MENTAL HEALTH BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of the Bill

The general policy objective of the Bill is to provide for the involuntary assessment and treatment, and the protection, of persons (whether adults or minors) who have mental illnesses while at the same time safeguarding their rights.

In achieving these objectives, the Mental Health Bill will entirely replace the current *Mental Health Act 1974* and will:

- provide a scheme for the involuntary admission, treatment and protection of people with mental illnesses where this is necessary;
- ensure that the rights of people with mental illness are protected through independent review of their involuntary status;
- provide for the expert determination of criminal responsibility for people with a mental illness charged with criminal offences; and
- facilitate the admission and treatment of people with mental illness serving a sentence of imprisonment or charged with criminal offences.

In addition, the Mental Health Bill will make an interim amendment to the current *Mental Health Act 1974* to ensure an effective transition between the current Act and the Mental Health Bill.

Reasons why the proposed legislation is necessary

Mental health service delivery and community expectations about the care and treatment of the mentally ill have undergone considerable change since the commencement of the *Mental Health Act 1974* in December 1974.

Criticisms of the current Act are that:

- *The current Act does not reflect the current structure and operation of mental health services and fails to support contemporary treatment practices. These changes have been brought about in part by the development of state and national mental health policy, which need to be reflected in the legislation.*

  The *National Mental Health Strategy* and the plan to implement the strategy were endorsed by all Commonwealth, State and Territory Health Ministers in 1992 and set the framework for the reform of mental health services in Australia. A fundamental component of the policy is the mainstreaming of mental health services with general health services. This means that, as far as possible, the treatment of people with a mental illness should be regarded in the same way as treatment for any other illness. The policy encourages further development of community services as a viable option to hospital treatment due to the fact that people with mental illness require a mix of services over the course of the illness, including in-patient and community assessment and treatment services.

  The *Queensland Mental Health Policy* in 1993 and the *Queensland Mental Health Plan* in 1994 and the *Ten Year Mental Health Strategy for Queensland* in 1996 established the framework for reform of mental health services in Queensland and reflected the key policy directions established in the National Mental Health Strategy.

- *The current Act is not consistent with the National Mental Health Statement of Rights and Responsibilities, the United Nations Principles for the Protection of Rights of People with Mental Illness and for the Improvement of Mental Health Care, and the model mental health legislation.*

  The *National Mental Health Statement of Rights and Responsibilities* was adopted by all Australian Health Ministers in March 1991. The statement asserts a commitment to ensure that people with mental illness and mental health problems have the same rights to dignity and respect as other Australians. It also points to the need to balance the rights and responsibilities of all concerned—patients, carers, service providers and the community in general.

  The Australian government made a commitment to implementing the *United Nations Principles for the Protection of Persons with Mental*

Illness and for the Improvement of Mental Health Care ("the UN Principles") in 1991. The principles provide a standard for the protection of the rights of people with mental illness, with which legislative schemes in all Australian states and territories must conform.

As part of the National Mental Health Plan, all states and territories undertook to develop legislation consistent with the UN Principles. The Commonwealth Government, with the cooperation of the Australian Health Ministers' Advisory Council Working Group on Mental Health Policy commissioned a group of consultants to draft model clauses for mental health legislation which incorporates the UN Principles and the Mental Health Statement of Rights of Responsibilities. The *model mental health legislation* was released in 1995.

- *A number of state and national inquiries into mental health services have highlighted the deficiencies in the current Act.*

  The *Human Rights and Equal Opportunities Commission Report on the Rights of People with Mental Illness* in 1993 highlighted the fact that reforms that brought improvements in the quality of life and service provision for people in general health services have not been applied to people being treated for mental illnesses.

  The recommendations of the Report of the Commission of Inquiry into the Psychiatric Unit at Townsville General Hospital *(the Carter Inquiry into Ward 10B)* in 1991 drew attention to the specific inadequacies of the current legislation. The particular areas of concern were the authorisation of treatment, the use of force, the definition and practice of seclusion of a patient and the operation of the Official Visitors Program.

These matters have been considered in the process of the review and are reflected in the policy that underpins the *Mental Health Bill 2000.*

Means of achieving objectives

The objectives of the legislation are achieved by providing for the involuntary detention, admission, assessment, treatment and protection of people with mental illnesses. The legislation includes independent reviews of the person's involuntary status, and hearings to approve specific

regulated treatments. Mechanisms for determining the criminal responsibility for people with mental illness charged with criminal offences, and the detention and treatment of people charged with criminal offences are also provided for.

The significant features of the new system for the treatment and protection of people with a mental illness and the major changes to the current system are set out below.

- *Specific legislation for involuntary treatment*

The *Mental Health Bill 2000* provides for the unique features of mental illness that cannot be catered for in other mainstream legislation. Specific legislation is necessary to provide for treatment of mental illness when the person is unable to consent or is unreasonably objecting to treatment.

The proposal to provide for involuntary treatment in the *Mental Health Bill 2000* arose out of the mainstreaming principle of reform that is central to State and national mental health policy. Voluntary treatment for mental illness should be regarded in the same way as treatment for any other illness, with legislative protections in mainstream legislation. Specialist legislation should only be provided to accommodate those aspects of mental illness which require special measures not able to be covered within mainstream legislation; that is, where the person cannot consent or is unreasonably objecting to treatment. Regulating all aspects of voluntary treatment in the Mental Health Bill would contravene a fundamental tenet of the reform process.

The Bill is clear however, that nothing in the legislation prevents a person from being admitted as a voluntary patient. There are also specific provisions in the Bill that regulate certain aspects of voluntary treatment (the administration of electroconvulsive therapy and psychosurgery) and there is a general offence of ill treatment of a patient that also applies to voluntary patients. These circumstances were chosen as needing regulation in the legislation to provide safeguards for the use of forms of treatment that are the subject of significant community concern.

- *Limitation on involuntary treatment only for mental illness*

The Bill ensures that a person cannot be involuntarily detained and treated for anything other than mental illness. A specific definition of mental illness is provided and reflected in the criteria that must be met before the person can be detained or treated. A person cannot be detained for involuntary treatment in a mental health service on the basis of an

intellectual disability or any other type of mental disorder that is not a mental illness. It would be clearly inappropriate and ineffective to provide psychiatric treatment to conditions that are not mental illnesses.

An exception to this is if a person is found of unsound mind in relation to a criminal offence as a result of their intellectual disability. Such a person can be detained in a mental health service under the provisions of the Bill dealing with people with a mental illness who have committed criminal offences. This is to ensure the safety of the person and the general community, and because there is currently no other suitable scheme.

- *Streamlined involuntary assessment and treatment processes*

The *Mental Health Bill 2000* provides a more streamlined system of involuntary assessment and treatment. The Bill makes it more straightforward for members of the community to assist the person to gain access to services to be involuntarily assessed for treatment. In contrast, the current *Mental Health Act 1974* sets up barriers to people gaining access to early involuntary assessment and treatment by only allowing certain people to make a request for the person to be assessed.

The Bill does not limit the type of person who can make the request for assessment. This means that any member of the community (a family member, teacher, friend, counsellor, health professional) can make the request if they have reason to believe that the person has a mental illness of a nature or to the extent that warrants involuntary assessment. However improved safeguards are provided as outlined below.

- *Increased safeguards against inappropriate treatment and detention*

Increased safeguards are also provided for in the Bill to ensure that involuntary assessment and treatment is appropriate. These include:

  - The person making a request for an assessment (eg. a community member) must have observed the person within the last 3 days before making a request for involuntary assessment so the information is accurate and timely.
  - Before the person can be detained involuntarily for assessment, a recommendation for assessment must also be made by a doctor or other specially appointed experienced mental health professional (an “authorised mental health practitioner”), who must be satisfied that the person meets strict criteria.

- Strict penalties are provided for in the Bill against a person making documents based on information that the person knows to be untrue. The Bill also makes it easier to commence a prosecution under this provision.
- There is now a two-step authorisation process before involuntary treatment is authorised. Before a person can be detained for treatment, specific criteria must be met to authorise an assessment of the person. Once the assessment has occurred, different criteria must be met before involuntary treatment is authorised. The criteria for involuntary assessment and treatment are consistent with the UN Principles and the national model mental health legislation.
- Stricter requirements for seclusion and mechanical restraint are proposed in the Bill to replace administrative guidelines, with penalties imposed for contravening the requirements.
- The Bill proposes that involuntary treatment must, at an early stage, be authorised by a psychiatrist and not simply any medical practitioner. Orders made by an authorised doctor who is not a psychiatrist must be confirmed by a psychiatrist within 3 days.

• *Involuntary treatment orders in the community*

The legislation provides for involuntary treatment in the community as an alternative to being an in-patient in a mental health service. That is, the person is required to undertake treatment through a mental health service, whilst still living in the community. This reflects contemporary clinical practice and the principle of reform that involuntary treatment must be in the least restrictive form. Safeguards are provided to monitor the treatment and to respond quickly to the patient if they do not comply with treatment or their condition deteriorates to the extent that they require in-patient treatment.

• *Patient involvement in decision making*

A significant change in the involuntary treatment process is the increased involvement of the patient in decisions made about their treatment. This reflects current State and national mental health policy that aims to improve consumer participation in decision making.

The Bill requires the patient to be told about the decisions and the reasons for treatment. The patient is also able to choose another person (the "allied person") to help the patient to represent the patient's views.

One of the guiding principles of the Bill is that, in making decisions about the person, the person's views are to be taken into account and the patient is to be encouraged to take part in decisions made about treatment.

- *Independent review of involuntary status*

The Bill proposes to increase the quality of the reviews regarding the status of involuntary patients. It is proposed that the numerous Patient Review Tribunals be replaced by a single Mental Health Review Tribunal with one president, and panels appointed across the state. It is also proposed that the panels be required to include a member of the community who is not a doctor or lawyer, therefore ensuring community representation on the panel. Changes are also proposed to be made to the way in which matters will be heard, with new hearing procedures and the right to legal representation specifically provided for.

The Bill proposes to double the amount of independent reviews for a patient (every six months, rather than the current 12 monthly review), with no limit on how many times a patient can apply to be reviewed (subject to refusal on the basis that the application is frivolous or vexatious). It is proposed that the President have the discretion to allow single member panels to hear reviews if necessary and appropriate (for example, in rural or remote areas where it may be more difficult to convene a full panel, or in urgent circumstances).

- *Regulated treatments*

Specific treatments are proposed to be regulated in the legislation and offences with significant penalties are provided for contravening these procedures. Insulin induced coma therapy and deep sleep therapy are prohibited under the Bill. Electroconvulsive therapy can only be performed after specified criteria are met and, for an involuntary patient, after the treatment has been authorised by an independent tribunal. Psychosurgery can only be performed after strict criteria are met and must always be authorised by an independent tribunal.

- *Provision for the role of guardians and attorneys in the Mental Health Bill*

Although guardians (under the *Guardianship and Administration Act 2000*) and attorneys (under the *Powers of Attorney Act 1998*) do not have any power to provide substituted consent to treatment when a patient is subject to the involuntary treatment provisions of the Bill, the Bill recognises that guardians and attorneys may have relevant information and

play a role in assisting the patient to represent the patient's views in the involuntary process.

Guardians and attorneys are now automatically notified at key points in the involuntary process, are able to appear before the Mental Health Review Tribunal and can be chosen to be the patient's allied person.

Further, the principles of the Mental Health Bill are consistent with the principles in the *Guardianship and Administration Act 2000* where relevant and Advance Health Directives are recognised at relevant points in the Mental Health Bill.

- *Provision for the interstate transfer of people with a mental illness*

The Mental Health Bill provides for the admission, transfer and return of involuntary patients to and from other States or Territories to ensure effective treatment and detention of the patient. This can occur when formal agreements between state or territory governments are made to give effect to these provisions.

- *Admission and treatment of people with a mental illness serving a sentence of imprisonment or charged with a criminal offence.*

The processes and requirements that apply to the assessment of a patient admitted to a service from court or custody are simplified and streamlined. The processes are similar to those for patients who have not committed offences. However, a person who has been charged with a criminal offence, or who is serving a sentence, is also able to be assessed and treated with their consent. The patient is still detained involuntarily, as they do not have bail or parole and the patient's security must to be assured.

- *Expert determination of criminal responsibility for people with a mental illness charged with a criminal offence.*

It is proposed that the current Mental Health Tribunal be abolished and replaced by the Mental Health Court constituted by a Supreme Court judge, with amendments to its jurisdiction and procedures that more closely align it with the broader court system. Specific reforms include:

- The test for returning the matter to the criminal court system when significant matters are in dispute is specified in the legislation and the test has been widened. That is, the Court must refrain from making a decision about the person's criminal responsibility if there is a reasonable doubt that the person committed the offence, or if a fact that is substantially material to

the opinion of an expert witness is so in dispute as to make it unsafe to make a determination.

- The Mental Health Court will retain inquisitorial powers to enable it to accept and consider material that would otherwise be inadmissible in a criminal court (for example, the evidence of a victim of their observations about the person some weeks prior to the offence). The Mental Health Court will not be bound by the rules of evidence (unless the interests of justice require it).
- The decision making of the Mental Health Court will be more open and accountable than the Mental Health Tribunal. The role of the assisting psychiatrists is specified and limited to matters within their expertise. The advice the psychiatrists provided to the judge must also be provided to the parties. Note that the assisting psychiatrists do not examine the person, but provide advice to the judge by analysing and clarifying the meaning of the clinical evidence. In the hearing, the advice must now be audible to the parties.

- *Provisions to recognise the role of victims of crime where the offender has a mental illness*

Certain reforms are proposed to be made to the independent review body that determines the continued involuntary treatment and detention of a patient (to be called the Mental Health Review Tribunal) to take into account the concerns of the community, including victims of crime. The reforms include:

- requiring the Mental Health Review Tribunal to include a member of the community who is not a doctor or lawyer, ensuring community representation on the panel making decisions about the detention of the patient; and
- in cases that represent greater concern (eg. a person who has committed a violent offence, or whose condition or history indicates potential danger to the community), the panel size for reviews can be increased to up to five members.

Amendments are proposed to be made to the test for leave of absence (now called "limited community treatment") for patients who have committed criminal offences, or who have been charged with committing an offence, including:

- for a patient with outstanding charges, the test for limited community treatment is generally consistent with the test for other people in the criminal justice system, that is, the test for bail under the *Bail Act 1980*.
- for a patient found of unsound mind in relation an offence, only the Mental Health Court or the Mental Health Review Tribunal can approve limited community treatment. This means the decision is made either by a Supreme Court judge or a properly constituted independent review body that reflects community expectation more appropriately.
- for a patient serving a sentence of imprisonment who is detained in a mental health service for involuntary treatment, limited community treatment cannot be undertaken without being escorted by staff.

Under the current Act, criminal proceedings are automatically discontinued if the patient remains unfit for trial for 3 years, that is, for a period of 3 years. A person will be unfit for trial if the person is unable to understand what it means to plead guilty or not guilty, or understand what he or she is charged with. Also, the person will be unfit for trial if they are not able to understand the general nature of court proceedings, or if they are unable to tell their lawyer or the court their version of events or comment to their lawyer about the evidence. The person will also be unfit for trial if, in attending the trial, they are likely to experience a serious deterioration in their mental condition.

Under the Bill, for offences carrying a maximum penalty of life imprisonment, proceedings are not discontinued until 7 years have elapsed. For other less serious offences, the proceedings are discontinued after 3 years. Discontinuing proceedings does not prevent the patient from being detained for involuntary treatment in a mental health service if they continue to meet the criteria.

Victims can provide information to the Mental Health Review Tribunal and the Mental Health Court that is relevant to the determination of the body, if it is not already before the body. Therefore, information from the victim that may not have been relevant to the police investigation will now be available to the Court. For example, the evidence of a victim about their observations of the person some weeks prior to the offence may be able to be submitted to the Court.

Victims can be notified of certain hearings and decisions about the patient including: a hearing to discharge the patient, and decisions to authorise limited community treatment, transfer the patient to another service, or move the patient out of Queensland. The reasons for making or not making the notification order must be provided to the victim.

- *Amendment to provide for the effective transition between the current Act and the new system*

An amendment to the current Act is required that would come into effect upon assent of the Mental Health Bill and continue in force until the new *Mental Health Act 1974* commences. It became clear in consultation on the transitional arrangements between the current and new Act, that additional hearings of the Patient Review Tribunal (the body reviewing the detention of involuntary patients) will be necessary before commencement. If the additional hearings do not take place, the new Mental Health Review Tribunal will not be able to hear the number of matters within the new time frames imposed by the Mental Health Bill. This could result in patients being unlawfully detained or being discharged while still requiring involuntary treatment. The current provisions restrict the number of members for each panel, and only authorise them to sit within one region, limiting the number of members available to hear matters. The proposed amendment removes this restriction and enables special panels to be formed to hear the outstanding matters.

- *Consequential amendment to provide for community visitor scheme*

The Mental Health Bill repeals the provisions relating to the current Official Visitor scheme and makes a consequential amendment to the *Guardianship and Administration Act 2000* to ensure that the community visitor scheme established under that legislation applies to voluntary and involuntary patients at authorised mental health services.

As part of the *Mental Health Act 1974* review process, it became clear that the current Official Visitor's scheme was not sufficiently independent of the services they were overseeing. The scheme should be administered from an agency external to Queensland Health to ensure independence and increase accountability and confidence in the scheme. There was also a need to ensure patients had access to a person with power to investigate their complaints and advocate on their behalf, rather than continuing the more restrictive regulatory model of the current scheme.

The *Guardianship and Administration Act 2000* sets up a community visitor scheme that is based on the model recommended as part of the review process. It is administered externally to Queensland Health, and has investigatory and advocacy functions and powers. The scheme will cover people with impaired decision making capacity living or receiving services at "visitable sites" declared under the legislation. The consequential amendment ensures that voluntary and involuntary patients who are receiving services at authorised mental health services will be covered by the scheme. Stakeholders representing the views of people with a mental illness will be involved in the implementation of the community visitor scheme to ensure that the administrative arrangements are appropriate to their specific needs (for example, job descriptions for those particular visitors who will be assigned to authorised mental health services, and training and materials).

The community visitor scheme set up under the *Guardianship and Administration Act 2000* will have commenced by the time the Mental Health Bill amendment repealing the Official Visitor provisions come into force. Therefore it is not necessary to provide for any interim arrangements.

Estimated cost of implementation for Government

The initial implementation of the new Mental Health Act has been estimated at $1.47M per year. Funds have already been secured for this purpose.

Additional funds were required in order to:

- establish the Mental Health Review Tribunal and fund the additional members and sitting fees that are required to meet the increased number of reviews;
- establish the new registry for the Mental Health Court;
- provide funds to mental health services to meet the cost of transportation by ambulance (now provided for under the Bill) for people who do not have a current subscription to the ambulance service.
- provide education on the new legislation as the reforms introduce a new scheme.

A review of the financial implications of the Bill will take place 12 months after commencement. The funding allocation for the operation of the Mental Health Review Tribunal is based on an extrapolation from Victoria, as they have broadly equivalent provisions. The actual cost for the Mental Health Review Tribunal (as opposed to the projected costs) will need to be reviewed after 12 months operation.

Other financial allocations that will need to be reviewed after 12 months are:

- the cost of ambulance transportation to a Mental Health Service when the patient does not have an ambulance subscription; and
- the cost to services of having to return the person if an involuntary treatment order is not made after detention for assessment.

A fundamental component of the accountability mechanism for involuntary treatment is an independent system to oversee the scheme's application to individual patients. The current Official Visitor provisions are omitted from the current Act by the *Mental Health Bill 2000,* as a new system is to be established independent of Queensland Health.

A community visitor scheme for people with a mental illness is to be provided as part of the generic community visitor scheme being established by the Department of Justice and Attorney-General under the *Guardianship and Administration Act 2000* (to be passed and commenced prior to the commencement of the *Mental Health Bill 2000).* Additional funds to establish the community visitor scheme for people with a mental illness are being sought through the Department of Justice and Attorney-General, as part of the budget process.

Additional funds are required for the community visitor scheme as it applies to people with a mental illness because of the need to oversee community mental health services in addition to in-patient facilities, taking into account the new community category of involuntary treatment orders. People will be receiving involuntary treatment from community mental health services when on a community category of an involuntary treatment order. Additional funds are also required to provide for the increased advocacy/complaints resolution powers provided for under the *Guardianship and Administration Act 2000*, which meets concerns expressed in the Carter Inquiry into Ward 10B and other comments in the review process about the need for more comprehensive powers and functions for the community visitor scheme.

Consistency with Fundamental Legislative Principles

Aspects of the Bill which raise possible breaches of fundamental legislative principles are outlined below.

- *Treatment and detention without consent*

The Mental Health Bill impacts on the rights and liberties of individuals through the provision of a scheme that enables examination, assessment, treatment and detention of a person without their consent. Chapters 2 and 3 deal with the involuntary assessment of a person, including authorising the involuntary examination of the person. Chapter 4 provides for involuntary treatment. Chapter 7 provides for the involuntary detention for treatment of a person found of unsound mind or unfit for trial in relation to a criminal offence. Chapter 12 provides for the compulsory examination of the person to assist in the determination of unsoundness of mind or unfitness for trial.

The scheme for involuntary treatment is necessary to protect the health and safety of persons with a mental illness and to ensure the safety of the community. A significant feature of some mental illnesses is the person's inability to recognise the presence of illness and the need for treatment. Without treatment, the person is likely to remain unwell for an extended period to the detriment of their own quality of life, health and safety and in a small number of cases, the safety of others.

The Bill aims to protect against the inappropriate application of the involuntary processes in a range of ways including:

- a requirement that the power to restrict a person's liberty be exercised only if there is no less restrictive way to protect the person or others (clause 9);
- requiring that before a person is subjected to involuntary treatment there must have been an expert diagnosis of mental illness and the need for involuntary treatment (Chapter 2, Part 4);
- a requirement for two unrelated individuals to certify that a person requires involuntary assessment, one of whom must be a doctor or a specially appointed experienced mental health professional, that is, an "authorised mental health practitioner" (Chapter 2, Part 2);

- a requirement for the doctor or authorised mental health practitioner to be satisfied that specified criteria apply before making this certification (clause 20(2) and see clause 13 for the criteria);
- a requirement for an order for involuntary treatment to be made by a psychiatrist, or for an interim period (ie. a maximum of 72 hours), by a specially appointed doctor with experience in the treatment of mental illness (ie. an "authorised doctor") (Clauses 108 and 112);
- a requirement that before making the involuntary treatment order the doctor must be satisfied that specified criteria apply (clause 108, see clause 14 for the criteria);
- the review of involuntary status occurs automatically, at specified intervals and on the application of the person being assessed or treated, by an independent tribunal (the Mental Health Review Tribunal) (Chapter 6);
- the right of appeal against the Mental Health Review Tribunal's decisions (Chapter 8, Part 1);
- the appointment of an allied person for the patient who is independent of the treating service and who is notified upon the patient's detention for involuntary assessment, and at other key stages in the involuntary treatment process:
    - on the making of an involuntary treatment order and any amendments to or revocation of that order;
    - on application for certain treatments that are regulated in the legislation; and
    - on the hearing of statutory reviews and applications for reviews of the patient's detention.

  The allied person also has the right to appear at reviews and treatment applications, and can lodge appeals on behalf of the patient regarding the patient's detention. See Chapter 9 for appointment process and role of the allied person. There are specific provisions throughout the Bill for notifications, right of appeal and appearance.

As part of the involuntary treatment process, the Bill empowers a police officer, ambulance officer, or a psychiatrist to make an "emergency examination order" (Chapter 2, Division 3). An emergency examination order empowers the police officer, ambulance officer or psychiatrist to take a person to an authorised mental health service to conduct an examination to determine if documents authorising assessment should be made for the person.

Emergency examination orders are necessary to provide for the admission of a person in situations of imminent risk where the delay required in proceeding through the process of recommendation/request or detention on authority of a magistrate ("a justices examination order") would substantially increase the risk to the person or others.

The safeguards provided in the Bill against the inappropriate use of this power include:

- a strict test that the person must be satisfied of before authorising the person's detention, including that the person has a mental illness, that there is an imminent risk of significant physical harm to the person or others, and that proceeding under the other mechanisms would cause dangerous delay and significantly increase the risk of harm to the person or someone else (clause 33 for the police officer or ambulance officer, and clause 37 for a psychiatrist);
- restricting the categories of people who can authorise this action to people with appropriate skills and qualifications. Police officers and ambulance officers are usually called upon to assist in these emergency situations and have sufficient experience in dealing with potentially violent situations. It is also more likely that very disturbed persons would present to a psychiatrist rather than a general practitioner and a rapid response is required to ensure the safety of the person and others. A psychiatrist has the necessary level of seniority and expertise in mental health to authorise an act that significantly affects the rights of the person;
- strictly limiting the time that the person is able to be detained to a maximum of six hours (clauses 36 and 40);

- requiring the person carrying out the examination to identify themselves to the person and explain why the person is being detained and what is going to occur when they are detained (clauses 36, 40 and 542);
- if assessment documents are not made at the end of the period of detention, the person must be taken back to the place from which the person was taken, or any other place the person reasonably asks to be taken. The Director of Mental Health is also notified in these circumstances to monitor the use of emergency examination orders (clause 41).

As part of the involuntary treatment process, the Bill also contains powers relating to entry and search without the occupier's consent for the purpose of locating an individual who is in need of urgent assessment to determine whether an involuntary treatment order should be made. Again, these powers are necessary because the nature of some mental illnesses means that the person lacks insight into the need to obtain treatment for the illness. The power to enter and search for the person is necessary to ensure the person's own health and safety, and the safety of others.

The Bill places limitations on the power to use force to enter and search a premises without the occupier's consent. Such powers can only be exercised on the authority of a warrant obtained by police from a magistrate (Chapter 14, Part 2) or an examination order issued by a magistrate or justice of the peace (qualified) (Chapter 2, Part 3, Division 2). In urgent circumstances or other special circumstances including for example the remote location of the police officer, a warrant can be issued by a Magistrate on the basis of an application by telephone, fax or radio.

Natural justice and determinations of the Mental Health Review Tribunal

In exercising its functions, the Mental Health Review Tribunal (the statutory body that provides independent review of involuntary status) will apply the principles of natural justice (clause 459). However, there are three areas where a breach of the principles of natural justice may be identified.

Firstly, the Bill does not require written reasons for Mental Health Review Tribunal decisions to be routinely provided to the patient. In a reasonable proportion of cases, it can be expected that references to symptomatology and other clinical matters contained in a statement of reasons will result in a patient experiencing distress, anger or anxiety and this potentially places recovery at risk. It is preferable that such matters are

discussed with the patient at appropriate times in the recovery process, with due sensitivity and the provision of appropriate counselling and support.

On balance, the routine provision of a statement of reasons is not considered to be in the best interests of the patient. However, the Bill requires that the patient be given a copy of the decision in all cases, and written advice of his/her entitlement to request a statement of reasons (clause 192). If the patient requests the reasons, the Tribunal must give the patient reasons and if the request is made within 7 days of receiving the notice, the Tribunal must provide the reasons within 7 days.

However, the reasons for the decision will not be provided to the patient if there is a confidentiality order preventing the information being provided to the patient (clause 192). Confidentiality orders may be made by the Mental Health Review Tribunal (clause 458) or the Mental Health Court (clause 426). Confidentiality orders prohibit or restrict the disclosure of information relating to the patient, including the reasons for a decision of the Mental Health Court or Mental Health Review Tribunal.

Confidentiality orders are limited to circumstances where the decision-maker is satisfied that disclosure will cause serious harm to the health of the person or place the safety of another person at risk. In order to protect the patient's rights, if a confidentiality order is made, the decision-maker must disclose the information to the patient's lawyer or agent and give written reasons for the making of the confidentiality order to the lawyer or agent. If the patient is not represented at the hearing, the Court or Tribunal must appoint a lawyer or agent to receive this information, at no cost to the patient. The lawyer or agent can appeal against the decision to make a confidentiality order (see Chapter 8).

Powers to search patients and visitors and withhold certain items

Chapter 10 of the Bill provides powers to search visitors and in-patients, scrutinise postal articles and to seize certain material that is potentially harmful. The Bill also allows certain visitors to be excluded from the authorised mental health service. These provisions are a departure from the general fundamental legislative principle that sufficient regard be given to the rights and liberties of individuals.

The powers are necessary to enable proper security to be maintained and to ensure the safety of patients, staff and visitors within mental health services. Limitations and safeguards apply in the application of these powers.

The power to interfere with postal articles relates to restricting the delivery or the sending of a thing by post and the power to open or examine anything received by the patient (clauses 349 and 350). These powers only apply to patients in high security units which accommodate patients transferred from correctional facilities or watch-houses and those patients transferred from other mental health services if the Director of Mental Health considers it necessary that they be detained in a high security unit.

The article can only be opened or examined in the patient's presence and after they have been advised of their right to request the presence of a lawyer. If the patient requests a lawyer be present, the examination must occur in the presence of a lawyer, except if the accountable officer (the administrator) for the service is satisfied it is not reasonably practicable to delay the opening.

The power to search patients and their possessions applies to any patient in an authorised mental health service (Chapter 10, Part 3) and is expressed to apply only to ensure the protection of the patient and the security and good order of mental health services (clause 352). Strict limitations are placed on these powers. The search can only occur on the reasonable belief that the patient is in possession of a harmful thing (clause 353), and only certain officers are able to carry out the search (clauses 354 and 355). How the search can be carried out is strictly defined, the privacy and dignity of the patient is to be respected, and more invasive searching of the person must be separately authorised if it is deemed necessary in the circumstances to carry out a proper search (clause 357). Records must be kept of the search and things seized and strict provisions determine what must happen to the thing if it is seized (clauses 359, 360).

The power to search visitors to a patient only applies to visitors to high security units (clause 361. Similar restrictions are placed on the search of visitors as applies to patients (Part 3, Division 3).

The Bill provides for compensation to be paid if the possession of a visitor or the patient is damaged in the exercise of the power to search or examine the thing under Chapter 10 (clause 373).

The power to exclude a person from visiting a patient (set out in Part 4 of Chapter 10) is necessary to protect the patient's health and welfare. The visitor can only be excluded if the administrator for the service is satisfied that the proposed visit will adversely affect the patient's treatment. Written notice of the decision and the reasons for the decision, including their right

to appeal and how the appeal is made, must be provided to the visitor. A stay of the decision can be granted before the appeal is heard to enable the person to visit the patient pending the outcome of the appeal (clause 378).

Director of Mental Health and an approved officer's power to enter an authorised mental health service without warrant or consent

The Bill gives the Director of Mental Health and an "approved officer" appointed by the Director of Mental Health the power to enter and inspect authorised mental health services to ensure the proper and efficient administration of the Act (clauses 532 and 533. Note that the dictionary defines an approved officer as the Director of Mental Health, or a person appointed under clause 500).

The powers include visiting the service without notice and inspecting any part of the premises, seeing a patient at the service, inspecting documents and requiring reasonable help for the exercise of those powers (clause 532). A penalty is imposed if the person refuses to comply with the request to help (clause 532(4)). The Director of Mental Health or approved officer can also require the production of documents and penalties are imposed if the documents are not produced (clause 533).

To ensure that the rights of patients subject to involuntary detention and treatment are protected, it is important that authorised mental health services (where the detention and treatment takes place) be subject to external scrutiny provided for by these powers. The powers to enter and inspect the authorised mental health services ensure that the proper procedures and processes in the Act are being complied with.

To ensure against inappropriate use of the power to enter and inspect the premises and require the production of documents, the power is limited in the following ways:

- the powers to enter and inspect and require documents are strictly described (clauses 532 and 533);
- the power to enter the authorised mental health service is limited to within business hours of health services (between 8 a.m. and 6 p.m.) (clause 532(1));
- the authorised officer (and the Director of Mental Health) are required to have identity cards containing a recent photograph of the person (clause 503). Clause 542 requires the officer, before exercising the power, to identify themselves to the extent

reasonably practicable, for example by producing their identity card or having it clearly displayed;

- when the authorised officer requires the person to give help that is reasonable, the authorised officer must warn the person it is an offence not to comply with the requirement unless the person has reasonable excuse (clause 532(4);
- it is a defence to the person not providing help to the authorised officer if the person has a reasonable excuse (clause 532(3)). The legislation states that it is a reasonable excuse if the requirement might tend to incriminate the person (clause 532(5)). The same defence applies to the production of documents under clause 533;
- an authorised officer is appointed by the Director of Mental Health only if the officer has the necessary expertise or experience to perform the functions of the authorised officer (clause 500(2)).

Compulsory examination of offenders and references to the Mental Health Court

Clause 238 of the Bill authorises the involuntary examination of patients who are subject to the involuntary treatment provisions and charged with an offence. Further, the Bill makes provision for the Director of Mental Health to refer criminal matters to the Attorney-General or the Mental Health Court for determination without the person's consent (clause 240).

As noted above, a significant feature of some mental illnesses is the inability of the patient to have insight into the nature and effect of their illness, which may prevent them from consenting to the examination or to the reference being made. These procedures are intended to protect those patients who are most vulnerable by ensuring examination of the relevant issues, in particular, the patient's mental state at the time of the offence and their current fitness for trial. This pro-active approach better ensures identification of persons whose criminal behaviour results from mental illness and thus enables a response (ie. treatment for mental illness) which provides greater protection against re-offending.

In the case of a matter referred to the Mental Health Court, further examinations may be ordered by the Mental Health Court (clause 422). Such examinations are necessary to enable the Court to make informed determinations about issues of unsoundness of mind and fitness for trial and an appropriate order for the patient's care after the hearing. Again, the person may not consent to the examination due to the nature of their mental

illness. The Court is empowered to require examination on an in-patient basis only where the examination cannot be achieved through less restrictive means. There are strict limitations on the period of detention and mechanisms, which ensure the person's earliest possible release.

The rights of individuals encompassed by the above scheme will be protected by the inclusion of the following:

- a person referred to the Mental Health Court by the Director of Mental Health may, upon ceasing to be an involuntary patient, withdraw the reference;
- a person whose criminal charge is determined by the Mental Health Court will retain their right to trial by jury;
- the legislation will limit the purpose for which information obtained under routine or compulsory examination may be applied.

Criminal history may be provided to Mental Health Court

Under clause 400 of the Bill, if the registrar of the Mental Health Court, in relation to a matter before the Court, asks the commissioner of the police service or the Director of Public Prosecutions for a written report on a person's criminal history, the commissioner or director must provide the report. This may be seen as adversely affecting an individual's liberty.

The provision of this information is necessary to enable the Mental Health Court to assess whether a patient is a danger to himself, herself or others. This consideration is taken into account in determining whether a person should be released into the community.

The consideration of a person's criminal history is essential when the Mental Health Court is determining criminal responsibility. As the Mental Health Court has powers of inquiry, it is not constrained by the rules of evidence thereby allowing it to consider material that would not be admissible in a jury trial.

The Mental Health Court has powers of inquiry so as to facilitate an unconstrained investigation into a matter. The criminal history contributes to development of the overall picture of the person's mental state, which is necessary to determine the person's criminal responsibility.

It should be noted that the *Criminal Law (Rehabilitation of Offenders) Act 1986* excludes the operation of the Act to criminal or civil proceedings before a court if the fact of the conviction or charge is relevant to an issue in the proceedings.

Any information obtained under this provision will be protected by the confidentiality obligations under clause 528 of the Bill.

Consultation

An extensive process of consultation has been undertaken in developing the proposals for the *Mental Health Bill 2000* beginning in 1993 with the development of a Green Paper that was widely consulted on in 1994. Specific reviews with focussed consultation have also been conducted on the operation of the Mental Health Tribunal and the Patient Review Tribunal. Public consultation has also taken place on proposals addressing the rights and interests of victims where the offender is mentally ill or has an intellectual disability.

The final stage in the development of the proposals was the release of an exposure draft of the *Mental Health Bill 2000* to key stakeholders throughout the State. The stakeholders included all mental health services and other general health services in Queensland, key consumer and carer organisations, key health and legal professional bodies, current staff of the Mental Health Tribunal and Patient Review Tribunals and other relevant government agencies, and representatives with mental health knowledge from the Aboriginal and Torres Strait Islander and non-English speaking communities. Individual victims of crime and organisations representing the interests of victims of crime were also included in the consultation.

The purpose of the consultation on the draft Bill was to determine if there were any unintended consequences arising out of the practical application of the proposals in a variety of contexts throughout Queensland. Further, as there had been no information regarding the outcome of the consultations on proposals as a whole since the Green Paper in 1994, it was seen as important to release a draft Bill for consultation before introduction.

Consultation strategies on the draft Bill included:

- Distribution of the Bill and an Information Paper explaining in plain English the provisions of the Bill;

- Information sessions held in ten selected sites around Queensland, taking into account the different contexts in which the legislation is to operate (rural, remote, regional, metropolitan, urban);
- Focus groups held for mental health services, consumers and carers, the Aboriginal and Torres Strait Islander and non-English speaking communities and forensic mental health services and victims of crime; and
- Distribution of a video taped information session.

The proposals for the *Mental Health Bill 2000* were also developed in consultation with other relevant government departments, including the Department of Premier and Cabinet; the Department of Justice and Attorney-General; Families, Youth and Community Care, Queensland; Disability Services Queensland; the Queensland Police Service; and the Correctional Services Commission.

CHAPTER 1—PRELIMINARY

Part 1—Introduction

Clause 1 sets out the short title of the Bill.

Clause 2 provides for the commencement of the provisions of the Bill. The provisions in Part 1 of Schedule 1 that set up special panels of the Patient Review Tribunal are to commence on assent and are then repealed on commencement of the remaining provisions of the Act. This is to ensure an effective transition of the current *Mental Health Act 1974*. See Schedule 1, Part 1 for a full explanation of the provision.

Clause 3 provides that the Act binds all persons including the State of Queensland and, as far as the legislative power of Parliament permits, the Commonwealth and other States. However, the State of Queensland may not be prosecuted for an offence against the Act.

Part 2—Purpose and Application of Act

Clause 4 sets out the purpose of the Act which is to provide for the involuntary assessment and treatment, and the protection, of persons having a mental illness while at the same time safeguarding their rights. The clause clarifies that the Act applies to adults and children. While it is rare for a young person under the age of 16 years to need to be assessed or treated involuntarily, situations arise where it is necessary to do so. For this reason, the Bill makes it clear that no minimum age limit is set for the application of the Bill.

Clause 5 sets out the ways in which the purpose of the Act is primarily achieved. The matters listed under this clause are the principal functions, processes or mechanisms that enable the purpose of the Act to be achieved.

Clause 6 clarifies that this Act does not prevent a person having a mental illness being admitted to, or being assessed or treated at an authorised mental health service other than as an involuntary patient, for example, as a voluntary patient. The objective of this provision is to clarify that voluntary patients should not be disadvantaged by the operation of this Act.

Clause 7 provides for flow charts to be attached to the Act to show the way in which provisions of the Act apply in particular circumstances, and how the provisions relate to each other. The clause clarifies that the flow charts do not have the effect of law and do not form part of the substantive provisions of the Act. The clause also sets out the way in which the flow charts are to be updated to reflect amendments to the Act and the timing for the updates to occur.

Part 3—Principles for administration of Act

Clause 8 sets out the general principles that guide the administration of the Act. The principles are consistent with the model mental health legislation (developed by the Commonwealth under the first National Mental Health Plan) and the United Nations Principles for the Protection of Persons with a Mental Illness and for the Improvement of Mental Health Care. The principles from the *Guardianship and Administration Act 2000* that are relevant to decisions made under this Act are also included in this clause.

The Act's administration is to be founded on principles that respect basic human rights and ensure, to the greatest extent practicable, a person's participation in decisions made about them under the Act. The principles seek to ensure the particular needs and circumstances of the person are taken into account, including the particular cultural, religious and linguistic needs of people from non-English speaking backgrounds and the Aboriginal and Torres Strait Islander community. The clause specifically provides that treatment administered under the Act is to be provided only if it is appropriate to promote and maintain the person's mental health and wellbeing. Finally, the principles confirm that a person's right to confidentiality must be recognised and taken into account, subject to the specific provisions providing for the release of confidential information under this Act and other relevant legislation. The principles set out in clause 8 are reflected throughout the Bill.

Clause 9 requires that a power or function exercised under the Act must be exercised so that a person's liberty and rights are affected only if there is no less restrictive way to protect the person's health and safety or to protect others. If the person's liberty or rights are to be affected, the affect is to be the minimum necessary in the circumstances. The purpose of the clause is to ensure that any power or function exercised under the Act is to be interpreted in a way that is consistent with this principle.

Part 4—Interpretation

Division 1—Dictionary

Clause 10 provides that the dictionary for particular terms used in the Act is located in Schedule 2. The dictionary should be read together with the "key definitions" in Part 4, Division 2 of this Chapter.

Clause 11 clarifies that a note located in the text is a part of the Act.

Division 2—Key definitions

The purpose of the key definitions is to provide an explanation of the key terms and concepts that are central to an understanding of the Act.

Clause 12 provides a broad definition of **"mental illness"**. A person should not be considered to have a mental illness merely by reason of a number of listed circumstances being present. However, the presence of one or more of the listed circumstances does not prevent a person from having a mental illness. For example, a person may have a mental illness that is caused by taking drugs or alcohol (which is a circumstance listed in the exclusion). Similarly, a person will not necessarily be excluded from the definition if they have a dual diagnosis, for example, of a mental illness as well as an intellectual disability. An intellectual disability on its own is a circumstance listed in the exclusions. This ensures that effective treatment is not denied to people who would otherwise benefit from treatment of their mental illness, but limits those people who are treated under the legislation to those with a genuine mental illness and for whom involuntary treatment in a mental health service would be effective.

The definition and the exclusions from the definition, and the requirement that the decision be made in accordance with internationally accepted medical standards, are drawn from the model mental health legislation and the United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care.

Clause 13 sets out the criteria that must be met before a person can be detained for assessment under Chapter 2 (the general assessment provisions) or Chapter 3 (the assessment of persons who are before a court or in custody).

Clause 13 is to be distinguished from clause 14. Clause 13 deals with decisions about whether involuntary *assessment* is authorised to take place whereas clause 14 deals with decisions about whether involuntary *treatment* is authorised. The Mental Health Bill now requires a period of assessment to occur before involuntary treatment can be authorised. This represents a significant safeguard against inappropriate involuntary treatment: no person should be subjected to involuntary treatment unless there has first been an expert determination of the presence of mental illness and the need for involuntary treatment.

The purpose of the assessment and the treatment criteria is to provide for a limited and defined set of circumstances that must be satisfied before a person can be detained for assessment or be treated involuntarily. This is an additional measure to prevent inappropriate involuntary detention and treatment. A person cannot be detained for assessment if they do not meet each and every one of the assessment criteria. Similarly, a person cannot be

treated involuntarily unless each and every one of the treatment criteria is met.

The criteria ensure that the presence of a mental illness alone is not sufficient justification for involuntary assessment or treatment. The criteria also ensure that the person's right to choose whether to undertake treatment is not breached unless a certain level of risk to self or others exists as well as the other criteria are satisfied.

A doctor or a specially appointed experienced mental health professional (an "authorised mental health practitioner") makes the decision as to whether the assessment criteria are satisfied, on the available information.

The first assessment criterion in clause 13 is that the person appears to have a mental illness. The definition of mental illness is set out in clause 12. As the primary function of the assessment criteria is to determine whether a referral for expert assessment should occur, a definitive finding of mental illness is not required at this point. Therefore the test is whether the person appears to have a mental illness. Expert assessment as to whether the person has a mental illness and whether involuntary treatment is required is made in the assessment phase.

The information to determine whether the person appears to have a mental illness can be provided by a number of sources. These include information contained in the request for assessment and through the examination of the person by a doctor or an authorised mental health practitioner. Information may also be provided by other people to the doctor or authorised mental health practitioner.

The second assessment criterion is that, in the opinion of the doctor or authorised mental health practitioner, the person requires immediate assessment. The test whether the need for assessment is "immediate" reflects the principle that involuntary interventions should be the least restrictive alternative.

The third assessment criterion is that the assessment can properly be made at an authorised mental health service to ensure that an involuntary assessment can be carried out only if the person has a condition that can be properly assessed by a mental health service.

The fourth assessment criterion is that there is a risk that the person may cause harm to themselves or someone else or suffer serious mental or physical deterioration. The test is not expressed as an "imminent risk of harm" as appears in the treatment criteria. The test for whether assessment

should occur is limited to reflect the least restrictive alternative principle, but is not so limited as to prevent a person from being assessed in appropriate circumstances.

The fifth assessment criterion encapsulates the principle of the least restrictive alternative that must be applied before involuntary assessment is authorised. The criterion states that the authorised mental health practitioner must be satisfied that there is no less restrictive way of ensuring that the person is assessed other than involuntarily.

The sixth assessment criterion states that for the purposes of conducting the involuntary assessment under Chapter 2, the person must lack the capacity to consent to the assessment, or have unreasonably refused to be assessed. "Unreasonably refused" is not defined in the legislation, as a variety of circumstances could occur to satisfy this criterion. Examples of when a person's refusal could be considered unreasonable include when the refusal would put the patient's safety or the safety of others at risk, or when the decision making process in coming to the decision to refuse assessment was irrational.

The determination of whether a person lacks the capacity to consent to the assessment, relates to the person's own capacity to consent. The consent of a guardian or attorney or statutory health attorney to the assessment on behalf of the patient is not relevant to determine whether the person meets the criteria or not.

This criterion should also be read in conjunction with principle (b) in clause 8: a person is presumed to have capacity to consent to assessment.

The ability of the person to consent or the absence of the consent is relevant only to assessment under Chapter 2. A classified patient under Chapter 3 (a person who is admitted to the mental health service from court or custody, for example prison or a watchhouse) can be involuntarily detained as a result of being subject to criminal charges and not having bail. However, this should not prevent the person's access to mental health treatment because they are capable of consenting to assessment.

Clause 14 sets out the criteria that must be met before a person can be treated involuntarily. A person cannot be treated involuntarily if they do not meet each and every one of the criteria. An "authorised doctor" (appointed for their experience and expertise in mental health) or a psychiatrist makes the assessment as to whether the criteria are met when determining whether to make an involuntary treatment order under Chapter 4. The treatment

criteria are also relevant in the regular assessments that must occur under Chapter 4 after an involuntary treatment order has been made. The purpose of the regular assessment is to determine whether the patient continues to meet the treatment criteria set out in this clause. The Mental Health Review Tribunal, under Chapter 6, must also review whether the treatment criteria continue to apply to the person.

The criteria for involuntary treatment are expressed in a similar way to the assessment criteria, however the decision to be made is whether *treatment* is authorised, not assessment.

The first treatment criterion that must be satisfied is that the person has a mental illness, as defined in clause 12. Unlike the assessment criteria, the authorised doctor or psychiatrist must determine whether the person has a mental illness, not whether the person merely appears to have a mental illness.

The second treatment criterion is that the person's illness requires immediate treatment, reflecting the principle that involuntary interventions should be the least restrictive alternative.

The third treatment criterion is that the proposed involuntary treatment is available at an authorised mental health service, again to ensure that the involuntary treatment can be carried out only if the person has a condition that can be properly treated at a mental health service. An example of when this criterion would *not* be satisfied is if the person has a condition for which involuntary treatment is not effective or if the condition needs a particular kind of treatment that is not available at an authorised mental health service.

The fourth treatment criterion is that because of the person's illness, there is an imminent risk that the person may cause harm to themselves or someone else or suffer serious mental or physical deterioration. The risk to the person or others must be caused by the person's mental illness, not some other factor that is unrelated to mental illness. The risk of harm must also be "imminent", which is not defined and therefore has its everyday meaning.

The fifth treatment criterion encapsulates the principle of the least restrictive alternative that must be applied before involuntary treatment is authorised: there must be no less restrictive way of ensuring that the person receives appropriate treatment other than involuntarily.

The sixth treatment criterion states that the person lacks the capacity to consent to treatment for the illness or has unreasonably refused the proposed treatment. "Unreasonably refused" is not defined in the legislation, as a variety of circumstances could occur to satisfy this criterion. Examples of when a person's refusal could be considered unreasonable include when the refusal would put the patient's safety or the safety of others at risk, or when the decision making process in coming to the decision to refuse the treatment was irrational.

Like clause 13, clause 14 makes it clear that the determination of whether a person lacks capacity to consent to the treatment, relates to the person's own capacity to consent. The consent of a guardian or attorney or statutory health attorney to treatment on behalf of the patient is not relevant to determine whether the person meets the criterion or not.

This criterion should also be read in conjunction with principle (b) in clause 8: a person is presumed to have capacity to consent to treatment.

CHAPTER 2—INVOLUNTARY ASSESSMENT

Chapter 2 sets out the process for enabling a person to be assessed at an authorised mental health service to determine if the treatment criteria apply to the person. The process for authorising the person's involuntary treatment for mental illness is dealt with separately, under Chapter 4.

"Assessment documents" must be completed before the person can be assessed involuntarily at an authorised mental health service. The assessment documents are a **"request for assessment"** and **"recommendation for assessment"**.

If assessment documents have not been made (eg if the person has not been seen by a doctor or authorised mental health practitioner within the last 3 days) then an application can be made to a magistrate or justice of the peace (qualified) for a **"justices examination order"**. The justices examination order authorises a doctor or authorised mental health practitioner to examine the person to determine if a recommendation for assessment should be made.

If a request for assessment and recommendation for assessment are made (in either of the circumstances mentioned above) for a person who is not at an authorised mental health service, the person can be taken to the health service for the assessment.

In the circumstances of an emergency, a person may be taken to an authorised mental health service under an **"emergency examination order"**. This order authorises a person's examination at the authorised mental health service to determine if the assessment documents should be made.

Part 1—Interpretation

Clause 15 limits the definition of "**authorised mental health service"** for this Chapter. An authorised mental health service is generally the only place where involuntary examination, assessment or treatment can be carried out. The limited definition in Chapter 2 prohibits a person's examination or assessment from occurring at a high security unit. However, the examination or assessment can occur at a public hospital where there is no authorised mental health service readily accessible, for example, in rural or remote areas.

Part 2—Requirements for involuntary assessment

Division 1—Preliminary

Clause 16 sets out the documents required to authorise a person's involuntary assessment at an authorised mental health service. These are a request for assessment and a recommendation for assessment, and together are called the assessment documents. The assessment documents are only valid if they comply with the requirements of this Part.

Division 2—Request for assessment

Clause 17 specifies that a request for assessment of a person can be made by any person who is an adult who reasonably believes the person has a mental illness of a nature or to an extent that involuntary assessment is necessary. As a safeguard to ensure the information is accurate, the person making the request must have observed the person the subject of the request within the previous 3 days.

Clause 18 requires the request for assessment to be in the approved form.

Division 3—Recommendation for assessment

Clause 19 specifies that a recommendation for assessment of a person can only be made by a doctor or authorised mental health practitioner. An authorised mental health practitioner is a health practitioner appointed by the Director of Mental Health as a person with the necessary expertise and experience to perform the functions of the position.

The doctor or authorised mental health practitioner must have examined the person within the previous 3 days. The examination could have been carried out using audio visual link facilities. A doctor or authorised mental health practitioner is prohibited from making recommendation for assessment for a relative.

Clause 20 requires the recommendation for assessment to be in the approved form. The doctor or authorised mental health practitioner must include the facts on which the recommendation is based, specifying which facts are known because of personal observation and those communicated by others. A recommendation for assessment must not be made for a person unless the doctor or authorised mental health practitioner is satisfied that each and every one of the assessment criteria under clause 13 applies to the person.

Clause 21 specifies that the recommendation for assessment can be acted on for 7 days after it is made.

Division 4—Miscellaneous provisions

Clause 22 clarifies that it is not important whether the recommendation or request for assessment is made first. For example, a person who is being seen by a doctor could in the course of the examination have a recommendation for assessment made, which is then followed by a request for assessment. However, the documents must be made within 7 days of each other to ensure that the person still requires involuntary assessment. A request for assessment is only in force when a recommendation for assessment for the person is also in force.

Clause 23 requires the assessment documents to be made by different persons.

Clause 24 prohibits a request for assessment being made by an employee or relative of the doctor or authorised mental health practitioner who has made a recommendation for assessment of the same person. It should be noted that this does not prevent two employees of the same health service making the assessment documents for a person.

Part 3—Procedures leading to involuntary assessment

Division 1—Provisions about taking persons to authorised mental health services for involuntary assessment

Clause 25 sets out the process of taking a person to an authorised mental health service where assessment documents are in force for the person. A health practitioner or ambulance officer is empowered to take the person to an authorised mental health service with the help, and using the force, that is reasonable in the circumstances.

Police may be required to ensure reasonable help is given to take the person to the authorised mental health service. For this provision, the health practitioner or ambulance officer is declared a public official for the *Police Powers and Responsibilities Act 2000* to ensure that the police officer providing the assistance has the same powers as the health practitioner or ambulance officer while giving the help.

The clause also specifies what the person must be told on being taken to an authorised mental health service. However, if the circumstances do not permit compliance with this requirement, the process is not rendered invalid.

Clause 26 authorises the administration of medication to the person while being taken to the authorised mental health service only if this is necessary to ensure the safety of the patient or others. Where a doctor is satisfied this is the case, the medication may only be administered by a doctor or registered nurse under the specific instructions of a doctor.

The provisions in relation to the provision of non-consensual health care under the *Guardianship and Administration Act 2000* do not apply to the giving of medication under this clause.

Division 2—Justices examination orders

Clause 27 sets out how an application may be made to either a magistrate or justice of the peace (qualified) for a justices examination order. To ensure the scheme is sufficiently flexible, a request for assessment may either be made by the person who makes the application for a justices examination order, or by someone else.

Clause 28 aims to ensure that justices examination orders are only issued in particular circumstances. A magistrate or justice of the peace (qualified) must have a reasonable belief that a person should be examined to determine whether a recommendation for assessment should be made, on the basis that the person has a mental illness and the order is necessary for the examination to occur.

Clause 29 requires the justices examination order and any supporting document to be forwarded to the administrator of an authorised mental health service (normally the service nearest the person the subject of the order). Where the order is made by a justice of the peace (qualified), a copy of the order and a copy of the application documents must also be sent to the registrar of the Magistrates Court. This would normally be the court nearest the person the subject of the order. This ensures against a person making numerous applications on the same grounds until they find a person willing to grant the application.

Clause 30 empowers a doctor or authorised mental health practitioner to examine the person, and if necessary, to enter a place to conduct the examination at any reasonable time of the day or night. The purpose of the examination is to decide if a recommendation for assessment of the person should be made.

Police may be asked to provide assistance to conduct the examination. For this provision, the doctor or authorised mental health practitioner is declared a public official for the *Police Powers and Responsibilities Act 2000* to ensure that the police officer providing the assistance has the same powers. Additionally, a police officer is given authority to detain the person. This is intended to give the police officer entry and search powers under the *Police Powers and Responsibilities Act 2000*.

After the examination, if both a recommendation and a request for assessment are in force for the person, the person can be taken to an authorised mental health service under Division 1 for the assessment.

Clause 30 also specifies what the person must be told on being taken to an authorised mental health service. However, if the circumstances do not permit compliance with this requirement, the process is not rendered invalid.

Clause 31 requires the justices examination order to specify when the authority to examine a person without their consent ends. The maximum time is 7 days after the order is made.

Clause 32 aims to provide a safeguard against the inappropriate issue and execution of justices examination orders by requiring that any orders not resulting in the making of a recommendation for assessment, along with the application documents, are sent to the Director of Mental Health.

Division 3—Emergency examination orders

Subdivision 1—Emergency examination orders by police officers and ambulance officers

Subdivision 1 provides a scheme that empowers a police officer or an ambulance officer to take measures, in an emergency, to take a person to an authorised mental health service for an examination to decide if assessment

documents should be made for the person.

Clause 33 sets out strict criteria that must be met before an emergency examination order can be made for the person by a police officer or an ambulance officer. A police officer's powers to enter a place in these circumstances are provided under the *Police Powers and Responsibilities Act 2000*. The matters that must be satisfied before the order is made recognise the intrusive nature of the power, and therefore, reflect the principle of the least restrictive alternative.

Clause 34 gives the police officer or ambulance officer authority to take the person to an authorised mental health service only if satisfied of the matters listed in clause 33.

Clause 35 sets out the documentation required to make the emergency examination order, and to whom it must be given. Due to the urgent nature of the circumstances, it is anticipated that the police officer or ambulance officer will not have an opportunity to complete the documents until immediately after taking the person to the authorised mental health service. The time the order was made must be recorded on the order (ie. when the document is completed).

Clause 36 enables the person to be detained at the authorised mental health service for an examination by a doctor or authorised mental health practitioner for not more than 6 hours from the time the order is made. It should be noted that the time for detention would start after the person arrives at the health service, because the order is made immediately after the person is taken to the health service.

Subdivision 2—Emergency examination orders by psychiatrists

Similar to the emergency examination orders made by police or ambulance officers, Subdivision 2 provides a scheme that empowers a psychiatrist, to make an emergency examination order for a person.

Clause 37 sets out strict criteria that must be met before an emergency examination order can be made for the person by a psychiatrist. Again, the matters that must be satisfied before the order is made recognise the intrusive nature of the power, and therefore, reflects the principle of the least restrictive alternative.

Clause 38 gives a psychiatrist authority to make an emergency

examination order.

Clause 39 gives the psychiatrist, a police officer or ambulance officer authority to take the person to an authorised mental health service, once the psychiatrist makes the emergency examination order.

Clause 40 enables the person to be detained for an examination by a doctor or authorised mental health practitioner at the authorised mental health service for not more than 6 hours from the time the order is produced to a health service employee at the authorised mental health service.

Subdivision 3—General

Clause 41 requires, if assessment documents are not made for the person, that the person is returned to the place from which the person was taken for the examination or to another place the person reasonably asks to be taken.

As a safeguard against inappropriate use of emergency examination orders, the Director of Mental Health receives notice of all circumstances where assessment documents are not made for a person for whom an emergency examination order was made, in addition to a copy of the order.

Part 4—Detention as involuntary patient for involuntary assessment

Division 1—Preliminary

Clause 42 specifies that the involuntary assessment provisions apply to a person for whom assessment documents have been made.

Clause 43 states that the purpose of the Part is to provide for the person's detention for assessment.

Division 2—Involuntary assessment

Clause 44 enables a person to be detained as an involuntary patient in an authorised mental health service for assessment for the **"assessment period"**. The assessment period is defined as an initial period of up to 24 hours, which may be extended under clause 47. For the purpose of calculating time, the clause specifies when the assessment period begins and requires the time when the assessment period begins to be written on the assessment documents.

A person may become an involuntary patient after being taken to the authorised mental health service under Part 3. Alternatively, a voluntary patient already at the authorised mental health service can become an involuntary patient, either on the making of assessment documents by health practitioners at the authorised mental health service, or on production of the documents to a health practitioner at the service.

Clause 45 sets out who must be told about the patient's assessment as an involuntary patient.

Clause 46 requires an authorised doctor to make an assessment of the patient as soon as practicable after the patient becomes an involuntary patient. The purpose of the assessment is to determine whether the treatment criteria apply to the person. The assessment may be carried out using audio visual link facilities.

Clause 47 allows the assessment period for the patient to be extended by an authorised doctor for periods of up to 24 hours at a time. The maximum time allowed for the patient's detention is 72 hours from when the patient first became an involuntary patient. The period can only be extended if it is necessary to finish the assessment.

Clause 48 declares that the person is no longer an involuntary patient if, by the end of the assessment period, an involuntary treatment order has not been made by an authorised doctor for the patient. The doctor is obliged to tell the person that this is the case to ensure the patient is aware they are free to leave the health service. However, the person may continue to be a voluntary patient of the health service.

Clause 48 also sets out circumstances when the person must be returned to the place from which the person was taken for the assessment or to another place the person reasonably asks to be taken.

CHAPTER 3—PERSONS BEFORE A COURT OR IN CUSTODY REQUIRING ASSESSMENT OR DETENTION

Any person admitted to an authorised mental health service from court or custody for assessment of mental illness will become a **"classified patient"**. The purpose of the classified patient scheme is to ensure the secure management of the person whilst still ensuring the person has access to treatment for mental illness.

The classified patient scheme provides for involuntary assessment at an authorised mental health service but does not specifically include treatment. The aim is to provide a scheme that operates in parallel with the treatment provisions. A classified patient may be treated either with the patient's consent or, if the treatment criteria apply, under the involuntary treatment provisions of Chapter 4.

A classified patient can be admitted to any authorised mental health service. Where the person receives assessment and treatment will depend on the facilities available, the person's criminal and psychiatric history and the person's treatment and security requirements. There are restrictions on where a person may be detained as a classified patient if they are only charged with a simple offence (ie. a less serious offence, for example, breach of bail) or if the person is under 17 years.

Note that the classified patient scheme does not apply to persons granted bail and then admitted to an authorised mental health service.

Chapter 3 also provides a scheme for the detention of a person in an authorised mental health service during the person's trial.

Part 1—Requirements for assessment

Division 1—Preliminary

Clause 49 sets out the documents required to authorise a person's detention as a classified patient in an authorised mental health service. A recommendation for assessment and an agreement for assessment must be

accompanied by either a court assessment order (if the person is before a court or justices) or a custodian's assessment authority (if the person is in custody). A place of custody includes a police watchhouse.

Division 2—Recommendations for assessment

Clause 50 specifies that a recommendation for assessment of a person can only be made by a doctor or authorised mental health practitioner. The doctor or authorised mental health practitioner must have examined the person within the previous 3 days. The examination could have been carried out using audio visual link facilities. A doctor or authorised mental health practitioner is prohibited from making recommendation for assessment for a relative.

Clause 51 requires the recommendation for assessment to be in the approved form. The doctor or authorised mental health practitioner must include the facts on which the recommendation is based, specifying which facts are known because of personal observation and those communicated by others. A recommendation for assessment must not be made for a person unless the doctor or authorised mental health practitioner is satisfied that each and every one of the assessment criteria applies to the person.

It should be noted that the assessment criteria for Chapter 3 do not include a requirement that the person has unreasonably refused or lacks capacity to consent to the assessment. This enables a person who can consent to assessment to become a classified patient.

Clause 52 specifies that the recommendation for assessment can be acted on for 7 days after it is made.

Division 3—Agreements for assessment

Clause 53 provides that an agreement for a person's assessment as a classified patient may be given by either the administrator of the authorised mental health service at which the person is to be assessed or the Director of Mental Health. A young person (ie. under 17 years) or a person charged only with a simple offence can only be admitted as a classified patient to a high security unit with the Director of Mental Health's approval. This

ensures against inappropriate admissions for these people. The clause also sets out the matters the Director of Mental Health must consider in deciding whether or not to give the approval.

Clause 54 sets out when the administrator of an authorised mental health service can give agreement for a person's assessment at the health service as a classified patient. The aim is to ensure that a classified patient is provided treatment in the most suitable setting, given the person's criminal and psychiatric history, as well as their treatment and security requirements.

Clause 55 empowers the Director of Mental Health to give agreement for a person's assessment as a classified patient at a particular authorised mental health service in the absence of an agreement by the administrator of that service. However, the administrator must have first refused to give the agreement.

Clause 56 specifies that the agreement for assessment can be acted on for 7 days after it is made.

Part 2—Persons having a mental illness before court

Division 1—Court assessment orders

Clause 57 states that the provisions about court assessment orders apply to persons charged with simple or indictable offences.

Clause 58 empowers a court or justices to make a court assessment order for a person and specifies the circumstances in which an order can be made. The court or justices must be given a recommendation and agreement for assessment, which are in force for the person before a court assessment order can be made. Note that it is sufficient for the court or justices to be given a facsimile copy of the documents.

The clause also sets out what the court must do on making a court assessment order.

Clause 59 sets out what the court must do if a court assessment order is not made. It aims to clarify that a court assessment order should only be made if the person needs to be detained in an authorised mental health service for assessment. Alternatively, the person could be remanded in custody or granted bail, and subsequently assessed as an out-patient or a

voluntary patient of a health service. This also includes assessment whilst in prison custody.

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

Clause 60 provides that this Division does not apply to Commonwealth offences. The *Crimes Act 1914 (Commonwealth)* provides a separate scheme for determining criminal responsibility of alleged offenders with a mental illness and as commonwealth law prevails over state law; Queensland has no jurisdiction to provide for decisions in Commonwealth offences.

Clause 61 specifies the circumstances in which Division 2 applies.

Clause 62 gives a Supreme or District Court power to order a plea of not guilty be entered for a person if the person pleads guilty to an indictable offence. The order applies to both an indictable offence the person is charged with, and a summary offence if the summary offence is to be heard by the Court (section 651 of the Criminal Code gives the Supreme or District Court the power to hear a summary offence). On making the order, the Court is required to adjourn the trial, refer the matter of the person's mental condition relating to the offence to the Mental Health Court, and make an order remanding the person in custody or granting bail.

The clause also clarifies that the Court has the option of remanding the person to be detained as a classified patient at an authorised mental health service by making a court assessment order under Division 1.

Clause 63 sets out how a reference is made to the Mental Health Court by the Supreme or District Court.

Division 3—Persons having a mental illness in lawful custody

Clause 64 states that the provisions of this Part about custodian's assessment authorities apply to a defendant or accused person in custody or a person serving a sentence of imprisonment or detention under a court order.

Clause 65 empowers a person's custodian (as defined) to make a custodian's assessment authority. The order is a pre-requisite to being detained in an authorised mental health service.

Clause 66 requires that before a custodian's assessment authority can be made, the custodian must be given a recommendation and agreement for assessment, that are in force for the person. Note that it is sufficient for the custodian to be given a facsimile copy of the documents.

Part 4—Detention as classified patient on completion of assessment documents

Division 1—Preliminary

Clause 67 states that the provisions about the detention of a person as a classified patient apply to circumstances where either a court assessment order or a custodian's assessment authority is in force for the person.

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

Clause 68 requires the person to be taken as soon as practicable to the in-patient facility of the authorised mental health service stated in the court assessment order or custodian's assessment authority. A police officer, correctional officer or detention centre officer is empowered to take the person to the health service.

Clause 69 authorises the person's detention as a classified patient at the authorised mental health service until the patient ceases to be a classified patient. The person's detention starts on production of the request for assessment and court assessment order or custodian's assessment authority. The authorised mental health service will already have the agreement for assessment. The clause also sets out the circumstances under which a patient ceases to be a classified patient.

Clause 70 sets out who must be told about the patient's admission as a classified patient.

Division 3—Assessment and treatment as classified patient

Clause 71 requires an authorised doctor to make an initial assessment of a classified patient within 3 days of the patient's admission. An authorised doctor is a medical practitioner who has the necessary expertise or experience to exercise the powers under the legislation, and is appointed by the administrator of an authorised mental health service.

The classified patient scheme ensures an offender can receive assessment and treatment for mental illness in an authorised mental health service if no other option is available. The purpose of the initial assessment is firstly, to confirm that the patient needs treatment for their mental illness under the classified patient scheme, and secondly, to determine whether the patient requires involuntary treatment.

It is not necessary for the patient to require involuntary treatment to remain a classified patient because, under the scheme, the patient is able to consent to treatment. However, if the treatment criteria do apply, the authorised doctor may make an involuntary treatment order under Chapter 4. Note that if the patient is already under an involuntary treatment order, no further authority is required to treat the patient involuntarily. Also, if the patient is under the community category of an involuntary treatment order, the category must be changed to in-patient (see clause 119). A classified patient can only receive treatment as an in-patient in the health service or undertake limited community treatment (as set out in Chapter 4, Part 2, Division 2).

The doctor may decide the patient does not need to be a classified patient if, for example, the patient's treatment needs could be met by continuing under the community category of an involuntary treatment order and being returned to court or custody.

Clause 72 requires the authorised doctor to ensure a treatment plan is prepared for the patient, if the patient is not returned to court or custody following the initial assessment. The doctor is also obliged to talk to the patient about the treatment under the treatment plan. The footnote clarifies that the treatment plan must be prepared in accordance with Chapter 4, Part 2.

Clause 73 sets out the administrator's responsibility to ensure the patient is assessed at regular intervals by an authorised psychiatrist (as defined). Note that the treatment plan is to state the intervals that the assessments are to occur. The purpose of this clause is to provide authority to make further decisions about whether the patient requires involuntary treatment and whether the patient needs to continue to be treated as a classified patient.

Clause 74 provides that an authorised doctor (which includes the authorised psychiatrist) must give the Director of Mental Health a report on deciding that a patient does not need to be treated as a classified patient.

Division 4—Provisions about legal proceedings

Clause 75 suspends proceedings for any offence against a person for the period the person is a classified patient. Commonwealth offences are excluded, as these offences are subject to a separate legislative scheme.

Clause 76 aims to ensure that, on the resumption of proceedings for a Commonwealth offence, the patient continues to be subject to the classified patient scheme, and that inconsistent orders as to the patient's custody are not made. It should be noted that this does not apply if the patient is returned to court under Part 5 when no longer needing to be treated as a classified patient.

Clause 77 clarifies that nothing prevents a classified patient from being granted bail and that proceedings against the patient may be discontinued.

Clause 78 provides that if bail is granted, proceedings are discontinued or proceedings for a Commonwealth offence are finally decided according to law, the patient for whom the offence relates ceases to be a classified patient. However, if the patient is awaiting the start or continuation of criminal proceedings for additional offences or if the patient is serving a sentence, it is intended the patient will continue to be a classified patient in relation to the additional offences or sentence. If the patient ceases to be a classified patient under this provision, nothing prevents the patient continuing to be an involuntary patient under another provision of the Bill; eg. under an involuntary treatment order or a forensic order.

Clause 79 sets out who must be given notice of the ceasing of classified status for the patient.

Division 5—What happens on patient ceasing to be classified patient

Clause 80 states that this Division applies to a person on ceasing to be a classified patient.

Clause 81 requires that if the person is not under an involuntary treatment order or forensic order (an order under Chapter 7, Part 7, authorising the person's detention in an authorised mental health service for treatment or care), the administrator of the treating health service must either immediately discharge the person or arrange for the person's transfer to an authorised mental health service that is not a high security unit.

Clause 82 aims to ensure that a person who is under an involuntary treatment order cannot be detained in a high security unit without the Director of Mental Health's approval on ceasing to be a classified patient. A maximum 3 day period is provided to ensure that there is sufficient time to seek the Director of Mental Health's approval where necessary (eg. if the patient ceases to be a classified patient on a weekend or public holiday).

Part 5—Return of classified patients to court or custody

Division 1—Preliminary

Clause 83 provides that a classified patient is to be returned to court or custody if one of the following occur:

- the patient no longer needs to be detained in the authorised mental health service as a classified patient for treatment; or
- if the patient is receiving voluntary treatment—the patient asks to be discharged from the authorised mental health service.

Clause 84 requires the administrator of a classified patient's treating health service to give notice to the Director of Mental Health if a classified patient receiving voluntary treatment asks to be discharged from the authorised mental health service.

Division 2—Patients under court assessment orders

Clause 85 states that the Division applies if one of the circumstances mentioned in clause 83 occurs or the Director of Mental Health receives a notice under clause 84 and a court assessment order was originally made for the patient.

Clause 86 sets out who must be given notice that this Division applies to the patient.

Clause 87 requires the patient to be brought before the appropriate court or justices to be dealt with according to law as soon as practicable, but not more than 3 days after the Commissioner of Police or Director of Public Prosecutions receives the notice.

Division 3—Patients under custodian's assessment authorities

Clause 88 states that the Division applies if one of the circumstances mentioned in clause 83 occurs or the Director of Mental Health receives a notice under clause 84 and a custodian's assessment authority was originally made for the patient.

Clause 89 requires the Director of Mental Health to decide whether a patient awaiting the start or continuation of criminal proceedings should be returned to court or custody. In most circumstances, a person who became a classified patient on the making of a custodian's assessment authority will be returned to the original place of custody. However, in some circumstances, it would be more appropriate for the patient to be brought before a court or justices to be dealt with according to law. Examples of such circumstances include:

- a patient who was detained in a police watchhouse when the custodian's assessment authority was made; and
- a patient who was not able to appear in court because of their detention as a classified patient.

A decision to return the patient to court can only be made if the Director of Mental Health is satisfied it is in the patient's best interests and it is proper and expedient to do so.

Clause 90 provides for a patient's return to custody if either of the following apply to the patient:

- the patient is serving a sentence of imprisonment or detention under a court order; or
- the Director of Mental Health has decided under clause 89 that the patient should be returned to custody.

Clause 91 sets out who must be given notice when the patient is to be returned to court.

Clause 92 requires the patient to be brought before the appropriate court or justices to be dealt with according to law as soon as practicable, but not more than 3 days after the Commissioner of Police or Director of Public Prosecutions receives the notice.

Division 4—Miscellaneous provisions

Clause 93 states when the administrator's custody ends.

Clause 94 declares that the patient ceases to be a classified patient when the administrator's custody of the patient ends. However, the patient may continue to be an involuntary patient under another provision of the Bill; eg. under an involuntary treatment order or a forensic order.

It should be noted that until a patient is returned to court or custody under this Part, the patient may continue to be detained as a classified patient.

Clause 95 sets out who must be given notice of the ceasing of classified status for the patient.

Part 6—Procedures following end of sentence or parole

Clause 96 states that this Part applies to a person who becomes a classified patient while serving a sentence of imprisonment or detention under a court order.

Clause 97 clarifies that nothing prevents a classified patient from being granted parole. Parole is defined in the dictionary to include release under a fixed release order under the *Juvenile Justice Act 1992*.

Clause 98 requires the administrator to give notice to the Director of Mental Health of the ending of the patient's period of imprisonment or detention, or on the patient's parole.

Clause 99 declares that the patient ceases to be a classified patient at the end of the patient's period of imprisonment or detention, or on the patient's parole, unless the patient is also awaiting the start or continuation of proceedings for an offence. However, the patient may continue to be an involuntary patient under another provision of the Bill; eg. under an involuntary treatment order or a forensic order.

Clause 100 sets out who must be given notice of the ceasing of classified status for the patient.

Part 7—Detention in authorised mental health service during trial

Part 7 provides a scheme for the detention of a person in an authorised mental health service during an adjournment of the person's trial. The purpose of this Part is to provide an avenue for a person who is otherwise fit to plead to receive treatment or care to assist in the continuation of the trial. Note that the person does not become a classified patient, and the person can only be assessed or treated involuntarily under the processes outlined in Chapters 2 and 4.

Clause 101 empowers a court to order a person's detention in an authorised mental health service during an adjournment of the person's trial. The court must be satisfied the person requires treatment or care in the authorised mental health service, and have a current agreement for detention.

Clause 102 provides that an agreement for a person's detention may be given by either the administrator of the authorised mental health service at which the person is to be detained or the Director of Mental Health. A young person cannot be admitted to a high security unit under this Part.

Clause 103 sets out when the administrator of an authorised mental health service can give agreement for a person's detention at the health service. The aim is to ensure that a the person is provided treatment or care in the most suitable setting, given the person's criminal and psychiatric history, as well as their treatment and security requirements.

Clause 104 empowers the Director of Mental Health to give agreement for a person's detention at a particular authorised mental health service in the absence of an agreement by the administrator of that service. However, the administrator must have first refused to give the agreement.

Clause 105 specifies that the agreement for detention can be acted on for 7 days after it is made.

Clause 106 provides authority for the person to be taken to the in-patient facility of the authorised mental health service stated in the order, and returned to court at the end of the adjournment.

Clause 107 enables the person to be detained in the authorised mental health service stated in the order.

CHAPTER 4—TREATMENT OF PERSONS WHO HAVE MENTAL ILLNESSES

Chapter 4 sets out the requirements for, and administration of, involuntary treatment for mental illness. Under an **"involuntary treatment order"** a person can be treated in the in-patient facility of an authorised mental health service or in the community. Involuntary treatment in the community means the person is required to undertake treatment through a mental health service, whilst still living in the community. However, an involuntary treatment order can only remain in force for as long as the treatment criteria apply to the person.

Particular regulated and prohibited treatments and management techniques are covered in Chapter 4 to ensure the rights of patients are protected.

Part 1—Involuntary treatment orders

Division 1—Making and effect of involuntary treatment orders

Clause 108 specifies that each and every one of the treatment criteria (set out in clause 14) must be met for a person before an involuntary treatment order can be made. Only an authorised doctor is empowered to make an involuntary treatment order, on an assessment of the person under Chapter 2 or 3. An authorised doctor is a medical practitioner who has the necessary expertise or experience to exercise the powers under the legislation, and is appointed by the administrator of an authorised mental health service.

If the doctor who made the recommendation for assessment for the person was a psychiatrist, the same psychiatrist cannot make an involuntary treatment order. This is to ensure that a person's involuntary treatment is not provided on the basis of an assessment or examination by a single doctor.

The clause also specifies that a person cannot be treated under an involuntary treatment order in a high security unit unless the person is a classified patient or the Director of Mental Health has given prior agreement.

Clause 109 requires the authorised doctor who makes the involuntary treatment order to specify the category of the order. If the patient needs to be treated as an in-patient, the category is "in-patient". If the patient does not need to be treated as an in-patient, the category of the order is "community". A classified patient can only be treated under the in-patient category of an involuntary treatment order.

Clause 110 provides that the authorised doctor must ensure a treatment plan is prepared for the patient.

Clause 111 aims to ensure that a patient is told about the making of the order and the category, as well as their treatment under the accompanying treatment plan. In addition, the authorised doctor must explain the basis on which the involuntary treatment order is made.

Clause 112 provides that in certain circumstances there must be a further examination within 72 hours by a psychiatrist to confirm that the treatment criteria apply. A further examination must take place if:

- the authorised doctor who made the involuntary treatment order was not a psychiatrist, for example, a psychiatry registrar or medical superintendent; or
- the assessment was carried out by audio visual link (by a psychiatrist or another authorised doctor).

Note that the same psychiatrist can make the second examination if the assessment was carried out by audio visual link. If the involuntary treatment order is not revoked or confirmed by the end of the 72 hours, the patient ceases to be an involuntary patient.

Clause 113 sets out who must be given notice of the making of an involuntary treatment order for a patient.

Clause 114 enables a patient under the in-patient category of an involuntary treatment order to be detained in the patient's treating health service.

Clause 115 provides a single point of accountability for a patient's treatment under an involuntary treatment order.

Clause 116 aims to ensure that a patient under an involuntary treatment order is assessed at regular intervals by an authorised psychiatrist to determine if the treatment criteria continue to apply to the patient. The intervals for the regular assessments must be set out in the patient's treatment plan (see clause 124).

Clause 117 sets out procedures to enable a patient to be brought back to their treating health service and detained for treatment if the patient is non-compliant with treatment under the community category of an involuntary treatment order. However, before this action is taken, a doctor must talk to the patient about their non-compliance and the consequences of further non-compliance (ie. that they could be detained for treatment).

If the patient again fails to comply, a health practitioner is empowered to take the person to the treating health service, with assistance from police if necessary. After the treatment, the person must be returned to the place from which the person was taken or to another place the person reasonably asks to be taken. Note that if more urgent measures are required because, for example, the patient is acutely unwell, the category of the involuntary treatment order can be changed to in-patient under clause 119.

Clause 118 provides that an involuntary treatment order continues unless revoked by an authorised doctor, the Director of Mental Health, the Mental

Health Review Tribunal on a review or the Mental Health Court on an appeal. Also, the order ends if the patient does not receive treatment under the order for 6 months.

Division 2—Changing category of involuntary treatment orders

Clause 119 empowers an authorised doctor to change the category of an involuntary treatment order if this is necessary because of the patient's treatment needs, for example, if a patient no longer needs in-patient treatment, the category would be changed to community. In addition, an authorised doctor is required to change the category of an involuntary treatment order in the following circumstances:

- to give effect to an order of the Mental Health Review Tribunal; and
- if a patient under the community category becomes a classified patient—to the in-patient category.

On making the change, the doctor must record the reasons for the change and talk to the patient about the change, except where this is not reasonably practicable. If the category is changed to in-patient, a health practitioner is empowered to take the person to the treating health service, with police assistance if necessary.

Clause 120 sets out who must be given notice of the change of category of an involuntary treatment order.

Division 3—Revoking involuntary treatment orders

Clause 121 obliges an authorised doctor to revoke an involuntary treatment order for a patient, if any or all of the treatment criteria no longer apply to the patient.

Clause 122 empowers the Director of Mental Health to revoke an involuntary treatment order for a patient if the Director is satisfied any or all of the treatment criteria no longer apply to the patient.

Clause 123 sets out who must be given notice of the revocation of an involuntary treatment order.

Part 2—Treatment plans

Treatment plans are required for the following patients:

- patients under involuntary treatment and forensic orders;
- classified patients; and
- patients for whom the Mental Health Court has made an order under clause 273(1)(b).

Division 1—Preparing and changing treatment plans

Clause 124 sets out what the treatment plan for a patient must state. The purpose is to ensure accountability of the treatment a patient is to receive involuntarily, including who is to provide the service and how often the person is to be assessed.

In some circumstances, a patient may receive primary mental health follow-up by a service that is not an authorised mental health service. For example, a patient may be followed-up by a community health service or a private psychiatrist. In these cases, the treatment plan must state the health service and, if the patient is to be treated by a non-public sector mental health service employee, the name of the practitioner (with the practitioner's agreement). Note that reasonable force can only be used to give a patient involuntary treatment at an authorised mental health service or when being taken to an authorised mental health service.

Clause 124 also provides recognition of a patient's wishes as expressed in an advance health directive. Previous and existing treatment regimes are also to be taken into account in formulating the treatment plan. However, these matters are not binding on the health practitioner setting out the treatment plan, recognising that the treatment plan needs to be responsive to the patient's particular needs at that time.

Clause 125 sets out who can change a patient's treatment plan. It ensures that if a change is made, the change must be recorded, and the patient told of the change. It is also intended to ensure that a patient's treatment plan is consistent with any orders made by the Mental Health Review Tribunal or Mental Health Court for the patient.

Clause 126 requires that a patient's treatment plan is changed to reflect an order by the Director of Mental Health transferring a patient from one authorised mental health service to another.

Clause 127 requires that a patient's treatment plan be changed to reflect the revocation by the Director of Mental Health of an approval for a classified patient to undertake limited community treatment. In addition, an authorised doctor must issue a notice under clause 507 requiring the patient to return to the treating health service if the patient is not in the health service.

Division 2—Limited community treatment

Division 2 provides a scheme for a patient's graded return to the community whilst an in-patient (for example, when the patient is under a forensic order, the in-patient category of an involuntary treatment order or a classified patient). Limited community treatment may be authorised by an authorised doctor and is documented under the patient's treatment plan. Additional approval is required prior to authorising limited community treatment for classified and forensic patients and patients detained in an authorised mental health service under an order of the Mental Health Court under clause 273(1)(b). The purpose of the independent approval process for patients treated under more restrictive circumstances is to ensure the safety of the patient and the general community. Chapter 14, Part 1 provides for the return of a patient to an authorised mental health service if the patient fails to comply with involuntary treatment or the patient's treatment needs change while undertaking limited community treatment.

Clause 128 clarifies that the limited community treatment scheme does not apply to patients under the community category of an involuntary treatment order, as these patients are already living in the community. Limited community treatment is also not available to a patient for whom a court has made an order under clause 101(2) or 337(5).

Clause 129 empowers an authorised doctor to allow a patient to undertake limited community treatment. It sets out who must give additional approval for forensic and classified patients and for patients detained in an authorised mental health service under an order by the Mental Health Court under clause 273(1)(b). Restrictions on when the Director of Mental Health can give approval are also specified. Note that similar

restrictions are placed on the Mental Health Review Tribunal and Mental Health Court in giving approval. These are set out in Chapters 6 and 7 respectively.

Clause 130 requires the administrator of the patient's treating health service to ensure an authorised doctor for the health service changes the patient's treatment plan (by documenting an authority for limited community treatment) to give effect to an order of the Mental Health Review Tribunal or Mental Health Court for limited community treatment.

Clause 131 sets out what the treatment plan must state where limited community treatment is authorised. Limited community treatment may be authorised for periods extending from short periods on a daily basis, up to longer continuous periods. However, this is limited to a maximum continuous period of 7 days at a time for patients under involuntary treatment orders (who are not also classified patients). This is to ensure that consideration is given to changing the category of the involuntary treatment order for the patient to the community category. As classified and forensic patients do not have a "community" category available, the continuous period is not limited.

Clause 132 specifies that a classified patient serving a sentence of imprisonment or detention or a patient detained in an authorised mental health service under an order by the Mental Health Court under clause 273(1)(b) must be accompanied by a health service employee whilst undertaking limited community treatment.

Part 3—Regulated and prohibited treatments, seclusion and restraint

An involuntary treatment order authorises the administration of comprehensive treatment and care to a person who is an involuntary patient. The purpose of this Part is to prohibit certain treatments and to regulate other treatments or management techniques. Penalties are imposed for contravening the restrictions on performing regulated treatment, or for performing prohibited treatment.

Division 1—Informed consent

This Division sets out the requirements to obtain informed consent for certain treatments under this Part. Informed consent is required to perform electroconvulsive therapy or psychosurgery on voluntary patients.

Clause 133 requires that a person must comply with the provisions of this Division in order to give informed consent to treatments regulated in this Part.

Clause 134 requires that a person must have the capacity to give informed consent. "Capacity" is defined in the dictionary in Schedule 2.

Clause 135 requires that the consent must be in writing signed by the person.

Clause 136 requires that the consent must be given freely and voluntarily by the person and clarifies what the term "freely and voluntarily" means.

Clause 137 requires that a full explanation must be given to the person about the treatment and specifies how the explanation must be given and what information the explanation must contain.

Division 2—Electroconvulsive therapy

Clause 138 makes it an offence to perform electroconvulsive therapy other than by complying with the requirements set out in this Division.

Clause 139 sets out the requirements that must be met in order for electroconvulsive therapy to be authorised for voluntary and involuntary patients in all circumstances except emergencies. For voluntary patients, the patient must have given informed consent (in accordance with Division 1). For involuntary patients, the Mental Health Review Tribunal must give approval for the treatment. The approval process for the Mental Health Review Tribunal is set out in Chapter 6. For both voluntary and involuntary patients, a doctor at an authorised mental health service must perform the treatment.

Clause 140 sets out the requirements that must be met in order to perform electroconvulsive therapy on an involuntary patient in emergency circumstances without the prior approval of the Mental Health Review

Tribunal. Electroconvulsive therapy is only authorised without the prior approval of the Mental Health Review Tribunal if a psychiatrist and the medical superintendent of the authorised mental health service where the treatment is to take place are satisfied that electroconvulsive therapy is necessary to save the person's life or to prevent the person from suffering irreparable harm. A psychiatrist and the medical superintendent must certify that they are satisfied of these matters. Immediately after the certificate is made, the psychiatrist must make a treatment application to the Mental Health Review Tribunal under Chapter 6. The maximum period of authorisation of the treatment under the certificate is 5 days. The Mental Health Review Tribunal can then authorise further electroconvulsive therapy after considering the application.

Division 3—Restraint

Clause 141 sets out the definition of **"mechanical restraint"** for the purposes of this Division as the restraint of the person by the use of mechanical appliance preventing the free movement of the person's body or a limb of the person. The definition specifically excludes the use of a surgical or medical appliance for the proper treatment of physical disease or injury.

Clause 142 makes it an offence to use mechanical restraint on a patient in an authorised mental health service other than by complying with the requirements set out in this Division.

Clause 143 requires a doctor to authorise the use of mechanical restraint and sets out the matters the doctor must be satisfied of before authorising its use.

Clause 144 requires the doctor to make the authorisation by recording the matters set out in the clause in the patient's clinical file.

Clause 145 requires the senior registered nurse on duty at the authorised mental health service to ensure that the restraint is applied as authorised by the doctor. The nurse must also ensure the patient's needs are met which includes providing the things set out in the clause. The nurse must also record the matters specified in the clause in the patient's clinical file.

Clause 146 allows the senior registered nurse on duty to authorise the removal of the restraint if the nurse is satisfied the patient can be safely treated without the restraint.

Clause 147 requires the administrator of an authorised mental health service, if requested by the Director of Mental Health, to send a report to the Director of Mental Health about matters relating to the use of mechanical restraint of patients in the service.

Division 4—Seclusion

Subdivision 1—Interpretation

Clause 148 sets out the definition of seclusion for the purposes of this Division as the confinement of the patient at any time of the day or night alone in a room or area from which free exit is prevented. The definition specifically excludes confining an involuntary patient overnight for security purposes in a high security unit or an in-patient facility of an authorised mental health service prescribed under a regulation.

Subdivision 2—Prohibition of seclusion

Clause 149 makes it an offence to seclude a patient in an authorised mental health service other than by complying with the requirements set out in this Division.

Subdivision 3—Authorisation of seclusion

Clause 150 states who is empowered to authorise seclusion. Seclusion can only be authorised for an involuntary patient and can never be authorised for a voluntary patient.

Clause 151 sets out the test that must be satisfied before the seclusion can be authorised.

Clause 152 clarifies that the patient's consent is not necessary to authorise the seclusion.

Subdivision 4—Provisions about seclusion authorised by a doctor

Clause 153 requires a written order by a doctor to be made to authorise the seclusion of a patient, and specifies what must be in the order.

Clause 154 sets out the requirements to observe the patient when secluded under the order of the doctor. Continuous observation is required unless a doctor is satisfied that it is not clinically necessary to continuously observe the patient while secluded. If the patient is not continuously observed, the patient must still be observed at intervals of no longer than 15 minutes.

Clause 155 provides for a nurse to release the patient from seclusion before the end of the period stated in the order, or to return the patient to seclusion. The clause sets out the requirements that must be satisfied before the nurse is authorised to seclude the patient or release the patient from seclusion.

Subdivision 5—Provisions about seclusion authorised by senior registered nurse

Clause 156 sets out what must occur if the senior registered nurse authorises seclusion in urgent circumstances.

Clause 157 requires continuous observation of patient while in seclusion under the senior registered nurse's authorisation.

Subdivision 6—General provisions about seclusion

Clause 158 requires the senior registered nurse on duty to ensure that the patient's needs are met which includes providing the things specified in the clause.

Clause 159 gives authority to the person who authorises the seclusion to use the force that is reasonable in the circumstances to place the patient in seclusion.

Clause 160 requires the administrator of an authorised mental health service, if requested by the Director of Mental Health, to send a report to the Director of Mental Health about the seclusion of patients in the service.

Division 5—Other treatments

Clause 161 makes it an offence to perform psychosurgery other than by complying with the requirements set out in this Division. Psychosurgery can only be performed on voluntary patients if they have given informed consent to the treatment under Division 1, and the Mental Health Review Tribunal has given approval to the treatment. The processes for approval from the Mental Health Review Tribunal are set out in Part 6 of Chapter 6.

Psychosurgery can never be performed on an involuntary patient because informed consent is required to perform the treatment. In order to become an involuntary patient, the person must either be incapable of giving consent, or have refused the treatment.

Clause 162 makes it an offence to administer insulin induced coma therapy or deep sleep therapy under any circumstances on any person including voluntary and involuntary patients.

CHAPTER 5—MOVING, TRANSFER AND TEMPORARY ABSENCE OF PATIENTS

The requirements for moving patients within authorised mental health services and for transfers between authorised mental health services are set out in Chapter 5. As a safeguard, only the Director of Mental Health or Mental Health Review Tribunal may order the transfer of patients treated under more restrictive orders. In addition, the Mental Health Review Tribunal is empowered to approve an application for a patient to move out of Queensland.

Under Chapter 5, the Minister may enter into an agreement with another State or Territory to provide for the admission, transfer or return of a patient to or from Queensland. To ensure access to mental health services for

people living in border areas, an interstate agreement may also provide for the community-based treatment of a patient living interstate from the treating health service.

Chapter 5 also provides for a classified or forensic patient's temporary absence on the Director of Mental Health's approval, for medical, legal or compassionate reasons.

Part 1—Moving and transfer of patients

Division 1—Moving patients within authorised mental health services

Clause 163 provides for a patient to be moved from one facility to another within an authorised mental health service. This includes physically distant sites within the one authorised mental health service; for example, between a community facility and an in-patient facility.

As a safeguard, the Director of Mental Health must be given notice of a move between separate in-patient facilities within the authorised mental health service if the patient is a classified or forensic patient. For example, the Director of Mental Health must be notified where the patient is moved between physically separate in-patient facilities in the same or different towns if these are both part of the same authorised mental health service. It should be noted that if a patient is moved to a facility located in a different authorised mental health service, an order for transfer must be made. However, it is not intended that a notice be issued where a patient is moved between different wards of one in-patient facility.

Clause 164 authorises the administration of medication to the person while being moved only if this is necessary to ensure the safety of the patient or others. Where a doctor is satisfied this is the case, the medication may only be administered by a doctor or registered nurse under the specific instructions of a doctor.

The provisions in relation to the provision of non-consensual health care under the *Guardianship and Administration Act 2000* do not apply to the giving of medication under this clause.

Division 2—Transfers between authorised mental health services

Clause 165 empowers an authorised doctor or the Director of Mental Health to order the transfer of an involuntary patient (other than a classified or forensic patient) from one authorised mental health service to another. In the case of a patient detained for assessment, a doctor who is not an authorised doctor can also order the transfer. This is because, under Chapter 2, the assessment can occur in a hospital that is not an authorised mental health service.

The clause also specifies that the Director of Mental Health's approval is required to transfer the patient to a high security unit.

Clause 166 empowers the Director of Mental Health to order the transfer of a classified or forensic patient or a person detained in an authorised mental health service under a court order under clause 101(2), 273(1)(b) or 337(5).

Clause 167 sets out the test for the Director of Mental Health to give approval for the transfer of an involuntary patient to a high security unit. It also requires the Director of Mental Health to give notice to the Mental Health Review Tribunal of an approval for a young patient to be transferred to a high security unit. Under Chapter 6, Part 2 the Mental Health Review Tribunal must review the young patient's detention in the high security unit within 7 days.

Clause 168 authorises a health practitioner (and if necessary, with the assistance of a police officer) to take the patient to the authorised mental health service to which the patient is transferred.

Clause 169 requires the Mental Health Review Tribunal to be given notice of the transfer.

Division 3—Moving and transfer of patients out of Queensland

Subdivision 1—Interpretation

Clause 170 is intended to exclude patients for whom criminal proceedings have not been finalised or who are serving a sentence of imprisonment or detention from the provisions about moving out of

Queensland (for example, a forensic patient for whom the Mental Health Review Tribunal is undertaking reviews of fitness for trial).

Subdivision 2—Moving of patients out of Queensland

Clause 171 sets out who can apply to the Mental Health Review Tribunal for an approval that a patient move out of Queensland.

Clause 172 sets out who must be given notice of the hearing.

Clause 173 empowers the Mental Health Review Tribunal to grant or refuse the application.

Clause 174 sets out whom the Mental Health Review Tribunal must give notice of its decision to and when it must give reasons for the decision.

Clause 175 clarifies that an involuntary treatment order for a patient remains in force in Queensland as long as the involuntary treatment order would still be effective if the patient had not left the State.

Part 2—Interstate application of mental health laws

This Part is consistent with corresponding provisions under the mental health legislation of other states and territories. It is intended that this will enable recognition of corresponding interstate laws under an agreement entered into by the Minister.

Division 1—Preliminary

Clause 176 empowers the Minister to enter into an agreement with another State or Territory about the interstate application of mental health legislation and the admission, transfer or return of a patient to or from Queensland. The following provisions of this Part would only apply on entering into the agreement.

Division 2—Making involuntary treatment orders and exercise of powers

Clause 177 allows for an involuntary treatment order to be made for a person who is not a resident of Queensland.

Clause 178 provides that a health practitioner (or other person authorised by the Minister) can exercise a power or function in a participating State conferred on them by an interstate agreement. For example, a health practitioner may, under an interstate agreement, be authorised to provide involuntary treatment to a patient under an involuntary treatment order who resides interstate.

Clause 179 provides for the converse of clause 178; that is, subject to an interstate agreement, a person authorised to exercise a power or perform a function under a corresponding law can exercise or perform similar powers or functions in Queensland.

Division 3—Interstate admissions and transfers of persons and patients

Clause 180 provides that, if assessment documents or an emergency examination order have been made for a person, the person may be taken to an interstate mental health service.

Clause 181 allows an involuntary patient to be transferred to an interstate mental health service. Under the corresponding law, the patient would be deemed to be an involuntary patient under a similar provision of that law.

Clause 182 provides that, if a person may be taken to and detained in an interstate mental health service under a corresponding law, the person may be taken to an authorised mental health service in this State. Under these circumstances, it is to be deemed that the person has had assessment documents made. This applies even if there are no documents presented to the mental health service because, under the emergency provisions of some interstate laws, particular persons are empowered to take a person to a mental health service for assessment with no authorising documents. In this case, the person will only be able to be detained in an authorised mental health service for the time that is reasonable for an examination of the person to decide if assessment documents need to be made.

Clause 183 allows a person who is involuntarily detained for treatment in an interstate mental health service to be transferred to an authorised mental health service in this State. On admission, the person is deemed to have had an involuntary treatment order made by an authorised doctor who is not a psychiatrist to ensure that an assessment occurs within 3 days to decide if the treatment criteria apply.

Division 4—Apprehension and return of persons

Clause 184 ensures that a person who is absent without leave from an interstate mental health service, if found in Queensland, can be returned to the interstate mental health service. The clause also allows for the person to be taken to an authorised mental health service in Queensland if interim treatment or care is necessary or if the person now resides in this State.

Clause 185 ensures that a patient who is found interstate can be returned under Chapter 14, Part 1 to an authorised mental health service.

Part 3—Temporary absences

Clause 186 empowers the Director of Mental Health to approve a classified or forensic patient's temporary absence from an authorised mental health service for medical, legal or compassionate reasons. Conditions can be placed on the absence if necessary, for example, that the person is to be escorted while absent from the service.

CHAPTER 6—TRIBUNAL REVIEWS, NOTIFICATION ORDERS AND TREATMENT APPLICATIONS

Chapter 6 sets out the matters that the Mental Health Review Tribunal must review. These are:

- the application of the treatment criteria to a patient under an involuntary treatment order;

- the detention of young patients in high security units;
- patients under forensic orders; and
- the mental condition of persons to determine fitness for trial.

The Mental Health Review Tribunal also considers applications for:

- notification orders; and
- particular treatments regulated under the Act.

Part 1—Reviews by Tribunal for patients under involuntary treatment orders

Clause 187 sets out the times at which the Tribunal must review the application of the treatment criteria to a patient under an involuntary treatment order. The clause provides for the mandatory review of a patient within 6 weeks of an involuntary treatment order being made and afterwards at intervals of no more than 6 months. Where a patient makes application for a review within 6 weeks of the involuntary treatment order being made, the Tribunal must conduct the review within 7 days. For an application for review made after the first 6 weeks, the Tribunal must conduct the review within a reasonable time. The Tribunal may carry out a review at the same time as another review however if it does not, the review on application does not effect the timing of the 6 monthly review. The clause sets out what the Tribunal must have regard to when deciding whether to carry out reviews for the patient at the same time.

Clause 188 provides that an application for review must be made in writing, and that it may be made by the patient, a person on behalf of the patient, or the Director of Mental Health.

Clause 189 sets out the persons to whom the Tribunal must provide written notice of a hearing of a review, when it must be provided, and what must be contained in the notice.

Clause 190 aims to ensure that the Tribunal gives consideration to obtaining an independent opinion when reviewing patients for whom an involuntary treatment order has been in force for more than 6 months.

Clause 191 sets out the decisions the Tribunal may make on a review. The clause sets out the matters the Tribunal must have regard to in making a decision.

Clause 192 sets out the persons to whom the Tribunal must give a copy of its decision. A notice must be given to the parties stating that a party may appeal to the Mental Health Court and that a party may request written reasons for the decision. The clause ensures that reasons are provided to the parties to allow time for an appeal to be filed. However, a confidentiality order made under clause 458 may displace the requirement to give reasons.

Clause 193 provides that it is the responsibility of the administrator of the treating health service at the time of the patient's hearing to ensure that to the Tribunal's decision is given effect.

Part 2—Reviews by Tribunal for young patients detained in high security units

Clause 194 provides for the mandatory review of a young patient detained in a high security unit within 7 days of admission to the unit and afterwards at intervals of not more than 3 months. Where a patient makes application for a review, the Tribunal must conduct the review within a reasonable time. The Tribunal may carry out a review at the same time as another review however if it does not, the review on application does not effect the timing of the 3 monthly review. The clause sets out what the Tribunal must have regard to when deciding whether to carry out reviews for the patient at the same time.

The dictionary defines a young patient as an involuntary patient who is under 17 years.

Clause 195 states that an application by or on behalf of a patient for a review must be in writing and given to the Tribunal. An application can be made at any time.

Clause 196 sets out the persons to whom the Tribunal must provide written notice of a hearing of a review under this Part and what must be contained in the notice.

Clause 197 sets out the decisions the Tribunal may make on a review of the detention of a young person in a high security unit and states the matters the Tribunal must be satisfied of in determining that a young patient should remain in a high security unit.

Clause 198 sets out the persons to whom the Tribunal must give a copy of its decision. A notice must be given to the parties stating that a party may appeal to the Mental Health Court and that a party may request written reasons for the decision. The clause ensures that reasons are provided to the parties to allow time for an appeal to be filed. However, a confidentiality order made under clause 458 may displace the requirement to give reasons.

Clause 199 requires the administrator of the health service responsible for the treatment or care of the patient to ensure the Tribunal's decision is given effect.

Part 3—Reviews by Tribunal for forensic patients

Clause 200 provides for the timing of reviews of forensic patients. The clause ensures that in circumstances where a patient is subject to more than one forensic order, those orders are reviewed together. Where a patient makes application for a review, the Tribunal must conduct the review within a reasonable time. The Tribunal may carry out a review at the same time as another review however if it does not, the review on application does not effect the timing of the 6 monthly review. The clause sets out what the Tribunal must have regard to when deciding whether to carry out reviews for the patient at the same time.

Clause 201 provides that an application for review must be made in writing and may be made by the patient, a person on behalf of the patient or the Director of Mental Health.

Clause 202 sets out the persons to whom the Tribunal must provide written notice of a hearing of a review under this Part and what must be contained in the notice.

Clause 203 sets out the Tribunal's powers on a review. The clause requires the Tribunal to first consider whether the patient should remain a forensic patient. If it is decided the patient continues to require involuntary treatment or care, the Tribunal must then decide whether a further order relating to limited community treatment or transfer for the patient is

appropriate. The clause ensures that where two or more forensic orders are being reviewed for the patient, the decision of the Tribunal must be the same for each order.

The clause sets out those matters the Tribunal must have regard to in its decision on review. Further, in making the decision, the clause requires the Tribunal to have regard to the restrictions in clause 204.

Clause 204 sets out the restrictions on the decisions the Tribunal can make with respect to different classes of patients. The clause provides that the Tribunal must not revoke a forensic order or place a forensic patient on limited community treatment if the patient represents an unacceptable risk to his or her safety or the safety of a member of the public on account of the patient's mental illness or intellectual disability.

The purpose of the second subclause is to indicate that it is possible for the Tribunal to revoke an order for a patient who has moved interstate. However, the Tribunal is precluded from discharging a patient who has been moved interstate unless the patient has been out of Queensland for at least two years and the patient is unlikely to return to Queensland.

The Tribunal must not discharge a forensic patient who has been found unfit for trial by a jury or the Mental Health Court unless proceedings for the offence the subject of the finding have been discontinued. The Tribunal in considering whether to grant limited community treatment must apply criteria similar to that set down in section 16 of the *Bail Act 1980.*

Clause 205 sets out the persons to whom the Tribunal must give a copy of its decision. A notice must be given to the parties stating that a party may appeal to the Mental Health Court and that a party may request written reasons for the decision. The clause ensures that reasons are provided to the parties to allow time for an appeal to be filed. However, a confidentiality order made under clause 458 may displace the requirement to give reasons.

Clause 206 requires the administrator of the health service responsible for the treatment and care of the patient to ensure the decision of the Tribunal is given effect.

Clause 207 provides that if the Tribunal revokes the forensic order, the patient ceases to be a forensic patient. If there is more than one forensic order for the patient, the Tribunal must hear them together. Accordingly, a decision to revoke a forensic order must apply to all forensic orders for a patient.

Part 4—Reviews by Tribunal of mental condition of persons to decide fitness for trial

Division 1—Conduct of reviews

Clause 208 requires the Tribunal to review the mental condition of a person found unfit for trial (but not of a permanent nature) by the Mental Health Court or for whom a jury has made a finding under section 613 (want of understanding of accused person) or under section 645 (accused person insane during trial) of the Criminal Code.

This includes a person who is in custody in a place other than an authorised mental health service following a jury finding under section 613 or section 645 of the Criminal Code.

Clause 209 provides for the timing of reviews under this Part. A review of a patient's fitness for trial must be conducted every 3 months for a period of 12 months from the date of the Court's decision or the jury's finding. If the patient remains unfit for trial after 12 months, the Tribunal must then review the fitness of the patient at least once every 6 months unless proceedings for the relevant offence is discontinued. Where a patient makes application for a review, the Tribunal must conduct the review within a reasonable time. The Tribunal may carry out a review at the same time as another review however if it does not, the review on application does not effect the timing of the 3 monthly or 6 monthly review (as the case may be). The clause sets out what the Tribunal must have regard to when deciding whether to carry out reviews for the patient at the same time.

Clause 210 provides that an application for review must be made in writing and may be made by the patient, by a person on behalf of the patient or by the Director of Mental Health.

Clause 211 sets out the persons to whom the Tribunal must provide written notice of a hearing of a review and what must be contained in the notice.

Clause 212 requires the Tribunal to make a decision about the person's fitness for trial. On the last review within the first twelve months or on subsequent reviews, the Tribunal must provide to the Attorney-General a report about the person's mental condition in circumstances where the Tribunal is of the opinion that the person is unlikely to become fit for trial within a reasonable time.

Clause 213 sets out the persons to whom the Tribunal must give a copy of its decision. A notice must be given to the parties stating that a party may appeal to the Mental Health Court and that a party may request written reasons for the decision. The clause ensures that reasons are provided to the parties to allow time for an appeal to be filed. However, a confidentiality order made under clause 458 may displace the requirement to give reasons.

Division 2—Procedures following reviews

Clause 214 applies if the Tribunal finds a person unfit for trial on the last review within the first twelve months or on a subsequent review. The Attorney-General is able to discontinue proceedings or defer a decision on the matter. Subject to clause 215, the Attorney-General is not limited in the number of times he or she can defer a decision. If the Attorney-General decides to defer the decision the Tribunal must review the person's fitness at least once every six months. The Tribunal is not precluded from reporting again to the Attorney-General that the person is unfit for trial after having completed a deferred review.

Clause 215 provides for the circumstances in which proceedings are automatically discontinued. Where the Attorney-General has not ordered proceedings to be discontinued or the Tribunal has not found a person fit for trial, proceedings for the offence are deemed to be discontinued in the case of offences which attract a maximum penalty of life imprisonment, at the expiration of 7 years and for all other offences, at the expiration of 3 years from the date of the original finding

The clause ensures that unauthorised periods of absence from the authorised mental health service are not counted toward the prescribed period.

Clause 216 states that the person cannot be further proceeded against for the offence if proceedings are discontinued by the Attorney-General or at the end of the prescribed period under clause 215. The clause provides that despite proceedings being discontinued, a forensic order remains in force.

Clause 217 provides that the Attorney-General may discontinue proceedings at any time. The clause further provides that in circumstances where the police or Director of Public Prosecutions discontinues the prosecution, the person ceases to be a forensic patient for the offence. The clause ensures any other forensic order remains in force.

Clause 218 sets out what occurs in circumstances where the Mental Health Review Tribunal finds that a person is fit for trial. The person must be returned to court within 7 days of the decision so the proceedings can be recommenced.

Clause 219 provides for the interim custody arrangements for a forensic patient against whom proceedings are to resume. The patient ceases to be a forensic patient when the administrator's custody of the patient ends. However the clause does not prevent any other forensic order remaining in force.

Part 5—Notification Orders

Division 1—Interpretation

Clause 220 states that the Mental Health Review Tribunal has the power to make a notification order about a forensic patient who has been found of unsound mind by a jury or by the Mental Health Court.

Division 2—Making of notification orders

Clause 221 provides that the Tribunal may make an order giving a person notice of a review, or of a review decision or notice of a decision regarding where the patient is going to be detained. The clause sets out how an application for a notification order is to be made.

Clause 222 sets out how the Tribunal is to decide an application for a notification. The president may elect to decide the application on the papers. It is intended that the president would not take that course unless satisfied all parties could be afforded natural justice in a decision reliant upon written submissions.

If the hearing of the application is heard during a review, it is intended that the review hearing be conducted separately to the hearing of the notification order to minimise the risk of disclosure of confidential information.

Clause 223 sets out the restrictions and limitations placed on the Tribunal when making a decision about a notification order. The Tribunal must be satisfied that the person for whom the order is to be made has sufficient personal interest in the matter. In determining whether a person has sufficient personal interest, the Tribunal must have regard to the matters listed in the clause. However the considerations are not intended to be exclusive and the Tribunal may take account of any other matter. The Tribunal does not need to be satisfied of all or any of the matters listed; it must simply consider the matters.

Clause 224 sets out the further matters to be considered by the Tribunal before making an order if under clause 223 it has decided that a person has sufficient personal interest.

Clause 225 provides that the Tribunal may impose conditions on the order, for example, that the person for whom the order is made not disclose to any other person information received about the patient during the course of the hearing or as a result of the notification order.

Clause 226 provides for the distribution of the Tribunal's decision and its reasons for the decision. In providing its reasons for the decision not to make a notification order, it is not intended that the Tribunal will disclose confidential information that would have formed part of the notification order. In providing its reasons for its decision to the person in whose favour the order is sought, the Tribunal must have regard to the principle that a patient has a right to confidentiality and take it into account in providing the reasons. However, this does not preclude the Tribunal from disclosing matters of a confidential nature in the reasons for the decision if this is appropriate.

Clause 227 provides that if a notification order is made it is the responsibility of the executive officer of the Mental Health Review Tribunal to ensure that notices are given to the person in whose favour the order is made.

Division 3—Variation and revocation

Clause 228 provides for the variation and revocation of notification orders.

Part 6—Treatment Applications

Clause 229 allows a psychiatrist to make an application to the Mental Health Review Tribunal for approval to administer electroconvulsive therapy on an involuntary patient and sets out the requirements for the application. This clause is to be read in conjunction with clause 233 which sets out the matters the Tribunal must then be satisfied of before the treatment is authorised.

Clause 230 allows a psychiatrist to make an application to the Mental Health Review Tribunal for approval to perform psychosurgery on a person and sets out the requirements for the application. Because of the requirement that the psychiatrist must be satisfied that the person has given informed consent to the treatment, the treatment can never be performed on an involuntary patient. This clause is to be read in conjunction with clause 233 which sets out the matters the Tribunal must then be satisfied of before the treatment is authorised.

Clause 231 requires the Mental Health Review Tribunal to hear the application within a reasonable time after the application is made. "Reasonable time" is not defined in the Bill because it may vary in specific circumstances, for example to allow access to legal advice and travel time, which may vary in different parts of the state. However if electroconvulsive therapy has been performed in emergency circumstances under a certificate given pursuant to clause 140, the Mental Health Review Tribunal must hear the application within 5 days after the application is made.

Clause 232 requires the Mental Health Review Tribunal to notify specified people in applications for electroconvulsive therapy and psychosurgery. The clause specifies what must be contained in the notice and when the notice must be given.

Clause 233 requires the Mental Health Review Tribunal to be satisfied of certain matters before authorising electroconvulsive therapy. The clause sets out the matters the Mental Health Review Tribunal must be satisfied of before approving psychosurgery.

The clause also states that the Mental Health Review Tribunal, in deciding a treatment application for either electroconvulsive therapy or psychosurgery, may give or refuse to give approval for the treatment. If the Mental Health Review Tribunal gives approval for electroconvulsive therapy, the decision must also state the number of treatments that may be given in a stated period. It is anticipated that the applicant will indicate the number of treatments sought in the application.

Clause 234 sets out to whom the Mental Health Review Tribunal must give a copy of its decision. A notice must be given to the parties stating that a party may appeal to the Mental Health Court and that a party may request written reasons for the decision. The clause ensures that reasons are provided to the parties to allow time for an appeal to be filed. However, a confidentiality order under clause 458 may displace the requirement to give reasons. The administrator is notified because if an appeal needs to be made against the decision, the administrator will need to bring it to the attention of the Director of Mental Health who has a right of appeal under Chapter 8.

CHAPTER 7—EXAMINATIONS, REFERENCES AND ORDERS FOR PERSONS CHARGED WITH OFFENCES

Chapter 7 provides for the examination of the mental state of persons charged with offences when there is reasonable cause to believe the person may not be criminally responsible or is unfit for trial.

The Chapter sets down the process for enabling the Attorney-General or the Mental Health Court to determine charges when the alleged offender has a mental illness or intellectual disability. The Chapter provides a mechanism to ensure that a person with a mental illness who is found not criminally responsible for an offence receives treatment and care.

Part 1– Interpretation

Clause 235 provides that this Chapter does not apply to Commonwealth offences. The *Crimes Act 1914 (Commonwealth)* provides a separate scheme for determining criminal responsibility of alleged offenders with a mental illness and as Commonwealth law prevails over state law, Queensland has no jurisdiction to deal with federal offenders.

Part 2—Procedures for particular involuntary patients charged with offences

Division 1—Preliminary

Clause 236 provides that the Part applies to a patient under an involuntary treatment order or forensic order who is charged with an offence or a person charged with an offence who subsequently becomes a patient under an involuntary treatment order or forensic order.

Clause 237 provides that an administrator must advise the Director of Mental Health of the application of this Part to a patient. The clause sets out those persons requiring notice of the application of the Part. Nothing prevents the Director of Mental Health from issuing notice of the application of this Part independent of advice from the administrator.

Division 2—Examination of patient and procedures following examination

Clause 238 requires an examination of a patient to be conducted by a psychiatrist upon the application of this Part to a patient. The clause sets out those matters a psychiatrist must have regard to in conducting the examination.

Clause 239 requires an administrator to provide a report on the psychiatrist's examination to the Director of Mental Health within 21 days of receiving the notice.

Clause 240 provides that the Director of Mental Health may refer the matter of patient's mental condition relating to the offence to the Attorney-General or the Mental Health Court. Restrictions are placed on when the Director of Mental Health can refer a matter to the Attorney-General and when the matter should be referred to the Mental Health Court. It is intended that the Director of Mental Health refer less serious offences to the Attorney-General and more serious offences to the Mental Health Court.

Clause 241 provides that the Director of Mental Health may defer a decision to refer a matter to the Attorney-General or the Mental Health Court for up to two months. This ensures that in circumstances where proceedings against the person should continue, time is provided for the person to become fit for trial.

If the patient remains unfit for trial, the Director must refer the matter to the Attorney-General or the Mental Health Court.

Clause 242 provides how the Director of Mental Health refers a matter to the Attorney-General or the Mental Health Court. If the Director of Mental Health refers a matter to the Attorney-General it is intended that the Director will indicate whether the patient is fit for trial or not.

Division 3—Miscellaneous

Clause 243 provides that upon the application of the Part (while the patient remains under an involuntary treatment order or forensic order and continues to have outstanding charges) proceedings are suspended until a decision has been made about the charges.

Clause 244 provides that a court may grant bail or the prosecution for an offence may be discontinued despite a patient being subject to this Part.

Clause 245 provides who must receive notice that this Part no longer applies to a patient.

Part 3—Procedure on Reference to Attorney-General

Clause 246 provides that this Part applies when the Director of Mental Health refers a matter to the Attorney-General.

Clause 247 sets out the Attorney-General's powers on a reference and what matters the Attorney must have regard to in making a decision on a reference. The clause clarifies that the Attorney may order proceedings against a person continue despite the person remaining under involuntary treatment.

Clause 248 provides that the Attorney-General must advise the Director of Mental Health of the Attorney-General's decision to ensure appropriate actions are taken by the mental health service.

Clause 249 provides how the Attorney-General refers a matter to the Mental Health Court.

Clause 250 sets out what occurs if the Attorney-General directs that proceedings continue. The person must be served personally with a notice informing the person that proceedings are to continue. This is to ensure that the person has knowledge of the return date of the matter before the Court.

Clause 251 provides that if the Attorney-General orders proceedings be discontinued the charge is dismissed.

Clause 252 sets out the notices to be issued by the chief executive of justice if the Attorney-General directs that proceedings be discontinued.

Clause 253 provides that if the person is a classified patient and proceedings are discontinued or continued the patient ceases to be a classified patient for the relevant offence. The fact that the charge is dismissed does not prevent the person from remaining or being made an involuntary patient under another provision of this Act, for example, under an involuntary treatment order or forensic order.

Clause 254 sets out who must be told if a patient ceases to be classified patient.

Clause 255 provides that this Part does not prevent the prosecution of the offence being discontinued despite a reference being made to the Attorney-General under this Part.

Part 4—References to Mental Health Court generally

Clause 256 sets out the application of this Part. Before a reference can be made to the Mental Health Court, there must be reasonable cause to believe a person is mentally ill or was mentally ill at the time of the alleged indictable offence or has an intellectual disability to a degree that raises issues of unsoundness of mind, diminished responsibility or fitness for trial. It is intended that reasonable cause to believe will be something more than suspicion. Further, it is expected, although not mandatory, that the opinion of an expert will be sought before a reference is made under this Part. It is not intended that a reference be made by the Director of Public Prosecutions on the basis that the person may raise diminished responsibility at his or her trial.

Clause 257 provides for who may refer a matter to the Mental Health Court. Although under clause 256 it is necessary to be charged with an indictable offence to invoke the jurisdiction of the Court, a simple offence may also be referred to the Court if an indictable offence is before the Court. The simple offence does not have to arise out of the same incident or facts to be referred under this clause.

Clause 258 sets out how a reference is made.

Clause 259 provides that upon a reference being made to the Mental Health Court under this Part, proceedings for an offence allegedly committed by the person are suspended.

Clause 260 provides that a court may grant bail or the prosecution of the offence can be discontinued despite the matter having been referred to the Mental Health Court.

Part 5—Withdrawal of References to Mental Health Court

Clause 261 sets out who may withdraw a reference to the Mental Health Court. The clause allows the person who made the reference to withdraw it. Further, if the reference was made by the Director of Mental Health or the Attorney-General and the person ceases to be subject to an involuntary treatment order or forensic order, the person may withdraw the reference.

Clause 262 requires the registrar to give notice of an application to withdraw a reference to the other parties to the proceeding. A notice is not required if the application to withdraw the reference is made at the hearing of the reference.

Clause 263 sets out the Court's powers on deciding the application to withdraw a reference. For example, the Court may decide not to grant an application to withdraw a reference by the person the subject of proceedings in circumstances where it appears on the evidence available to the Court that the person does not understand the nature of their decision to withdraw the reference or if a person is not fit for trial.

Part 6—Inquiries on References to Mental Health Court

Division 1—Preliminary

Clause 264 provides who the registrar must notify of the reference to the Court.

Clause 265 provides the documents to be disclosed by the parties. Each party must disclose all expert's reports in their possession relevant to the inquiry being conducted by the Court. This applies even if a report is detrimental to the party's position on the matter.

Clause 266 sets out who the registrar must notify about the hearing of the reference.

Division 2—Hearing of reference by Mental Health Court

Clause 267 sets out those matters to be decided by the Mental Health Court. Subject to a dispute under clause 268 or 269, the Court must decide whether the person was of unsound mind when the alleged offence was committed. If the charge is murder and the Court finds the person was not of unsound mind, the Court must decide whether the person was of diminished responsibility when the alleged offence was committed.

Clause 268 provides that the Court must refrain from making a decision about unsoundness of mind or diminished responsibility if the Court is satisfied there is reasonable doubt the person committed the offence. It is intended that a reasonable doubt might exist on the facts themselves, or because the person the subject of the reference is putting the facts in dispute. If the person is putting the facts in dispute, the Court may still proceed to a finding if the dispute arises as a consequence of the person's mental condition. For example the person has a delusional belief about the facts.

The clause also gives the Court the flexibility to substitute charges where the Court is satisfied there is reasonable doubt the person committed the disputed offence. As the Court makes a determination about the person's mental state at the time of the act or omission that gives rise to the offence, the alternative offence must share the mental condition that existed at that time. The alternative offence must also not be disputed.

Clause 269 provides that the Court must refrain from making a decision when a fact substantially material to the opinion of an expert is in dispute. However, it is not intended to oust the jurisdiction of the Court by virtue only of a disagreement between experts. The Court must be satisfied that as a result of the dispute it is unsafe to make a decision.

Clause 270 sets out when the Mental Health Court must decide fitness for trial.

Clause 271 provides that the Mental Health Court must decide if the unfitness is of a permanent nature.

Division 3—Provisions about continuing proceedings

Subdivision 1—Orders about continuing proceedings and custody

Clause 272 provides that if the Mental Health Court finds a person fit for trial proceedings against the person continue according to law.

Clause 273 sets out the orders the Court may make if proceedings for the offence are continued. The clause gives the Court the power to order that a person be detained in an authorised mental health service until the person is brought before a court for resumption of proceedings or bail is granted to the person. It is intended that a mention of the matter in the court in which proceedings are to resume would be a resumption. However, an unsuccessful application for bail before a Supreme Court judge in chambers would not, for the purposes of this clause, be a continuation of proceedings.

Subdivision 2—Detention in authorised mental health service

Clause 274 provides that this Subdivision applies if the Mental Health Court orders the detention of a patient in an authorised mental health service under clause 273(1)(b).

Clause 275 provides that the Mental Health Court may approve limited community treatment for the patient and sets out the test that must be applied before approving limited community treatment.

Clause 276 requires the registrar to notify the Director of Mental Health of the Court's order detaining the patient in an authorised mental health service.

Clause 277 authorises the patient's detention in a health service.

Clause 278 provides that a treatment plan must be made for the patient. It should be noted that this scheme does not authorise involuntary treatment.

Clause 279 provides that an administrator must ensure the patient is treated or cared for in accordance with the treatment plan.

Division 4—Provisions about staying proceedings

Clause 280 provides that proceedings against a person who is found unfit for trial are stayed until the Mental Health Review Tribunal finds the person is fit for trial. A finding that a person is unfit for trial does not preclude the prosecution of the offence being discontinued.

Division 5—Provisions about discontinuing proceedings

Clause 281 provides that if a person is found of unsound mind at the time of the offence proceedings for the offence are discontinued and further proceedings cannot be taken against the person for the offence unless the person elects, under Part 8, to be brought to trial.

Clause 282 provides that if the Mental Health Court decides a person charged with murder was of diminished responsibility at the time of the offence, proceedings for the charge of murder are discontinued. However, proceedings may be continued for another offence, for example, manslaughter.

Clause 283 provides that if a person is found permanently unfit for trial proceedings for the offence are discontinued and further proceedings cannot be taken against a person for the offence.

Division 6—Material submitted by non-parties

Clause 284 provides for the submission and consideration of non-party material by the Mental Health Court. It is intended that the Court will only accept material under this clause if it is relevant to the decision the Court is making. For example, a sworn statement by a carer as to their observations of the person at or about the time of the alleged offence. Conversely, a statement by a victim as to the impact the offence has had on them would not be relevant to the decision of the Court.

Clause 285 provides that the Mental Health Court must give reasons in its decision for taking or not taking into account material submitted by a non-party under clause 284.

Division 7—Miscellaneous provisions

Clause 286 provides to whom the registrar and chief executive for justice must give copies of the decisions and orders of the Mental Health Court.

Clause 287 sets out when the classified patient status ceases for a classified patient on a decision on the reference.

Part 7—Forensic patients

Division 1—Forensic orders by Mental Health Court

Clause 288 sets out when the Mental Health Court may make a forensic order. The clause provides the Court with discretion to make an order but sets out those matters the Court must have regard to in deciding whether to make an order. However, the clause provides that the Court must make a forensic order for a person who has been found unfit for trial.

The clause provides that a forensic order can only be made in relation to those indictable offences committed by the person.

Clause 289 sets out the matters the Court must have regard to before ordering or approving limited community treatment for a forensic patient.

Clause 290 provides that upon the making of a forensic order any involuntary treatment order the patient was under ceases to have effect because the forensic order authorises treatment of the patient.

Clause 291 provides to whom the registrar must give notice about the making of a forensic order.

Clause 292 provides for the taking of the patient to an authorised mental health service.

Clause 293 provides for the detention of the patient in an authorised mental health service.

Clause 294 requires the administrator of the authorised mental health service responsible for the patient's treatment or care to ensure that the forensic order (including any order or approval for limited community treatment) be given effect.

Clause 295 provides that the administrator must advise the patient's allied person of the making of a forensic order.

Clause 296 requires a treatment plan to be made for the patient. For a person with an intellectual disability it is intended that the treatment plan will be adapted to address relevant aspects of the person's care.

Clause 297 provides that the administrator must ensure the patient is treated or cared for in accordance with the treatment plan.

Clause 298 provides that the patient be regularly assessed to decide whether the patient should continue to be under the forensic order. If the authorised psychiatrist decides the person does not need to be under the forensic order, an application can be made to the Mental Health Review Tribunal for revocation of the order.

Division 2—Forensic orders following jury findings

Subdivision 1—Preliminary

Clause 299 provides that the Division applies to a person for whom a jury has made a finding under sections 613 (Want of understanding of accused person), 645 (Accused person insane during trial) and 647 (Acquittal on ground of insanity) of the *Criminal Code* and the court has either ordered the person be detained in an authorised mental health service under the provisions of this Act ("forensic order (Criminal Code)") or the court has ordered the person be otherwise kept in custody (a "custody order").

Subdivision 2—Notices of orders and references

Clause 300 provides that the registrar of a court must give notice of an order being made under this Part to the Chief Executive of the Department of Justice and the Director of Mental Health.

Clause 301 provides that when a custody order or forensic order (Criminal Code) has been made by a court pursuant to a jury finding under section 613 or 645 of the Criminal Code or a "forensic order (Criminal

Code)" has been made following a section 647 finding, the Director of Mental Health must refer the matter of the person's mental condition to the Mental Health Review Tribunal. The Mental Health Review Tribunal then reviews the person's mental condition under Chapter 6.

Subdivision 3—Forensic orders by Minister

Clause 302 empowers the Minister to order that a person subject to a custody order be admitted to and detained in an authorised mental health service.

Clause 303 provides for the detention of a patient in an authorised mental health service until the patient ceases to be a forensic patient.

Clause 304 requires the Minister to advise the Mental Health Review Tribunal of the making of a "forensic order (Minister)" to facilitate the review of the person's status as a forensic patient.

Clause 305 provides for the taking of a patient to the treating health service.

Subdivision 4—Miscellaneous provisions

Clause 306 requires the administrator to notify the patient's allied person of the making of a "forensic order (Criminal Code)" or "forensic order (Minister)".

Clause 307 requires a treatment plan to be made for the patient.

Clause 308 provides that the administrator must ensure the patient is treated or cared for in accordance with the treatment plan.

Clause 309 provides that the patient be regularly assessed to decide whether the patient should continue to be under the forensic order. If the authorised psychiatrist decides the person does not need to be under the forensic order, an application can be made to the Mental Health Review Tribunal for revocation of the order.

Part 8—Right to trial retained

Clause 310 provides that this Part applies to a person found of unsound mind by the Mental Health Court.

Clause 311 provides that a person may elect to be tried for the offence about which the Mental Health Court decided the person was of unsound mind at the time it was committed. The person must make the election to go to trial within 28 days of the Mental Health Court's decision. A person's election to go to trial does not preclude the person from entering a plea of guilty.

Clause 312 requires the Attorney-General to ensure proceedings against the person are re-commenced within 28 days after receiving the notice. It is intended that proceedings be resumed from the point at which they were suspended. Accordingly, if a person has been committed for trial then proceedings would resume in the District or Supreme Court as applicable. Resumption may be by presentation of an indictment in a superior court or by having the person re-charged for the purposes of the Magistrates Court or Children's Court.

If the Attorney-General reasonably believes the person is not fit for trial, the Attorney-General is not precluded from referring the matter to the Mental Health Court to have the matter determined. Proceedings must be resumed before a reference may be made. If a person is found unfit for trial the forensic order will run parallel with the forensic order on the unsound mind finding.

Clause 313 provides that a forensic order for the patient continues until the matter is finally decided, for example, a jury acquits the person, or the person is sentenced. A decision to discontinue prosecution for the offence will be a final decision.

Part 9—Admissibility and use of evidence

Clause 314 defines "expert's report" for the purposes of this Part. Although it is intended that an expert's report will include a person's medical records, it is only intended to include within the definition those records that relate to the person's mental condition. For example, a record

relating to a previous admission to hospital for a sports injury is not intended to be covered by this definition.

Clause 315 sets out when a report or document that was received in evidence by the Mental Health Court is admissible at the trial of the person.

Clause 316 provides that a statement during a hearing made by a person the subject of a reference is inadmissible in any civil or criminal proceeding (other than for contempt) regardless of whether or not the statement was on oath. It is not intended that a person the subject of a reference be compelled to give evidence in the Mental Health Court.

Clause 317 provides that the person's mental condition may be raised at trial but the decision of the Mental Health Court is inadmissible.

Clause 318 provides that the treating health service and the Mental Health Review Tribunal may use expert's reports that were before the Mental Health Court. The use of the report by any other person may only be with the leave of the Mental Health Court.

CHAPTER 8—APPEALS

Part 1—Appeals against Tribunal decisions

Division 1—Making and hearing appeals

Clause 319 sets out the decisions of the Mental Health Review Tribunal that are appealable to the Mental Health Court.

Clause 320 sets out who may appeal a decision of the Mental Health Review Tribunal to the Mental Health Court. A person may appeal on behalf of the patient. For example, a parent who appeals (without the consent of the patient) because they are dissatisfied with a decision to revoke an involuntary treatment order on the basis that the decision is premature, is not appealing on behalf of the patient.

Clause 321 provides the time within which an appeal must be started. The notice of appeal must be in the approved form.

Clause 322 requires that a notice that an appeal has been filed must be given to the parties and the Mental Health Review Tribunal. Also, notice of the hearing of the appeal must be given to the parties and the Mental Health Review Tribunal.

Clause 323 provides that the Mental Health Court may order a stay of a Mental Health Review Tribunal decision pending the hearing of the appeal. It is intended that the Court may inform itself on the issue of the stay in any way it sees fit. It is intended that the Court may determine the stay on the papers.

Clause 324 sets out who must be given notice of the Mental Health Court's decision if the Court orders a stay of a decision by the Mental Health Review Tribunal pending the hearing of the appeal. It should be noted that the Attorney-General is a party to a hearing of a patient's mental condition to determine fitness for trial. It is intended that, on being notified of the stay, the Attorney-General will cause the chief executive for justice to issue the notices as required under this clause.

Clause 325 sets out the Mental Health Court's powers on an appeal.

Clause 326 sets out who must be given notice of the Court's decision.

Clause 327 provides that the decision of the Mental Health Court on an appeal against a decision of the Mental Health Review Tribunal is final. No appeal lies to the Court of Appeal.

Division 2—Participation and representation at appeals

Clause 328 sets out those persons who have a right of appearance at a hearing of an appeal against a review decision.

Clause 329 sets out those persons who have a right of appearance at a hearing of an appeal against a decision on a treatment application.

Clause 330 sets out those persons who have a right of appearance at a hearing of an appeal against a decision on an application for approval that a patient move out of Queensland.

Clause 331 provides that the Director of Mental Health can elect to become a party to an appeal. In such circumstances, the Director has a right of appearance on the appeal.

Clause 332 provides that a patient's allied person or, with the leave of the Court, some other person, may assist the patient during the hearing of an appeal. Such a person may, for example, support the person or may assist the Court by helping the patient represent the patient's views to the Court.

Division 3—Procedural provisions

Clause 333 sets out the hearing procedure for an appeal. An appeal is by way of re-hearing. It is intended that the Court can consider material and evidence not considered by the Mental Health Review Tribunal whether or not that material was available to the Mental Health Review Tribunal at the original hearing of the matter.

Part 2—Appeals against Mental Health Court decisions on references

Clause 334 provides who may appeal a decision of the Mental Health Court to the Court of Appeal.

Clause 335 provides the time for starting an appeal.

Clause 336 provides for the hearing procedures for appeals.

Clause 337 sets out the Court of Appeal's powers in deciding an appeal.

Clause 338 provides that a notice of the decision be provided to the registrar of the Mental Health Court. It is intended that the registrar of the Mental Health Court will deal with the notice of the decision as if it were a decision of the Mental Health Court.

CHAPTER 9—ALLIED PERSONS AND PARTICULAR RIGHTS OF INVOLUNTARY PATIENTS

Part 1—Allied persons

Clause 339 defines an allied person for a patient as the person who is chosen or declared under this Part to be the patient's allied person.

Clause 340 specifies the function of the allied person. The purpose of the allied person is to help the patient to represent the patient's views, wishes and interests relating to the patient's assessment, detention and treatment under the Act. Whilst the clause sets out the general role of the allied person, other provisions throughout the Bill provide specifically for the involvement of the allied person at key points in the involuntary assessment and treatment process. The allied person is notified at certain times and is empowered to make applications to the Mental Health Review Tribunal on behalf of the patient. The allied person also has the right to appear at Tribunal hearings to assist the patient to represent the patient's views and can appeal on behalf of the patient against decisions of the Mental Health Review Tribunal.

Clause 341 enables the patient to choose a person to be their allied person. The patient's ability to choose who they want to be their allied person under this clause is subject to their having the capacity to make that decision. It should be noted that the patient is presumed to have capacity to make this decision according to the principle in clause 8(b).

If the patient has the capacity to make the decision about choosing an allied person, the patient can choose *not* to have an allied person at all.

The patient can choose their allied person from the categories of people listed in the clause. A patient does not have to appoint their guardian or attorney as their allied person—they can choose an adult relative or close friend or any other adult to be their allied person instead.

The person chosen as the patient's allied person must also be willing, readily available and capable to perform the function of the allied person. It is intended that the administrator of the authorised mental health service will make the determination as to whether the person is willing, readily available and capable to be the patient's allied person. People who are health service

employees cannot be chosen to be an allied person. This is to ensure against a conflict of interest arising between the allied person's subjective role in relation to representing the patient's views and wishes and the health service's objective role to provide appropriate treatment to the patient. It is possible that the patient could choose a person who has also been a patient to be their allied person, if they fall within the categories set out in the legislation.

Clause 342 sets out how an allied person is chosen for the patient if the patient does not have the capacity to make the decision to choose an allied person. "Capacity" is defined in the dictionary in Schedule 2. The decision as to whether the patient has the capacity to make this decision lies with the administrator. However, the patient is to be presumed to have capacity to make the decision by virtue of Principle (b) in Clause 8 of the Bill.

If the patient does not have the capacity to choose an allied person, and the patient has given an Advance Health Directive stating who the allied person is to be, the person stated in the Advance Health Directive is to be the allied person.

If the patient has not stated who is to be their allied person in an Advance Health Directive, or does not have an Advance Health Directive, the administrator then chooses the allied person for the patient. The same exclusion applies to the appointment of the allied person as when the patient is choosing the allied person: the person must not be a health service employee. The clause requires the administrator of the service to choose as the patient's allied person the first person in the list set out for the patient in clause 341 who is willing, readily available, capable and culturally appropriate to be the patient's allied person.

The clause ensures that an allied person is always chosen for the person if the patient is incapable of making a decision to choose their own allied person. Default appointments are provided if no-one satisfies the test set out in the clause. The Adult Guardian is the default appointment if the patient is an adult. The Children's Commissioner is the default appointment if the patient is a minor.

Clause 343 provides for circumstances when the allied person ceases to act for the patient.

Part 2—Rights of patients

Division 1—Statement of rights

Clause 344 ensures that a written statement about the rights of involuntary patients is prepared by the Director of Mental Health. The clause specifies what must be contained in the statement, as well as providing for other matters to be included if the Director of Mental Health considers it appropriate.

Clause 345 requires a copy of the statement of rights to be provided to the patient on their involuntary admission to an authorised mental health service. The statement is also required to be given to the patient's allied person. The clause ensures that the patient understands the content of the statement by requiring an oral explanation of the information in the statement to be given to the patient in a language or way the patient is most likely to understand. The way in which the explanation is provided must also have proper regard to the patient's age, culture and any disability. If the person giving the explanation to the patient believes the patient has not understood the information, the person must record this in the patient's clinical file.

Clause 346 ensures that the information in the statement of rights is displayed in a prominent place in authorised mental health services.

Division 2—Examinations of, and visits to, involuntary patients

Clause 347 gives a health practitioner the authority to visit and examine an involuntary patient in an authorised mental health service, as well as to consult with an authorised doctor for the health service about the patient's treatment. This can only occur at a reasonable time of the day or night.

The clause also gives a legal or other adviser authority to visit an involuntary patient at any reasonable time of the day or night.

The authority given to the health practitioner, legal or other adviser can only be exercised at the request of the patient, or someone else on behalf of a patient and under arrangements made with the administrator of the health service.

CHAPTER 10—SECURITY OF AUTHORISED MENTAL HEALTH SERVICES

Part 1—Interpretation

Clause 348 sets out specific definitions that apply in this Chapter.

Part 2—Provisions about postal articles and other things received for patients in high security units

Clause 349 makes it an offence to interfere with postal articles for patients in high security units, except as provided for under clause 350 when the administrator is able to open or examine things received at the unit for a patient. Interference with a postal article is also specifically allowed if the person to whom the postal article is sent requests in writing for the article to be withheld. However, in order to protect the patient's rights, the patient cannot be prevented from sending postal articles to certain specified people and organisations.

Clause 350 allows the administrator of a high security unit to open or examine anything received at the unit for a patient. However certain safeguards are provided to protect against the inappropriate use of this power. The administrator may open or examine the thing only in the patient's presence and after the administrator has told the patient that they can request the presence of a lawyer at the opening. If the patient requests their lawyer be present, the administrator can only proceed to open the thing without the lawyer if it is not reasonably practicable to delay the opening.

The clause sets out what the administrator can do with the thing if satisfied it constitutes a danger to the patient or to the security of the unit. The clause also sets out what the administrator must reasonably believe in order to exercise the power of seizure and requires the administrator to do certain things once a matter is seized.

Part 3—Searches

Division 1—Preliminary

Clause 351 provides a definition of patient for this Part.

Clause 352 provides that the purpose of this Part is to ensure the protection of patients and the security and good order of authorised mental health services. The Part achieves this by authorising the carrying out of searches of patients in authorised mental health services and their possessions, which includes high security units. Because of the additional security needs of high security units, the Part authorises the search of visitors to high security units and their possessions.

Division 2– Searches of patients and their possessions

Subdivision 1—Searches on reasonable belief of possession of harmful things

Clauses 353 and 354 empower a doctor or the senior registered nurse on duty to search a patient or their possessions if there is a reasonable belief a patient in the health service has possession of a harmful thing. The doctor or nurse can also authorise another health practitioner to search the patient or the patient's possessions. However, before carrying out the search the doctor or nurse must tell the patient the reasons for the search and how it is to be carried out. These clauses are to be read in conjunction with Subdivision 3 that sets out how the search must be carried out.

Subdivision 2—Searches of patients and their possessions on admission or entry to high security units

Clause 355 empowers an authorised officer for a high security unit to search the patient or the patient's possessions for the purposes of detecting harmful things, and requires the officer to tell the patient the reasons for the search and how it is to be carried out. "Authorised officer" is defined in the

dictionary. This clause is to be read in conjunction with Subdivision 3 that sets out how the search must be carried out.

Subdivision 3—Carrying out searches

Clause 356 states that this Subdivision applies only after the search has been authorised under Subdivision 1 or 2.

Clause 357 sets out what the searcher is allowed to do in order to carry out the search. Additional restrictions are placed on how the search is to be conducted if more invasive searching techniques are used. If clothing other than an outer garment or footwear is required to be removed, the approval of the administrator of the authorised mental health service is required. In addition, the searcher must be the same sex as the patient and the search is required to be carried out in a part of a building that ensures the patient's privacy.

In order to carry out the search, the searcher is authorised to use the help and the force that is reasonable in the circumstances. It is recognised that searching a patient without their consent is an infringement of the patient's rights. Accordingly the searcher must carry out the search in a way that respects the patient's dignity to the greatest possible extent and cause as little inconvenience to the patient as is practicable in the circumstances to carry out a proper search.

Clause 358 allows the searcher to seize any thing found during a search that the searcher reasonably suspects is a harmful thing.

Clause 359 requires the administrator to take certain actions if reasonably satisfied that the thing seized is harmful.

Subdivision 4—Miscellaneous

Clause 360 requires records to be made after searches have been conducted in certain specified circumstances.

Division 3—Searches of visitors to high security units, and their possessions

Clause 361 empowers an authorised officer (ie. a health practitioner providing mental health services at the unit or a security officer for the unit) to search a visitor or their possessions and provides for the visitor to be informed about matters relating to the search. This clause is to be read in conjunction with clause 363 that sets out how the search must be carried out.

Clause 362 obliges the visitor to comply with the request, and if they do not, they will be denied permission to enter, or must leave the high security unit. A penalty is imposed if the visitor is asked to leave the unit but refuses to comply.

Clause 363 sets out what the authorised officer is allowed to do in order to carry out the search, including requiring the visitor to leave a harmful thing with the authorised officer while visiting the high security unit. If the visitor refuses to submit to the search or refuses to leave the harmful thing with the authorised officer, the visitor can be denied permission to enter the unit, or be required to leave the unit. A penalty is imposed if the person refuses to leave the unit on request.

Additional restrictions are placed on how the search is to be conducted if more invasive searching techniques are used. It is recognised that searching a visitor is an infringement of rights. Accordingly the searcher must carry out the search in a way that respects the visitor's dignity to the greatest possible extent and cause as little inconvenience to the visitor as is practicable in the circumstances to carry out a proper search.

This clause should be read in conjunction with clauses 364 and 365 relating to how the visitor can restrict the nature of the search or request it to stop.

Clause 364 allows the visitor to leave a thing in their possession with the authorised officer until the end of the visit if they do not wish the thing to be inspected.

Clause 365 allows the visitor to stop the search if the visitor then leaves the unit immediately. A penalty is imposed if the visitor does not then leave the unit immediately.

Clause 366 ensures that the visitor's possessions are returned to the visitor when requested and when the visitor is about to leave the high security unit.

Clause 367 allows the authorised officer to seize a harmful thing found during a search that the authorised officer reasonably believes is connected with or is evidence of the commission or intended commission of an offence.

Clause 368 requires the authorised officer to give a receipt for the seized thing.

Clause 369 sets out what the administrator must do with a thing that is seized.

Clause 370 sets out what happens if the thing that is seized is not returned to the visitor.

Clause 371 allows the owner of the seized thing to have access to the thing and do certain things, until it is either returned to the owner or forfeited.

Division 4—Identity cards

Clause 372 requires the administrator of a high security unit to approve identity cards for authorised officers for the unit.

Division 5—Compensation

Clause 373 enables a patient or visitor to claim compensation from the State for any damage to their possessions that occurs in the exercise of a power to search a patient or their possessions in authorised mental health services. The claim for compensation can also be made for damage to possessions in the course of a search of a visitor (or their possessions) to a high security unit. The clause also sets out how the compensation can be claimed and the test to be satisfied in order to be awarded compensation.

Part 4—Exclusion of visitors

Clause 374 gives the administrator of an authorised mental health service the power to refuse to allow a person to visit an involuntary patient in the health service if the administrator is satisfied the proposed visit will adversely affect the patient's treatment. An example of when the patient's treatment would be aversely affected is if, on a previous visit by the person, the patient's mental state deteriorated. If the person is excluded from visiting the patient the person must be given reasons for that decision and be told that they can ask for a review of the decision and how to request that the review take place.

Clause 375 allows a person who is dissatisfied with the decision to exclude a person from visiting a patient to appeal to the Mental Health Review Tribunal against that decision.

Clause 376 sets out how to start the appeal.

Clause 377 sets out the procedure that must occur before the appeal is heard, including the notices to be provided to specified persons.

Clause 378 allows the President of the Mental Health Review Tribunal to grant a stay of the decision to exclude the person until the appeal is heard.

Clause 379 lists the powers of the Mental Health Review Tribunal to confirm or revoke the decision that was appealed against.

Clause 380 requires the Tribunal to give a copy of the decision to the parties to the appeal.

CHAPTER 11—MENTAL HEALTH COURT

Part 1—Establishment, constitution, jurisdiction and powers

Clause 381 establishes the Mental Health Court.

Clause 382 provides that the Mental Health Court is constituted by a judge of the Supreme Court who must be assisted by 2 assisting psychiatrists. The assisting psychiatrists do not constitute the Court. The clause sets out the circumstances in which it may proceed to a hearing if only 1 assisting psychiatrist is available.

Clause 383 sets out the jurisdiction of the Mental Health Court. The clause enables the Court to inquire into the matter before it, unconstrained by the limits of the adversarial process. The Court has a very wide discretion as to the manner in which it informs itself, including the manner in which it receives evidence.

Clause 384 confers on the Court wide powers to exercise its jurisdiction.

Part 2—Provisions about constituting judge of court

Clause 385 empowers the Governor in Council to appoint the constituting judge of the Mental Health Court. The judge must be a current member of the Supreme Court.

Clause 386 provides that a commission to constitute the Mental Health Court does not otherwise affect the judge's tenure of office as a judge of the Supreme Court.

Clause 387 sets out when the constituting judge holds office. The clause provides the Governor in Council with discretion to continue the person in office to complete a hearing in circumstances where the person otherwise ceases to hold office.

Clause 388 gives the Governor in Council the power to appoint an acting judge of the Mental Health Court. It is intended that the Governor in Council will appoint an acting judge prospectively to ensure hearings are not delayed due to the time required to appoint an acting judge.

Part 3—Provisions about assisting psychiatrists

Clause 389 sets out the functions of the assisting psychiatrists and limits the advice they may provide to the Court.

Clause 390 provides for the appointment of assisting psychiatrists.

Clause 391 sets out the terms of assisting psychiatrists' appointment.

Clause 392 sets out how an assisting psychiatrist may resign.

Clause 393 provides the Governor in Council with power to terminate the appointment of an assisting psychiatrist. The clause sets out the circumstances in which the Governor in Council may terminate an appointment and those circumstances in which termination of an appointment is mandatory.

Clause 394 empowers the Governor in Council to appoint an acting assisting psychiatrist and sets out the circumstances in which such a power may be exercised.

Part 4—Mental Health Court registry and registrar

Clause 395 establishes the Mental Health Court registry and the position of registrar. The clause provides for the appointment of other staff.

Clause 396 sets out the functions of the registry.

Clause 397 sets out the functions of the registrar.

Clause 398 sets out the registrar's general powers.

Clause 399 gives the registrar the power to issue a subpoena under the seal of the Mental Health Court. Failure to comply with the subpoena without lawful excuse is contempt of the Mental Health Court.

Clause 400 confers on the registrar power to require documents in the possession of a hospital administrator to be produced to the Court. The clause expressly overrides any confidentiality provisions of any Act the administrator would otherwise have been bound by.

The clause requires the Commissioner of Police or the Director of Public Prosecutions to provide the registrar with the criminal history of a person the subject of a reference. This will include criminal histories from interstate that those agencies have access to.

Clause 401 confers on the registrar the power to require an administrator or custodian to produce a patient or prisoner to the Court. It is intended that the notice will be under the hand of the registrar.

Clause 402 provides that the registrar may delegate a power. The power to delegate is restricted to circumstances where the delegation is conferred on an appropriately qualified staff member of the registry.

Part 5—Procedural provisions

Clause 403 expressly provides that a party to a hearing may be legally represented. A party may be represented by an agent only with the leave of the Court.

Clause 404 confers on the Court the power to hear evidence that may otherwise be inadmissible if the strict rules of evidence were to apply. It is intended that the Court's ability to inquire into a matter before it will not be unnecessarily constrained by the application of the rules of evidence unless the interests of justice dictate otherwise.

Clause 405 provides that no party bears an onus of proof, although a party may bear a persuasive onus. Subject to clause 268, the standard of proof to be applied by the Tribunal is on the balance of probabilities. The civil standard applies even if it is the prosecution's reference to the Court.

Clause 406 provides that advice given to the constituting judge by the assisting psychiatrists under clause 389 before the hearing of a matter may be provided to the parties by the Court. If a party does not waive the right to be given the advice, the Court must give the advice. It is a matter for the Court to determine the manner in which it provides the assisting psychiatrists' advice.

Clause 407 states that advice given by the assisting psychiatrists to the Court during a hearing must be audible to the parties to ensure the openness and accountability of the decision making.

Clause 408 provides that the Court must disclose in its reasons advice received from the assisting psychiatrists that materially contributed to the Court's decision. This will include advice received about the clinical evidence after a hearing has been completed that has not otherwise been provided to the parties but only if it is material to the decision of the Court.

Clause 409 gives the Mental Health Court the power to proceed in the absence of the person subject of the hearing. However, the circumstances in which this can occur are limited to when the Court is satisfied it is expedient

and in the person's best interests. It is intended that the Court may excuse the appearance of the person the subject of the hearing on application of a party or of its own motion.

Clause 410 allows the Court to appoint persons to assist it during a hearing. It is intended that the broad power will allow the Court to appoint persons with, for example, particular language skills to assist in interpretation or persons with specific cultural knowledge to assist the Court in contextualising evidence. The Court may also use this clause to appoint a person to assist the person the subject of the hearing to understand or endure the proceedings.

Clause 411 allows the Court to regulate when and where it will sit.

Clause 412 provides that any hearing before the Mental Health Court involving a young person (ie a person under 17 years) must be conducted in a closed Court. The Court may permit a person to be present, for example, a parent or guardian of the child.

Clause 413 provides that a hearing on a reference is open to the public. The clause sets out the test to be applied in deciding whether to close the hearing to the public.

Clause 414 provides that appeals (Chapter 8) and inquiries into detention of patients in an authorised mental health service (Chapter 11, Part 9) must not be open to the public. Due to the personal and confidential nature of the material under consideration, the Court is required to apply a threefold test before proceedings can be opened to the public.

Clause 415 provides that the Court does not have power to make an award of costs against a party to a proceeding.

Part 6—Protection and immunities

Clause 416 sets out the Mental Health Court's power to deal with contempt of court.

Clause 417 provides protection against double jeopardy in circumstances where conduct before the Mental Health Court gives rise to a contempt of the Court and another offence against this or another Act.

Clause 418 provides that the constituting judge of the Mental Health Court enjoys the usual protection and immunities of a judge of the Supreme Court.

Part 7—Rules and practices

Clause 419 confers on the Governor in Council the power to make rules under this Act. The clause requires rules relating to the Mental Health Court or registry to be made only with the consent of the constituting judge. The clause sets out those matters about which rules can be made.

Clause 420 gives the constituting judge power to give directions about the practice and procedure of the Court.

Clause 421 sets out the forms the Mental Health Court may approve under this Act.

Part 8—Examination and confidentiality orders

Clause 422 states that the Court may order a person the subject of a proceeding to submit to an examination (a "court examination order") by a psychiatrist or health professional. The examining practitioner must provide a written report to the Court on the matters the Court requests. The clause provides the Court with the power to ensure that matters are properly investigated and that appropriate and adequate expert opinion is available to the Court.

Clause 423 provides that the assisting psychiatrists may recommend, or the Director of Public Prosecutions may request, the Court to make a court examination order. It is intended that in most cases, the Court will make these orders outside a hearing. Accordingly, the clause provides that parties may make written submissions on the recommendation or request.

Clause 424 provides the Court with the power to order a person who is subject to a court examination order to be detained in a health service. This power ensures that a person is properly examined in circumstances where, for example, in-patient observation is necessary or the person is uncooperative. However, before making the order the Court must be satisfied that there is no less restrictive way to ensure the appropriate examination takes place.

The clause limits the detention of the person under this clause to 3 days unless the Court orders a longer period.

Clause 425 requires that a person the subject of a court examination order (in-patient) be returned to the place from which the person was taken for the examination. The clause does not preclude the person from being detained for involuntary treatment upon the completion of the court examination order.

Clause 426 recognises that in certain circumstances it will be inappropriate for the Court to disclose certain information to the person the subject of the hearing. Such a restriction on the information provided can only be ordered where the Court is satisfied that disclosure would cause serious harm to the person or put the safety of someone else at serious risk. In order to protect the person's rights, the Court must provide the information to the person's legal representative or agent. If the party is unrepresented, the Court must ensure a lawyer or agent is appointed to receive the restricted information on the person's behalf.

Part 9—Inquiries into detention of patients in authorised mental health services

Part 9 gives the Mental Health Court the power to inquire into the detention of a patient in an authorised mental health service. It is not intended that this power will be used to uncover administrative defects, but rather, more serious infringements of a person's rights. For example, the deliberate or reckless disregard for the provisions of this Act or for the violation of a person's basic human rights whilst the person is being involuntarily detained under this Act.

Clause 427 provides that a patient may make an application to the Mental Health Court for the Court to inquire into whether or not the person is lawfully detained in an authorised mental health service. It is intended that the Court will deal with the application expeditiously to ensure that an investigation into the person's detention commences as soon as possible. However, the Court may dismiss the application if it is frivolous or vexatious, or if the matter is one which may properly be decided by the Mental Health Review Tribunal, for example, the continued application of the treatment criteria to the patient.

Clause 428 provides that the Mental Health Court may commence an inquiry into a patient's detention on its own initiative.

Clause 429 gives to the Mental Health Court the power to appoint a person (the "appointed person") to inquire into and report about the detention of a patient.

Clause 430 states that the administrator of the health service must ensure that the appointed person is given reasonable assistance to ensure that the appointed person has free and open access to information relevant to the inquiry.

Clause 431 sets out the powers an appointed person may exercise in conducting an inquiry. The clause provides that in exercising a power the appointed person may use reasonable force.

Clause 432 provides the appointed person with the power to require a person to answer a question about a patient's detention. Although the clause creates an offence for failing to comply with the request, the clause states that a person does not have to answer questions that might incriminate them.

Clause 433 empowers the Court to discharge a patient who is unlawfully detained.

Clause 434 provides that despite the Mental Health Court finding that a person is unlawfully detained, the person is not barred from seeking any other remedy.

Part 10—Miscellaneous provisions

Clause 435 provides that the constituting judge must provide a report to the Minister at the end of each financial year to be tabled in Parliament by the Minister.

CHAPTER 12—MENTAL HEALTH REVIEW TRIBUNAL

Part 1—Establishment, jurisdiction and powers

Clause 436 establishes the Mental Health Review Tribunal and states who constitutes the Tribunal.

Clause 437 sets out the Mental Health Review Tribunal's jurisdiction.

Clause 438 provides that the Mental Health Review Tribunal must exercise its jurisdiction in a way that is fair, just, economical, informal and timely.

Clause 439 confers on the Tribunal wide powers to exercise its jurisdiction.

Part 2—Tribunal members and staff

Clause 440 provides for the appointment by the Governor in Council of the president and members of the Tribunal and their qualifications. It is intended that the Tribunal will be representative of the gender balance, cultural and social diversity in the community. It is intended that as far as possible, members will sit on Tribunals in the community in which they live.

Appointment to the Tribunal is not limited to mental health professionals and members, for example, may have experience in caring for a person with a mental illness, or may have had a mental illness themselves.

Clause 441 provides for the duration of appointment to the Tribunal.

Clause 442 sets out the terms of appointment to the Tribunal including that remuneration and allowances are to be set by the Governor in Council.

Clause 443 sets out how a member may resign.

Clause 444 provides the Governor in Council with the power to terminate the appointment of a member of the Tribunal. The clause sets out the circumstances in which a Governor in Council may terminate an

appointment and those circumstances in which the termination of appointment is mandatory.

Clause 445 gives the Governor in Council the power to appoint an acting President of the Mental Health Review Tribunal. It is intended that the Governor in Council will appoint an acting president prospectively.

Clause 446 makes provision for the appointment of an executive officer and staff to assist the Tribunal. The executive officer and staff are to be employed under the *Public Service Act 1996*. The President is conferred with the power to oversee the operation of the organisational unit as if the President were a Chief Executive Officer of a Department.

Part 3—Constitution of Tribunal for hearings

Clause 447 provides for how the Tribunal must be constituted for particular hearings. Subject to clause 448, the Tribunal must be constituted by at least 3 but no more than 5 members. In deciding the number of members to constitute a Tribunal for a review, the president must have regard to the current risk the patient represents to himself or herself or others. It is intended that whenever possible, the president will be the presiding member for a review of a forensic patient.

Clause 448 sets out those matters when the president may order that a Tribunal of less than 3 members be constituted to hear a matter.

Clause 449 provides that if a Tribunal is constituted by more than one member at least one member must be a lawyer and a lawyer must be the presiding member. The clause does not preclude a one member Tribunal being constituted by a member that is not a lawyer.

Part 4—Participation and representation at hearings

Clause 450 sets out those persons who have a right of appearance at a review hearing.

Clause 451 sets out those persons who have a right of appearance at the hearing of a treatment application.

Clause 452 sets out those persons who have a right of appearance at the hearing of an application for approval for a patient to move out of Queensland.

Clause 453 sets out those persons who have a right of appearance at the hearing of an application for a notification order.

Clause 454 sets out those persons who have a right of appearance at the hearing of an appeal against the decision to exclude a visitor.

Clause 455 provides that the patient's allied person, or some other person with the leave of the Tribunal may attend a Tribunal hearing. It is intended that the allied person or other person give assistance and support to the patient and only present the patient's views, wishes and interests.

Clause 456 sets out the circumstances in which the Tribunal may proceed in the absence of an involuntary patient the subject of a review or treatment application. An example of when the Tribunal would be satisfied that the patient is absent of the patient's own free will is if notice of the hearing had been forwarded to the patient's last known address giving reasonable notice of the hearing.

Part 5—Examination and confidentiality orders

Clause 457 gives the Tribunal power to order the person the subject of the proceeding to submit to an examination by a stated examining practitioner.

Clause 458 recognises that in certain circumstances it will be inappropriate for the Mental Health Review Tribunal to disclose certain information to the person the subject of the hearing. Such a restriction on the information provided can only be ordered where the Tribunal is satisfied that disclosure would cause serious harm to the person or put the safety of someone else at serious risk. In order to protect the person's rights, the Tribunal must provide the information to the person's legal representative or agent. If the party is unrepresented, the Tribunal must ensure a lawyer or agent is appointed to receive the restricted information on the person's behalf.

Part 6—Procedural provisions

Clause 459 sets out the procedures to be adopted by the Tribunal during a hearing.

Clause 460 provides that a Tribunal hearing must not be open to the public unless otherwise ordered. Due to the personal and confidential nature of the material under consideration, the Tribunal is required to apply a threefold test before proceedings can be opened to the public.

Clause 461 provides that in all hearings, questions of law are decided by a member who is a lawyer. If the panel is comprised of a single member who is not a lawyer, that member must refer the question of law to a member who is a lawyer, for example, the President. Decisions on other matters are decided by majority or otherwise according to the opinion of a presiding member.

Clause 462 allows the Tribunal to appoint persons to assist it during a hearing. It is intended that the broad power will allow the Tribunal to appoint persons with, for example, particular language skills to assist in interpretation or persons with specific cultural knowledge to assist the Tribunal in contextualising evidence. The Tribunal may also use this clause to appoint a person to assist the person the subject of the hearing to understand or endure the proceedings.

Clause 463 provides that a matter before the Tribunal can be adjourned for not more than 28 days to ensure the material already received is still relevant to the patient. The person's mental condition may have changed in that period of time.

Clause 464 allows the Tribunal to take into account material submitted by a person who is not a party to the proceeding. However, the material must not otherwise be before the Tribunal and it must be relevant to the decision under consideration. It is intended that material of this nature will be provided in writing however the clause does not preclude the Tribunal from taking oral evidence from the person. The rules of natural justice may in certain circumstances dictate that the person must be available for cross-examination by a person the subject of a hearing.

Clause 465 states that if the Tribunal accepts material from a person under clause 464, the Tribunal must give reasons to the person for taking or not taking into account the material submitted.

Clause 466 gives the presiding member power to require the attendance of a person to give evidence or provide documents. The presiding member has power to administer an oath and direct that evidence be given on oath or verified by oath.

Clause 467 provides for the Tribunal's custody of documents and things ordered by the Tribunal to be provided to it.

Clause 468 provides for offences by witnesses.

Clause 469 provides that a witness need not answer a question or produce a document if it might tend to incriminate the witness.

Clause 470 provides that it is an offence for a person to make a false or misleading statement to the Tribunal, Executive Officer or other staff member.

Clause 471 provides that it is an offence for a person to give false, misleading or incomplete information in a document to the Tribunal, Executive Officer or other staff member.

Clause 472 provides that the proceedings of the Tribunal are, for the purposes of the *Criminal Code*, judicial proceedings and fabrication of evidence can be punished under the *Criminal Code.*

Clause 473 provides for circumstances in which a person may be held in contempt of the Tribunal. The clause also gives the Tribunal power to have a person removed if they are in contempt.

Clause 474 provides for the punishment of contempt by a certificate issued to the Supreme Court. If, upon its inquiry, the Court is satisfied the person was in contempt of the Tribunal, the Court may punish a person as if the contempt was a contempt of the Supreme Court.

Clause 475 provides protection against double jeopardy in circumstances where conduct before the Tribunal gives rise to a contempt of the Tribunal and another offence against this or another Act.

Clause 476 provides that the Tribunal does not have power to make an award of costs against a party to a proceeding.

Part 7—Protection and immunities

Clause 477 confers upon Tribunal members in the exercise of their duties under the Act the protection and immunities of a Supreme Court judge.

Clause 478 sets out the protection and immunities afforded legal representatives, agents and witnesses appearing before the Tribunal and documents produced at the Tribunal.

Part 8—Rules and practices

Clause 479 sets out the matters relating to the Mental Health Review Tribunal and its staff about which the Governor in Council can make rules.

Clause 480 gives the President power to give directions about the practice and procedure of the Tribunal.

Clause 481 sets out the forms the President may approve under this Act.

Part 9—Miscellaneous provisions

Clause 482 provides for the authentication of documents.

Clause 483 provides that judicial notice must be taken of the signature of a Tribunal member.

Clause 484 provides that the president is responsible for the arrangement of the business of the Tribunal. The clause sets out those matters that the president must give directions about.

The clause provides that as far as practicable, a Tribunal member who is culturally appropriate to the patient must be a member of the Tribunal hearing the matter.

Clause 485 allows the President to delegate a power to another Tribunal member.

Clause 486 requires the President to ensure a register is kept. The clause sets out the information to be kept in the register.

Clause 487 provides that the President must provide a report to the Minister at the end of each financial year to be tabled in Parliament by the Minister.

CHAPTER 13—ADMINISTRATION

Part 1—Director of Mental Health

Division 1—Appointment, functions and powers

Clause 488 establishes the statutory position of the Director of Mental Health and ensures the independence of the position from Queensland Health by providing for the appointment to occur through Governor in Council.

Clause 489 sets out the functions of the Director of Mental Health.

Clause 490 declares the general powers of the Director of Mental Health.

Clause 491 ensures the independence of the Director of Mental Health by providing that, in exercising a power under this Act, the Director is not under the control of the Minister for Health.

Clause 492 provides for the Director of Mental Health to delegate certain powers under this Act. The powers are only to be delegated to appropriately qualified persons. A schedule of delegations will be available to be examined and guidelines will be produced setting out how, and when, delegations are to be reviewed. The clause provides that certain powers can never be delegated. However, those powers that can be delegated are done so because the power is required to be exercised urgently in order to protect the rights of patients or to ensure the proper security of mental health services.

Clause 493 allows the Director of Mental Health to approve relevant forms for use under the Act. Note that the Mental Health Court and the Mental Health Review Tribunal have the power to approve forms relevant to Court and Tribunal matters respectively.

Division 2—Miscellaneous provisions

Clause 494 requires the Director of Mental Health to provide an annual report on the administration of the Act, and requires the Minister to table a copy of the report in Parliament.

Part 2—Authorised mental health services, high security units and administrators

Clause 495 provides for the Director of Mental Health to declare a health service, or part of a health service, to be an authorised mental health service. An authorised mental health service is the only place where a person is allowed to be detained involuntarily for treatment, and in most cases, involuntary assessment.

The purpose of the declaration is to ensure that the service is of a standard appropriate to protect the rights of people treated involuntarily. It is intended that matters to be considered in determining whether a particular service should be declared an authorised mental health service will include whether there are appropriately qualified staff, whether the service has the capacity to provide appropriate treatment and the availability of adequate quality information systems.

Both private and public health services providing mental health services can be declared to be authorised mental health services. A community based health service can also be declared part of an authorised mental health service in order to meet the needs of patients under a community category of an involuntary treatment order.

Clause 496 provides that the Director of Mental Health may declare the whole or part of an authorised mental health service a high security unit. Private health services can never be declared high security units.

Clause 497 provides that the Director of Mental Health may declare a person to be the administrator of an authorised mental health service. The Director can also declare a person to be the administrator of a high security unit, which will always be an authorised mental health service or part of an authorised mental health service.

Clause 498 enables the administrator to delegate certain powers under this Act in urgent circumstances in order to protect the rights of patients or to ensure the proper security of mental health services. The powers are only to be delegated to appropriately qualified persons. A schedule of delegations will be available to be examined and guidelines will be produced setting out how, and when, delegations are to be reviewed.

Part 3—Authorised mental health practitioners and approved officers

Clause 499 provides for the Director of Mental Health to appoint a health practitioner to be an authorised mental health practitioner. An authorised mental health practitioner has an important role in the involuntary admission process, in particular, by making the recommendation for the involuntary assessment of a person. The powers of the authorised mental health practitioner are contained in Chapters 2 and 3.

Safeguards are provided in the legislation to ensure that an authorised mental health practitioner has the appropriate expertise to perform their functions under the legislation. The legislation requires the authorised mental health practitioner to be either a doctor, nurse, occupational therapist, psychologist, social worker, or another person with training or qualifications in mental health. Further, the person has to satisfy the Director of Mental Health that they have the necessary expertise and experience to be an authorised mental health practitioner. It is intended that guidelines will be developed regarding the particular training and experience required to be able to demonstrate their ability to fulfil this role.

Clause 500 empowers the Director of Mental Health to appoint a person to be an "**approved officer"** who will exercise the powers set out in clauses 532 and 533. In order to be appointed an approved officer, the person must have the necessary expertise or experience to perform the functions and powers of an approved officer. Note that the Director of Mental Health also has the powers of an approved officer because the definition of an approved officer includes the Director of Mental Health.

Clause 501 provides for the terms of appointment of an authorised mental health practitioner and an approved officer.

Clause 502 clarifies that an authorised mental health practitioner or approved officer has the powers provided for under this Act, subject to any limitation expressed in the instrument of appointment.

Clause 503 provides for identity cards to be issued for authorised mental health practitioners and approved officers.

Part 4—Authorised doctors

Clause 504 provides for the appointment of authorised doctors. Authorised doctors are able to make involuntary treatment orders.

In order to be appointed, the doctor must have the necessary expertise or experience to exercise the powers under the legislation, ensuring the quality of decision making. In most circumstances an authorised doctor will be a psychiatrist which ensures the highest level of expertise in authorising involuntary treatment. In order to ensure against unacceptable delays in starting treatment because of the lack of availability of psychiatrists, the administrator can also appoint another doctor (who is not a psychiatrist) to be an authorised doctor, for example a psychiatry registrar, or another doctor with experience or expertise in mental health. In addition, if involuntary treatment is authorised in the first instance by an authorised doctor who is not a psychiatrist, the order must be re-assessed and then either confirmed or revoked by a psychiatrist within 72 hours of the order being made (clause 112). The Act declares that if the administrator of an authorised mental health service is a psychiatrist, the psychiatrist is also an authorised doctor for the service.

Clause 505 clarifies that the authorised doctor has the powers provided for under this Act, subject to any limitation expressed in the instrument of appointment.

Clause 506 provides that a register of authorised doctors must be kept by the administrator of an authorised mental health service to document the identity, number and availability of the pool of people able to authorise involuntary treatment.

CHAPTER 14—ENFORCEMENT, EVIDENCE AND LEGAL PROCEEDINGS

Specific powers are set out under Chapter 14 to assist in taking or returning a patient to an authorised mental health service. A patient may be returned, under Part 1, to an authorised mental health service if the patient fails to comply with involuntary assessment or treatment or the patient's treatment needs change while undertaking limited community treatment. Part 2 aims to safeguard the rights of a patient by placing a limitation on the circumstances where entry and search powers can be used to apprehend the patient.

The extent to which force can be used to detain and treat a patient under this Act is set out clearly in Part 3.

Part 4 creates a number of offences.

Part 5 provides for confidentiality of information relating to proceedings before the Mental Health Court and the Mental Health Review Tribunal and creates offences for breaching confidentiality. It also sets out in what circumstances confidential information may be disclosed by a health service employee.

Part 6 sets out the powers of the Director of Mental Health and an approved officer to visit mental health services and inspect documents and other matters.

Part 7 sets out matters pertaining to evidential proof and legal proceedings.

Part 8 provides for when and how the general provisions of the Act are to be complied with.

Part 1—Return of patients to treating health service for assessment or treatment

Clause 507 empowers an authorised doctor to require an involuntary patient, by written notice, to return to an authorised mental health service. Under most circumstances the doctor is required to talk to the patient about the notice and the reasons for giving it. However, it is intended that the

patient may be returned without complying with this requirement; for example, if it is not reasonably practicable, or it would not be in the interests of the health or safety of the patient or the safety of others to do so.

Clause 508 provides for a patient to be returned to an authorised mental health service in the following circumstances:

- if a notice is issued under clause 507 by an authorised doctor;
- if the Director of Mental Health's approval for a classified or forensic patient's temporary absence is revoked or ends.
- if a patient detained in an authorised mental health service under a particular court order unlawfully absents him or herself from the health service.

The purpose of empowering a police officer to detain a classified or forensic patient or patient detained under a court order is to provide for the safety of the patient and the general community. If a police officer has a power to detain a person under an Act, other powers are also conferred on the police officer under the *Police Powers and Responsibilities Act 1997*, including entry and search powers.

Clause 509 authorises the administration of medication to the person while being taken to the authorised mental health service only if this is necessary to ensure the safety of the patient or others. Where a doctor is satisfied this is the case, the medication may only be administered by a doctor or registered nurse under the specific instructions of a doctor.

The provisions in relation to the provision of non-consensual health care under the *Guardianship and Administration Act 2000* do not apply to the giving of medication under this clause.

Part 2—Entry to places

Clause 510 states that the provisions about entry to places apply to circumstances where authority is given to take a patient to an authorised mental health service.

Clause 511 aims to limit entry to a place without the occupier's consent to find a patient in order to take them to an authorised mental health service to circumstances where such entry is authorised by a warrant for apprehension of the patient.

Clause 512 sets out who can apply for a warrant of apprehension and how an application is made.

Clause 513 specifies that a warrant of apprehension can only be issued by a magistrate, and only if the magistrate is satisfied of the matters set out in the clause. The purpose of empowering a police officer to detain a patient to take the patient to an authorised mental health service is to provide entry and search powers under the *Police Powers and Responsibilities Act 2000*.

The clause also specifies what the warrant must state so that it clearly sets out the police officer's powers.

Clause 514 sets out how a "**special warrant"** may be obtained in urgent circumstances or other special circumstances (eg. in a remote location). A special warrant may be applied for, and issued by phone, fax, radio or another form of communication (as opposed to in person). Specific safeguards are placed on the use of special warrants, including a requirement that the making of the warrant is documented, that a sworn application be sent at the first reasonable opportunity and evidentiary requirements.

Clause 515 sets out the obligations on a police officer if the officer intends to enter a place under a warrant of apprehension. It aims to safeguard a person's privacy and ensures the person is given a clear explanation of the warrant and the police officer's powers under the warrant.

Part 3—Use of reasonable force for detention and treatment

Clause 516 authorises the use of force (and the help) that is reasonable in the circumstances to detain a person in an authorised mental health service.

Clause 517 provides for a patient's treatment without consent if the patient is under an involuntary treatment order or forensic order. Reasonable force and help, as necessary in the circumstances, are authorised to provide the treatment.

Part 4—Offences

Clause 518 creates an offence for the ill-treatment of patients.

Clause 519 creates offences relating to assistance given to classified or forensic patients, or patients for whom a court has made an order under section 101(2), 273(1)(b) or 337(5) to unlawfully absent themselves from an authorised mental health service or authorised person under the section.

Clause 520 creates offences relating to assistance given to a patient to unlawfully absent themselves from an authorised mental health service and assistance given to patients who are unlawfully absent from a health service.

Clause 521 creates an offence of obstruction of an official.

Clause 522 creates an offence for making a false or misleading statement in a document used for the purposes of this Act.

Part 5—Confidentiality

Clause 523 provides that for this Part a "report" includes a report of part of a proceeding.

Clause 524 prohibits the publication of a report of a proceeding of the Mental Health Court or Court of Appeal until a prescribed period has elapsed. The deferment of the right to publish is necessary to ensure that in all circumstances a person's possible trial is not prejudiced by the publication of evidence that may be given at the person's trial.

Clause 525 prohibits the publication of any report about a proceeding of the Mental Health Review Tribunal and proceedings before the Mental Health Court on an appeal from a decision of the Mental Health Review Tribunal or the Court's inquiry into the detention of a patient. However, the clause sets out the circumstances in which the Tribunal or Mental Health Court can permit publication. It is recognised that the material being considered is personal in nature; being principally concerned with medical matters. Accordingly, the material should remain confidential unless the Tribunal or Mental Health Court permits publication. Permission to publish may only be granted if the Court or Tribunal is satisfied it is in the public

interest and the report will not contain information identifying a person involved in the hearing.

Clause 526 prohibits the publication of information that identifies a young person in any proceeding. The clause also prohibits publication of information that identifies a person the subject of a proceeding before the Tribunal, an appeal from a decision of the Tribunal or the Court's inquiry into the detention of a patient.

Clause 527 creates an offence to publish information contained in a notice given under a notification order.

Clause 528 provides for circumstances in which a Court or Tribunal official or staff member will not be in breach of disclosing confidential information. The clause creates an offence for breach of confidential information.

Clause 529 creates an offence if a patient's allied person or a person acting on behalf of a patient discloses confidential information.

Clause 530 provides for the disclosure of confidential information by the Director of Mental Health or an officer, employee or agent of a department in exercising a power or performing a function under this Act.

Part 6—Investigations

Clause 531 defines patient for this Part.

Clause 532 allows the Director of Mental Health or an **"approved officer**" appointed under clause 500 to visit authorised mental health services with or without notice to ensure the proper and efficient administration of the Act. The Director of Mental Health and the approved officer also have specified powers when visiting the service, including the power to require the administrator of the health service to provide reasonable help in the exercise of those powers.

Clause 533 sets out the powers of the Director of Mental Health or the approved officer to require the administrator of an authorised mental health service to provide documents and other information.

Part 7—Evidence and legal proceedings

Clause 534 provides for the presumptions of proof to be applied to various proceedings under the Act.

Clause 535 provides that prosecution of offences created by this Act must be by way of summary proceedings taken under the *Justices Act 1886*. All offences under this Act are simple offences.

Clause 536 provides for the protection of officials from civil liability.

Part 8—General

Clause 537 provides that where a thing is required to be done under this Act and no time is provided for doing the thing, it must be done as soon as practicable.

Clause 538 provides that when notice is required to be given, the person need only comply with the requirement to the extent that is reasonably practicable in the circumstances.

Clause 539 validates the directions of an administrator of an authorised mental health service in relation to notice given to an allied person in circumstances where an administrator mistakenly gives notice to a person believing that person to be an allied person.

CHAPTER 15—MISCELLANEOUS PROVISIONS

Clause 540 provides that the legal custody of particular patients who have outstanding charges is vested in the administrator of the treating health service.

Clause 541 provides that a health practitioner can take an involuntary patient to and from court for any reason. The health practitioner may request assistance from police if necessary.

Clause 542 sets out the circumstances when an official (as defined) must identify himself or herself, and anyone else helping the official exercise a power.

Clause 543 specifies that detention in an authorised mental health service for particular patients is to be counted toward any period of imprisonment under the *Penalties and Sentences Act 1992*, the *Corrective Services Act 1988* or the *Juvenile Justice Act 1992*. Any period a patient is on limited community treatment is also to be counted as imprisonment for the purposes of these Acts.

Clause 544 provides that a patient or a surety is not liable under the *Bail Act 1980* if proceedings for an offence are suspended under this Act. It is intended that this clause operate despite a patient being placed on limited community treatment.

Clause 545 provides the Governor in Council with the power to make regulations.

Clause 546 provides that, in an Act or document, a reference to the *Mental Health Act 1974* may be taken to be a reference to this Act if the context permits.

CHAPTER 16—REPEAL AND TRANSITIONAL PROVISIONS

Part 1—Repeal of *Mental Health Act 1974*

Clause 547 repeals the *Mental Health Act 1974*.

Part 2—Transitional provisions

Part 2 establishes a scheme to ensure a straightforward transition to the new legislation. It is important to note that under the new legislation, the Patient Review Tribunal is replaced by the Mental Health Review Tribunal, and the Mental Health Tribunal is replaced by the Mental Health Court.

Division 1—Interpretation

Clause 548 defines the **"commencement day"** and the **"repealed Act"** for the purposes of Part 2.

Clause 549 clarifies references to the patient's treating health service under this Part. On commencement day, health services declared by gazette notice under clause 495 will become authorised mental health services. On commencement day, a health service previously responsible for a patient's involuntary treatment that becomes an authorised mental health service will be referred to as the patient's treating health service.

Division 2—Provisions about admission, detention and removal to places of safety under Part 3 of repealed Act

Clause 550 provides that if a person was to be admitted to a hospital under section 18 of the repealed Act and the documents were still effective immediately before commencement day, the documents are taken to be assessment documents under Chapter 2, and continue in force until the documents would have ceased under the repealed Act. This will allow the person's assessment under Chapter 2, without the need for obtaining further documents.

Clause 551 is intended to ensure that a patient detained under an interim detention order under section 19 of the repealed Act immediately before the commencement day can continue to be detained until the end of the 24 hour period as provided under the section.

Clause 552 deems a warrant for the removal of a person to a place of safety, made under section 25 of the repealed Act, to be a justices examination order, if the warrant was still effective immediately before the commencement day.

Clause 553 provides that a person is deemed to be detained for involuntary assessment under Chapter 2, Part 4 if, immediately before the commencement day, the person was detained in a hospital under section 27 of the repealed Act. This means the person may be detained for assessment for a maximum period of 3 days.

Clause 554 aims to ensure that a patient detained under section 21 of the repealed Act immediately before the commencement day continues to be able to receive involuntary treatment. The level of authority for the treatment should be consistent with the corresponding authorisation under Chapter 4.

The following scheme applies to the deeming of a patient's involuntary status:

- A medical recommendation under section 21(1) or (2) is deemed to be an involuntary treatment order made by an authorised doctor who is not a psychiatrist.
- The last psychiatrist's report under section 21(3) for a patient prior to commencement is deemed to be an involuntary treatment order made by a psychiatrist. However, if the report was not made by a psychiatrist it is deemed to be an involuntary treatment order made by an authorised doctor who is not a psychiatrist.
- In the case of a medical recommendation under section 21(1) or (2) or a report under section 21(3) not made by a psychiatrist, this will need to be confirmed by a psychiatrist within 72 hours of commencement.

Clause 555 aims to ensure that all patients for whom an involuntary treatment order is deemed to have been made under the Part will have an assessment to decide whether the treatment criteria apply at the first regular assessment of the patient after the commencement day. If the treatment criteria are met for the patient, an authorised psychiatrist must make a new involuntary treatment order. While the making of the order does not require the patient to have an initial 6 week review by the Mental Health Review Tribunal, reviews at intervals of not more than 6 months are required under clause 187.

Clause 556 clarifies that if an involuntary treatment order that is taken to have been made under this Part, the category of the order is in-patient. However, this does not apply to an involuntary treatment order made on an assessment under clause 555 because that order will be made under clause 108.

Division 3—Provisions about particular patients detained under Part 4 of repealed Act

Division 3 provides deeming provisions to ensure that particular patients detained in a hospital under Part 4 of the repealed Act can continue to be detained in an authorised mental health service. If, under the Division, a patient is deemed to be a classified patient, clauses 70 and 72 will not apply because equivalent notices under the repealed Act would have already been issued and, in most cases, the timeframe for an initial assessment will have passed. In cases where the repealed Act required a patient's examination or assessment by a doctor, an involuntary treatment order is deemed to have been made for the patient.

Unlike the repealed Act, examinations and references for patients charged with offences are now addressed in one scheme. Deeming provisions for the application of Chapter 7 to examinations and references for these patients are set out in Division 6.

Clause 557 provides that a person detained in a hospital under section 29(3) of the repealed Act immediately before the commencement day is taken to be a classified patient for whom a court assessment order has been made.

For a patient to be treated involuntarily, an involuntary treatment order must be made. This is because, under section 29 of the repealed Act, a doctor is not required to conduct an examination or assessment of the patient.

Clause 558 authorises a person's continued detention if, immediately before the commencement day, the person was detained in a prison or hospital under a court order under section 29(4)(b) of the repealed Act.

Clause 559 deems a patient to be a classified patient for whom a court assessment order was made if, immediately before the commencement day, the patient was detained in a hospital under section 29A(2) or 29C of the repealed Act. The justices order under section 29A(2) or 29C is taken to be an involuntary treatment order that was made on the commencement day by an authorised doctor who is not a psychiatrist. This ensures that involuntary treatment that was authorised under the repealed Act can continue after the commencement day. Because the involuntary treatment was only authorised on the basis of evidence provided by two doctors, the involuntary treatment order must be confirmed by a psychiatrist within 72 hours of the commencement day.

Clause 560 deems a patient to be a classified patient for whom a custodian's assessment authority was made if, immediately before the commencement day, the patient was detained in a hospital under section 31 or 32 of the repealed Act.

The doctor's recommendation under section 31(2) is taken to be an involuntary treatment order that was made by an authorised doctor who is not a psychiatrist. The involuntary treatment order must be confirmed by a psychiatrist within 72 hours of the doctor's recommendation. However, the order is taken to have been confirmed if, before the commencement day, a psychiatrist had given a certificate under section 31(3).

The different requirements for the making and confirmation of involuntary treatment orders are intended to address circumstances where the commencement day falls within the first 3 days of a person's admission under section 31 or 32, or after a psychiatrist has given a certificate under section 31(3). It also provides a safeguard to ensure that a patient's involuntary treatment under this provision is authorised on a similar basis to patients admitted on, or after, the commencement day.

Clause 561 aims to ensure that a person to whom section 31A of the repealed Act applied immediately before the commencement day, is brought before a court or justices.

Clause 562 deems a prisoner to be a classified patient for whom a custodian's assessment authority was made if, immediately before the commencement day, the prisoner was detained in a hospital under section 43 of the repealed Act.

The doctor's recommendation under section 43(2) is taken to be an involuntary treatment order that was made by an authorised doctor who is not a psychiatrist. The involuntary treatment order must be confirmed by a psychiatrist within 72 hours of the doctor's recommendation. However, the order is taken to have been confirmed if, before the commencement day, a psychiatrist had given a certificate under section 43(5).

The different requirements for the making and confirmation of involuntary treatment orders are intended to address circumstances where the commencement day falls within the first 3 days of a person's admission under section 31 or 32, or after a psychiatrist has given a certificate under section 31(3). It also provides a safeguard to ensure that a patient's involuntary treatment under this provision is authorised on a similar basis to patients admitted on, or after, the commencement day.

Clause 562 also enables a patient to continue to be detained in a high security unit if, immediately before the commencement day, the patient was detained (or liable to be detained) in a security patient's hospital following the expiration of the patient's period of imprisonment or detention.

Clause 563 ensures a young patient detained in a security patient's hospital immediately before commencement day can continue to be detained in a high security unit. The intervals for reviews of the young patient's detention by the Mental Health Review Tribunal under Chapter 6, Part 2 will be calculated from the commencement day.

Clause 564 deems a court order under section 43E of the repealed Act to be a court order under Chapter 3, Part 7.

Division 4—Provisions about transfer and leave of absence

Clause 565 ensures a restricted patient detained in a security patients' hospital immediately before the commencement day can continue to be detained in a high security unit. If the Director of Mental Health ordered the patient's transfer to the security patients' hospital under section 41 or 44 of the repealed Act, the transfer is taken to have been authorised under clause 165 to a high security unit. If the patient is a young patient, the intervals for reviews by the Mental Health Review Tribunal under Chapter 6, Part 2 will be calculated from the commencement day.

Clause 566 deals with leave of absence for restricted patients under Part 4 of the repealed Act. A patient granted leave of absence or released on leave of absence following a finding of the Patient Review Tribunal is deemed to have had an equivalent order or authorisation for limited community treatment.

Clause 567 deems leave of absence that was granted for a patient under section 46 of the repealed Act to be limited community treatment authorised under clause 129. The maximum time the limited community treatment is authorised is 7 days from the commencement day to bring patients under the new scheme. The patient's involuntary treatment order will be able to be changed to the community category from the commencement day.

Clause 568 ensures that a patient who was absent without leave from hospital immediately before commencement day can be returned to the in-patient facility of an authorised mental health service. For returning the

patient, health practitioners and police officers have the same powers as in clauses 508 and 509.

Division 5—Reviews by Patient Review Tribunal

Clause 569 deems particular applications made to a Patient Review Tribunal that had not been heard immediately before the commencement day to be applications for reviews by the Mental Health Review Tribunal. Also, if an order by a Patient Review Tribunal for a patient's discharge, leave of absence or transfer had not been given effect immediately before the commencement day, the order is deemed to be an equivalent decision under clause 191.

Clause 570 deems an order by a Patient Review Tribunal that a patient could be released (other than on leave of absence) to be a decision by the Mental Health Review Tribunal revoking a forensic order for the patient, if such an order had not been given effect immediately before commencement day. Similarly, an order by a Patient Review Tribunal for a patient's transfer is taken to be an order of the Mental Health Review Tribunal that a patient be transferred from one authorised mental health service to another.

Clause 571 aims to ensure that patients originally detained under the repealed Act are provided a timely and consistent transition into the new scheme for reviews by the Mental Health Review Tribunal.

Clause 572 aims to ensure that patients found not fit for trial under section 33 of the repealed Act enter the scheme under Chapter 6, Part 4 for reviews of a patient's mental condition to determine fitness for trial at the equivalent point they were under the repealed Act immediately before commencement day.

Clause 573 declares that the period after which legal proceedings against a patient found not fit for trial under the repealed Act are discontinued is the same as the period under section 34 of the repealed Act. This is because the period under Chapter 6, Part 4 is different to the period under section 34 of the repealed Act and should not be imposed retrospectively.

Clause 574 aims to ensure that certain patients for whom a jury has made a section 613 or 645 finding under the Criminal Code enter the scheme under Chapter 6, Part 4 at the equivalent point they were, under the repealed Act, immediately before the commencement day.

Clause 575 ensures the trial of a person who, after having been subject to a finding by a jury under sections 613 or 645 of the Criminal Code, is found fit for trial by the Patient Review Tribunal and the Governor in Council orders that the person be tried for the offence. Sections 38(13) and (14) of the repealed Act apply as if the repealed Act had not been repealed.

Clause 576 declares that the period after which legal proceedings against a patient for whom a jury has made a section 613 or 645 finding before the commencement day are discontinued is 3 years. This is because the period under Chapter 6, Part 4 is different to the period under section 38 of the repealed Act and should not be imposed retrospectively.

Division 6—Examinations, references and orders for persons charged with offences

Clause 577 aims to ensure that Chapter 7 applies to all patients, who, because of the operation of the transitional provisions, are deemed to be under involuntary treatment or forensic orders and who are charged with criminal offences. To ensure a smooth transition to the new scheme, notices, decisions, references, etc. will not have to be repeated under the new scheme if a corresponding action has been done under the repealed Act.

Subclause (5) provides a deeming provision for particular things done under the repealed Act that do not have a directly corresponding, but do have a similar, provision under the new scheme.

Clause 578 deems a reference of a person's mental condition to the Mental Health Tribunal made under the repealed Act to be a reference to the Mental Health Court if, immediately before commencement day, the Mental Health Tribunal had not taken oral evidence on the reference.

Clause 579 aims to ensure that the Mental Health Tribunal can continue to hear the matter of a patient's mental condition on or after the commencement day, if the Mental Health Tribunal had taken oral evidence, but immediately before the commencement day, had not decided the reference. It is then deemed that a determination or order of the Mental Health Tribunal is an equivalent decision or order of the Mental Health Court.

*Clause 5*80 aims to ensure that determinations or orders by the Mental Health Tribunal (or Court of Appeal), in force immediately before the commencement day, are deemed to be equivalent decisions or orders by the Mental Health Court under Chapter 7.

Clause 581 provides that a patient who was, immediately before the commencement day, detained under an order of the Minister under section 38(1) or 39(1) of the repealed Act can continue to be detained in an authorised mental health service under a forensic order (Minister).

Clause 582 ensures that a person who elected to be brought to trial under section 43C of the repealed Act can, on or after the commencement day, proceed to trial.

Division 7—Appeals and inquiries

Clause 583 deems an application under sections 15(9) or (10) or 37 of the repealed Act that had not been decided before the commencement day to be an appeal against an equivalent review decision. However, if on hearing the application, the Mental Health Tribunal had taken oral evidence or an oral submission on a material matter, the application must continue to be decided by the judge who constituted the Tribunal, assisted by the same psychiatrists.

Subclause (4) ensures that if a person wishes to appeal against a decision of the Patient Review Tribunal on or after the commencement day, the appeal can be heard under Chapter 8, Part 1, as if the decision appealed against were a decision of the Mental Health Review Tribunal.

Clause 584 permits an appeal against a decision of the Mental Health Tribunal to be started or continued on, or after, the commencement day. The clause sets out deeming provisions for particular findings.

Clause 585 empowers the Mental Health Tribunal to start or continue to hear an application made before the commencement day under section 70 of the repealed Act. To provide consistency with the new scheme, the Mental Health Tribunal must apply the treatment criteria under clause 13 to the test under section 70(3) of the repealed Act.

Division 8—Miscellaneous provisions

Clause 586 provides continuity between the repealed Act and the new scheme for appointment of the Director of Mental Health.

Clause 587 ensures that a committee in force under section 82 of the repealed Act continues in force for 1 year after the commencement of that section as inserted by the *Guardianship and Administration Act 2000*.

Clause 588 empowers the Mental Health Court or the president of the Mental Health Review Tribunal to make an order to resolve a difficulty arising in the transitional period. This is necessary, given the complexity of the transitional provisions, and the potential for serious consequences in particular cases (eg. if a transitional provision does not adequately provide for the detention or the determination of charges for a Part 4 patient under the repealed Act).

Use of this power is safeguarded by limiting it to a Supreme Court judge or a tribunal that is properly constituted. In addition, the provision does not empower the Court or Tribunal to make an order that is inconsistent with the *Mental Health Act 1974*.

Clause 589 aims to ensure an unforseen matter may be resolved in the transitional phase.

Whilst Part 2 of Chapter 16 (Transitional provisions) deals with all anticipated matters necessary to effect the transition, there may be unforeseen consequences that are not dealt with in the Bill. Given that a principal purpose of the legislation is to protect the safety of persons with mental illnesses and the general community, it is imperative that any unintended consequences that may arise during the transition from the repealed Act to the new Act be dealt with swiftly. As provided in clause 588, this is necessary, given the complexity of the transitional provisions, and the potential for serious consequences.

The clause would only be used in exceptional circumstances. However, if it were necessary to make a regulation under this section, the regulation expires 1 year after it is made. Clause 589 itself expires 1 year after commencement. Clause 589 mirrors similar provisions in other legislation (eg. the *Primary Industry Bodies Reform Act 1999*).

CHAPTER 17—AMENDMENTS OF ACTS

Clause 590 states that Schedule 1 amends the Acts mentioned in it.

SCHEDULE 1—AMENDMENTS OF ACTS

Part 1—Amendments of *Mental Health Act 1974* commencing on assent

This Part provides for the establishment of special Patient Review Tribunals to facilitate additional hearings of the Patient Review Tribunal. The Part provides that a special Tribunal has the power to hear a review, application or reference as if it were a regional Tribunal constituted under section 14 of the *Mental Health Act 1974* ("the current Act"). It is intended the chairpersons will constitute Special Tribunals in their region from time to time as required to meet the additional hearings necessary.

The Special Tribunals can be made up of current members of the Patient Review Tribunals and new members appointed by the Governor in Council. The new members must meet the requirements of appointment as required in section 14(3) of the current Act. Effectively, the Part provides that a Special Tribunal may be made up of members appointed under section 14A (the inserted section) or from pre-existing regional panel members or both. For example, a regional panel member can sit in another region as a member of a Special Tribunal. Similarly, a regional member can sit with a new member in their own region as a Special Tribunal.

Part 2—Amendments of Acts commencing after assent

Part 2 lists the Acts that are amended by the Bill on commencement of the Mental Health Bill.

Note the consequential amendment to the *Guardianship and Administration Act 2000* provides for the community visitor scheme set up under that Act to apply to people with a mental illness receiving services at an authorised mental health service. The amendment also enables reports from the chief executive of the community visitor scheme to be provided to the Director of Mental Health when relevant.

SCHEDULE 2—DICTIONARY

Schedule 2 defines terms used in the Bill.