



Queensland

Forensic Disability Act 2011

Act No. 13 of 2011



Queensland

Forensic Disability Act 2011

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Queensland

Forensic Disability Act 2011

Act No. 13 of 2011

An Act to provide for the involuntary detention, and the care and support and protection, of particular people with an intellectual or cognitive disability, and to make minor or consequential amendments of this Act and the Bail Act 1980, Child Protection (Offender Reporting) Act 2004, Child Protection (Offender Prohibition Order) Act 2008, Commissions of Inquiry Act 1950, Coroners Act 2003, Crime and Misconduct Act 2001, Criminal Code, Criminal Practice Rules 1999, Disability Services Act 2006, Guardianship and Administration Act 2000, Guardianship and Administration Regulation 2000, Limitation of Actions Act 1974, Mental Health Act 2000, Mental Health Regulation 2002, Police Powers and Responsibilities Act 2000, Powers of Attorney Act 1998, Queensland Civil and Administrative Tribunal Act 2009, Queensland Civil and Administrative Tribunal Rules 2009, Residential Services (Accreditation) Act 2002, Residential Tenancies and Rooming Accommodation Act 2008 and Supreme Court of Queensland Act 1991

[Assented to 19 May 2011]

The Parliament of Queensland enacts—

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Forensic Disability Act 2011*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Purpose and application of Act

3 Purpose

The purpose of this Act is to provide for the involuntary detention, and the care and support and protection, of forensic disability clients, 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 people; and
- (c) promoting their individual development and enhancing their opportunities for quality of life; and
- (d) maximising their opportunities for reintegration into the community.

Note—

See section 10 for who is a forensic disability client.

4 How purpose is to be achieved

The purpose of this Act is to be achieved mainly by—

- (a) stating the human rights and other principles applying to the administration of this Act in relation to forensic disability clients; and
- (b) providing for the detention, admission, assessment, care and support and protection of clients; and
- (c) providing for a multidisciplinary model of care and support for clients that is designed to promote their continual development, independence and quality of life; and
- (d) when making a decision under this Act about a client, taking into account each of the following—
 - (i) the protection of the community;
 - (ii) the needs of a victim of the alleged offence to which the applicable forensic order relates;
 - (iii) the client's individual development plan, including any limited community treatment.

5 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.

6 Application of Act

This Act does not prevent a person who is receiving care and support in the forensic disability service under a forensic

[s 7]

order (Mental Health Court—Disability) continuing to receive care and support in the service after the order ends.

Part 3 Principles for administration of Act

7 General principles

The following principles apply for the administration of this Act in relation to forensic disability clients—

(a) Same human rights

- the right of all people to the same basic human rights must be recognised and taken into account
- a person's right to respect for the person's human worth and dignity as an individual, and as part of human diversity and humanity, must be recognised and taken into account
- a person's right to live a life free from abuse, neglect or exploitation must be recognised and taken into account
- people with a disability should be empowered to exercise their rights

(b) Promoting habilitation and rehabilitation

- to the greatest extent practicable, a person is to be supported to promote the person's development potential and physical, mental, social and vocational ability, and to enhance the person's quality of life
- support and services provided to a person under this Act must promote the person's opportunities for participation and inclusion in the community

(c) Meeting individual needs and goals

- services provided to a person under this Act should be responsive to the person's needs and goals
- a person's physical, age-related, gender-related, religious, cultural, language, communication and other needs must be taken into account

Example of other needs—

needs arising because of the person's community of origin

(d) Maintaining supportive relationships and community participation

- care and support provided to a person under this Act must take into account the importance of the person's continued participation in community life and maintenance of supportive relationships

(e) Matters to be considered in making decisions

- a person is to be encouraged and supported to take part in making decisions affecting the person's life, especially decisions about the services to be provided to the person under this Act
- in making a decision about a person, the person's views, the views of any guardian or informal decision-maker for the person, and the effect on the person's family or carers must be taken into account

Example—

a decision under section 33 or 34 for a transfer order for a person who is a forensic disability client

- a person is presumed to have capacity to make decisions about the person's care and support and choice of an allied person

[s 8]

(f) Providing support and information for exercising rights

- a person must be provided with necessary support, and necessary information in an appropriate accessible format, to enable the person to exercise rights under this Act

Example of necessary support and information—

support and information facilitating access to necessary independent help to represent the person's point of view

(g) Confidentiality

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

Note—

See chapter 9, part 4 for provisions about confidentiality.

8 Principles for exercising powers and performing functions

A power or function under this Act relating to a forensic disability client must be exercised or performed so that—

- (a) the client's liberty and rights are adversely affected only if it is the least restrictive way to protect the client's health and safety or to protect others; and
- (b) any adverse effect on the client's liberty and rights is the minimum necessary in the circumstances.

Part 4 Interpretation

9 Definitions

The dictionary in schedule 3 defines particular words used in this Act.

10 Who is a *forensic disability client*

- (1) A *forensic disability client* is an adult with an intellectual or cognitive disability for whom a forensic order (Mental Health Court—Disability) is in force for the person’s detention in the forensic disability service.
- (2) A forensic order mentioned in subsection (1) includes an order that, under the Mental Health Act, section 169L or 605, applies to the client as if it were an order for the client’s detention in the forensic disability service.
- (3) If a person who is a forensic disability client is transferred to an authorised mental health service under section 33(1) or (3), the person remains a forensic disability client until admitted to the authorised mental health service.
- (4) If a person who is a forensic disability client is detained temporarily in an authorised mental health service under the Mental Health Act, section 309B, the person remains a forensic disability client until a transfer order for the person is made under section 34(2) or by the tribunal or Mental Health Court under the Mental Health Act.

Note—

See, however, section 152 for the person’s care (within the meaning of the Mental Health Act) while detained temporarily in the authorised mental health service.

- (5) To remove any doubt, it is declared that a person who is a forensic disability client remains a forensic disability client while undertaking any limited community treatment under this Act.

[s 11]

11 What is a *cognitive disability*

A *cognitive disability* is a condition that is—

- (a) attributable to a cognitive impairment; and
- (b) a disability within the meaning of the Disability Services Act.

12 What is an *intellectual disability*

(1) An *intellectual disability* is a disability within the meaning of the Disability Services Act that—

- (a) is characterised by significant limitations in intellectual functioning and adaptive behaviour; and
 - (b) originates in a person before the age of 18.
- (2) Schedule 1 provides for assessing a person's intellectual functioning and adaptive behaviour for subsection (1)(a).

Chapter 2 Support and development of forensic disability clients

Part 1 Individual development plans

13 What is an *individual development plan*

(1) An *individual development plan* is a written plan, complying with this Act, developed following a multidisciplinary assessment of a forensic disability client and designed—

- (a) to promote the client's development, habilitation and rehabilitation; and
- (b) to provide for the client's care and support; and

-
- (c) when appropriate, to support the client's reintegration into the community.

Note—

See section 15 for the content of the plan.

- (2) In this section—

multidisciplinary assessment means an assessment by 2 or more persons—

- (a) with the qualifications or experience appropriate to conduct the assessment; and
- (b) whose qualifications or experience are in different disciplines.

Examples of persons who may have the appropriate qualifications or experience for conducting the assessment—

behaviour specialists, doctors, psychologists, psychiatrists, speech and language pathologists, occupational therapists, registered nurses, social workers

14 Preparing plan for client

- (1) A senior practitioner must ensure an individual development plan is prepared for a forensic disability client.
- (2) For preparing the plan, the senior practitioner must consult with and consider the views of the following persons—
 - (a) the client;
 - (b) if the client has a guardian or an informal decision-maker—the guardian or informal decision-maker, or each of those persons, as the case may be;
 - (c) anyone else the senior practitioner considers to be integral to the plan's preparation.

Example—

a family member who is part of the client's support network, the client's allied person or an advocate for the client

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- (3) The plan must be prepared having regard to any relevant policies and procedures about the care and support and protection of forensic disability clients issued by the director under this Act.
- (4) The plan must also take into account any relevant plans or advance health directive for the client.
- (5) Despite subsection (2)(b), the senior practitioner is not required to consult with a person who is an informal decision-maker for the client if—
 - (a) the senior practitioner is not, and could not reasonably be expected to be, aware the person is an informal decision-maker for the client; or
 - (b) after taking all reasonable steps, the senior practitioner can not locate the person.
- (6) In this section—

relevant plans include the following—

 - (a) an individual development plan;
 - (b) a positive behaviour support plan within the meaning of the Disability Services Act;
 - (c) for a client transferred from an authorised mental health service to the forensic disability service—any treatment plan under the Mental Health Act applying to the client immediately before the transfer.

15 Content of plan

- (1) The individual development plan must state each of the following—
 - (a) an outline of the proposed arrangements for the provision of programs or services for—
 - (i) promoting the client’s development, habilitation, rehabilitation and quality of life; and

-
- (ii) reducing the intensity, frequency and duration of the client's behaviour that places the client's health or safety or the safety of others at risk; and
 - (iii) when appropriate, supporting the client's reintegration into the community;

Examples of programs or services for paragraph (a)—

- programs for developing communication skills, motor skills, life skills or a combination of those skills
 - programs that encourage positive behaviour
- (b) an outline of the proposed plan for the client's transition to participation and inclusion in the community;
 - (c) the intervals for regularly reviewing and, if necessary, changing the plan to ensure its continued appropriateness for promoting the client's development and independence and supporting the client to participate and to be included in the community;
 - (d) the intervals for the client's regular assessment.

Note—

Section 19 deals with the client's regular assessment.

- (2) The plan must include a risk management plan for the client.
- (3) The plan must also—
 - (a) include the details of any medication prescribed for the client by a doctor; and
 - (b) state the intervals, of not more than 3 months, for regularly reviewing the client's medication as required under sections 52 and 145.

Note—

See also section 22 for what the plan must include about limited community treatment.

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16 Senior practitioner must tell client about plan

- (1) A senior practitioner must talk to the client about the client's care and support under the individual development plan.
- (2) If the client has a guardian or an informal decision-maker, a senior practitioner must also talk to the guardian or informal decision-maker, or each of those persons, as the case may be, about the client's care and support under the plan.

Note—

See section 146 about complying with provisions as soon as practicable, section 147 about complying with provisions to the extent reasonably practicable and section 154 about ensuring the client understands things told or explained to the client.

17 Changing plan

- (1) A senior practitioner, or an authorised practitioner authorised for the purpose by a senior practitioner, may change the client's individual development plan.
- (2) For changing the plan under subsection (1), section 14(2) to (5) applies as if—
 - (a) a reference in those provisions to preparing an individual development plan were a reference to changing an individual development plan; and
 - (b) a reference in those provisions to a senior practitioner included a reference to the authorised practitioner.
- (3) A senior practitioner must change the client's individual development plan—
 - (a) to give effect to a decision or order of the tribunal or Mental Health Court; or
 - (b) to comply with section 22 or 73.
- (4) A senior practitioner or authorised practitioner mentioned in subsection (1) who changes the client's individual development plan must—

- (a) make a written record of the change and the reasons for it; and
 - (b) talk to the client about the change and reasons.
- (5) If the client has a guardian or an informal decision-maker, a senior practitioner must also talk to the guardian or informal decision-maker, or each of those persons, as the case may be, about the change and the reasons for it.

Note—

See section 146 about complying with provisions as soon as practicable, section 147 about complying with provisions to the extent reasonably practicable and section 154 about ensuring the client understands things told or explained to the client.

18 Care and support under plan

The administrator must ensure the client receives care and support and protection as required under the individual development plan.

19 Regular assessment of client

- (1) The administrator must ensure a senior practitioner carries out regular assessments of the client as required under the individual development plan.
- (2) A senior practitioner carrying out an assessment of the client must record details of it in the client's file.

Part 2 Limited community treatment

20 Authorising limited community treatment

- (1) A senior practitioner may, for a forensic disability client's individual development plan, authorise limited community treatment for the client.

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- (2) However, the senior practitioner may authorise the limited community treatment only if the tribunal or Mental Health Court has ordered or approved the limited community treatment.

21 Limited community treatment on order of tribunal or Mental Health Court

If the tribunal or Mental Health Court orders that a forensic disability client have limited community treatment, the administrator must ensure a senior practitioner changes the client's individual development plan to give effect to the order.

22 What individual development plan must state about limited community treatment

If a forensic disability client is authorised to have limited community treatment under section 20, or ordered to have limited community treatment as mentioned in section 21, the client's individual development plan must include, or be changed to include, in specific terms—

- (a) any periods, whether or not continuous, of the limited community treatment; and
- (b) the conditions a senior practitioner considers necessary for managing the client's care and support and protecting the client's health or safety or the safety of others while the client is undertaking the limited community treatment.

Chapter 3 Allied persons

23 Who is an *allied person*

An *allied person* is the person chosen by a forensic disability client, or declared, under this part to be the client's allied person.

24 Function of allied person

The function of a forensic disability client's allied person is to help the client to represent the client's views, wishes and interests relating to the client's assessment, detention, care and support and protection under this Act.

25 Client may choose allied person

- (1) A forensic disability client may choose any 1 of the following persons (other than a forensic disability service employee) who is willing, readily available, capable and culturally appropriate to be the client's allied person—
 - (a) if the client has a personal guardian—the personal guardian;
 - (b) if the client has a personal attorney—the personal attorney;
 - (c) an adult relative or adult close friend of the client;
 - (d) an adult carer of the client;
 - (e) another adult.

Example of application of subsection (1)—

The client may choose a person mentioned in paragraph (d) to be the client's allied person even though the client has a personal attorney or personal guardian.

- (2) This section has effect subject to section 26.
- (3) In this section—

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close friend, of the client, means a person with whom the client has a close relationship.

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.

26 Who is allied person if client does not have capacity to choose

- (1) This section applies if the administrator is satisfied a forensic disability client does not have the capacity to choose an allied person.
- (2) If the client, by an advance health directive, has directed that a stated person be the client's allied person under this Act or the Mental Health Act, the stated person is the client's allied person for this Act.
- (3) If subsection (2) does not apply to the client, the administrator must choose a person (other than a forensic disability service employee) to be the client's allied person.
- (4) The person chosen must be—
 - (a) the first person in listed order of the persons mentioned in section 25 who is willing, readily available, capable and culturally appropriate to be the allied person; or
 - (b) if no-one in the list is willing, readily available, capable and culturally appropriate to be the allied person—the adult guardian within the meaning of the Guardianship and Administration Act.

27 When choice of allied person ends

The choice of an allied person of a forensic disability client ends if—

- (a) under section 25, the client chooses another person to be the allied person; or

-
- (b) the client tells the administrator the client no longer wishes to have an allied person and the administrator is satisfied the client has the capacity to make that decision; or
 - (c) under section 26, the administrator chose the allied person but the administrator is no longer satisfied the allied person is willing, readily available, capable and culturally appropriate to be the allied person.

28 Administrator to give notice of applicable forensic order to allied person

The administrator must give notice of the applicable forensic order to a forensic disability client's allied person.

Chapter 4 Rights of forensic disability clients and others

Part 1 Statement of rights

29 Preparing statement of rights

- (1) The director must prepare a written statement (the *statement of rights*) containing information about—
 - (a) the rights of forensic disability clients and their allied persons under this Act; and
 - (b) the rights of clients to make complaints about the service provided at the forensic disability service and how the complaints are made.

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- (2) The statement of rights may also contain anything else the director considers appropriate.

30 Giving statement of rights to client and allied person

- (1) After a forensic disability client is admitted to the forensic disability service, the administrator must give a copy of the statement of rights so far as it is relevant to the client to—
 - (a) the client; and
 - (b) the client's allied person.
- (2) In addition to the statement, the administrator must ensure the client is given an oral explanation of the information in the statement.

Note—

See section 146 about complying with provisions as soon as practicable and section 154 about ensuring the client understands things told or explained to the client.

31 Notice of rights

The administrator must ensure a copy of the statement of rights is displayed in a prominent place in the forensic disability service so it is easily visible to forensic disability clients and their allied persons.

Part 2

Rights of persons other than forensic disability service employees to visit client etc.

32 Visiting and assessing client and consulting about client's care and support

- (1) A registered health practitioner or social worker engaged in providing disability services, other than a forensic disability service employee, may at any reasonable time of the day or night—
 - (a) visit and assess a forensic disability client detained in the forensic disability service; or
 - (b) consult with a senior practitioner about the care and support of a forensic disability client.

Note—

Subsection (1) does not affect a right or obligation of a forensic disability service employee in relation to a client under this Act.

- (2) A legal or other adviser for a forensic disability client detained in the forensic disability service may visit the client at any reasonable time of the day or night.
- (3) The registered health practitioner, social worker or adviser may exercise a power under subsection (1) or (2)—
 - (a) only if asked by the client or someone else on the client's behalf; and
 - (b) only under an arrangement made with the administrator.

Chapter 5 Transfer and temporary absence of forensic disability clients

Part 1 Transfer

33 Transfer from forensic disability service to authorised mental health service

- (1) The director may, by written order, transfer a forensic disability client from the forensic disability service to an authorised mental health service if—
 - (a) the director is satisfied the transfer is in the client's best interests; and
 - (b) the director (mental health) agrees to the transfer.
- (2) If the director (mental health) does not agree to the transfer, the director (within the meaning of this Act) may apply to the tribunal for an order for the client's transfer to an authorised mental health service.

Note—

Under sections 129 and 139, the Mental Health Act, chapter 5, part 1, division 2A, subdivision 2 applies for the application.

- (3) The client must be transferred to an authorised mental health service if the tribunal orders the transfer.
- (4) However, subsection (3) does not apply if the tribunal's decision is stayed under the Mental Health Act, section 323.

34 Transfer if detained temporarily in authorised mental health service

- (1) This section applies to a forensic disability client who is detained temporarily in an authorised mental health service under the Mental Health Act, section 309B.
- (2) The director may, by written order, transfer the client to an authorised mental health service if—
 - (a) the client’s period of detention in the authorised mental health service mentioned in subsection (1) has not ended; and
 - (b) the director is satisfied the transfer is in the client’s best interests; and
 - (c) the director (mental health) agrees to the transfer.
- (3) Section 33(2) to (4) applies for the transfer.

35 Director to give notice of transfer order to tribunal and others

- (1) Within 7 days after making a transfer order for a forensic disability client under section 33 or 34, the director must give written notice of the order to—
 - (a) the tribunal; and
 - (b) if any proceeding involving the client has started but not finished—each entity the director considers has a sufficient interest in the proceeding.

Example—

the Mental Health Court, the director of public prosecutions or other prosecuting agency

- (2) In this section—

proceeding means a proceeding in the tribunal or Mental Health Court.

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36 Administrator to give notice of transfer order to client and allied person

The administrator must give notice of a transfer order to—

- (a) the forensic disability client to whom the order relates;
and
- (b) the client’s allied person.

37 Taking client to authorised mental health service if transferred

A practitioner may, under a transfer order, take a forensic disability client to an authorised mental health service.

Notes—

- 1 For provisions about entering places, see chapter 9, part 2.
- 2 For the use of reasonable force, see section 155 and for administering medication to the client, see section 144.

38 Giving information about client for facilitating transfer and care and support

- (1) This section applies for facilitating—
 - (a) the transfer of a forensic disability client from the forensic disability service to an authorised mental health service; and
 - (b) the care and support of the client, as a patient, in the authorised mental health service.
- (2) The director may give to the director (mental health), or a person nominated by the director (mental health), the following information about the client—
 - (a) the client’s personal and medical information;
 - (b) the circumstances giving rise to the applicable forensic order, including information contained in any report considered by the Mental Health Court in making the order;

- (c) the details of the applicable forensic order;
- (d) any details necessary to give effect to the applicable forensic order;
- (e) the details of the client's individual development plan;
- (f) the client's response to care and support and willingness to continue care and support;
- (g) the details of any instance of behaviour control medication, restraint or seclusion of the client;
- (h) whether the tribunal or Mental Health Court has approved or ordered limited community treatment for the client, including any conditions of the approval or order;
- (i) the details of any limited community treatment undertaken by the client, and the details of any limited community treatment that has been revoked;
- (j) when the tribunal is to conduct a review of the client's mental condition;
- (k) any previous decisions of the tribunal about the client;
- (l) any previous decisions of the Mental Health Court about the client;
- (m) whether the client has an allied person and, if so, the allied person's name and contact details;
- (n) whether the client has a guardian or an informal decision-maker and, if so, the contact details for the guardian or informal decision-maker;
- (o) whether the client is subject to a forensic information order and, if so, any details necessary to give effect to that order;
- (p) any other information obtained or brought into existence under this Act or the Mental Health Act relating to the client's care and support.

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- (3) This section applies despite any duty of confidentiality or right of privacy provided under this or any other Act.
- (4) In this section—
 - information* includes a document.
 - personal information*, about a forensic disability client, includes information about—
 - (a) the client’s social circumstances, including, for example, the client’s support network; and
 - (b) the client’s relevant behavioural history.

39 Continuation of existing forensic order

- (1) On the admission of a forensic disability client to an authorised mental health service under a transfer order, the client’s existing forensic order—
 - (a) applies to the client, as a patient, as if it were a forensic order (Mental Health Court—Disability) for the client’s detention in the authorised mental health service; and
 - (b) is to be read, or continued in force, with the changes necessary—
 - (i) to make it consistent with the Mental Health Act; and
 - (ii) to adapt its operation to that Act.
- (2) Subsection (1) does not affect a power of the tribunal or Mental Health Court in relation to the existing forensic order.
- (3) Without limiting subsection (2), the tribunal may carry out a review and make a decision about the existing forensic order under the Mental Health Act, chapter 6, part 3.
- (4) In this section—
 - existing forensic order* means the forensic order (Mental Health Court—Disability) that was the client’s applicable forensic order immediately before the client’s admission to the authorised mental health service.

40 Continuation of matters under applied provisions for client transferred to authorised mental health service

- (1) This section applies if—
 - (a) an action is done or something is brought into existence for a matter in relation to a forensic disability client in compliance with an applied provision; and
 - (b) before the matter ends, the client is transferred to an authorised mental health service under a transfer order.
- (2) On the client's admission to the authorised mental health service under the transfer order—
 - (a) the previous action or thing is taken to have been done or brought into existence for a matter in relation to the client, as a patient, in compliance with the provision of the Mental Health Act that is the applied provision; and
 - (b) if the previous thing is a document, it is to be read, or continued in force, with the changes necessary—
 - (i) to make it consistent with that Act; and
 - (ii) to adapt its operation to that Act.
- (3) The previous action or thing may be amended, repealed or revoked under the Mental Health Act.

Part 2 Temporary absence

41 Absence of client with director's approval

- (1) The director may, by written notice, approve the absence of a forensic disability client from the forensic disability service—
 - (a) to receive medical, dental or optical treatment; or
 - (b) to appear before a court, tribunal or other body; or

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- (c) for another purpose the director considers to be appropriate on compassionate grounds.
- (2) The notice must state the approved period of absence.
- (3) The approval may be given on the conditions the director considers appropriate, including, for example, a condition that the client is to be in the care of a stated person for the period of absence.

Chapter 6 Regulation of behaviour control

Part 1 Preliminary

42 Purpose of ch 6

The purpose of this chapter is to protect the rights of forensic disability clients by regulating the use of behaviour control medication, restraint and seclusion (each a *regulated behaviour control*) under this Act so that the regulated behaviour control is only used—

- (a) if considered necessary and the least restrictive way to protect the health and safety of clients or to protect others; and
- (b) in a way that—
 - (i) has regard to the human rights of clients; and
 - (ii) aims to reduce or eliminate the need for its use; and
 - (iii) ensures transparency and accountability in its use.

43 Definitions for ch 6

In this chapter—

authorised practitioner means an authorised practitioner whose instrument of appointment states that the practitioner may exercise the powers given to an authorised practitioner under this chapter.

behaviour control medication see section 44.

restraint see section 45.

seclusion see section 46.

senior practitioner means a senior practitioner whose instrument of appointment states that the practitioner may exercise the powers given to a senior practitioner under this chapter.

44 Meaning of *behaviour control medication*

- (1) *Behaviour control medication* of a forensic disability client is the use of medication for the primary purpose of controlling the client's behaviour.
- (2) However, using medication for the client's health care is not behaviour control medication.
- (3) In this section—

health care see the Guardianship and Administration Act, schedule 2, section 5.

45 Meaning of *restraint*

- (1) *Restraint* of a forensic disability client is the restraint of the client by use of an approved mechanical appliance preventing the free movement of the client's body or a limb of the client.
- (2) However, the use of a surgical or medical appliance for the proper treatment of physical disease or injury is not restraint.

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46 Meaning of *seclusion*

Seclusion of a forensic disability client is the confinement of the client at any time of the day or night alone in a room or area from which the client's free exit is prevented.

47 Relationship with Disability Services Act

The Disability Services Act, part 10A applies to a forensic disability client only if the client is absent from the forensic disability service—

- (a) while undertaking limited community treatment; or
- (b) under a temporary absence approval.

Note—

The Disability Services Act, part 10A deals with the use of restrictive practices within the meaning of that Act.

48 Relationship with Guardianship and Administration Act

- (1) This chapter does not limit the extent to which a person is authorised under the Guardianship and Administration Act to make a decision about the health care of a person who is a forensic disability client.

- (2) In this section—

health care see the Guardianship and Administration Act, schedule 2, section 5.

Part 2 Behaviour control

Division 1 Behaviour control medication

49 Offence to administer behaviour control medication

A person must not administer behaviour control medication to a forensic disability client detained in the forensic disability service other than under this division.

Maximum penalty—50 penalty units.

50 Use of behaviour control medication

A senior practitioner who is a doctor or registered nurse, or a doctor or registered nurse acting under the direction of a senior practitioner who is a doctor or registered nurse, may administer behaviour control medication to a forensic disability client detained in the forensic disability service if—

- (a) a psychiatrist prescribes the medication as a regulated behaviour control for the client; and
- (b) the medication is administered in accordance with the psychiatrist's directions, including directions about the dose, route and frequency of the medication and any restrictions on its use; and

Note—

See also chapter 12, part 1 for the use of other medication on a forensic disability client.

- (c) the client is observed in accordance with the psychiatrist's directions.

51 Obligations of senior practitioner

- (1) If a psychiatrist prescribes the behaviour control medication as a regulated behaviour control for the client, a senior

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practitioner must ensure details of the medication, as prescribed by the psychiatrist, are included in—

- (a) the client's file; and
 - (b) the client's individual development plan as required under section 15(3).
- (2) If the medication is administered to the client under section 50, the senior practitioner who administered it, or under whose direction it was administered, must ensure the following details are recorded in the client's file—
- (a) the name of the medication that was administered;
 - (b) the time it was administered;
 - (c) the person who administered it;
 - (d) for medication to be administered as and when needed—the circumstances in which it was administered.

52 Review of client's behaviour control medication

- (1) A senior practitioner must ensure a psychiatrist regularly reviews the client's need for, and the appropriateness of, the behaviour control medication prescribed for the client.
- (2) The review must be carried out at least every 3 months.
- (3) Also, if requested by the director, a senior practitioner must ensure a psychiatrist carries out an immediate review of the client's behaviour control medication as mentioned in subsection (1).
- (4) The psychiatrist must record details of the review in the client's file.

53 Consent of client not required

It is not necessary to obtain the client's consent to the administration of behaviour control medication to the client under this division.

Division 2 Restraint

54 Offence to use restraint

A person must not use restraint on a forensic disability client detained in the forensic disability service other than under this division.

Maximum penalty—50 penalty units.

55 Approval of appliances for restraint

The director must—

- (a) approve the mechanical appliances that may be used for the restraint of a forensic disability client; and
- (b) state the approved mechanical appliances in a policy or procedure issued under section 91.

56 Authorisation of use of restraint

- (1) The director may authorise the use of restraint on a forensic disability client only if satisfied it is the least restrictive way to protect the client's health and safety or to protect others.
- (2) In authorising the restraint, the director—
 - (a) must have regard to the client's individual development plan; and
 - (b) must authorise the restraint to be applied for only the minimum period or periods possible.
- (3) The authorisation must be given by written order to a senior practitioner or authorised practitioner.
- (4) The order must state the following—
 - (a) the type of restraint authorised to be used;
 - (b) the reasons for the restraint;

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- (c) any restrictions on the circumstances in which the restraint may be used;
- (d) the maximum period or periods for which the restraint may be used;
- (e) the intervals at which the client must be observed while restrained;
- (f) any special measures necessary to ensure the client's proper care and support while restrained;
- (g) the time (not longer than 3 hours after the order is made) when the authorisation ends.

57 Obligations of senior practitioner and authorised practitioner

A senior practitioner or authorised practitioner must—

- (a) ensure a copy of the director's order under section 56 is included in the client's file; and
- (b) use the restraint as authorised by the director; and
- (c) record the following details in the client's file—
 - (i) the type of restraint used;
 - (ii) if the director's order states any restrictions on the circumstances in which the restraint may be used—the circumstances in which the restraint was used;
 - (iii) the time the restraint was used;
 - (iv) the person who used the restraint;
 - (v) the time the restraint was removed;
 - (vi) the person who removed the restraint.

58 Removal of restraint before authorisation ends

- (1) This section applies if, before the authorisation ends—

-
- (a) a senior practitioner or authorised practitioner is satisfied care and support can be safely provided to the client without the restraint; or
 - (b) the director orders a senior practitioner or authorised practitioner to remove the restraint.
- (2) The practitioner must immediately remove the restraint.

59 Consent of client not required

It is not necessary to obtain the client's consent to the use of restraint on the client under this division.

Division 3 Seclusion

60 Offence to keep client in seclusion

A person must not keep a forensic disability client detained in the forensic disability service in seclusion other than under this division.

Maximum penalty—50 penalty units.

61 When client may be placed in seclusion

- (1) A forensic disability client may be placed in seclusion in the forensic disability service—
 - (a) by a senior practitioner, at any time; or
 - (b) by an authorised practitioner—
 - (i) if authorised by a senior practitioner; or
 - (ii) in urgent circumstances.
- (2) However, a senior practitioner may place a client in seclusion or authorise the seclusion of a client only if reasonably satisfied—

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- (a) the seclusion is necessary to protect the client or other persons from imminent physical harm; and
 - (b) there is no less restrictive way to protect the client's health and safety or to protect others.
- (3) An authorised practitioner may place a client in seclusion under subsection (1)(b)(ii) only if reasonably satisfied of the matters mentioned in subsection (2)(a) and (b).

62 How authorisation of seclusion is given

- (1) A senior practitioner's authorisation must be given by written order to an authorised practitioner.
- (2) The order must state the following—
- (a) the reasons for the seclusion;
 - (b) the time the order is made;
 - (c) the time (not longer than 3 hours after the order is made) when the authorisation ends;
 - (d) whether an authorised practitioner is authorised to release the client from, or return the client to, seclusion;
 - (e) the special measures necessary to ensure the client's proper care and support while secluded;
 - (f) whether it is necessary to continuously observe the client while secluded;
 - (g) if the order states that it is not necessary to continuously observe the client while secluded—the intervals (not longer than 15 minutes) at which the client must be observed while secluded.
- (3) The senior practitioner must ensure a copy of the order is included in the client's file.

63 Obligations of senior practitioner and authorised practitioner

- (1) A senior practitioner must have regard to a forensic disability client's individual development plan in placing the client in seclusion, or authorising the seclusion, under this division.
- (2) An authorised practitioner must have regard to a forensic disability client's individual development plan in placing the client in seclusion under this division.
- (3) An authorised practitioner who places a forensic disability client in seclusion under a senior practitioner's authorisation must place the client in seclusion as authorised.
- (4) A senior practitioner who places a client in seclusion, or an authorised practitioner who places a client in seclusion under a senior practitioner's authorisation, must record the following details in the client's file—
 - (a) the time the client was placed in seclusion;
 - (b) the name of the senior practitioner or authorised practitioner who placed the client in seclusion;
 - (c) the time the client was released from seclusion.

64 Other obligations if authorised practitioner places client in seclusion in urgent circumstances

- (1) If an authorised practitioner places a forensic disability client in seclusion in the forensic disability service in urgent circumstances, the authorised practitioner must—
 - (a) immediately tell a senior practitioner of the seclusion; and
 - (b) record the following details in the client's file—
 - (i) the reasons for the seclusion;
 - (ii) the time the client was placed in seclusion;
 - (iii) the time the authorised practitioner told the senior practitioner of the seclusion;

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- (iv) the authorised practitioner's name;
 - (v) the senior practitioner's name.
- (2) The senior practitioner must ensure the client is examined as soon as practicable by a senior practitioner.
- (3) On the examination, the examining senior practitioner must—
 - (a) record in the client's file the time of the examination; and
 - (b) order the client's release from seclusion or authorise the client's seclusion.

65 When authorised practitioner may end seclusion or return client to seclusion

- (1) This section applies if, under a senior practitioner's authorisation, an authorised practitioner may release a forensic disability client from, or return a client to, seclusion.
- (2) An authorised practitioner may—
 - (a) release the client from seclusion if satisfied the client's seclusion is no longer necessary; and
 - (b) return the client to seclusion if—
 - (i) the senior practitioner's authorisation is still in force; and
 - (ii) the authorised practitioner is reasonably satisfied of the matters mentioned in section 61(2)(a) and (b) in relation to the client.
- (3) Immediately after acting under subsection (2), the authorised practitioner must record the following in the client's file—
 - (a) the time of release from, or return to, seclusion;
 - (b) the reasons for the release or return.

66 Ending seclusion on director's order

A senior practitioner or authorised practitioner must immediately release a forensic disability client from seclusion in the forensic disability service if the director orders that the client be released.

67 Consent of client not required

It is not necessary to obtain a forensic disability client's consent to the client's seclusion under this division.

Division 4 Other provisions about regulated behaviour controls

68 Use of reasonable force

A senior practitioner or authorised practitioner may, with the help, and using the minimum force, that is necessary and reasonable in the circumstances—

- (a) administer behaviour control medication to a forensic disability client under division 1; or
- (b) use restraint on a forensic disability client under division 2; or
- (c) place a forensic disability client in seclusion under division 3.

69 Ensuring client's reasonable needs are met while subject to a regulated behaviour control

- (1) A senior practitioner or authorised practitioner must ensure a forensic disability client's reasonable needs are met while the client is subject to a regulated behaviour control.
- (2) In this section—

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reasonable needs includes the following—

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

70 Observation of client while restrained or secluded

- (1) A senior practitioner or authorised practitioner must ensure a forensic disability client on whom restraint is used under division 2 is observed as required under the director's authorisation for the restraint.
- (2) A senior practitioner or authorised practitioner must ensure a forensic disability client is continuously observed while secluded under division 3.
- (3) However, subsection (2) does not apply if the seclusion is authorised by a senior practitioner's authorisation the order for which states—
 - (a) it is not necessary to continuously observe the client while secluded; and
 - (b) the intervals (not longer than 15 minutes) at which the client must be observed while secluded.

71 Administrator must notify director about prescription of fixed dose behaviour control medication

- (1) As soon as practicable after a psychiatrist prescribes fixed dose medication for a forensic disability client detained in the forensic disability service, the administrator must give the director written notice about the medication.
- (2) The notice must include the information required by the director.
- (3) In this section—

fixed dose medication means behaviour control medication that is administered at fixed intervals and times.

72 Administrator must notify director about use of other regulated behaviour controls

- (1) The administrator must give the director written notice about the use of a regulated behaviour control (other than fixed dose medication mentioned in section 71) on a forensic disability client detained in the forensic disability service.
- (2) The notice must—
 - (a) be given as soon as practicable after—
 - (i) for behaviour control medication (other than fixed dose medication mentioned in section 71) or restraint—the regulated behaviour control is used on the client; or
 - (ii) for seclusion—the client is placed in seclusion; and
 - (b) include the information required by the director.

73 What individual development plan must state about regulated behaviour controls

If a regulated behaviour control is used on a forensic disability client, the client's individual development plan must include strategies for avoiding, reducing and eliminating any further use of the behaviour control.

74 Register of use of regulated behaviour controls

- (1) The administrator must keep a register of the use of regulated behaviour controls under this chapter.
- (2) The register must include the details prescribed under a regulation.

Chapter 7 Security of forensic disability service

Part 1 Searching forensic disability clients and possessions

75 Purpose of pt 1

- (1) The purpose of this part is to ensure the protection of forensic disability clients and the security and good order of the forensic disability service.
- (2) For achieving the purpose, this part provides for carrying out searches of clients detained in the service and their possessions.

76 Authority to search

- (1) If a senior practitioner or authorised practitioner reasonably believes a forensic disability client detained in the forensic disability service has possession of a harmful thing, the practitioner may search the client or the client's possessions.
- (2) The search may be carried out without the client's consent.
- (3) However, before carrying out the search, the practitioner must tell the client the reasons for the search and how it is to be carried out.

Note—

See section 147 about complying with provisions to the extent reasonably practicable and section 154 about ensuring the client understands things told or explained to the client.

77 Carrying out search

- (1) The senior practitioner or authorised practitioner may require the client to submit, or submit the client's possessions, to a search under this section.
- (2) The practitioner may do any or all of the following—
 - (a) pass a hand-held electronic scanning device over or around the client or the client's possessions;
 - (b) open or inspect a thing in the client's possession;
 - (c) remove and inspect an outer garment or footwear of the client;
 - (d) remove and inspect all things from the pockets of the client's clothing;
 - (e) touch the clothing worn by the client to the extent reasonably necessary to detect things in the client's possession;
 - (f) remove and inspect any detected thing.
- (3) Also, the practitioner may, with the administrator's approval, remove and inspect all, or part of, the client'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 the search.
- (5) The practitioner may—
 - (a) exercise a power of inspection under subsection (2) only if the client 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 practitioner is the same sex as the client; and
 - (ii) the search is carried out in a part of a building that ensures the client's privacy.

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- (6) The practitioner must—
 - (a) carry out the search in a way that respects the client’s dignity to the greatest extent possible; and
 - (b) cause as little inconvenience to the client as is practicable in the circumstances.
- (7) However, the practitioner may carry out the search with the help, and using the minimum force, that is necessary and reasonable in the circumstances.

78 Seizure of things

The senior practitioner or authorised practitioner may seize anything found during the search that the practitioner reasonably suspects is a harmful thing.

79 What happens to thing seized

- (1) If the administrator is reasonably satisfied a thing seized under section 78 is a harmful thing, the administrator must—
 - (a) keep it for the client and give it to the client on the client’s release from the forensic disability service; or
 - (b) give it to someone else if the client is able to give, 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 that 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 that 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.
- (6) In this section—

authorised person, under an Act, means a person who is authorised under that Act to perform inspection and enforcement functions.

seizure provisions, of an Act, means the provisions of that Act relating to the access to, and retention, disposal and forfeiture of, a thing after its seizure under that Act.

80 Record of search

- (1) This section applies if a senior practitioner or authorised practitioner—
 - (a) carries out a search under this part; or
 - (b) seizes anything found during a search under this part.
- (2) Immediately after carrying out the search, the practitioner must make a written record of the following details of the search—
 - (a) the reasons for the search;
 - (b) the practitioner's name;
 - (c) how the search was carried out;
 - (d) the results of the search;
 - (e) anything seized.

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81 Compensation for damage to possessions

- (1) A forensic disability client may claim from the State the cost of repairing or replacing the client'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 brought in a court of competent jurisdiction for the recovery of the amount claimed.
- (3) A court may order an amount be paid only if 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.

Part 2 Excluding visitors

82 Administrator may refuse to allow a person to visit a client

- (1) The administrator may refuse to allow a person to visit a forensic disability client detained in the forensic disability service if the administrator is satisfied the proposed visit will adversely affect the client's care and support.

Example—

The administrator may be satisfied the care and support of the client will be adversely affected if, on a previous visit by a person, the client's behaviour 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.

83 Who may appeal

A person who is dissatisfied with a decision of the administrator to refuse to allow the person to visit a forensic disability client in the forensic disability service may appeal to the tribunal against the decision.

84 Procedure for appeal

- (1) An appeal is to be started and carried out in the way stated in the Mental Health Act, sections 376 to 380.
- (2) For subsection (1), the Mental Health Act, sections 376(2) and 377(1) apply as if a reference in those provisions to the administrator of an authorised mental health service were a reference to the administrator of the forensic disability service.

Chapter 8 Administration

Part 1 Director of Forensic Disability

85 Appointment

- (1) There is to be a Director of Forensic Disability.
- (2) The director is to be appointed by the Governor in Council under this Act and not under the *Public Service Act 2008*.

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Note—

Section 160 provides for an initial director.

86 Duration of appointment

The director holds office for the term (which must not be longer than 5 years) stated in the instrument of appointment.

Note—

The director may be reappointed—see the *Acts Interpretation Act 1954*, section 25(1)(c).

87 Functions

- (1) The director has the following functions—
 - (a) ensuring the protection of the rights of forensic disability clients under this Act;
 - (b) ensuring the involuntary detention, assessment, care and support and protection of forensic disability clients comply with this Act;
 - (c) facilitating the proper and efficient administration of this Act;
 - (d) monitoring and auditing compliance with this Act;
 - (e) promoting community awareness and understanding of the administration of this Act;
 - (f) 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) at 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.

88 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.

89 Independence of director

In exercising a power under this Act, the director is not under the control of the Minister.

90 Delegation of director's powers

- (1) The director may delegate the director's powers under this Act to an appropriately qualified person.
- (2) However, the director must not delegate a power under section 96, 100 or 102.

91 Policies and procedures about detention, care and support of clients

- (1) The director must issue policies and procedures about the detention, care and support and protection of forensic disability clients.
- (2) Without limiting subsection (1), the director must issue policies and procedures about the following—
 - (a) the review and change of individual development plans as mentioned in section 15(1)(c);
 - (b) the use of regulated behaviour controls;
 - (c) the detention, care and support and protection of special notification clients.
- (3) If a policy or procedure is inconsistent with this Act, the policy or procedure is invalid to the extent of the inconsistency.

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92 Giving information about client to director (mental health) or nominee

- (1) The director, or a person nominated by the director, may give information about a person who is or was a forensic disability client to—
 - (a) the director (mental health); or
 - (b) a person nominated by the director (mental health).
- (2) However, the director may only give the information if the director is satisfied the information is reasonably necessary for enabling the director (mental health) to perform that director's functions under the Mental Health Act.
- (3) This section does not limit section 38.
- (4) In this section—
information includes a document.

93 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 that year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives it.

94 Acting director

The Governor in Council may appoint a person to act as the director during any period, or all periods, when—

- (a) there is a vacancy in the office of director; or
- (b) the director is absent from duty or is, for another reason, unable to perform the functions of the office.

Part 2 Forensic disability service and administrator

95 Declaration of forensic disability service

A regulation may declare a place to be the forensic disability service.

96 Declaration of administrator of forensic disability service

- (1) The director may, by gazette notice, declare a person to be the administrator of the forensic disability service.
- (2) The declaration may state the administrator by name or reference to the holder of a stated office.

97 Delegation of administrator's powers

The administrator may delegate the administrator's powers under this Act to an appropriately qualified officer or employee of the forensic disability service.

98 Administrator's obligation to ensure forensic order is given effect

The administrator must ensure the applicable forensic order is given effect for a forensic disability client.

Note—

Giving effect to the order may require, but is not limited to, any or all of the following—

- (a) changing the client's individual development plan under section 17(3);
- (b) authorising limited community treatment under chapter 2, part 2;
- (c) requiring the client to return to the forensic disability service under section 112(1)(b).

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99 Administrator's obligation to ensure policies and procedures are given effect

The administrator must ensure any policies and procedures issued by the director under section 91 are given effect.

100 Acting administrator

The director may appoint a person to be the administrator of the forensic disability service during any period, or all periods, when—

- (a) there is a vacancy in the office of the administrator; or
- (b) the administrator is absent from duty or is, for another reason, unable to perform the functions of the office.

Part 3 Practitioners

101 Appointment of senior practitioners and authorised practitioners by administrator

- (1) The administrator may, by written instrument, appoint a person—
 - (a) to be a senior practitioner for the forensic disability service; or
 - (b) to be an authorised practitioner for the forensic disability service.
- (2) However, a person may be appointed under subsection (1) only if, in the administrator's opinion, the person has the necessary expertise or experience relevant to the role to which the person is appointed.
- (3) Also, in appointing a person under subsection (1), the administrator must have regard to the following—

- (a) the need for a multidisciplinary approach within the forensic disability service;
 - (b) the person's commitment to the principles stated in section 7;
 - (c) the person's skills and expertise in supporting people with an intellectual or cognitive disability, mental condition or offending behaviour.
- (4) An appointment made under this section may limit the senior practitioner's, or authorised practitioner's, powers under this Act.

102 Appointment of administrator as a senior practitioner

- (1) The director may, by written instrument, appoint the administrator to be a senior practitioner for the forensic disability service.
- (2) However, the administrator may be appointed to be a senior practitioner only if, in the director's opinion, the administrator has the necessary expertise or experience to be a senior practitioner.
- (3) An appointment made under this section may limit the powers the person has as a senior practitioner under this Act.

103 Powers of senior practitioners and authorised practitioners

- (1) A senior practitioner or authorised practitioner has the powers given under this Act.
- (2) However, a senior practitioner or authorised practitioner has the powers given under chapter 6 only if the practitioner's instrument of appointment states that the practitioner may exercise the powers.

Note—

Chapter 6 provides for the regulation of behaviour control.

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- (3) Also, subsection (1) has effect subject to any limitation stated in the practitioner's instrument of appointment.

104 Appointment of other persons to perform the role of a practitioner

- (1) The administrator may, by written instrument, appoint a person to perform the role of a practitioner for the forensic disability service.
- (2) However, a person may be appointed to perform the role of a practitioner only if, in the administrator's opinion, the person has the necessary training, qualifications and expertise relevant to providing care and support of persons with an intellectual or cognitive disability.
- (3) Also, in appointing a person under this section, the administrator must have regard to the matters mentioned in section 101(3).
- (4) An appointment made under this section may limit the exercise of the powers the person has in performing the role of a practitioner under this Act.
- (5) A person appointed under this section has the powers given to a practitioner whose role the person is appointed to perform.
- (6) However, the person may not exercise powers given to a senior practitioner or authorised practitioner under chapter 6.
- (7) Also, subsection (5) has effect subject to any limitation stated in the person's instrument of appointment.

105 Register of practitioners and other persons

- (1) The administrator must keep a register of the following—
 - (a) senior practitioners appointed under sections 101 and 102;
 - (b) authorised practitioners appointed under section 101;

- (c) persons appointed under section 104 to perform the role of a practitioner.
- (2) The register must identify the senior practitioners and authorised practitioners mentioned in subsection (1) whose instrument of appointment states that the practitioner may exercise the powers given under chapter 6.

Part 4 Authorised officers

106 Appointment of authorised officers

- (1) The director or chief executive may appoint a registered health practitioner, social worker engaged in providing disability services, lawyer or other person to be an authorised officer for this Act.
- (2) However, a person may be appointed to be an authorised officer only if—
 - (a) the person is not a forensic disability service employee; and
 - (b) in the director’s or chief executive’s opinion, the person has the necessary expertise or experience to be an authorised officer.

107 Appointment conditions and limit on powers

- (1) An authorised officer holds office on the conditions stated in the officer’s instrument of appointment.
- (2) The instrument of appointment may limit the authorised officer’s powers under this Act.

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108 Approval of identity cards

- (1) The director must approve identity cards for authorised officers.
- (2) An approved identity card for an authorised officer must contain a recent photo of the officer.

Note—

See section 153 for the requirement for an authorised officer to identify himself or herself before exercising a power under this Act.

109 When authorised officer ceases to hold office

- (1) An authorised officer ceases to hold office if any of the following happen—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the officer ceases to hold office;
 - (c) the officer's resignation under section 110 takes effect.
- (2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.
- (3) In this section—

condition of office means a condition on which the authorised officer holds office.

110 Resignation

- (1) An authorised officer may resign by signed notice given to the appointing entity.
- (2) In this section—

appointing entity means the director or chief executive who appointed the authorised officer under this part.

111 Powers

- (1) An authorised officer has the powers given under this Act.

Note—

Authorised officers have powers under chapter 9, part 5.

- (2) Subsection (1) has effect subject to any limitation stated in the officer's instrument of appointment.

Chapter 9 Enforcement, evidence and legal proceedings

Part 1 Return of forensic disability clients to forensic disability service for care and support

112 Senior practitioner may require return of client

- (1) A senior practitioner may, by written notice given to a forensic disability client, require the client to return to the forensic disability service on or before a stated time—
- (a) to give effect to a change to the client's individual development plan; or
 - (b) to give effect to a decision or order of the tribunal or Mental Health Court; or
 - (c) if the senior practitioner reasonably believes—
 - (i) the client has not complied with the client's individual development plan; and
 - (ii) it is necessary in the interests of the client's health or safety or the safety of others.

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- (2) The senior practitioner must—
 - (a) state the reasons for the requirement in the notice; and
 - (b) talk to the client about the requirement.

Note—

See section 146 about complying with provisions as soon as practicable, section 147 about complying with provisions to the extent reasonably practicable and section 154 about ensuring the client understands things told or explained to the client.

- (3) However, the senior practitioner need not comply with subsection (2)(b) if the senior practitioner reasonably believes that to do so would not be in the interests of the client's health or safety or the safety of others.

113 Taking client to forensic disability service or authorised mental health service

- (1) This section applies to—
 - (a) a client required by notice under section 112 to return to the forensic disability service; or
 - (b) a client for whom a temporary absence approval is revoked or the approved period of absence has ended; or
 - (c) a client whose period of limited community treatment has ended; or
 - (d) a client who has absconded from the charge of an authorised person mentioned in section 117(2); or
 - (e) a client who has absconded from detention in the forensic disability service; or
 - (f) a client whose period of detention in an authorised mental health service under the Mental Health Act, section 309B has ended.

Note—

The Mental Health Act, section 309B deals with forensic disability clients taken to an authorised mental health service under subsection (2)(b) or (4).

- (2) A practitioner may take a client mentioned in any of subsection (1)(a) to (e) to—
- (a) the forensic disability service; or
 - (b) an authorised mental health service if—
 - (i) it is not reasonably practicable to return the client to the forensic disability service; and
 - (ii) the director and the director (mental health) agree that the client be taken to an authorised mental health service for temporary detention under the Mental Health Act, section 309B.

Note—

See section 152 in relation to the detention and care and support of a client taken to an authorised mental health service under paragraph (b).

- (3) A practitioner may take a client mentioned in subsection (1)(f) to—
- (a) if the client is to be detained in the forensic disability service as mentioned in the Mental Health Act, section 309C(4)(b)(i)—the forensic disability service; or
 - (b) if the client is to undertake limited community treatment as mentioned in the Mental Health Act, section 309C(4)(b)(ii)—the place where the client is to undertake the limited community treatment.

Note for subsections (2) and (3)—

See section 155 for the use of reasonable force and section 144 for the administration of medication to the client.

- (4) If it is not reasonably practicable for a practitioner to take a client to the forensic disability service, an authorised mental health service or a place for limited community treatment (each the ***relevant place***) under subsection (2) or (3), a health practitioner may, if agreed between the director and the director (mental health), take the client to the relevant place.
- (5) For the purpose of taking a client to the relevant place under subsection (4), a health practitioner may exercise a power, and

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has the obligations, under the Mental Health Act in relation to the client as if the client were a forensic patient being taken to an authorised mental health service.

- (6) If asked by a practitioner or a health practitioner, a police officer must, as soon as reasonably practicable, ensure reasonable help is given.
- (7) 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).
- (8) Also, a police officer may detain the client.

Note—

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).

- (9) In this section—

health practitioner means a health practitioner within the meaning of the Mental Health Act.

Part 2 Entry of places

114 Application of pt 2

This part applies if, under section 113, a practitioner is authorised to take a forensic disability client to the forensic disability service, an authorised mental health service or a place where the client is to undertake limited community treatment.

115 Entry of places

For taking the client to the forensic disability service, an authorised mental health service or a place where the client is

to undertake limited community treatment, the practitioner 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.

Part 3 Offences

116 Offences relating to ill-treatment

- (1) This section applies to a person who has—
 - (a) a responsibility for the detention, care and support and protection of a forensic disability client in the forensic disability service; or
 - (b) the care or custody of a forensic disability client detained in the forensic disability service; or
 - (c) the care or custody of a forensic disability client while the client is undertaking limited community treatment.
- (2) The person must not ill-treat the forensic disability client.
Maximum penalty—150 penalty units or 1 year's imprisonment.

- (3) In this section—
ill-treat includes wilfully abuse, neglect or exploit.

117 Offences relating to forensic disability clients absconding

- (1) This section applies if, under this Act, a person (the *authorised person*) is—
 - (a) taking a forensic disability client—
 - (i) to the forensic disability service; or

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- (ii) to an authorised mental health service; or
 - (iii) to a place of custody; or
 - (iv) to appear before a court; or
 - (b) accompanying a forensic disability client while the client is undertaking limited community treatment; or
 - (c) caring for a forensic disability client during the client's absence from the forensic disability service under a temporary absence approval; or
 - (d) accompanying a forensic disability client at an authorised mental health service while the client is awaiting admission to that service under a transfer order.
- (2) For this section, while the authorised person is acting as mentioned in subsection (1), the client is in the authorised person's charge.
- (3) The authorised person must not wilfully allow the client to abscond from the authorised person's charge.
- Maximum penalty—200 penalty units or 2 years imprisonment.
- (4) A person must not knowingly help the client to abscond from the authorised person's charge.
- Maximum penalty—200 penalty units or 2 years imprisonment.

118 Other offences relating to absence of forensic disability clients

- (1) A person must not—
- (a) induce, or knowingly help, a forensic disability client detained in the forensic disability service to unlawfully absent himself or herself from the service; or
 - (b) knowingly harbour a forensic disability client who is unlawfully absent from the forensic disability service.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) For subsection (1)(a) or (b), a forensic disability client is unlawfully absent from the forensic disability service if the client has absconded from the charge of an authorised person mentioned in section 117(2).
- (3) A forensic disability service employee must not wilfully allow a forensic disability client detained in the forensic disability service to unlawfully absent himself or herself from the service.

Maximum penalty—200 penalty units or 2 years imprisonment.

119 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 forensic disability client does not commit an offence against subsection (1) merely because the client resists the exercise of the power in relation to himself or herself.
- (3) In this section—

official means a following person—

- (a) the director;
- (b) the administrator;
- (c) a practitioner;
- (d) an authorised officer;
- (e) a person acting under the direction of a person mentioned in any of paragraphs (a) to (d);
- (f) a doctor or registered nurse exercising a power under section 50 or 144.

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120 False or misleading documents

- (1) A person must not state anything in a 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 4 Confidentiality

121 Confidentiality of information—allied persons

- (1) This section applies to a person who is, or has been, a forensic disability client’s allied person and in that capacity—
 - (a) acquired information about the client’s or another person’s affairs; or
 - (b) has access to, or custody of, a document about the affairs of a forensic disability client or another person.

- (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 or document relates agrees to the disclosure or giving of access and the person is an adult when the agreement is given.

122 Confidentiality of information—other persons

- (1) This section applies to a person who gains confidential information through the person's involvement in the administration of this Act.
- (2) The person must not disclose the information to anyone, other than under subsection (4) or section 123.

Maximum penalty—100 penalty units.

- (3) Without limiting subsection (1), a person gains information through involvement in the administration of this Act if the person gains the information because of being, or an opportunity given by being, any of the following—
 - (a) the Minister;
 - (b) the chief executive;
 - (c) the director;
 - (d) the director (mental health);
 - (e) the administrator;
 - (f) a practitioner;
 - (g) a forensic disability service employee not mentioned in paragraph (f);
 - (h) an authorised officer;
 - (i) an employee in the department.
- (4) A person may disclose information to someone else—
 - (a) for administering, monitoring or enforcing compliance with this Act; or
 - (b) to discharge a function under another law; or
 - (c) for a proceeding in a court or tribunal; or
 - (d) if authorised under another law or a regulation made under this Act; or
 - (e) if—

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- (i) the person is authorised in writing by the person to whom the information relates; and
 - (ii) the person to whom the information relates is an adult when the authorisation is given; or
 - (f) to protect a forensic disability client from abuse, neglect or exploitation.
- (5) In this section—
- confidential information*** includes information about a person's affairs but does not include—
- (a) information already publicly disclosed unless further disclosure of the information is prohibited by law; or
 - (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

123 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 to the relevant person information that is confidential information under that part; and
 - (b) the director or an officer, employee or agent of the department in which the Mental Health Act is administered may disclose to the relevant person information 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 section 93.

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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.

125 Authorised officer may require production of documents etc.

- (1) For the proper and efficient administration of this Act, an authorised officer may, by written notice, require the administrator—
- (a) to produce to the officer—
 - (i) a stated document (including a medical record), or a copy of a stated document, about a forensic disability client; or
 - (ii) another document relevant to the administration or enforcement of this Act; or
 - (b) to provide stated information to the officer about—
 - (i) a forensic disability client; or
 - (ii) another matter relevant to the administration or enforcement of this Act.
- (2) The notice must state the day on which the document or information is to be produced or provided.
- (3) The day stated under subsection (2) 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, including a medical record, is produced to the authorised officer, the officer—

-
- (a) may inspect it and make copies of, or take extracts from, it 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 6 **Evidence and legal proceedings**

126 **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 any of the following—
 - (i) the director;
 - (ii) the director (mental health);
 - (iii) the administrator;
 - (iv) a senior practitioner, authorised practitioner or person appointed to perform the role of a practitioner for the forensic disability service;
 - (v) an authorised officer; 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 a person mentioned in subsection (2)(a), 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—

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- (a) a stated document is a copy of an order, notice, declaration, direction or decision made, issued or given under this Act;
- (b) a stated document is a copy of an order, notice or decision made, issued or given under the Mental Health Act;
- (c) on a stated day, or during a stated period, a stated person was or was not a forensic disability client;
- (d) a stated place is, or was on a stated day or during a stated period, the forensic disability service;
- (e) a stated place is, or was on a stated day or during a stated period, an authorised mental health service;
- (f) on a stated day, a stated person was given a stated order, notice, declaration, direction or decision under this Act or the Mental Health Act;
- (g) a stated document is a copy of a part of a register kept under this Act.

127 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 offence is committed; or
 - (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

128 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 following person—
- (a) the director;
 - (b) the director (mental health);
 - (c) the administrator;
 - (d) a practitioner;
 - (e) an authorised officer;
 - (f) a person acting under the direction of a person mentioned in any of paragraphs (a) to (e);
 - (g) a doctor or registered nurse exercising a power under section 50 or 144.

Chapter 10 Application of Mental Health Act

Part 1 Applied provisions

129 Applications for tribunal order for transfer of client to authorised mental health service

The provisions of the Mental Health Act, chapter 5, part 1, division 2A, subdivision 2 (other than section 169G(2) and (3) and 169H) are applied for an application to the tribunal for a transfer order for a forensic disability client.

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130 Applications for tribunal approval for client to move out of Queensland

The provisions of the Mental Health Act, chapter 5, part 1, division 3 (other than section 175) are applied for an application to the tribunal for an approval that a client move out of Queensland.

131 Reviews by tribunal

The following provisions of the Mental Health Act, chapter 6 are applied for reviews for forensic disability clients—

- (a) part 3, other than sections 203(2)(d) and (6), 204(5) and (6), 204A and 206;
- (b) part 4.

132 Tribunal's decision to be given effect

The administrator under this Act must ensure the tribunal's decision on the review is given effect.

Note—

Giving effect to the tribunal's decision may require, but is not limited to, any or all of the following—

- (a) changing the client's individual development plan under section 17(3);
- (b) authorising limited community treatment under chapter 2, part 2;
- (c) requiring the client to return to the forensic disability service under section 112(1)(b).

133 Examinations, references and orders for clients charged with offences

The following provisions of the Mental Health Act, chapter 7 are applied for examinations, references and orders for forensic disability clients charged with offences—

- (a) parts 1 and 2;

- (b) part 3, other than sections 252A, 253 and 254;
- (c) part 4, other than section 257(1)(d) and (2);
- (d) part 5;
- (e) part 6, other than division 3 and section 287;
- (f) part 7, other than the following—
 - section 294
 - divisions 2 and 3;
- (g) part 8;
- (h) part 9, other than section 315(a)(iv).

134 Forensic information orders

The provisions of the Mental Health Act, chapter 7A, part 2 (other than sections 318O(1)(e) and (g), 318Y(f) and 318ZB) are applied for forensic information orders for forensic disability clients.

135 Appeals against tribunal decisions

The following provisions of the Mental Health Act, chapter 8, part 1 are applied for appeals against tribunal decisions for forensic disability clients—

- (a) division 2, other than section 319(b);
- (b) division 3, other than section 329;
- (c) division 4.

136 Appeals against Mental Health Court decisions on references

The provisions of the Mental Health Act, chapter 8, part 2 are applied for appeals against a decision of the Mental Health Court on a reference for forensic disability clients.

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137 Inquiries into detention of clients in forensic disability service

The provisions of the Mental Health Act, chapter 11, part 9 are applied for inquiries into the detention of a forensic disability client in the forensic disability service to decide whether the client's detention is lawful.

138 Participation and representation at tribunal hearings

The following provisions of the Mental Health Act, chapter 12 are applied for tribunal proceedings for forensic disability clients—

- (a) part 4, other than section 451;
- (b) parts 5 and 6.

Part 2 Facilitation of application of applied provisions

139 Application of applied provisions

- (1) This section applies for applying the applied provisions.
- (2) Subject to subsection (3), the applied provisions apply as if—
 - (a) a reference in the provisions to a forensic patient, patient or involuntary patient, were a reference to a forensic disability client; and
 - (b) a reference in the provisions to a special notification forensic patient were a reference to a special notification client; and
 - (c) a reference in the provisions to the director, or the director (of mental health), were a reference to the director under this Act; and

- (d) a reference in the provisions to an administrator were a reference to the administrator under this Act; and
- (e) a reference in the provisions to an allied person were a reference to an allied person under this Act; and
- (f) a reference in the provisions to an authorised doctor, or authorised psychiatrist, were a reference to a senior practitioner; and
- (g) a reference in the provisions to a health practitioner were a reference to a practitioner; and
- (h) a reference in the provisions to an authorised mental health service, treating health service or in-patient facility were a reference to the forensic disability service; and
- (i) a reference in the provisions to the forensic disability service were a reference to an authorised mental health service; and
- (j) a reference in the provisions to treatment, or care, were a reference to care and support; and
- (k) a reference in the provisions to a treatment plan were a reference to an individual development plan; and
- (l) a reference in the provisions to limited community treatment were a reference to limited community treatment within the meaning of this Act; and
- (m) a reference in the provisions to examining a patient were a reference to assessing a forensic disability client; and
- (n) a reference in the provisions to an examination of a patient were a reference to an assessment of a forensic disability client; and
- (o) a reference in the Mental Health Act, section 169D(1) to an application under that Act, section 169A(3) were a reference to an application under this Act; and

Examples—

chapter 6, part 5A and chapter 7, part 8A

(2) In this section—

excluded provision means a following provision of the Mental Health Act—

- (a) chapter 6, part 6;
- (b) a provision that, under part 1, is expressly excluded from being an applied provision.

Example—

Section 129 expressly excludes the Mental Health Act, sections 169G(2) and (3) and 169H from being an applied provision.

Chapter 11 5-year review of client's benefit from care and support

141 Review by director

- (1) This section applies to a forensic disability client who has been a client for a continuous period of 5 years as worked out under subsection (5).
- (2) The administrator must ensure the director—
 - (a) reviews the benefit to the client from care and support provided by the forensic disability service; and
 - (b) considers whether the benefit is likely to continue if the client continues to be a client.
- (3) The director must give a report on the review to the administrator.
- (4) If the administrator receives a notice under the Mental Health Act, section 202 for the hearing of a review of the client's

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mental condition, the administrator must give a copy of the report to the tribunal.

- (5) For working out whether a client has been a client for a continuous period of 5 years, the following periods are to be included—
- (a) any period the client was undertaking limited community treatment;
 - (b) any period the client was absent from the service under a temporary absence approval;
 - (c) any period the client was—
 - (i) detained temporarily in an authorised mental health service under the Mental Health Act, section 309B; or
 - (ii) absent from the health service while undertaking limited community treatment within the meaning of that Act, or under an approval given under that Act, section 186.

Example—

A forensic disability client has been subject to an applicable forensic order (or successive applicable forensic orders) for 5 years. During the 5 years, the client undertook limited community treatment for periods totalling 3 months. For subsection (1), the client has been a client for a continuous period of 5 years.

- (6) In this section—

benefit means a benefit by way of individual development and opportunities for quality of life and participation and inclusion in the community.

142 Transfer from forensic disability service to authorised mental health service

- (1) Subsection (2) applies if, as a result of the review, the director considers the benefit to the client mentioned in section 141 is not likely to continue.

- (2) The director may, by written order, transfer the client to an authorised mental health service if the director (mental health) agrees to the transfer.
- (3) Section 33(2) to (4) applies for the transfer.

Chapter 12 Miscellaneous provisions

Part 1 Other provisions about administration or use of medication

143 Definition for pt 1

In this part—

medication does not include behaviour control medication.

Note—

Chapter 6 provides for the administration and use of behaviour control medication.

144 Administration of medication for particular purposes

- (1) This section applies for taking a forensic disability client from the forensic disability service to an authorised mental health service (the **relevant service**) under a transfer order.
- (2) This section also applies for taking a client to the forensic disability service or an authorised mental health service under section 113 (each of which are also the **relevant service**).
- (3) Despite the absence or refusal of the client's consent, medication may be administered to the client before or while being taken to the relevant service.
- (4) However, the medication—

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- (a) may be administered to the client only if a doctor is satisfied it is necessary to ensure the safety of the client or others while the client is being taken to the relevant service; and
 - (b) must be administered by a doctor, or registered nurse under the instruction of a doctor.
- (5) The doctor or registered nurse may administer the medication with the help, and using the minimum force, that is necessary and reasonable in the circumstances.
 - (6) For subsection (4)(b), the doctor's instruction must include the medication's name and the dose, route and frequency of administration.
 - (7) A doctor or registered nurse who administers medication under this section must keep a written record of the matters mentioned in subsection (6).
 - (8) This section applies despite the Guardianship and Administration Act, chapter 5, part 2, division 1.

Note—

Guardianship and Administration Act, chapter 5, part 2, division 1
(Health care—no consent)

145 Review of client's medication

- (1) A senior practitioner must ensure a doctor regularly reviews a forensic disability client's need for, and the appropriateness of, medication administered to or used by the client.

Note—

See section 52 for reviewing behaviour control medication.

- (2) The review must be carried out at least every 3 months.
- (3) Also, if requested by the director, a senior practitioner must ensure a doctor carries out an immediate review of a forensic disability client's medication as mentioned in subsection (1).
- (4) The doctor must record details of the review in the client's file.

Part 2 **Compliance with particular provisions**

146 Compliance with provisions as soon as practicable

- (1) This section applies if, under a provision of this Act—
 - (a) a person is required or permitted—
 - (i) to make, prepare or give a document to someone; or
 - (ii) to talk to or tell someone 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.

147 Compliance with provisions 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 to comply with a provision relating to a forensic disability client's allied person if, after reasonable enquiries, the administrator can not ascertain the allied person's whereabouts.

148 Administrator taken to have complied with particular requirements

- (1) This section applies if, under a provision of this Act—

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- (a) the administrator is required to give notice to or tell a forensic disability client's allied person 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 client'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.

149 Director taken to have complied with particular requirements

- (1) The director may enter into a written agreement with the director (mental health) for the director (mental health) or a person nominated by the director (mental health) to give information, a notice or copy of a notice to a person under a prescribed provision.
- (2) The director is taken to have complied with the prescribed provision if the director (mental health) or a person nominated by the director (mental health) gives the information, notice or copy to the person as required under the provision.
- (3) Anything done or omitted to be done under this Act in reliance on the director's purported compliance with the prescribed provision is taken to be as effective as it would have been had the director complied with the provision.
- (4) In this section—
prescribed provision means a following provision of the Mental Health Act, as applied under sections 134 and 139—
 - section 318O(1) (other than sections 318O(1)(e) and (g))

- section 318U(2), (4) or (6)
- section 318W(3), (6) or (9)
- section 318X(3), (6) or (9)
- section 318ZA(2).

Part 3 Other provisions

150 Legal custody of client

A forensic disability client is in the legal custody of the administrator.

151 Taking client to appear before court and return to forensic disability service

- (1) This section applies if a forensic disability client is required for any reason to appear before a court.
- (2) A practitioner may take the client to appear before the court.
- (3) Subject to any order the court may make, a practitioner may take the client back to the forensic disability service at the end of the proceedings.

Note—

See section 155 for the use of reasonable force.

152 Care of client detained temporarily in authorised mental health service

- (1) The Mental Health Act, sections 309B and 309C provide for the detention and care of a forensic disability client who is taken to an authorised mental health service under section 113(2)(b) or (4).

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(2) In this section—

care means care within the meaning of the Mental Health Act.

153 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 who is an authorised officer complies with subsection (1) if the official—

(a) first produces his or her approved identity card for the person's inspection; or

(b) has his or her approved 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—

approved identity card means an identity card approved under section 108.

official means—

(a) generally, a practitioner; but

(b) for chapter 9, part 5, an authorised officer.

154 Ensuring client understands things told or explained to the client

(1) If a provision of this Act requires a person to tell or explain something to a forensic disability client, the person must do so—

(a) in the language or way the client is most likely to understand; and

- (b) in a way that has appropriate regard to the client's age, culture, disability and communication ability.

Example of way for paragraph (a) or (b)—

by using visual or other aids

- (2) If the person believes the client has not understood what the person told or explained to the client, the person must record details of the fact in the client's file.

155 Use of reasonable force

- (1) Subsection (2) applies for the exercise of—
 - (a) a practitioner's power under section 37, 113(2) or (3) or 151; or
 - (b) the administrator's power to detain a forensic disability client in the forensic disability service if, under this Act or the applicable forensic order, a forensic disability client is authorised or required to be detained in the forensic disability service.
- (2) The practitioner or administrator, and anyone lawfully helping the practitioner or administrator—
 - (a) may exercise the power with the help, and using the minimum force, that is necessary and reasonable in the circumstances; and
 - (b) is a public official for the *Police Powers and Responsibilities Act 2000*.

Note—

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).

156 Period counted as imprisonment

- (1) The period a person is a forensic disability client for a particular offence is—
 - (a) for the *Penalties and Sentences Act 1992*—taken to be imprisonment already served under the sentence for the offence; or

Note—

See the *Penalties and Sentences Act 1992*, section 159A (Time held in presentence custody to be deducted).

 - (b) for the *Corrective Services Act 2006* or the *Youth 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.

157 Review of Act

- (1) The Minister must review the efficacy and efficiency of this Act as soon as practicable after the end of 3 years after the commencement of this section.
- (2) In conducting the review, if the Minister is not responsible for administering the Mental Health Act, the Minister must consult with the Minister responsible for administering that Act.
- (3) As soon as practicable after finishing the review, the Minister must table a report about its outcome in the Legislative Assembly.

158 Approved forms

The director may approve forms for use under this Act.

159 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about 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.

Chapter 13 Transitional provision

160 Initial director

- (1) The chief practitioner disability is the initial Director of Forensic Disability (*initial director*) until whichever of the following happens first—
 - (a) a Director of Forensic Disability is appointed under section 85;
 - (b) the period of 5 years starting on the day this section commences ends;
 - (c) the chief practitioner disability resigns from office as the initial director by signed notice given to the Minister;
 - (d) the chief practitioner disability is removed from office as the initial director under subsection (2).

Note—

The functions of the initial director are provided for under section 87 (see schedule 2, definition *director*, paragraph (a)).

- (2) The Governor in Council may at any time remove the chief practitioner disability from office as the initial director for any reason or none.
- (3) To remove any doubt, it is declared that the chief practitioner disability may be appointed as Director of Forensic Disability under section 85.

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(4) In this section—

chief practitioner disability means the Chief Practitioner Disability appointed under the *Public Service Act 2008*.

Chapter 14 Legislation amended

Part 1 Amendment of Bail Act 1980

161 Act amended

This part amends the *Bail Act 1980*.

162 Amendment of s 21 (Sureties)

Section 21(1)(c)—

omit, insert—

‘(c) is not—

- (i) an involuntary patient under the *Mental Health Act 2000* who is, or is liable to be, detained in an authorised mental health service under that Act; or
- (ii) a forensic disability client within the meaning of the *Forensic Disability Act 2011*; or
- (iii) a person for whom a guardian or administrator has been appointed under the *Guardianship and Administration Act 2000*; and’.

- (iv) absent from the forensic disability service under a temporary absence approval while accompanied by a practitioner within the meaning of that Act; or
- (v) awaiting admission at an authorised mental health service under an order for the person's transfer from the forensic disability service to the authorised mental health service; or'.

(2) Section 9(1)(b)—

insert—

- '(v) absent from an authorised mental health service under an approval given under section 186 of that Act while accompanied by an employee of a health service; or
- (vi) being detained in an authorised mental health service under section 309B of that Act; or
- (vii) being taken to the forensic disability service under section 169J of that Act; or'.

(3) Section 9(2), '(1)(b)'—

omit, insert—

'(1)(aa) or (b)'.

(4) Section 9(4)—

insert—

'forensic disability client' means a forensic disability client as defined under the *Forensic Disability Act 2011*.

'forensic disability service' means the forensic disability service as defined under the *Forensic Disability Act 2011*.'

167 Amendment of s 10 (*Death in custody defined*)

Section 10(2), definition *custody*, paragraph (c)—

insert—

'(iii) the *Forensic Disability Act 2011*; or'.

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168 Amendment of s 47 (Coroner’s comments and findings for particular deaths)

Section 47(3), definition *relevant Act*, paragraph (a)—
insert—

‘(iia)for the death of a person mentioned in section 9(1)(aa)—the *Forensic Disability Act 2011*; or’.

Part 4 Amendment of Crime and Misconduct Act 2001

169 Act amended

This part amends the *Crime and Misconduct Act 2001*.

170 Amendment of s 83 (Notice to attend hearing—prisoner or patient)

(1) Section 83, heading, ‘or patient’—

omit, insert—

‘, **patient or forensic disability client**’.

(2) Section 83(3) to (5)—

omit, insert—

‘(2A) If the attendance before the commission of a forensic disability client detained in the forensic disability service is required, the chairperson may, by notice given to the forensic disability service administrator, direct the forensic disability service administrator to produce the client named in the notice at a stated time and place.

‘(3) A direction mentioned in subsection (1), (2) or (2A) is lawful authority to the person to whom it is given for production of the prisoner, patient or forensic disability client as directed.

-
- ‘(4) The person to whom the direction is given must comply with the direction.
- ‘(5) A prisoner, patient or forensic disability client produced under this section remains in the custody of the chief executive (corrective services), hospital administrator or forensic disability service administrator.’.
- (3) Section 83(6)—
insert—
‘forensic disability client means a forensic disability client within the meaning of the *Forensic Disability Act 2011*.
forensic disability service means the forensic disability service within the meaning of the *Forensic Disability Act 2011*.
forensic disability service administrator means the administrator within the meaning of the *Forensic Disability Act 2011*.’.
- (4) Section 83(6), definitions *administrator* and *patient*, paragraph (b), ‘schedule 2’—
omit, insert—
‘schedule’.

Part 5 Amendment of Criminal Code

171 Code amended

This part amends the Criminal Code.

172 Amendment of s 145A (Sections 141 to 144 do not apply to certain types of custody)

Section 145A—

[s 173]

insert—

‘(c) the custody of a forensic disability client mentioned in the *Forensic Disability Act 2011*;’.

173 Amendment of s 227C (Persons who are not criminally responsible for offences against ss 227A and 227B)

Section 227C(3), definition *lawful custody—*

omit, insert—

‘*lawful custody* includes detention under the *Mental Health Act 2000* in—

- (a) an authorised mental health service or a high security unit within the meaning of that Act; or
- (b) the forensic disability service within the meaning of the *Forensic Disability Act 2011*’.

174 Amendment of s 266 (Prevention of crimes and offences for which an offender may be arrested without warrant—prevention of violence by patients under Mental Health Act 2000)

- (1) Section 266, heading, from ‘patients’—

omit, insert—

‘**particular persons**’.

- (2) Section 266, after ‘*Mental Health Act 2000*’—

insert—

‘or a forensic disability client under the *Forensic Disability Act 2011*’.

175 Amendment of s 358 (Unlawful custody of patient under Mental Health Act 2000)

- (1) Section 358, heading, from ‘patient’—

omit, insert—

182 Amendment of s 123T (Participation of psychiatrist in development of plan—adult subject to forensic order or involuntary treatment order)

- (1) Section 123T, heading, from ‘in development’—
omit, insert—
‘or senior practitioner in development of plan’.
- (2) Section 123T(1)(a)—
omit, insert—
‘(a) the chief executive is aware the adult is—
(i) subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*; or
(ii) a forensic disability client; and’.
- (3) Section 123T(2)—
omit, insert—
‘(2) The chief executive must ensure a following person is given the opportunity to participate in the development of the positive behaviour support plan—
(a) for an adult mentioned in subsection (1)(a)(i)—the authorised psychiatrist responsible for treatment of the adult under the *Mental Health Act 2000*;
(b) for an adult mentioned in subsection (1)(a)(ii)—a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*.’.

183 Amendment of s 123X (Requirements for chief executive’s decision about whether change should be made)

Section 123X—

insert—

- ‘(3A) Also, if the chief executive is deciding whether a change should be made because the adult is a forensic disability

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client, the chief executive must consult a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*.’.

184 Amendment of s 123Y (Action of chief executive after deciding whether change should be made)

(1) Section 123Y(5)(b), after ‘2000’—

insert—

‘, or is a forensic disability client’.

(2) Section 123Y(5)(b)(i)—

omit, insert—

‘(i) the relevant director; and’.

(3) Section 123Y(6)—

insert—

‘*relevant director* means—

(a) if the adult is a forensic disability client—the director of forensic disability; or

(b) otherwise—the director of mental health.’.

185 Amendment of s 123ZF (Requirements for development of positive behaviour support plan—assessment and consultation)

Section 123ZF(2)—

insert—

‘(ba) if the provider is aware the adult is a forensic disability client—ensure a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011* is given the opportunity to participate in the development of the positive behaviour support plan; and’.

186 Amendment of s 123ZH (Requirement for relevant service provider to consider whether plan should be changed)

- (1) Section 123ZH(1)(b), after ‘2000’—
insert—
‘, or is a forensic disability client’.
- (2) Section 123ZH(3)(a), after ‘2000’—
insert—
‘, or senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*’.
- (3) Section 123ZH(3)(b), after ‘psychiatrist’s’—
insert—
‘, or senior practitioner’s,’.

187 Amendment of s 123ZI (Requirement for relevant service provider to notify guardian)

- (1) Section 123ZI(1)(a), after ‘2000’—
insert—
‘, or senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*’.
- (2) Section 123ZI(1)(b), after ‘psychiatrist’—
insert—
‘, or senior practitioner,’.
- (3) Section 123ZI(2), after ‘psychiatrist’—
insert—
‘or senior practitioner’.
- (4) Section 123ZI(2), after ‘psychiatrist’s’—
insert—
‘or senior practitioner’s’.

[s 188]

- (5) Section 123ZI(3), definition *consult*—

omit, insert—

'consult, the authorised psychiatrist responsible for treatment of the adult under the *Mental Health Act 2000*, or senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*, includes give the psychiatrist, or senior practitioner, an opportunity to participate in the development of a positive behaviour support plan.'

188 Amendment of s 123ZJ (Requirement for relevant service provider to notify director of mental health)

- (1) Section 123ZJ, heading, 'director of mental health'—

omit, insert—

'relevant director'.

- (2) Section 123ZJ(1)(c), after '2000'—

insert—

', or is a forensic disability client'.

- (3) Section 123ZJ(2), 'director of mental health'—

omit, insert—

'relevant director'.

- (4) Section 123ZJ(2)(a)(ii), from 'of the'—

omit, insert—

'as mentioned in subsection (1)(c); and'.

- (5) Section 123ZJ—

insert—

- '(3) In this section—

relevant director means—

- (a) if the adult is a forensic disability client—the director of forensic disability; or
- (b) otherwise—the director of mental health.’.

189 Amendment of s 123ZK (Short term approval for use of restrictive practices other than containment or seclusion)

Section 123ZK(4)—

insert—

- ‘(c) if the chief executive is aware the adult is a forensic disability client—a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*.’.

190 Amendment of sch 7 (Dictionary)

Schedule 7—

insert—

‘director of forensic disability means the director under the *Forensic Disability Act 2011*.

forensic disability client means a forensic disability client under the *Forensic Disability Act 2011*.’.

Part 8 Amendment of Guardianship and Administration Act 2000

191 Act amended

This part amends the *Guardianship and Administration Act 2000*.

[s 192]

Note—

See also the amendments in schedule 2.

192 Amendment of s 29 (Other review of appointment)

Section 29(1)(c)—

insert—

‘(vii)if the adult is a forensic disability client—the director of forensic disability.’.

193 Amendment of s 80U (Definitions for ch 5B)

(1) Section 80U—

insert—

‘director of forensic disability means the director of forensic disability under the *Forensic Disability Act 2011*.

forensic disability client means a forensic disability client under the *Forensic Disability Act 2011*.

forensic disability service means the forensic disability service under the *Forensic Disability Act 2011*.

senior practitioner means a senior practitioner under the *Forensic Disability Act 2011*.’.

(2) Section 80U, definition *authorised psychiatrist*, ‘schedule 2’—

omit, insert—

‘schedule’.

194 Amendment of s 80W (Matters tribunal must consider)

Section 80W—

insert—

‘(ba) if the tribunal is aware the adult is a forensic disability client—

- (i) the terms of the forensic order under the *Mental Health Act 2000* for the adult's detention in the forensic disability service; and
- (ii) the views of a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011* about the containment or seclusion of the adult;’.

195 Amendment of s 80ZA (When containment or seclusion approval may be reviewed)

Section 80ZA(b)—

insert—

- ‘(vii) if the adult is a forensic disability client—the director of forensic disability.’.

196 Amendment of s 80ZE (Requirements for giving consent—guardian for restrictive practice (general matter))

Section 80ZE(5)—

insert—

- ‘(aa) if the guardian is aware the adult is a forensic disability client—
- (i) the terms of the forensic order under the *Mental Health Act 2000* for the adult's detention in the forensic disability service; and
 - (ii) the views of a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011* about the use of the restrictive practice;’.

[s 197]

197 Amendment of s 80ZH (When adult guardian may give short term approval for use of containment or seclusion)

Section 80ZH(2)—

insert—

‘(d) if the adult guardian is aware the adult is a forensic disability client—a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*.’.

198 Amendment of s 80ZP (Who may apply for appointment of guardian for restrictive practice matter)

Section 80ZP—

insert—

‘(g) if the adult is a forensic disability client—the director of forensic disability.’.

199 Amendment of s 80ZQ (Who is an *active party*)

Section 80ZQ—

insert—

‘(ea) if the adult is a forensic disability client—the director of forensic disability;’.

200 Amendment of s 80ZS (Requirements for informal decision makers—consenting to use of restrictive practices)

Section 80ZS(2)(b)—

insert—

‘(vi) if the informal decision-maker is aware the adult is a forensic disability client—a senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011* has been given an

opportunity to participate in the development of the positive behaviour support plan.’.

201 Amendment of s 118 (Tribunal advises persons concerned of hearing)

Section 118(1)(fa)—

insert—

‘(iv) if the tribunal is aware the adult is a forensic disability client—the director of forensic disability;’.

202 Amendment of s 222 (Definitions for ch 10)

(1) Section 222, definition *consumer*, paragraph (b)—

renumber as paragraph (c).

(2) Section 222, definition *consumer*—

insert—

‘(b) for a visitable site that is the forensic disability service—any person who lives or receives services at the visitable site; or’.

203 Amendment of s 230 (Reports by community visitors)

Section 230(4)—

insert—

‘(da) the director of forensic disability;’.

204 Amendment of s 231 (Appointment)

(1) Section 231(4)(a)(ii) and (iii)—

renumber as section 231(4)(a)(iii) and (iv).

(2) Section 231(4)(a)—

[s 205]

insert—

‘(ii) the *Forensic Disability Act 2011*.’.

205 Insertion of new ch 12, pt 12

Chapter 12—

insert—

‘Part 12 Transitional provision for Forensic Disability Act 2011

‘270 Amendment of regulation by Forensic Disability Act 2011 does not affect powers of Governor in Council

‘The amendment of the *Guardianship and Administration Regulation 2000* by the *Forensic Disability Act 2011* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.

206 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

‘director of forensic disability see section 80U.

forensic disability client see section 80U.

forensic disability service see section 80U.

senior practitioner, for chapter 5B, see section 80U.’.

[s 211]

Part 11 **Amendment of Mental Health Act 2000**

211 Act amended

This part amends the *Mental Health Act 2000*.

Note—

See also the amendments in schedule 2.

212 Amendment of s 8 (General principles for administration of Act)

Section 8—

insert—

- ‘(2) The principles stated in the Forensic Disability Act, section 7 apply to the administration of this Act in relation to persons with an intellectual disability as if—
- (a) a reference in that section to the Forensic Disability Act were a reference to this Act; and
 - (b) a reference in that section to care and support were a reference to care.’.

213 Amendment of s 9 (Principles for exercising powers and performing functions)

Section 9, after ‘illness’—

insert—

‘or intellectual disability’.

214 Amendment of s 124 (Preparing treatment plan)

- (1) Section 124(1)(a)—

omit, insert—

-
- ‘(a) in general terms, an outline of the proposed treatment or care to be provided in relation to the patient; and’.
- (2) Section 124(1)(b), ‘services are’—
omit, insert—
‘treatment or care is’.
- (3) Section 124(4), from ‘account’—
omit, insert—
‘account the following—
- (a) any existing plan of treatment, or advance health directive under the *Powers of Attorney Act 1998*, for the patient;
- (b) for a patient transferred from the forensic disability service to an authorised mental health service—any individual development plan under the Forensic Disability Act applying to the patient immediately before the transfer.’.

215 Amendment of s 131 (What treatment plan must state for limited community treatment)

Section 131(1)(b)(i), after ‘treatment’—
insert—

‘, or the management of the patient’s care, while the patient is undertaking the limited community treatment’.

216 Amendment of s 141 (Meaning of *mechanical restraint* for div 3)

Section 141(1), after ‘appliance’—
insert—

‘, approved under section 162B.’.

[s 217]

217 Insertion of new s 141A

After section 141—

insert—

‘141A Approval of mechanical appliances

‘The director must—

- (a) approve the mechanical appliances that may be used for mechanical restraint of a person; and
- (b) state the approved mechanical appliances in a relevant policy or practice guideline.

Note—

Policies and practice guidelines are issued under section 309A for forensic patients and section 493A for other patients.’.

218 Amendment of s 144 (How authorisation is given)

Section 144(g)—

omit, insert—

‘(g) the time (not longer than 3 hours after the authorisation is given) when the authorisation ends.’.

219 Insertion of new s 144A

After section 144—

insert—

‘144A Use of reasonable force

‘A doctor or the senior registered nurse on duty may, with the help, and using the minimum force, that is necessary and reasonable in the circumstances, apply the restraint as authorised to the patient.’.

220 Replacement of ss 146 and 147

Sections 146 and 147—

omit, insert—

‘146 Removal of restraint before authorisation ends

‘(1) The director may order the removal of restraint from a patient in an authorised mental health service at any time.

‘(2) If, before the authorisation of the use of the restraint ends—

(a) the senior registered nurse on duty is satisfied the patient can be safely treated or cared for without the restraint;
or

(b) the director orders the removal of the restraint under subsection (1);

the senior registered nurse on duty must immediately direct the removal of the restraint.

‘147 Administrator must notify director about mechanical restraint

‘(1) The administrator of an authorised mental health service must give the director written notice about the mechanical restraint of a patient in the health service as soon as practicable after the mechanical restraint is applied to the patient.

‘(2) The notice must include the information required by the director.’.

221 Amendment of s 153 (Seclusion authorised by doctor)

(1) Section 153(2)(c), ‘12’—

omit, insert—

‘3’.

(2) Section 153(2)(e), after ‘treatment’—

insert—

‘or care’.

[s 222]

222 Replacement of s 160 (Director may require reports about seclusions)

Section 160—

omit, insert—

‘159A Ending seclusion on director’s order

- ‘(1) The director may order a patient’s release from seclusion in an in-patient facility of an authorised mental health service at any time.
- ‘(2) If the director makes an order under subsection (1), a doctor or senior registered nurse on duty must immediately release the patient from seclusion.

‘160 Administrator must notify director about seclusions

- ‘(1) The administrator of an authorised mental health service must give the director notice about the seclusion of a patient in the health service.
- ‘(2) The notice must—
 - (a) be given as soon as practicable after the person is placed in seclusion; and
 - (b) include the information required by the director.’.

223 Omission of s 164 (Administration of medication while being moved in an authorised mental health service)

Section 164—

omit.

224 Insertion of new ch 5, pt 1, divs 2A and 2B

Chapter 5, part 1—

insert—

‘Division 2A Transfers from authorised mental health service to forensic disability service

‘Subdivision 1 Transfer order by director

‘169A Transfer order

- ‘(1) This section applies to a patient who is detained in an authorised mental health service under a forensic order (Mental Health Court—Disability).
- ‘(2) The director may, by written order, transfer the patient from the authorised mental health service to the forensic disability service if—
 - (a) the director is satisfied the transfer is in the patient’s best interests; and
 - (b) the director (forensic disability) agrees to the transfer.
- ‘(3) If the director (forensic disability) does not agree to the transfer, the director (within the meaning of this Act) may apply to the tribunal for an order for the patient’s transfer to the forensic disability service.
- ‘(4) Subdivision 2 applies for the application.
- ‘(5) The patient must be transferred to the forensic disability service if the tribunal orders the transfer.
- ‘(6) However, subsection (5) does not apply if the tribunal’s decision is stayed under section 323.

‘169B Director to give notice of transfer order to tribunal and others

‘Within 7 days after making the transfer order, the director must give written notice of the order to each of the following—

[s 224]

- (a) the tribunal;
- (b) the administrator of the patient's treating health service;
- (c) if any proceeding involving the patient has started but not finished—each entity the director considers has a sufficient interest in the proceeding.

Example—

the Mental Health Court, the director of public prosecutions or other prosecuting agency

'169C Administrator to give notice of transfer order to patient and allied person

'The administrator of the patient's treating health service must give notice of the transfer order to—

- (a) the patient; and
- (b) the patient's allied person.

'Subdivision 2 Application to tribunal for transfer order

Note—

See the Forensic Disability Act, sections 129 and 139 for the application of this subdivision for the purpose of that Act.

'169D Application for order

- '(1) An application under section 169A(3) for a transfer order must—
 - (a) be made in writing; and
 - (b) be given to the tribunal.
- '(2) The application may be made at any time.

‘169E Notice of hearing

- ‘(1) The tribunal must give written notice of the hearing of the application to the following persons—
- (a) the director;
 - (b) the director (forensic disability);
 - (c) the administrator of the patient’s treating health service;
 - (d) the administrator under the Forensic Disability Act;
 - (e) the patient;
 - (f) the patient’s allied person;
 - (g) the Attorney-General.
- ‘(2) The notice must—
- (a) be in the approved form; and
 - (b) be given at least 7 days before the hearing; and
 - (c) state the following information—
 - (i) the time and place of the hearing;
 - (ii) the nature of the hearing;
 - (iii) the right of the parties to the proceeding to be represented at the hearing.

‘169F Deciding application

‘The application may be decided by the tribunal constituted by the president on written material and submissions, without the applicant or forensic patient attending a hearing of the application.

‘169G Decision on application

- ‘(1) In deciding the application, the tribunal must make or refuse to make the transfer order.

[s 224]

- ‘(2) However, in deciding an application for a transfer order for a patient, the tribunal must have regard to the following—
- (a) whether the patient has an intellectual or cognitive disability within the meaning of the Forensic Disability Act but does not require involuntary treatment for a mental illness under this Act;
 - (b) whether the patient is likely to benefit from care and support within the meaning of the Forensic Disability Act provided in the forensic disability service.
- ‘(3) Also, the tribunal must not make a transfer order for a patient unless a certificate given to the tribunal under section 169H states that the forensic disability service has the capacity for the patient’s detention and care.
- ‘(4) In this section—
- benefit* means benefit by way of individual development and opportunities for quality of life and participation and inclusion in the community.

‘169H Certificate of forensic disability service availability

- ‘(1) This section applies for the purpose of the tribunal deciding an application for a transfer order for a patient.
- ‘(2) If asked by the director (forensic disability), the chief executive (forensic disability) must give the director (forensic disability) a certificate stating whether or not the forensic disability service has the capacity for the patient’s detention and care.
- ‘(3) The director (forensic disability) may give the certificate to the tribunal.
- ‘(4) The tribunal may ask the director (forensic disability) to give the tribunal a certificate of the chief executive (forensic disability) stating whether or not the forensic disability service has the capacity for the patient’s detention and care.

-
- ‘(5) If the tribunal makes a request under subsection (4), the director (forensic disability) must give the certificate to the tribunal within—
- (a) 7 days after receiving the request; or
 - (b) any longer period allowed by the tribunal.

‘169I 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 patient’s allied person;
 - (c) the administrator of the patient’s treating health service.
- ‘(2) Also, the tribunal must give the parties a written notice stating—
- (a) a party may ask the tribunal for written reasons for the 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) 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.

‘Subdivision 3 Taking patient to forensic disability service etc.

‘169J Taking patient to forensic disability service

- ‘(1) Under a transfer order for a patient, a health practitioner may take the patient to the forensic disability service.

Notes—

- 1 See the definition *transfer order* in the schedule.
- 2 For provisions about entering places, see chapter 14 (Enforcement, evidence and legal proceedings), part 2 (Entry to places).

- ‘(2) For subsection (1), the practitioner—
- (a) may exercise the power with the help, and using the minimum force, that is necessary and reasonable in the circumstances; and
 - (b) is a public official for the *Police Powers and Responsibilities Act 2000*.

Note—

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).

‘169K Giving information about patient for facilitating transfer and care

- ‘(1) This section applies for facilitating—
- (a) the transfer of a patient from an authorised mental health service to the forensic disability service under a transfer order; and
 - (b) the care of the patient, as a forensic disability client, in the forensic disability service.
- ‘(2) The director may give to the director (forensic disability) or a person nominated by the director (forensic disability) the following information about the patient—

- (a) the patient's personal and medical information;
- (b) the circumstances giving rise to any forensic order for the patient, including information contained in any report considered by the Mental Health Court in making the order;
- (c) the details of the patient's current forensic order;
- (d) any details necessary to give effect to the current forensic order;
- (e) the details of the patient's treatment plan;
- (f) the patient's response to treatment or care and willingness to continue treatment or care;
- (g) the details of any instance of mechanical restraint or seclusion of the patient;
- (h) whether the tribunal or Mental Health Court has approved or ordered limited community treatment for the patient, including any conditions of the approval or order;
- (i) the details of any limited community treatment undertaken by the patient, and the details of any limited community treatment that has been revoked;
- (j) when the tribunal is to conduct a review of the patient's mental condition;
- (k) any previous decisions of the tribunal about the patient;
- (l) any previous decisions of the Mental Health Court about the patient;
- (m) whether the patient has an allied person under this Act and, if so, the allied person's contact details;
- (n) whether the patient has a guardian or informal decision-maker and, if so, the contact details for the guardian or informal decision-maker;

[s 224]

- (o) whether the patient is subject to a forensic information order and, if so, any details necessary to give effect to that order;
 - (p) any other information obtained or brought into existence under this Act or the Forensic Disability Act relating to the patient's care.
- ‘(3) This section applies despite any duty of confidentiality or right of privacy provided under this or any other Act.

‘(4) In this section—

informal decision-maker, for a patient, means a member of the patient's support network, other than a paid carer for the patient within the meaning of the *Guardianship and Administration Act 2000*.

information includes a document.

personal information, about a patient, includes—

- (a) the patient's social circumstances, including, for example, the patient's support network; and
- (b) the patient's relevant behavioural history.

‘Subdivision 4 Continuation of forensic order and particular procedures for patient transferred to forensic disability service

‘169L Continuation of existing forensic order

- ‘(1) On the admission of a patient to the forensic disability service under a transfer order (other than a transfer order made under section 602), the patient's existing forensic order—
- (a) applies to the patient, as a forensic disability client, as if it were a forensic order (Mental Health Court—Disability) for the patient's detention in the forensic disability service; and

-
- (b) is to be read, or continued in force, with the changes necessary—
- (i) to make it consistent with the Forensic Disability Act; and
 - (ii) to adapt its operation to that Act.

Note—

Section 605 provides for the continuation of the relevant forensic order for a patient transferred under a transfer order made under section 602.

- ‘(2) Subsection (1) does not affect a power of the tribunal or Mental Health Court in relation to the existing forensic order.
- ‘(3) Without limiting subsection (2), the tribunal may carry out a review and make a decision about the existing forensic order under chapter 6, part 3.
- ‘(4) In this section—

existing forensic order means the forensic order (Mental Health Court—Disability) that, immediately before the patient’s admission to the forensic disability service—

- (a) was in force for the patient’s detention in the authorised mental health service; or
- (b) under the Forensic Disability Act, section 39, applied to the patient as if it were an order for the patient’s detention in the authorised mental health service.

‘169M Continuation of matters under particular provisions for patient transferred to forensic disability service

- ‘(1) This section applies if—
- (a) an action is done or something is brought into existence for a matter in relation to a patient in compliance with a provision of this Act that is an applied provision within the meaning of the Forensic Disability Act; and
 - (b) before the matter ends, the patient is transferred to the forensic disability service under a transfer order, including a transfer order made under section 602.

[s 224]

- ‘(2) On the patient’s admission to the forensic disability service under the transfer order—
- (a) the previous action or thing is taken to have been done or brought into existence for a matter in relation to the patient, as a forensic disability client, in compliance with the provision mentioned in subsection (1)(a); and
 - (b) if the previous thing is a document, it is to be read, or continued in force, with the changes necessary—
 - (i) to make it consistent with the Forensic Disability Act; and
 - (ii) to adapt its operation to the Forensic Disability Act.
- ‘(3) The previous action or thing may be amended, repealed or revoked under this Act.

‘Division 2B Administration of medication for particular purposes

‘169N Administration of medication

- ‘(1) This section applies for—
- (a) moving a patient from one facility in an authorised mental health service to another facility in the health service under section 163 for assessment, treatment or care; or
 - (b) transferring a patient from an authorised mental health service to—
 - (i) another authorised mental health service; or
 - (ii) the forensic disability service.
- ‘(2) Despite the absence or refusal of the patient’s consent, medication may be administered to the patient before or while being moved or transferred.

-
- ‘(3) 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 the patient is being moved or transferred; and
 - (b) must be administered by a doctor, or registered nurse under the instruction of a doctor.
- ‘(4) The doctor or registered nurse may administer the medication with the help, and using the minimum force, that is necessary and reasonable in the circumstances.
- ‘(5) For subsection (3)(b), the doctor’s instruction must include the medication’s name and the dose, route and frequency of administration.
- ‘(6) A doctor or registered nurse who administers medication under this section must keep a written record of the matters mentioned in subsection (5).
- ‘(7) This section applies despite the *Guardianship and Administration Act 2000*, chapter 5, part 2, division 1.

Note—

Guardianship and Administration Act 2000, chapter 5, part 2, division 1 (Health care—no consent)’.

225 Amendment of s 203 (Decisions on review)

- (1) Section 203(2)—
- insert—*
- ‘(e) an order that the patient be transferred from an authorised mental health service to the forensic disability service.’.
- (2) Section 203—
- insert—*

[s 226]

- ‘(5A) For subsection (5), the matters the tribunal must have regard to in making the decision are the matters stated in this section in relation to the most recent forensic order.’.
- (3) Section 203(6), after ‘subsection (1) or (2)’—
insert—
‘in relation to a patient whose most recent forensic order is not a forensic order (Mental Health Court—Disability)’.
- (4) Section 203—
insert—
- ‘(6A) In making a decision under subsection (1) or (2) in relation to a patient whose most recent forensic order is a forensic order (Mental Health Court—Disability), the tribunal must have regard to the following—
- (a) the patient’s mental state;
 - (b) the patient’s intellectual disability;
 - (c) each offence leading to the patient becoming subject to the forensic order;
 - (d) the patient’s social circumstances;
 - (e) the patient’s treatment plan;
 - (f) the patient’s behaviour in response to that plan, including behaviour that places the patient’s health or safety or the safety of others at risk;
 - (g) any report by the director (forensic disability) on a review about the patient under the Forensic Disability Act, section 141.’.

226 Amendment of s 203A (Tribunal may order examination etc.)

Section 203A(2) to (5)—
omit, insert—

-
- ‘(2) If the patient is not subject to a forensic order (Mental Health Court—Disability), the tribunal may order the patient to submit to an examination by a stated psychiatrist (the *examining person*) who is not an authorised psychiatrist for the patient’s treating health service.
 - ‘(3) If the patient is subject to a forensic order (Mental Health Court—Disability), the tribunal may order the patient to submit to an examination by a stated person (the *examining person*) who—
 - (a) has expertise in the aetiology and behaviour of persons with an intellectual disability; and
 - (b) is not a health practitioner engaged in providing health services at the patient’s treating health service.
 - ‘(4) If the patient is subject to 2 or more forensic orders—
 - (a) the tribunal may make only 1 order under this section; and
 - (b) the order made must be an order the tribunal may make in relation to the most recent forensic order.
 - ‘(5) The order must state the matters on which the examining person must report on to the tribunal.
 - ‘(6) The examining person must give a written report on the examination to the tribunal.
 - ‘(7) The tribunal must not revoke the forensic order for the patient unless the tribunal has obtained a report mentioned in subsection (6) in relation to the patient.’.

227 Amendment of s 204 (Restrictions on review decisions)

Section 204—

insert—

- ‘(5) In deciding whether to make an order under section 203(2)(e), the tribunal must have regard to the following—

[s 228]

- (a) whether the patient has an intellectual or cognitive disability within the meaning of the Forensic Disability Act but does not require involuntary treatment for a mental illness under this Act;
 - (b) whether the patient is likely to benefit from care and support within the meaning of the Forensic Disability Act provided in the forensic disability service.
- ‘(6) Also, the tribunal must not make an order for a patient under section 203(2)(e) unless a certificate given to the tribunal under section 204A states that the forensic disability service has the capacity for the patient’s detention and care.
- ‘(7) In this section—
- benefit* means benefit by way of individual development and opportunities for quality of life and participation and inclusion in the community.’.

228 Insertion of new s 204A

After section 204—

insert—

‘204A Certificate of forensic disability service availability

- ‘(1) This section applies for the purpose of the tribunal deciding whether to make a transfer order for a patient under section 203(2)(e).
- ‘(2) If asked by the director (forensic disability), the chief executive (forensic disability) must give the director (forensic disability) a certificate stating whether or not the forensic disability service has the capacity for the patient’s detention and care.
- ‘(3) The director (forensic disability) may give the certificate to the tribunal.
- ‘(4) The tribunal may ask the director (forensic disability) to give the tribunal a certificate of the chief executive (forensic

disability) stating whether or not the forensic disability service has the capacity for the patient's detention and care.

- '(5) If the tribunal makes a request under subsection (4), the director (forensic disability) must give the certificate to the tribunal within—
- (a) 7 days after receiving the request; or
 - (b) any longer period allowed by the tribunal.'

229 Amendment of s 257 (Reference to Mental Health Court)

Section 257(1)—

insert—

- '(e) if the person is receiving care under this Act for an intellectual disability—the director.'

230 Replacement of s 288 (Mental Health Court may make forensic order)

Section 288—

omit, insert—

'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 in accordance with this division (a *forensic order (Mental Health Court)* or a *forensic order (Mental Health Court—Disability)*) for a person mentioned

[s 230]

in subsection (1)(a) or (b) that the person be detained for involuntary treatment or care.

- ‘(3) The court must make an order in accordance with this division (also a *forensic order (Mental Health Court)* or a *forensic order (Mental Health Court—Disability)*) for a person mentioned in subsection (1)(c) that the person be detained for involuntary treatment or care.
- ‘(4) In deciding whether to make an order under subsection (2), the court must have regard to the following—
- (a) the seriousness of the offence;
 - (b) the person’s treatment or care needs;
 - (c) the protection of the community.
- ‘(5) After deciding to make an order under subsection (2), or for the purpose of making an order as required under subsection (3), the court must consider whether the person’s unsoundness of mind or unfitness for trial is a consequence of an intellectual disability.
- ‘(6) If the court does not consider the person’s unsoundness of mind or unfitness for trial is a consequence of an intellectual disability, the order—
- (a) must be a forensic order (Mental Health Court); and
 - (b) must state that the person is to be detained in a stated authorised mental health service for involuntary treatment or care.
- ‘(7) If the court considers the person’s unsoundness of mind or unfitness for trial is a consequence of an intellectual disability, the order—
- (a) must be a forensic order (Mental Health Court—Disability); and
 - (b) subject to subsections (8) and (9), must state which of the following services the person is to be detained in for care—
 - (i) the forensic disability service;

-
- (ii) a stated authorised mental health service.
- ‘(8) In deciding whether a forensic order (Mental Health Court—Disability) is to state that the person is to be detained in the forensic disability service for care, the court must have regard to the following—
- (a) whether the person has an intellectual or cognitive disability within the meaning of the Forensic Disability Act but does not require involuntary treatment for a mental illness under this Act;
 - (b) whether the person is likely to benefit from care and support within the meaning of the Forensic Disability Act provided in the forensic disability service.
- ‘(9) A forensic order (Mental Health Court—Disability), must not state that the person to whom the order relates be detained in the forensic disability service for care unless a certificate given to the court under section 288AA states that the forensic disability service has the capacity for the person’s detention and care.
- ‘(10) To remove any doubt, it is declared that the court is not required to have regard to the matters mentioned in subsection (8)(a) and (b), or a certificate given to the court under section 288AA, in deciding whether to make an order under subsection (2).
- ‘(11) A forensic order (Mental Health Court) or a forensic order (Mental Health Court—Disability) must be in the approved form.
- ‘(12) In this section—
- benefit* means benefit by way of individual development and opportunities for quality of life and participation and inclusion in the community.

‘288AA Certificate of forensic disability service availability

- ‘(1) This section applies for the purpose of the Mental Health Court deciding whether a forensic order (Mental Health

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Court—Disability) is to state that the person to whom the order relates is to be detained in the forensic disability service for care.

- ‘(2) If asked by the director (forensic disability), the chief executive (forensic disability) must give the director (forensic disability) a certificate stating whether or not the forensic disability service has the capacity for the person’s detention and care.
- ‘(3) The director (forensic disability) may give the certificate to the court.
- ‘(4) The court may ask the director (forensic disability) to give the court a certificate of the chief executive (forensic disability) stating whether or not the forensic disability service has the capacity for the person’s detention and care.
- ‘(5) If the court makes a request under subsection (4), the director (forensic disability) must give the certificate to the court within—
 - (a) 7 days after receiving the request; or
 - (b) any longer period allowed by the court.’.

231 Amendment of s 288A (Effect of new forensic order on existing forensic order)

Section 288A(2)—

omit, insert—

- ‘(2) If there is any inconsistency between the new forensic order and the old forensic order to the extent of—
 - (a) any limited community treatment ordered or approved under the orders; or
 - (b) the place of detention under the orders;the new forensic order prevails over the old forensic order to the extent of the inconsistency.’.

**232 Replacement of ch 7, pt 7, div 2, sdiv 4, hdg
(Miscellaneous provisions)**

Chapter 7, part 7, division 2, subdivision 4, heading—
omit, insert—

‘Division 3 Miscellaneous

‘Subdivision 1 General’.

**233 Amendment of s 306 (Administrator to give notice of
forensic order to patient’s allied person)**

Section 306, from ‘making’—

omit, insert—

‘following to the patient’s allied person—

- (a) the making of the forensic order for the patient;
- (b) any change to the forensic order under section 607.’.

**234 Amendment of s 309A (Policies and practice guidelines
about treatment and care of forensic patients etc.)**

- (1) Section 309A(2), from ‘about’—

omit, insert—

‘about—

- (a) the care of a patient subject to a forensic order (Mental Health Court—Disability) for the patient’s detention in an authorised mental health service; and
 - (b) the treatment and care of a special notification forensic patient in an authorised mental health service.’.
- (2) Section 309A(3) and (4)—
renumber as section 309A(5) and (6).

[s 235]

(3) Section 309A—

insert—

- ‘(3) The director must consult with the director (forensic disability) in preparing policies and practice guidelines mentioned in subsection (2)(a).
- ‘(4) Failure to comply with subsection (3) does not affect the validity of the policy or practice guideline.’.

235 Insertion of new ch 7, pt 7, div 3, sdiv 2

Chapter 7, part 7, division 3—

insert—

‘Subdivision 2 Temporary detention of particular forensic disability clients

‘309B Temporary detention in authorised mental health service

- ‘(1) This section applies if a forensic disability client (the *client*) is taken to an authorised mental health service under the Forensic Disability Act, section 113(2)(b) or (4).
- ‘(2) The client may be detained in the health service for the period agreed between the director and the director (forensic disability).
- ‘(3) Subject to subsection (4), the period agreed must not be more than 3 days.
- ‘(4) The director and the director (forensic disability) may agree that the client be detained in the health service for longer than 3 days if—
 - (a) both the director and the director (forensic disability) are satisfied it is in the client’s best interests to do so having regard to the client’s health and safety; and
 - (b) the director (forensic disability) has given the director written notice detailing the arrangements for returning

to the forensic disability service, before or at the end of the longer period, the responsibility for the client's care.

- '(5) The director must give written notice of an agreement mentioned in subsection (2) or (4) to the administrator of the health service.

'309C Application of existing forensic order

- '(1) While a forensic disability client is detained in an authorised mental health service under section 309B(2)—
- (a) the client's applicable forensic order applies as if it were an order for the client's detention in the health service for care; and
 - (b) the applicable forensic order and this Act are to be read with the changes necessary for the client's detention and care in the health service; and
 - (c) the Forensic Disability Act (other than sections 34, 152 and 156) does not apply to the client.
- '(2) Also, while the client is detained in an authorised mental health service under section 309B(2), any authorisation under the Forensic Disability Act, section 20, or any order or approval of the tribunal or Mental Health Court, that is in force for limited community treatment for the client continues as if the authorisation, order or approval were given or made for the client, as a patient, under this Act.
- '(3) Without limiting subsection (1) or (2), for the purpose of giving effect to the applicable forensic order or authorisation, order or approval mentioned in subsection (2) while the client is detained in the health service, a person may exercise a power, and has the obligations, under this Act in relation to the client as if the client were a forensic patient.
- '(4) At the end of the client's period of detention in the health service under section 309B(2)—
- (a) the Forensic Disability Act applies to the client; and

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- (b) the client—
 - (i) is to be detained in the forensic disability service under the applicable forensic order; or
 - (ii) may undertake any limited community treatment under an authorisation that is in force for the client under the Forensic Disability Act, section 20 or an order of the tribunal or Mental Health Court that is in force for the client.
- ‘(5) However, subsection (4) does not apply if the client is transferred to an authorised mental health service under the Forensic Disability Act, section 34.
- ‘(6) In this section—
applicable forensic order means the client’s applicable forensic order within the meaning of the Forensic Disability Act.’.

236 Amendment of s 318O (Tribunal may make forensic patient information order)

- (1) Section 318O, heading, ‘patient’—
omit.
- (2) Section 318O(1), from ‘(a *forensic patient information order*)’ to ‘(the *forensic patient information*)’—
omit, insert—
‘(a *forensic information order*) about a forensic patient that the person be given notice of the following information (the *forensic information*)’.
- (3) Section 318O(1)—
insert—
‘(ba) the fact that an application has been made under section 171 for an approval for the patient to move out of Queensland;

-
- ‘(da) the fact that the patient has been transferred from an authorised mental health service to the forensic disability service under a transfer order, and the date of the transfer;’.
- (4) Section 318O(1)(h), ‘(f) or (g)’—
omit, insert—
‘(h) or (i)’.
- (5) Section 318O(1)(ba) to (k)—
renumber as section 318O(1)(c) to (m).
- (6) Section 318O—
insert—
- ‘(1A) An order made under subsection (1) about a forensic disability client who is detained in an authorised mental health service for more than 3 days under section 309B may also provide that the person be given notice of the fact that the client is detained temporarily in an authorised mental health service.’.
- (7) Section 318O(2), from ‘If’ to ‘information’, second mention—
omit, insert—
‘If a forensic information order is made about the forensic patient, the forensic information’.
- (8) Section 318O(3)(b), (4) and (5), ‘forensic patient information’—
omit, insert—
‘forensic information’.

237 Amendment of s 319 (Decisions to which part applies)

- (1) Section 319(c)—
renumber as section 319(d).

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(2) Section 319—

insert—

‘(c) a decision of the tribunal under chapter 5, part 1, division 2A, for a transfer order for a patient;’.

238 Amendment of s 325 (Appeal powers)

Section 325(2)(b), after ‘(other than this part)’—

insert—

‘and the Forensic Disability Act’.

239 Amendment of s 383 (Jurisdiction)

Section 383(1)—

insert—

‘(d) investigating the detention of forensic disability clients in the forensic disability service;

(e) deciding applications made under section 607 for an order changing a forensic order (Mental Health Court) to a forensic order (Mental Health Court—Disability).’.

240 Amendment of s 389 (Functions)

Section 389(1)(c)(ii)—

omit, insert—

(ii) about clinical issues relating to the treatment, care and detention needs of persons under this Act; and

(iii) about clinical issues relating to the care and detention needs of persons under the Forensic Disability Act.’.

241 Amendment of s 400 (Registrar's power to require production of documents)

- (1) Section 400(1), after 'service'—
insert—
'or the forensic disability service'.
- (2) Section 400(3) to (5), 'commissioner of the police service or director of public prosecutions'—
omit, insert—
'prosecuting authority'.
- (3) Section 400(5), 'commissioner or director of public prosecutions'—
omit, insert—
'prosecuting authority'.

242 Amendment of s 401 (Registrar's power to require person to be brought before Mental Health Court)

- (1) Section 401(1)(b)—
renumber as section 401(1)(c).
- (2) Section 401(1)—
insert—
'(b) require the administrator under the Forensic Disability Act to bring a forensic disability client before the court at a stated time and place; or'.

243 Amendment of s 410 (Appointment of assistants)

Section 410, from 'example'—
omit, insert—

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‘example—

- (a) a person with appropriate communication skills or appropriate cultural or social knowledge or experience; or
- (b) a person with expertise in the aetiology, behaviour and care of persons with an intellectual disability.’

244 Amendment of s 437 (Jurisdiction)

- (1) Section 437(c), after ‘patients’—

insert—

‘and forensic disability clients’.

- (2) Section 437(e), ‘patient’—

omit.

- (3) Section 437—

insert—

- ‘(i) deciding applications for orders for the transfer of persons from an authorised mental health service to the forensic disability service, or from the forensic disability service to an authorised mental health service;

Note—

See section 169A and the Forensic Disability Act, sections 33 and 34.

- (j) deciding appeals against decisions of the administrator under the Forensic Disability Act to refuse to allow persons to visit forensic disability clients in the forensic disability service.’

245 Amendment of s 440 (Appointment of members)

- (1) Section 440(6)—

renumber as section 440(7).

(2) Section 440—

insert—

‘(6) Also, in recommending persons for appointment as members, if the Minister is not responsible for administering the Forensic Disability Act, the Minister must consult with the Minister responsible for administering that Act.’.

246 Amendment of s 447 (Members constituting tribunal for hearings)

(1) Section 447(1), note—

omit.

(2) Section 447(1)(d)—

omit, insert—

‘(d) an application for a forensic information order;

Note—

Under section 318R, an application for a forensic information order may also be decided by the president on the papers or during the hearing for a review for the person about whom the order is sought.’.

(3) Section 447(1)—

insert—

‘(f) an application for an order for the transfer of a person from an authorised mental health service to the forensic disability service, or from the forensic disability service to an authorised mental health service;

(g) an appeal against a decision of the administrator under the Forensic Disability Act to refuse to allow a person to visit a forensic disability client in the forensic disability service.’.

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247 Amendment of s 448 (When tribunal may be constituted by less than 3 members)

Section 448—

insert—

- ‘(d) for deciding an application for an order for the transfer of a person from an authorised mental health service to the forensic disability service, or from the forensic disability service to an authorised mental health service—if the president is satisfied it is appropriate and expedient to do so; or
- (e) for the hearing of an appeal against a decision of the administrator within the meaning of the Forensic Disability Act to refuse to allow a person to visit a forensic disability client in the forensic disability service—if the president is satisfied it is appropriate and expedient to do so.’.

248 Insertion of new s 451A

After section 451—

insert—

‘451A Right of appearance—application for order for transfer to forensic disability service

- ‘(1) The following persons may appear in person at the hearing of an application for an order for the transfer of a patient from an authorised mental health service to the forensic disability service—
 - (a) the patient;
 - (b) the director;
 - (c) director (forensic disability);
 - (d) 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.’.

249 Amendment of s 462 (Appointment of assistants)

Section 462, from ‘example’—

omit, insert—

‘example—

- (a) a person with appropriate communication skills or appropriate cultural or social knowledge or experience; or
- (b) a person with expertise in the aetiology, behaviour and care of persons with an intellectual disability.’.

250 Insertion of new s 493B

Chapter 13, part 1, division 2—

insert—

‘493B Giving information about patient to director (forensic disability) or nominee

- ‘(1) The director, or a person nominated by the director, may give information about a person who is or was a patient to—
- (a) the director (forensic disability); or
 - (b) a person nominated by the director (forensic disability).
- ‘(2) However, the director may only give the information if the director is satisfied the information is reasonably necessary for enabling the director (forensic disability) to perform that director’s functions under the Forensic Disability Act.
- ‘(3) This section does not limit section 169K.

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‘(4) In this section—
information includes a document.’.

251 Amendment of s 518 (Offences relating to ill-treatment)

- (1) Section 518(2), penalty—
omit, insert—
‘Maximum penalty—150 penalty units or 1 year’s imprisonment.’.
- (2) Section 518(3), definition *ill-treat*, ‘neglect or molest’—
omit, insert—
‘abuse, neglect or exploit’.

252 Amendment of s 519 (Offences relating to patients in custody absconding)

- (1) Section 519(1)(a)(ii) and (iii)—
renumber as section 519(1)(a)(iii) and (iv).
- (2) Section 519(1)(a)—
insert—
‘(ii) to the forensic disability service; or’.

253 Insertion of new ss 541A and 541B

After section 541—
insert—

‘541A Ensuring patient understands things told or explained to the patient

- ‘(1) If a provision of this Act requires a person to tell or explain something to a patient, the person must do so—
- (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, mental illness, communication ability and any disability.
- ‘(2) If the person believes the patient has not understood what the person told or explained to the patient, the person must record details of the fact in the patient's file.

‘541B Effect of order for transfer on forensic order

- ‘(1) This section applies if a patient is transferred to an authorised mental health service under—
- (a) an order made under section 166 or 167; or
 - (b) an order of the tribunal or Mental Health Court.
- ‘(2) While the person is a forensic patient, the forensic order relating to the person—
- (a) continues to apply to the person; and
 - (b) is to be read with any changes necessary to give it effect, subject to the order mentioned in subsection (1), in relation to the person's treatment or care under this Act.’.

254 Insertion of new ch 16, pt 5

Chapter 16—

insert—

- (a) the tribunal;
- (b) the administrator of the patient's treating health service;
- (c) if any proceeding involving the patient has started but not finished—each entity the director considers has a sufficient interest in the proceeding.

Example—

the Mental Health Court, the director of public prosecutions or other prosecuting agency

'604 Administrator to give notice of transfer order to patient and allied person

'The administrator of the patient's treating health service must give notice of the transfer order to—

- (a) the patient; and
- (b) the patient's allied person.

'605 Continuation of existing forensic order

'(1) On the admission of the patient to the forensic disability service under the transfer order, the patient's existing forensic order—

- (a) applies to the patient, as a forensic disability client, as if it were a forensic order (Mental Health Court—Disability) for the patient's detention in the forensic disability service; and
- (b) is to be read, or continued in force, with the changes necessary—
 - (a) to make it consistent with the Forensic Disability Act; and
 - (b) to adapt its operation to that Act.

'(2) Subsection (1) does not affect a power of the tribunal or Mental Health Court in relation to the existing forensic order.

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- ‘(3) Without limiting subsection (2), the tribunal may carry out a review and make a decision about the existing forensic order under chapter 6, part 3.
- ‘(4) Subsection (1) stops applying in relation to the patient, as a forensic disability client, when whichever of the following happens first—
- (a) the period of 1 year starting on the day the patient is admitted to the forensic disability service under the transfer order ends;
 - (b) the Mental Health Court makes an order changing the existing forensic order under division 2.
- ‘(5) In this section—
- existing forensic order* means the forensic order (Mental Health Court) that was in force for the patient immediately before the patient’s admission to the forensic disability service under the transfer order.

‘Division 2 Changing existing forensic order

‘606 Definitions for div 2

In this division—

commencement means the commencement of this section.

existing forensic order, for a person, means a forensic order (Mental Health Court) in force, immediately before the commencement, for the person’s detention in an authorised mental health service.

‘607 Application for order changing existing forensic order

- ‘(1) This section applies if, immediately before the commencement, a person was subject to an existing forensic order.

-
- ‘(2) An application to the Mental Health Court for an order changing the existing forensic order to a forensic order (Mental Health Court—Disability) may be made by any of the following—
- (a) the person to whom the existing forensic order relates, or someone else on behalf of the person;
 - (b) the director;
 - (c) the director (forensic disability);
 - (d) the director and the director (forensic disability) acting jointly.
- ‘(3) The application—
- (a) must be in writing; and
 - (b) must be accompanied by sufficient documentation to enable the court to decide the application.
- Examples—*
- a multidisciplinary assessment of the person to whom the existing forensic order relates
 - any expert report previously submitted to the court in relation to the person
 - any current or proposed treatment plan, or individual development plan within the meaning of the Forensic Disability Act, for the person
 - any relevant psychiatrist’s report for the person
- ‘(4) Before deciding the application, the court must give each relevant person, other than the applicant, the following—
- (a) a copy of the application;
 - (b) an invitation to the relevant person to make submissions in writing to the court within a reasonable time about the application.
- ‘(5) However, for the person to whom the existing forensic order relates, the documents mentioned in subsection (4) must be given by the court to the director, who must then give them to the person.

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- ‘(6) The court is taken to have given the documents to the person to whom the existing forensic order relates if the court has given them to the director.
- ‘(7) In this section—
relevant person means each of the following—
- (a) the person to whom the existing forensic order relates;
 - (b) the director;
 - (c) the director (forensic disability);
 - (d) the Attorney-General.

‘608 Court’s powers

- ‘(1) In deciding the application, the Mental Health Court must consider whether the person’s unsoundness of mind or unfitness for trial which resulted in the existing forensic order was a consequence of an intellectual disability.
- ‘(2) The court may, by order—
- (a) confirm the existing forensic order; or
 - (b) change the existing forensic order to a forensic order (Mental Health Court—Disability).
- ‘(3) However, the court may make an order under subsection (2)(b) only if the court considers the person’s unsoundness of mind or unfitness for trial was a consequence of an intellectual disability.
- ‘(4) Subject to subsections (5) and (6), an order made under subsection (2)(b) must also state which of the following services the person is to be detained in for care—
- (a) the forensic disability service;
 - (b) a stated authorised mental health service.
- ‘(5) In deciding whether the person is to be detained in the forensic disability service for care, the court must have regard to the following—

-
- (a) whether the person has an intellectual or cognitive disability within the meaning of the Forensic Disability Act but does not require involuntary treatment for a mental illness under this Act;
 - (b) whether the person is likely to benefit from care and support within the meaning of the Forensic Disability Act provided in the forensic disability service.
- ‘(6) The court must not decide that the person be detained in the forensic disability service for care unless a certificate given to the court under section 288AA states that the forensic disability service has the capacity for the person’s detention and care.
- ‘(7) On the making of an order under subsection (2)(b), the existing forensic order is taken to be a forensic order (Mental Health Court—Disability).
- ‘(8) To remove any doubt, it is declared that the court is not required to have regard to the matters mentioned in subsection (5)(a) and (b), or a certificate given to the court under section 288AA, in deciding whether to make an order under subsection (2).
- ‘(9) This section does not limit the court’s powers under section 288 or 289 in relation to—
- (a) the existing forensic order; or
 - (b) the forensic order (Mental Health Court—Disability).
- ‘(10) In this section—
- benefit* means benefit by way of individual development and opportunities for quality of life and participation and inclusion in the community.

‘609 Notice of decision

‘The registrar must give a copy of the Mental Health Court’s decision to the following persons—

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- (a) the parties to the proceeding;
- (b) the tribunal.

‘610 Relevant director to give notice of decision to relevant administrator

‘(1) The relevant director must give written notice of the Mental Health Court’s decision to the relevant administrator.

‘(2) In this section—

relevant administrator means—

- (a) if the person to whom the existing forensic order relates is a patient—the administrator of the patient’s treating health service; or
- (b) if the person to whom the existing forensic order relates is a forensic disability client—the administrator under the Forensic Disability Act.

relevant director means—

- (a) if the person to whom the existing forensic order relates is a patient—the director; or
- (b) if the person to whom the existing forensic order relates is a forensic disability client—the director (forensic disability).

‘611 Effect of order on existing forensic order

‘If there is an inconsistency between the existing forensic order and that order as changed under section 608, that order as changed under section 608 prevails to the extent of the inconsistency.

‘612 Appeal against Mental Health Court decision

‘(1) The following persons may appeal to the Court of Appeal against a decision of the Mental Health Court under section 608—

-
- (a) the person to whom the existing forensic order relates, or someone else on behalf of the person;
 - (b) the director;
 - (c) the director (forensic disability);
 - (d) the director and the director (forensic disability) acting jointly.
- ‘(2) Sections 335, 336, 337(1), (2), (4) and (7) and 338 apply for the appeal.

‘Division 3 Other provisions

‘613 Declaration and validation concerning special notification forensic patients

- ‘(1) During the transitional period, section 305A is taken always to have applied in relation to a forensic patient as if the *Forensic Disability Act 2011*, section 232 had commenced on 28 February 2008 immediately after the commencement of the *Mental Health and Other Legislation Amendment Act 2007*, section 24.
- ‘(2) In this section—
- transitional period* means the period—
- (a) starting immediately after the commencement of the *Mental Health and Other Legislation Amendment Act 2007*, section 24; and
 - (b) ending at the end of the day before the commencement of the *Forensic Disability Act 2011*, section 232.

‘614 References to forensic patient information

‘A reference in any Act or document to forensic patient information is, if the context permits, taken to be a reference to forensic information.

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‘615 References to forensic patient information orders

‘A reference in any Act or document to a forensic patient information order is, if the context permits, taken to be a reference to a forensic information order.

‘616 Orders made under s 318O(1) before commencement

‘An order made under section 318O(1) before the commencement of this section is taken to be a forensic information order.

‘617 Provision about Mental Health Regulation 2002

‘The amendment of the *Mental Health Regulation 2002* by the *Forensic Disability Act 2011* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.

255 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *forensic order*, *forensic order (Mental Health Court)*, *forensic patient information*, *forensic patient information order*, *hearing*, *mechanical restraint*, *party* and *seclusion*—

omit.

- (2) Schedule 2—

insert—

‘chief executive (forensic disability) means the chief executive of the department in which the *Forensic Disability Act 2011* is administered.

director (forensic disability) means the director under the Forensic Disability Act.

Forensic Disability Act means the *Forensic Disability Act 2011*.

forensic disability client see the Forensic Disability Act, section 10.

forensic disability service means the forensic disability service under the Forensic Disability Act.

forensic information, for chapter 7A, part 2, see section 318M.

forensic information order see section 318O(1).

forensic order means—

- (a) a forensic order (Criminal Code); or
- (b) a forensic order (Mental Health Court); or
- (c) a forensic order (Mental Health Court—Disability); or
- (d) a forensic order (Minister).

forensic order (Mental Health Court) see section 288(2) and (3).

forensic order (Mental Health Court—Disability) see section 288(2) and (3).

hearing, means—

- (a) for the tribunal—
 - (i) the hearing for a review, treatment application or application for a forensic information order; or
 - (ii) the hearing of an application for approval for a patient to move out of Queensland; or
 - (iii) the hearing of an appeal against a decision to exclude a visitor from an authorised mental health service; or
 - (iv) the hearing of an appeal against a decision to refuse to allow a person to visit a forensic disability client in the forensic disability service; or
 - (v) the hearing of an application for a transfer order; or
 - (vi) the hearing of an application for an order for the transfer of a forensic disability client from the

forensic disability service to an authorised mental health service; or

- (b) for the Mental Health Court—
 - (i) the hearing of an appeal against a decision of the tribunal under chapter 5, part 1, division 2A for a transfer order for a patient; or
 - (ii) the hearing of an appeal against a review decision or a treatment application; or
 - (iii) the hearing of a reference or withdrawal of a reference; or
 - (iv) the hearing of an application under section 607 to change a patient’s forensic order (Mental Health Court) to a forensic order (Mental Health Court—Disability).

intellectual disability includes a cognitive disability.

mechanical restraint see section 162A.

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 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 an appeal to the tribunal against a decision of the administrator of the forensic disability service under the Forensic Disability Act to refuse to allow a person to visit a forensic disability client in that service—the appellant or the administrator of that service; or
- (c) 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
- (d) for a proceeding in the Mental Health Court on an appeal against a review decision, a decision on a

- treatment application, a decision under chapter 5, part 1, division 2A for a transfer order for a patient or a decision on an application under that part, 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
- (e) for a proceeding in the Mental Health Court on an appeal against a decision on an application under chapter 5, part 1, division 2A for an order for the transfer of a forensic disability client from the forensic disability service to an authorised mental health service—
- (i) a party to the proceeding in the tribunal for the application; or
 - (ii) the director, if the director is the appellant or elects to become a party to the proceeding; or
 - (iii) the director (forensic disability), if that director elects to become a party to the proceeding; or
- (f) for a proceeding in the Mental Health Court on a reference not mentioned in paragraph (g)—
- (i) the person the subject of the reference; or
 - (ii) the director; or
 - (iii) the director of public prosecutions; or
- (g) for a proceeding in the Mental Health Court on a reference about a person who has an intellectual disability—
- (i) the person the subject of the reference; or
 - (ii) the director, if the director elects to become a party to the proceeding; or

[s 255]

- (iii) the director (forensic disability), if that director elects to become a party to the proceeding; or
 - (iv) the director of public prosecutions; or
- (h) for a proceeding in the Mental Health Court on an application to withdraw a reference—the parties to the proceeding for the reference; or
- (i) 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; or
- (j) for a proceeding in the Mental Health Court on an application to inquire into a forensic disability client’s detention in the forensic disability service—
 - (i) the forensic disability client; or
 - (ii) the applicant; or
 - (iii) the director (forensic disability); or
- (k) for a proceeding in the Mental Health Court on an application under section 607 to change a person’s forensic order (Mental Health Court) to a forensic order (Mental Health Court—Disability)—
 - (i) the person to whom the existing forensic order relates, or someone else on behalf of the person; or
 - (ii) the director; or
 - (iii) the director (forensic disability); or
 - (iv) the director and the director (forensic disability) acting jointly; or
 - (v) the Attorney-General.

prosecuting authority, for an offence, means the commissioner of the police service, director of public

prosecutions or other entity responsible for prosecuting the proceeding for the offence.

seclusion see section 162J.

transfer order, other than in sections 126, 165 and 166, means an order made by—

- (a) the director under section 169A or 602; or
- (b) the tribunal or the Mental Health Court;

for the transfer of a patient from an authorised mental health service to the forensic disability service.’.

- (3) Schedule 3, definition *brief of evidence*, paragraph (a), ‘commissioner of the police service or director of public prosecutions’—

omit, insert—

‘prosecuting authority’.

- (4) Schedule 2, definition *care*, after ‘rehabilitation,’—

insert—

‘habilitation,’.

- (5) Schedule 2, definition *less restrictive*, ‘or treatment’—

omit, insert—

‘, treatment or care’.

- (6) Schedule 2, definition *limited community treatment*, ‘rehabilitation’—

omit, insert—

‘care’.

‘(2) However, the *Forensic Disability Act 2011* prevails in the case of inconsistency.’.

Part 14 Amendment of Queensland Civil and Administrative Tribunal Act 2009

260 Act amended

This part amends the *Queensland Civil and Administrative Tribunal Act 2009*.

261 Insertion of new ch 10

After chapter 9—
insert—

‘Chapter 10 Transitional provision for Forensic Disability Act 2011

‘283 Transitional provision for Forensic Disability Act 2011

‘The amendment of the *Queensland Civil and Administrative Tribunal Rules 2009* by the *Forensic Disability Act 2011* does not affect the power of the Governor in Council to further amend the rules or to repeal them.’.

[s 262]

Part 15 **Amendment of Queensland Civil and Administrative Tribunal Rules 2009**

262 **Rules amended**

This part amends the *Queensland Civil and Administrative Tribunal Rules 2009*.

263 **Amendment of r 21 (Alternative notice requirements for proceedings about persons with impaired capacity etc.)**

Rule 21(3)(b)(vii)—

insert—

‘(D) if the tribunal is aware the relevant adult is a forensic disability client within the meaning of the *Forensic Disability Act 2011*—the director of forensic disability under that Act;’.

Part 16 **Amendment of Residential Services (Accreditation) Act 2002**

264 **Act amended**

This part amends the *Residential Services (Accreditation) Act 2002*.

265 Amendment of s 4 (Meaning of *residential service*)

Section 4(5)—

insert—

‘(aa) the forensic disability service under the *Forensic Disability Act 2011*;’.

Part 17 Amendment of Residential Tenancies and Rooming Accommodation Act 2008

266 Act amended

This part amends the *Residential Tenancies and Rooming Accommodation Act 2008*.

267 Amendment of s 44 (Rooming accommodation agreements to which Act does not apply)

Section 44(1)—

insert—

‘(ba) accommodation provided at the forensic disability service under the *Forensic Disability Act 2011*;’.

Part 18 Amendment of Supreme Court of Queensland Act 1991

268 Act amended

This part amends the *Supreme Court of Queensland Act 1991*.

[s 269]

269 Insertion of new s 141

Part 11—

insert—

‘141 Transitional provision for Forensic Disability Act 2011

‘The amendment of the *Criminal Practice Rules 1999* by the *Forensic Disability Act 2011* does not affect the power of the Governor in Council to further amend the rules or to repeal them.’.

Chapter 15 Other amendment of legislation

270 Legislation amended

Schedule 2 amends the legislation it mentions.

Schedule 1 **Assessing intellectual functioning and adaptive behaviour**

section 12

1 Intellectual functioning

- (1) For section 12(1)(a), a standardised measurement of intelligence must be used, if practicable, to assess a person's general intellectual functioning.
- (2) If a standardised measurement of intelligence is used—
 - (a) the person must be taken to have significant limitations in intellectual functioning if the measurement indicates that the person has an intelligence not higher than 2 standard deviations below the population average; and
 - (b) the person must be taken not to have significant limitations in intellectual functioning if the measurement indicates that the person has an intelligence not lower than 2 standard deviations below the population average.
- (3) If the standardised measurement of intelligence is inconclusive as to whether or not the person has an intelligence higher or lower than 2 standard deviations below the population average, other indicators of general intellectual functioning may be taken into account in deciding whether or not the person has significant limitations in intellectual functioning.
- (4) In applying the standardised measurement of intelligence, the test result must be considered within the 95% confidence level as decided by the standard error of measurement of the test.

2 Adaptive behaviour

- (1) For section 12(1)(a), a person has significant limitations in adaptive behaviour if the person has significant limitations in 2 or more of the following skill areas—
 - (a) communication;
 - (b) self-care;
 - (c) home living;
 - (d) social skills;
 - (e) use of community services;
 - (f) self-direction;
 - (g) health and safety;
 - (h) functional academics, including, for example, reading, writing and arithmetic;
 - (i) leisure;
 - (j) work.
- (2) If a standardised measurement of adaptive behaviour is used to assess a person's adaptive behaviour and it indicates a score at or below the second percentile of people of the same age and cultural group, the person must be taken to have significant limitations in adaptive behaviour.

Schedule 2 Legislation amended

section 270

Part 1 Amendment of this Act

1 Long title, from ‘disability,’—

omit, insert—

‘disability’.

2 Section 9, ‘schedule 3’—

omit, insert—

‘schedule 2’.

3 Schedule 3—

renumber as schedule 2.

Part 2 Amendment of other legislation

Child Protection (Offender Prohibition Order) Act 2008

1 Schedule, definition *forensic order*—

omit, insert—

‘*forensic order*’ means a following order within the meaning of the *Mental Health Act 2000*—

- (a) forensic order (Criminal Code);
- (b) forensic order (Mental Health Court);
- (c) forensic order (Mental Health Court—Disability).’.

Child Protection (Offender Reporting) Act 2004

1 Schedule 3, definition *forensic order*—

omit, insert—

‘forensic order means a following order under the *Mental Health Act 2000*—

- (a) forensic order (Criminal Code);
- (b) forensic order (Mental Health Court);
- (c) forensic order (Mental Health Court—Disability).’.

Guardianship and Administration Act 2000

1 Chapter 12, part 10, second occurring—

renumber as chapter 12, part 11.

2 Section 268, second occurring—

renumber as section 269.

Mental Health Act 2000

- 1 Sections 10, 44(1), note and 237A(1), ‘schedule 2’—**
omit, insert—
‘the schedule’.
- 2 Sections 25(2)(a), 26(3), 68(3), 90(5), 106(2), 117(5)(a), 119(6)(a), 159, 163(2)(a), 168(2)(a), 180(2), 181(3), 182(3)(a), 183(3)(a), 184(4), 185(3), 218(3), 252A(3), 273(3), 292(2), 305(2), 357(7), 424(3), 425(2), 431(2), 473(3), 508(3)(a), 509(3), 516(2), 541(4)(a) and 568(3)(a), ‘the force, that is’—**
omit, insert—
‘the minimum force, that is necessary and’.
- 3 Section 72—**
insert—
‘Note—
See section 537 about complying with provisions as soon as practicable, section 538 about complying with provisions to the extent reasonably practicable and section 541A about ensuring the patient understands things told or explained to the patient.’.
- 4 Sections 73(2), 116(2) and 309(2), from ‘must’ to ‘assessment’—**
omit, insert—
‘carrying out an assessment of the patient must record details of it’.
- 5 Chapter 4, heading—**
omit, insert—

‘Chapter 4 Treatment and care of patients’.

6 Sections 111(b) and 119(3)(b), footnotes—

omit, insert—

‘Notes—

- 1 See section 537 about complying with provisions as soon as practicable, section 538 about complying with provisions to the extent reasonably practicable and section 541A about ensuring the patient understands things told or explained to the patient.
- 2 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).’.

7 Sections 125(3)(b) and 127(2), footnotes—

omit, insert—

‘Note—

See section 537 about complying with provisions as soon as practicable, section 538 about complying with provisions to the extent reasonably practicable and section 541A about ensuring the patient understands things told or explained to the patient.’.

8 Chapter 4, part 3, heading, from ‘treatments,’—

omit, insert—

‘treatments’.

9 After section 162—

insert—

‘Chapter 4A Restraint and seclusion of patients’.

-
- 10 Chapter 4, part 3, divisions 3 and 4, as amended under this Act—**
relocate and *renumber*, in chapter 4A (as inserted under this Act), as parts 1 and 2.
- 11 Chapter 4, part 3, division 5—**
renumber as chapter 4, part 3, division 3.
- 12 Section 141, as relocated, heading, ‘div 3’—**
omit, insert—
‘pt 1’.
- 13 Sections 141(1) and 142, as relocated, ‘division’—**
omit, insert—
‘part’.
- 14 Section 143, as relocated, after ‘treating’—**
insert—
‘or caring for’.
- 15 Section 144(f), as relocated, after ‘treatment’—**
insert—
‘or care’.
- 16 Sections 141 to 147, as relocated—**
renumber as sections 162A to 162I.
- 17 Chapter 4A (as inserted under this Act), part 2 (as relocated and renumbered), subdivisions 1 to 6—**
renumber as divisions 1 to 6.

- 18 Section 148, as relocated, heading, ‘div 4’—**
omit, insert—
‘pt 2’.
- 19 Sections 148(1), 149, 152 and 159, as relocated, ‘division’—**
omit, insert—
‘part’.
- 20 Section 155(2)(b)(ii), as relocated, ‘151’—**
omit, insert—
‘162M’.
- 21 Sections 148 to 160, as relocated—**
renumber as sections 162J to 162W.
- 22 Section 163(1), ‘assessing or treating’—**
omit, insert—
‘the assessment, treatment or care of’.
- 23 Sections 167(1)(b) and 197(2)(b) and schedule 2, definition *capacity*, after ‘treatment’—**
insert—
‘, care’.
- 24 Chapter 5, part 1, division 3, before subdivision 1—**
insert—
‘*Note—*
See the Forensic Disability Act, sections 130 and 139 for the application of this division for the purpose of that Act.’.

25 Chapter 6, part 3, before section 200—

insert—

‘Note—

See the Forensic Disability Act, sections 131 and 139 for the application of this part for the purpose of that Act.’.

26 Chapter 6, part 4, before division 1—

insert—

‘Note—

See the Forensic Disability Act, sections 131 and 139 for the application of this part for the purpose of that Act.’.

27 Sections 216(2)(c), 218(1)(a)(ii), 237(4)(b), 245(2)(b) and 324(2)(b), from ‘the commissioner’—

omit, insert—

‘the prosecuting authority;’.

28 Section 264(1)(b)—

omit, insert—

‘(b) the prosecuting authority.’.

29 Sections 228C(1), 318(1)(b), 318M, 318N, 318P(2), 318Q(2) and (3), 318S, 318T, 318U(1), 318V, 318W, 318X, 318Y, 318Z, 318ZA, 318ZB, 453, 458(2A), 465(3), 481(b), 595, 596(2) and 597(2), ‘patient information’—

omit, insert—

‘information’.

30 Chapter 7, before part 1—

insert—

Note—

See the Forensic Disability Act, sections 133 and 139 for the application of this part for the purpose of that Act.’

31 Section 237A, ‘commissioner of the police service or director of public prosecutions’—

omit, insert—

‘prosecuting authority’.

32 Section 237A(5), ‘commissioner or director of public prosecutions’—

omit, insert—

‘prosecuting authority’.

33 Section 238(2)(b) and (c), ‘illness’—

omit, insert—

‘condition’.

34 Sections 238(2)(c), 289(6)(d), 347(1)(b), 374(1), 532(2)(d), 533(1)(a), 533(1)(b)(ii) and schedule 2, definition *harmful thing*, after ‘treatment’—

insert—

‘or care’.

35 Sections 278(a) and 307(a), footnote—

omit.

36 Sections 278 and 307—

insert—

Note—

See section 537 about complying with provisions as soon as practicable, section 538 about complying with provisions to the extent reasonably

practicable and section 541A about ensuring the client understands things told or explained to the patient.’.

37 Section 286A(2)(a), ‘and’—

omit, insert—

‘or’.

38 Sections 295 to 298—

omit.

39 Section 313A, note, ‘288(3)’—

omit, insert—

‘288(4)’.

40 Chapter 7A, heading, ‘patient’, second mention—

omit.

41 Chapter 7A, part 2, heading, ‘patient’—

omit.

42 Chapter 7A, part 2, before division 1—

insert—

‘Note—

See the Forensic Disability Act, sections 134 and 139 for the application of this part for the purpose of that Act.’.

43 Chapter 7A, part 2, divisions 2 to 4, heading, ‘patient’—

omit.

**44 Sections 318U(5)(e) and (f) and 318W(5)(e) and (f),
‘director’—**

omit, insert—

‘president’.

45 Chapter 8, part 1, before division 1—

insert—

Note—

See the Forensic Disability Act, sections 135 and 139 for the application of this part for the purpose of that Act.’.

46 Chapter 8, part 2, before section 334—

insert—

Note—

See the Forensic Disability Act, sections 136 and 139 for the application of this part for the purpose of that Act.’.

47 Sections 340 and 489(1)(b), ‘and treatment’—

omit, insert—

‘, treatment and care’.

48 Section 342(2), after ‘person’, second mention—

insert—

‘under this Act or the Forensic Disability Act’.

49 Section 345(2), from ‘statement—’—

omit, insert—

‘statement.

Note—

See also section 541A about ensuring the patient understands things told or explained to the patient.’.

-
- 50 Section 345(3)—**
omit.
- 51 Sections 351 and 531, definition *patient*, ‘detained or treated for a mental illness’—**
omit, insert—
‘detained, treated or cared for’.
- 52 Sections 418(1), 477(1) and 478(1), after ‘this Act’—**
insert—
‘or the Forensic Disability Act’.
- 53 Section 421(d) and (e)—**
renumber as section 421(e) and (f).
- 54 Section 421—**
insert—
‘(d) forensic order (Mental Health Court—Disability);’.
- 55 Sections 424(6) and 517(3), ‘reasonable force’—**
omit, insert—
‘minimum force, that is necessary and reasonable in the circumstances.’.
- 56 Chapter 11, part 9, before section 427—**
insert—
‘*Note—*
See the Forensic Disability Act, sections 137 and 139 for the application of this part for the purpose of that Act.’.

57 Chapter 12, before part 1—

insert—

‘Note—

See the Forensic Disability Act, sections 138 and 139 for the application of this chapter for the purpose of that Act.’.

58 Section 458(2B), ‘(2)’—

omit, insert—

‘(2A)’.

59 Section 481(d)—

omit, insert—

‘(d) application under section 169A for a transfer order;

(e) notice of appeal under section 376.

Note—

The notice of appeal is for an appeal to the Mental Health Review Tribunal against—

- a decision made under section 374 to exclude a visitor from an authorised mental health service
- a decision made under the Forensic Disability Act, section 82 to refuse to allow a person to visit a forensic disability client in the forensic disability service.’.

60 Section 486(1)—

insert—

‘(e) applications under section 169A for transfer orders.’.

61 Section 509(1), ‘which’—

omit, insert—

‘whom’.

-
- 62 Section 518(1)(a), ‘or treatment for mental illness’—**
omit, insert—
‘, treatment or care’.
- 63 Section 527, ‘forensic patient information order’—**
omit, insert—
‘forensic information order’.
- 64 Section 532(2)(c) and schedule 2, definition *health service employee*, ‘or treatment’—**
omit, insert—
‘, treatment or care’.
- 65 Schedule 2—**
renumber as schedule.

Mental Health Regulation 2002

- 1 Section 3(1)—**
insert—
‘(c) a person detained in the health service under section 309B of the Act.’.
- 2 Section 4(1)(e) to (i)—**
renumber as section 4(1)(g) to (k).
- 3 Section 4(1)—**
insert—

- ‘(e) if the director, tribunal or Mental Health Court makes an order for the person’s transfer from the health service to another authorised mental health service or the forensic disability service—the day the order is made;
- (f) if the person is moved from the health service to another authorised mental health service or the forensic disability service under an order mentioned in paragraph (e)—the day the person is moved;’.

4 Section 4(1)(k), as renumbered, examples—

omit, insert—

‘Examples of reasons for the ceasing—

- 1 The assessment period for the person ends and no involuntary treatment order is made.
- 2 The person is transferred to another authorised mental health service or the forensic disability service.’.

Schedule 3 Dictionary

section 9

administrator means the person declared under section 96 to be the administrator of the forensic disability service.

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

allied person, of a forensic disability client, see section 23.

applicable forensic order, in relation to a forensic disability client—

- (a) means the forensic order (Mental Health Court—Disability) that is in force for the client's detention in the forensic disability service; and
- (b) includes an order that, under the Mental Health Act, section 169L or 605, applies to the client as if it were an order for the client's detention in the forensic disability service.

applied provisions, for a particular matter relating to this Act, means the provisions of the Mental Health Act that are applied for the matter under chapter 10, part 1 of this Act.

appropriately qualified, for a person to whom a power may be delegated under this Act, includes having the qualifications, experience or standing appropriate to exercise the power.

approved mechanical appliance means a mechanical appliance approved under section 55.

authorised mental health service means an authorised mental health service under the Mental Health Act.

authorised officer means a person appointed to be an authorised officer under section 106.

authorised practitioner—

- (a) generally, means a person appointed as an authorised practitioner under section 101; but
- (b) for chapter 6, see section 43.

behaviour control medication see section 44.

capacity, for chapter 1, part 3 and chapter 3, part 2 in relation to a forensic disability client, means the client is capable of—

- (a) understanding the nature and effect of decisions about the client's assessment, care and support or choice of an allied person; and
- (b) freely and voluntarily making decisions about the client's assessment, care and support or choice of an allied person; and
- (c) communicating the decisions in some way.

care and support, in relation to a forensic disability client, includes the provision of habilitation, rehabilitation, support and other services for the client.

carer, of a forensic disability client, means a person who—

- (a) provides domestic services and support to the client; or
- (b) arranges for the client to be provided with domestic services and support.

client means a forensic disability client.

cognitive disability see section 11.

director means—

- (a) other than for sections 85 and 86—the initial director under section 160; or
- (b) the Director of Forensic Disability appointed under section 85.

director (mental health) means the Director of Mental Health appointed under the Mental Health Act.

Disability Services Act means the *Disability Services Act 2006*.

forensic disability client see section 10.

forensic disability service means the forensic disability service declared under section 95.

forensic disability service employee means—

- (a) a practitioner employed, or engaged to perform services, at the forensic disability service; or
- (b) a person employed, or engaged, at the forensic disability service to perform administrative functions relating to the assessment or care and support of forensic disability clients.

forensic information order means a forensic information order made under the Mental Health Act, section 318O.

forensic order (Mental Health Court—Disability) means a forensic order (Mental Health Court—Disability) made under the Mental Health Act, section 288(2) or (3).

guardian means a guardian appointed under the Guardianship and Administration Act.

Guardianship and Administration Act means the *Guardianship and Administration Act 2000*.

harmful thing means anything—

- (a) that may be used to—
 - (i) threaten the security of the forensic disability service; or
 - (ii) threaten a person's health or safety; or
- (b) that, if used by a forensic disability client in the forensic disability service, is likely to adversely affect the client's care and support.

Examples of a harmful thing—

a gun or replica of a gun, a dangerous drug, alcohol, medication

individual development plan see section 13.

informal decision-maker, for a forensic disability client, means a member of the client's support network, other than a

paid carer for the client within the meaning of the Guardianship and Administration Act.

intellectual disability see section 12.

least restrictive, for the use of restraint or seclusion in relation to a forensic disability client, means the use of restraint or seclusion that—

- (a) ensures the safety of the client or others; and
- (b) having regard to paragraph (a), imposes the minimum limits on the client's freedom as is practicable in the circumstances.

limited community treatment, for a forensic disability client, means the provision of some care and support for the client in the community.

medication, for chapter 12, part 1, see section 143.

Mental Health Act means the *Mental Health Act 2000*.

Mental Health Court means the Mental Health Court established under the Mental Health Act.

patient means a patient within the meaning of the Mental Health Act.

plan means an individual development plan.

practitioner means—

- (a) a senior practitioner; or
- (b) an authorised practitioner; or
- (c) other than for section 104—a person appointed under that section to perform the role of a practitioner.

psychiatrist means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the specialty of psychiatry, other than as a student.

registered health practitioner means—

- (a) a person registered under the Health Practitioner Regulation National Law to practise, other than as a student, in any of the following—

-
- (i) the medical profession;
 - (ii) the nursing profession;
 - (iii) the physiotherapy profession;
 - (iv) the psychology profession; or
 - (b) a person registered under any of the following Acts or under similar legislation of another State—
 - (i) the *Occupational Therapists Registration Act 2001*;
 - (ii) the *Speech Pathologists Registration Act 2001*.

registered nurse means a person registered under the Health Practitioner Regulation National Law—

- (a) to practise in the nursing and midwifery profession as a nurse, other than as a student; and
- (b) in the registered nurses division of that profession.

regulated behaviour control see section 42.

restraint see section 45.

seclusion see section 46.

senior practitioner—

- (a) generally, means a person appointed to be a senior practitioner under section 101 or 102; but
- (b) for chapter 6, see section 43.

senior practitioner's authorisation means an authorisation given under section 61(1)(b)(i) or 64(3)(b).

special notification client means a forensic disability client for whom the offence leading to the making of the applicable forensic order is an offence against a following provision of the Criminal Code—

- section 300
- section 306
- section 328A(4), but only if the commission of the offence involved the death of another person

- section 349
- section 351.

statement of rights see section 29(1).

temporary absence approval means an approval given under section 41.

transfer order means an order made by the director under section 33, 34 or 142, or by the tribunal or Mental Health Court under the Mental Health Act, for the transfer of a forensic disability client to an authorised mental health service.

tribunal means the Mental Health Review Tribunal established under the Mental Health Act.