division does not apply to—

- (a) a patient under an involuntary treatment order if the order's category is community; or
- (b) a patient for whom a court has made an order under section 101(2) or 337(6).

### **129    Authorising limited community treatment**

- (1) An authorised doctor for a patient's treating health service may, under the patient's treatment plan, authorise limited community treatment for the patient.
- (2) However, the doctor may authorise limited community treatment for the patient only—
  - (a) for a forensic patient—with the approval of the tribunal or the Mental Health Court;<sup>48</sup> or
  - (b) for a classified patient—with the director's written approval; or
  - (c) for a patient detained in an authorised mental health service under an order of the Mental Health Court under section 273(1)(b)—if authorised to do so under the order.<sup>49</sup>
- (3) The director must not give an approval under subsection (2)(b) unless the director is satisfied there is not an

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47 Section 507 (Authorised doctor may require involuntary patient's return)

48 See sections 203 (Decisions on review) and 289 (Mental Health Court may order, approve or revoke limited community treatment).

49 See section 275 (Mental Health Court may approve limited community treatment).

unacceptable risk the patient would, if the treatment were undertaken in the community—

- (a) not return to the authorised mental health service when required; or
  - (b) commit an offence while away from the health service; or
  - (c) endanger the safety or welfare of the patient or others.
- (4) Also, in deciding whether to give the approval, the director must have regard to the following—
- (a) the patient's mental state and psychiatric history;
  - (b) the offence leading to the patient becoming a classified patient;
  - (c) the patient's social circumstances;
  - (d) the patient's response to treatment and willingness to continue treatment.

### **130 Limited community treatment on order of tribunal or Mental Health Court**

If the tribunal or the Mental Health Court orders that a patient have limited community treatment, the administrator of the patient's treating health service must ensure an authorised doctor for the health service changes the patient's treatment plan to give effect to the order.

### **131 What treatment plan must state for limited community treatment**

- (1) If, under a patient's treatment plan, the patient is authorised to have limited community treatment, the treatment plan must include in specific terms—
- (a) the continuous periods of limited community treatment; and
  - (b) the conditions the doctor considers necessary—
    - (i) for the clinical management of the patient's treatment; and

- (ii) to protect the health or safety of the patient or the safety of others.
- (2) A continuous period of limited community treatment for a patient, other than a classified or forensic patient, must not be more than 7 days.
- (3) However, an authorised doctor for the health service may, from time to time, extend the period for a further continuous period of not more than 7 days.

*Note—*

Instead of extending the period for an involuntary patient (other than a classified or forensic patient), the authorised doctor may change the category of the order, see section 119.

In deciding whether to extend the period or change the category, the doctor must have regard to the general principles for the administration of this Act and the principles for exercising powers and performing functions under this Act, see sections 8 and 9.

## **132 Particular patients to be accompanied while undertaking limited community treatment**

- (1) This section applies to the following patients—
  - (a) a classified patient serving a sentence of imprisonment or detention;
  - (b) a patient who is detained in an authorised mental health service under an order of the Mental Health Court under section 273(1)(b).<sup>50</sup>
- (2) While undertaking limited community treatment, the patient must be accompanied by an employee of the health service in which the patient is detained.

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50 Section 273 (Orders about custody)

## **Part 3                      Regulated and prohibited treatments, seclusion and restraint**

### **Division 1                Informed consent**

#### **133      Requirements for informed consent**

For this part, a person gives informed consent to treatment of himself or herself only if the requirements of this division have been complied with.

#### **134      Capacity to give informed consent**

The person must have capacity to give informed consent.<sup>51</sup>

#### **135      Consent to be written**

Informed consent must be in writing signed by the person.

#### **136      Consent to be given freely and voluntarily**

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

#### **137      Explanation to be given**

Before a person gives informed consent, a full explanation must be given to the person in a form and language able to be understood by the person about—

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<sup>51</sup> *Capacity* is defined in the dictionary.

- (a) the purpose, method, likely duration and expected benefit of the treatment; and
- (b) possible pain, discomforts, risks and side effects associated with the treatment; and
- (c) alternative methods of treatment available to the person.

## **Division 2                    Electroconvulsive therapy**

### **138    Offence to perform electroconvulsive therapy**

A person must not perform electroconvulsive therapy on another person other than under this division.

Maximum penalty—100 penalty units or 1 year's imprisonment.

### **139    Performance of electroconvulsive therapy with consent or tribunal approval**

- (1) A doctor may perform electroconvulsive therapy on a person at an authorised mental health service if—
  - (a) the person has given informed consent to the treatment; or
  - (b) the tribunal has approved the use of the treatment on the person.
- (2) However, a doctor must not, under subsection (1)(b), perform electroconvulsive therapy on a person who is not an involuntary patient if the doctor knows the person objects to the therapy.
- (3) In this section—

*object*, for a person, means—

  - (a) the person indicates the person does not wish to have electroconvulsive therapy; or
  - (b) the person previously indicated, in similar circumstances, the person did not then wish to have electroconvulsive therapy and since then the person has not indicated otherwise.

*Example—*

An indication may be given in an enduring power of attorney or advance health directive or in another way, including, for example, orally or by conduct.

**140 Performance of electroconvulsive therapy in emergency**

- (1) A doctor may perform electroconvulsive therapy on an involuntary patient at an authorised mental health service if—
  - (a) a certificate under subsection (2) is in force for the patient; and
  - (b) a treatment application to perform electroconvulsive therapy on the patient is made under subsection (4).
- (2) For subsection (1)(a), a psychiatrist and the medical superintendent for the health service must certify in writing that performing electroconvulsive therapy on the patient is necessary to—
  - (a) save the patient's life; or
  - (b) prevent the patient from suffering irreparable harm.
- (3) The certificate is in force for 5 days after it is made.
- (4) For subsection (1)(b), the treatment application must be made by the psychiatrist who gives the certificate under subsection (2) immediately after giving the certificate.

**Division 3 Restraint****141 Meaning of *mechanical restraint* for div 3**

- (1) For this division, *mechanical restraint*, of a person, is the restraint of the person by the use of a mechanical appliance preventing the free movement of the person's body or a limb of the person.
- (2) However, the use of a surgical or medical appliance for the proper treatment of physical disease or injury is not mechanical restraint.

**142 Offence to use mechanical restraint**

A person must not use mechanical restraint on a patient in an authorised mental health service other than under this division.

Maximum penalty—50 penalty units.

**143 Doctor may authorise use of mechanical restraint**

For treating an involuntary patient in an authorised mental health service, a doctor may authorise the use of mechanical restraint on the patient only if the doctor is satisfied it is the most clinically appropriate way of preventing injury to the patient or someone else.

**144 How authorisation is given**

The doctor must give the authorisation by recording the following details in the patient's clinical file—

- (a) the type of restraint authorised;
- (b) the reasons for the restraint;
- (c) any restrictions on the circumstances in which restraint may be applied;
- (d) the maximum period or periods for which the restraint may be applied;
- (e) the intervals at which the patient must be observed while the restraint is applied;
- (f) any special measures necessary to ensure the patient's proper treatment while the restraint is applied;
- (g) the time when the authorisation ends.

**145 Obligations of senior registered nurse**

The senior registered nurse on duty must—

- (a) ensure the restraint is applied as authorised by the doctor; and
- (b) ensure the patient's reasonable needs are met, including, for example, being given—

- (i) sufficient bedding and clothing; and
  - (ii) sufficient food and drink; and
  - (iii) access to toilet facilities; and
- (c) record the following details in the patient's clinical file—
- (i) the type of restraint applied;
  - (ii) if the doctor has stated any restrictions on the application of the restraint—the circumstances in which the restraint was applied;
  - (iii) the time the restraint was applied;
  - (iv) the person who applied the restraint;
  - (v) the time the restraint was removed.

#### **146 When nurse may authorise end of restraint**

If the senior registered nurse on duty is satisfied the patient can be safely treated without the restraint, the nurse must immediately direct the removal of the restraint.

#### **147 Director may require reports about mechanical restraint**

- (1) If asked by the director, the administrator of an authorised mental health service must send to the director a written report about the use of the mechanical restraint of patients in the health service for the period identified by the director or for each occasion on which the mechanical restraint of a patient is authorised.
- (2) The report must include the information required by the director.

## **Division 4            Seclusion**

### **Subdivision 1        Interpretation**

#### **148    Meaning of *seclusion* for div 4**

- (1) For this division, *seclusion*, of a patient, is the confinement of the patient at any time of the day or night alone in a room or area from which free exit is prevented.
- (2) However, the overnight confinement for security purposes of an involuntary patient in a high security unit or an in-patient facility of an authorised mental health service prescribed under a regulation for this subsection is not seclusion.

### **Subdivision 2        Prohibition of seclusion**

#### **149    Offence to keep patient in seclusion**

A person must not keep a patient in an authorised mental health service in seclusion other than under this division.

Maximum penalty—50 penalty units.

### **Subdivision 3        Authorisation of seclusion**

#### **150    Who may authorise seclusion**

Seclusion of an involuntary patient in an in-patient facility of an authorised mental health service may be authorised—

- (a) at any time, by a doctor; or
- (b) in urgent circumstances, by the senior registered nurse on duty.

**151 When seclusion may be authorised**

A doctor or the senior registered nurse on duty must not authorise seclusion of an involuntary patient unless the doctor or nurse is reasonably satisfied—

- (a) it is necessary to protect the patient or other persons from imminent physical harm; and
- (b) there is no less restrictive way of ensuring the safety of the patient or others.

**152 Patient's consent not required**

It is not necessary to obtain an involuntary patient's consent to the patient's seclusion under this division.

**Subdivision 4 Provisions about seclusion authorised by doctor****153 Seclusion authorised by doctor**

- (1) A doctor must authorise seclusion of a patient by written order.
- (2) The order must state—
  - (a) the reasons for the seclusion; and
  - (b) the time the order is made; and
  - (c) the time (not longer than 12 hours after the order is made) when it ends; and
  - (d) whether the senior registered nurse on duty is authorised to release the patient from, or return the patient to, seclusion; and
  - (e) the specific measures necessary to ensure the patient's proper treatment while secluded.

**154 Observation of patient**

The senior registered nurse on duty must ensure the patient is continuously observed unless the doctor states in the order—

- (a) that it is not clinically necessary to continuously observe the patient while secluded; and
- (b) the intervals (not longer than 15 minutes) at which the patient must be observed.

### **155 When nurse may authorise end to seclusion**

- (1) This section applies if, under the doctor's order, the senior registered nurse on duty is authorised to release the patient from, or return the patient to, seclusion.
- (2) The nurse may—
  - (a) release the patient from seclusion if the nurse is satisfied seclusion of the patient is no longer necessary; and
  - (b) return the patient to seclusion if—
    - (i) the doctor's order is still in force; and
    - (ii) the nurse is satisfied the criteria stated in section 151 apply in relation to the patient.
- (3) Immediately after acting under subsection (2), the nurse must record in the patient's clinical file—
  - (a) the time of release from, or return to, seclusion; and
  - (b) the reasons for the release or return.

## **Subdivision 5 Provisions about seclusion authorised by senior registered nurse**

### **156 Seclusion authorised by senior registered nurse**

- (1) If the senior registered nurse on duty authorises a patient's seclusion, the nurse must—
  - (a) immediately tell a doctor of the seclusion; and
  - (b) record the following in the patient's clinical file—
    - (i) the reasons for the seclusion;
    - (ii) the time the patient was placed in seclusion;

- (iii) the time the nurse told a doctor of the seclusion.
- (2) The doctor must ensure the patient is examined as soon as practicable by a doctor.
- (3) On the examination of the patient, the examining doctor must—
  - (a) record in the patient’s clinical file the time of the examination; and
  - (b) order the patient’s release from seclusion or authorise the patient’s seclusion.

### **157 Observation of patient**

The senior registered nurse on duty must ensure the patient is continuously observed while in seclusion under a nurse’s authorisation.

## **Subdivision 6 General provisions about seclusion**

### **158 Nurse to ensure patient’s needs are met**

The senior registered nurse on duty must ensure the patient’s reasonable needs are met, including, for example, being given—

- (a) sufficient bedding and clothing; and
- (b) sufficient food and drink; and
- (c) access to toilet facilities.

### **159 Use of reasonable force**

A doctor or senior registered nurse on duty who, under this division, authorises a patient’s seclusion may, with the help, and using the force, that is reasonable in the circumstances, place the patient in seclusion.

**160 Director may require reports about seclusions**

- (1) If asked by the director, the administrator of an authorised mental health service must send to the director a written report about seclusions of patients in the health service for a period identified by the director.
- (2) The report must include the information required by the director.

**Division 5 Other treatments****161 Psychosurgery**

- (1) A person must not perform psychosurgery on another person other than under this section.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) A doctor may perform psychosurgery on a person if—
  - (a) the person on whom the treatment is performed has given informed consent to the treatment; and
  - (b) the tribunal has given approval to the treatment.<sup>52</sup>

**162 Prohibited treatment**

A person must not administer to another person—

- (a) insulin induced coma therapy; or
- (b) deep sleep therapy.

Maximum penalty—200 penalty units or 2 years imprisonment.

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<sup>52</sup> For application for approval to perform psychosurgery, see section 233.

## **Chapter 5      Moving, transfer and temporary absence of patients**

### **Part 1            Moving and transfer of patients**

#### **Division 1        Moving patients within authorised mental health services**

##### **163      Involuntary patient may be moved within authorised mental health service**

- (1) For assessing or treating an involuntary patient in an authorised mental health service, the administrator of the health service may move the patient from one facility in the health service to another facility in the health service.
- (2) For subsection (1), the administrator and anyone lawfully helping the administrator—
  - (a) may exercise the power with the help, and using the force, that is reasonable in the circumstances; and
  - (b) is a public official for the *Police Powers and Responsibilities Act 2000*.<sup>53</sup>
- (3) If the patient is a classified or forensic patient and the patient is moved from one in-patient facility to another in-patient facility in the health service, the administrator of the health service must give written notice of the move to the director.

##### **164      Administration of medication while being moved in an authorised mental health service**

- (1) This section applies if an involuntary patient is being moved in an authorised mental health service for assessment.

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<sup>53</sup> For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16 (Helping public officials exercise powers under other Acts).



- (a) for a patient detained for assessment—the director or a doctor at the health service where the patient is detained; or
  - (b) for a patient detained under an involuntary treatment order—the director or an authorised doctor for the patient’s treating health service.
- (3) Also, an authorised doctor for an involuntary patient’s treating health service must order the patient’s transfer from one authorised mental health service to another authorised mental health service to give effect to the tribunal’s decision under section 191(2)(c).
- (4) However, an involuntary patient must not be transferred to a high security unit without the director’s approval under section 167.

### **166 Transfer orders—other patients**

- (1) This section applies to the following patients—
- (a) a classified or forensic patient;
  - (b) a patient for whom a court has made an order under section 101(2), 273(1)(b) or 337(6).<sup>55</sup>
- (2) The patient may be transferred from one authorised mental health service to another authorised mental health service only on the written order of the director.
- (3) Also, the director must order the patient’s transfer from one authorised mental health service to another authorised mental health service to give effect to a decision of the tribunal under section 203(2)(d).

### **167 Transfers to high security units**

- (1) The director must not give an approval for, or order, the transfer of an involuntary patient to a high security unit unless the director is satisfied it is in the patient’s best interests to do so having regard to the following—

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<sup>55</sup> Section 101 (Court may order person’s detention in authorised mental health service), 273 (Orders about custody) or 337 (Appeal powers)

- (a) the person's mental state and psychiatric history;
  - (b) the person's treatment and security requirements;
  - (c) any offence with which the person has been charged or for which the person is serving a sentence of imprisonment or period of detention.
- (2) Immediately after giving the approval for, or ordering, the transfer of a young patient, the director must give written notice of the approval or order to the tribunal.<sup>56</sup>

### **168 Taking involuntary patient to authorised mental health service**

- (1) Under an order for the transfer of an involuntary patient—
- (a) a health practitioner may take the patient to the authorised mental health service to which the patient is transferred;<sup>57</sup> and
  - (b) the patient may be detained in the health service.
- (2) For subsection (1), the practitioner—
- (a) may exercise the power with the help, and using the force, that is reasonable in the circumstances; and
  - (b) is a public official for the *Police Powers and Responsibilities Act 2000*.<sup>58</sup>

### **169 Notice of transfer**

- (1) Within 7 days after the order for the patient's transfer is made, written notice of the order must be given to the tribunal—

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56 For reviews of the detention of a young patient in a high security unit, see chapter 6 (Tribunal reviews, notification orders and treatment applications), part 2 (Reviews by tribunal for young patients detained in high security units).

57 For provisions about entering places, see chapter 14 (Enforcement, evidence and legal proceedings), part 2 (Entry to places).

58 For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16 (Helping public officials exercise powers under other Acts).

- (a) if the order is made by an authorised doctor at the patient's treating health service—by the administrator of the health service; or
  - (b) if the order is made by the director—by the director.
- (2) Subsection (1) does not apply if the patient is a patient detained for assessment.

## **Division 3                    Moving and transfer of patients out of Queensland**

### **Subdivision 1            Interpretation**

#### **170    Application of div 3**

This division applies to an involuntary patient other than—

- (a) a classified patient; or
- (b) a forensic patient—
  - (i) for whom a jury has made a section 613 or 645 finding<sup>59</sup> or who the Mental Health Court has decided is unfit for trial; and
  - (ii) for whom proceedings for the offence to which the finding or decision relates have not been discontinued under chapter 6, part 4 or chapter 7, part 6.<sup>60</sup>

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<sup>59</sup> See section 299(a)(i) and (ii).

<sup>60</sup> Chapter 6 (Tribunal reviews, notification orders and treatment applications), part 4 (Reviews by tribunal of mental condition of persons to decide fitness for trial) or chapter 7 (Examinations, references and orders for persons charged with offences), part 6 (Inquiries on references to Mental Health Court)

## **Subdivision 2      Moving of patients out of Queensland**

### **171      Application for approval for patient to move out of Queensland**

The following persons may apply in writing to the tribunal for an approval that a patient move out of Queensland—

- (a) the patient;
- (b) a person on behalf of the patient;
- (c) the administrator of the patient's treating health service;
- (d) the director.

### **172      Notice of hearing of application**

- (1) The tribunal must give written notice of the hearing of the application to the following persons—
  - (a) the parties to the proceeding for the application;
  - (b) the administrator of the patient's treating health service;
  - (c) if the patient is a forensic patient—the director;
  - (d) the patient's allied person.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) be given—
    - (i) at least 7 days before the hearing; or
    - (ii) if the patient agrees to a period of less than 7 days—the lesser period; and
  - (c) state the following information—
    - (i) the time and place of the hearing;
    - (ii) the nature of the hearing;
    - (iii) the patient's right to be represented at the hearing.

**173 Tribunal's powers on application**

- (1) In deciding the application, the tribunal must grant or refuse the application.
- (2) However, the tribunal may approve that the patient move out of Queensland only if it is satisfied appropriate arrangements exist for the patient's treatment or care at the place where the patient is to move.
- (3) Also, the tribunal may impose the reasonable conditions on the approval the tribunal considers appropriate.

**174 Notice of decision**

- (1) The tribunal must give a copy of its decision to the following persons—
  - (a) the parties to the proceeding for the application;
  - (b) the patient's allied person;
  - (c) the administrator of the patient's treating health service;
  - (d) for a forensic patient—the director.
- (2) In addition, the tribunal must give the parties a written notice stating—
  - (a) a party may ask the tribunal for written reasons for its decision; and
  - (b) a party may, within 60 days after receiving the notice, appeal to the Mental Health Court against the decision; and
  - (c) how to appeal.
- (3) If asked to do so by a party, the tribunal must give the party reasons for the decision.
- (4) If the request is made within 7 days after receiving the notice, the tribunal must comply with the request within 21 days after receiving the request.

- (5) However, a confidentiality order of the tribunal may displace the requirement to give the reasons for its decision to the patient.<sup>61</sup>
- (6) Despite subsections (2) to (4), the tribunal must give written reasons for the decision—
  - (a) for a forensic patient—to the Attorney-General and director if asked to do so by the Attorney-General or director; or
  - (b) for another patient—to the director if asked to do so by the director.
- (7) The tribunal must give the Attorney-General or director the reasons for the decision within 21 days after receiving the request from the Attorney-General or director.

## **175 Effect of patient moving on involuntary treatment order**

- (1) This section applies if the patient is an involuntary patient under an involuntary treatment order.
- (2) On the patient moving out of Queensland under the tribunal's approval, the involuntary treatment order for the patient is in force only if the patient returns to Queensland and while the patient is in Queensland.

# **Part 2 Interstate application of mental health laws**

## **Division 1 Preliminary**

### **176 Interstate agreements**

- (1) The Minister may, for the State, enter into an agreement with another State about the following—

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61 See section 458 (Confidentiality orders).

- (a) the application of mental health laws of this State or the other State;
  - (b) the transfer, detention and apprehension of persons in this State and the other State under mental health laws;
  - (c) administrative and other matters incidental to a matter mentioned in paragraph (a) or (b).
- (2) The Minister must, by gazette notice, give notice of the making of the agreement and its terms.

## **Division 2                    Making involuntary treatment orders and exercise of powers**

### **177    Involuntary treatment orders for interstate residents**

An involuntary treatment order may be made for a person who is detained under this Act even if the person does not live in Queensland.

### **178    Queensland officers may exercise powers etc. under corresponding laws**

- (1) A person authorised by the Minister for this section or a health practitioner, may exercise a power or perform a function conferred on him or her under a corresponding law.
- (2) Subsection (1) has effect subject to the provisions of an interstate agreement about the exercise of a power or performance of a function by the person or health practitioner.

### **179    Interstate officers may exercise powers etc. in this State**

A person who is authorised to exercise a power or perform a function for treating a patient under an interstate order may exercise the power or perform the function in this State.

## **Division 3                    Interstate admissions and transfers of persons and patients**

### **180    Admission of persons to interstate mental health services**

- (1) A person who may be taken to and involuntarily detained in an authorised mental health service under chapter 2 may instead be taken to an interstate mental health service, if permitted under a corresponding law, by—
  - (a) a person authorised under this Act to take the person to an authorised mental health service; or
  - (b) a person who, under the corresponding law, is authorised to take the person to an interstate mental health service.
- (2) A person exercising a power under subsection (1) may do so with the help, and using the force, that is reasonable in the circumstances.
- (3) Despite the absence or refusal of the person's consent, medication may be administered to the person while being taken to the interstate mental health service.
- (4) Section 26(2) to (6) applies to the administration of the medication.

### **181    Transfer of involuntary patients to interstate mental health services**

- (1) The director or an authorised doctor for an involuntary patient's treating health service may, by written order, transfer the patient to an interstate mental health service if—
  - (a) the director or doctor is satisfied the transfer is in the patient's best interests; and
  - (b) the transfer is permitted under a corresponding law; and
  - (c) the interstate authority for the interstate mental health service agrees to the transfer.
- (2) The patient may be taken to the interstate mental health service by—

- (a) a person authorised under this Act to take the person to an authorised mental health service; or
  - (b) a person who, under the corresponding law, is authorised to take the person to an interstate mental health service.
- (3) A person exercising a power under subsection (2) may do so with the help, and using the force, that is reasonable in the circumstances.
- (4) Despite the absence or refusal of the person's consent, medication may be administered to the person while being taken to the interstate mental health service.
- (5) Section 26(2) to (6) applies to the administration of the medication.
- (6) The patient ceases to be an involuntary patient on the patient's detention in the interstate mental health service.
- (7) Within 7 days after the order for the patient's transfer is made, written notice of the order must be given to the tribunal—
- (a) if the order is made by an authorised doctor at the patient's treating health service—by the administrator of the health service; or
  - (b) if the order is made by the director—by the director.

## **182 Admission of interstate persons to authorised mental health services**

- (1) A person who may be taken to and detained in an interstate mental health service under a corresponding law may instead be taken to and detained in an authorised mental health service.
- (2) The person may be taken to the authorised mental health service by—
- (a) a health practitioner; or
  - (b) a person who, under the corresponding law, is authorised to take the person to an interstate mental health service.
- (3) For subsection (2)(a), the practitioner—

- (a) may exercise the power with the help, and using the force, that is reasonable in the circumstances; and
  - (b) is a public official for the *Police Powers and Responsibilities Act 2000*.<sup>62</sup>
- (4) If there are documents authorising the admission and detention of the person under the corresponding law, chapter 2, part 4, applies to the person as if the documents were assessment documents made for the person.
- (5) If there are no documents authorising the admission and detention of the person under the corresponding law, the person may be detained for a reasonable time to allow the person's examination to decide whether assessment documents should be made for the person.

### **183 Transfer of patients to authorised mental health services**

- (1) A person who is involuntarily detained in an interstate mental health service under a corresponding law may be transferred to an authorised mental health service if—
- (a) the administrator for the authorised mental health service agrees to the transfer; and
  - (b) the transfer is authorised under the corresponding law.
- (2) The person may be taken to the authorised mental health service by—
- (a) a health practitioner; or
  - (b) a person who, under the corresponding law, is authorised to take the person to an interstate mental health service.
- (3) For subsection (2)(a), the practitioner—
- (a) may exercise the power with the help, and using the force, that is reasonable in the circumstances; and
  - (b) is a public official for the *Police Powers and Responsibilities Act 2000*.

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<sup>62</sup> For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16 (Helping public officials exercise powers under other Acts).

- (4) Chapter 4 applies to the person as if an involuntary treatment order were made for the person by an authorised doctor who is not a psychiatrist.
- (5) For subsection (4), documents authorising the person's transfer under the corresponding law are taken to be the involuntary treatment order.

## **Division 4                    Apprehension and return of persons**

### **184    Apprehension of persons absent from interstate mental health services**

- (1) A person who is absent without leave from an interstate mental health service in a participating State and who may be apprehended under a corresponding law in the State may be apprehended in this State by—
  - (a) a person who is authorised to apprehend the person under the corresponding law; or
  - (b) a health practitioner or police officer.
- (2) For subsection (1), a warrant or other document that, under the corresponding law, authorises the person's apprehension in the participating State, authorises a police officer to exercise the powers a police officer has under a warrant for apprehension of a patient under chapter 14, part 2.
- (3) If the person is apprehended under this section, the person must be taken to an interstate mental health service in the participating State or an authorised mental health service.
- (4) A person exercising a power under subsection (1) or (2) may do so with the help, and using the force, that is reasonable in the circumstances.
- (5) Despite the absence or refusal of the person's consent, medication may be administered to the person while being taken to the interstate mental health service or the authorised mental health service.
- (6) Section 509(2) to (6) applies to the administration of the medication.

- (7) If the person is taken to an authorised mental health service—
- (a) chapter 4 applies to the person as if an involuntary treatment order were made for the person by an authorised doctor who is not a psychiatrist; and
  - (b) for paragraph (a)—
    - (i) the warrant or other document authorising the person's apprehension is taken to be the involuntary treatment order; and
    - (ii) section 112(2) applies as if the order were made when the person is received at the authorised mental health service and the document authorising the patient's apprehension is produced to a health service employee at the authorised mental health service.

### **185 Apprehension of involuntary patients interstate**

- (1) This section applies to an involuntary patient—
- (a) to whom chapter 14, part 1,<sup>63</sup> applies; and
  - (b) who is apprehended in a participating State.
- (2) The patient may be taken to an authorised mental health service by—
- (a) a person who, under a corresponding law, is authorised to take the patient to an interstate mental health service; or
  - (b) a person authorised under this Act to take the person to an authorised mental health service.
- (3) A person exercising a power under subsection (2) may do so with the help, and using the force, that is reasonable in the circumstances.
- (4) Despite the absence or refusal of the person's consent, medication may be administered to the person while being taken to the authorised mental health service.

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<sup>63</sup> Chapter 14 (Enforcement, evidence and legal proceedings), part 1 (Return of patients to treating health service for assessment or treatment)

- (5) Section 509(2) to (6) applies to the administration of the medication.

## **Part 3                      Temporary absences**

### **186      Absence of particular patients with director's approval**

- (1) This section applies to—
- (a) a classified or forensic patient detained in an authorised mental health service; or
  - (b) a patient for whom a court has made an order under section 101(2), 273(1)(b) or 337(6).<sup>64</sup>
- (2) The director may, by written notice, approve the patient's absence from the health service—
- (a) to receive medical, dental or optical treatment; or
  - (b) to appear before a court, tribunal or other body; or
  - (c) for another purpose the director considers to be appropriate on compassionate grounds.
- (3) The notice must state the approved period of absence.
- (4) The approval may be given on the conditions the director considers appropriate, including, for example, a condition that the patient is to be in the care of a stated person for the period of absence.

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<sup>64</sup> Section 101 (Court may order person's detention in authorised mental health service), 273 (Orders about custody) or 337 (Appeal powers)

## **Chapter 6      Tribunal reviews, notification orders and treatment applications**

### **Part 1            Reviews by tribunal for patients under involuntary treatment orders**

#### **187      When reviews are conducted**

- (1) The tribunal must review the application of the treatment criteria to a patient for whom an involuntary treatment order is in force—
  - (a) within 6 weeks after the order is made and afterwards at intervals of not more than 6 months; and
  - (b) on application for the review made under section 188.
- (2) However, the tribunal may dismiss an application for a review if the tribunal is satisfied the application is frivolous or vexatious.
- (3) The tribunal may, on its own initiative, carry out a review of the application of the treatment criteria to the patient.
- (4) The tribunal may carry out a review on an application for a review at the same time as another review for the patient but must carry out a review on the application—
  - (a) if it is made within the 6 week period mentioned in subsection (1)(a)—within 7 days after the application is made; or
  - (b) if paragraph (a) does not apply—within a reasonable time after it is made.
- (5) In deciding whether to carry out reviews for the patient at the same time, the tribunal must have regard to the following—
  - (a) the period until the next periodic review under subsection (1)(a) is required to be carried out;
  - (b) whether it is in the patient's best interests to do so.

- (6) The tribunal must conduct a hearing for reviewing the application of the treatment criteria to an involuntary patient under this part.

### **188 Application for review**

- (1) The application for a review must—
- (a) be made in writing by—
    - (i) the patient; or
    - (ii) a person on behalf of the patient; or
    - (iii) the director; and
  - (b) be given to the tribunal.
- (2) The application may be made at any time.
- (3) However, for an involuntary treatment order mentioned in section 112(1),<sup>65</sup> application may be made for a review only after the order is confirmed under section 112.

### **189 Notice of hearing for review**

- (1) The tribunal must give written notice of the hearing for a review to the following persons—
- (a) the patient;
  - (b) the administrator of the patient's treating health service;
  - (c) if the patient is a classified patient—the director;
  - (d) the patient's allied person;
  - (e) if the patient is a minor—a parent of the minor or the minor's guardian;
  - (f) if the tribunal reasonably believes the patient has a personal attorney—the attorney;
  - (g) if the tribunal reasonably believes the patient has a personal guardian—the guardian;

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<sup>65</sup> Section 112 (Second examination in particular cases)

- (h) if the review is to be carried out on an application by someone other than the patient—the applicant.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) be given—
    - (i) at least 7 days before the hearing; or
    - (ii) if the patient agrees to a period of less than 7 days—the lesser period; and
  - (c) state the following information—
    - (i) the time and place of the hearing;
    - (ii) the nature of the hearing;
    - (iii) the patient’s right to be represented at the hearing.

## **190 Matters to be considered on particular reviews**

If the involuntary treatment order for the patient has been in force for more than 6 months, the tribunal must consider whether an examination and report should be obtained from a psychiatrist other than the psychiatrist responsible for the patient’s treatment.<sup>66</sup>

## **191 Decisions on review**

- (1) On the review, the tribunal must decide to confirm or revoke the involuntary treatment order for the patient.
- (2) If the tribunal confirms the involuntary treatment order for the patient, the tribunal may decide to make 1 or more of the following orders—
  - (a) an order that the category of the order be changed;
  - (b) if the category of the order is in-patient—

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<sup>66</sup> See section 457 (Tribunal may order examination) which provides that the tribunal may order the person the subject of a proceeding to submit to an examination by a stated psychiatrist, doctor or other health practitioner.

- (i) an order that the patient have limited community treatment subject to the reasonable conditions the tribunal considers appropriate; or
  - (ii) an order revoking an order or authorisation for limited community treatment for the patient;
- (c) an order that the patient be transferred from one authorised mental health service to another authorised mental health service.
- (3) However, subsection (2) does not apply to a classified patient.
- (4) In making a decision under subsection (1) or (2), the tribunal must have regard to the following—
  - (a) the patient's mental state and psychiatric history;
  - (b) the patient's social circumstances;
  - (c) the patient's response to treatment and willingness to continue treatment.

## **192 Notice of decision**

- (1) The tribunal must give a copy of its decision on the review to the following persons—
  - (a) the parties to the proceeding for the review;
  - (b) the patient's allied person;
  - (c) the administrator of the patient's treating health service;
  - (d) for a classified patient—the director;
  - (e) if the review was carried out on application of a person not mentioned in paragraphs (a) to (d)—the applicant.
- (2) In addition, the tribunal must give the parties a written notice stating—
  - (a) a party may ask the tribunal for written reasons for its decision; and
  - (b) a party may, within 60 days after receiving the notice, appeal to the Mental Health Court against the decision; and
  - (c) how to appeal.

- (3) If asked to do so by a party, the tribunal must give the party the reasons for the decision.
- (4) If the request is made within 7 days after receiving the notice, the tribunal must comply with the request within 21 days after receiving the request.
- (5) However, a confidentiality order of the tribunal may displace the requirement to give the reasons for its decision to the patient.<sup>67</sup>
- (6) Despite subsections (2) to (4), the tribunal must give the director the reasons for the decision within 21 days after receiving the director's request.

### **193 Decision to be given effect**

The administrator of the patient's treating health service must ensure the tribunal's decision is given effect.

*Note—*

Giving effect to the tribunal's decision may require any 1 or more the following—

- (a) changing the category of the involuntary treatment order for the patient, see section 119(2);
- (b) changing the patient's treatment plan, see section 125(2);
- (c) authorising limited community treatment, see sections 129 and 130;
- (d) transferring the patient to another authorised mental health service, see section 165(3);
- (e) requiring the patient to return to an authorised mental health service, see section 507(1)(c).

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<sup>67</sup> See section 458 (Confidentiality orders).

## **Part 2**

# **Reviews by tribunal for young patients detained in high security units**

### **194 When reviews are conducted**

- (1) The tribunal must review the detention of a young patient in a high security unit for treatment or care—
  - (a) within 7 days after the detention starts and afterwards at intervals of not more than 3 months; and<sup>68</sup>
  - (b) on application for the review made under section 195.
- (2) However, the tribunal may dismiss an application for a review if the tribunal is satisfied the application is frivolous or vexatious.
- (3) The tribunal may, on its own initiative, carry out a review of the detention of a young patient in a high security unit for treatment or care.
- (4) The tribunal may carry out a review on an application for a review at the same time as another review for the patient but must carry out a review on the application within a reasonable time after it is made.
- (5) In deciding whether to carry out reviews for the patient at the same time, the tribunal must have regard to the following—
  - (a) the period until the next periodic review under subsection (1)(a) is required to be carried out;
  - (b) whether it is in the patient's best interests to do so.
- (6) The tribunal must conduct a hearing for reviewing the detention of a young patient under this part.

### **195 Application for review**

- (1) The application for a review must—
  - (a) be made in writing by—

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<sup>68</sup> For director's approval or order for detention of a young patient in a high security unit, see sections 53 and 167.

- (i) the patient; or
- (ii) a person on behalf of the patient; and
- (b) be given to the tribunal.
- (2) The application may be made at any time.

### **196 Notice of hearing for review**

- (1) The tribunal must give written notice of the hearing for a review to the following persons—
  - (a) the patient;
  - (b) the administrator of the patient's treating health service;
  - (c) the director;
  - (d) the patient's allied person;
  - (e) a parent of the patient or the patient's guardian;
  - (f) if the review is to be carried out on application of a person not mentioned in paragraphs (a) to (e)—the applicant.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) be given at least 7 days before the hearing, other than for the first review after the patient's detention; and
  - (c) state the following information—
    - (i) the time and place of the hearing;
    - (ii) the nature of the hearing;
    - (iii) the patient's right to be represented at the hearing.

### **197 Decision on review**

- (1) On the review, the tribunal must decide that the patient—
  - (a) continue to be detained in the high security unit; or
  - (b) be transferred from the high security unit to an authorised mental health service that is not a high security unit.

- (2) The tribunal must not make a decision under subsection (1)(a) unless the tribunal is satisfied it is in the patient's best interests to do so having regard to the following—
  - (a) the patient's mental state and psychiatric history;
  - (b) the patient's treatment and security requirements;
  - (c) for a classified or forensic patient—the offence leading to the patient becoming a classified or forensic patient.

### **198 Notice of decision**

- (1) The tribunal must give a copy of its decision on the review to the following persons—
  - (a) the patient;
  - (b) the administrator of the patient's treating health service;
  - (c) the director;
  - (d) the patient's allied person;
  - (e) a parent of the patient or the patient's guardian;
  - (f) if the review was carried out on application of a person not mentioned in paragraphs (a) to (e)—the applicant.
- (2) In addition, the tribunal must give the patient a written notice stating—
  - (a) the patient may ask the tribunal for written reasons for its decision; and
  - (b) the patient may, within 60 days after receiving the notice, appeal to the Mental Health Court against the decision; and
  - (c) how to appeal.
- (3) If asked to do so by the patient, the tribunal must give the patient the reasons for the decision.
- (4) If the request is made within 7 days after receiving the notice, the tribunal must comply with the request within 21 days after receiving the request.



- (2) However, the tribunal may dismiss an application for a review if the tribunal is satisfied the application is frivolous or vexatious.
- (3) The tribunal may, on its own initiative, review a forensic patient's mental condition.
- (4) The tribunal may carry out a review on an application for a review at the same time as another review for the patient but must carry out a review on the application within a reasonable time after it is made.
- (5) In deciding whether to carry out reviews for the patient at the same time, the tribunal must have regard to the following—
  - (a) the period until the next periodic review under subsection (1)(a) is required to be carried out;
  - (b) whether it is in the patient's best interests to do so.
- (6) The tribunal must conduct a hearing for reviewing the patient's mental condition under this part.
- (7) If a forensic order is made for a person who is already a forensic patient, reviews under subsection (1)(a) must be heard together.

## **201 Application for review**

- (1) An application for a review must—
  - (a) be made in writing by—
    - (i) the patient; or
    - (ii) a person on behalf of the patient; or
    - (iii) the director; and
  - (b) be given to the tribunal.
- (2) The application may be made at any time.
- (3) An application is taken to be an application for a review of the patient's mental condition relating to all forensic orders for the patient.

**202 Notice of hearing for review**

- (1) The tribunal must give written notice of the hearing for a review to the following persons—
  - (a) the parties to the proceeding for the review;
  - (b) the administrator of the patient's treating health service;
  - (c) the director;
  - (d) the patient's allied person;
  - (e) if the review is to be carried out on application of a person not mentioned in paragraphs (a) to (c)—the applicant.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) be given—
    - (i) at least 7 days before the hearing; or
    - (ii) if the patient agrees to a period of less than 7 days—the lesser period; and
  - (c) state the following information—
    - (i) the time and place of the hearing;
    - (ii) the nature of the hearing;
    - (iii) for a party to the proceeding—the party's right to be represented at the hearing.

**203 Decisions on review**

- (1) On the review, the tribunal must decide to confirm or revoke the forensic order for the patient.
- (2) If the tribunal confirms the forensic order, the tribunal may decide to make 1 or more of the following orders—
  - (a) an order that the patient have limited community treatment subject to the reasonable conditions the tribunal considers appropriate;
  - (b) an order approving limited community treatment for the patient subject to the reasonable conditions the tribunal considers appropriate;

- (c) an order revoking an order or approval for limited community treatment for the patient; or
  - (d) an order that the patient be transferred from one authorised mental health service to another authorised mental health service.
- (3) Without limiting subsection (2)(a) or (b), an order under the paragraph may be made subject to a condition that the patient must not contact a stated person.

*Examples of persons a patient must not contact—*

- 1 a victim of an offence alleged to have been committed by the patient
  - 2 the spouse or a relative or dependent of the patient
- (4) In deciding whether to make an order under subsection (2)(a) or (b), the tribunal must consider whether the order should be subject to a condition mentioned in subsection (3).
- (5) If 2 or more forensic orders for the patient are being reviewed together, the tribunal must make the same decision for each of the orders.
- (6) In making a decision under subsection (1) or (2), the tribunal must have regard to the following—
- (a) the patient's mental state and psychiatric history;
  - (b) each offence leading to the patient becoming a forensic patient;
  - (c) the patient's social circumstances;
  - (d) the patient's response to treatment and willingness to continue treatment.
- (7) This section has effect subject to section 204.

## **204 Restrictions on review decisions**

- (1) The tribunal must not do either of the following unless it is satisfied the patient does not represent an unacceptable risk to the safety of the patient or others, having regard to the patient's mental illness or intellectual disability—
- (a) revoke the forensic order for the patient;

- (b) order or approve limited community treatment for the patient.
- (2) The tribunal must not revoke the forensic order for the patient if the patient has moved out of Queensland under chapter 5, part 1, division 3 or section 288B, unless—
  - (a) 2 years has elapsed after the patient's moving out of Queensland; and
  - (b) it is satisfied the patient is not likely to move back to Queensland.
- (3) The tribunal must not revoke the forensic order for the patient if—
  - (a) a jury has made a section 613 or 645 finding for the patient or the Mental Health Court has decided the patient is unfit for trial; and
  - (b) proceedings against the patient for the offence to which the finding or decision relates have not been discontinued under part 4 or chapter 7, part 6.<sup>71</sup>
- (4) The tribunal must not order or approve limited community treatment for a patient mentioned in subsection (3) unless it is satisfied there is not an unacceptable risk the patient would, if the treatment were undertaken in the community—
  - (a) not return to the authorised mental health service when required; or
  - (b) commit an offence; or
  - (c) endanger the safety or welfare of the patient or others.

## **205 Notice of decision**

- (1) The tribunal must give a copy of its decision to the following persons—
  - (a) the parties to the proceeding for the review;
  - (b) the patient's allied person;

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<sup>71</sup> Part 4 (Reviews by tribunal of mental condition of persons to decide fitness for trial) or chapter 7 (Examinations, references and orders for persons changed with offences), part 6 (Inquiries on references to Mental Health Court)

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- (c) the administrator of the patient's treating health service;
  - (d) the director;<sup>72</sup>
  - (e) if the review was carried out on application of a person not mentioned in paragraphs (a) to (d)—the applicant;
  - (f) if the forensic order was made with an offender reporting order under the *Child Protection (Offender Reporting) Act 2004*—the commissioner of the police service.
- (2) Also, the tribunal must give the parties a written notice stating—
- (a) a party may ask the tribunal for written reasons for its decision; and
  - (b) a party may, within 60 days after receiving the notice, appeal to the Mental Health Court against the decision; and
  - (c) how to appeal.
- (3) If asked to do so by a party, the tribunal must give the party the reasons for the decision.
- (4) If the request is made within 7 days after receiving the notice, the tribunal must comply with the request within 21 days after receiving the request.
- (5) However, a confidentiality order of the tribunal may displace the requirement to give the reasons for its decision to the patient.<sup>73</sup>
- (6) Despite subsections (2) to (4), the tribunal must give the Attorney-General and director the reasons for the decision within 21 days after receiving a request from the Attorney-General or director.

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72 For notices that must be given if chapter 7 (Examinations, references and orders for persons charged with offences), part 2 (Procedures for particular involuntary patients charged with offences) no longer applies to the patient, see section 245.

73 See section 458 (Confidentiality orders).

**206 Decision to be given effect**

The administrator of the patient's treating health service must ensure the tribunal's decision is given effect.

*Note—*

Giving effect to the tribunal's decision may require any 1 or more of the following—

- (a) changing the patient's treatment plan, see section 125(2);
- (b) authorising limited community treatment, see sections 129 and 130;
- (c) requiring the patient to return to an authorised mental health service, see section 507(1)(c).<sup>74</sup>

**207 When patient ceases to be forensic patient**

If the tribunal revokes the forensic order for the patient, the patient ceases to be a forensic patient.

## **Part 4                      Reviews by tribunal of mental condition of persons to decide fitness for trial**

### **Division 1                      Conduct of reviews**

**208 Application of div 1**

This division applies if—

- (a) on a reference of the mental condition of a person charged with an offence (the *relevant offence*), the Mental Health Court decides the person is unfit for trial but the unfitness for trial is not of a permanent nature; or
- (b) on the trial of a person charged with an indictable offence (also the *relevant offence*), a jury has made a

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<sup>74</sup> For transferring the patient, see section 165(3).

section 613 or 645 finding and the proceedings against the person for the offence have not been discontinued or the person has not been found fit for trial.<sup>75</sup>

## **209 When reviews are conducted**

- (1) The tribunal must review the person's mental condition—
  - (a) at least once every 3 months for the year starting on the day of the court's decision or jury's finding; and
  - (b) afterwards at intervals of not more than 6 months.
- (2) Also, the tribunal must review the person's mental condition on application for the review made under section 210.
- (3) However, the tribunal may dismiss the application if the tribunal is satisfied the application is frivolous or vexatious.
- (4) The tribunal may, on its own initiative, review the person's mental condition.
- (5) The tribunal may carry out a review on an application for a review at the same time as another review for the patient but must carry out a review on the application within a reasonable time after it is made.
- (6) In deciding whether to carry out reviews for the patient at the same time, the tribunal must have regard to the following—
  - (a) the period until the next periodic review under subsection (1)(b) is required to be carried out;
  - (b) whether it is in the patient's best interests to do so.
- (7) The tribunal must conduct a hearing for reviewing the person's mental condition under this part.

## **210 Application for review**

- (1) The application for a review must—
  - (a) be made in writing by—
    - (i) the person; or

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<sup>75</sup> See section 301 (Director to refer mental condition of particular persons to tribunal).

- (ii) someone else on behalf of the person; or
    - (iii) the director; and
  - (b) be given to the tribunal.
- (2) The application may be made at any time.

## **211 Notice of hearing for review**

- (1) The tribunal must give written notice of the hearing for a review to the following persons—
- (a) the parties to the proceeding for the review;
  - (b) the administrator of the authorised mental health service responsible for the person's treatment or care;
  - (c) the director;
  - (d) if the person is a forensic patient—the patient's allied person;
  - (e) if the review is to be carried out on application of a person not mentioned in paragraphs (a) to (d)—the applicant.
- (2) The notice must—
- (a) be in the approved form; and
  - (b) be given—
    - (i) at least 7 days before the hearing; or
    - (ii) if the person agrees to a period of less than 7 days—the lesser period; and
  - (c) state the following information—
    - (i) the time and place of the hearing;
    - (ii) the nature of the hearing;
    - (iii) for a party to the proceeding—the party's right to be represented at the hearing.

## **212 Decision on review**

- (1) On the review, the tribunal must decide whether the person is fit for trial.

- (2) If, on the last review required to be conducted under section 209(1)(a) or any subsequent review, the tribunal decides the person is unfit for trial, the tribunal must also decide whether the person is likely to be fit for trial in a reasonable time.
- (3) If the tribunal decides the person is unlikely to be fit for trial in a reasonable time, it must give a written report to the Attorney-General about the person's mental condition.

### **213 Notice of decision**

- (1) The tribunal must give a copy of its decision to the following persons—
  - (a) the parties to the proceeding;
  - (b) the administrator of the authorised mental health service responsible for the person's treatment or care;
  - (c) the director;
  - (d) if the person is a forensic patient—the patient's allied person;
  - (e) if the review was carried out on application of a person not mentioned in paragraphs (a) to (d)—the applicant.
- (2) Also, the tribunal must give the parties a written notice stating—
  - (a) a party may ask the tribunal for written reasons for its decision; and
  - (b) a party may, within 60 days after receiving the notice, appeal to the Mental Health Court against the decision; and
  - (c) how to appeal.
- (3) If asked to do so by a party, the tribunal must give the party the reasons for the decision.
- (4) If the request is made within 7 days after receiving the notice, the tribunal must comply with the request within 21 days after receiving the request.

- (5) However, a confidentiality order of the tribunal may displace the requirement to give the reasons for its decision to the person.<sup>76</sup>
- (6) Despite subsections (2) to (4), the tribunal must give the Attorney-General and director the reasons for the decision within 21 days after receiving a request from the Attorney-General or director.

## **Division 2                      Procedures following reviews**

### **214      Attorney-General's powers**

- (1) This section applies if, on a review mentioned in section 212(2), the tribunal decides the person is unfit for trial.
- (2) The Attorney-General must, within 28 days after receiving notice of the review decision—
  - (a) order that proceedings against the person for the relevant offence be discontinued; or
  - (b) defer a decision on the matter and order that the tribunal continue to carry out reviews under section 209(1)(b) of the person's mental condition.

### **215      Proceedings discontinued after particular period**

- (1) Proceedings against the person for the relevant offence are discontinued, at the end of the prescribed period after the court's decision or jury's finding, if—
  - (a) the Attorney-General has not ordered that proceedings against the person for the relevant offence be discontinued; or
  - (b) the tribunal has not decided the person is fit for trial.
- (2) For subsection (1), the prescribed period is—
  - (a) for proceedings for an offence for which an offender is liable to life imprisonment—7 years; or

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<sup>76</sup> See section 458 (Confidentiality orders).

- (b) for other proceedings—3 years.
- (3) In calculating the prescribed period, the following periods are to be disregarded—
  - (a) the period between the giving of a notice under section 507 requiring the person to return to an authorised mental health service and the person's return to the health service;
  - (b) the period between the revocation of an approval for absence by the person from an authorised mental health service and the person's return to the health service.<sup>77</sup>

## **216 Effect of discontinuing of proceedings**

- (1) This section applies if—
  - (a) the Attorney-General has, under section 214, ordered that proceedings against the person for the relevant offence be discontinued; or
  - (b) under section 215, proceedings against the person for the relevant offence are discontinued.
- (2) The chief executive for justice must give written notice of the order or discontinuing of proceedings to the following—
  - (a) the person;
  - (b) the registrar of the court in which the proceedings were to continue;
  - (c) the commissioner of the police service or director of public prosecutions as appropriate in the circumstances;
  - (d) the tribunal;
  - (e) the director;
  - (f) if the patient is a child—the chief executive for young people.
- (3) The person can not be further proceeded against for the relevant offence.

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<sup>77</sup> See chapter 5 (Moving, transfer and temporary absence of patients), part 3 (Temporary absences).

- (4) However, if the person for whom proceedings are discontinued under section 214 or 215 is a forensic patient, the forensic order for the patient for the relevant offence continues in force.

## **217 Proceedings may be discontinued**

- (1) This part does not prevent—
- (a) the Attorney-General at any time ordering that proceedings against the person for the relevant offence be discontinued; or
  - (b) the prosecution of the person for the relevant offence being discontinued at any time by the complainant or director of public prosecutions.
- (2) If proceedings are discontinued under subsection (1)(a) for a forensic patient, the forensic order for the patient for the relevant offence continues in force.
- (3) If the prosecution is discontinued under subsection (1)(b) for a forensic patient, the forensic order for the patient ends to the extent that the order relates to the relevant offence.

## **218 When proceedings against person continue**

- (1) If, on any review of the person's mental condition, the tribunal decides the person is fit for trial—
- (a) the chief executive for justice must, immediately, give written notice of the decision to the following persons—
    - (i) the registrar of the court in which the proceedings are to continue;
    - (ii) the commissioner of the police service or director of public prosecutions;
    - (iii) the director;
    - (iv) if the person is a child—the chief executive for young people; and
  - (b) the person must be brought before the court within 7 days after the decision to be dealt with according to law.

- (2) For subsection (1)(b), a health practitioner or police officer may take the person to appear before the court.
- (3) A health practitioner may exercise the power under subsection (2) with the help, and using the force, that is reasonable in the circumstances.<sup>78</sup>

## **219 Effect of continuing proceedings on forensic patient**

- (1) This section applies if the person is a forensic patient.
- (2) The patient may be detained in the treating health service until the patient is taken to appear before the court.
- (3) The administrator's custody of the patient ends when the patient appears before the court.
- (4) When the administrator's custody of the patient ends—
  - (a) the patient ceases to be a forensic patient; and
  - (b) the forensic order for the patient ends to the extent that the order relates to the relevant offence.

# **Part 5 Notification orders**

## **Division 1 Interpretation**

### **220 Patients to whom pt 5 applies**

This part applies to a forensic patient for whom a forensic order is made following—

- (a) a section 647 finding for the patient; or
- (b) a decision by the Mental Health Court, under chapter 7, part 6, division 2, of unsoundness of mind, or unfitness for trial of a permanent nature, for the patient.

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<sup>78</sup> For use of force by police officers, see the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).

*Note—*

Under chapter 7, part 6, division 2, the Mental Health Court decides issues of unsoundness of mind, diminished responsibility and fitness for trial, see sections 267, 270 and 271.

Also, the Mental Health Court may make a forensic order for a person for whom a decision of unsoundness of mind is made, see section 288(1)(a).

## **Division 2                    Making of notification orders**

### **221    Tribunal may make notification order**

- (1) The tribunal may, on application made to it by a person or on its own initiative, make an order (a **notification order**) about a patient to whom this part applies that a person be given notice of 1 or more of the following—
  - (a) when a review for the patient is to be carried out;
  - (b) a review decision under chapter 6, part 3,<sup>79</sup> about the patient;
  - (c) an approval that the patient move out of Queensland;<sup>80</sup>
  - (d) an order that the patient be transferred from one authorised mental health service to another authorised mental health service;<sup>81</sup>
  - (e) the transfer, under an interstate agreement, of the patient to another State.
- (2) The application must be made in the approved form.

### **222    Deciding application**

An application for a notification order about a patient may be decided by—

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79 Chapter 6 (Tribunal reviews, notification orders and treatment applications), part 3 (Reviews by tribunal for forensic patients)

80 See section 173 (Tribunal's powers on application).

81 See section 166 (Transfer orders—other patients).

- (a) the tribunal constituted by the president on written material and submissions without the applicant or patient attending a hearing of the application; or
- (b) the tribunal during a review carried out for the patient or at a hearing conducted for the application.

## **223 Restriction on making notification order**

- (1) The tribunal must refuse an application for a notification order about a patient if the tribunal is satisfied it is frivolous or vexatious.
- (2) The tribunal must not make a notification order about a patient unless the tribunal is satisfied the person for whom the order is to be made has a sufficient personal interest in being given notice of the matter under the order.

*Examples of persons who may have a sufficient personal interest—*

- 1 a direct victim of an alleged offence committed by the patient
  - 1A if a direct victim of an alleged offence allegedly committed by the patient has died as a result of the alleged offence, a relative of the direct victim
  - 2 a person who was with a direct victim of an alleged offence when it was allegedly committed by the patient
  - 3 A personal attorney or personal guardian of the patient.
  - 4 The spouse or a relative or dependent of the patient.
- (3) Without limiting subsection (2), the tribunal must consider the following matters in deciding whether a person has a sufficient personal interest—
    - (a) whether the patient represents a risk to the safety of the person for whom the order is to be made;
    - (b) whether it is likely the patient will come into contact with the person;
    - (c) the nature and seriousness of the offence that led to the patient becoming a forensic patient.

**224 Matters to be considered by tribunal in making notification order**

- (1) This section applies if the tribunal is satisfied it may, under section 221, make a notification order about a patient.
- (2) In deciding to make the order, the tribunal must consider the following—
  - (a) if an application is made for the order—the grounds of the application;
  - (b) whether as a consequence of the order the patient's treatment or rehabilitation is likely to be adversely affected;
  - (c) the patient's views;
  - (d) other matters the tribunal considers appropriate.

*Note—*

The principle relating to confidentiality of information stated in section 8(i) is relevant to the tribunal's consideration of the matters.

**225 Order may impose conditions**

- (1) The tribunal may impose the conditions on the notification order the tribunal considers appropriate.
- (2) The person for whom the order is made must comply with the conditions imposed on the notification order.

Maximum penalty—40 penalty units.

**226 Notice of order or decision to refuse**

- (1) If the tribunal decides to make a notification order about a patient, the tribunal must give a copy of the order to the persons mentioned in subsection (3).
- (2) If the tribunal decides to refuse an application for a notification order about a patient, the tribunal must give written notice of the decision to the persons mentioned in subsection (3).
- (3) For subsections (1) and (2), the persons are—
  - (a) the patient; and

- (b) the person for whom the order is made or applicant for the order; and
  - (c) the administrator of the patient's treating health service; and
  - (d) the director; and
  - (e) the patient's allied person.
- (4) The tribunal must give its reasons for the decision to the patient and the person for whom the order is made or applicant for the order.

*Note—*

The principle relating to confidentiality of information stated in section 8(i) is relevant to the tribunal giving its reasons.

- (5) The reasons must be given in writing.
- (6) However, a confidentiality order of the tribunal may displace the requirement to give the reasons for the decision to the patient.<sup>82</sup>
- (7) If the director asks for the tribunal's reasons for the decision, the tribunal must give the reasons to the director within 21 days after receiving the request.

## **227 Executive officer to give notices under order**

If the tribunal makes a notification order about a patient, the executive officer must give any notices required under the order.

## **Division 3 Variation and revocation**

### **228 Variation and revocation of notification orders**

- (1) The patient, director or person for whom a notification order is made about a patient may apply to the tribunal for an order to vary or revoke the notification order.

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<sup>82</sup> See section 458 (Confidentiality orders).

- (2) Division 2 applies, with all necessary changes, to the application as if it were an application for a notification order for the patient.
- (3) Also, for an application made by the patient or director, the tribunal must give written notice of its decision, and reasons for the decision, on the application to the person for whom the order is made.

## **Part 5A                      Non-contact orders**

### **228A    Application of pt 5A**

This part applies if, on a review of the mental condition of a person charged with a personal offence, the tribunal decides to revoke a forensic order made for the person.

### **228B    Tribunal may make non-contact order**

- (1) Despite being satisfied the person does not represent an unacceptable risk to the safety of others, the tribunal may make a non-contact order against the person requiring any 1 or more of the following—
  - (a) if a direct victim of the alleged offence is alive—the person not contact the direct victim, for a stated time;
  - (aa) if a direct victim of the alleged offence has died as a result of the alleged offence—the person not contact a relative of the direct victim, for a stated time;
  - (b) the person not contact someone who was with the direct victim when the alleged offence was committed (an *associate*), for a stated time;
  - (c) the person not go to a stated place, or within a stated distance of a stated place, for a stated time.
- (2) The time stated in the order must be a period starting when it is made and ending no later than 2 years after it is made.
- (3) The order must state a Magistrates Court in which a copy of the order is to be filed.

- (4) A non-contact order that relates to a direct victim of the alleged offence or relative or associate mentioned in subsection (1)(a), (aa) or (b) is made in favour of that person.
- (5) The tribunal's decision to make a non-contact order against the person must be made as part of a review but is separate from, and not material to, the decision to revoke the forensic order for the person.

### **228C Restrictions on making non-contact order**

- (1) The tribunal may make a non-contact order against the person only in favour of another person for whom a notification order is in force relating to the first person.
- (2) The tribunal must not make a non-contact order against the person unless it is satisfied it is appropriate in all the circumstances.
- (3) In deciding whether it is appropriate to make a non-contact order against the person, the tribunal must consider—
  - (a) the views of the following persons—
    - (i) if the tribunal is considering making the order in favour of a direct victim of the alleged offence—the direct victim;
    - (ia) if a direct victim of the alleged offence has died as a result of the alleged offence—a relative of the direct victim in whose favour the tribunal is considering making the order;
    - (ii) the associate in whose favour the tribunal is considering making the order;
    - (iii) the person; and
  - (b) the viability of making the order in circumstances in which contact between the person and the direct victim, associate or relative may be unavoidable; and

*Example of unavoidable contact under paragraph (b)—*

Contact may be unavoidable if the person and the direct victim both live in a small remote community.

- (c) the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and
- (d) the terms of any other order relating to the person and the direct victim, associate or relative.

*Examples of another order under paragraph (d)—*

An order under the *Family Law Act 1975* (Cwlth) or the *Domestic and Family Violence Protection Act 1989*.

## **228D Non-contact order and reasons to be given to particular persons**

If the tribunal decides to make a non-contact order against the person, the tribunal must—

- (a) give a copy of the order to each interested person for the order and the commissioner of the police service; and
- (b) give each interested person written reasons for the decision; and
- (c) give the person against whom the order is made a written notice stating—
  - (i) the person may, within 28 days after receiving the notice, appeal to the Mental Health Court against the decision; and
  - (ii) how to appeal.

## **228E Executive officer to file non-contact order**

The executive officer must file a copy of the non-contact order, together with the tribunal's reasons for making the order, in the Magistrates Court stated in it.

## **228F Variation and revocation of non-contact order**

- (1) An interested person for the non-contact order or a person acting on behalf of the person against whom the order is made may, at any time, apply to a Magistrates Court for an order to vary or revoke the order.
- (2) The application must—

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- (a) be in the form approved by the chief executive for justice; and
  - (b) state fully the grounds of the application and the facts relied on; and
  - (c) be filed in the court.
- (3) Within 7 days after the application is filed, the registrar of the court must give a copy of the application to—
- (a) if the application is made by an interested person—the other interested persons; or
  - (b) if paragraph (a) does not apply—the interested persons.
- (4) The registrar of the court must give 7 days written notice of the hearing of the application to the applicant and the persons given a copy of the application under subsection (3).
- (5) Each of the persons given notice of the hearing under subsection (4) is entitled to be heard at the hearing of the application.
- (6) The court may make an order varying or revoking the non-contact order only if satisfied there has been a material change in the circumstances of an interested person that justifies the variation or revocation.
- Example of a material change in the victim's circumstances—*
- Because of the relocation of the victim's workplace, the victim starts working in the building where the person against whom the order is made works.
- (7) In deciding whether to vary or revoke the non-contact order, the court must consider the reasons for the decision to make the order.
- (8) The registrar of the court must give a copy of the order varying or revoking the non-contact order to the following persons—
- (a) the interested persons for the non-contact order and any other person to whom a varying order relates;
  - (b) the commissioner of the police service.

**228G Offence to contravene requirement of non-contact order**

- (1) The person against whom a non-contact order is made must not contravene a requirement of the order.

Maximum penalty—40 penalty units or 1 year's imprisonment.

- (2) A Magistrates Court that convicts a person of an offence against subsection (1) may, in addition to or instead of sentencing the person for the offence, make an order varying the non-contact order.
- (3) If a court acts under subsection (2), the registrar of the court must give a copy of the court's order to the following persons—
- (a) the interested persons for the non-contact order and any other person to whom the varying order relates;
  - (b) the commissioner of the police service.

## Part 6 Treatment applications

**229 Application to perform electroconvulsive therapy**

- (1) A psychiatrist may apply to the tribunal for approval to administer electroconvulsive therapy on a person if the psychiatrist is satisfied—
- (a) electroconvulsive therapy is the most clinically appropriate treatment alternative for the person having regard to the person's clinical condition and treatment history; and
  - (b) the person is incapable of giving informed consent<sup>83</sup> to the treatment.

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83 For requirements of informed consent, see chapter 4 (Treatment of persons who have mental illnesses) part 3 (Regulated and prohibited treatments, seclusion and restraint), division 1 (Informed consent).

- (2) The application must be in the approved form.
- (3) On making the application, the psychiatrist must tell the following about the application—
  - (a) if the person is an involuntary patient—the patient and the patient’s allied person;
  - (b) otherwise—the person.

### **230 Application to perform psychosurgery**

- (1) A psychiatrist may apply to the tribunal for approval to perform psychosurgery on a person if the psychiatrist is satisfied the person has given informed consent to the psychosurgery.
- (2) The application must be in the approved form.

### **231 Time for deciding application**

- (1) The tribunal must decide a treatment application within a reasonable time after it is made.
- (2) However, if the application is for approval to perform electroconvulsive therapy and a certificate is given under section 140,<sup>84</sup> the tribunal must decide the application within 5 days after it is made.

### **232 Notice of hearing of application**

- (1) The tribunal must give written notice of the hearing of the treatment application.
- (2) For a notice of a hearing of a treatment application for approval to administer electroconvulsive therapy, the notice must be given to the following persons—
  - (a) the person the subject of the application;
  - (b) if the person is an involuntary patient—the patient’s allied person;

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84 Section 140 (Performance of electroconvulsive therapy in emergency)

- (c) if the person is a minor—a parent of the minor or the minor’s guardian;
  - (d) if the tribunal reasonably believes the person has a personal attorney—the attorney;
  - (e) if the tribunal reasonably believes the person has a personal guardian—the guardian;
  - (f) the administrator of the authorised mental health service identified in the application as the service in which the electroconvulsive therapy is to be administered;
  - (g) the applicant.
- (3) For a notice of a hearing of a treatment application for approval to perform psychosurgery, the notice must be given to—
- (a) the person the subject of the application; and
  - (b) the applicant.
- (4) The notice must—
- (a) be in the approved form; and
  - (b) be given—
    - (i) for an application for electroconvulsive therapy—at least 2 days before the hearing; or
    - (ii) for another application for psychosurgery—at least 7 days before the hearing; and
  - (b) state the following information—
    - (i) the time and place of the hearing;
    - (ii) the nature of the hearing;
    - (iii) for a party to the proceeding—the party’s right to be represented at the hearing.

### **233 Decision on application**

- (1) In deciding a treatment application, the tribunal must give, or refuse to give, approval.

- (2) The tribunal must not approve the administering of electroconvulsive therapy to a person unless the tribunal is satisfied—
  - (a) the person does not have the capacity to give informed consent to the administering of electroconvulsive therapy; and
  - (b) electroconvulsive therapy is the most appropriate treatment in the circumstances having regard to the person's clinical condition and treatment history.
- (3) If the tribunal decides to approve the administering of electroconvulsive therapy, the decision must state the number of treatments that may be given in a stated period.
- (4) The tribunal must not approve the performing of psychosurgery on a person unless the tribunal is satisfied—
  - (a) the person has the capacity to give, and has given, informed consent to the performing of psychosurgery; and
  - (b) psychosurgery has clinical merit and is appropriate in the circumstances; and
  - (c) every available alternative to psychosurgery that could reasonably be regarded as likely to produce a sufficient and lasting benefit has been satisfactorily given without a sufficient and lasting benefit resulting; and
  - (d) the psychosurgery is to be performed by a suitably qualified person; and
  - (e) the psychosurgery is to be performed on the person at an authorised mental health service.

## **234 Notice of decision**

- (1) The tribunal must give a copy of its decision to—
  - (a) the parties to the proceeding; and
  - (b) for an application for approval to administer electroconvulsive therapy—
    - (i) the administrator of the authorised mental health service identified in the application as the service

- in which the electroconvulsive therapy is to be administered; and
- (ii) if the person the subject of the application is an involuntary patient, the person's allied person.
- (2) In addition, the tribunal must give the parties a written notice stating—
- (a) a party may within 7 days after receiving the notice, ask the tribunal for written reasons for its decision; and
- (b) a party may, within 60 days after receiving the notice, appeal to the Mental Health Court against the decision; and
- (c) how to appeal.
- (3) If, within 7 days after receiving the notice, a party asks the tribunal for written reasons for its decision, the tribunal must give the person the reasons for the decision within 21 days after receiving the request.
- (4) However, a confidentiality order of the tribunal may displace the requirement to give the reasons for its decision to the person the subject of the application.<sup>85</sup>

## **Chapter 7      Examinations, references and orders for persons charged with offences**

### **Part 1            Interpretation**

#### **235      Definition for ch 7**

In this chapter—

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<sup>85</sup> See section 458 (Confidentiality orders).

*offence* does not include an offence against a Commonwealth law.

## **Part 2                      Procedures for particular    involuntary patients charged    with offences**

### **Division 1                      Preliminary**

#### **236      Application of pt 2**

- (1) This part applies if—
  - (a) a person is charged with a simple or indictable offence;  
and
  - (b) an involuntary treatment or forensic order is made for  
the person.
- (2) For subsection (1), it is immaterial which happens first.
- (3) However for subsection (1)(b), if the involuntary treatment  
order for the person was made by an authorised doctor who is  
not a psychiatrist, this part does not apply unless the order has  
been confirmed by a psychiatrist.

#### **237      Notice of application of part**

- (1) If the administrator of the patient's treating health service  
becomes aware that this part applies, or may apply, to the  
patient, the administrator must immediately tell the director.
- (2) If the director is satisfied that this part applies to the patient,  
the director must immediately give written notice of the  
application of the part to the following persons—
  - (a) the administrator;
  - (b) the chief executive for justice;
  - (c) if the patient is a forensic patient—the tribunal.



- (3) The psychiatrist must give the administrator of the health service a report on the examination.

### **239 Reports on examination**

Within 21 days after the administrator receives the director's notice under section 237(2), the administrator of the treating health service must give to the director the psychiatrist's report on the examination.

### **240 Director to refer patient's mental condition to Mental Health Court or Attorney-General**

- (1) On consideration of the information available to the director, including the psychiatrist's report, the director must—
  - (a) refer the matter of the patient's mental condition relating to the offence with which the patient is charged to the Mental Health Court or the Attorney-General;<sup>87</sup> and
  - (b) if the reference is to the Mental Health Court—give written notice of the reference to the Attorney-General.
- (2) The director must comply with subsection (1) within 14 days after receiving the psychiatrist's report.

*Note—*

This part ceases to apply to the patient if the involuntary treatment order for the patient is revoked under section 121, 122 or 191, the patient ceases, under section 207, to be a forensic patient or the prosecution of the patient for the offence is discontinued.

- (3) However, the director must not refer the matter to the Mental Health Court if the patient is charged only with a simple offence.
- (4) Also, if the patient is charged with an indictable offence, the director must not refer the matter to the Attorney-General unless the director is satisfied the offence is not of a serious nature having regard to any damage, injury or loss caused.

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<sup>87</sup> See parts 3 (Procedure on reference to Attorney-General) and 6 (Inquiries on references to Mental Health Court).

**241 Director may defer reference**

- (1) Despite section 240, if the director reasonably believes the patient is unfit for trial but is likely to be fit for trial in less than 2 months, the director may defer referring the matter for the period that ends 2 months after the decision to defer.
- (2) If the director defers a decision on the matter, the director must give written notice of the decision to the Attorney-General.
- (3) The director must, under section 240, refer the matter of the patient's mental condition to the Mental Health Court or Attorney-General within the deferment period.

**242 Reference to Mental Health Court or Attorney-General**

- (1) A reference is made by—
  - (a) for a reference to the Mental Health Court—filing notice in the approved form in the registry; or
  - (b) for a reference to the Attorney-General—giving written notice to the Attorney-General.
- (2) The notice must be accompanied by a copy of the psychiatrist's report on the psychiatrist's examination of the patient.
- (3) The director must give written notice of the reference to the administrator of the patient's treating health service.
- (4) The administrator must give written notice of the reference to the patient and the patient's allied person.

**Division 3 Miscellaneous****243 Suspension of proceedings**

- (1) On the application of this part to the patient, the proceedings for the offence are suspended until—
  - (a) the Attorney-General has made a decision on a reference under this part that the proceedings continue or be discontinued; or

- (b) the Mental Health Court has made a decision on a reference under this part; or
  - (c) the director has given notice to the chief executive for justice that this part no longer applies to the patient.
- (2) Subsection (1)(c) does not apply if a reference relating to the patient has been made under part 4.<sup>88</sup>

#### **244 Bail, remand and discontinuance of proceedings etc.**

This part does not prevent—

- (a) a court making an order granting the patient bail under the *Bail Act 1980*; or
- (b) a court remanding the patient in custody in relation to proceedings for an offence; or
- (c) a court adjourning the proceedings for an offence until a stated date; or
- (d) the prosecution of the patient for the offence mentioned in section 236(1)(a) being discontinued at any time by the complainant or director of public prosecutions.

#### **245 Notice if part no longer applies in particular circumstances**

- (1) On receiving 1 of the following notices, the director must give written notice to the chief executive for justice that this part no longer applies to a patient—
  - (a) a notice, under section 123 or 192, of the revocation of the involuntary treatment order for the patient;
  - (b) a notice, under section 205, of the revocation of the forensic order for the patient.
- (2) The chief executive for justice must give written notice to the following persons this part no longer applies to the patient—
  - (a) the registrar of the court before which the patient is to appear for the offence;

- (b) the commissioner of the police service or the director of public prosecutions as appropriate in the circumstances;
- (c) if the patient is a child—the chief executive for young people.

### **245A Notice if part no longer applies to forensic patient**

If the director becomes aware that this part no longer applies to a forensic patient because the patient is not charged with a simple or indictable offence, the director must give written notice of the fact to the tribunal.

## **Part 3 Procedure on reference to Attorney-General**

### **246 Application of pt 3**

This part applies if, under section 240, the director refers the matter of the patient's mental condition relating to an offence to the Attorney-General.

### **247 Attorney-General's powers on reference**

- (1) The Attorney-General must have regard to the psychiatrist's report on the examination of the patient, any recommendation of the director and the matters mentioned in subsection (4) and decide that—
  - (a) proceedings against the patient for the offence are to continue according to law; or
  - (b) proceedings against the patient for the offence are to be discontinued; or
  - (c) the matter of the patient's mental condition is to be referred to the Mental Health Court.<sup>89</sup>
- (2) However, the Attorney-General must not refer the matter to

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<sup>89</sup> See part 6 (Inquiries on references to Mental Health Court).

the Mental Health Court if the patient is charged only with a simple offence.

- (3) The Attorney-General must make a decision under subsection (1) within 28 days after receiving the reference.
- (4) For subsection (1), the Attorney-General must have regard to the following—
  - (a) the nature of the offence, including, whether any harm was done to a victim or any damage, injury or loss was caused;
  - (b) information available about the patient's mental condition when the offence was committed;
  - (c) information available about the patient's current mental condition, and, in particular, the patient's fitness for trial;
  - (d) information available about the likely effect of a continuation of proceedings on the patient's mental condition.
- (5) However, the Attorney-General must not make a decision under subsection (1)(a) if the director, in the notice given to the Attorney-General under section 242(1)(b), states the patient is unfit for trial.
- (6) The Attorney-General may make a decision under subsection (1)(a) or (b) regardless of whether an involuntary treatment or forensic order is in force for the patient.

## **248 Notice of decision to director and tribunal**

The Attorney-General must give written notice of the Attorney-General's decision on the reference to the director and tribunal.

## **249 How reference to Mental Health Court is made**

- (1) The reference of the patient's mental condition to the Mental Health Court is made by filing notice in the approved form in the registry.

- (2) The notice must be accompanied by a copy of the psychiatrist's report on the psychiatrist's examination of the person.

## **250 Effect of decision to continue proceedings**

- (1) If, under section 247(1)(a), the Attorney-General decides the proceedings are to continue, the chief executive for justice must give written notice to—
  - (a) the registrar of the court in which the proceedings for the offence are to continue; and
  - (b) the complainant or director of public prosecutions as appropriate in the circumstances; and
  - (c) if the patient is a child—the chief executive for young people.
- (2) The complainant or director of public prosecutions must give written notice to the patient that the proceedings are to continue.
- (3) The notice under subsection (2) must be served personally unless the patient is in lawful custody other than in an authorised mental health service.
- (4) The court may issue a warrant for the patient's arrest to be brought before the court to be dealt with according to law if it is satisfied—
  - (a) the complainant or director of public prosecutions has taken reasonable steps, but has been unable, to serve the notice on the patient; and
  - (b) the patient has not appeared before the court when proceedings against the patient for the offence were to be continued.
- (5) On the proceedings being resumed, any evidence previously given must be disregarded and the court must hear all evidence afresh.

**251 Effect on proceedings of decision to discontinue proceedings**

If, under section 247(1)(b), the Attorney-General decides proceedings against the patient for the offence are to be discontinued, the charge against the person for the act or omission constituting the offence is dismissed.

**252 Notice of decision to discontinue proceedings**

If the Attorney-General decides the proceedings against the patient for the offence are to be discontinued, the chief executive for justice must give written notice of the decision to—

- (a) the registrar of the court in which the proceedings would have continued; and
- (b) the patient; and
- (c) the patient's allied person; and
- (d) if the patient is a child, the chief executive for young people.

**253 When patient ceases to be classified patient**

- (1) If the patient is a classified patient and, under section 247(1), the Attorney-General decides proceedings against the patient for the offence are to be continued or discontinued, the patient ceases to be a classified patient.<sup>90</sup>
- (2) However, subsection (1) does not apply if—
  - (a) the patient—
    - (i) is held in lawful custody, or lawfully detained, without charge under an Act of the State or the Commonwealth prescribed under a regulation for section 64(3); or
    - (ii) is serving a sentence of imprisonment or period of detention under a court order; or

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<sup>90</sup> For what happens on patient ceasing to be classified patient, see chapter 3, part 4, division 5.



- (b) has an intellectual disability of a degree that issues of unsoundness of mind, diminished responsibility or fitness for trial should be considered by the Mental Health Court.

## **257 Reference to Mental Health Court**

- (1) The matter of the person's mental condition relating to the offence may be referred to the Mental Health Court by—
  - (a) the person or the person's legal representative; or
  - (b) the Attorney-General; or
  - (c) the director of public prosecutions; or
  - (d) if the person is receiving treatment for mental illness—the director.<sup>92</sup>
- (2) However, the director may make a reference for a person who is not under an involuntary treatment or forensic order only if—
  - (a) the person agrees to the reference; or
  - (b) the director declares, in the reference, the director is satisfied the person does not have the capacity to give agreement to the reference.
- (3) A reference made under this section may include a reference of the person's mental condition relating to a simple offence alleged to have been committed by the person.

## **258 How reference to Mental Health Court is made**

- (1) The reference is made by filing notice in the approved form in the registry.
- (2) The notice must be accompanied by a copy of any expert's report on the expert's examination of the person.

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92 See part 6 (Inquiries on references to Mental Health Court).



- (a) filing notice with the registrar; or
- (b) by oral submission at the hearing of the reference.

## **262 Notices if application to withdraw filed**

- (1) This section applies if the application to withdraw the reference is made by filing a notice under section 261(2)(a).
- (2) Within 7 days after the notice is filed, the registrar must give written notice of the application to the other parties to the proceeding.
- (3) The registrar must give 7 days written notice of the hearing of the application to the parties to the proceeding.
- (4) The notice of the hearing must state the following information—
  - (a) the time and place of the hearing;
  - (b) the nature of the hearing;
  - (c) the parties' rights to be represented at the hearing.

## **263 Court's powers on deciding application**

- (1) In deciding an application, the Mental Health Court may grant or refuse it.
- (2) However, the court must not refuse the application unless the withdrawal of the reference is contrary to the interests of justice.

# **Part 6 Inquiries on references to Mental Health Court**

## **Division 1 Preliminary**

### **264 Notices of reference**

- (1) On reference of a person's mental condition relating to an

offence to the Mental Health Court,<sup>94</sup> the registrar must give written notice of the reference to—

- (a) the registrar of the court before which the person is to appear for the offence; and
  - (b) the commissioner of the police service or the director of public prosecutions as appropriate in the circumstances.
- (2) Within 7 days after the reference is made, the registrar must give written notice of the reference to the other parties to the proceeding for the reference.

## **265 Documents to be disclosed**

- (1) Each party to the proceeding must give the registrar a copy of any expert's report the party has relating to the matters to be decided by the Mental Health Court.
- (2) Subsection (1) applies even if giving the report would disclose matter detrimental to the case of the person the subject of the reference.

## **266 Notice of hearing**

- (1) The registrar must give 7 days written notice of the hearing of the reference to the following persons—
  - (a) the parties to the proceeding;
  - (b) if the person the subject of the reference is an involuntary patient—the administrator of the patient's treating health service;
  - (c) if the person the subject of the reference is in other lawful custody—the person's custodian.
- (2) The notice of the hearing must state the following information—
  - (a) the time and place of the hearing;
  - (b) the nature of the hearing;
  - (c) the parties' rights to be represented at the hearing.

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94 For who may make the reference, see sections 62, 240, 247 and 257.

## Division 2                      Hearing of reference by Mental Health Court

### 267      **Mental Health Court to decide unsoundness of mind and diminished responsibility**

- (1) On the hearing of the reference, the Mental Health Court<sup>95</sup> must—
  - (a) decide whether the person the subject of the reference was of unsound mind when the alleged offence was committed; and
  - (b) if the person is alleged to have committed the offence of murder and the court decides the person was not of unsound mind when the alleged offence was committed—decide whether the person was of diminished responsibility when the alleged offence was committed.
- (2) This section has effect subject to sections 268 and 269.

### 268      **Reasonable doubt person committed offence**

- (1) The Mental Health Court must not make a decision under section 267(1)(a) or (b) if the court is satisfied there is reasonable doubt the person committed the alleged offence (the *disputed offence*).
- (2) However, the court may make a decision under section 267(1)(a) or (b) if the doubt the person committed the disputed offence exists only as a consequence of the person's mental condition.
- (3) If elements of the disputed offence are elements of another offence (the *alternative offence*), subsection (1) does not prevent the court from making a decision under section 267(1)(a) for the alternative offence.

*Example for application of subsection (3)—*

If the disputed offence is attempted murder, the court may make a decision in relation to the alternative offence of grievous bodily harm if

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95 For constitution of Mental Health Court, see section 382.

the alternative offence is not disputed.

- (4) If the court decides the person was of unsound mind when the alternative offence was committed proceedings against the person for the disputed offence are discontinued.

## **269 Dispute relating to substantially material fact**

- (1) The Mental Health Court must not make a decision under section 267(1)(a) or (b) if the court is satisfied a fact that is substantially material to the opinion of an expert witness is so in dispute it would be unsafe to make the decision.
- (2) Without limiting subsection (1), a substantially material fact may be—
  - (a) something that happened before, at the same time as, or after the alleged offence was committed; or
  - (b) something about the person's past or present medical or psychiatric treatment.

## **270 When Mental Health Court must decide fitness for trial**

- (1) The Mental Health Court must decide whether the person is fit for trial if—
  - (a) the court decides the person was not of unsound mind; or
  - (b) under section 268 or 269, the court must not decide whether the person was of unsound mind when the alleged offence was committed.
- (2) Subsection (1) does not apply if, under section 268(4), proceedings against the person for the alleged offence are discontinued.

## **271 Mental Health Court to decide whether unfitness for trial is permanent**

If the Mental Health Court decides the person is unfit for trial, the court must also decide whether the unfitness for trial is of a permanent nature.

## **Division 3                    Provisions about continuing proceedings**

### **Subdivision 1                Orders about continuing proceedings and custody**

#### **272    When Mental Health Court to order proceedings to continue**

If the Mental Health Court decides a person alleged to have committed an offence is fit for trial, the court must order that proceedings against the person for the offence be continued according to law.

#### **273    Orders about custody**

- (1) If the Mental Health Court orders proceedings against the person for the offence continue, the court may order—
  - (a) the person be remanded in custody or bail be granted or enlarged under the *Bail Act 1980* for the person; or
  - (b) the person be detained in a stated authorised mental health service until—
    - (i) the person is granted bail under the *Bail Act 1980*; or
    - (ii) the person is brought before a court for continuing the proceedings.
- (2) For subsection (1)—
  - (a) a police officer, correctional officer or detention centre officer may take the person to a place of custody; or
  - (b) a police officer, correctional officer, health practitioner or detention centre officer may take the person to the authorised mental health service stated in the order.
- (3) A correctional officer, health practitioner or detention centre officer may exercise the power under subsection (2) with the

help, and using the force, that is reasonable in the circumstances.<sup>96</sup>

## **Subdivision 2      Detention in authorised mental health service**

### **274      Application of sdiv 2**

This subdivision applies if, under section 273(1)(b), the Mental Health Court orders the detention of a patient in an authorised mental health service.

### **275      Mental Health Court may approve limited community treatment**

- (1) The Mental Health Court may, under the order, approve limited community treatment for the patient.
- (2) However, the Mental Health Court must not approve limited community treatment unless it is satisfied the patient does not represent an unacceptable risk to the safety of the patient or others, having regard to the patient's mental illness or intellectual disability.

### **276      Notice of order**

The registrar must give written notice of the court's order to the director.

### **277      Detention under order**

The patient may be detained under the court's order in the patient's treating health service.

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<sup>96</sup> For use of force by police officers, see the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).

**278 Treatment plan for patient**

An authorised doctor for the patient's treating health service must—

- (a) ensure a treatment plan is prepared for the patient;<sup>97</sup> and
- (b) talk to the patient about the patient's treatment or care under the treatment plan.

**279 Treatment or care under treatment plan**

The administrator of the patient's treating health service must ensure the patient is treated or cared for as required under the patient's treatment plan.

**Division 4 Provisions about staying proceedings****280 Proceedings stayed—not permanently unfit for trial**

If the Mental Health Court decides a person charged with an offence is unfit for trial but the unfitness for trial is not of a permanent nature, proceedings for the offence are stayed until, on a review, the tribunal decides the person is fit for trial.<sup>98</sup>

**Division 5 Provisions about discontinuing proceedings****281 Proceedings discontinued—unsound mind**

- (1) If the Mental Health Court decides a person charged with an offence was of unsound mind when the alleged offence was committed—

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97 See chapter 4 (Treatment of persons who have mental illnesses), part 2 (Treatment plans).

98 See chapter 6 (Tribunal reviews, notification orders and treatment applications), part 4 (Reviews by tribunal of mental condition of persons to decide fitness for trial).

- (a) proceedings against the person for the offence are discontinued; and
  - (b) further proceedings must not be taken against the person for the act or omission constituting the offence.
- (2) Subsection (1) is subject to the person exercising the person's right under part 8 to elect to be brought to trial for the alleged offence.

**282 Particular proceedings discontinued—diminished responsibility**

If the Mental Health Court decides a person charged with the offence of murder was of diminished responsibility when the alleged offence was committed—

- (a) proceedings against the person for the offence of murder are discontinued; but
- (b) proceedings may be continued against the person for another offence constituted by the act or omission to which the proceedings for the offence of murder relate.

**283 Proceedings discontinued—permanently unfit for trial**

If the Mental Health Court decides a person charged with an offence is unfit for trial and the unfitness for trial is of a permanent nature—

- (a) proceedings against the person for the offence are discontinued; and
- (b) further proceedings must not be taken against the person for the act or omission constituting the offence.

**Division 6 Material submitted by victims or concerned persons etc.**

**284 Submission and consideration of material from victim or concerned person etc.**

- (1) In making a decision on a reference, the Mental Health Court may take into account material submitted by a victim of the

alleged offence to which the reference relates or another person who is not a party to the hearing of the reference (**concerned person**) if the material is sworn.

- (1A) The purpose of submitting the material is to help the court in making a decision on the reference, including, for example, deciding—
- (a) whether the person to whom the reference relates was of unsound mind when the alleged offence was allegedly committed; or
  - (b) whether the person to whom the reference relates is unfit for trial; or
  - (c) whether to make a forensic order; or
  - (d) whether to order, approve or revoke limited community treatment; or
  - (e) what conditions the court should impose on an order or approval for limited community treatment.
- (1B) The material may include the views of the person submitting the material about—
- (a) the behaviour of the person to whom the reference relates and the impact of the behaviour on the person submitting the material; or
  - (b) the risk the person submitting the material believes the person to whom the reference relates represents to the person submitting the material or another person; or
  - (c) any other matter relevant to the decision of the court on the reference.
- (1C) If the court takes the material into account, it may place the weight it considers appropriate on the material.
- (2) Also, for a decision about the making of a non-contact order in favour of a person mentioned in section 313C(2), the court must receive in evidence material giving the person's views as required under the section.
  - (3) The material must be submitted to the court by a party to the proceeding.
  - (4) For subsection (2), the director of public prosecutions must submit the material mentioned in the subsection.

- (5) The person submitting the material under subsection (1) does not have a right of appearance before the court unless otherwise ordered by the court.

## **285 Reasons for decision about material submitted by victim or concerned person**

- (1) This section applies if, under section 284(1), a victim of the alleged offence to which the reference relates or a concerned person submits material to the Mental Health Court.
- (2) The court must, as soon as practicable after making its decision on the reference, give the person who submitted the material and persons who were parties to the hearing of the reference—
- (a) reasons for—
    - (i) taking the material into account; or
    - (ii) refusing to take the material into account; and
  - (b) if the material was taken into account by the court—a statement about how it was taken into account.
- (3) However, a confidentiality order of the court may displace the requirement to give the reasons or statement to the person to whom the reference relates.

## **Division 7 Miscellaneous provisions**

### **286 Notices of decisions and orders**

- (1) The registrar must give a copy of the Mental Health Court's decision on a reference and if relevant, the order to continue proceedings against the person for the offence, to the following persons—
- (a) the parties to the proceeding for the reference;
  - (b) the Attorney-General;
  - (c) the chief executive for justice;
  - (d) if an involuntary treatment or forensic order is in force for the person—the tribunal;

- (e) if the person the subject of the reference is an involuntary patient—the administrator of the patient’s treating health service;
  - (f) if the person the subject of the reference is in other lawful custody—the person’s custodian.
- (2) The chief executive for justice must give written notice of the decision and order to—
- (a) the registrar of the court in which the proceedings for the offence are to continue or would have continued; and
  - (b) if the person is a child—the chief executive for young people.

### **286A Notice about material submitted by victim or concerned person**

- (1) This section applies if, under section 284(1), a victim of an alleged offence to which a reference relates or a concerned person submits material to the Mental Health Court.
- (2) Subject to subsection (3), the registrar may after the court makes its decision on the reference give a copy of the material to—
- (a) the administrator of the authorised mental health service responsible for the treatment and care of the person to whom the reference relates; or
  - (b) the tribunal.
- (3) The court may order that a copy of the material not be given under subsection (2).
- (4) If the court makes an order under subsection (3), the court must in its decision on the reference give reasons for making the order.

### **287 When person ceases to be classified patient**

- (1) This section applies if the person the subject of the reference is a classified patient.
- (2) On a decision on the reference, the patient ceases to be a classified patient unless—

- (a) the patient—
    - (i) is held in lawful custody, or lawfully detained, without charge under an Act of the State or the Commonwealth prescribed under a regulation for section 64(3); or
    - (ii) is serving a sentence of imprisonment or period of detention under a court order; or
  - (b) the patient is awaiting the start or continuation of proceedings for an offence against a Commonwealth law.<sup>99</sup>
- (3) However, the patient may continue to be an involuntary patient under another provision of this Act.

## **Part 7                      Forensic patients**

### **Division 1                      Forensic orders by Mental Health Court**

#### **288      Mental Health Court may make forensic order**

- (1) This section applies if, on a reference, the Mental Health Court decides a person charged with an indictable offence—
  - (a) was of unsound mind when the alleged offence was committed; or
  - (b) is unfit for trial for the alleged offence and the unfitness for trial is of a permanent nature; or
  - (c) is unfit for trial for the alleged offence and the unfitness for trial is not of a permanent nature.
- (2) The court may make an order under this division (a *forensic order (Mental Health Court)*) for a person mentioned in subsection (1)(a) or (b) that the person be detained in a stated

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<sup>99</sup> For what happens on patient ceasing to be classified patient, see chapter 3, part 4, division 5.

authorised mental health service for involuntary treatment or care.

- (3) In deciding whether to make the order, the court must have regard to the following—
  - (a) the seriousness of the offence;
  - (b) the person's treatment needs;
  - (c) the protection of the community.
- (4) The court must make an order under this division (also a ***forensic order (Mental Health Court)***) for a person mentioned in subsection (1)(c) that the person be detained in a stated authorised mental health service for involuntary treatment or care.
- (5) A forensic order (Mental Health Court) must be in the approved form.

*Note—*

The Supreme Court judge who constitutes the Mental Health Court may also make an offender reporting order under the *Child Protection (Offender Reporting) Act 2004*, section 13 (Offender reporting orders) with the forensic order.

### **288A Effect of new forensic order on existing forensic order**

- (1) This section applies if—
  - (a) the Mental Health Court makes a forensic order for a patient; and
  - (b) a forensic order is already in force for the patient.
- (2) If there is any inconsistency between the new forensic order and the old forensic order, including any limited community treatment ordered or approved under the forensic orders, the new forensic order prevails over the old forensic order to the extent of the inconsistency.

### **288B Mental Health Court may approve interstate move of patient**

- (1) If the Mental Health Court is making a forensic order mentioned in section 288(2) for a patient, the court may, under the order, approve that the patient move out of Queensland.

- (2) However, the court may approve that the patient move out of Queensland only if it is satisfied appropriate arrangements exist for the patient's treatment or care at the place where the patient is to move.
- (3) Also, the court may impose the reasonable conditions on the approval the court considers appropriate.

### **289 Mental Health Court may order, approve or revoke limited community treatment**

- (1) The Mental Health Court may, under the forensic order for the patient, decide to do any 1 or more of the following—
  - (a) order that the patient have limited community treatment subject to the reasonable conditions the court considers appropriate;
  - (b) approve limited community treatment for the patient subject to the reasonable conditions the court considers appropriate;
  - (c) revoke an order or approval for limited community treatment for the patient.
- (2) Without limiting subsection (1)(a) or (b), an order under the paragraph may be made subject to a condition that the patient must not contact a stated person.

#### *Examples of persons a patient must not contact—*

- 1 a victim of an offence alleged to have been committed by the patient
  - 2 the spouse or a relative or dependent of the patient
- (3) In deciding whether to make an order under subsection (1)(a) or (b), the court must consider whether the order should be subject to a condition mentioned in subsection (2).
  - (4) However, the court must not order or approve limited community treatment unless it is satisfied the patient does not represent an unacceptable risk to the safety of the patient or others, having regard to the patient's mental illness or intellectual disability.
  - (5) Also, the court must not order or approve limited community treatment for a patient mentioned in section 288(1)(c) unless it

is satisfied there is not an unacceptable risk the patient would, if the treatment were undertaken in the community—

- (a) not return to the authorised mental health service when required; or
  - (b) commit an offence; or
  - (c) endanger the safety or welfare of the patient or others.
- (6) In deciding whether to order or approve limited community treatment for a patient, the court must have regard to the following—
- (a) the patient's mental state and psychiatric history;
  - (b) the offence leading to the making of the forensic order for the patient;
  - (c) the patient's social circumstances;
  - (d) the patient's response to treatment and willingness to continue treatment.

## **290 Effect of forensic order on involuntary treatment order**

On the making of the forensic order for the patient, any involuntary treatment order in force for the patient before the making of the forensic order ends.

## **291 Registrar to give notice of order**

The registrar must give written notice of the forensic order to the following—

- (a) the parties to the proceeding for the reference;
- (b) the Attorney-General;
- (c) the chief executive for justice;
- (d) the tribunal;
- (e) the administrator of the authorised mental health service stated in the order;
- (f) if, before the making of the order, the patient was in other lawful custody—the patient's custodian;

- (g) if the patient is a child—the chief executive for young people.

## **292 Taking patient to authorised mental health service**

- (1) A police officer, correctional officer, health practitioner or detention centre officer may take the patient to the authorised mental health service stated in the forensic order for the patient.
- (2) A correctional officer, health practitioner or detention centre officer may exercise the power under subsection (1) with the help, and using the force, that is reasonable in the circumstances.<sup>100</sup>

## **293 Detention under order**

The patient may be detained in the authorised mental health service stated in the forensic order for the patient until the patient ceases to be a forensic patient.<sup>101</sup>

## **294 Order to be given effect**

The administrator of the patient's treating health service must ensure the forensic order for the patient is given effect.

*Note—*

Giving effect to the order may require any 1 or more of the following—

- (a) changing the patient's treatment plan, see section 125(2);
- (b) authorising limited community treatment, see sections 129 and 130;
- (c) requiring the patient to return to an authorised mental health service, see section 507(1)(c).

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100 For use of force by police officers, see the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).

101 For reviews by the Mental Health Review Tribunal of a forensic patient's mental condition, see chapter 6 (Tribunal reviews, notification orders and treatment applications), parts 3 (Reviews by tribunal for forensic patients) and 4 (Reviews by tribunal of mental condition of persons to decide fitness for trial). For when a patient ceases to be a forensic patient, see sections 207 (When patient ceases to be forensic patient) and 219 (Effect of continuing proceedings on forensic patient).

**295 Administrator to give notice of order to patient's allied person**

The administrator of the patient's treating health service must give notice of the forensic order to the patient's allied person.

**296 Treatment plan for patient**

An authorised doctor for the authorised mental health service must—

- (a) ensure a treatment plan is prepared for the patient;<sup>102</sup> and
- (b) talk to the patient about the patient's treatment or care under the treatment plan.

**297 Treatment or care under treatment plan**

The administrator of the authorised mental health service must ensure the patient is treated or cared for as required under the patient's treatment plan.

**298 Regular assessments of patient**

- (1) The administrator of the treating health service must ensure an authorised psychiatrist for the health service carries out regular assessments of the patient as required under the patient's treatment plan.
- (2) The authorised psychiatrist must record details of each assessment in the patient's clinical file.

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102 See chapter 4 (Treatment of persons who have mental illnesses), part 2 (Treatment plans).

## Division 2                    Forensic orders following jury findings

### Subdivision 1            Preliminary

#### 299    Application of div 2

This division applies if, on the trial of a person charged with an indictable offence—

- (a) a jury has—
  - (i) under the Criminal Code, section 613,<sup>103</sup> found the person not capable of understanding the proceedings at the trial for the reason that the person is of unsound mind (a *section 613 finding*); or
  - (ii) under the Criminal Code, section 645,<sup>104</sup> found the person is not of sound mind (a *section 645 finding*); or
  - (iii) under the Criminal Code, section 647,<sup>105</sup> found the person not guilty of the offence on account of the person being of unsound mind when the act or omission alleged to constitute the offence occurred (a *section 647 finding*); and
- (b) a court has, under the relevant section of the Criminal Code—
  - (i) made an order (a *forensic order (Criminal Code)*) in relation to the person being kept in custody in an authorised mental health service; or
  - (ii) made an order (a *custody order*) in relation to the person being kept in custody in another place.

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103 Criminal Code, section 613 (Want of understanding of accused person)

104 Criminal Code, section 645 (Accused person insane during trial)

105 Criminal Code, section 647 (Acquittal on ground of insanity)

## **Subdivision 2      Notices of orders and references**

### **300      Registrar of court to give notice of order**

Within 7 days after a forensic order (Criminal Code) or custody order is made, the registrar of the court that made the order must give notice of the order in the approved form to the chief executive for justice and the director.

### **301      Director to refer mental condition of particular persons to tribunal**

- (1) Immediately after receiving the registrar's notice, the director must refer the matter of the person's mental condition to the tribunal.
- (2) However, this section does not apply to a person for whom a court has made a custody order following a section 647 finding.

## **Subdivision 3      Forensic orders by Minister**

### **302      Minister may make forensic order for persons subject to custody order**

- (1) This section applies to a person for whom a court has made a custody order.
- (2) If the Minister is satisfied it is necessary for the proper treatment or care of the person, the Minister may, by written order (a *forensic order (Minister)*), direct the person be admitted to, and detained in—
  - (a) a stated high security unit; or
  - (b) if the Minister is satisfied the person can be safely detained in an authorised mental health service that is not a high security unit—a stated authorised mental health service.
- (3) A forensic order (Minister) must be in the approved form.

**303 Effect of forensic order (Minister)**

On the making of the forensic order, the patient may be admitted to, and detained in, the patient's treating health service for involuntary treatment or care until the patient ceases to be a forensic patient.<sup>106</sup>

**304 Notice of forensic order (Minister)**

The Minister must give written notice of the making of the forensic order to the tribunal.

**305 Taking patient to authorised mental health service**

- (1) A police officer, correctional officer or detention centre officer may take the patient from the place of custody to the treating health service.
- (2) A correctional officer or detention centre officer may exercise the power under subsection (1) with the help, and using the force, that is reasonable in the circumstances.<sup>107</sup>

**Subdivision 4 Miscellaneous provisions****306 Administrator to give notice of forensic order to patient's allied person**

The administrator of the patient's treating health service must give notice of the making of the forensic order for the patient to the patient's allied person.

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106 For reviews by the Mental Health Review Tribunal of a forensic patient's mental condition, see chapter 6 (Tribunal reviews, notification orders and treatment applications), parts 3 (Reviews by tribunal for forensic patients) and 4 (Reviews by tribunal of mental condition of persons to decide fitness for trial). For when a patient ceases to be a forensic patient, see sections 207 (When patient ceases to be forensic patient) and 219 (Effect of continuing proceedings on forensic patient).

107 For use of force by police officers, see the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).

**307 Treatment plan for patient**

An authorised doctor for the treating health service must—

- (a) ensure a treatment plan is prepared for the patient;<sup>108</sup> and
- (b) talk to the patient about the patient's treatment or care under the treatment plan.

**308 Treatment or care under treatment plan**

The administrator of the treating health service must ensure the patient is treated or cared for as required under the patient's treatment plan.

**309 Regular assessments of patient**

- (1) The administrator of the treating health service must ensure an authorised psychiatrist for the health service carries out regular assessments of the patient as required under the patient's treatment plan.
- (2) The authorised psychiatrist must record details of each assessment in the patient's clinical file.

**Part 8 Right to trial retained****310 Application of pt 8**

This part applies if the Mental Health Court decides a person charged with an offence was of unsound mind when the offence was committed.

**311 Person may elect to go to trial**

- (1) Despite the court's decision, the person may elect to be brought to trial for the offence.

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108 See chapter 4 (Treatment of persons who have mental illnesses), part 2 (Treatment plans).

- (2) The election must be made by giving the Attorney-General a notice in the approved form within 28 days after the person receives written notice of the court's decision.

### **312 Attorney-General's powers on election to go to trial**

The Attorney-General must ensure proceedings against the person for the offence are continued according to law within 28 days after receiving the patient's election to go to trial.

### **313 Effect of election to go to trial when proceedings continued**

A forensic order for the patient continues in force until a decision is made on the proceedings against the person for the offence.

## **Part 8A Non-contact orders**

### **313A Application of pt 8A**

This part applies if, on a reference, the Mental Health Court—

- (a) decides a person charged with a personal offence—
- (i) was of unsound mind when the alleged offence was committed; or
  - (ii) is unfit for trial for the alleged offence and the unfitness for trial is of a permanent nature; and
- (b) does not make a forensic order for the person.

*Note—*

The court must have regard to the matters mentioned in section 288(3) in deciding whether to make a forensic order for the person.

### **313B Mental Health Court may make non-contact order**

- (1) The Mental Health Court may make a non-contact order against the person requiring any 1 or more of the following—

- (a) if a direct victim of the alleged offence is alive—the person not contact the direct victim, for a stated time;
  - (aa) if a direct victim of the alleged offence has died as a result of the alleged offence—the person not contact a relative of the direct victim, for a stated time;
  - (b) the person not contact someone who was with the direct victim when the alleged offence was committed (an *associate*), for a stated time;
  - (c) the person not go to a stated place, or within a stated distance of a stated place, for a stated time.
- (2) The time stated in the order must be a period starting when it is made and ending no later than 2 years after it is made.
  - (3) The order must state a Magistrates Court in which a copy of the order is to be filed.
  - (4) A non-contact order that relates to a direct victim of the alleged offence or relative or associate mentioned in subsection (1)(a), (aa) or (b) is made in favour of that person.
  - (5) The court's decision to make a non-contact order against the person must be made as part of the reference but is separate from, and not material to, the decision whether to make a forensic order for the person.

### **313C Restrictions on making non-contact order**

- (1) The Mental Health Court must not make a non-contact order against the person unless it is satisfied it is appropriate in all the circumstances.
- (2) In deciding whether it is appropriate to make a non-contact order against the person, the court must consider—
  - (a) the views of the following persons—
    - (i) if the court is considering making the order in favour of a direct victim of the alleged offence—the direct victim;
    - (ia) if a direct victim of the alleged offence has died as a result of the alleged offence—a relative of the direct victim in whose favour the court is considering making the order;

- (ii) the associate in whose favour the court is considering making the order;
- (iii) the person; and
- (b) the viability of making the order in circumstances in which contact between the person and the direct victim, associate or relative may be unavoidable; and

*Example of unavoidable contact under paragraph (b)—*

Contact may be unavoidable if the person and the direct victim both live in a small remote community.

- (c) the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and
- (d) the terms of any other order relating to the person and the direct victim, associate or relative.

*Examples of another order under paragraph (d)—*

an order under the *Family Law Act 1975* (Cwlth) or the *Domestic and Family Violence Protection Act 1989*

### **313D Non-contact order and reasons to be given to particular persons**

If the Mental Health Court decides to make a non-contact order against the person, the registrar of the court must give—

- (a) a copy of the order, and written reasons for making the order, to the interested persons for the order; and
- (b) a copy of the order to the commissioner of the police service.

### **313E Registrar to file non-contact order**

The registrar must file a copy of the non-contact order, together with the Mental Health Court's reasons for making the order, in the Magistrates Court stated in it.

### **313F Variation and revocation of non-contact order**

- (1) An interested person for the non-contact order or a person acting on behalf of the person against whom the order is made

may, at any time, apply to a Magistrates Court for an order to vary or revoke the order.

- (2) The application must—
  - (a) be in the form approved by the chief executive for justice; and
  - (b) state fully the grounds of the application and the facts relied on; and
  - (c) be filed in the court.
- (3) Within 7 days after the application is filed, the registrar of the court must give a copy of the application to—
  - (a) if the application is made by an interested person—the other interested persons; or
  - (b) if paragraph (a) does not apply—the interested persons.
- (4) The registrar of the court must give 7 days written notice of the hearing of the application to the applicant and the persons given a copy of the application under subsection (3).
- (5) Each of the persons given notice of the hearing under subsection (4) is entitled to be heard at the hearing of the application.
- (6) The court may make an order varying or revoking the non-contact order only if satisfied there has been a material change in the circumstances of an interested person that justifies the variation or revocation.

*Example of a material change in the victim's circumstances—*

Because of the relocation of the victim's workplace, the victim starts working in the building where the person against whom the order is made works.

- (7) In deciding whether to vary or revoke the non-contact order, the court must consider the reasons for making the order.
- (8) The registrar of the court must give a copy of the order varying or revoking the non-contact order to the following persons—
  - (a) the interested persons for the non-contact order and any other person to whom a varying order relates;
  - (b) the commissioner of the police service.



- (ii) the person is not of sound mind, for the application of the Criminal Code, section 645; or
  - (iii) the person was of unsound mind or diminished responsibility, when the alleged offence was committed; or
  - (iv) the person should be detained in an authorised mental health service under a forensic order (Criminal Code); or
  - (v) a court assessment order should be made for the person; or
- (b) for sentencing the person.

**316 Particular statements not admissible in any proceeding**

- (1) A statement made by the person the subject of a reference at the hearing of the reference is not admissible in evidence in any civil or criminal proceeding against the person.
- (2) Subsection (1) applies to statements made orally or in writing and whether under oath or otherwise.
- (3) However, subsection (1) does not apply to a proceeding for contempt of the Mental Health Court or an offence against the Criminal Code, chapter 16.<sup>109</sup>

**317 Mental condition may be raised, but court's decision not admissible, at trial**

- (1) A decision by the Mental Health Court on a reference of a person's mental condition does not prevent the person from raising the person's mental condition at the person's trial for the alleged offence the subject of the reference.
- (2) If the issue of the person's mental condition is raised at the person's trial, the Mental Health Court's decision is not admissible in evidence.

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109 Criminal Code, chapter 16 (Offences relating to the administration of justice)

**318 Use of expert's report received by Mental Health Court**

- (1) An expert's report received in evidence by the Mental Health Court on a reference of a person's mental condition may be given to—
  - (a) the administrator of the authorised mental health service responsible for the treatment or care of the person; or
  - (b) the tribunal for conducting a review or making a notification order.
- (2) The report may be given to, and used by, another person only with the leave of the court.
- (3) The court may grant the leave subject to the conditions it considers appropriate.

**Chapter 8 Appeals****Part 1 Appeals against tribunal decisions****Division 1 Preliminary****318A Definition of *patient* for pt 1**

In this part—

*patient* includes a person who, immediately before the making of a decision appealed against, was an involuntary patient.

**Division 2 Making and hearing appeals****319 Decisions to which part applies**

This part applies to the following decisions—

- (a) a review decision;
- (b) a decision of the tribunal on a treatment application;
- (c) a decision of the tribunal on an application under chapter 5, part 1, division 3, for approval that a patient move out of Queensland.

### **320 Who may appeal**

The following persons may appeal to the Mental Health Court against a decision to which this part applies—

- (a) a party to the proceeding for the decision;
- (b) a person on behalf of the patient for whom the decision is made;
- (c) the director, other than if the decision is a decision to make a non-contact order.

### **321 How to start appeal**

- (1) The appeal is started by filing notice of appeal in the registry.
- (2) The notice of appeal must be filed—
  - (a) if the appellant is the director—within 60 days after the decision is made; or
  - (b) if paragraph (a) does not apply—within 60 days after the appellant receives written notice of the decision.
- (3) The Mental Health Court may, at any time, extend the time for filing the notice of appeal.
- (4) The notice of appeal must—
  - (a) be in the approved form; and
  - (b) state fully the grounds of the appeal and the facts relied on.

### **322 Notices of appeal and hearing**

- (1) Within 7 days after the notice of appeal is filed, the registrar must give written notice of the appeal to the following persons—

- (a) the other parties to the appeal;
  - (b) the director, other than if the decision appealed against is a decision to make a non-contact order;
  - (c) anyone else to whom notice of the tribunal's hearing for the review or application was given;
  - (d) the tribunal.
- (2) The registrar must give 7 days written notice of the hearing of the appeal to the following persons—
- (a) the parties to the appeal;
  - (b) the administrator of the patient's treating health service;
  - (c) the director, other than if the decision appealed against is a decision to make a non-contact order;
  - (d) anyone else to whom notice of the tribunal's hearing for the review or application was given.
- (3) The notice of the hearing of the appeal must state the following information—
- (a) the time and place of the hearing of the appeal;
  - (b) the nature of the hearing;
  - (c) the parties' rights to be represented at the hearing.

### **323 Stay of decision pending appeal**

- (1) The Mental Health Court may stay the decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
- (a) may be given on the conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be revoked or amended by the court.
- (3) The period of a stay must not extend past the time when the appeal is decided.

- (4) The court may, by written order, authorise a police officer to detain the patient and take the patient to a stated authorised mental health service pending the hearing of the appeal.<sup>110</sup>

### **324 Notice of stay of decision on review of patient's fitness for trial**

- (1) This section applies if—
- (a) the decision appealed against is a review decision under chapter 6, part 4;<sup>111</sup> and
  - (b) under section 323, the Mental Health Court stays the decision.
- (2) Immediately after the Attorney-General receives notice of the stay, the chief executive for justice must give written notice to the following persons of the stay—
- (a) the registrar of the court in which proceedings for the relevant offence under chapter 6, part 4, are to be heard;
  - (b) the commissioner of the police service or director of public prosecutions as appropriate in the circumstances;
  - (c) if the patient is a child—the chief executive for young people.

### **325 Appeal powers**

- (1) In deciding the appeal, the Mental Health Court may confirm or set aside the decision appealed against.
- (2) If the Mental Health Court sets aside the decision appealed against—
- (a) the court may make a decision the tribunal could have made on the review or application; and
  - (b) the decision is taken, for this Act (other than this part), to be that of the tribunal.

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110 For a police officer's entry and search powers, see the *Police Powers and Responsibilities Act 2000*, section 21 (General power to enter to arrest or detain someone or enforce warrant).

111 Chapter 6 (Tribunal reviews, notification orders and treatment applications), part 4 (Reviews by tribunal of mental condition of persons to decide fitness for trial)

**326 Notice of decision**

- (1) The registrar must give a copy of the Mental Health Court's decision to the following persons—
  - (a) the parties to the proceeding;
  - (b) if the decision appealed against is a review decision—the administrator of the patient's treating health service;
  - (c) if the director is not a party to the proceeding—the director;
  - (d) the tribunal.
- (2) However, subsection (1)(b) and (c) does not apply if the decision appealed against is a decision to make a non-contact order.

**327 Mental Health Court's order final**

The Mental Health Court's decision on the appeal—

- (a) is final and conclusive; and
- (b) can not be impeached for informality or want of form; and
- (c) can not be appealed against, reviewed, quashed or invalidated in any court.

**Division 3 Participation and representation at appeals****328 Right of appearance—appeals against decisions on reviews**

- (1) The following persons may appear in person at a hearing of an appeal against a review decision—
  - (a) the patient;
  - (b) if the appellant is the director—the director;

- (c) for an appeal against a review decision under chapter 6, part 3 or 4<sup>112</sup>—the Attorney-General.
- (2) A person mentioned in subsection (1) may be represented at the hearing by a lawyer or, with the leave of the Mental Health Court, an agent.

**329 Right of appearance—appeals against decisions on treatment applications**

- (1) The following persons may appear in person at the hearing of an appeal against a tribunal decision on a treatment application—
  - (a) the applicant for the treatment;
  - (b) the person the subject of the treatment application.
- (2) A person mentioned in subsection (1) may be represented at the hearing by a lawyer or, with the leave of the Mental Health Court, an agent.

**330 Right of appearance—appeals against decisions on application for approval that a patient move out of Queensland**

- (1) The following persons may appear in person at the hearing of an appeal against a tribunal decision on an application for approval that a patient move out of Queensland—
  - (a) the patient;
  - (b) the director.
- (2) A person mentioned in subsection (1) may be represented at the hearing by a lawyer or, with the leave of the Mental Health Court, an agent.

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112 Chapter 6 (Tribunal reviews, notification orders and treatment applications), part 3 (Reviews by tribunal for forensic patients) or 4 (Reviews by tribunal of mental condition of persons to decide fitness for trial)

**331 Director may elect to become party to appeal**

The director may at any time, by notice filed in the registry, elect to become a party to an appeal, other than an appeal against a decision to make a non-contact order.

**332 Right of particular persons to attend hearing**

- (1) The following persons may attend a hearing to help the patient represent the patient's views, wishes and interests—
  - (a) patient's allied person;
  - (b) someone else granted leave to attend by the Mental Health Court.
- (2) However, the patient's allied person or other person does not become a party to the proceeding.

**Division 4 Procedural provisions****333 Hearing procedures**

- (1) The procedure for the appeal is to be in accordance with court rules applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the Mental Health Court.
- (2) The appeal is by way of rehearing, unaffected by the tribunal's decision, on the material before the tribunal and any further evidence the court allows.

**Part 2 Appeals against Mental Health Court decisions on references****334 Who may appeal**

The following persons may appeal to the Court of Appeal against a decision of the Mental Health Court on a reference—

- (a) the person to whose mental condition the decision relates;
- (b) the Attorney-General.

### **335 How to start appeal**

- (1) An appeal is started by filing notice of appeal with the registrar of the Court of Appeal.
- (2) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision.
- (3) However, the Court of Appeal may at any time extend the period for filing the notice of appeal.
- (4) The notice of appeal must—
  - (a) be signed by the appellant or the appellant's lawyer; and
  - (b) state fully the grounds of the appeal and the facts relied on.

### **336 Hearing procedures**

The procedure for the appeal is to be in accordance with court rules applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the Court of Appeal.

### **337 Appeal powers**

- (1) In deciding the appeal, the Court of Appeal may—
  - (a) confirm the decision appealed against; or
  - (b) set aside the decision appealed against.
- (2) If the court sets aside the decision, the court may—
  - (a) remit the matter to the Mental Health Court; or
  - (b) make a decision the Mental Health Court could have made on the matter; or
  - (c) make a decision the Mental Health Court could have made on the matter and remit the matter to the Mental Health Court.

- (3) However, subsection (2)(a) and (c) do not apply if the decision appealed against is a decision to make a non-contact order.
- (4) If the court makes a decision mentioned in subsection (2)(b) or (c), the decision is taken, for this Act (other than this part), to be that of the Mental Health Court.
- (5) If the court remits the matter to the Mental Health Court, the court must—
  - (a) remand the person in custody; or
  - (b) grant the person bail under the *Bail Act 1980*.
- (6) If the court remands the person in custody, the court may order the person be detained in a stated authorised mental health service.
- (7) The person may be detained under the court's order in the authorised mental health service stated in the order.

### **338 Notice of decision**

The registrar of the Court of Appeal must give a copy of the Court of Appeal's decision to the registrar of the Mental Health Court.

## **Chapter 9 Allied persons and particular rights of involuntary patients**

### **Part 1 Allied persons**

#### **339 Who is an allied person**

An allied person for an involuntary patient is the person chosen or declared under this part to be the patient's allied person.

**340 Function of allied person**

The function of an involuntary patient's allied person is to help the patient to represent the patient's views, wishes and interests relating to the patient's assessment, detention and treatment under this Act.

**341 Patient may choose allied person**

- (1) An involuntary patient may choose any 1 of the following persons, other than a health service employee at the patient's treating health service, who is capable, readily available and willing to be the patient's allied person for this Act—
  - (a) if the patient is a minor—a parent of the minor or the minor's guardian;
  - (b) if the patient has a personal guardian—the guardian;
  - (c) if the patient has a personal attorney—the attorney;
  - (d) an adult relative or adult close friend of the patient;
  - (e) an adult carer of the patient;
  - (f) another adult.

*Examples of application of section—*

- 1 A patient who is a minor may choose a person mentioned in paragraph (a), (d), (e) or (f) to be the patient's allied person.
  - 2 An adult patient may choose a person mentioned in paragraph (d) to be the patient's allied person even though the patient has a personal attorney or personal guardian.
- (2) This section has effect subject to section 342.

**342 Who is allied person if patient does not have capacity to choose allied person**

- (1) This section applies if the administrator of an involuntary patient's treating health service is satisfied the patient does not have the capacity to choose an allied person.
- (2) If the patient, by an advance health directive under the *Powers of Attorney Act 1998*,<sup>113</sup> has directed that a stated person be

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113 See the *Powers of Attorney Act 1998*, section 35 (Advance health directives).

the patient's allied person, the stated person is the patient's allied person.

- (3) If subsection (2) does not apply, the administrator must choose a person, other than a health service employee at the patient's treating health service, to be the patient's allied person.
- (4) The person chosen must be—
  - (a) the first person in listed order of the persons mentioned in section 341 who is willing, readily available, capable and culturally appropriate to be the patient's allied person; or
  - (b) if no-one in the list is willing, readily available, capable and culturally appropriate to be the patient's allied person—
    - (i) if the patient is an adult—the adult guardian; or
    - (ii) if the patient is a minor—the Commissioner for Children and Young People and Child Guardian under the *Commission for Children and Young People and Child Guardian Act 2000*.

### **343 When allied person ceases to act**

The choice of an allied person for an involuntary patient ends if—

- (a) under section 341, the patient chooses another person to be the allied person; or
- (b) the patient tells the administrator of the patient's treating health service that the patient no longer wishes to have an allied person and the administrator is satisfied the patient has the capacity to make that decision; or
- (c) under section 342, the administrator of the patient's treating health service chose the patient's allied person but the administrator is no longer satisfied the person is willing, readily available, capable and culturally appropriate to be the patient's allied person.

## **Part 2**                      **Rights of patients**

### **Division 1**                **Statement of rights**

#### **344**     **Director to prepare statement of rights**

- (1) The director must prepare a written statement about the rights of involuntary patients (a *statement of rights*).
- (2) The statement must contain information about the following—
  - (a) the rights of patients and allied persons for patients under this Act;
  - (b) the rights of patients to make complaints about the service provided at an authorised mental health service and how the complaints are made.
- (3) The statement may also contain anything else the director considers appropriate, including, for example, information from relevant standards for providing mental health services.

#### **345**     **Statement of rights to be given to involuntary patient and patient's allied person**

- (1) On admission of an involuntary patient to an authorised mental health service, the administrator of the health service must give a copy of the statement of rights so far as it is relevant to the patient to—
  - (a) the patient; and
  - (b) the patient's allied person.
- (2) In addition to the statement, the administrator must ensure the patient is given an oral explanation of the information in the statement—
  - (a) in the language or way the patient is most likely to understand; and
  - (b) in a way that has appropriate regard to the patient's age, culture and any disability.

- (3) If the person giving the explanation to the patient believes the patient has not understood the explanation the person must record details of the fact in the patient's clinical file.

### **346 Notice of rights**

The administrator of an authorised mental health service must ensure a notice about the information in the statement of rights is displayed in the health service in a prominent place.

## **Division 2 Examinations of, and visits to, involuntary patients**

### **347 Examining and visiting patient**

- (1) A health practitioner may, at any reasonable time of the day or night—
  - (a) visit and examine an involuntary patient in an authorised mental health service; or
  - (b) consult with an authorised doctor for the health service about the patient's treatment.
- (2) A legal or other adviser for an involuntary patient in an authorised mental health service may, at any reasonable time of the day or night, visit the patient.
- (3) The health practitioner or adviser may exercise a power under subsection (1) or (2) only—
  - (a) if asked by the patient or someone else on behalf of the patient; and
  - (b) under arrangements made with the administrator of the health service.

## **Chapter 10 Security of authorised mental health services**

### **Part 1 Interpretation**

#### **348 Definitions for ch 10**

In this chapter—

*authorised person*, for an Act, means a person who is authorised under the Act to perform inspection and enforcement functions.

*seizure provisions*, of an Act, means the provisions of the Act relating to the access to, and retention, disposal and forfeiture of, a thing after its seizure under the Act.

### **Part 2 Provisions about postal articles and other things received for patients in high security units**

#### **349 Interfering with postal articles for patients in high security units**

- (1) A person must not prevent or impede in any way—
  - (a) the delivery, to a patient in a high security unit, of a postal article addressed to the patient; or
  - (b) the sending of a postal article for a patient in a high security unit.

Maximum penalty—20 penalty units.

- (2) Subsection (1)(a) has effect subject to section 350.
- (3) A person does not commit an offence against subsection (1)(b) if the addressee of the postal article has given written notice to the administrator of the high security unit asking that

postal articles addressed by or for the patient to the addressee be withheld.

- (4) However, subsection (3) does not apply to a postal article addressed by or for a patient in a high security unit to any of the following persons—
- (a) a member of the Parliament of the Commonwealth or a State;
  - (b) the Mental Health Court;
  - (c) the tribunal;
  - (d) the director;
  - (e) a community visitor under the *Guardianship and Administration Act 2000*;
  - (f) the Health Quality and Complaints Commission under the *Health Quality and Complaints Commission Act 2006*;
  - (g) the ombudsman appointed under the *Ombudsman Act 2001*;
  - (h) another person prescribed under a regulation for this paragraph.

### **350 Opening and examining things received for patients in high security units**

- (1) Subject to subsections (2) to (4), the administrator of a high security unit may open or examine anything received at the unit for a patient in the unit.
- (2) Before the administrator opens or examines the thing, the administrator must tell the patient that the patient may ask that the patient's lawyer be present at the opening or examination.
- (3) The administrator may open or examine the thing only—
- (a) in the patient's presence; and
  - (b) if the patient asks that the patient's lawyer be present at the opening or examination—in the lawyer's presence.
- (4) Despite the patient's request that the patient's lawyer be present at the opening, the administrator may open the thing

in the absence of the lawyer if the administrator is satisfied it is not reasonably practicable to delay the opening.

- (5) If, on opening or examining the thing, the administrator is satisfied it is a danger to the patient or someone else or to the security of the unit, the administrator may—
  - (a) with the patient's agreement—give it to someone else; or
  - (b) keep it for the patient and give it to the patient on the patient's release from the unit; or
  - (c) return it to the sender; or
  - (d) if the administrator is satisfied it is of negligible value—dispose of it in the way the administrator considers appropriate.
- (6) However, if the administrator reasonably believes the thing is connected with, or is evidence of, the commission or intended commission of an offence against an Act, the administrator may seize the thing.
- (7) If the administrator seizes the thing—
  - (a) the administrator must give it to an authorised person under the Act mentioned in subsection (6); and
  - (b) the seizure provisions of that Act apply to the thing as if the authorised person had seized it under the provisions of that Act that relate to the offence.
- (8) However, if the authorised person is not reasonably satisfied the thing is evidence of the commission or intended commission of the offence, the authorised person must return it to the administrator who must deal with it under this section.
- (9) Immediately after making a decision about what happens to a seized thing, the administrator must make a written record of the decision.

## **Part 3                      Searches**

### **Division 1                Preliminary**

#### **351      Definition of *patient* for pt 3**

In this part—

*patient*, in an authorised mental health service, means any person admitted to or assessed, examined, detained or treated for a mental illness in the health service.

#### **352      Purpose of pt 3**

For ensuring the protection of patients and the security and good order of authorised mental health services, this part provides for carrying out searches of—

- (a) patients in authorised mental health services and their possessions; and
- (b) visitors to high security units and their possessions.

### **Division 2                Searches of patients and their possessions**

#### **Subdivision 1          Searches on reasonable belief of possession of harmful things**

#### **353      Application of sdiv 1**

This subdivision applies if a doctor, or the senior registered nurse on duty, at an authorised mental health service reasonably believes a patient in the health service has possession of a harmful thing.

**354 Authority to search patients and possessions**

- (1) The doctor or nurse may search, or authorise another health practitioner to search, the patient or the patient's possessions.
- (2) The search may be carried out without the patient's consent.
- (3) However, before carrying out the search, the doctor or nurse must tell the patient the reasons for the search and how it is to be carried out.

**Subdivision 2 Searches of patients and their possessions on admission or entry to high security units****355 Authority to search patients and possessions**

- (1) On a person's admission as a patient, or a patient's entry, to a high security unit, an authorised officer may, for detecting harmful things, search the patient or the patient's possessions.
- (2) However, before carrying out the search, the officer must tell the patient the reasons for the search and how it is to be carried out.
- (3) The search may be carried out without the patient's consent.

**Subdivision 3 Carrying out searches****356 Application of sdiv 3**

This subdivision applies if—

- (a) under subdivision 1, a doctor or nurse is authorised, or another health practitioner has been authorised by a doctor or nurse, to search a patient or a patient's possessions; or
- (b) under subdivision 2, an authorised officer is authorised to search a patient or a patient's possessions.

**357 Carrying out search**

- (1) The person authorised to carry out the search (the *searcher*) may require the patient, to submit, or submit the patient's possessions, to a search under this section.
- (2) The searcher may do any 1 or more of the following—
  - (a) pass a hand-held electronic scanning device over or around the patient or the patient's possessions;
  - (b) open or inspect a thing in the patient's possession;
  - (c) remove and inspect an outer garment or footwear of the patient;
  - (d) remove and inspect all things from the pockets of the patient's clothing;
  - (e) touch the clothing worn by the patient to the extent reasonably necessary to detect things in the patient's possession;
  - (f) remove and inspect any detected thing.
- (3) Also, the searcher may, with the approval of the administrator of the authorised mental health service, remove and inspect all, or part of, the patient's other clothing and anything found in the clothing.
- (4) However, the administrator may give the approval only if the administrator is reasonably satisfied it is necessary in the circumstances for carrying out an appropriate search.
- (5) The searcher may—
  - (a) exercise a power of inspection under subsection (2) only if the patient is present or has been given the opportunity to be present; or
  - (b) exercise a power under subsection (2)(c) to (f) or (3) only if—
    - (i) the searcher is the same sex as the patient; and
    - (ii) the search is carried out in a part of a building that ensures the patient's privacy.
- (6) The searcher must—

- (a) carry out the search in a way that respects the patient's dignity to the greatest possible extent; and
  - (b) cause as little inconvenience to the patient as is practicable in the circumstances.
- (7) However, the searcher may carry out the search with the help, and using the force, that is reasonable in the circumstances.

### **358 Seizure of things**

The searcher may seize anything found during a search that the searcher reasonably suspects is a harmful thing.

### **359 What happens to thing seized**

- (1) If the administrator of the authorised mental health service is reasonably satisfied the seized thing is a harmful thing, the administrator must—
- (a) keep it for the patient and give it to the patient on the patient's release from the health service; or
  - (b) give it to someone else if the patient is able to, and has given, agreement to do so; or
  - (c) if the administrator is satisfied someone else is entitled to possession of the thing—give or send it to the person; or
  - (d) if the administrator is reasonably satisfied it is of negligible value—dispose of it in the way the administrator considers appropriate.
- (2) However, if the administrator reasonably believes the seized thing is connected with, or is evidence of, the commission or intended commission of an offence against an Act, the administrator must give it to an authorised person under that Act.
- (3) The seizure provisions of the Act mentioned in subsection (2) apply to the thing as if the authorised person had seized it under the provisions of the Act that relate to the offence.
- (4) If the authorised person is not reasonably satisfied the thing is evidence of the commission or intended commission of the

offence, the authorised person must return it to the administrator who must deal with it under this section.

- (5) Immediately after making a decision about what happens to a seized thing, the administrator must make a written record of the decision.

## **Subdivision 4      Miscellaneous**

### **360      Records of searches**

- (1) This section applies if—
  - (a) a search is authorised under subdivision 1; or
  - (b) an administrator of an authorised mental health service gives an approval mentioned in section 357(3); or
  - (c) a searcher seizes anything found during a search under this part.
- (2) Immediately after carrying out the search, the searcher must make a written record of the following details of the search—
  - (a) the reasons for the search;
  - (b) if, under subdivision 1, a doctor or nurse authorised another health practitioner to carry out the search—the name of the doctor or nurse;
  - (c) the name of the searcher;
  - (d) how the search was carried out;
  - (e) the results of the search;
  - (f) anything seized.

## **Division 3                      Searches of visitors to high security units, and their possessions**

### **361      Power to search visitors**

- (1) An authorised officer for a high security unit may ask a visitor to submit, or submit the visitor's possessions, to being

searched, under this division, by an authorised officer.

- (2) The officer must tell the visitor in general terms of—
  - (a) the officer's powers in relation to the search; and
  - (b) how the search is to be carried out; and
  - (c) the visitor's rights under this division.

### **362 Directions to leave high security unit**

- (1) If the visitor does not agree to the request, the authorised officer may refuse the visitor permission to enter the high security unit or, if the person is in the unit, direct the person to immediately leave the unit.
- (2) If the visitor is directed to leave the unit, the visitor must comply with the direction.

Maximum penalty for subsection (2)—20 penalty units.

### **363 Carrying out the search**

- (1) For carrying out the search, the authorised officer may ask the visitor to do any 1 or more of the following—
  - (a) walk through an electronic scanning device;
  - (b) remove a stated outer garment or footwear;
  - (c) remove everything from the pockets of the visitor's clothing;
  - (d) open or inspect anything in the visitor's possession.
- (2) Also, the officer may ask the visitor to leave a thing the officer reasonably suspects is a harmful thing with the officer until the visitor leaves the high security unit.
- (3) If the visitor refuses to comply with a request under subsection (1) or (2), the authorised officer may refuse the visitor permission to enter the unit or, if the person is in the unit, direct the person to immediately leave the unit.
- (4) If the visitor is directed to leave the unit, the visitor must comply with the direction.

Maximum penalty—20 penalty units.

- (5) For carrying out the search, the authorised officer may—
  - (a) pass a hand-held electronic scanning device over or around the visitor or the visitor's possessions; and
  - (b) inspect an outer garment or footwear removed by the visitor; and
  - (c) touch the clothing worn by the visitor to the extent reasonably necessary to detect things in the visitor's possession; and
  - (d) remove and inspect any detected thing.
- (6) The authorised officer may—
  - (a) exercise a power of inspection under subsection (5) only if the visitor is present or has been given the opportunity to be present; or
  - (b) exercise a power under subsection (5)(c) or (d) only if—
    - (i) the officer is the same sex as the visitor; and
    - (ii) the search is carried out in privacy in a part of a building that ensures the visitor's privacy.
- (7) The authorised officer must—
  - (a) carry out the search in a way that respects the visitor's dignity to the greatest possible extent; and
  - (b) ensure the officer causes as little inconvenience to the visitor as is practicable in the circumstances to carry out an appropriate search.

### **364 Visitor may leave things with authorised officer**

If the visitor does not want the authorised officer to inspect anything in the visitor's possession, the visitor may leave the thing with the authorised officer until the visitor leaves the high security unit.

### **365 Visitor may ask for search to stop**

- (1) The authorised officer must stop the search if the visitor tells the officer the visitor does not want the search to continue and is prepared to leave the high security unit immediately.

- (2) The visitor must leave the unit immediately.

Maximum penalty for subsection (2)—20 penalty units.

### **366 Return of things to visitor**

If the visitor has left a thing with an authorised officer, the officer must ensure the thing is returned to the visitor—

- (a) if the visitor asks for its return; and
- (b) if the officer is reasonably satisfied the visitor is about to leave the high security unit.

### **367 Seizure of things**

The authorised officer may seize a harmful thing found during the search if the officer reasonably believes it is connected with, or is evidence of, the commission or intended commission of an offence.

### **368 Receipt for seized things**

- (1) The authorised officer must give a receipt for the thing to the visitor from whom it was seized.
- (2) The receipt must describe generally the thing seized and its condition.

### **369 Procedure after thing seized**

- (1) If the administrator of the authorised mental health service reasonably believes the seized thing is connected with, or is evidence of, the commission or intended commission of an offence against an Act, the administrator must give it to an authorised person under that Act.
- (2) The seizure provisions of the Act mentioned in subsection (1) apply to the thing as if the authorised person had seized it under the provisions of the Act that relate to the offence.
- (3) If the administrator is not reasonably satisfied the thing is evidence of the commission or intended commission of the offence, the administrator must ensure reasonable efforts are made to return it to the visitor from whom it was seized.

**370 Forfeiture of seized things**

- (1) This section applies to a seized thing mentioned in section 369(3).
- (2) The seized thing is forfeited to the State if the administrator of the authorised mental health service—
  - (a) can not find the visitor from whom it was seized, after making reasonable inquiries; or
  - (b) can not return it to the visitor, after making reasonable efforts.
- (3) In applying subsection (2)—
  - (a) subsection (2)(a) does not require the administrator to make inquiries if it would be unreasonable in the particular circumstances to make inquiries to find the visitor; and
  - (b) subsection (2)(b) does not require the administrator to make efforts if it would be unreasonable in the particular circumstances to make efforts to return the thing to the visitor.
- (4) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

**371 Access to seized things**

- (1) Until a seized thing is forfeited or returned, the administrator must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## **Division 4                      Identity cards**

### **372      Approval of identity cards**

- (1) The administrator of a high security unit must approve identity cards for authorised officers for the unit.
- (2) An approved identity card for an authorised officer must—
  - (a) contain a recent photograph of the officer; and
  - (b) identify the person as a health practitioner or security officer at the unit.
- (3) For subsection (2)(b), the identity of the officer as a health practitioner must state the officer's occupation.<sup>114</sup>

## **Division 5                      Compensation**

### **373      Compensation for damage to possessions**

- (1) A patient or visitor (the *claimant*) may claim from the State the cost of repairing or replacing the claimant's possessions damaged in the exercise or purported exercise of a power under this part.
- (2) The cost may be claimed and ordered in a proceeding—
  - (a) brought in a court of competent jurisdiction for the recovery of the amount claimed; or
  - (b) for an offence against this Act brought against the claimant.
- (3) A court may order an amount be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

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114 See also section 542 (Official to identify himself or herself before exercising powers).

## **Part 4 Exclusion of visitors**

### **374 Administrator may refuse to allow a person to visit a patient**

- (1) The administrator of an authorised mental health service may refuse to allow a person to visit a patient in the health service if the administrator is satisfied the proposed visit will adversely affect the patient's treatment.

*Example of application of subsection (1)—*

The administrator may be satisfied a patient's treatment will be adversely affected if, on a previous visit by a person, the patient's mental state deteriorated.

- (2) The administrator must give the person written notice of the decision.
- (3) The notice must state the following—
  - (a) the reasons for the decision;
  - (b) that the person may appeal to the tribunal against the decision within 28 days after the person receives the notice;
  - (c) how the appeal is made.

### **375 Who may appeal**

A person who is dissatisfied with the decision of the administrator of an authorised mental health service to refuse to allow the person to visit a patient in the health service may appeal to the tribunal against the decision.

### **376 How to start appeal**

- (1) An appeal is started by giving notice of appeal to the tribunal.
- (2) The notice of appeal must be given within 28 days after the appellant receives notice of the decision of the administrator of the authorised mental health service.
- (3) The tribunal may, at any time, extend the time for giving the notice of appeal.

- (4) The notice of appeal must—
  - (a) be in the approved form; and
  - (b) state fully the grounds of the appeal and the facts relied on.

### **377 Notices of appeal and hearing**

- (1) Within 7 days after the appeal is started, the tribunal must give notice of the appeal to the administrator of the authorised mental health service.
- (2) The tribunal must give 7 days written notice of the hearing of the appeal to the parties to the appeal.
- (3) The notice of the hearing of the appeal must state the following information—
  - (a) the time and place of the hearing of the appeal;
  - (b) the nature of the hearing;
  - (c) the parties' rights to be represented at the hearing.

### **378 Stay of decision pending appeal**

- (1) The president of the tribunal may stay the decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
  - (a) may be given on the reasonable conditions the president considers appropriate; and
  - (b) operates for the period fixed by the president; and
  - (c) may be revoked or amended by the president.
- (3) However, the period of a stay must not extend past the time when the appeal is decided.

### **379 Appeal powers**

In deciding an appeal, the tribunal may confirm or revoke the decision appealed against.

**380 Notice of decision**

The tribunal must give a copy of the decision to the parties to the appeal.

## **Chapter 11 Mental Health Court**

### **Part 1 Establishment, constitution, jurisdiction and powers**

**381 Mental Health Court established**

- (1) The Mental Health Court is established as a superior court of record.
- (2) The court has a seal that must be judicially noticed.

**382 Constitution**

- (1) The Mental Health Court is constituted by a Supreme Court judge sitting alone.
- (2) In exercising jurisdiction under this Act, the court must be assisted by 2 assisting psychiatrists.
- (3) However, if 2 assisting psychiatrists are not available to assist the court in a particular hearing of a matter and the constituting judge is satisfied it is necessary to hear the matter in the interests of justice, the court may be assisted by only 1 psychiatrist.
- (4) The constituting judge must decide the assisting psychiatrists who are to assist the court for a particular hearing.

**383 Jurisdiction**

- (1) The Mental Health Court has the following jurisdiction—
  - (a) deciding appeals against decisions of the tribunal;
  - (b) deciding references of the mental condition of persons;

- (c) investigating the detention of patients in authorised mental health services.
- (2) In exercising its jurisdiction, the court—
  - (a) must inquire into the matter before it; and
  - (b) may inform itself of any matter relating to the inquiry in any way it considers appropriate.
- (3) In a proceeding, the court may give directions about the hearing of a matter.<sup>115</sup>
- (4) The court's jurisdiction is not limited, by implication, by a provision of this or another Act.

### **384 Powers**

- (1) The Mental Health Court may do all things necessary or convenient to be done for, or in relation to, exercising its jurisdiction.
- (2) Without limiting subsection (1), the court has the powers conferred on it by this Act.

## **Part 2 Provisions about constituting judge of court**

### **385 Appointment of constituting judge**

- (1) The Governor in Council may, by commission, appoint a Supreme Court judge to constitute the Mental Health Court.
- (2) The judge is appointed for the term, not more than 3 years, stated in the commission.

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<sup>115</sup> Also, see the *Evidence Act 1977*, part 3A. The stated purposes of the part include the facilitation of the giving and receiving of evidence, and the making and receiving of submissions, in Queensland court proceedings by audiovisual link or audio link.

**386 Appointment does not affect constituting judge's tenure of office etc.**

- (1) The appointment of, or service by, the judge as constituting judge of the Mental Health Court does not affect—
  - (a) the judge's tenure of office as a judge; or
  - (b) the judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of his or her office as a judge.
- (2) The judge's service as constituting judge is taken to be service as a Supreme Court judge for all purposes.

**387 When constituting judge holds office**

- (1) The constituting judge of the Mental Health Court holds office until—
  - (a) the judge's term of appointment ends; or
  - (b) the judge ceases to be a Supreme Court judge.
- (2) However, if the constituting judge ceases to hold office while hearing a matter, the Governor in Council may, without reappointing the person as constituting judge, continue the person in office for the time necessary to enable the hearing to be completed.
- (3) The person continued in office may exercise the jurisdiction and powers of the court necessary or convenient for the hearing to be completed.

**388 Acting constituting judge**

The Governor in Council may, by commission, appoint a Supreme Court judge to act as the constituting judge of the Mental Health Court—

- (a) for any period the office is vacant; or
- (b) for any period, or all periods, when the constituting judge is absent from duty or the State or can not, for another reason, perform the duties of the office.



**391 Terms of appointment**

- (1) An assisting psychiatrist is entitled to be paid the remuneration and allowances decided by the Governor in Council.
- (2) An assisting psychiatrist holds office on the terms not provided for in this Act as are decided by the Governor in Council.

**392 Resignation**

An assisting psychiatrist may resign office by signed notice given to the Minister.

**393 Termination of appointment of assisting psychiatrists**

- (1) The Governor in Council may terminate the appointment of an assisting psychiatrist if the Governor in Council is satisfied the psychiatrist—
  - (a) is mentally or physically incapable of satisfactorily performing the psychiatrist's duties; or
  - (b) performed the psychiatrist's duties carelessly, incompetently or inefficiently; or
  - (c) is guilty of misconduct that could warrant dismissal from the public service if the psychiatrist were an officer of the public service.
- (2) The Governor in Council must terminate the appointment of an assisting psychiatrist if the psychiatrist—
  - (a) ceases to be eligible for appointment as an assisting psychiatrist; or
  - (b) is convicted of an indictable offence.

**394 Acting appointments**

The Governor in Council may appoint a psychiatrist to act as an assisting psychiatrist—

- (a) during a vacancy in the office; or



- (2) In performing a function or exercising a power, the registrar must comply with a direction relating to the performance or exercise given by the constituting judge.

### **399 Registrar's power to issue subpoena**

- (1) For the Mental Health Court exercising its jurisdiction, the registrar may, on the registrar's own initiative or at the request of a party to a proceeding, issue a subpoena requiring the person stated in the subpoena to—
  - (a) produce a stated or described document; or
  - (b) attend before the Mental Health Court to give evidence.
- (2) The person to whom the subpoena is directed must comply with it.
- (3) Failure to comply with the subpoena without lawful excuse is contempt of court and the person may be dealt with for contempt of court.

### **400 Registrar's power to require production of documents**

- (1) For the Mental Health Court exercising its jurisdiction, the registrar may, by written notice given to the administrator of an authorised mental health service, require the administrator to give the registrar a stated or described document.
- (2) The administrator must comply with the notice despite an obligation under an Act or law not to give the document or disclose information in the document.
- (3) The registrar may ask the commissioner of the police service or director of public prosecutions to give the registrar—
  - (a) a written report about the criminal history of a person the subject of a reference to the Mental Health Court; or
  - (b) a brief of evidence.
- (4) The commissioner of the police service or director of public prosecutions must comply with the request.
- (5) Subsection (3) applies to the criminal history in the possession of the commissioner of the police service or director of public

prosecutions or to which the commissioner or director of public prosecutions has access.

**401 Registrar's power to require person to be brought before Mental Health Court**

- (1) For the Mental Health Court exercising its jurisdiction, the registrar may—
  - (a) require the administrator of an authorised mental health service to bring a patient of the health service before the court at a stated time and place; or
  - (b) require the custodian of a person in lawful custody to bring the person before the court at a stated time and place.
- (2) The requirement must be made by written notice given to the administrator or custodian.
- (3) The administrator or custodian must comply with the notice.

**402 Delegation by registrar**

The registrar may delegate a power of the registrar under this or another Act to an appropriately qualified member of the staff of the registry.

## **Part 5 Procedural provisions**

**403 Right of appearance and representation in Mental Health Court proceeding**

A party to a proceeding in the Mental Health Court may—

- (a) appear in person at the hearing of the proceeding; or
- (b) be represented at the hearing by a lawyer or, with the leave of the court, an agent.

**404 Evidence**

- (1) In hearing the proceeding, the Mental Health Court is not bound by the rules of evidence unless the court decides it is in the interests of justice that it be bound for the hearing or a part of the hearing.
- (2) The court may make the decision on application by a party to the hearing or of its own initiative.

**405 Proof of matters**

- (1) In the proceeding, no party bears the onus of proof of any matter.
- (2) Subject to section 268,<sup>116</sup> a matter to be decided by the Mental Health Court must be decided on the balance of probabilities.

**406 Assisting psychiatrists' advice before or during hearing**

- (1) This section applies to advice given by an assisting psychiatrist to the Mental Health Court—
  - (a) before the hearing is started; or
  - (b) during an adjournment of the hearing, other than an adjournment for the court to make its decision.
- (2) During the hearing, the court must inform each party of the advice unless the party tells the court that it does not require the information.

**407 Assisting psychiatrist's advice during hearing**

Advice given by an assisting psychiatrist to the Mental Health Court during a hearing must be given in a way that can be heard by the parties.

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116 Section 268 (Reasonable doubt person committed offence)

**408 Particular assisting psychiatrist's advice to be stated in reasons for decision**

If the Mental Health Court is satisfied advice given by an assisting psychiatrist to the court materially contributed to the court's decision, the advice must be stated in the court's reasons for its decision.

**409 Court may proceed in absence of person subject of proceeding**

The Mental Health Court may proceed to conduct the hearing of a proceeding in the absence of the person the subject of the proceeding only if the court is satisfied it is expedient and it is in the person's best interests to do so.

**410 Appointment of assistants**

The Mental Health Court may appoint a person with appropriate knowledge or experience to assist it in a hearing, including, for example, a person with appropriate communication skills or appropriate cultural or social knowledge or experience.

**411 Court may sit and adjourn hearings**

Subject to the court rules, the Mental Health Court may—

- (a) sit at any time and in any place for a hearing; and
- (b) adjourn a hearing to any time and place.

**412 Hearings about young persons**

- (1) This section applies if a young person is the subject of a hearing in the Mental Health Court.
- (2) The hearing is not open to the public.
- (3) However, the court may permit a person to be present during the hearing if the court is satisfied it is in the interests of justice.

**413 Hearings of references open to public**

- (1) The hearing of a proceeding for a reference is open to the public unless the Mental Health Court, by order, directs the hearing or part of the hearing not to be open to the public.
- (2) However, the court may make an order directing the hearing or part of the hearing not to be open to the public only if the court is satisfied it is in the interests of justice.
- (3) This section is subject to section 412.

**414 Other hearings not open to public**

- (1) The hearing of a proceeding in the Mental Health Court, other than the hearing of a proceeding for a reference, must not be open to the public unless the court, by order, directs the hearing or part of the hearing be open to the public.
- (2) However, the court may make an order directing a hearing or part of a hearing be open to the public only if it is satisfied—
  - (a) the person the subject of the proceeding has agreed to the order; and
  - (b) the order will not result in serious harm to the person's health or risk the safety of anyone else; and
  - (c) the privacy of the parties to the proceeding will not be adversely affected.
- (3) This section is subject to section 412.

**415 Costs**

Each party to a proceeding in the Mental Health Court is to bear the party's own costs.



## **Part 7**                      **Rules and practices**

### **419**    **Rule-making power**

- (1) The Governor in Council may make rules under this Act.
- (2) Rules relating to the Mental Health Court or the registry may only be made with the consent of the constituting judge of the court.
- (3) Rules may be made about the following matters—
  - (a) regulating the practice and procedure to be followed and used in or for proceedings in the court;
  - (b) fees and expenses payable to witnesses;
  - (c) fees and costs payable in relation to proceedings in the court and the party by or to whom they are to be paid;
  - (d) service of process, notices, orders or other things on parties and other persons;
  - (e) the functions and powers of the registrar and other staff of the registry.
- (4) Rules made under this section are rules of court.

### **420**    **Directions about practice**

- (1) Subject to this Act and the court rules, the practice and procedure of the Mental Health Court are as directed by the constituting judge of the court.
- (2) If this Act or the rules do not provide or sufficiently provide for a particular matter, an application for directions may be made to the judge.

### **421**    **Approved forms—constituting judge**

The constituting judge of the Mental Health Court may approve the following forms for use under this Act—

- (a) notice of a reference;
- (b) court examination order;
- (c) forensic order (Mental Health Court);

- (d) notice of appeal under section 321(4)(a);
- (e) application under section 427(2)(a).<sup>117</sup>

## **Part 8                      Examination and confidentiality orders**

### **422      Court examination orders**

- (1) The Mental Health Court may order (a *court examination order*) the person the subject of a proceeding to submit to an examination by a stated psychiatrist, doctor or other health practitioner (the *examining practitioner*).
- (2) A court examination order must—
  - (a) be in the approved form; and
  - (b) state the matters on which the examining practitioner must report on to the court.
- (3) The examining practitioner must give a written report on the examination to the court.

### **423      Recommendations and requests for court examination order on references**

- (1) This section applies if, for a proceeding for a reference on a person's mental condition, an assisting psychiatrist recommends, or the director of public prosecutions asks, that the Mental Health Court make a court examination order for the person.
- (2) The registrar must give written notice of the recommendation or request to the parties to the proceeding.

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<sup>117</sup> The notice of appeal under section 321(4)(a) is for an appeal to the Mental Health Court against a decision mentioned in section 319 and the application under section 427(2)(a) is for an inquiry into a patient's detention in an authorised mental health service.

- (3) The notice must state that the parties may make written submissions on the recommendation or request within the reasonable time stated in the notice.
- (4) The registrar must give the recommendation or request, and any submission made by a party on it, to the court.
- (5) The director of public prosecutions must pay the costs of an examination requested by the director of public prosecutions.

#### **424 Court examination order may also authorise detention etc.**

- (1) This section applies if the Mental Health Court makes a court examination order for a person the subject of a reference.
- (2) For examining the person, the order may also authorise either or both of the following—
  - (a) a police officer, correctional officer, detention centre officer or other person stated in the order to detain the person and take the person to a stated authorised mental health service;<sup>118</sup>
  - (b) the person's detention in the health service.
- (3) A correctional officer, detention centre officer or other person stated in the order may exercise the power under subsection (2)(a) with the help, and using the force, that is reasonable in the circumstances.<sup>119</sup>
- (4) However, the court may make an order authorising a matter mentioned in subsection (2) only if the court is satisfied there is no less restrictive way to ensure a thorough examination of the person's mental condition.
- (5) The person may be detained in the health service for the examination for not more than 3 days unless the court states a longer period in the order.

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118 For a police officer's entry and search powers, see the *Police Powers and Responsibilities Act 2000*, section 21 (General power to enter to arrest or detain someone or enforce warrant).

119 For use of force by police officers, see the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).

*Note—*

If, immediately before the examination, the person was detained as an involuntary patient in another authorised mental health service, the health service stated in the court examination order is the patient's treating health service while the order is in force.

- (6) The examining practitioner, or anyone lawfully helping the examining practitioner in examining the person, may use reasonable force to examine the person.

**425 What happens at end of examination**

- (1) After the end of the time allowed for the person's examination or on the earlier completion of the person's examination, the administrator of the authorised mental health service must ensure—
  - (a) if the person was taken from lawful custody for the examination—the person's custodian takes the person from the health service; or
  - (b) if, immediately before the examination, the person was detained as an involuntary patient in another authorised mental health service—the person is taken to that health service; or
  - (c) otherwise—arrangements are made for the person's return to the place from which the person was taken for the examination or for the person to be taken to another place the person reasonably asks to be taken.
- (2) For subsection (1)(a), a correctional officer or detention centre officer may take the person from the health service with the help, and using the force, that is reasonable in the circumstances.
- (3) The person may be detained in the health service until the person is taken, under subsection (1)(a) or (b), from the health service.
- (4) This section does not apply if—
  - (a) the person becomes an involuntary patient; or

- (b) an order is made transferring the patient to the health service stated in the court examination order.<sup>120</sup>

*Note for subsection (4)(a)—*

The person becomes an involuntary patient if assessment documents under chapter 2 or 3 are made for the person following the examination.

## **426 Confidentiality orders**

- (1) In a proceeding, the Mental Health Court may, by order (a ***confidentiality order***), prohibit or restrict the disclosure to the person the subject of a proceeding of—
- (a) information given before it; or
  - (b) matters contained in documents filed with, or received by, it; or
  - (c) the reasons for its decision in the proceeding; or
  - (d) the reasons for taking into account, or refusing to take into account, material submitted under section 284(1); or
  - (e) if material submitted under section 284(1) was taken into account by the court—how the material was taken into account.
- (2) However, the court may make a confidentiality order only if it is satisfied the disclosure would—
- (a) cause serious harm to the health of the person; or
  - (b) put the safety of someone else at serious risk.
- (3) If the court makes a confidentiality order for a person, the court must—
- (a) disclose the information or matters to the person's lawyer or agent; and
  - (b) give written reasons for the order to the lawyer or agent.
- (4) If the person is not represented at the hearing of the proceeding by a lawyer or agent, the court must ensure a lawyer or agent is appointed for subsection (3).

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120 See section 165 (Transfer orders—involuntary patients other than classified or forensic patients) or 166 (Transfer orders—other patients).

- (5) A person must not contravene a confidentiality order unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—40 penalty units.

## **Part 9**

### **Inquiries into detention of patients in authorised mental health services**

#### **427 Mental Health Court may inquire into detention—on application**

- (1) The Mental Health Court may, on application made to it, inquire into a patient's detention in an authorised mental health service to decide whether the patient's detention is lawful.
- (2) The application must—
- (a) be in the approved form; and
  - (b) state the grounds on which it is made.
- (3) The court must consider the application as soon as practicable after it is made.
- (4) The court may refuse the application if the court is satisfied the application—
- (a) may more properly be dealt with by the tribunal on a review; or
  - (b) is frivolous or vexatious.

#### **428 Mental Health Court may inquire into detention—on own initiative**

The Mental Health Court may, on its own initiative, inquire into a patient's detention in an authorised mental health service to decide whether the patient's detention is lawful.

**429 Mental Health Court may order inquiry into detention**

For inquiring into a patient's detention in an authorised mental health service, the court may, by written order, direct a stated person (the *appointed person*) to inquire into and report to the court in relation to the patient's detention.

**430 Administrator to ensure help given to appointed person**

The administrator of the authorised mental health service must ensure the appointed person is given reasonable help to carry out the inquiry.

**431 General powers of appointed person on inquiry**

- (1) For carrying out the inquiry, the appointed person may exercise any 1 or more of the following powers—
  - (a) enter the authorised mental health service stated in the order;
  - (b) examine the patient;
  - (c) search any part of the health service;
  - (d) inspect, examine, test, measure, photograph or film any part of the health service or any documents or other thing in the health service;
  - (e) take extracts from, or make copies of, any documents in the health service;
  - (f) take into the health service any persons, equipment and materials the appointed person reasonably requires for exercising powers in relation to the health service.
- (2) The appointed person may exercise a power under subsection (1) with the help, and using the force, that is reasonable in the circumstances.

**432 Appointed person's power to ask questions**

- (1) The appointed person may require another person to answer a question about the patient's detention.

- (2) When making the requirement, the appointed person must warn the other person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- (3) The person must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—50 penalty units.
- (4) It is a reasonable excuse for the person to fail to answer the question if complying with the requirement might tend to incriminate the person.
- (5) The person does not commit an offence against subsection (3) if the information sought by the appointed person is not in fact relevant to the patient's detention.

#### **433 Mental Health Court may order patient's discharge**

- (1) If, on consideration of the appointed person's report on the inquiry and any other evidence before it, the Mental Health Court is satisfied the patient is unlawfully detained in the authorised mental health service, the court must, by order, direct the patient be immediately discharged from the health service.
- (2) The administrator of the health service must ensure the order is complied with.

#### **434 Patient's other remedies not affected**

This part does not limit any other remedy available to the patient.

## **Part 10 Miscellaneous provisions**

#### **435 Annual report**

- (1) After each financial year, the constituting judge must prepare and give to the Minister a report for the year on the operation of the Mental Health Court and the registry.

- (2) The report must also contain the other information required by the Minister.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it.

## **Chapter 12      Mental Health Review Tribunal**

### **Part 1              Establishment, jurisdiction and powers**

#### **436      Establishment**

- (1) The Mental Health Review Tribunal is established.
- (2) The tribunal consists of the president of the tribunal and other members.

#### **437      Jurisdiction**

The tribunal has the following jurisdiction—

- (a) reviewing the application of treatment criteria for patients;
- (b) reviewing the detention of young patients in high security units;
- (c) reviewing the mental condition of forensic patients;
- (d) reviewing the fitness for trial of—
  - (i) persons found by the Mental Health Court to be unfit for trial and the unfitness for trial is not of a permanent nature; and
  - (ii) persons for whom a jury has made a section 613 or 645 finding;
- (e) deciding applications for notification orders;

- (f) deciding treatment applications;
- (g) deciding applications for approval for particular patients to move out of Queensland;
- (h) deciding appeals against decisions of administrators of authorised mental health services to refuse to allow persons to visit involuntary patients in health services.

#### **438 Procedure of tribunal**

The tribunal must exercise its jurisdiction in a way that is fair, just, economical, informal and timely.

#### **439 Powers**

- (1) The tribunal may do all things necessary or convenient to be done for, or in relation to, exercising its jurisdiction.
- (2) Without limiting subsection (1), the tribunal has the powers conferred on it by this Act.

## **Part 2 Tribunal members and staff**

#### **440 Appointment of members**

- (1) The president of the tribunal is to be appointed by the Governor in Council on a full-time basis.
- (2) The other members are to be appointed by the Governor in Council on a full-time or part-time basis.
- (3) A person is eligible for appointment as the president of the tribunal only if the person is a lawyer of at least 7 years standing.
- (4) A person is eligible for appointment as another member only if the person—
  - (a) is a lawyer of at least 5 years standing; or
  - (b) is a psychiatrist; or

- (c) has other qualifications and experience the Minister considers relevant to exercising the tribunal's jurisdiction.
- (5) In recommending persons for appointment as members, the Minister must take into account—
  - (a) the need for a balanced gender representation in the membership of the tribunal; and
  - (b) the range and experience of members of the tribunal; and
  - (c) the need for the membership of the tribunal to reflect the social and cultural diversity of the general community.
- (6) Members are to be appointed under this Act, and not under the *Public Service Act 1996*.

#### **441 Duration of appointment**

- (1) The president of the tribunal holds office for a term of not longer than 5 years stated in the instrument of appointment.
- (2) Other members hold office for a term of not longer than 3 years in the member's instrument of appointment.<sup>121</sup>

#### **442 Terms of appointment**

- (1) Members are entitled to be paid the remuneration and allowances decided by the Governor in Council.
- (2) Members hold office on the terms not provided for in this Act as are decided by the Governor in Council.

#### **443 Resignation**

A member may resign office by signed notice given to the Minister.

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121 For reappointments—see the *Acts Interpretation Act 1954*, section 25(1)(c).

**444 Termination of appointment**

- (1) The Governor in Council may terminate the appointment of a member if the Governor in Council is satisfied the member—
  - (a) is mentally or physically incapable of satisfactorily performing the member's duties; or
  - (b) performed the member's duties carelessly, incompetently or inefficiently; or
  - (c) is guilty of misconduct that could warrant dismissal from the public service if the member were an officer of the public service.
- (2) The Governor in Council must terminate the appointment of a member if the member—
  - (a) ceases to be eligible for appointment as a member; or
  - (b) is convicted of an indictable offence.

**445 Acting appointment**

The Governor in Council may appoint a person, who is eligible for appointment as the president of the tribunal, to act as president—

- (a) for any period the office is vacant; or
- (b) for any period, or all periods, when the president of the tribunal is absent from duty or the State or can not, for another reason, perform the duties of the office.

**446 Executive officer and staff**

- (1) There are to be appointed an executive officer of the tribunal and other staff necessary for it to exercise its jurisdiction.
- (2) The executive officer and other staff are to be employed under the *Public Service Act 1996*.
- (3) The president of the tribunal has all the functions and powers of the chief executive of a department, so far as the functions and powers relate to the organisational unit made up of the tribunal's staff, as if—

- (a) the unit were a department within the meaning of the *Public Service Act 1996*; and
- (b) the president were the chief executive of the department.

## **Part 3**

# **Constitution of tribunal for hearings**

### **447 Members constituting tribunal for hearings**

- (1) Subsection (2) applies to a tribunal hearing for the following matters—
  - (a) a review;
  - (b) an application for approval to administer electroconvulsive therapy to a person;
  - (c) an application for approval for a patient to move out of Queensland;
  - (d) an application for a notification order for a patient constituted for the purpose;
  - (e) an appeal against a decision of the administrator of an authorised mental health service to refuse to allow a person to visit a patient in the health service.

*Note for subsection (1)(d)—*

Under section 222, an application for a notification order for a patient may also be decided by the president on the papers or during the hearing for a review for the patient.

- (2) Subject to section 448, the tribunal must be constituted by at least 3, but not more than 5, members of whom—
  - (a) at least 1 must be a lawyer; and
  - (b) at least 1 must be a psychiatrist or, if a psychiatrist is not readily available but another doctor is available, the doctor; and
  - (c) at least 1 who is not a lawyer or doctor.

- (3) In deciding the tribunal's constitution for a hearing for a review for an involuntary patient, the president must have regard to the current risk the patient represents to the safety of himself or herself or others.<sup>122</sup>
- (4) For the hearing of an application for approval to perform psychosurgery, the tribunal must be constituted by 5 members as follows—
  - (a) a lawyer of at least 7 years standing;
  - (b) 1 psychiatrist nominated by the Royal Australian and New Zealand College of Psychiatrists;
  - (c) 1 psychiatrist nominated by the Minister;
  - (d) 1 neurosurgeon nominated by the Royal Australasian College of Surgeons;
  - (e) 1 person who is not a lawyer or doctor.

#### **448 When tribunal may be constituted by less than 3 members**

The tribunal may be constituted by less than 3 members—

- (a) for a review for a patient under an involuntary treatment order—if the president is satisfied it is in the patient's best interests and it is appropriate and expedient to do so; or
- (b) for an application for approval to administer electroconvulsive therapy—if the president is satisfied it is in the person's best interests to do so and, on the information contained in the application, the treatment is required urgently and it is appropriate and expedient to do so; or
- (c) for the hearing of an appeal against a decision of the administrator of an authorised mental health service to refuse to allow a person to visit a patient in the health service—if the president is satisfied it is appropriate and expedient to do so.

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<sup>122</sup> For directions by president about the number of members to constitute, and the members who are to constitute, the tribunal for a particular hearing, see section 484(2)(b) and (c).



- (4) As a representative of the State, the Attorney-General's role at the hearing for a review under chapter 6, part 3 or 4 is to represent the public interest.

#### **451 Right of appearance—treatment applications**

- (1) The following persons may appear in person at the hearing of a treatment application—
  - (a) the applicant for the treatment;
  - (b) the person the subject of the treatment application.
- (2) In addition, the person the subject of the treatment application may be represented at the hearing by a lawyer or, with the leave of the tribunal, an agent.
- (3) If, at a tribunal hearing, the person the subject of the application is not represented, the presiding member may appoint a person to represent the person's views, wishes and interests.

#### **452 Right of appearance—application for approval for patient to move out of Queensland**

- (1) The following persons may appear in person at the hearing of an application for approval for a patient to move out of Queensland—
  - (a) the patient;
  - (b) the applicant;
  - (c) for an application for a forensic patient—the Attorney-General.
- (2) A person mentioned in subsection (1) may be represented at the hearing by a lawyer or, with the leave of the tribunal, an agent.
- (3) If, at a tribunal hearing, the patient is not represented, the presiding member may appoint a person to represent the patient's views, wishes and interests.

*Note—*

The tribunal may, under section 463, adjourn the hearing to allow the appointment to be made.

**453 Right of appearance—application for notification order**

- (1) The following persons may appear in person at the hearing of an application for a notification order for a patient—
  - (a) the patient;
  - (b) the applicant.
- (2) The patient may be represented at the hearing by a lawyer or agent.
- (3) Also, the applicant with the leave of the tribunal, may be represented at the hearing by a lawyer or, with the leave of the tribunal, an agent.
- (4) If, at a tribunal hearing, the patient is not represented, the presiding member may appoint a person to represent the patient's views, wishes and interests.

*Note—*

The tribunal may, under section 463, adjourn the hearing to allow the appointment to be made.

- (5) If the application is heard during the hearing for a review for the patient, the applicant has a right of appearance only for the hearing of the application and not for the review.

**454 Right of appearance—appeal against decision to exclude a visitor**

- (1) The following persons may appear in person at the hearing of an appeal against a decision of the administrator of an authorised mental health service to refuse to allow a person to visit a patient in the health service<sup>124</sup>—
  - (a) the appellant;
  - (b) the administrator.
- (2) A person mentioned in subsection (1) may be represented at the hearing by a lawyer or, with the leave of the tribunal, an agent.

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124 See chapter 10 (Security of authorised mental health services), part 4 (Exclusion of visitors).

**455 Right of particular persons to attend hearing**

- (1) The following persons may attend a tribunal hearing to help an involuntary patient represent the patient's views, wishes and interests—
  - (a) the patient's allied person; and
  - (b) someone else granted leave to attend by the tribunal.
- (2) However, the patient's allied person or the other person does not become a party to the proceeding.

**456 Tribunal may proceed in absence of involuntary patient**

- (1) On the hearing for a review or treatment application for an involuntary patient, the tribunal may proceed in the absence of the patient the subject of the proceeding if—
  - (a) the tribunal reasonably believes the patient—
    - (i) is absent because of the patient's own free will; or
    - (ii) is unfit to appear; and
  - (b) the tribunal is satisfied it is appropriate and expedient to do so.
- (2) Subsection (1) has effect despite section 459.

**Part 5 Examination and confidentiality orders****457 Tribunal may order examination**

- (1) The tribunal may order the person the subject of a proceeding to submit to an examination by a stated psychiatrist, doctor or other health practitioner (the *examining practitioner*).
- (2) The order must state the matters on which the examining practitioner must report on to the tribunal.
- (3) The examining practitioner must give a written report on the examination to the tribunal.

**458 Confidentiality orders**

- (1) The tribunal may, by order (a *confidentiality order*), prohibit or restrict the disclosure of the following to the person the subject of a proceeding or the patient the subject of an application for a notification order—
  - (a) information given before it;
  - (b) matters contained in documents filed with, or received by, it;
  - (c) the reasons for its decision on the proceeding or the application;
  - (d) the reasons for taking or not taking into account material submitted under section 464.
- (2) However, the tribunal may make a confidentiality order only if it is satisfied the disclosure would—
  - (a) cause serious harm to the health of the person or patient;  
or
  - (b) put the safety of someone else at serious risk.
- (3) If the tribunal makes a confidentiality order for a person or patient, the tribunal must—
  - (a) disclose the information or matters to the lawyer or agent of the person or patient; and
  - (b) give written reasons for the order to the lawyer or agent.
- (4) If the person is not represented by a lawyer or agent, the tribunal must ensure a lawyer or agent is appointed for subsection (3).
- (5) A person must not contravene a confidentiality order unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—40 penalty units.

## **Part 6**                      **Procedural provisions**

### **459**    **Hearing procedures**

- (1) At a hearing, the tribunal must—
  - (a) observe natural justice; and
  - (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it.
- (2) In conducting the hearing, the tribunal—
  - (a) is not bound by the rules of evidence; and
  - (b) may inform itself on a matter in a way it considers appropriate; and
  - (c) may decide the procedures to be followed for the hearing.
- (3) However, the tribunal must comply with this part and any tribunal rules.
- (4) A party to a proceeding must be given a reasonable opportunity to present the party's case, and in particular to inspect a document to which the tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions about the document.
- (5) However, the tribunal may displace the right to inspect by a confidentiality order.

### **460**    **Hearing not open to public**

- (1) A hearing must not be open to the public unless the tribunal, by order, directs the hearing or part of the hearing be open to the public.
- (2) However, the tribunal must not order a hearing be open to the public if the person the subject of the hearing is a young person.
- (3) Also, the tribunal may make an order directing a hearing or part of a hearing be open to the public only if it is satisfied—

- (a) the person the subject of the hearing has agreed to the order; and
- (b) the privacy of the parties to the proceeding will not be adversely affected; and
- (c) the order will not result in serious harm to the person's health or risk the safety of anyone else.

#### **460A Observer may attend hearing**

- (1) A person (an *observer*) may attend a hearing that is not open to the public under section 460 to observe the hearing if—
  - (a) the president gives approval for the observer's attendance at the hearing; and
  - (b) the person the subject of the hearing has given consent to the observer's attendance.
- (2) However, the president may not give approval for an observer's attendance at a hearing if the person the subject of the hearing is a young person.

#### **461 Way questions decided**

- (1) A question of law arising at a hearing is to be decided according to the presiding member's opinion.
- (2) However, if the tribunal is constituted by 1 member who is not a lawyer—
  - (a) the member must refer the question of law to another member who is a lawyer to decide; and
  - (b) the other member must decide the question; and
  - (c) for subsection (1), the decision is taken to be the presiding member's decision.
- (3) If the members constituting the tribunal for a hearing are divided in opinion about the decision to be made on another question at the hearing—
  - (a) if there is a majority of the same opinion—the question is decided according to the majority opinion; or

- (b) otherwise—the question is decided according to the opinion of the presiding member.

#### **462 Appointment of assistants**

The tribunal may appoint a person with appropriate knowledge or experience to assist it in a hearing, including, for example, a person with appropriate communication skills or appropriate cultural or social knowledge or experience.

#### **463 Tribunal may adjourn hearings**

The tribunal may adjourn a tribunal hearing for—

- (a) a period of not more than 28 days; or
- (b) if the adjournment is for obtaining an examination and the president has approved that the hearing be adjourned for more than 28 days but less than 61 days—the period approved by the president.

#### **464 Submission and consideration of material submitted by victim or concerned person etc.**

- (1) In making a decision in a proceeding, the tribunal may take into account material submitted by a victim of the alleged offence to which the proceeding relates or another person who is not a party to the proceeding (*concerned person*).
- (1A) The purpose of submitting the material is to help the tribunal in making a decision in the proceeding, including, for example, deciding—
  - (a) whether to revoke a forensic order; or
  - (b) whether to order, approve or revoke limited community treatment; or
  - (c) what conditions the tribunal should impose on an order or approval for limited community treatment.
- (1B) The material may include the views of the person submitting the material about—

- (a) the conduct of the person to whom the proceeding relates and the impact of the conduct on the person submitting the material; or
  - (b) the risk the person submitting the material believes the person to whom the proceeding relates represents to the person submitting the material or another person; or
  - (c) any other matter relevant to the decision of the tribunal in the proceeding.
- (1C) If the tribunal takes the material into account, it may place the weight it considers appropriate on the material.
- (2) Also, for a decision about the making of a non-contact order in favour of a person mentioned in section 228C(3), the tribunal must take into account material giving the person's views as required under the section.
- (3) In deciding the weight to place on the material, the tribunal must take into account the following—
- (a) whether the person the subject of the proceeding has had sufficient opportunity to examine and reply to the material;
  - (b) material previously submitted by the person;
  - (c) for a forensic patient—the circumstances of the offences leading to the patient becoming a forensic patient;
  - (d) any other matter the tribunal considers appropriate.
- (4) The person submitting the material under subsection (1) does not have a right of appearance before the tribunal unless otherwise ordered by the tribunal.

**465 Reasons for decision about material submitted by victim or concerned person**

- (1) This section applies if, under section 464(1), a victim of the alleged offence to which a proceeding before the tribunal relates or a concerned person submits material to the tribunal.
- (2) After making its decision in the proceeding, the tribunal must, if asked by a party to the proceeding or the person who submitted the material, give reasons to the party or person for taking or not taking into account the material.

- (3) However, a confidentiality order of the tribunal may displace the requirement to give the reasons for taking or not taking into account the material to the person the subject of the proceeding or the patient.<sup>125</sup>

#### **466 Witnesses**

- (1) The presiding member of the tribunal may, by written notice given to a person (an *attendance notice*), require a person to attend a tribunal hearing at a stated time and place—
  - (a) to give evidence; or
  - (b) to produce a stated document or thing that is relevant to the hearing (including a medical report or clinical file for the person the subject of the proceeding).
- (2) The presiding member of the tribunal may—
  - (a) require the evidence to be given on oath; or
  - (b) allow a person appearing as a witness at a hearing to give information by tendering a written statement, verified, if the member directs, by oath.
- (3) For subsection (2)(a), the presiding member may administer an oath.

#### **467 Inspection of documents**

- (1) If a document or thing is produced at a tribunal hearing, the tribunal may—
  - (a) inspect the document or thing; and
  - (b) make copies of, photograph, or take extracts from, the document or thing if it is relevant to the proceeding.
- (2) The tribunal may also take possession of the document or thing, and keep it while it is necessary for the proceeding.
- (3) While it keeps a document or thing, the tribunal must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts

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125 See section 458 (Confidentiality orders).

from, the document or thing, at the reasonable time and place the tribunal decides.

#### **468 Offences by witnesses**

- (1) A person served with an attendance notice must not, without reasonable excuse—
  - (a) fail to attend as required by the notice; or
  - (b) fail to continue to attend at the tribunal hearing as required by the presiding member of the tribunal until excused from further attendance.

Maximum penalty—40 penalty units.

- (2) A person appearing as a witness at a tribunal hearing must not—
  - (a) fail to take an oath or make an affirmation when required by the presiding member of the tribunal; or
  - (b) fail, without reasonable excuse, to answer a question the person is required to answer by the presiding member of the tribunal; or
  - (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by an attendance notice.

Maximum penalty—40 penalty units.

#### **469 Self-incrimination**

It is a reasonable excuse for a person to fail to answer a question or to produce a document if answering the question or producing the document might tend to incriminate the person.

#### **470 False or misleading statements**

- (1) A person must not state anything to the tribunal, the executive officer or another tribunal staff member the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

- (2) It is enough for a complaint against a person for an offence against subsection (1) to state the statement made was, without specifying which, ‘false or misleading’.

#### **471 False or misleading documents**

- (1) A person must not give the tribunal, the executive officer or another tribunal staff member a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the tribunal, executive officer or other tribunal staff member, to the best of the person’s ability, how it is false or misleading; and
  - (b) if the person, has, or can reasonably obtain, the correct information—gives the correct information.
- (3) It is enough for a complaint against a person for an offence against subsection (1) to state the statement made was, without specifying which, ‘false or misleading’.

#### **472 Fabricating evidence**

The tribunal is a tribunal for the Criminal Code, section 126.<sup>126</sup>

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126 Criminal Code, section 126—

##### **126 Fabricating evidence**

- (1) Any person who, with intent to mislead any tribunal in any judicial proceeding—
- (a) fabricates evidence by any means other than perjury or counselling or procuring the commission of perjury; or
  - (b) knowingly makes use of such fabricated evidence;
- is guilty of a crime, and is liable to imprisonment for 7 years.
- (2) The offender cannot be arrested without warrant.

**473 Contempt of tribunal**

- (1) A person is in contempt of the tribunal if the person—
  - (a) insults a member or a member of the tribunal staff at a proceeding, or in going to or returning from the proceeding; or
  - (b) deliberately interrupts a proceeding, or otherwise misbehaves at a proceeding; or
  - (c) creates or continues, or joins in creating or continuing, a disturbance in or near a place where a proceeding is being conducted; or
  - (d) obstructs or assaults a person attending a proceeding; or
  - (e) obstructs a member in the performance of the member's functions or the exercise of the member's powers; or
  - (f) without lawful excuse, disobeys a lawful order or direction of the tribunal made or given under this Act; or
  - (g) obstructs a person acting under an order made under this Act by the tribunal or a member; or
  - (h) does anything at a proceeding or otherwise that would be contempt of court if the tribunal were a court of record.
- (2) The tribunal may order that a person who contravenes subsection (1) at a proceeding be excluded from the place where the proceeding is being conducted.
- (3) A member of the staff of the tribunal or a health practitioner, acting under the tribunal's order, may, with the help, and using the force, that is reasonable in the circumstances, exclude the person from the place.

**474 Punishment of contempt**

- (1) Without limiting the tribunal's power under section 473, a person's contempt of the tribunal may be punished under this section.
- (2) The president may certify the contempt in writing to the Supreme Court (the *court*).

- (3) For subsection (2), it is enough for the president to be satisfied there is evidence of contempt.
- (4) The president may issue a warrant directed to a police officer or all police officers for the arrest of the person to be brought before the court to be dealt with according to law.
- (5) The *Bail Act 1980* applies to the proceeding for the contempt started by the certification in the same way it applies to a charge of an offence.
- (6) The court must inquire into the alleged contempt.
- (7) The court must hear—
  - (a) witnesses and evidence that may be produced against or for the person whose contempt was certified; and
  - (b) any statement given by the person in defence.
- (8) If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had committed the contempt in relation to proceedings in the court.
- (9) The *Uniform Civil Procedure Rules 1999* apply to the court's investigation, hearing and power to punish with necessary changes.
- (10) The president's certificate of contempt is evidence of the matters contained in the certificate.

#### **475 Conduct that is contempt and offence**

If conduct of a person is both contempt of the tribunal and an offence, the person may be proceeded against for the contempt or for the offence, but the person is not liable to be punished twice for the same conduct.

#### **476 Costs**

Each party to a tribunal proceeding is to bear the party's own costs.



- (c) fees or costs payable in relation to proceedings in the tribunal and the party by or to whom they are to be paid;
  - (d) service of process, notices, orders or other things on parties and other persons;
  - (e) the functions and powers of staff of the tribunal.
- (3) Rules made under this section are rules of court.

**480 Directions about practice**

- (1) Subject to this Act and the tribunal rules, the practice and procedure of the tribunal are as directed by the president of the tribunal.
- (2) If this Act or the rules do not provide or sufficiently provide for a particular matter, an application for directions may be made to the president of the tribunal.

**481 Approved forms—president**

The president may approve the following forms for use under this Act—

- (a) notice of a hearing of a review or treatment application;
- (b) application for a notification order;
- (c) treatment application;
- (d) notice of appeal under section 376(4)(a).<sup>127</sup>

**Part 9 Miscellaneous provisions****482 Authentication of documents**

A document requiring authentication by the tribunal is sufficiently authenticated if it is signed by a tribunal member.

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<sup>127</sup> The notice of appeal is for an appeal to the Mental Health Review Tribunal against a decision to exclude a visitor from an authorised mental health service.

**483 Judicial notice of particular signatures**

Judicial notice must be taken of the signature of a tribunal member if it appears on a document issued by the tribunal.

**484 Arrangement of business**

- (1) The president of the tribunal is responsible for ensuring the quick and efficient discharge of the tribunal's business.
- (2) Without limiting subsection (1), the president must give directions about—
  - (a) the arrangement of the tribunal's business; and
  - (b) the number of members to constitute the tribunal for a particular hearing; and
  - (c) the members who are to constitute the tribunal for a particular hearing; and
  - (d) the places and times the tribunal is to sit.
- (3) A direction may be of general or limited application.
- (4) Subsection (2)(b) and (c) has effect subject to part 3.<sup>128</sup>
- (5) For subsection (2)(c), the members constituting the tribunal for a particular hearing must, as far as practicable, include a member who is culturally appropriate to the patient.

**485 Delegation**

The president of the tribunal may delegate the president's powers under this Act to another tribunal member.

**486 Register**

- (1) The president of the tribunal must keep a register of—
  - (a) applications for reviews; and
  - (b) treatment applications; and
  - (c) reviews heard by it; and

- (d) its decisions on the reviews, and the reasons for them.
- (2) The president may keep the register in the way the president considers appropriate.

#### **487 Annual report**

- (1) After each financial year, the president must prepare and give to the Minister a report on the tribunal's operations in the year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives it.

## **Chapter 13 Administration**

### **Part 1 Director of Mental Health**

#### **Division 1 Appointment, functions and powers**

##### **488 Appointment**

- (1) There is to be a Director of Mental Health.
- (2) The director is to be appointed by the Governor in Council under this Act and not under the *Public Service Act 1996*.

##### **489 Functions**

- (1) The director has the following functions—
  - (a) to the extent that it is reasonably practicable, ensuring the protection of the rights of involuntary patients under this Act;
  - (b) to the extent that it is reasonably practicable, ensuring the involuntary admission, assessment and treatment of persons complies with this Act;

- (c) facilitating the proper and efficient administration of this Act;
  - (d) promoting community awareness and understanding of the administration of this Act;
  - (e) advising and reporting to the Minister on any matter relating to the administration of this Act—
    - (i) on the director's own initiative; or
    - (ii) on the request of the Minister if the matter is in the public interest.
- (2) Also, the director has the other functions given under this Act.

#### **490 Powers—general**

- (1) The director has the powers given under this Act.
- (2) In addition, the director has power to do all things necessary or convenient to be done in performing the director's functions.

#### **491 Independence of director**

In exercising a power under this Act, the director is not under the control of the Minister.

#### **492 Delegation**

- (1) The director may delegate the director's powers under this Act to an appropriately qualified public service officer in the department or a health service employee appointed under the *Health Services Act 1991*, part 3.
- (2) However, the director must not delegate a power under part 2.

#### **493 Approved forms**

The director may approve forms for use under this Act, other than a form that the constituting judge of the Mental Health Court or the president of the tribunal may approve under section 421 or 481.

## **Division 2                      Miscellaneous provisions**

### **494      Annual report**

- (1) After the end of each financial year, the director must give to the Minister a report on the administration of this Act during the year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives it.

## **Part 2                              Authorised mental health services, high security units and administrators**

### **495      Declaration of authorised mental health services**

The director may, by gazette notice, declare a health service, or part of a health service, providing treatment and care of people who have mental illnesses to be an authorised mental health service for this Act.

### **496      Declaration of high security units**

The director may, by gazette notice, declare a public sector mental health service, or part of public sector mental health service, to be a high security unit for this Act.

### **497      Declaration of administrators of authorised mental health services and high security units**

- (1) The director may, by gazette notice, declare a person to be the administrator of an authorised mental health service or high security unit for this Act.
- (2) The declaration may state the administrator by name or reference to the holder of a stated office.

**498 Delegations by administrator**

The administrator of an authorised mental health service may delegate the administrator's powers under this Act to an appropriately qualified officer or employee of the health service.

**Part 3 Authorised mental health practitioners and approved officers****499 Appointment of authorised mental health practitioners**

- (1) The director may appoint a health practitioner to be an authorised mental health practitioner if the practitioner is—
  - (a) a health service employee of an authorised mental health service; or
  - (b) an officer or employee of the department.
- (2) However, a health practitioner may be appointed to be an authorised mental health practitioner only if, in the director's opinion, the practitioner has the necessary expertise and experience to be an authorised mental health practitioner.

**500 Appointment of approved officers**

- (1) The director may appoint a health practitioner, lawyer or other person to be an approved officer.
- (2) However, a person may be appointed to be an approved officer only if, in the director's opinion, the officer has the necessary expertise or experience to be an approved officer.

**501 Terms of appointment**

- (1) An authorised mental health practitioner or approved officer holds office on the terms stated in the instrument of appointment.

- (2) An authorised mental health practitioner or approved officer ceases to hold office if the practitioner or officer ceases to be qualified for appointment as an authorised mental health practitioner or approved officer.

## **502 Powers**

- (1) An authorised mental health practitioner or approved officer has the powers given under this Act.<sup>129</sup>
- (2) Subsection (1) has effect subject to any limitation stated in the instrument of appointment for the practitioner or officer.

## **503 Approval of identity cards**

- (1) The director must approve identity cards for authorised mental health practitioners and approved officers.
- (2) An approved identity card for an authorised mental health practitioner or approved officer must—
  - (a) contain a recent photograph of the practitioner or officer; and
  - (b) for an authorised mental health practitioner—state the person's occupation.

# **Part 4 Authorised doctors and appointed health practitioners**

## **504 Who is an authorised doctor**

- (1) The administrator of an authorised mental health service may, by written instrument, appoint a doctor to be an authorised doctor for the health service.

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<sup>129</sup> Authorised mental health practitioners have powers under chapter 2, part 2, chapter 2, part 3, division 2 and chapter 3, part 1. Approved officers have powers under chapter 14, part 6.

- (2) However, a doctor may be appointed to be an authorised doctor only if, in the administrator's opinion, the doctor has the necessary expertise or experience to be an authorised doctor.
- (3) The administrator of an authorised mental health service who is a psychiatrist is also an authorised doctor for the health service.

**505 Powers**

- (1) An authorised doctor has the powers given under this Act.
- (2) Subsection (1) has effect subject to any limitation stated in the doctor's instrument of appointment.

**505A Appointment of certain health practitioners**

- (1) The administrator of an authorised mental health service may, by written instrument, appoint a person to be a health practitioner.
- (2) However, a person may be appointed to be a health practitioner only if, in the administrator's opinion, the person has the necessary training, qualifications and expertise in the provision of mental health services to be a health practitioner.
- (3) An appointment made under this section may limit the exercise of the powers the person has as a health practitioner under this Act.

**506 Register of authorised doctors and certain health practitioners**

The administrator of an authorised mental health service must keep a register of—

- (a) authorised doctors for the health service; and
- (b) health practitioners appointed by the administrator under section 505A.

## **Chapter 14      Enforcement, evidence and                                  legal proceedings**

### **Part 1                      Return of patients to treating    health service for assessment    or treatment**

#### **507      Authorised doctor may require involuntary patient's                  return**

- (1) An authorised doctor may, by written notice given to an involuntary patient, require the patient to return to a stated authorised mental health service on or before a stated time—
  - (a) to complete the patient's assessment under chapter 2 or 3;<sup>130</sup> or
  - (b) to give effect to a change to the patient's treatment plan; or
  - (c) to give effect to a decision or order of the tribunal or Mental Health Court; or
  - (d) if the doctor reasonably believes—
    - (i) the patient has not complied with the patient's treatment plan; and
    - (ii) it is necessary in the interests of the health or safety of the patient or the safety of others.
- (2) The doctor must—
  - (a) state the reasons for the requirement in the notice; and
  - (b) talk to the patient about the requirement.
- (3) However, the doctor need not comply with subsection (2)(b) if—
  - (a) it is not reasonably practicable to do so; or

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130 Chapter 2 (Involuntary assessment) or 3 (Persons before a court or in custody requiring assessment or detention)

- (b) the doctor reasonably believes that to do so would not be in the interests of the health or safety of the patient or the safety of others.

## **508 Taking patient to authorised mental health service**

- (1) This section applies to—
  - (a) a patient required by notice under section 507 to return to an authorised mental health service; or
  - (b) a patient for whom an approval was given under section 186<sup>131</sup> and the approval is revoked or the period of absence under the approval ends; or
  - (c) a patient for whom a court has made an order under section 101(2), 273(1)(b) or 337(6)<sup>132</sup> and who unlawfully absents himself or herself from the health service.
- (2) A health practitioner or police officer may take the patient to the in-patient facility of the authorised mental health service.
- (3) For subsection (2), the health practitioner—
  - (a) may exercise the power with the help, and using the force, that is reasonable in the circumstances;<sup>133</sup> and
  - (b) is a public official for the *Police Powers and Responsibilities Act 2000*.<sup>134</sup>
- (4) If asked by a health practitioner, a police officer must, as soon as reasonably practicable, ensure reasonable help is given.
- (5) For giving the help, a police officer is taken to have responded to a request by a public official under the *Police Powers and Responsibilities Act 2000*, section 16(3).

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131 Section 186 (Absence of particular patients with director's approval)

132 Section 101 (Court may order person's detention in authorised mental health service), 273 (Orders about custody) or 337 (Appeal powers)

133 For use of force by police officers, see the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).

134 For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16 (Helping public officials exercise powers under other Acts).

- (6) Also, if the patient is a classified or forensic patient or a patient mentioned in subsection (1)(c), a police officer may detain the patient.<sup>135</sup>

### **509 Administration of medication while being taken to authorised mental health service**

- (1) For taking a patient to which section 508 applies to an authorised mental health service, medication may be administered to the patient while being taken to the health service despite the absence or refusal of the patient's consent.
- (2) However, the medication—
- (a) may be administered to the patient only if a doctor is satisfied it is necessary to ensure the safety of the patient or others while being taken to the health service; and
  - (b) must be administered by a doctor or a registered nurse under the instruction of a doctor.
- (3) The doctor or nurse may administer the medication with the help, and using the force, that is reasonable in the circumstances.
- (4) For subsection (2)(b), the doctor's instruction must include the medication's name, the dose and route and frequency of administration.
- (5) A doctor or nurse who administers medication under this section must keep a written record of the matters mentioned in subsection (4).
- (6) This section applies despite the *Guardianship and Administration Act 2000*, chapter 5, part 2, division 1.<sup>136</sup>

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135 For a police officer's entry and search powers, see the *Police Powers and Responsibilities Act 2000*, section 21 (General power to enter to arrest or detain someone or enforce warrant).

136 *Guardianship and Administration Act 2000*, chapter 5 (Health matters and special health matters), part 2 (Scheme for health care and special health care), division 1 (Health care—no consent)

## Part 2                      Entry to places

### 510      Application of pt 2

This part applies if, under section 25, 117, 119 or 508,<sup>137</sup> a person (the *authorised person*) is authorised or required to take someone else (the *patient*) to an authorised mental health service.

### 511      Entry of places

For taking the patient to the authorised mental health service, the authorised person may enter a place if—

- (a) the occupier of the place consents to the entry; or
- (b) it is a public place and the entry is made when the place is open to the public; or
- (c) the entry is authorised by a warrant for apprehension of the patient.

### 512      Application for warrant for apprehension of patient

- (1) An authorised person or police officer may apply to a magistrate for a warrant for apprehension of the patient.
- (2) The application must be sworn and state the grounds on which it is sought.
- (3) The magistrate may refuse to consider the application until the authorised person or police officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

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<sup>137</sup> Section 25 (Taking person to authorised mental health service), 117 (Noncompliance with treatment under community category of involuntary treatment order), 119 (Change of category of order by authorised doctor) or 508 (Taking patient to authorised mental health service)

**513 Issue of warrant**

- (1) The magistrate may issue a warrant for apprehension only if the magistrate is satisfied—
  - (a) there are reasonable grounds for suspecting the patient may be found at the place; and
  - (b) the warrant is necessary to enable the patient to be taken to an authorised mental health service for assessment, treatment or care.
- (2) The warrant authorises a police officer to detain the patient and take the patient to the authorised mental health service.<sup>138</sup>
- (3) The warrant must state the following—
  - (a) a police officer's powers under subsection (2);
  - (b) for exercising the powers, a police officer may, under the *Police Powers and Responsibilities Act 2000*, section 21—
    - (i) enter and stay for a reasonable time on a place to detain the patient; and
    - (ii) search the place to find the patient;
  - (c) the hours of the day when entry may be made;
  - (d) the day (within 7 days after the warrant's issue) when the warrant ends.

**514 Special warrants**

- (1) An authorised person or police officer may apply for a warrant for apprehension of the patient (a *special warrant*) by phone, fax, radio or another form of communication if the authorised person or police officer considers it necessary because of—
  - (a) urgent circumstances; or

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<sup>138</sup> For a police officer's entry and search powers, see the *Police Powers and Responsibilities Act 2000*, section 21 (General power to enter to arrest or detain someone or enforce warrant). Also, for the use of force by a police officer, see the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).

- (b) other special circumstances, including, for example, the remote location of the authorised person or police officer.
- (2) Before applying for the special warrant, the authorised person or police officer must prepare an application stating the grounds on which the warrant is sought.
  - (3) The authorised person or police officer may apply for the warrant before the application is sworn.
  - (4) After issuing the special warrant, the magistrate must immediately fax a copy to the authorised person or police officer if it is reasonably practicable to fax the copy.
  - (5) If it is not reasonably practicable to fax a copy to the authorised person or police officer—
    - (a) the magistrate must tell the authorised person or police officer—
      - (i) what the terms of the warrant are; and
      - (ii) the date and time the warrant is issued; and
    - (b) the authorised person or police officer must complete a form of warrant (a *warrant form*) and write on it—
      - (i) the magistrate's name; and
      - (ii) the date and time the magistrate issued the special warrant; and
      - (iii) the terms of the special warrant.
  - (6) The facsimile warrant, or the warrant form properly completed by the authorised person or police officer, authorises the exercise of powers under the warrant made by the magistrate.
  - (7) The authorised person or police officer must, at the first reasonable opportunity, send to the magistrate—
    - (a) the sworn application; and
    - (b) if the authorised person or police officer completed a warrant form—the completed warrant form.
  - (8) On receiving the documents, the magistrate must attach them to the warrant.

- (9) A court must find the exercise of a power by a police officer was not authorised by a special warrant if—
- (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a special warrant; and
  - (b) the special warrant is not produced in evidence; and
  - (c) it is not proved by the person relying on the lawfulness of the entry that the special warrant was obtained.

### **515 Warrants—procedure before entry**

- (1) This section applies if a police officer is intending to enter a place under a warrant for apprehension of a patient.
- (2) Before entering the place, the police officer must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person present at the place who is an occupier of the place;
  - (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 514(6), a copy of the facsimile warrant or warrant form;
  - (c) tell the person the officer is permitted by the warrant to enter and search the place to find the patient.
- (3) For subsection (2)(a), the police officer must identify himself or herself in the way stated in the *Police Powers and Responsibilities Act 2000*, section 637(2) or (3).<sup>139</sup>
- (4) However, the officer need not comply with subsection (2) if the officer reasonably believes immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

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139 *Police Powers and Responsibilities Act 2000*, section 637 (Supplying police officer's details)



- (a) has a responsibility for the assessment, examination, detention or treatment for mental illness of a person in an authorised mental health service (the *patient*); or
  - (b) has the care or custody of a patient in an authorised mental health service.
- (2) The person must not ill-treat the patient.  
Maximum penalty—100 penalty units or 1 year's imprisonment.
- (3) In this section—  
*ill-treat* includes to wilfully neglect or molest.

### **519 Offences relating to patients in custody absconding**

- (1) This section applies if, under this Act, a person (the *authorised person*)—
- (a) is taking a classified or forensic patient—
    - (i) to an authorised mental health service; or
    - (ii) to appear before a court; or
    - (iii) to a place of custody; or
  - (b) is accompanying a classified or forensic patient or a patient for whom a court has made an order under section 273(1)(b) while the patient is undertaking limited community treatment; or
  - (c) is caring for a classified or forensic patient or a patient for whom a court has made an order under section 101(2), 273(1)(b) or 337(6)<sup>141</sup> during the patient's absence under an approval given under section 186.
- (2) For this section, while the authorised person is acting as mentioned in subsection (1), the patient is in the authorised person's charge.
- (3) The authorised person must not wilfully allow the patient to abscond from the authorised person's charge.

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<sup>141</sup> Section 101 (Court may order person's detention in authorised mental health service), 273 (Orders about custody) or 337 (Appeal powers)

Maximum penalty—200 penalty units or 2 years imprisonment.

- (4) A person must not knowingly help the patient to abscond from the authorised person's charge.

Maximum penalty for subsection (4)—200 penalty units or 2 years imprisonment.

## **520 Other offences relating to absence of patients**

- (1) A person must not—

- (a) induce, or knowingly help, a patient detained in an authorised mental health service to unlawfully absent himself or herself from the health service; or
- (b) knowingly harbour a patient who is unlawfully absent from an authorised mental health service.

Maximum penalty—

- (a) if the patient is a classified or forensic patient or a patient for whom a court has made an order under section 101(2), 273(1)(b) or 337(6)—200 penalty units or 2 years imprisonment; or
  - (b) otherwise—20 penalty units.
- (2) For subsection (1)(b), a patient, within the meaning of section 519, is unlawfully absent from the health service if the patient has absconded from the charge of a person mentioned in section 519(2).
- (3) A person employed in an authorised mental health service must not wilfully allow a patient detained in the health service to unlawfully absent himself or herself from the health service.

Maximum penalty—

- (a) if the patient is a classified or forensic patient or a patient for whom a court has made an order under section 101(2), 273(1)(b) or 337(6)—200 penalty units or 2 years imprisonment; or
- (b) otherwise—20 penalty units.

**521 Obstruction of official**

- (1) A person must not obstruct an official in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (2) However, a patient does not commit an offence against subsection (1) merely because the patient resists the exercise of the power in relation to himself or herself.

- (3) In this section—

*official* means—

- (a) the director, an administrator of an authorised mental health service, health practitioner, ambulance officer, authorised officer or approved officer or an appointed person under section 429; or
- (b) a person acting under the direction of a person mentioned in paragraph (a).

**522 False or misleading documents**

- (1) A person must not state anything in any document required or permitted to be made under this Act the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

- (2) It is enough for a complaint against a person for an offence against subsection (1) to state the statement made was, without specifying which, ‘false or misleading’.

**Part 5 Confidentiality****523 Definition for pt 5**

In this part—

*report*, of a proceeding, includes a report of part of the proceeding.

**524 Publication of reports and decisions on references—Mental Health Court and Court of Appeal**

- (1) A person must not publish a report of a proceeding, or a decision on a proceeding, in the Mental Health Court or Court of Appeal for a reference before the end of the prescribed day after the decision on the proceeding.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) In this section—

*patient* means the person the subject of a reference.

*prescribed day* means—

- (a) for a decision that will result in the patient being brought to trial for the offence under the reference—the end of the trial; or
- (b) for a decision of the Mental Health Court that will not result in the patient being brought to trial for the offence under the reference—
- (i) the day that is 28 days after the date of the decision; or
- (ii) if an appeal to the Court of Appeal against the decision is started within the 28 days, the later of the following—
- (A) the day that is 28 days after the date of the Court of Appeal’s decision on the appeal;
- (B) if the Court of Appeal’s decision on the appeal will result in the patient being brought to trial for the offence—the end of the trial; or
- (iii) if an appeal to the Court of Appeal against the decision is started within the 28 days but is later withdrawn—the day that is 28 days after the date of the decision; or
- (iv) if an appeal to the Court of Appeal against the decision is not started within the 28 days but within that time the patient elects, under chapter 7, part

8,<sup>142</sup> to be brought to trial for the offence—the end of the trial; or

- (c) for a decision of the Court of Appeal that will not result in the patient being brought to trial for the offence under the reference, the later of the following—
  - (i) the day that is 28 days after the date of the decision; or
  - (ii) if the patient elects, under chapter 7, part 8, to be brought to trial for the offence—the end of the trial.

## **525 Publication of reports of other proceedings**

- (1) A person must not publish a report of a proceeding of—
  - (a) the tribunal; or
  - (b) the Mental Health Court relating to an appeal against a decision of the tribunal; or
  - (c) the Mental Health Court relating to an inquiry by the court under chapter 11, part 9.<sup>143</sup>

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) However, a person does not commit an offence against subsection (1) if the person publishes the report with the leave of the tribunal or court.
- (3) The tribunal or court may grant leave to publish the report only if it is satisfied—
  - (a) publication of the report is in the public interest; and
  - (b) the report does not contain information that identifies, or is likely to identify—
    - (i) the person the subject of the proceeding; or

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142 Chapter 7 (Examinations, references and orders for persons charged with offences), part 8 (Right to trial retained)

143 Chapter 11 (Mental Health Court), part 9 (Inquiries into detention of patients in authorised mental health services)

- (ii) a person who appears as a witness before the tribunal or court in the proceeding; or
- (iii) a person mentioned or otherwise involved in the proceeding.

**526 Publication of information disclosing identity of parties to proceedings**

- (1) A person must not publish information that identifies, or is likely to lead to the identification of, a young person who is or has been a party to any proceeding under this Act in the tribunal, Mental Health Court or Court of Appeal.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) A person must not publish information that identifies, or is likely to lead to the identification of, a person other than a young person who is or has been a party to a proceeding mentioned in section 525(1).

Maximum penalty—200 penalty units or 2 years imprisonment.

**527 Publication of information disclosed under notification order**

A person must not publish information contained in a notice given under a notification order.

Maximum penalty—200 penalty units or 2 years imprisonment.

**528 Confidentiality of information—officials**

- (1) This section applies to a person who—
- (a) is or has been—
    - (i) an assisting psychiatrist; or
    - (ii) the registrar or another member of staff of the registry; or
    - (iii) a member of the tribunal; or

- (iv) the executive officer; or
  - (v) a member of the staff of the tribunal; or
  - (vi) another person providing services to the tribunal;  
and
  - (b) in that capacity acquired information about another person's affairs or has access to, or custody of, a document about another person's affairs.
- (2) The person must not disclose the information, or give access to the document, to anyone else.

Maximum penalty—50 penalty units.

- (3) However, the person may disclose the information or give access to the document to someone else—
- (a) to the extent necessary to perform the person's functions under or in relation to this Act; or
  - (b) to the extent necessary for the other person to perform that person's functions under or in relation to this Act;  
or
  - (c) if the disclosure or giving of access is otherwise required or permitted by law; or
  - (d) if the person to whom the information relates agrees to the disclosure or giving of access and the person is an adult when the agreement is given.

## **529 Confidentiality of information—allied persons and agents**

- (1) This section applies to a person who—
- (a) is or has been—
    - (i) a patient's allied person; or
    - (ii) an agent representing a party at the hearing of a proceeding; or
    - (iii) a person appointed by the tribunal to represent a person's views, wishes and interests at a tribunal hearing; or

- (iv) a person granted leave by the tribunal to attend a tribunal hearing to help a patient represent the patient's views, wishes and interests; and
  - (b) in that capacity acquired information about another person's affairs or has access to, or custody of, a document about another person's affairs.
- (2) The person must not disclose the information, or give access to the document, to anyone else.
- Maximum penalty—50 penalty units or 6 months imprisonment.
- (3) However, the person may disclose the information or give access to the document to someone else if—
- (a) the disclosure or giving of access is otherwise required or permitted by law; or
  - (b) the person to whom the information relates agrees to the disclosure or giving of access and the person is an adult when the agreement is given.

### **530 Disclosure of confidential information**

- (1) For a person (a *relevant person*) exercising a power under this Act—
- (a) a designated person under the *Health Services Act 1991*, part 7, may disclose information to the relevant person that is confidential information under that part; and
  - (b) the director or an officer, employee or agent of the department may disclose information to the relevant person that is subject to confidentiality under the *Private Health Facilities Act 1999*, section 147.
- (2) Subsection (1) does not apply to the preparation of an annual report under this Act.



- (3) When making a requirement under subsection (2)(f), the officer must warn the administrator of the health service or the other person it is an offence not to comply with the requirement, unless the person has a reasonable excuse.
- (4) A person required to give reasonable help under subsection (2)(f) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (5) If a person is required under subsection (2)(f) to give reasonable help by giving information or producing a document, it is a reasonable excuse if complying with the requirement might tend to incriminate the person.

### **533 Approved officer may require production of documents etc.**

- (1) For the proper and efficient administration of this Act, an approved officer may, by written notice, require the administrator of an authorised mental health service to—
  - (a) produce to the officer a stated document (including a medical record), or a copy of a stated document, about a patient receiving treatment in the service or another document relevant to the administration or enforcement of this Act; or
  - (b) provide stated information to the officer about—
    - (i) a patient who has been examined or assessed or is being examined or assessed in the health service; or
    - (ii) a patient who has received, or is receiving, treatment in the health service; or
    - (iii) another matter relevant to the administration or enforcement of this Act.
- (2) The notice must state the day (the *stated day*) on which the document, record or information is to be produced or provided.
- (3) The stated day must be a reasonable time after the notice is given.

- (4) The administrator must comply with the notice unless the administrator has a reasonable excuse.  
Maximum penalty—40 penalty units.
- (5) It is a reasonable excuse if complying with the notice might tend to incriminate the administrator.
- (6) If a document or medical record is produced to the officer, the officer—
  - (a) may inspect it and make copies of, or take extracts from, the document if it is relevant to the administration of this Act; and
  - (b) for an original document—must return it to the administrator within a reasonable time after it is produced.

## **Part 7**                      **Evidence and legal proceedings**

### **534**    **Evidentiary provisions**

- (1) This section applies to a proceeding under or in relation to this Act.
- (2) Unless a party, by reasonable notice, requires proof of—
  - (a) the appointment of the director, an authorised mental health practitioner, the administrator of, or an authorised doctor for, an authorised mental health service; or
  - (b) the authority of a person mentioned in paragraph (a) to do an act under this Act;the appointment or authority must be presumed.
- (3) A signature purporting to be the signature of the director, president of the tribunal or the administrator of, or authorised doctor for, an authorised mental health service, is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by the director stating any of the following matters is evidence of the matter—

- (a) a stated document is a copy of an order, notice, declaration, direction or decision made, issued or given under this Act;
  - (b) on a stated day, or during a stated period, a stated person was or was not an involuntary patient or stated type of involuntary patient;
  - (c) a stated place is, or was on a stated day or during a stated period, an authorised mental health service or high security unit;
  - (d) on a stated day, a stated person was given a stated order, notice, declaration, direction or decision under this Act;
  - (e) a stated document is a copy of a part of a register kept under this Act.
- (5) A document purporting to be certified by the executive officer of the tribunal and to be a copy of an order or decision of the tribunal, is evidence of the order or decision.

### **535 Proceedings for offences**

- (1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.
- (2) The proceeding must start—
  - (a) within 1 year after the commission of the offence; or
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### **536 Protection of officials from liability**

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—  
*official* means—

- (a) the director, an administrator of an authorised mental health service, health practitioner, ambulance officer, authorised officer or approved officer or an appointed person under section 429; or
- (b) a person acting under the direction of a person mentioned in paragraph (a).

## **Part 8                      General**

### **537      Compliance with particular provisions as soon as practicable**

- (1) This section applies if, under a provision of this Act—
  - (a) a person is required or permitted to—
    - (i) make, prepare or give a document to another person; or
    - (ii) talk to or tell another person about a matter; and
  - (b) no time is provided or allowed for complying with the provision.
- (2) The provision must be complied with as soon as practicable.

### **538      Compliance with provision to extent reasonably practicable**

- (1) This section applies if, under a provision of this Act, a person is authorised or required to give notice to or tell someone about a matter.
- (2) The person need only comply with the provision to the extent that is reasonably practicable in the circumstances.
- (3) Without limiting subsection (2), it is not reasonably practicable for the administrator of an authorised mental health service to comply with a provision relating to an allied person for a patient if, after reasonable enquiries, the administrator can not ascertain the allied person's whereabouts.

**539 Administrator taken to have complied with particular requirements**

- (1) This section applies if, under a provision of this Act—
  - (a) the administrator of an authorised mental health service is required to give notice to or tell an allied person for a patient about a matter; and
  - (b) the administrator purportedly complies with the requirement by giving a notice to or telling a person about the matter in the honest and reasonable belief the person is the patient’s allied person.
- (2) The administrator is taken to have complied with the requirement.
- (3) Anything done or omitted to be done under this Act in reliance on the administrator’s purported compliance with the requirement is taken to be as effective as it would have been had the administrator complied with the requirement.

## **Chapter 15 Miscellaneous provisions**

**540 Legal custody of particular patients**

- (1) The following patients are in the legal custody of the administrator of the patient’s treating health service—
  - (a) a classified patient;
  - (b) a forensic patient—
    - (i) the Mental Health Court has decided is unfit for trial but the unfitness for trial is not of a permanent nature; or
    - (ii) for whom a jury has made a section 613 or 645 finding; or

- (c) a patient for whom a court has made an order under section 101(2), 273(1)(b) or 337(6).<sup>144</sup>
- (2) Also, a person detained in an authorised mental health service under a court examination order is in the legal custody of the administrator of the health service.

#### **541 Taking patients to appear before court and return to treating health service**

- (1) This section applies if a patient who is detained in an authorised mental health service is required for any reason to appear before a court.
- (2) A health practitioner may take the patient to appear before the court.
- (3) Subject to any order the court may make, a health practitioner may take the patient back to the health service at the end of the proceedings.
- (4) For subsections (2) and (3), the health practitioner—
  - (a) may exercise the power with the help, and using the force, that is reasonable in the circumstances; and
  - (b) is a public official for the *Police Powers and Responsibilities Act 2000*.<sup>145</sup>

#### **542 Official to identify himself or herself before exercising powers**

- (1) Before exercising a power under this Act in relation to another person, an official must, to the extent that it is reasonable and practicable in the circumstances, identify himself or herself, and anyone else helping the official exercise the power, to the other person.
- (2) An official complies with subsection (1) if the official—

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144 Section 101 (Court may order person's detention in authorised mental health service), 273 (Orders about custody) or 337 (Appeal powers)

145 For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16 (Helping public officials exercise powers under other Acts).

- (a) first produces his or her identity card for the person's inspection; or
  - (b) has his or her identity card displayed so that it is clearly visible to the person.
- (3) Failure to comply with subsection (1) does not affect the validity of the exercise of the power.
- (4) In this section—
- official* means—
- (a) generally—a health practitioner or an ambulance officer who is not in uniform; or
  - (b) for chapter 10, part 3<sup>146</sup>—an authorised officer; or
  - (c) for chapter 14, part 6<sup>147</sup>—an approved officer.

### **543 Period counted as imprisonment**

- (1) The period a person is a classified or forensic patient or is detained in an authorised mental health service under a court examination order or court order under section 101(2), 273(1)(b) or 337(6),<sup>148</sup> for a particular offence, is—
- (a) for the *Penalties and Sentences Act 1992*<sup>149</sup>—taken to be imprisonment already served under the sentence for the offence; or
  - (b) for the *Corrective Services Act 2006* or *Juvenile Justice Act 1992*—counted as part of the person's period of imprisonment or detention for the offence.
- (2) However, subsection (1) does not apply to a period the person is granted bail for the offence.

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146 Chapter 10 (Security of authorised mental health services), part 3 (Searches)

147 Chapter 14 (Enforcement, evidence and legal proceedings), part 6 (Investigations)

148 Section 101 (Court may order person's detention in authorised mental health service), 273 (Orders about custody) or 337 (Appeal powers)

149 See the *Penalties and Sentences Act 1992*, section 159A (Time held in presentence custody to be deducted).

**544 When prescribed person or surety not liable**

- (1) This section applies if proceedings for an offence against a prescribed person are suspended under this Act.
- (2) The prescribed person or a surety of the prescribed person does not incur any liability merely because of the prescribed person's failure to appear before a court for the offence.
- (3) In this section—  
*prescribed person* means—
  - (a) a person mentioned in section 75; or
  - (b) a patient mentioned in section 243; or
  - (c) a person mentioned in section 259.

**545 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about any of the following matters—
  - (a) fees payable under this Act;
  - (b) the records to be kept and returns to be made by persons and the inspection of records.
- (3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

**546 References to repealed Act**

In an Act or document, a reference to the *Mental Health Act 1974* may, if the context permits, be taken to be a reference to this Act.

## Chapter 16      **Repeal and transitional provisions**

### Part 1              **Repeal of Mental Health Act 1974**

#### 547      **Act repealed**

The *Mental Health Act 1974* (1974 Act No. 2) is repealed.

### Part 2              **Transitional provisions**

#### Division 1          **Interpretation**

#### 548      **Definitions for pt 2**

In this part—

*commencement day* means the day this part commences.<sup>150</sup>

*repealed Act* means the *Mental Health Act 1974* as in force immediately before the commencement day.

#### 549      **References to patient's treating health service**

For applying a provision of this Act (the *applied provision*) to a patient to whom a provision of this part applies, a reference in the applied provision to the patient's treating health service is, if the context permits, a reference to the authorised mental health service in which the patient was detained, or liable to be detained, immediately before the commencement day.

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<sup>150</sup> Part 2 commenced 28 February 2002 (see 2002 SL No. 27).

## **Division 2                      Provisions about admission, detention and removal to places of safety under part 3 of repealed Act**

### **550      Application for admission and doctor's recommendation under s 18 of repealed Act**

- (1) This section applies if, immediately before the commencement day—
  - (a) an application for admission under section 18 of the repealed Act and a doctor's recommendation under the section supporting the application provided lawful authority for a patient's admission to a hospital; and
  - (b) the patient had not, under the section, been admitted to a hospital.
- (2) The application and recommendation are taken to be assessment documents for chapter 2 and continue in force until the day they would have ceased to provide lawful authority for the patient's admission to a hospital had the repealed Act not been repealed.

### **551      In-patients detained in hospital under certificate of doctor under s 19 of repealed Act**

- (1) This section applies if, immediately before the commencement day, a patient was lawfully detained in a hospital under section 19(2) of the repealed Act.
- (2) The patient may be detained in an authorised mental health service until the end of the time the patient could have been lawfully detained in a hospital had the repealed Act not been repealed.

### **552      Warrants to remove to place of safety under s 25 of repealed Act**

- (1) This section applies if, immediately before the commencement day, a warrant for the removal of a person to a place of safety under section 25 of the repealed Act had not been executed.

- (2) However, this section does not apply if—
  - (a) under section 25(2) of the repealed Act, the warrant had ceased to authorise the person's removal; or
  - (b) under section 25(3A) of the repealed Act, a doctor or designated authorised person informs a police officer of his or her opinion about a matter mentioned in the subsection.
- (3) The warrant has effect as if it were a justices examination order made for the person until the warrant would have ended under the repealed Act had the repealed Act not been repealed.

**553 Patients detained in hospital, under s 27 of repealed Act, following removal to place of safety**

- (1) This section applies if, immediately before the commencement day, a person was detained in a hospital under section 27 of the repealed Act.
- (2) Chapter 2, part 4, applies to the person as if assessment documents were made for the person and produced to a health service employee at an authorised mental health service.
- (3) However, the total period of the person's detention under section 27 of the repealed Act and this Act must not be more than 3 days.

**554 Patients detained under s 21 of repealed Act**

- (1) This section applies to a patient who, immediately before the commencement day, was detained in a hospital under section 21 of the repealed Act.
- (2) If the patient was detained—
  - (a) under section 21(1) or (2) of the repealed Act—the medical recommendation made under section 18(3) of the repealed Act for the patient is taken to be an involuntary treatment order made by an authorised doctor who is not a psychiatrist; or
  - (b) under section 21(3) of the repealed Act—the last report made under section 21(4) of the repealed Act for the

patient is taken to be an involuntary treatment order made by a psychiatrist.

- (3) However, if the report mentioned in subsection (2)(b) was made under section 21(7) of the repealed Act following an examination by a doctor who is not a psychiatrist, the order is taken to have been made by an authorised doctor who is not a psychiatrist.
- (4) An involuntary treatment order mentioned in subsection (2)(a) or (3) is taken to have been made on the commencement day.

## **Division 2A                    Provisions about involuntary treatment orders taken to have been made under this part**

### **555    Involuntary treatment orders must be made for particular patients**

- (1) This section applies to a patient for whom an involuntary treatment order (the *old order*) is taken to have been made under this part.
- (2) If, on the first regular assessment of the patient under section 116, the psychiatrist is satisfied the treatment criteria apply to the patient, the psychiatrist must make an involuntary treatment order for the patient (the *new order*).
- (3) For section 108, the assessment of the patient is taken to have been carried out under chapter 2, part 4.
- (4) Subsections (5) and (6) apply to the patient if the old order is taken, under this part, to have been made or confirmed by a psychiatrist.
- (5) For section 187(1)(a), a review is not required within 6 weeks after the new order is made but the periodic reviews mentioned in the paragraph must be carried out at intervals of not more than 6 months starting when the new order is made.<sup>151</sup>

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151 See section 571 (Timing of reviews by Mental Health Review Tribunal).

- (6) Section 113 does not apply to the making of the new order.
- (7) The old order is revoked on the making of the new order.

### **556 Category of involuntary treatment orders**

If, under a provision of this part, an involuntary treatment order is taken to have been made for a patient, the category of the order is in-patient.

## **Division 3 Provisions about particular patients detained under part 4 of repealed Act**

### **557 Persons detained under s 29(3) of repealed Act**

- (1) This section applies if, immediately before the commencement day, a person was detained, or liable to be detained, in a security patients' hospital, under section 29(3) of the repealed Act.
- (2) The person is taken to be a classified patient for whom a court assessment order has been made and may be detained in an authorised mental health service until the patient ceases to be a classified patient.
- (3) Sections 70 to 72 do not apply to the patient.
- (4) The administrator of the authorised mental health service in which the patient is detained, or liable to be detained, must ensure—
  - (a) a treatment plan is prepared for the patient; and
  - (b) a health practitioner talks to the patient about the patient's treatment under the treatment plan.

### **558 Persons detained under s 29(4)(b) of repealed Act**

- (1) This section applies if, immediately before the commencement day, a person was detained in a prison or security patients' hospital under a court order under section 29(4)(b) of the repealed Act.

- (2) The court order for the person's detention continues in force despite the repeal of the repealed Act until the Mental Health Court decides the reference of the person's mental condition.

**559 Persons detained under s 29A(2) or 29C of repealed Act are classified patients**

- (1) This section applies if, immediately before the commencement day, a person was detained, or liable to be detained, in a hospital, under a justices order under section 29A(2) or 29C of the repealed Act.
- (2) The person is taken to be a classified patient for whom a court assessment order has been made and may be detained in an authorised mental health service until the patient ceases to be a classified patient.
- (3) Sections 70 to 72 do not apply to the patient.
- (4) The justices order is taken to be an involuntary treatment order for the patient that—
  - (a) was made on the commencement day; and
  - (b) has effect as if it were made by a doctor who is not a psychiatrist.

**560 Persons detained under s 31 or 32 of repealed Act are classified patients**

- (1) This section applies if, immediately before the commencement day, a person was detained, or liable to be detained, in a hospital, under section 31 or 32 of the repealed Act.
- (2) The person is taken to be a classified patient for whom a custodian's assessment authority has been made and may be detained in an authorised mental health service until the patient ceases to be a classified patient.
- (3) Sections 70 to 72 do not apply to the patient.
- (4) The doctor's recommendation for the patient under section 31(2) of the repealed Act is taken to be an involuntary treatment order for the patient that has effect as if it were made by a doctor who is not a psychiatrist.

- (5) However, if, before the commencement day, a psychiatrist has given a certificate under section 31(3) of the repealed Act stating that the patient is suffering from mental illness and ought to be detained as mentioned in section 31(3)(a) and (b) of the repealed Act, the certificate is taken to be a confirmation of the involuntary treatment order.

**561 Persons found not to be in need of detention under s 31A of repealed Act**

- (1) This section applies if—
- (a) section 31A(1)(a), (b) or (c) of the repealed Act applied to a person; and
  - (b) immediately before the commencement day, the person had not, under the section, been brought before a court.
- (2) Section 31A of the repealed Act continues to apply to the person as if the repealed Act had not been repealed.

**562 Prisoners detained under s 43 of repealed Act are classified patients**

- (1) This section applies if, immediately before the commencement day, a person was detained, or liable to be detained, in a hospital, under section 43 of the repealed Act.
- (2) The person is taken to be a classified patient for whom a custodian's assessment authority has been made and may be detained in an authorised mental health service until the patient ceases to be a classified patient.
- (3) Sections 70 to 72 do not apply to the patient.
- (4) The doctor's recommendation for the patient under section 43(2) of the repealed Act is taken to be an involuntary treatment order for the patient that has effect as if it were made by a doctor who is not a psychiatrist.
- (5) However, if, before the commencement day, a psychiatrist had given a certificate under section 43(5) of the repealed Act that the matters mentioned in the section apply to the patient, the certificate is taken to be a confirmation of the involuntary treatment order.

- (6) If the patient was detained, or liable to be detained, in a security patients' hospital, following the expiration of the patient's period of imprisonment or detention, the patient may be detained in a high security unit as if the director had, under section 82, approved the patient's detention in a high security unit.

**563 Patients under 17 years detained in security patients' hospitals**

- (1) This section applies to a patient who—
- (a) immediately before the commencement day, was detained in a security patients' hospital under part 4 of the repealed Act; and
  - (b) at the beginning of the commencement day, is a young patient.
- (2) The patient may be detained in a high security unit.
- (3) For section 194, the patient's detention in a high security unit starts on the commencement day.

**564 Court orders under s 43E of repealed Act for custody of persons during adjournment**

- (1) This section applies if, immediately before the commencement day, a person was in custody in a security patient's hospital during an adjournment of proceedings under a court order under section 43E of the repealed Act.
- (2) The court order is taken to be a court order under chapter 3, part 7,<sup>152</sup> for the person's detention, during the adjournment, in an authorised mental health service.

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<sup>152</sup> Chapter 3 (Persons before a court or in custody requiring assessment or detention), part 7 (Detention in authorised mental health service during trial)

## **Division 4                      Provisions about transfer and leave of absence**

### **565      Detention of restricted patients transferred to security patients' hospital**

- (1) This section applies to a restricted patient who, immediately before the commencement day, was detained in a security patients' hospital under the order of the director under section 41 or 44 of the repealed Act.
- (2) The patient may be detained in a high security unit as if the patient had, under section 165, been transferred to a high security unit.
- (3) If the patient is a young patient, for section 194, the patient's detention in a high security unit starts on the commencement day.

### **566      Leave of absence for restricted patients under pt 4 of repealed Act**

- (1) An order of the Mental Health Tribunal under section 34A of the repealed Act granting a restricted patient leave of absence that was in force immediately before the commencement day is taken to be an order under section 289 for limited community treatment for the patient.
- (2) A finding of a Patient Review Tribunal under section 36 of the repealed Act that a restricted patient can be released on leave of absence that was in force immediately before the commencement day is taken to be an order under section 203(2)(a) for limited community treatment for the patient.
- (3) Subsection (4) applies if—
  - (a) under section 42 of the repealed Act, the director granted leave of absence to a restricted patient; and
  - (b) the leave of absence was in force immediately before the commencement day.
- (4) Limited community treatment for the patient is taken to have been authorised under section 129.
- (5) In this section—

*restricted patient* means a restricted patient under part 4 of the repealed Act.

### **567 Leave of absence for other patients**

- (1) This section applies if—
  - (a) under section 46 of the repealed Act, a patient was granted leave of absence; and
  - (b) the leave of absence was in force immediately before the commencement day.
- (2) Limited community treatment for the patient is taken to have been authorised under section 129.
- (3) The conditions of the leave of absence are taken to be conditions of the patient's treatment plan.
- (4) The authorisation ends on the earlier of the following—
  - (a) the day the leave of absence would have ended had the repealed Act not been repealed;
  - (b) 7 days after the commencement day.

### **568 Return of patients absent without leave**

- (1) This section applies if—
  - (a) before the commencement day—
    - (i) a patient was liable, under section 47 of the repealed Act, to be taken into custody and returned or admitted to a hospital; or
    - (ii) the director, under the *Mental Health Regulation 1985*, section 26, revoked leave of absence granted under part 4 of the regulation to a patient; and
  - (b) at the beginning of the commencement day, the patient had not been returned or been admitted to an authorised mental health service.
- (2) A health practitioner or police officer may take the patient to the in-patient facility of an authorised mental health service.
- (3) For subsection (2), the health practitioner—

- (a) may exercise the power with the help, and using the force, that is reasonable in the circumstances;<sup>153</sup> and
- (b) is a public official for the *Police Powers and Responsibilities Act 2000*.<sup>154</sup>
- (4) If asked by a health practitioner, a police officer must, as soon as reasonably practicable, ensure reasonable help is given.
- (5) For giving the help, a police officer is taken to have responded to a request by a public official under the *Police Powers and Responsibilities Act 2000*, section 16(3).
- (6) Also, if the patient is a classified or forensic patient, a police officer may detain the patient.<sup>155</sup>
- (7) Despite the absence or refusal of the patient's consent, medication may be administered to the patient while being taken to the authorised mental health service.
- (8) Section 509(2) to (6) applies to the administration of the medication.

## **Division 5                      Reviews by Patient Review Tribunal**

### **569      Reviews by Patient Review Tribunal under ss 15 and 21 of repealed Act**

- (1) If, immediately before the commencement day, a Patient Review Tribunal had not decided an application under section 15(5) or 21(6A) of the repealed Act for a patient, the application is taken to be an application for a review for the patient.

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153 For use of force by police officers, see the *Police Powers and Responsibilities Act 2000*, section 615 (Power to use force against individuals).

154 For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16 (Helping public officials exercise powers under other Acts).

155 A police officer has entry and search powers under the *Police Powers and Responsibilities Act 2000*, section 21 (General power to enter to arrest or detain someone or enforce warrant).

- (2) However, for section 187(4) of this Act the application is taken to be an application to which section 187(4)(a) does not apply.
- (3) If, immediately before the commencement day, an order of a Patient Review Tribunal under section 15(6) of the repealed Act for a patient had not been given effect, the order is taken to be—
  - (a) if the order was for the patient's discharge—a decision under section 191(1) revoking the involuntary treatment order for the patient; or
  - (b) if the order was for the patient's leave of absence or transfer—a decision under section 191(2)(b)(i) or (2)(c) ordering limited community treatment for the patient or the patient's transfer.
- (4) However, section 192 does not apply to the decision.

**570    Reviews by Patient Review Tribunal under s 36 of repealed Act**

- (1) If, immediately before the commencement day, a finding or an order of a Patient Review Tribunal under section 36 of the repealed Act for a patient had not been given effect, the finding or order is taken to be—
  - (a) for a finding that the patient can be released, other than on leave of absence—a decision under section 203(1) revoking the forensic order for the patient; or
  - (b) for an order that the patient be transferred—an order under section 203(2)(d) for the patient.
- (2) However, section 205 does not apply to the decision.

**571    Timing of reviews by Mental Health Review Tribunal**

- (1) This section applies to—
  - (a) a patient for whom an involuntary treatment order is taken to have been made under this part; or
  - (b) a patient who, at the beginning of the commencement day, is a forensic patient.

- (2) If, under the repealed Act, a Patient Review Tribunal has carried out a review for a patient within 6 months before the commencement day, the first review under this Act for the patient must be carried out within 6 months after the last review under the repealed Act.
- (3) If, under the repealed Act, a Patient Review Tribunal has not carried out a review for a patient within 6 months before the commencement day, the first review under this Act for the patient must be carried out within a reasonable time, but not more than 3 months, after the commencement day.
- (4) This section has effect despite sections 187 and 200.

**572    Reviews of mental condition of persons to decide fitness for trial**

- (1) This section applies if—
  - (a) under section 34(1) or (4) of the repealed Act, a Patient Review Tribunal has found a person to be not fit for trial; and
  - (b) immediately before the commencement day, proceedings against the person have not been discontinued.
- (2) The finding is taken to be a review decision of the Mental Health Review Tribunal under—
  - (a) section 212(1)—for a finding under section 34(1)(b) of the repealed Act; or
  - (b) section 212(2)—for a finding under section 34(1)(c) or (4) of the repealed Act.
- (3) For section 209(1), reviews by a Patient Review Tribunal of the mental condition of the person in relation to the person's fitness for trial are taken to be reviews by the Mental Health Review Tribunal of the person's mental condition.
- (4) If the Governor in Council has, under section 34(3)(b) of the repealed Act, deferred the question mentioned in the section, the deferral is taken to be a deferral and order under section 214(2)(b).
- (5) Section 213 does not apply to the review decision.

- (6) For section 214, the Attorney-General is taken to have received notice of the review decision on the commencement day.

**572A Continuing proceedings for persons found fit for trial on review**

- (1) This section applies if—
- (a) under section 34(1) or (4) of the repealed Act, a Patient Review Tribunal has found a person to be fit for trial; and
  - (b) immediately before the commencement day, an order that proceedings against the person be continued has not been made.
- (2) The finding is taken to be a decision of the Mental Health Review Tribunal made under section 212(1) on the commencement day.
- (3) However, sections 213 and 218(1)(a) do not apply to the decision.

**573 When proceedings discontinued for particular persons to whom s 34 of repealed Act applied**

- (1) This section applies if—
- (a) under section 33 of the repealed Act, a person has been found to be not fit for trial; and
  - (b) immediately before the commencement day, proceedings for the offence have not been discontinued and, under section 34 of the repealed Act—
    - (i) the Attorney-General had not received a report from a Patient Review Tribunal reporting that the patient is fit for trial; or
    - (ii) the Attorney-General or Governor in Council had not ordered that proceedings be continued against the patient.
- (2) This section also applies if, under section 33 of the repealed Act, a person is found to be not fit for trial on or after the commencement day.

- (3) Despite section 215(2), the prescribed period for section 215(1) for the person is 3 years.

**574 Reviews of mental condition of persons following section 613 or 645 finding**

- (1) This section applies if, before the commencement day—
- (a) a jury has, on the trial of a person charged with an indictable offence, made a section 613 or 645 finding; and
  - (b) no order about the person has been made under section 38(8)(a) or (b) of the repealed Act for the offence; and
  - (c) proceedings against the person for the offence have not been discontinued under section 38(10) of the repealed Act.
- (2) The Governor in Council's deferral of a determination for the patient, under section 38(8)(c) of the repealed Act, is taken to be a deferral, and an order that reviews under this Act be carried out for the patient, under section 213(2)(b).
- (3) For subsection (2) and section 209(1)(b), the intervals for the periodic reviews to be carried out for the patient start from the date of the last review under the repealed Act.

**575 Trial of persons following section 613 or 645 finding**

- (1) This section applies if, before the commencement day—
- (a) a jury has, on the trial of a person charged with an indictable offence, made a section 613 or 645 finding; and
  - (b) the trial of the person ordered under section 38(8)(b) of the repealed Act has not started.
- (2) Section 38(13) and (14) of the repealed Act apply as if the repealed Act had not been repealed.

**576 When proceedings discontinued for particular persons to whom s 38 of repealed Act applied**

- (1) This section applies if—

- (a) on the trial of a person charged with an indictable offence, a jury has made a section 613 or 645 finding; and
  - (b) immediately before the commencement day, proceedings for the offence had not been discontinued and under section 38 of the repealed Act—
    - (i) the Attorney-General had not received a report from a Patient Review Tribunal recommending that the patient should be tried for the offence; or
    - (ii) the Governor in Council had not ordered that the patient be tried for the offence.
- (2) Despite section 215(2), the prescribed period for section 215(1) for the person is 3 years.

## **Division 6                      Examinations, references and orders for persons charged with offences**

### **577      Application of ch 7 to particular patients detained under pt 4 of repealed Act**

- (1) This section applies to—
  - (a) a patient who, under section 559 or 560 is taken to be a classified patient; or
  - (b) a patient who was being treated as a restricted patient, under section 29A(6A) or 29B of the repealed Act, immediately before the commencement day.
- (2) Chapter 7 applies to the patient to the extent the chapter is relevant to the patient.
- (3) For subsection (2), chapter 7 applies with all necessary changes.
- (4) However, anything done or made under a provision of the repealed Act that corresponds to a provision of chapter 7 is taken to have been done or made under the chapter.
- (5) If the Attorney-General has, under section 29A(9)(c) of the repealed Act, deferred a determination for the patient and,

immediately before the commencement day, a Patient Review Tribunal had not reported to the Attorney-General under section 29A(10A) of the repealed Act, the deferral is taken to be a deferral by the director under section 241(1).

- (6) Despite section 241(1), the period of deferral ends 2 months after the commencement day.
- (7) Section 241(2) does not apply to the deferral.
- (8) If a Patient Review Tribunal has reported to the Attorney-General under section 29A(10B) of the repealed Act about the patient and, before the commencement day, the Attorney-General has not directed that the hearing of the complaint proceed—
  - (a) the matter of the patient's mental condition is taken to have been referred to the Attorney-General under section 240; and
  - (b) the Attorney-General must make a decision under section 247(1)(a), (b) or (c).
- (9) The Attorney-General's decision must be made before the day that is 3 months after the deferment of a determination under section 29A(9)(c) of the repealed Act for the patient.

## **578 References of mental condition of persons not started**

- (1) This section applies if, before the commencement day, the Mental Health Tribunal has not taken oral evidence on a reference of the matter of a person's mental condition under the repealed Act.
- (2) The reference of the matter of the person's mental condition is taken to be a reference to the Mental Health Court under—
  - (a) section 62 if the matter was referred under section 29 of the repealed Act; or
  - (b) section 240 if the matter was referred under section 30 of the repealed Act; or
  - (c) section 257 if the matter was referred under section 28D or 31(8) of the repealed Act.
- (3) Despite section 264 or 266, the registrar is not required to give a notice to a person under the section if, before the

commencement day, a notice about the reference or hearing of the reference was given to the person under the repealed Act.

- (4) However, if a notice about the reference or hearing of the reference was not given to a person under the repealed Act, the registrar must, as soon as practicable after the commencement day, give the person the notice required under section 264 or 266.

### **579 References of mental condition of persons being heard**

- (1) This section applies if the Mental Health Tribunal has, on the hearing of a proceeding for a reference of the matter of a person's mental condition under the repealed Act, taken oral evidence but, immediately before the commencement day, had not decided the reference.
- (2) The Mental Health Tribunal must decide the reference under the repealed Act.
- (3) For the reference, the repealed Act continues to have effect despite its repeal.
- (4) For this Act, a determination or order—
  - (a) under section 33 of the repealed Act is taken to be a decision or order of the Mental Health Court; and
  - (b) under section 33A or 34(1)(a) of the repealed Act for a patient is taken to be a forensic order (Mental Health Court) for the patient's treatment or care in an authorised mental health service; and
  - (c) under section 33(4)(b) of the repealed Act for a patient is taken to be an order under section 273(1)(b) for the patient's detention in an authorised mental health service.

### **580 Determinations and orders on references to Mental Health Tribunal**

- (1) A determination or order under section 33 of the repealed Act that was in force immediately before the commencement day is taken to be a decision or order of the Mental Health Court.

- (2) An order under section 33A or 34(1)(a) of the repealed Act for a patient that was in force immediately before the commencement day is taken to be a forensic order (Mental Health Court) for the patient's treatment or care in an authorised mental health service.
- (3) A determination under section 33(1) of the repealed Act for a patient who, immediately before the commencement day, was liable, under section 35 of the repealed Act, to be detained in a hospital as a restricted patient under part 4 of the repealed Act, is taken to be a forensic order (Mental Health Court) for the patient's treatment or care in an authorised mental health service.
- (4) An order under section 33(4)(b) of the repealed Act for a patient that was in force immediately before the commencement day is taken to be an order under section 273(1)(b) for the patient's detention in an authorised mental health service.

### **581 Orders by Minister under ss 38 and 39 of repealed Act**

An order of the Minister under section 38(1) or 39(1) of the repealed Act that was in force immediately before the commencement day is taken to be a forensic order (Minister).

### **582 Elections under s 43C of repealed Act to go to trial**

- (1) This section applies if, immediately before the commencement day, a person had not been brought to trial for an offence following lodgment of a notice under section 43C of the repealed Act.
- (2) The notice is taken—
  - (a) to be a notice under section 311 of the person's election to be brought to trial for the offence; and
  - (b) to have been given to the Attorney-General on the commencement day.

## **Division 7                      Appeals and inquiries**

### **583      Appeals against Patient Review Tribunal decisions**

- (1) An application under section 15(9) or (10) or 37 of the repealed Act that has not been decided before the commencement day may be continued under chapter 8, part 1,<sup>156</sup> as if it were an appeal against a review decision.
- (2) Subsection (3) applies if the Mental Health Tribunal has, on the hearing of a proceeding for the application, taken oral evidence or an oral submission on a material matter but, before the commencement day, has not decided the appeal.
- (3) For deciding the application—
  - (a) the judge constituting the tribunal is the constituting judge of the Mental Health Court; and
  - (b) the psychiatrists appointed under the repealed Act to assist the tribunal for the application are taken to be the assisting psychiatrists for the application.
- (4) For chapter 8, part 1, a decision of a Patient Review Tribunal is taken to be a review decision.

### **584      Appeals against Mental Health Tribunal decisions**

- (1) An appeal against a decision of the Mental Health Tribunal may be started or continued under the repealed Act.
- (2) For the appeal, the repealed Act continues to have effect as if it had not been repealed.
- (3) The registrar of the Court of Appeal must give written notice of the court's decision on the appeal to the registrar of the Mental Health Court.
- (4) Subsection (5) applies if, on the appeal, the Court of Appeal makes an order under section 33A or 34(1)(a) of the repealed Act that a person be detained in a hospital as a restricted patient under part 4 of the repealed Act.

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<sup>156</sup> Chapter 8 (Appeals), part 1 (Appeals against tribunal decisions)

- (5) The order is taken, other than for chapter 8, part 2,<sup>157</sup> to be a forensic order (Mental Health Court) for the patient's treatment or care in an authorised mental health service.

### **585 Inquiries under s 70 of repealed Act**

- (1) This section applies if, before the commencement day—
- (a) an application was made for an inquiry under section 70 of the repealed Act; or
  - (b) the Mental Health Tribunal had started but not completed an inquiry under the section.
- (2) The repealed Act continues to apply to the application or inquiry as if it had not been repealed.
- (3) However, section 70(3) of the repealed Act has effect as if paragraph (a) were omitted and the following paragraph substituted—
- ‘(a) is not suffering from mental illness to the extent that the treatment criteria under the *Mental Health Act 2000* apply to the person; or’.

## **Division 8 Miscellaneous provisions**

### **586 Director of Mental Health**

The person who, immediately before the commencement day, held the office of Director of Mental Health under the repealed Act, becomes the director on the commencement day.

### **587 Committees continued under repealed Act**

- (1) This section applies to a committee continued in force under section 82 of the repealed Act.

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<sup>157</sup> Chapter 8 (Appeals), part 2 (Appeals against Mental Health Court decisions on references)

- (2) Despite the repeal of the repealed Act, the committee continues in force for 1 year after the commencement of section 82 of the repealed Act.
- (3) For subsection (2), the *Mental Health Act 1974*, schedule 5, as in force immediately before the repeal of the schedule, applies in relation to the committee as if the schedule had not been repealed.

**588 Mental Health Court or tribunal may make orders about transition from repealed Act to this Act**

- (1) If this part makes no or insufficient provision for the transition of a matter before the Mental Health Court or the Mental Health Review Tribunal to the administration of this Act, the court or tribunal may make the order it considers appropriate.
- (2) The order may be made—
  - (a) on application of the director or a party to a proceeding before the court or tribunal; or
  - (b) on the initiative of the court or tribunal.

## Schedule 2      Dictionary

### section 10

***administrator***, of an authorised mental health service or a high security unit part of an authorised mental health service, means the person declared, under section 497, to be the administrator for the health service or unit.

***adult guardian*** means the Adult Guardian appointed under the *Guardianship and Administration Act 2000*.

***agreement for assessment*** see section 49(b).

***allied person***, for an involuntary patient, means the person chosen under chapter 9, part 1, to be the patient's allied person for this Act.

***ambulance officer*** means an ambulance officer appointed under the *Ambulance Service Act 1991*, section 13.

***application documents***, for a justices examination order, means the application for the order and any document filed or given with the application.

***appointed person***, for chapter 11, part 9, see section 429.

***appropriately qualified***, for a person to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

a person's classification level in the public service

***approved form*** means a form approved under section 421, 481 or 493.

***approved officer*** means a person appointed as an approved officer under section 500, and includes the director.

***assessment***, of a person, means an assessment of the person under—

- (a) chapter 2, part 4; or
- (b) chapter 3, part 4; or

## Schedule 2 (continued)

(c) section 116.

**assessment criteria** see section 13.

**assessment documents** for—

(a) chapter 2—see section 16; or

(b) chapter 3—see section 49.

**assessment period** means—

(a) initially, a period of not longer than 24 hours; or

(b) if that period is extended or further extended under section 47, the extended period.

**assisting psychiatrist** see section 390.

**associate** for—

(a) chapter 6, part 5A—see section 228B(1)(b); or

(b) chapter 7, part 8A—see section 313B(1)(b).

**attendance notice** see section 466.

**audiovisual link facilities** means facilities, including closed-circuit television, that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places.

**authorised doctor**, for an authorised mental health service, means a doctor who, under section 504, is or holds appointment as an authorised doctor for the health service.

**authorised mental health practitioner** means a health practitioner appointed as an authorised mental health practitioner under section 499.

**authorised mental health service**—

(a) generally—means a mental health service declared under section 495 to be an authorised mental health service; or

(b) for chapter 2—see section 15.

**authorised officer**, for a high security unit, means—

## Schedule 2 (continued)

- (a) a health practitioner providing mental health services at the unit; or
- (b) a security officer for the unit.

**authorised person** for—

- (a) chapter 10—see section 348;
- (b) chapter 14, part 2—see section 510.

**authorised psychiatrist** means a psychiatrist who is an authorised doctor for an authorised mental health service.

**brief of evidence** means—

- (a) a brief of evidence compiled by the commissioner of the police service or director of public prosecutions that includes any of the following—
  - (i) an indictment or bench charge sheets;
  - (ii) summaries or particulars of allegations;
  - (iii) witness statements;
  - (iv) exhibits;
  - (v) transcripts of proceedings;
  - (vi) a record of interview or transcript of a record of interview;
  - (vii) a person's criminal history; or
- (b) an expert's report or medical record.

**capacity**, for a person, means the person is capable of—

- (a) understanding the nature and effect of decisions about the person's assessment, treatment or choosing of an allied person; and
- (b) freely and voluntarily making decisions about the person's assessment, treatment or choosing of an allied person; and
- (c) communicating the decisions in some way.

**care** includes the provision of rehabilitation, support and other services.

## Schedule 2 (continued)

**carer**, of a patient, means a person who—

- (a) provides domestic services and support to the patient; or
- (b) arranges for the patient to be provided with domestic services and support.

**category**, of an involuntary treatment order, means in-patient category or community category decided under section 109.

**charge**, for an indictable offence, includes committed for trial or sentence for the offence.

**chief executive for justice** means the chief executive of the department in which the Criminal Code is administered.

**chief executive for young people** means the chief executive of the department for whom a representative may, under the *Childrens Court Act 1992*, section 20, be present at a proceeding before the Childrens Court in relation to a child.

**child** see *Juvenile Justice Act 1992*, schedule 4.<sup>158</sup>

**classified patient** means a person who, under section 69, is a classified patient.

**close friend**, of a person, means a person with whom the first person has a close relationship.

**complaint** includes information and charge.

**concerned person**—

- (a) for chapter 7, part 6, divisions 6 and 7—see section 284(1); or
- (b) for chapter 12, part 6—see section 464(1).

**confidentiality order**, for—

- (a) the Mental Health Court—see section 426(1); or
- (b) the tribunal—see section 458.

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158 *Juvenile Justice Act 1992*, schedule 4—

**child** means—

- (a) a person who has not turned 17 years; or
- (b) after a day fixed under section 6—a person who has not turned 18 years.

## Schedule 2 (continued)

**constituting judge**, of the Mental Health Court, means the Supreme Court judge constituting the court.

**contact** a person, for chapter 6, part 5A or chapter 7, part 8A, means—

- (a) intentionally initiate contact with the person in any way, including for example, by phone, mail, fax, email or other technology; or
- (b) intentionally follow, loiter near, watch or approach the person; or
- (c) intentionally loiter near, watch, approach or enter a place where the person lives, works or visits.

**correctional officer** means a corrective services officer under the *Corrective Services Act 2006*.

**corresponding law** means a law of another State that is declared under a regulation to be a corresponding law for this Act.

**court** includes justices conducting committal proceedings.

**court assessment order** see section 58.

**court examination order** see section 422(1).

**court rule** means a rule made under section 419.

**criminal history**, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986* and—

- (a) despite sections 6, 8 and 9 of that Act, includes a conviction of the person to which any of the sections applies; and
- (b) despite section 5 of that Act, includes a charge made against the person for an offence.

**custodian**, for a person in lawful custody, means the person having the custody of the person.

**custodian's assessment authority** see section 65(1).

**custody order** see section 299(b)(ii).

## Schedule 2 (continued)

***detention centre*** means a detention centre established under the *Juvenile Justice Act 1992*.

***detention centre officer*** means a person authorised under the *Juvenile Justice Act 1992*, section 264, to exercise powers of a detention centre officer under this Act.

***diminished responsibility*** means the state of abnormality of mind described in the Criminal Code, section 304A.<sup>159</sup>

***director*** means the Director of Mental Health appointed under this Act.

***director of public prosecutions*** means the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1984*.

***direct victim***, of an alleged offence, means a person against whom the alleged offence was allegedly committed.

***electroconvulsive therapy*** means the application of electric current to specific areas of the head to produce a generalised seizure that is modified by general anaesthesia and the administration of a muscle relaxing agent.

***emergency examination order*** means—

- (a) an emergency examination order (police or ambulance officer); or
- (b) an emergency examination order (psychiatrist).

***emergency examination order (police or ambulance officer)*** see section 35(1).

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159 The state of mind is described in the Criminal Code, section 304A(1)—

- (1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, is at the time of doing the act or making the omission which causes death in such a state of abnormality of mind (whether arising from a condition of arrested or retarded development of mind or inherent causes or induced by disease or injury) as substantially to impair the person's capacity to understand what the person is doing, or the person's capacity to control the person's actions, or the person's capacity to know that the person ought not to do the act or make the omission, the person is guilty of manslaughter only.

## Schedule 2 (continued)

**emergency examination order (psychiatrist)** see section 38(1).

**entry**, of a person to a high security unit, includes re-entry to the unit.

**examination order** means a justices or emergency examination order.

**examination time** see sections 36(1) and 40(1).

**examining practitioner** see section 422(1).

**executive officer** means the executive officer of the tribunal.

**expert's report**, for chapter 7, part 9, see section 314.

**fit for trial**, for a person, means fit to plead at the person's trial and to instruct counsel and endure the person's trial, with serious adverse consequences to the person's mental condition unlikely.

**force**, for taking a person to an authorised mental health service, includes the use of physical restraint.

**forensic order** means—

- (a) a forensic order (Criminal Code); or
- (b) a forensic order (Mental Health Court); or
- (c) a forensic order (Minister).

**forensic order (Criminal Code)** see section 299(b)(i).

**forensic order (Mental Health Court)** see section 288(2) and (4).

**forensic order (Minister)** see section 302(2).

**forensic patient** means a person who is, or is liable to be, detained in an authorised mental health service under a forensic order.

**guardian** means a person who is recognised in law as having all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.

**harmful thing** means anything—

**Schedule 2 (continued)**

- (a) that may be used to—
  - (i) threaten the security or good order of an authorised mental health service; or
  - (ii) threaten a person's health or safety; or
- (b) that, if used by a patient in an authorised mental health service, is likely to adversely affect the patient's treatment.

*Examples of harmful things—*

- 1 a gun or replica of a gun
- 2 a dangerous drug
- 3 alcohol
- 4 medication

***health practitioner*** means—

- (a) a doctor, registered nurse, occupational therapist or psychologist or a social worker engaged in providing health services; or
- (b) a person appointed under section 505A(1).

***health service*** means a service for maintaining, improving and restoring people's health and wellbeing, and includes a community health facility.

***health service employee***, for an authorised mental health service, means—

- (a) a health practitioner employed at the health service; or
- (b) a person employed at the health service to perform administrative functions relating to the assessment or treatment of persons who have mental illnesses.

***hearing***, means—

- (a) for the tribunal—
  - (i) the hearing for a review, treatment application or application for a notification order; or
  - (ii) the hearing of an application for approval for a patient to move out of Queensland; or

## Schedule 2 (continued)

- (ii) the hearing of an appeal against a decision to exclude a visitor from an authorised mental health service; or
- (b) for the Mental Health Court—
  - (i) the hearing of an appeal against a review decision or a treatment application; or
  - (ii) the hearing of a reference or withdrawal of a reference.

***high security unit*** means a public sector mental health service, or part of a public sector mental health service, declared under section 496 to be a high security unit.

***immediate family member***, of a direct victim of an alleged offence, means the direct victim's spouse, child, step-child, parent, step-parent, brother, sister, stepbrother, stepsister, grandparent, guardian or personal guardian.

***informed consent*** means consent under chapter 4, part 3, division 1.

***inspect***, a thing, includes open the thing and examine its contents.

***interested person***, for a non-contact order, means any of the following persons named in the order—

- (a) a person in whose favour the order is made;
- (b) the person against whom the order is made.

***interstate agreement*** means an agreement under section 176.

***interstate authority***, for an interstate mental health service, means a person performing a similar or corresponding function to the administrator of an authorised mental health service.

***interstate mental health service*** means a health service in which a person in a participating State may be detained under a corresponding law of that State.

***interstate order***, means an order under a corresponding law of another State that is declared under a regulation to be an interstate order for this Act.

## Schedule 2 (continued)

***involuntary patient*** means a person—

- (a) who is, or is liable to be, detained, under chapter 2, part 4, in an authorised mental health service for assessment; or
- (b) for whom an involuntary treatment order is in force; or
- (c) who is a classified or forensic patient.

***involuntary treatment order*** see section 108(1).

***justice of the peace*** means a justice of the peace (magistrates court) or a justice of the peace (qualified) under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

***justices examination order*** see section 27(1).

***less restrictive***, for assessment or treatment of an involuntary patient, means assessment or treatment of the level that—

- (a) maximises the opportunity for positive outcomes; and
- (b) ensures the protection of the patient and the community; and
- (c) having regard to paragraphs (a) and (b), imposes the minimum limits on the freedom of the patient.

***limited community treatment***, for a patient, means undertaking some treatment or rehabilitation in the community other than under the community category of an involuntary treatment order.

***mechanical restraint***, for chapter 4, part 3, division 3, see section 141.

***member*** means a member of the tribunal, and includes the president.

***Mental Health Court*** means the Mental Health Court established under section 381(1).

***mental illness*** see section 12.

***non-contact order*** means an order in force under chapter 6, part 5A or chapter 7, part 8A, and includes an order of a Magistrates Court varying a non-contact order.

## Schedule 2 (continued)

**notification order** see section 221(1).

**obstruct** includes hinder, resist and attempt to obstruct.

**occupational therapist** means a person registered under the *Occupational Therapists Registration Act 2001*.

**occupier**, of place, includes the person apparently in charge of the place.

**offence** for—

- (a) chapter 3, part 2, division 2—see section 60; or
- (b) chapter 7—see section 235.

**parole** means parole under the *Corrective Services Act 2006*, chapter 5, part 1,<sup>160</sup> and for a child includes release under a supervised release order under the *Juvenile Justice Act 1992*, section 228.

**participating State** means a State—

- (a) in which a corresponding law is in force; and
- (b) with which an interstate agreement is in force.

**party** means—

- (a) for an appeal to the tribunal against a decision of the administrator of an authorised mental health service under chapter 10, part 4<sup>161</sup> to refuse to allow a person to visit a patient in the health service—the appellant or the administrator of the health service; or
- (b) for another proceeding in the tribunal—a person who, under chapter 12, part 4, has a right to appear in person at the hearing of the proceeding, regardless of whether the person appears or is represented at the hearing; or
- (c) for a proceeding in the Mental Health Court on an appeal against a review decision, a decision on a treatment application or a decision on an application

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<sup>160</sup> *Corrective Services Act 2006*, chapter 5 (Parole), part 1 (Parole orders)

<sup>161</sup> Chapter 10 (Security of authorised mental health services), part 4 (Exclusion of visitors)

**Schedule 2 (continued)**

under chapter 5, part 1, division 3, for approval that a patient move out of Queensland—

- (i) a party to the proceeding in the tribunal for the review or application; or
  - (ii) the director, if the director is the appellant or elects to become a party to the proceeding; or
- (d) for a proceeding in the Mental Health Court on a reference—
- (i) the person the subject of the reference; or
  - (ii) the director; or
  - (iii) director of public prosecutions; or
- (e) for a proceeding in the Mental Health Court on an application to withdraw a reference—the parties to the proceeding for the reference; or
- (f) for a proceeding in the Mental Health Court on an application to inquire into a patient’s detention in an authorised mental health service—
- (i) the patient; or
  - (ii) the applicant; or
  - (iii) the director.

***patient***—

- (a) for chapter 8, part 1—see section 318A; or
- (b) for chapter 10, part 3—see section 351; or
- (c) for chapter 14, part 2—see section 510; or
- (d) for chapter 14, part 6—see section 531; or
- (e) elsewhere—means—
  - (i) an involuntary patient; or
  - (ii) a person detained or liable to be detained in an authorised mental health service under a court

## Schedule 2 (continued)

order under section 101(2), 273(1)(b) or 337(6).<sup>162</sup>

***personal attorney*** means an attorney for a personal matter under the *Powers of Attorney Act 1998*.

***personal guardian*** means a guardian for a personal matter under the *Guardianship and Administration Act 2000*.

***personal offence*** means an indictable offence committed, or alleged to have been committed, against the person of someone.

***person in lawful custody*** means—

- (a) a person who is held in lawful custody, or lawfully detained, without charge under an Act of the State or the Commonwealth prescribed under a regulation for section 64(3); or
- (b) a person who is detained in lawful custody on a charge of an offence or awaiting sentence on conviction of an offence; or
- (c) a person who is serving a sentence of imprisonment or period of detention under a court order and is not released on parole.

***place*** includes the following—

- (a) vacant land;
- (b) premises;
- (c) a vehicle;
- (d) a boat;
- (e) an aircraft.

***postal article*** includes a postal article carried by a courier service.

***premises*** includes the following—

- (a) a building or structure of any kind;

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<sup>162</sup> Section 101 (Court may order person's detention in authorised mental health service), 273 (Orders about custody) or 337 (Appeal powers)

## Schedule 2 (continued)

- (b) part of a building or structure of any kind;
- (c) the land on which a building or structure is situated.

**president** means the president of the tribunal.

**presiding member**, for a tribunal hearing, means the tribunal member who, under section 449 is the presiding member of the tribunal for the hearing.

**proceeding** means—

- (a) for a provision relating to the Mental Health Court—a proceeding in the court; or
- (b) for a provision relating to the Patient Review Tribunal—a proceeding in the tribunal.

**psychiatrist** means a person registered under the *Medical Practitioners Registration Act 2001* as a specialist registrant in the specialty of psychiatry.

**psychologist** means a person registered under the *Psychologists Registration Act 2001*.

**psychosurgery** means a neurosurgical procedure to diagnose or treat a mental illness, but does not include a surgical procedure for treating epilepsy, Parkinson's disease or another neurological disorder.

**public place** means any place the public is entitled to use or is open to, or used by, the public (whether or not on payment of an admission fee).

**public sector health service** see *Health Services Act 1991*, section 2.<sup>163</sup>

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163 *Health Services Act 1991*, section 2—

**public sector health service** means a health service provided by the State, and includes a health service declared under a regulation to be a public sector health service, but does not include a health service declared under a regulation not to be a public sector health service.

## Schedule 2 (continued)

**public sector hospital** see *Health Services Act 1991*, section 2.<sup>164</sup>

**public sector mental health service** means an authorised mental health service that is a public sector health service.

**publish** means publish to the public by way of television, newspaper, radio, the Internet or other form of communication.

**reasonably believes** means believes on grounds that are reasonable in the circumstances.

**reasonably satisfied** means satisfied on grounds that are reasonable in the circumstances.

**reasonably suspects** means suspects on grounds that are reasonable in the circumstances.

**recommendation for assessment** for—

- (a) chapter 2—see section 16(b); or
- (b) chapter 3—see section 49(a).

**reference** means a reference, under section 62, 240, 247 or 257, to the Mental Health Court of a person's mental condition relating to an offence.

**registered nurse** means a registered nurse under the *Nursing Act 1992*.

**registrar** means the registrar of the Mental Health Court.

**registry** means the Mental Health Court Registry.

**relative**, of a person, means—

- (a) the person's spouse; or
- (b) a child, grandchild, parent, brother, sister, grandparent, aunt or uncle (whether of whole or half-blood) of the person or the person's spouse.

**relevant offence**, for chapter 6, part 4, see section 208.

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<sup>164</sup> *Health Services Act 1991*, section 2—

**public sector hospital** means a hospital operated by the State.

## Schedule 2 (continued)

**report**, for chapter 14, part 5, see section 523.

**request for assessment** see section 16(a).

**review** means a review by the tribunal under chapter 6.

**review decision** means a decision on a review.

**searcher**, for chapter 10, part 3—see section 357(1).

**seclusion**, for chapter 4, part 3, division 4—see section 148.

**section 613 finding** see section 299(a)(i).

**section 645 finding** see section 299(a)(ii).

**section 647 finding** see section 299(a)(iii).

**security officer**, for a high security unit, means a person appointed to an office at the unit to provide security services, regardless of how the person's office is described.

**seizure provisions**, for chapter 10, see section 348.

**senior registered nurse on duty**, for a patient in an in-patient facility of an authorised mental health service, means the senior registered nurse on duty in the ward in which the patient is being treated.

**statement of rights** see section 344(1).

**treating health service**, for a patient, means—

- (a) the authorised mental health service stated in—
  - (i) the involuntary treatment order for the patient; or
  - (ii) the court assessment order or custodian's authority for assessment for the patient; or
  - (iii) the forensic order for the patient; or
  - (iv) the court order for the patient under section 101(2), 273(1)(b) or 337(6);<sup>165</sup> or
  - (vi) if a court examination order is in force for the patient—the order; or

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<sup>165</sup> Section 101 (Court may order person's detention in authorised mental health service), 273 (Orders about custody) or 337 (Appeal powers)

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## Schedule 2 (continued)

- (b) another authorised mental health service to which the patient is transferred.

**treatment**, of a person who has a mental illness, means anything done, or to be done, with the intention of having a therapeutic effect on the person's illness.

**treatment application** means an application under chapter 6, part 6, for approval for treatment of a person.

**treatment criteria** see section 14.

**treatment plan**, for an involuntary patient, means the treatment plan prepared under chapter 4, part 2, for the patient.

**tribunal** means the Mental Health Review Tribunal established under section 436(1).

**tribunal rule** means a rule made under section 479.

**unlawfully** means without authority under this Act or other legal authority, justification or excuse.

**unsound mind** means the state of mental disease or natural mental infirmity described in the Criminal Code, section 27,<sup>166</sup> but does not include a state of mind resulting, to any extent, from intentional intoxication or stupefaction alone or in combination with some other agent at or about the time of the alleged offence.

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166 Criminal Code, section 27—

### 27 Insanity

- (1) A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission the person is in such a state of mental disease or natural mental infirmity as to deprive the person of capacity to understand what the person is doing, or of capacity to control the person's actions, or of capacity to know that the person ought not to do the act or make the omission.
- (2) A person whose mind, at the time of the person's doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of subsection (1), is criminally responsible for the act or omission to the same extent as if the real state of things had been such as the person was induced by the delusions to believe to exist.

## Schedule 2 (continued)

***young patient*** means an involuntary patient who is under 17 years.

***young person*** means an individual who is under 17 years.

***victim***, of an alleged offence, means—

- (a) a direct victim of the alleged offence; or
- (b) an immediate family member of a direct victim of the alleged offence.

***visitor*** means a person who—

- (a) is visiting a high security unit or a patient in a high security unit; or
- (b) seeks entry to a high security unit.

## **Attachment**

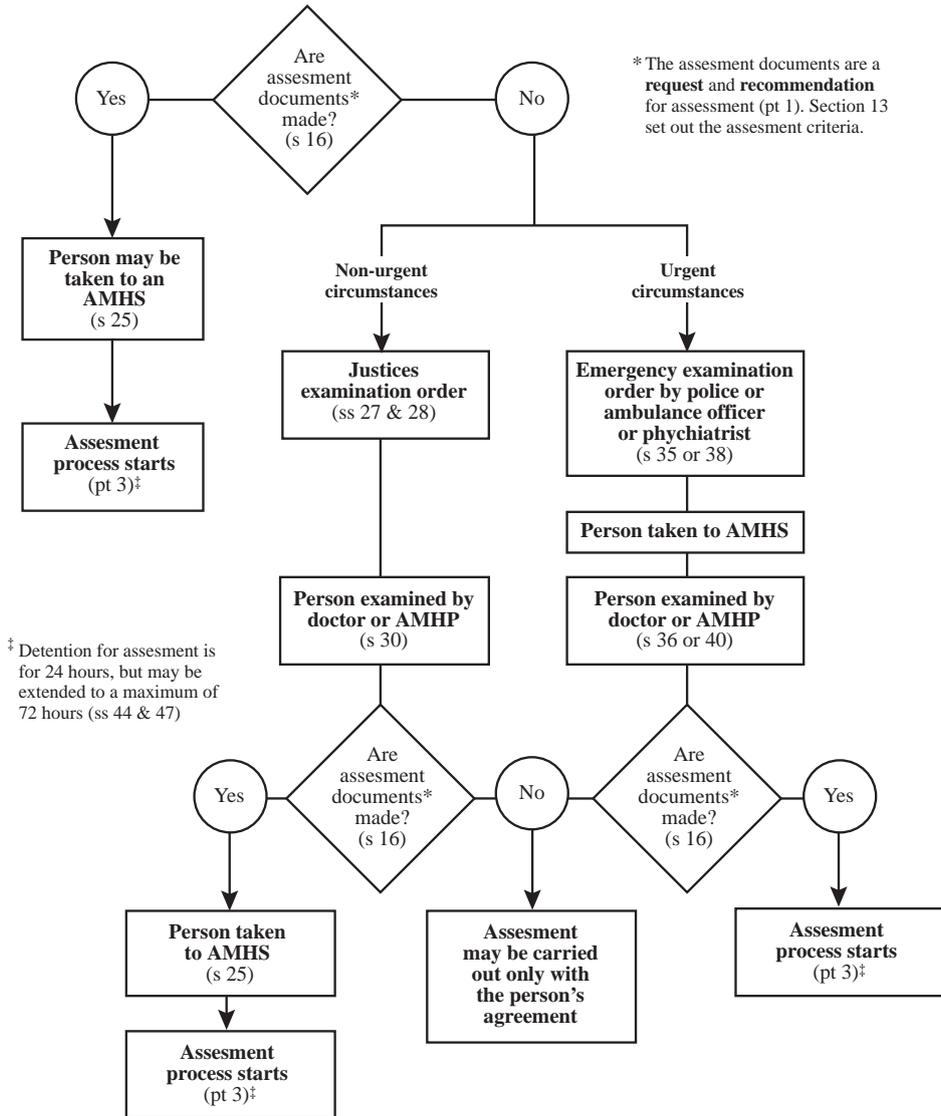
section 7

Abbreviations used in the flowcharts in this attachment—

AMHP	=	Authorised Mental Health Practitioner
AMHS	=	Authorised Mental Health Service
DMH	=	Director of Mental Health
ITO	=	Involuntary Treatment Order
MHC	=	Mental Health Court
MHRT	=	Mental Health Review Tribunal

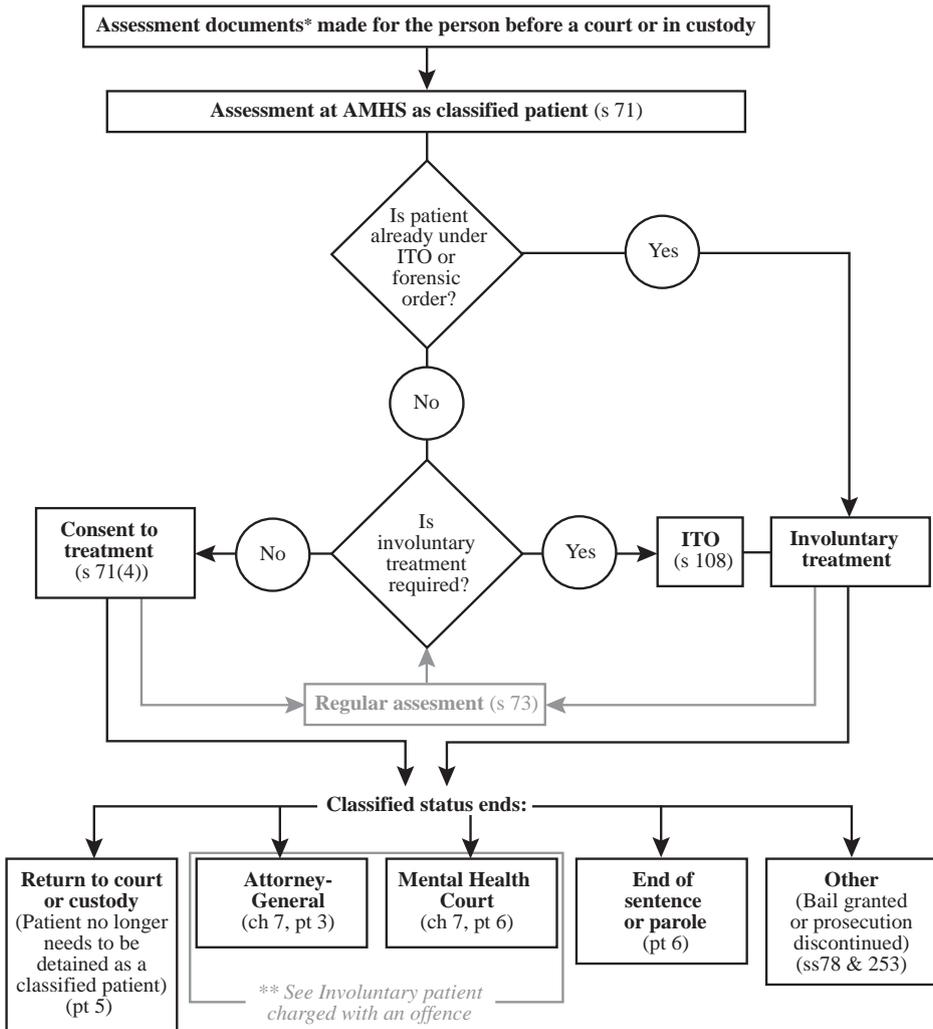
Attachment (continued)

**Involuntary assesment of a person—chapter 2**



Attachment (continued)

Detention as a classified patient—chapter 3

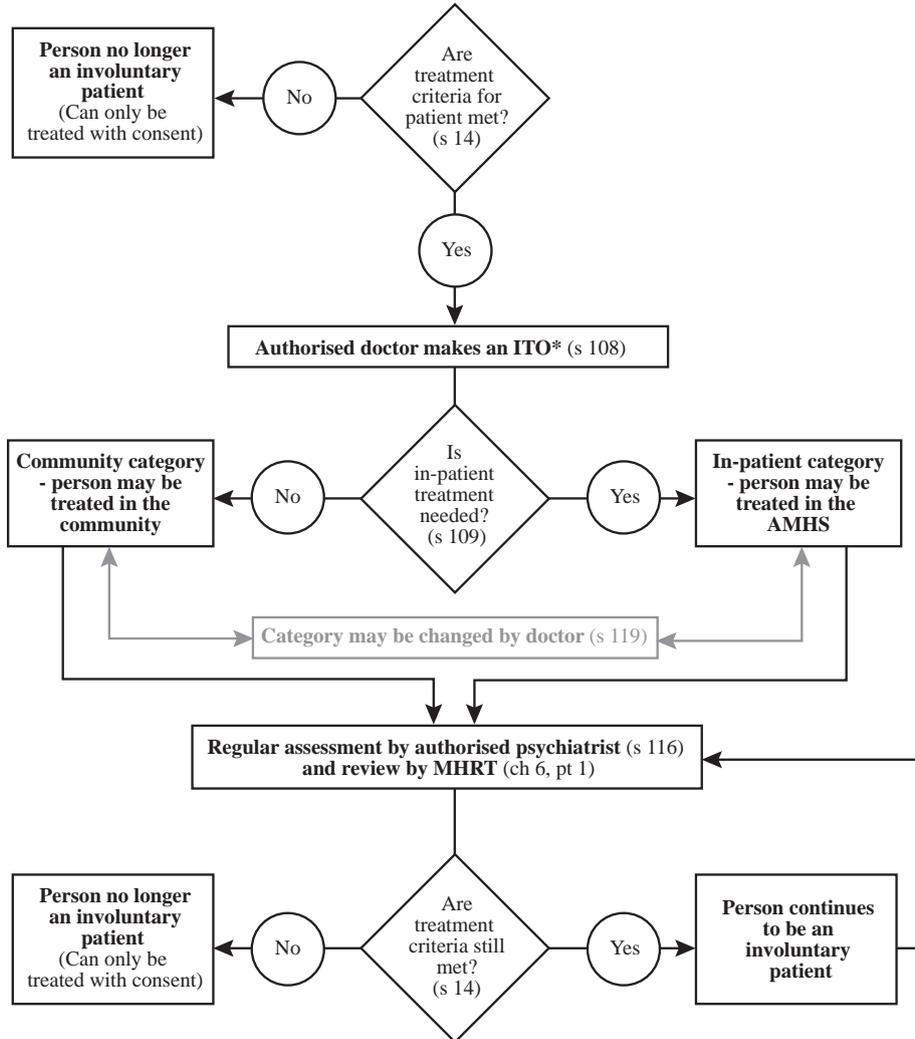


\*The assessment documents for chapter 3 (s 49) are:

- (a) Court assessment order (pt 2) or custodian’s assessment authority (pt 3)
- (b) Recommendation for assessment (pt 1)
- (c) Agreement for assessment (pt 1)

## Attachment (continued)

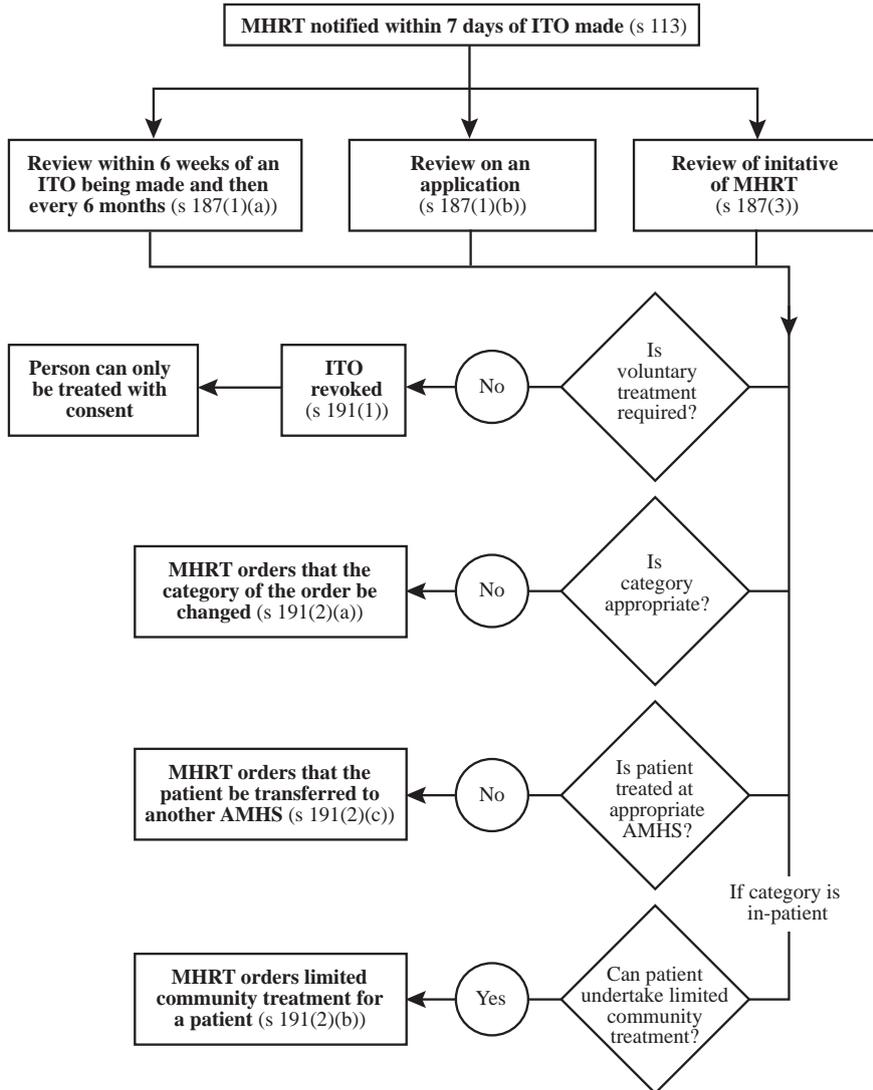
## Involuntary treatment—chapter 4



\* If the authorised doctor who makes the ITO is not a psychiatrist, an authorised psychiatrist must examine the person within 3 days. If the psychiatrist is not satisfied the person meets the treatment criteria, the person ceases to be an involuntary patient (s 112).

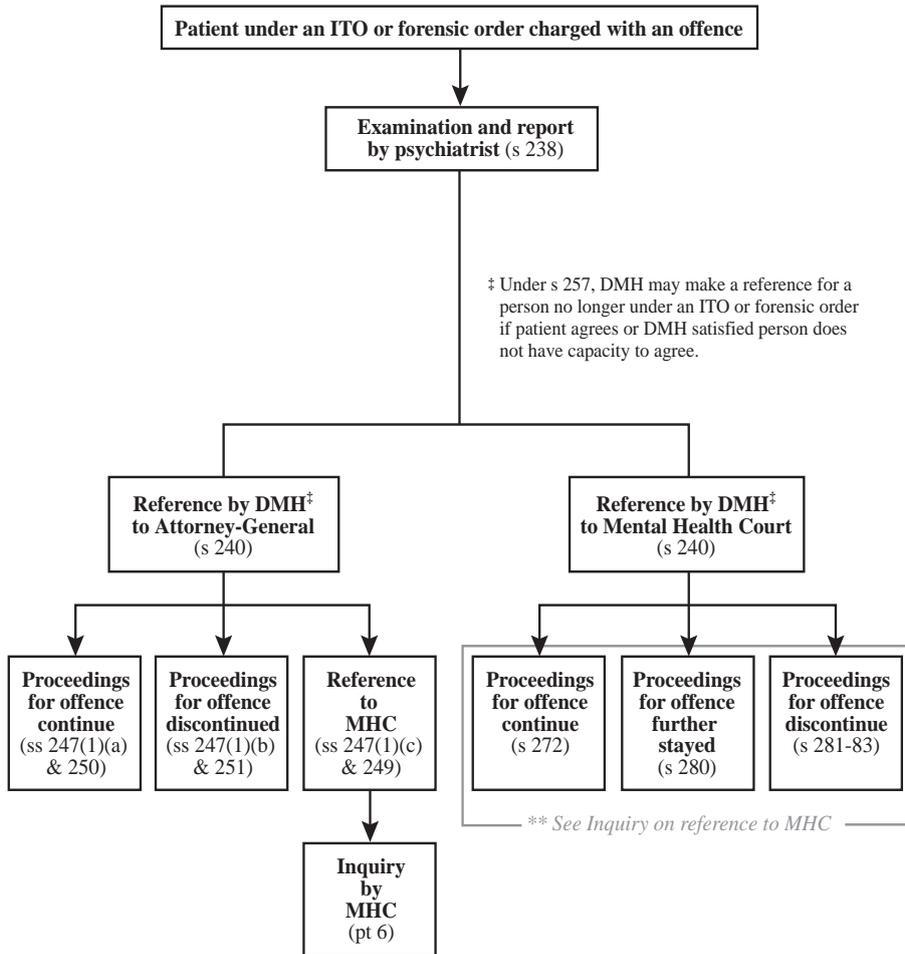
## Attachment (continued)

## Hearings of reviews by Mental Health Review Tribunal—chapter 6



## Attachment (continued)

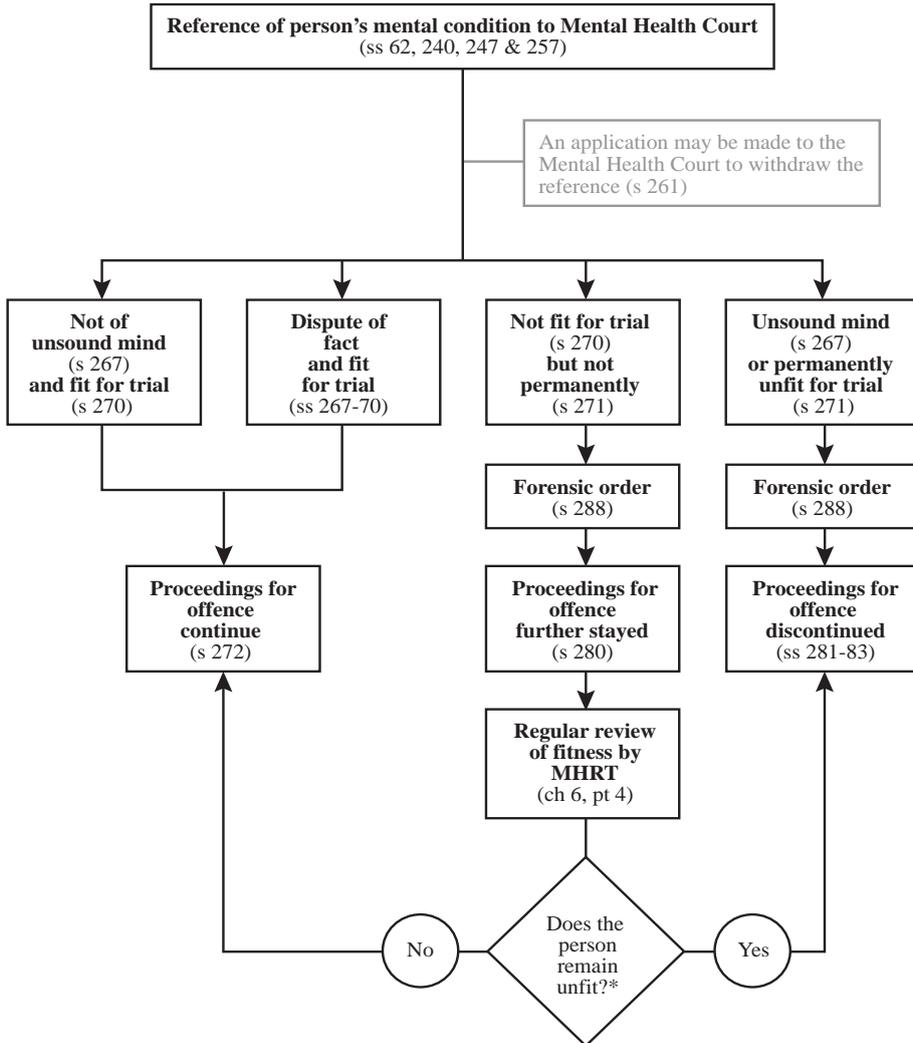
## Involuntary patient charged with an offence—chapter 7



**NB** Part 2 ceases to apply if ITO revoked (ss 121, 122 & 191) or patient ceases to be forensic patient (ss 207 & 219). In this case, proceedings for offence continue (s 245) unless prosecution discontinued (s 244(d)).

Attachment (continued)

**Inquiry on reference Mental Health Court—chapter 7, part 6**



\*When proceedings are discontinued if person remains unfit for trial:

- after 7 years if charged with an offence with a maximum sentence of life imprisonment; or
- after 3 years in any other case.

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 28 September 2007. Future amendments of the Mental Health Act 2000 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prev	= previous	sub	= substituted
prec	= preceding	unnum	= unnumbered
pres	= present		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
0A	2001 Act No. 78	28 February 2002	28 February 2002
0B	2001 Act No. 78	1 March 2002	1 March 2002
1	2001 Act No. 78	18 March 2002	18 March 2002
1A	2001 Act No. 78	1 May 2002	1 May 2002

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Reprint No.	Amendments included	Effective	Notes
1B	2002 Act No. 23	19 July 2002	
1C	—	1 March 2003	provs exp 28 February 2003
1D	2003 Act No. 9	28 March 2003	
1E	2002 Act No. 74	1 April 2003	
1F	1992 Act No. 44 (amd 2002 Act No. 39) 2002 Act No. 39	1 July 2003	R1F withdrawn, see R2
2	—	1 July 2003	

Reprint No.	Amendments included	Effective	Notes
2A	2004 Act No. 13	1 August 2004	
2B	2004 Act No. 52	1 January 2005	
2C	2005 Act No. 10	29 April 2005	
2D	2006 Act No. 25	1 July 2006	
2E	2000 Act No. 5 (amd 2006 Act No. 26)	21 July 2006	
2F	2006 Act No. 29	28 August 2006	
2G	2006 Act No. 46	10 November 2006	R2G withdrawn, see R3
3	—	10 November 2006	
3A	2007 Act No. 28	1 July 2007	
3B	2007 Act No. 37	28 September 2007	

## 5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1

## 6 List of legislation

### **Mental Health Act 2000 No. 16**

date of assent 8 June 2000  
 ss 1–2, 590 sch 1 pt 1 commenced on date of assent (see s 2(1))  
 s 436 ch 12 pt 2 commenced 4 June 2001 (2001 SL No. 45)  
 ch 4 pt 3 div 2 commenced 18 March 2002 (2002 SL No. 27)  
 remaining provisions commenced 28 February 2002 (2002 SL No. 27)  
 amending legislation—

### **Corrective Services Act 2000 No. 63 ss 1, 2(2), 276 sch 2**

date of assent 24 November 2000  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 July 2001 (2001 SL No. 88)

### **Medical Practitioners Registration Act 2001 No. 7 ss 1–2, 302 sch 2**

date of assent 11 May 2001  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 March 2002 (2002 SL No. 30)

### **Occupational Therapists Registration Act 2001 No. 9 ss 1–2, 239 sch 2**

date of assent 11 May 2001  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 February 2002 (2001 SL No. 259)

### **Psychologists Registration Act 2001 No. 15 ss 1–2, 255 sch 2**

date of assent 11 May 2001  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 May 2002 (2002 SL No. 77)

**Health Legislation Amendment Act 2001 No. 78 s 1 pt 10, s 102 sch 2**

date of assent 15 November 2001  
commenced on date of assent

**Criminal Law Amendment Act 2002 No. 23 ss 1–2(1), (3), 3 sch**

date of assent 23 May 2002  
ss 1–3 commenced on date of assent (see s 2(1))  
remaining provisions commenced 19 July 2002 (2002 SL No. 157)

**Juvenile Justice Amendment Act 2002 No. 39 pts 1, 13**

date of assent 29 August 2002  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2003 (2002 SL No. 350)

**Juvenile Justice Act 1992 No. 44 s 341(3) (prev s 262(3)) sch 3 (this Act is amended, see amending legislation below)**

amending legislation—

**Juvenile Justice Amendment Act 2002 No. 39 ss 1–2, 115, 118 (amends 1992 No. 44 above)**

date of assent 29 August 2002  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2003 (2002 SL No. 350)

**Discrimination Law Amendment Act 2002 No. 74 ss 1–2, 90 sch**

date of assent 13 December 2002  
ss 1–2 commenced on date of assent  
s 90 commenced 31 March 2003 (2003 SL No. 51)  
remaining provisions commenced 1 April 2003 (2003 SL No. 51)

**Health and Other Legislation Amendment Act 2003 No. 9 ss 1, 67 sch**

date of assent 28 March 2003  
commenced on date of assent

**Child Safety Legislation Amendment Act 2004 No. 13 ss 1–2(1), 102 sch 2 pts 1–2**

date of assent 24 June 2004  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 August 2004 (2004 SL No. 141)

**Child Protection (Offender Reporting) Act 2004 No. 52 ss 1–2, pt 7 div 4**

date of assent 29 November 2004  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 January 2005 (2004 SL No. 295)

**Health Legislation Amendment Act 2005 No. 10 pts 1, 3, s 50 sch**

date of assent 1 April 2005  
ss 1–2 commenced on date of assent  
remaining provisions commenced 29 April 2005 (2005 SL No. 72)

**Health Quality and Complaints Commission Act 2006 No. 25 ss 1–2(1), 241(1) sch 3**

date of assent 29 May 2006  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2006 (see s 2(1))

**Police Powers and Responsibilities Act 2000 No. 5 s 810 sch 4 (prev s 459A sch 3A)  
(this Act is amended, see amending legislation below)**

amending legislation—

**Police Powers and Responsibilities and Other Acts Amendment Act 2006  
No. 26 ss 1–2, 84, 86 (amends 2000 No. 5 above)**

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 21 July 2006 (2006 SL No. 185)

**Corrective Services Act 2006 No. 29 ss 1, 2(2), 518 sch 3**

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 28 August 2006 (2006 SL No. 213)

**Health Legislation Amendment Act 2006 No. 46 s 1, pt 8**

date of assent 10 November 2006

commenced on date of assent

**Health and Other Legislation Amendment Act 2007 No. 28 pts 1, 3–4**

date of assent 28 May 2007

ss 1–2 commenced on date of assent

pt 4 commenced 1 July 2007 (2007 SL No. 144)

remaining provisions not yet proclaimed into force (see s 2)**Justice and Other Legislation Amendment Act 2007 No. 37 pts 1, 25, s 117 sch**

date of assent 29 August 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 28 September 2007 (2007 SL No. 241)

## **7 List of annotations**

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**Giving information about detention**

s 70            amd 2001 No. 78 s 103; 2005 No. 10 s 50 sch

**Bail, remand and discontinuance of proceedings etc.**

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**When custodian is to take custody of patient**

s 90            amd 2006 No. 46 s 124

**Giving information about return of patient to custody**

s 90A        ins 2005 No. 10 s 9

**When patient to be brought before court**

s 91            amd 2005 No. 10 s 50 sch

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**PART 6A—PROCEDURES FOLLOWING END OF LAWFUL CUSTODY  
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**Authorising limited community treatment**

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TREATMENT APPLICATIONS****Matters to be considered on particular reviews**

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              amd 2007 No. 28 s 31**Restrictions on making non-contact order**s 228C     ins 2001 No. 78 s 119  
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- def “**correctional officer**” sub 2000 No. 63 s 276 sch 2  
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- def “**de facto spouse**” om 2002 No. 74 s 90 sch
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- def “**health practitioner**” amd 2001 No. 78 s 138(3)
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- def “**justice of the peace**” ins 2001 No. 78 s 138(2)
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- def “**occupational therapist**” sub 2001 No. 9 s 239 sch 2
- def “**parole**” amd 2000 No. 63 s 276 sch 2; 2002 No. 39 s 161; 1992 No. 44 s  
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- def “**patient**” amd 2001 No. 78 s 138(4); 2002 No. 23 s 3 sch
- def “**personal offence**” ins 2001 No. 78 s 138(1)
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- def “**psychiatrist**” sub 2001 No. 7 s 302 sch 2
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## **8 List of forms notified or published in the gazette**

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

**Form dmh 16(a) Version 1—Request for assessment**

pubd gaz 8 March 2002 p 929

**Form dmh 16(b), 49(a) Version 3—Recommendation for assessment**

pubd gaz 4 May 2007 p 114

**Form dmh 27—Application for justices examination order**

pubd gaz 28 May 2004 p 274

**Form dmh 28—Justices examination order**

pubd gaz 27 October 2006 p 934

**Form dmh 32(1) Version 1—Justices examination order**

pubd gaz 8 March 2002 p 929

**Form dmh 32(2) Version 1—Justices examination order**

pubd gaz 8 March 2002 p 929

**Form dmh 35—Emergency examination order (police or ambulance officer)**

pubd gaz 28 May 2004 p 274

**Form dmh 38 Version 1—Emergency examination order (psychiatrist)**

pubd gaz 8 March 2002 p 929

**Form dmh 41 Version 1a—Emergency examination order (police or ambulance officer)**

pubd gaz 8 March 2002 p 929

**Form dmh 41 Version 1—Emergency examination order (psychiatrist)**

pubd gaz 8 March 2002 p 929

**Form dmh 62(1), 70 Version 3—Custodian’s assessment authority**

pubd gaz 4 May 2007 p 114

**Form dmh 70 Version 1—Custodian’s assessment authority**

pubd gaz 8 March 2002 p 929

**Form dmh 108, 112 Version 2—Involuntary treatment order**

pubd gaz 4 May 2007 p 114

**Form dmh 300 Version 1a—Notice of forensic order (criminal code) or custody order**

pubd gaz 8 March 2002 p 929

**Form dmh 301 Version 1a—Notice of forensic order (criminal code) or custody order**

pubd gaz 8 March 2002 p 929

**Form dmh.302 Version 1—Forensic order (Minister)**

pubd gaz 8 March 2002 p 929

**Form dmh.311(2) Version 1—Notice of election to go to trial**

pubd gaz 8 March 2002 p 929

**Form mc.228F(1–3) Version 1—Application to Magistrates Court for a Variation or Revocation of a Non-Contact Order**

pubd gaz 8 March 2002 p 933

**Form Mhc 1 Version 2—Reference of person’s mental condition to the Mental Health Court by Registrar of the Supreme or District Court**

pubd gaz 19 July 2002 p 1135

**Form Mhc 2 Version 2—Reference of person’s mental condition to Mental Health Court**

pubd gaz 19 July 2002 p 1135

**Form Mhc 3 Version 1—Forensic order 1**

pubd gaz 8 March 2002 p 928

**Form Mhc 4 Version 1—Notice of appeal against decision of Mental Health Review Tribunal**

pubd gaz 8 March 2002 p 928

**Form Mhc 5 Version 1—Court examination order 1**

pubd gaz 8 March 2002 p 928

**Form Mhc 6 Version 1—Application to inquire into a patient’s detention**

pubd gaz 8 March 2002 p 928

**Form mhrt-140 Version 2—Treatment application (electroconvulsive therapy)**

pubd gaz 20 June 2003 p 628

**Form mhrt-221—Application for notification order**

pubd gaz 22 February 2002 p 748

**Form mhrt-229 Version 2—Treatment application (electroconvulsive therapy)**

pubd gaz 20 June 2003 p 628

**Form mhrt-230—Treatment application (psychosurgery)**

pubd gaz 22 February 2002 p 748

**Form mhrt-232—Notice of hearing of review or treatment application**

pubd gaz 22 February 2002 p 748

**Form mhrt-376—Appeal on refusal to allow a person to visit a patient**

pubd gaz 22 February 2002 p 748