

Mental Health Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Mental Health Bill 2015.

Policy objectives and the reasons for them

The main objects of the Bill are:

- to improve and maintain the health and wellbeing of persons with a mental illness who do not have the capacity to consent to treatment
- to enable persons to be diverted from the criminal justice system if found to have been of unsound mind at the time of an alleged offence or to be unfit for trial, and
- to protect the community if persons diverted from the criminal justice system may be at risk of harming others.

The objects are to be achieved in a way that:

- safeguards the rights of persons
- is least restrictive of a person's rights and liberties, and
- promotes the recovery of a person with a mental illness, and their ability to live in the community, without the need for involuntary treatment or care.

The Bill repeals and replaces the *Mental Health Act 2000*.

Achievement of policy objectives

The key aspects of the Bill are outlined below.

- **Examinations, assessment and treatment authorities**

Treatment authorities are made under the Bill by authorised doctors and provide a lawful authority to treat a person with a mental illness who lacks the capacity to consent to treatment. Treatment authorities replace involuntary treatment orders under the *Mental Health Act 2000*.

The elements of the 'treatment criteria' for making a treatment authority are:

- the person has a mental illness, and
- the person does not have capacity to consent to be treated for the illness, and
- there is a risk of imminent serious harm to the person or others, or that the person is likely to suffer serious mental or physical deterioration.

The Bill strengthens patient rights by tightening the criteria, when compared with the current Act, to focus on a person's lack of capacity to consent to treatment and the risk of serious harm to the person or others. The Bill also provides for a significantly expanded definition of 'capacity to consent to be treated'.

In addition, the Bill requires an authorised doctor to consider whether a person may be treated in a 'less restrictive way' before making a treatment authority. This includes treating the person under an advance health directive, or with the consent of a personal guardian or attorney. If the person's treatment and care needs can reasonably be met in a 'less restrictive way', a treatment authority cannot be made.

The making of a treatment authority is preceded by the making of a 'recommendation for assessment' by an authorised mental health practitioner or authorised doctor.

In a small number of cases, it may not be possible to examine a person to make a recommendation for assessment. If a person is concerned about another person's mental health, an application may be made to the Mental Health Review Tribunal for an examination authority, which authorises entry to a person's premises and an involuntary examination. This replaces 'justices examination orders' under the current Act.

In emergency circumstances, an ambulance officer or police officer may transport a person to a 'treatment or care place', such as a public sector hospital. This applies if:

- a person's behaviour indicates the person is at immediate risk of serious harm, for example, by threatening to commit suicide, and
- the risk appears to be the result of major disturbance in the person's mental capacity, and
- the person appears to require urgent examination, treatment or care.

This provision applies whether the major disturbance is the result of an illness, disability, injury, intoxication or other reason. Given the wider scope of these provisions, they have been placed in the *Public Health Act 2005*.

The Bill continues the 'classified patient' arrangements, where a person in custody, for example in a watch-house or prison, may be transferred to an authorised mental health service if they become acutely unwell and require assessment or treatment in an authorised mental health service.

- **Treatment and care of patients**

Authorised doctors and administrators of authorised mental health services have clear responsibilities under the Bill for the treatment and care of patients. The Bill requires authorised doctors to decide and record the treatment and care to be provided to a patient. To better align with good clinical practice, this will be recorded in the patient's health records rather than in a separate 'treatment plan' as is required under the current Act. Administrators of authorised mental health services must take reasonable steps to ensure that the patient receives the planned treatment and care. The administrator must also ensure the systems for recording planned and actual treatment can be audited.

The Bill strengthens the rights of family, carers and other support persons, who can play an important role in the patient's care and recovery. The Bill requires authorised doctors to involve family, carers and other support persons in decisions about the patient's treatment and care. This aligns with good clinical practice, will improve health service delivery and lead to better patient outcomes.

Under the Bill (clause 284), wherever a person (such as an authorised doctor) is required to tell or explain something to, or discuss something with, a patient, the person must also do the same with:

- the patient's nominated support person (see below), or,
- if the patient does not have a nominated support person, at least one of the patient's family, carer or other support person.

However, this does not apply (under clause 286), if:

- the patient requests (when the patient has capacity), that the communication not take place
- the person is not readily available or willing for the communication to take place, or
- the communication with the person is likely to be detrimental to the patient's health and wellbeing.

The Bill enables a person to appoint one or two 'nominated support persons' to support the person's treatment and care at a future time if the person becomes an involuntary patient. Nominated support persons have a number of roles under the Bill, including receiving all notices that must be given to the patient, being able to discuss confidential information about the patient with the treating team, and supporting the patient, or representing the patient, at hearings of the Mental Health Review Tribunal.

The Bill also introduces a right for a patient (or support person) to request a second opinion about the patient's treatment and care if an authorised mental health service has been unable to resolve ongoing concerns about the patient's treatment and care.

An innovation in the Bill is for public sector authorised mental health services to appoint an 'independent patient rights adviser' (or advisers) in the service to advise patients and the patient's family, carers and other support persons of their rights under the Bill. This includes advising patients and support persons on how the Mental Health Review Tribunal operates, and the person's rights at tribunal hearings. An adviser may be an employee of an organisation that the Hospital and Health Service has engaged to provide services, or an employee of the Service but not employed within the mental health service.

The Bill will remove the ambiguity in the current Act about where treatment and care can be provided. The Bill will allow treatment and care to be provided in any place that is clinically appropriate. The restrictions on the use of audio-visual technology in the current Act are removed in the Bill.

- **Mechanical restraint, seclusion and other restrictive practices**

The use of mechanical restraint and seclusion on patients is an area receiving attention nationally. The Bill supports the move to reduce and, where possible, eliminate the use of mechanical restraint and seclusion in a number of ways.

The Bill requires that the use of mechanical restraint on an involuntary patient must be approved by the chief psychiatrist (the position that will replace the Director of Mental Health under the current Act). The criteria for using mechanical restraint have been strengthened when compared to the current Act. It provides that mechanical restraint may only be used if there is no other reasonably practicable way to protect the patient or others from physical harm. Where mechanical restraint is applied, the patient must be observed continuously.

The Bill gives the chief psychiatrist the power to issue directions in relation to the use of seclusion.

The Bill also introduces the concept of a 'reduction and elimination plan'. These plans are to be used to approve the use of mechanical restraint or seclusion by the chief psychiatrist in the context of reducing and eliminating its use for the patient.

The Bill introduces the regulation of physical restraint on a patient in an authorised mental health service. The use of physical restraint on a patient must be authorised by an authorised doctor or the health practitioner in charge of the unit. Exceptions apply in urgent circumstances or if the physical restraint is authorised under another law.

The Bill requires that medication, including medications used for sedation, must only be given to a patient if it is clinically necessary for the patient's treatment and care.

- **Forensic provisions**

The Bill provides that an involuntary patient, or someone on the patient's behalf, may request a psychiatrist report if charged with a 'serious offence'. A 'serious offence' is an indictable offence other than an offence that must, under the Criminal Code, be heard by a magistrate.

The purpose of the report is to provide an opinion on whether the person was of unsound mind at the time of the alleged offence or is unfit for trial. The chief psychiatrist also has a reserve power to direct a psychiatrist report for a person if a person is charged with a serious offence and the chief psychiatrist believes the preparation of a report is in the public interest.

This replaces the current model whereby a person on an involuntarily treatment order or forensic order charged with any offence must have a report prepared. For indictable offences, the matter may then be referred to the Mental Health Court. The current approach is considered to be a breach of an individual's right to decide how to pursue a legal defence.

The Bill continues the Mental Health Court as the central judicial body for the forensic mental health system in Queensland. Under the Bill, the Court may hear references on whether a person charged with a serious offence was of unsound mind at the time of an alleged offence or is unfit for trial. Where the Court determines a person was of unsound mind at the time of the alleged offence or is unfit for trial, the Court may make a forensic order or a treatment support order (see below) for the person. Forensic orders may be a forensic order (mental health) or a forensic order (disability).

In making an order, the Court must also determine the category of the order (inpatient or community) and, if the category is inpatient, any limited community treatment for the patient. Limited community treatment enables a patient to go outside of the authorised mental health service for periods of up to seven days.

If the Court determines a person is unfit for trial, but the unfitness may not be of a permanent nature, the matter of the person's fitness for trial is referred to the Mental Health Review Tribunal for regular review. In these circumstances, a forensic order or treatment support order must be made.

Under the Bill, the Court will have the discretion to set a non-revocation period for forensic orders, of up to 10 years, for serious violent offences (called 'prescribed offences'), such as murder, rape and grievous bodily harm. This will give victims and the wider community greater certainty in the period after a forensic order is made.

The Bill also adopts the legal concept of 'unsound mind' as applies under the Criminal Code.

The Bill continues the arrangements for victims of unlawful acts to receive certain information about the status of a relevant person under the Bill (persons on a forensic order or treatment support order). The Bill improves these provisions in a number of ways, such as:

- providing a statement of principles for supporting victims of unlawful acts, to guide persons responsible for administering the legislation
- removing the confidentiality restrictions on government agencies, to enable a person to be offered victim support services, and
- providing additional information to victims on the reasons a patient is given community treatment, to assist the victim to understand the considerations that have gone into such a decision.

The requirement for the tribunal to obtain a second psychiatrist opinion before revoking a forensic order for a serious violent offence will be retained and expanded to include offences such as grievous bodily harm.

- **Magistrates Courts**

The Bill rectifies a deficiency in the current legal framework in Queensland, by expressly enabling magistrates to discharge persons who appear to have been of unsound mind at the time of an alleged offence or are unfit for trial. This only applies to proceedings that magistrates may determine.

Magistrates may also order that a person be examined in an authorised mental health service to decide if a treatment authority should be made for the person or to make recommendations about the person's voluntary treatment and care.

Magistrates will also be able to refer indictable offences to the Mental Health Court where it appears there may be grounds for the Court to make a forensic order or treatment support order for the person.

- **Mental Health Review Tribunal**

The Mental Health Review Tribunal continues under the Bill with responsibility for reviewing:

- treatment authorities
- forensic orders
- treatment support orders
- the fitness for trial of particular persons, and
- the detention of minors in high security units.

The tribunal also hears applications for:

- examination authorities, which authorise the involuntary examination of a person
- the approval of regulated treatments (electroconvulsive therapy (ECT) and non-ablative neurosurgery), and
- the transfer of forensic patients and patients on treatment support orders out of Queensland and, for equivalent orders, into Queensland.

The Bill states when periodic reviews of treatment authorities, forensic orders and treatment support orders must take place. Patients, or someone on behalf of the patient, may apply for a review of an authority or order at any time.

In reviewing treatment authorities, forensic orders and treatment support orders, the tribunal has the power to confirm or revoke an authority or order on the basis of the criteria stated in the Bill.

If a person does not have capacity to consent to treatment, and for all minors, the performance of ECT must be approved by the tribunal. Strengthened criteria are outlined in the Bill for ECT to be approved. ECT may also be performed in emergency situations to save a patient's life or prevent the patient suffering irreparable harm.

Persons who have given informed consent to 'non-ablative neurosurgery' (such as deep brain stimulation) must have the procedure approved by the tribunal. 'Psychosurgery' (the deliberate damage to, or removal of, brain tissue to treat a mental illness) is prohibited under the Bill.

The rights of patients at tribunal hearings are strengthened under the Bill. The Bill requires the tribunal to provide a lawyer at no cost to the patient for specified hearings, namely, where the Attorney-General is represented, for 'fitness for trial' reviews, for ECT applications, and for hearings involving minors.

The Bill also removes the barriers to the interstate transfer of involuntary patients, which may be of benefit to the patient's treatment, care and recovery. Transfers of forensic patients and patients on treatment support orders out of Queensland and, for equivalent orders, into Queensland, must be approved by the tribunal.

- **Treatment support orders**

A significant innovation in the Bill is the introduction of 'treatment support orders', which may be made by the Mental Health Court or the tribunal.

The Mental Health Court may make a treatment support order instead of a forensic order. The intention of a treatment support order is to provide a less intensive form of order, for example, where a person's role in an offence is relatively minor.

The tribunal may make a treatment support order when a forensic order is reviewed. In this context, the purpose of the order is to 'step-down' a patient from a forensic order as part of the patient's recovery, when it is appropriate to do so.

There are two differences between a forensic order and a treatment support order, namely:

- the way in which treatment in the community (i.e. a community category or limited community treatment) is authorised, and
- the nature of clinical oversight of the person on the order.

While treatment support orders authorise involuntary treatment, the Mental Health Court and the tribunal do not set limits on the extent of community treatment under treatment support orders. As with treatment authorities, this will be the responsibility of authorised doctors in accordance with the criteria established under the Bill. As with treatment authorities, the category for these orders will be a community category, unless it is necessary for the person to be an inpatient.

The Bill requires the chief psychiatrist to make policies for the clinical management of persons on forensic orders and treatment support orders. It is the intention of the legislation that these policies provide a more stringent level of oversight for persons on forensic orders than those on treatment support orders.

It will, however, be the responsibility of the tribunal to revoke a treatment support order. This will ensure that there is an ongoing independent consideration of any risk to the community until such time as the person's condition improves to the extent that an order can be revoked.

- **Chief psychiatrist**

The chief psychiatrist is appointed under the Bill to protect the rights of patients in authorised mental health services. This position will replace the Director of Mental Health under the current Act. This role extends to patients in authorised mental health services other than involuntary patients, such as those being treated under advance health directives or with the consent of a personal guardian or attorney.

The chief psychiatrist makes policies and practice guidelines, which persons in authorised mental health services must comply with. The Bill states a number of matters for which policies must be made, including the application of the treatment criteria, the use of mechanical restraint and seclusion, and the treatment and care of forensic patients.

The Bill also requires the publication of chief psychiatrist policies and practice guidelines, and expands the requirements for the chief psychiatrist's annual report.

- **Other matters**

The Bill will replace the *Mental Health Act 2000*, which is overly complex and difficult to administer. The Bill will reduce the compliance burden on health services in administering the legislation, including by reducing the volume of forms required under the legislation.

The Bill rectifies numerous operational problems with the current Act in areas such as the transport of patients, searches in authorised mental health services and notification requirements. The proposals will also result in greater devolvement to authorised mental health services, such as for the appointment of authorised mental health practitioners.

The Bill provides for clear and consistent criteria for statutory decisions. This is of critical importance given the restrictions on a person's liberties that may be exercised under the Bill.

Estimated cost for government implementation

The implementation of the Bill will incur one-off implementation costs for education and training, the development of policies, practice guidelines and other supporting material, and for information system re-development. These implementation costs are estimated at \$4.8 million.

On-going costs will also be incurred for the revised court liaison service (to support the revised role of Magistrates Courts), the establishment of independent patient rights advisers and the revised Mental Health Review Tribunal functions. These costs are estimated at \$12.5M.

Consistency with fundamental legislative principles

- **Treatment and detention without consent**

The Bill will impact on the rights and liberties of individuals by enabling examinations, assessments, treatment and, if necessary, detention without consent.

The Bill addresses the situation where a person does not have capacity to consent to treatment and may be at risk of harm or deterioration in his or her health, with no ability to make decisions to avert these adverse consequences. To remedy this, the Bill establishes legislative arrangements for treatment without consent under a treatment authority. (See chapter 2, part 4).

The Bill also empowers the Mental Health Court to impose orders (forensic orders and treatment support orders) on persons charged with serious offences (as defined). (See chapter 5, part 4). These orders authorise involuntary treatment and, if necessary, detention in an authorised mental health service or the forensic disability service. The purpose of these provisions is to improve the health of these persons to protect the community where persons diverted from the criminal justice system may be at risk of harming others.

The Bill includes robust safeguards to protect the rights of individuals on orders or authorities. The Bill expressly states that the objects of the Bill are to be achieved in a way that:

- safeguards the rights of persons
- is least restrictive of a person's rights and liberties, and
- promotes the person's recovery, and ability to live in the community, without the need for involuntary treatment and care.

The exercise of all relevant powers under the proposed Bill – involuntary examination, assessment, treatment and detention – may only be undertaken if the statutory decision-making criteria are met.

Examination authorities (which authorise entry to premises and an involuntary examination of a person) may only be made with prior clinical input, with the authority to be made by the independent Mental Health Review Tribunal.

An examination of a person (to determine whether a recommendation for assessment should be made), and an assessment (to determine whether a treatment authority should be made), are undertaken by appropriately skilled, and authorised, clinicians.

A person placed on a treatment authority has the authority automatically reviewed by the Mental Health Review Tribunal within 28 days after it is made, with the person having the right to apply to the tribunal for review at any time.

The Tribunal also reviews the continuation of forensic orders at 6-monthly intervals.

The Bill provides for the appointment of the chief psychiatrist to protect the rights of patients in authorised mental health services.

- **Psychiatrist examinations for persons charged with serious offences**

The Bill provides for the right of a person on a treatment authority, forensic order or treatment support order who is charged with a serious offence to request a psychiatrist report about whether the person was of unsound mind at the time of the alleged offence or is unfit for trial. A report may also be requested by other persons, such a nominated support person or lawyer.

In addition, if the chief psychiatrist determines that it is in the public interest, the chief psychiatrist may direct a psychiatrist report for a person charged with a serious offence without the person's consent (chapter 4, part 3). This authority may be seen as infringing on the rights and liberties of the person who is subject to the psychiatrist examination. However, the discretion to exercise this power is to be used by the chief psychiatrist only if the chief psychiatrist determines that it is in the public interest to do so. The Bill will provide safeguards for persons undergoing these examinations, including restrictions on the use of the resultant report.

- **Power of entry to authorised mental health services**

The Bill will continue the power under the *Mental Health Act 2000* for authorised persons to visit an authorised mental health service to investigate whether the legislation is being complied with. The exercise of this power does not require a warrant (clause 563). However, this power of entry is very limited – to authorised mental health services – nearly all of which are within the public sector. The power is considered reasonable given the need for involuntary patients to have their rights protected.

- **Suspension of treatment in the community or change of category to inpatient**

The Bill will continue the power under the *Mental Health Act 2000* for the chief psychiatrist to suspend limited community treatment or change a community category to inpatient for a class of forensic patients, if the chief psychiatrist believes there is a serious risk to the life, health or safety of a person or a serious risk to public safety (chapter 10, part 5). This power may be seen as infringing individual liberties in that the power may be exercised in relation to a class of persons, regardless of whether an individual constitutes a risk to the community.

However, this power is consistent with the purpose of the Bill in relation to the protection of the community. This power may be exercised, for example, where there are concerns of systemic management issues within an authorised mental health service that need rectification. It may be necessary to suspend community treatment pending the rectification of these issues. As in the current Act, the Bill incorporates safeguards, including the requirement to consult with the administrator of the authorised mental health service on the impact of suspending community treatment on patients before taking action under these provisions. The chief psychiatrist's decision is appealable to the tribunal.

- **Transitional regulation-making power**

The Bill enables a transitional regulation to be made about a matter to facilitate the transition to the new Bill (clause 862 and clause 910 (Forensic Disability Act)). The inclusion of this power raises the issue of whether the Bill has sufficient regard to the institution of the Parliament.

Although the Bill provides for a range of transitional issues, it is possible that unanticipated matters may arise given the complexity of transitioning to the new Bill. It should be noted that this provision expires 12 months after commencement.

Consultation

A Draft Mental Health Bill 2015 was released for public comment for a two-month period to 26 June 2015.

An extensive range of consultation workshops and meetings were held during the consultation period, including with:

- authorised mental health services
- interested consumers and organisations representing mental health consumers
- peak health representative bodies
- legal and advocacy groups
- government agencies, including the Public Guardian and the Public Advocate
- the Mental Health Court
- magistrates, and
- the Mental Health Review Tribunal.

A total of 97 submissions were received on the Draft Bill.

The Queensland Mental Health Commissioner has been consulted throughout the development of the legislation.

Notes on provisions

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

Clause 1 provides that, when enacted, the short title of the Act will be the *Mental Health Act 2015*.

2 Commencement

Clause 2 provides for commencement of the Bill on the day fixed by proclamation.

3 Main objects of Act

Clause 3 states the main objects of the Bill, namely:

- to improve and maintain the health and wellbeing of persons with a mental illness who do not have the capacity to consent to be treated
- to enable persons to be diverted from the criminal justice system if found to have been of unsound mind at the time of allegedly committing an unlawful act or to be unfit for trial, and
- to protect the community if persons diverted from the criminal justice system may be at risk of harming others.

The objects are to be achieved in a way that:

- safeguards the rights of persons
- is the least restrictive of the rights and liberties of a person with a mental illness, and
- promotes the recovery of a person with a mental illness, and their ability to live in the community, without the need for involuntary treatment or care.

4 Act binds all persons

Clause 4 states that the Bill binds the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

Part 2 Principles for administration of Act

5 Principles for persons with mental illness

Clause 5 states the principles that apply for the administration of the Bill.

6 Principles for victims and others

Clause 6 states the principles for persons performing functions under this Bill in relation to victims of unlawful acts.

7 Regard to principles

Clause 7 states that a person performing a function under this Act must have regard to the principles.

8 Application to persons with intellectual disability

Clause 8 states how the Act applies to persons with an intellectual disability. It should be noted that the Bill provides a specific definition of 'care' for a person with an intellectual disability.

Part 3 Interpretation

9 Definitions

Clause 9 states that the dictionary is in Schedule 3.

10 Meaning of *mental illness*

Clause 10 defines mental illness for the purpose of the Bill, namely, a condition characterised by a clinically significant disturbance of thought, mood, perception or memory. This clause states matters that are not considered to indicate a person has a mental illness.

11 Meaning of *involuntary patient*

Clause 11 defines 'involuntary patient', namely persons subject to:

- an examination authority (which authorises an involuntary examination under chapter 2)
- a recommendation for assessment (which authorises an involuntary assessment under chapter 2 to decide if a treatment authority should be made for the person)
- a treatment authority (which are made by authorised doctors under chapter 2)
- a forensic order (which are made by the Mental Health Court under chapter 5 for persons alleged to have committed unlawful acts)
- a treatment support order (a less intensive order made by the Mental Health Court or the Mental Health Review Tribunal for persons alleged to have committed unlawful acts)
- a judicial order (the Bill provides for various short-term detention orders; see dictionary to the Bill)
- a person detained while a recommendation for assessment is prepared, and
- the detention of a person who has absconded from interstate.

12 Meaning of *treatment criteria*

Clause 12 states the treatment criteria for the Bill. These criteria form the basis for a person being placed on a treatment authority.

The treatment criteria for a person are all of the following:

- the person has a mental illness, and

- the person does not have capacity to consent to be treated for the illness, and
- because of the person's illness, the absence of involuntary treatment, or the absence of continued involuntary treatment, is likely to result in:
 - (i) imminent serious harm to the person or someone else, or
 - (ii) the person suffering serious mental or physical deterioration.

13 Meaning of *less restrictive way*

Clause 13 outlines the meaning of 'less restrictive way' for the purposes of the Bill. This is relevant to when an authorised doctor must decide whether to make treatment authority for a person. If there is a less restrictive way to treat the person, such as under an advance health directive, a treatment authority cannot be made.

14 Meaning of *capacity to consent to be treated*

Clause 14 defines the meaning of 'capacity to consent to be treated'. This is relevant to the treatment criteria.

A person has capacity to consent to be treated if the person is capable of understanding, in general terms:

- that the person has an illness, or symptoms of an illness, that affects the person's mental health and wellbeing
- the nature and purpose of the treatment for the mental illness
- the benefits and risks of the treatment, and alternatives to the treatment, and
- the consequences of not receiving the treatment.

The person must also be capable of arriving at a decision and communicating the decision in some way.

The clause also recognises the importance of supported decision-making, in that a person may have capacity with the support of another person.

15 Responsibility for involuntary patient or forensic disability client

Clause 15 outlines who is responsible for the treatment and care of an involuntary patient under the Bill.

16 Purpose of limited community treatment

Clause 16 states the purpose of limited community treatment for the Bill, namely, to support a patient's recovery by transitioning the patient to living in the community with appropriate treatment and care.

Part 4 Overview of Act

17 Purpose of pt 4

Clause 17 states that this part gives an overview of the Bill.

18 Treatment authorities

Clause 18 summarises how treatment authorities operate under the Bill.

19 Persons in custody

Clause 19 summarises how persons in custody are dealt with under the Bill.

20 Psychiatrist reports

Clause 20 summarises how psychiatrist reports are prepared under the Bill.

21 Mental Health Court

Clause 21 summarises the role of the Mental Health Court under the Bill.

22 Magistrates Courts

Clause 22 summarises the powers that magistrates courts are given under the Bill.

23 Treatment and care of patients

Clause 23 summarises key aspects of the Bill in relation to the treatment and care of patients.

24 Mechanical restraint, seclusion, physical restraint and other practices

Clause 24 summarises key aspects of the Bill in relation to the use of mechanical restraint, seclusion, physical restraint and other practices for particular involuntary patients.

25 Rights of patients

Clause 25 summarises key aspects of the Bill in relation to the rights of involuntary patients and other patients under the Bill.

26 Chief psychiatrist

Clause 26 summarises the role of the chief psychiatrist.

27 Information notices

Clause 27 states that victims may receive specific information about a person who has committed an unlawful act.

28 Mental Health Review Tribunal

Clause 28 summarises the role of the Mental Health Review Tribunal.

29 Appeals

Clause 29 summarises appeals that may be made under the Bill.

Chapter 2 Making of treatment authorities after examination and assessment

Part 1 Preliminary

30 Purpose of ch 2

Clause 30 provides a purpose of this chapter, namely:

- the involuntary examination and assessment of persons, and
- the making of treatment authorities for persons.

Part 2 Examinations and recommendations for assessment

Division 1 Examinations generally

31 Examination

Clause 31 states that an examination may be made to decide whether to make a recommendation for assessment for a person. An examination may be made in any way, including voluntarily or under various powers under this Bill or another Act.

Division 2 Powers under examination authorities

32 Powers of doctor or authorised mental health practitioner

Clause 32 applies if the Mental Health Review Tribunal makes an examination authority for a person. This clause outlines the powers that may be exercised when an examination authority is made, including a power of entry. These provisions authorise a doctor or authorised mental health practitioner to examine a person, without the person's consent, to decide whether a recommendation for assessment should be made for the person.

33 Reasonable help and force to exercise powers

Clause 33 states that an examination may be done with reasonable help and force.

34 Asking police officer for help

Clause 34 states that a doctor or an authorised mental health practitioner is a public official for the *Police Powers and Responsibilities Act 2000* for performing the functions under this division.

35 Action before exercising powers

Clause 35 states the action that must be taken before exercising powers under this chapter.

Division 3 Detention of particular persons to make recommendation for assessment

36 Powers of doctor or authorised mental health practitioner

Clause 36 applies in circumstances where a doctor or authorised mental health practitioner intends to make a recommendation for assessment for a person and there is a risk that the person will leave the service or facility. In these circumstances, the person may be detained for up to one hour for the recommendation for assessment to be made.

37 Reasonable help and force to exercise powers

Clause 37 provides for the use of reasonable force to detain a person.

38 Action before exercising powers.

Clause 38 outlines the steps that must be taken prior to detaining the person.

Division 4 Recommendations for assessment

39 Making recommendation for assessment

Clause 39 provides for the making of a recommendation for assessment. A recommendation for assessment may be made by an authorised doctor or authorised mental health practitioner who has examined the person in the previous 7 days. A recommendation for assessment can only be made if the doctor or practitioner is satisfied that the treatment criteria may apply to the person and that there appears to be no less restrictive way of treating the person. If a recommendation for assessment is made for a person, an assessment may then be undertaken under the Bill.

40 Notice of making

Clause 40 states the person must be notified of the making of a recommendation for assessment.

41 Duration

Clause 41 provides that a recommendation for assessment is in force for 7 days after it is made.

42 Revocation

Clause 42 enables a recommendation for assessment to be revoked.

Part 3 Assessments

43 Making assessment

Clause 43 provides for the assessment of a person by an authorised doctor. The purpose of the assessment is to decide whether the treatment criteria apply for the person and whether the person can be treated in a less restrictive way. When these criteria are met, a treatment authority may be made for the person.

44 Where and how person may be assessed

Clause 44 states where and how a person may be assessed and requires the authorised doctor to discuss the assessment with the patient.

45 Detention for assessment

Clause 45 provides for detention for assessment.

46 Start of assessment period to be noted

Clause 46 requires the start of the assessment period to be noted.

47 Explaining decision not to make treatment authority

Clause 47 requires an authorised doctor to explain to the patient if the treatment criteria are not met or the person may be treated in a less restrictive way. Where this applies, a treatment authority is not made.

Part 4 Treatment authorities

48 Application of pt 4

Clause 48 provides that the part applies if the treatment criteria are met and there is no less restrictive way to treat the person.

49 Making treatment authority

Clause 49 states that an authorised doctor may make a treatment authority for a person.

50 Form of treatment authority

Clause 50 provides for the form of a treatment authority.

51 Category

Clause 51 requires an authorised doctor to decide the category of the treatment authority, namely, a community category or an inpatient category. The clause provides that the category is to be inpatient only if the patient's treatment and care needs cannot be met under a community category having regard to the person's relevant circumstances. The term 'relevant circumstances' is defined in the dictionary.

52 Limited community treatment

Clause 52 provides for the authorisation of limited community treatment for patients on an inpatient category. Limited community allows the patient to leave the inpatient unit of an authorised mental health service for a period of up to 7 days. In practice, there are various forms of limited community treatment including 'on-ground' escorted leave, unescorted day leave and overnight leave.

53 Nature and extent of treatment and care

Clause 53 states that an authorised doctor must discuss with the person the nature and extent of treatment and care to be provided under the authority.

54 When advance health directive not followed

Clause 54 requires an authorised doctor to explain to a patient why an advance health directive was not followed. This must also be recorded in the person's health records.

55 Notice of making

Clause 55 requires the authorised doctor to explain the making of the authority to the person.

56 Review of treatment authority if not made by psychiatrist

Clause 56 requires an authorised psychiatrist to review the making of the treatment authority by an authorised doctor who was not a psychiatrist.

57 Decision on review

Clause 57 outlines the decisions the authorised psychiatrist must make on review.

58 Notice about review

Clause 58 provides that, on reviewing the authority, the psychiatrist must explain to the person the psychiatrist's decision. The Mental Health Review Tribunal is also to be notified of the confirmation of a treatment authority.

59 Date for first assessment

Clause 59 requires an authorised doctor to decide and record when future assessments of the patient are to be made. Assessments are made to decide whether the treatment authority should continue.

60 Relationship with forensic order (disability)

Clause 60 provides that a forensic order (disability) prevails to the extent of any inconsistency with the treatment authority. This may apply to persons with a dual disability (a mental illness and an intellectual disability), who may be placed on a forensic order (disability) as well as a treatment authority.

Chapter 3 Persons in custody**Part 1 Preliminary****61 Purpose of ch 3**

Clause 61 provides a purpose of the chapter, namely, to provide for the transfer of persons in custody to an authorised mental health service for assessment, treatment or care. The purpose of this part is to enable persons in custody who become acutely unwell with a mental illness to be given appropriate treatment and care in an authorised mental health service. There are three circumstances in which this may occur, as outlined below.

62 Definitions for ch 3

Clause 62 provides the definitions for this chapter.

63 Meaning of person in custody

Clause 63 defines 'person in custody' for the chapter.

64 Meaning of classified patient

Clause 64 defines 'classified patient'. Where a person is subject to a recommendation for assessment, treatment authority, forensic order or treatment support order, the person is a classified patient (involuntary). Where a person voluntarily agrees to go to an authorised mental health service, the person is a classified patient (voluntary).

Part 2 Transport of persons in custody to authorised mental health service**65 Transport for assessment**

Clause 65 applies to persons for whom a recommendation for assessment has been made under chapter 2. A person may be transferred to an authorised mental health

service if an 'administrator consent' and 'custodian consent' are in place. The requirements for these consents are outlined in this chapter.

66 Transport for treatment and care under treatment authority or particular orders

Clause 66 applies to persons who are already on a treatment authority, forensic order (mental health) or a treatment support order. A person may be transferred to an authorised mental health service if a 'recommendation for transfer', 'administrator consent' and 'custodian consent' are in place.

67 Transport for treatment and care by consent

Clause 67 applies to persons who voluntarily consent to be transferred to an authorised mental health service. A person may be transferred to an authorised mental health service if a 'recommendation for transfer', an 'administrator consent' and a 'custodian consent' are in place.

68 Transfer recommendation

Clause 68 outlines the requirements for a recommendation for transfer. The key criteria is that the person requires treatment and care in an authorised mental health service.

69 Administrator consent

Clause 69 outlines the requirements for the administrator of an authorised mental health service to agree to a transfer.

70 Prior approval of chief psychiatrist for transport of minor to high security unit

Clause 70 outlines the requirements for a minor to be admitted to a high security unit. This can only occur with the approval of the chief psychiatrist.

71 Custodian consent

Clause 71 outlines the requirements for a custodian to agree to a transfer.

72 Notice to chief psychiatrist if person in custody not transported within 72 hours

Clause 72 requires a doctor or authorised mental health practitioner to notify the chief psychiatrist if a person subject to a recommendation for assessment or recommendation for transfer has not been admitted to an authorised mental health service within 72 hours of the recommendation being made. The purpose of this notification is for the chief psychiatrist to consider taking action under the following clause.

73 Chief psychiatrist consent for transport

Clause 73 enables the chief psychiatrist to agree to a person in custody being transferred to an authorised mental health service. This consent has the same effect as an administrator consent. The purpose of this provision is to ensure that, as far as practicable, an acutely unwell person in custody receives timely treatment.

Part 3 Persons in custody remaining in authorised mental health service**74 Person subject to examination order or court examination order remaining in authorised mental health service**

Clause 74 applies where a person has been transported from a place of custody to an authorised mental health service under an examination order (made by a magistrate) or a court examination order (made by the Mental Health Court). In these circumstances, the person may become a classified patient with an administrator consent and a custodian consent. The person may be detained in the service for up to 7 days under the order while the consents are obtained. This is a reasonable time period given that the person would otherwise be held in lawful custody.

Part 4 Requirements applying when person in custody becomes classified patient**75 Notice and explanation to person in custody who becomes classified patient**

Clause 75 requires an authorised doctor to explain to a classified patient the effect of being a classified patient under the Bill. Chapter 15, part 2 provides for the suspension of proceedings against a person who becomes a classified patient.

76 Notice to chief psychiatrist of person in custody becoming classified patient

Clause 76 requires the administrator to give written notice to the chief psychiatrist of a person in custody becoming a classified patient.

77 Notice to tribunal of minor in custody becoming classified patient

Clause 77 requires the Mental Health Review Tribunal to be notified if a minor is detained in a high security unit. The Tribunal must then review the detention under chapter 12.

78 Examination of classified patient under s 201

Clause 78 requires an authorised doctor to consider whether it is clinically appropriate for the patient to receive treatment and care in an authorised mental health service.

79 Classified patient (involuntary) may become classified patient (voluntary)

Clause 79 clarifies that a classified patient (involuntary) may become a classified patient (voluntary).

80 Notice to chief psychiatrist if classified patient (voluntary) withdraws consent

Clause 80 deals with circumstances where a voluntary classified patient withdraws consent. In these cases, an authorised doctor must notify the chief psychiatrist.

Part 5 Return to custody, or release from detention in authorised mental health service, of classified patient**81 Notice to chief psychiatrist of notice event**

Clause 81 applies if an authorised doctor believes it is not clinically necessary for a person to stay in an authorised mental health service for treatment and care. In these circumstances the chief psychiatrist is to be notified.

82 Chief psychiatrist may decide to return classified patient to place of custody

Clause 82 enables the chief psychiatrist to decide to return a classified patient to custody where it is no longer clinically necessary for the person to remain in an authorised mental health service for treatment and care.

83 Return of classified patient to custody

Clause 83 states when a classified patient is to be returned to custody. This applies where the patient is no longer an involuntary patient, the patient withdraws consent (if the patient is a classified patient (voluntary)), or where it is no longer clinically necessary for the person to remain in an authorised mental health service for treatment and care.

84 Person stops being classified patient if Mental Health Court makes decision on reference

Clause 84 states that a person ceases to be a classified patient in relation to the particular reference if the Mental Health Court makes a decision on a reference.

85 Release of classified patient

Clause 85 deals with the circumstances where a classified patient is to be released, for example, where the person is granted bail or a term of imprisonment ends.

Chapter 4 Psychiatrist reports for serious offences

Part 1 Preliminary

86 Purpose of ch 4

Clause 86 provides that the purpose of this chapter is for the preparation of psychiatrist reports for persons charged with serious offences who are subject to a treatment authority, forensic order or treatment support order. A serious offence is defined as any indictable offence, other than an offence that is a relevant offence within the meaning of the Criminal Code, section 552BA(4). This section of the Criminal Code outlines charges of indictable offences that must be heard and decided summarily.

87 Definitions for ch 4

Clause 87 defines a psychiatrist report for the purpose of this chapter.

Part 2 Psychiatrist report on request

88 Application of pt 2

Clause 88 provides that this part applies to a person charged with a serious offence who at the time of the offence is subject to a treatment authority, a forensic order (mental health) for which an authorised mental health service is responsible, or a treatment support order. (See clause 104 for the application of this chapter to persons with an intellectual disability).

89 Administrator must explain effect of request

Clause 89 requires the relevant administrator to advise the person of the person's right to request a psychiatrist report under this part and explain the effect of the request.

90 Request for psychiatrist report

Clause 90 outlines who may request a psychiatrist report, namely, the person, a nominated support person, a personal guardian, attorney, a parent or a lawyer.

91 Direction to prepare psychiatrist report

Clause 91 provides that the chief psychiatrist may direct the preparation of a psychiatrist report on request.

Part 3 Psychiatrist report on chief psychiatrist's own initiative

92 Application of pt 3

Clause 92 states that this part applies to persons charged with a serious offence.

93 Direction to prepare psychiatrist report

Clause 93 enables the chief psychiatrist to direct a psychiatrist report in the public interest. It is anticipated that this power would be used infrequently.

94 Notice of direction

Clause 94 requires the chief psychiatrist to notify the person and the administrator of direction.

Part 4 Preparation of psychiatrist reports

95 Authorised psychiatrist must prepare psychiatrist report

Clause 95 provides that an authorised psychiatrist must, within 60 days, prepare a report about the person when directed to prepare a report under clause 91 or 93. The psychiatrist report must include information about the following:

- the person's current mental state and, to the extent practicable, the person's mental state at the time of the alleged commission of the offence
- an opinion on whether the person was of unsound mind at the time of the alleged commission of the offence
- an opinion on whether the person is fit for trial, and
- if the opinion is the person is unfit for trial - whether the unfitness for trial is likely to be permanent or temporary.

Chapter 15, part 2 provides for the suspension of proceedings against a person when a psychiatrist report is directed to be prepared.

96 Information from prosecuting authority

Clause 96 provides that, for the purpose of preparing a report, an administrator or authorised psychiatrist may ask the prosecuting authority for specified documents related to the charge.

97 Support person

Clause 97 provides that a person being examined may be accompanied by a support person.

98 Person must participate in examination in good faith – report on request

Clause 98 applies where a person requests a psychiatrist report. The Bill requires the person to participate in the examination in good faith by, for example, attending appointments for an examination and answering questions during an examination. If this does not occur, the administrator can revoke the direction to prepare the report.

99 Person must attend examination – report on chief psychiatrist's initiative

Clause 99 applies where the chief psychiatrist directs a report on the chief psychiatrist's initiative. The relevant person must attend for an examination.

100 Second psychiatrist report

Clause 100 enables the chief psychiatrist to obtain a second psychiatrist report including, for example, due to the complexity of the matters in the initial report.

Part 5 References by chief psychiatrist**101 Reference by chief psychiatrist to Mental Health Court**

Clause 101 deals with referrals to the Mental Health Court related to a psychiatrist report prepared under this part. This clause gives the chief psychiatrist a discretion to refer the matter to the Mental Health Court if the person elects not to refer the matter and, having regard to the protection of the community, the psychiatrist believes there is a compelling reason in the public interest for a reference to be made.

Part 6 Miscellaneous**102 Copies of reports**

Clause 102 outlines who receives copies of psychiatrist reports.

103 Chapter stops applying to person if prosecution for offence discontinued

Clause 103 provides that this part ceases to apply to a person if the proceedings against the person are discontinued.

104 Application of chapter to person with intellectual disability

Clause 104 applies this part to persons with an intellectual disability. For these persons, the director of forensic disability (under the *Forensic Disability Act 2011*) also has the functions that the chief psychiatrist has under this chapter. Reports are prepared after an assessment of the person by a senior practitioner as defined under the Forensic Disability Act. The effect of this is that part 2, where a person may request a report, applies to a person with an intellectual disability who is the responsibility of the forensic disability service. Part 3, where the director of forensic disability may direct a report, applies to a person who may have an intellectual disability. This does not limit the ability of the chief psychiatrist to direct a report for a person who may have a mental condition, including an intellectual disability.

Chapter 5 Mental Health Court references**Part 1 Preliminary****105 Purpose of ch 5**

Clause 105 outlines the purpose of this chapter, including:

- the making of references to the Mental Health Court in relation to the mental state of persons charged with serious offences
- the hearing of references to the Court
- the decisions the Court may make on a reference in relation to a person, including whether the person was of unsound mind when the offence was allegedly committed or is unfit for trial, and
- the making of forensic orders and treatment support orders by the Court.

106 Definitions for ch 5

Clause 106 provides the definitions for this chapter.

107 Meaning of *associated offence*

Clause 107 provides a definition of ‘associated offence’, meaning another offence alleged to have been committed at or about the same time as a serious offence for which the matter was referred to the Court.

108 Meaning of *diminished responsibility*

Clause 108 provides a definition of diminished responsibility by reference to the Criminal Code.

109 Meaning of *unsound mind*

Clause 109 provides for the meaning of 'unsound mind'. The clause is based generally on the definition of 'unsound mind' in the *Mental Health Act 2000*. However, clause 109(1)(b) is new and includes, within the meaning of unsound mind, a state of mind described in section 28(1) of the Criminal Code (namely, a mind disordered by unintentional intoxication or stupefaction) for which section 27(1) of the Criminal Code applies to a person. The references in clause 109(1)(a) and (b) to section 27(1) of the Criminal Code require that the person is deprived of at least one of the three capacities mentioned in section 27(1).

Part 2 Making of references by particular persons**110 When reference may be made**

Clause 110 outlines who may make a reference to the Court, namely, the person alleged to have committed the offence or the person's lawyer, or the director of public prosecutions. In addition, the chief psychiatrist may refer a matter under chapter 4, and another court may refer the matter in specific circumstances under chapter 6.

111 How reference is made

Clause 111 outlines that references are to be made by filing a notice in the approved form in the registry for the Court.

Part 3 Proceedings for references**Division 1 Preliminary****112 Application of pt 3**

Clause 112 states the application for this part. Chapter 15, part 2 provides for the suspension of proceedings against a person when a reference is made.

Division 2 Notice requirements etc.**113 Notice of reference**

Clause 113 states who must be given a notice of the reference.

114 Parties to proceeding

Clause 114 states the parties to proceedings, namely, the person the subject of the reference, the director of public prosecutions and the chief psychiatrist. However, if the person the subject of the reference has an intellectual disability, the director of forensic disability (under the *Forensic Disability Act 2011*) may elect to be a party. Where this occurs, the chief psychiatrist may elect not to be a party.

115 Notice of hearing

Clause 115 outlines who is to receive a notice of the hearing.

Division 3 Particular decisions**116 Decision about unsoundness of mind and diminished responsibility**

Clause 116 provides that the Mental Health, on hearing a reference, must decide whether the person was of unsound mind when the alleged offence was committed or whether the person was of diminished responsibility in relation to a charge of murder.

117 Substantial dispute about whether person committed offence

Clause 117 provides that the Court cannot make a decision in relation to unsoundness of mind and diminished responsibility if there is a substantial dispute about whether the person committed the alleged offence. In these cases, the Court must then proceed to decide if the person is fit for trial under the following clause.

118 Decisions about fitness for trial

Clause 118 provides that the Mental Health Court must decide whether the person is fit for trial if the Court decides the person was not of unsound mind, or where there is a substantial dispute about whether the person committed the alleged offence. If the Court decides the person is not fit for trial, the Court must also decide whether the unfitness for trial is of a permanent or temporary nature.

The Bill does not define 'fit for trial' but relies on the common law, as is the case in the criminal jurisdiction in Queensland.

Division 4 Procedural provisions**119 Unsound mind – discontinuance of proceeding**

Clause 119 states that proceedings against a person for an offence are discontinued if the Court finds the person of unsound mind. However, despite this decision, the person may elect to be tried for the offence. The election is made by giving the director of public prosecutions written notice within 28 days.

120 Diminished responsibility – discontinuance of proceeding

Clause 120 deals with the finding of diminished responsibility in relation to a charge of murder. In these cases, proceedings for the offence of murder are discontinued, however, proceedings may be continued for another offence constituted by the relevant act or omission.

121 Temporary unfitness for trial – stay of proceedings

Clause 121 states that, where the Court decides a person is temporarily unfit for trial, proceedings are stayed until the Mental Health Review Tribunal decides the person is fit for trial.

122 Permanent unfitness for trial – discontinuance of proceeding

Clause 122 provides that proceedings against a person for an offence are discontinued if the Court finds the person is permanently unfit for trial.

123 Fit for trial - continuation of proceeding

Clause 123 provides that proceedings against the person charged with the offence are to proceed according to law if the Court finds the person not of unsound mind when the offence was allegedly committed and is fit for trial.

124 Related orders if person fit for trial

Clause 124 deals with circumstances where proceedings continue under the previous clause. In these cases, the Court can direct that the person be remanded in custody, be granted bail or be detained in an authorised mental health service.

Division 5 Withdrawal of particular references

125 Application of div 5

Clause 125 provides that the division applies to references to the Mental Health Court.

126 Application to withdraw reference

Clause 126 provides that the person who made the reference may apply to the Court for the reference to be withdrawn.

127 Notices if application to withdraw filed

Clause 127 states that the parties are to be notified of the application.

128 Decision on application

Clause 128 states that the Court may grant or refuse the application.

Part 4 Forensic orders and treatment support orders

Division 1 Preliminary

129 Definition for pt 4

Clause 129 defines ‘relevant unlawful act’ as meaning the unlawful act that constituted the offence to which the reference relates.

130 Explanation about operation of forensic orders and treatment support orders

Clause 130 explains the difference between a forensic order and a treatment support order. See the “Achievement of Policy Objectives” section of these Explanatory Notes.

131 Orders if unsound mind or permanent unfitness for trial

Clause 131 applies where a person is found of unsound mind or permanently unfit for trial. In these cases, the Court may make a forensic order, a treatment support order, or make no order.

132 Orders if temporary unfitness for trial

Clause 132 applies where a person is found temporarily unfit for trial. In these cases, the Court must make a forensic order or a treatment support order.

133 Matters to which the Mental Health Court must have regard

Clause 133 outlines the matters that the Court must have regard to in making a decision, namely, the relevant circumstances for the person (as defined in the dictionary), the nature of the offence and any victim impact statement. This clause does not limit the other matters the Court must consider where it is stated in the Bill. For example, clause 139 states additional matters that the Court must consider in deciding whether a person on an inpatient category has treatment in the community.

Division 2 Forensic orders

Subdivision 1 Making of forensic orders

134 Requirements for making forensic order

Clause 134 outlines the circumstances where the Mental Health Court must make a forensic order for a person. The Court must make a forensic order if it is necessary to protect the safety and welfare of the community, including protecting the community from the risk of serious harm to other persons or property.

There are two types of forensic orders the Court can make. If the Court considers the person's unsoundness of mind or unfitness for trial is because of a mental illness or mental condition other than an intellectual disability, the Court is to make a forensic order (mental health). If the Court considers the person's unsoundness of mind or unfitness for trial is due to an intellectual disability, the Court is to make a forensic order (disability). If the person has a dual disability, and the Court considers the person needs treatment and care for both the mental illness and the intellectual disability, the Court may make a forensic order (mental health).

135 Conditions

Clause 135 provides that the Court may impose conditions on a forensic order. A condition may be that the person the subject of the order must not contact another person such as a victim of an unlawful act. Under the definition of 'condition', the Court may require a forensic patient to wear a tracking device. However, the Court cannot impose a condition that requires a person to take a particular medication or dose of medication.

136 Recommendations for intervention programs

Clause 136 provides that the Court may also make recommendations for intervention programs for the person, such as drug and alcohol programs.

137 Non-revocation period

Clause 137 provides for non-revocation periods for certain forensic orders. For this purpose, the Bill specifies a 'prescribed offence' (see dictionary), including murder, manslaughter, grievous bodily harm and rape. For these offences, the Court may set a non-revocation period for the order of up to 10 years. This does not apply if a forensic order is made due to a person being temporarily unfit for trial.

Subdivision 2 Treatment in the community

138 Mental Health Court to decide category

Clause 138 provides that the Court must decide the category of a forensic order, namely, an inpatient category or a community category. A community category can only be made if the Court is satisfied that there is not an unacceptable risk to the safety of the community, because of the person's mental condition or intellectual disability. For persons on a forensic order (disability), an inpatient category may be referred to as a residential category if the person is the responsibility of the forensic disability service (see clause 141).

139 Inpatient category

Clause 139 deals with circumstances where the Court decides the category of a forensic order is inpatient. The Court must then decide whether the person is to have any treatment in the community. The Court may decide that:

- the person is to receive no limited community treatment

- at a future time, an authorised doctor (or a senior practitioner under the Forensic Disability Act) may authorise treatment in the community up to the extent, and subject to the conditions decided by the Court; (initially the patient would be an inpatient with no limited community treatment), or
- the patient must have limited community treatment of a stated extent; in making this decision, the Court may also decide whether or not an authorised doctor (or senior practitioner) may amend the level treatment in the community at a future time.

The basis on which an authorised doctor may amend a forensic order in relation to treatment in the community is outlined in chapter 7. Under clause 212, a decision of an authorised doctor must not be contrary to a decision of the Mental Health Court. The tribunal may amend the order under chapter 12.

140 Community category

Clause 140 deals with circumstances where the Court decides the category of a forensic order is community. The Court may decide that:

- the category of the order must be a community category, or
- at a future time, an authorised doctor (or a senior practitioner under the Forensic Disability Act) may change the extent of treatment in the community, to the extent, and subject to the conditions decided by the Court. For example, the Court may approve changing a community category to an inpatient category if stated circumstances happened.

Subdivision 3 Other provisions

141 When category of forensic order (disability) may be described as residential

Clause 141 states that an ‘inpatient category’ may be described as a ‘residential category’ for persons on a forensic order (disability) the responsibility of the forensic disability service.

142 Admission to high security unit—stay of order

Clause 142 enables the Court to stay in order for up to 7 days to make a physical place available for a person at the high security unit.

Division 3 Treatment support orders

Subdivision 1 Making of treatment support orders

143 Requirements for making treatment support orders

Clause 143 outlines circumstances where the Mental Health Court must make a treatment support order. A treatment support order is a lower-level order where the level of community treatment is determined by an authorised doctor in a similar way to that for treatment authorities. It is also anticipated that, under the chief psychiatrist's policies and practice guidelines, the level of oversight and scrutiny for a person on a treatment support order will be less than for a person on a forensic order. This type of order may be appropriate where the person's role in an offence was relatively minor.

The Court must make a treatment support order if this type of order, but not a forensic order, is necessary to protect the safety and welfare of the community, including protecting the community from the risk of serious harm to other persons or property.

144 Conditions

Clause 144 provides that the Court may impose conditions on a court treatment order. A condition may be that the person the subject of the order must not contact another person such as a victim of an unlawful act.

Subdivision 2 Treatment in the community

145 Mental Health Court to decide category and community treatment

Clause 145 provides that the Court must decide the category of a treatment support order, namely an inpatient category or a community category. The basis of the decision is similar to that for treatment authorities, namely, the person should be treated under a community category unless the safety and welfare of the person and the safety of others cannot reasonably be met this way.

If the category is inpatient, the Court may approve limited community treatment for the person.

If the Court decides the category of the order is community, or approves limited community treatment for the person, the Court must decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community under the order. This is consistent with taking a least restrictive approach to treatment. The tribunal may amend the order under chapter 12.

Division 4 Responsibility for treatment and care**146 Responsibility for person subject to forensic order (mental health) or treatment support order**

Clause 146 provides that, for a forensic order (mental health), the Court must decide the authorised mental health service responsible for the person's treatment and care.

147 Responsibility for person subject to forensic order (disability)

Clause 147 provides that, for a forensic order (disability), the Court must decide which authorised mental health service or the forensic disability service is responsible for the person's care.

148 Certificate of forensic disability service availability

Clause 148 requires the chief executive (forensic disability) to prepare a certificate on whether or not there is a capacity for a person's care in the forensic disability service.

Division 5 Transport**149 Transport to authorised mental health service**

Clause 149 provides that an authorised person, as defined in chapter 11, may transport persons to an authorised mental health service when an order is made by the Mental Health Court.

150 Transport to forensic disability service

Clause 150 provides that authorised persons, and authorised practitioners under the *Forensic Disability Act 2011*, may transport persons to the forensic disability service when an order is made for the person.

Division 6 Other provisions**151 Matters authorised by forensic order (mental health) or treatment support order**

Clause 151 states that a forensic order (mental health) or treatment support order authorises involuntary treatment for a person's mental illness and, for an inpatient, the detention of the person in an authorised mental health service. For persons with a dual disability, the order also authorises the provision of involuntary care for the person's intellectual disability.

152 Matters authorised by forensic orders (disability)

Clause 152 states that a forensic order (disability) authorises involuntary care for the person's intellectual disability and, for a person on an inpatient category, the person's detention in an authorised mental health service or the forensic disability service.

153 Status of forensic order or treatment support order if amended

Clause 153 clarifies that an order made by the Court continues as an order of the Court subject to future amendments under the Act by the Mental Health Review Tribunal or an authorised doctor.

154 Ending of order made because of temporary unfitness for trial

Clause 154 applies if the Court makes a forensic order (mental health), forensic order (disability) or treatment support order for a person because the person is unfit for trial but the unfitness for trial is not permanent. In these circumstances, the Mental Health Review Tribunal periodically reviews the person's mental state to decide whether the person is fit for trial. If the tribunal decides the person remains unfit for trial, the tribunal must also decide whether the person is likely to be fit for trial in a reasonable time (see clause 486). The director of public prosecutions is advised of this decision.

Under clause 488, the director of public prosecutions may then decide to discontinue the proceedings, for example, if the person is unlikely to be fit for trial in a reasonable time. Also, under clause 489, the proceedings are discontinued at the end of the periods prescribed in that clause. Under both these circumstances, the relevant forensic order or treatment support order continues, as it has not been possible for the person to be tried for the alleged offence.

However, under clause 491, the director of public prosecutions may discontinue proceedings for other reasons, for example, if new evidence indicates that the person did not commit the alleged offence. If the proceedings are discontinued due to a decision made under clause 491 then, under this clause (clause 154), the order will end, as the basis for the making of the order no longer exists.

Part 5 Other provisions**Division 1 Notice of decisions and orders****155 Notice of decisions and orders**

Clause 155 requires the registrar to notify various persons of the Court's decision.

Division 2 Admissibility and use of evidence

156 Definition for div 2

Clause 156 defines 'expert's report' for this division.

157 Admissibility of expert's report at trial

Clause 157 deals with the admissibility and use of an expert's report at proceedings in the Mental Health Court.

158 Particular statements not admissible

Clause 158 deals with the admissibility and use of statements at proceedings in the Mental Health Court.

159 Issue of mental condition may be raised at trial

Clause 159 deals with the admissibility of the Mental Health Court's decision in relation to the person's mental condition at a trial.

160 Other use of expert's report

Clause 160 deals with the admissibility and use of an expert's report at proceedings in the Mental Health Court.

Division 3 Victim impact statements

161 Application of div 3

Clause 161 provides that this division applies where the Court decides a person was of unsound mind at the time of an unlawful act or is unfit for trial.

162 Preparation of victim impact statement

Clause 162 enables a victim of an unlawful act or a close relative of the victim to prepare and give to the prosecuting authority a victim impact statement in relation to the unlawful act. This statement may include a request that the Court impose a condition that the person the subject of the order not contact the victim or a close relative of the victim.

163 Production of victim impact statement by prosecuting authority

Clause 163 requires a prosecuting authority to give the victim impact statement to the Court.

164 Restrictions on disclosing victim impact statement

Clause 164 provides that the statement must not be disclosed to the person the subject of the hearing unless the victim requests it. If the victim makes such a request and the Court considers the victim impact statement may adversely affect the health and wellbeing of the person charged with the offence, the Court may prohibit the disclosure of the statement to the person.

165 Use of victim impact statement by Mental Health Court

Clause 165 provides that the Court may place the weight on a victim impact statement it considers appropriate.

Division 4 Persons subject to existing orders or authorities**166 Person subject to existing forensic order**

Clause 166 deals with circumstances where a person before the Court is already on a forensic order. The Court may amend the existing forensic order or revoke the existing order and replace it with a new order.

167 Person subject to existing treatment authority or treatment support order

Clause 167 deals with circumstances where a person before the Court is already on a treatment support order or a treatment authority. If the Court makes a forensic order (mental health), the treatment support order or treatment authority ends.

Division 5 Miscellaneous**168 Relationship with ch 16, pt 1**

Clause 168 states that this chapter prevails if there is an inconsistency with chapter 16.

Chapter 6 Powers of courts hearing criminal proceedings and related processes**Part 1 Preliminary****169 Purpose of ch 6**

Clause 169 outlines the purpose of this chapter, related to powers for Magistrates Courts, the District Court and the Supreme Court to deal with cases where there is a concern about the mental condition of a person.

170 Childrens Court

Clause 170 provides that references in this part to a Magistrates Court are taken to include a reference to the Childrens Court for relevant offences.

Part 2 Magistrates Courts**Division 1 General****171 Definition for div 1**

Clause 171 uses the definition of ‘simple offence’ for this division that applies under the *Justices Act 1886*, namely, any offence (indictable or not) punishable, on summary conviction before a Magistrates Court by fine, imprisonment, or otherwise. The effect of this is that a magistrate’s powers to dismiss complaints is limited to matters that a magistrate may decide.

172 Power to dismiss complaint—unsound mind or unfitness for trial

Clause 172 applies if, at a proceeding before a Magistrates Court of a person charged with a simple offence, it appears the person was of unsound mind when the offence was allegedly committed or is unfit for trial. In these circumstances, the court may dismiss the complaint for the charge.

173 Power to adjourn hearing of complaint—temporary unfitness for trial

Clause 173 enables a Magistrates Court to adjourn the hearing of the complaint if it appears that the person is unfit for trial but may become fit for trial within 6 months.

174 Power to refer person to appropriate agency or entity

Clause 174 applies where the Magistrates Court dismisses a complaint against a person who does not have a mental illness. The court may refer the person to a relevant government agency, such as a disability services agency or the health department, to consider what treatment and care may be provided to the person. The referral is for the information of the agencies only and does not mandate any treatment or care.

Division 2 References to Mental Health Court**175 When reference may be made**

Clause 175 gives a Magistrates Court the power to refer a matter to the Mental Health Court in specific circumstances. This applies where it is appears the person may have been of unsound mind when the offence was allegedly committed or is unfit for trial, and:

- the nature and circumstances of the offence create an exceptional circumstance in relation to the protection of the community, and

- the making of a forensic order or treatment support order for the person may be justified.

This provision is similar to the arrangements for criminal matters under the Criminal Code.

176 How reference is made

Clause 176 outlines how a reference is made to the Mental Health Court.

Division 3 Examination orders

177 Power to make examination order for person charged with simple offence

Clause 177 gives a Magistrates Court the power to make examination orders for persons with a mental illness where a matter has been dismissed by the court or the court otherwise considers the person would benefit from an examination by an authorised doctor. In these circumstances, an authorised doctor in an authorised mental health service may examine the person without the person's consent to decide whether a treatment authority should be made or to make a recommendation as to the person's treatment or care. If the person is already on an order or authority, the authorised doctor may change the treatment and care being provided.

178 Examination of person

Clause 178 enables a person to be detained for 6 hours for the purpose of an examination. This period may be extended by a further 6 hours.

179 Examination report

Clause 179 requires an authorised doctor to prepare a report as result of the examination. Where relevant, the authorised doctor must explain to the person the benefits of being treated voluntarily in accordance with the authorised doctor's recommendations.

180 Admissibility of examination report

Clause 180 provides that an examination report may be admissible in the current proceedings and any future proceedings for the person if relevant. This will enable the court to consider the result of a previous examination order if the person appears before the court in relation to another offence at a future time.

Part 3 Supreme Court and District Court**Division 1 Making reference to Mental Health Court if person pleads guilty to indictable offence****181 Application of div 1**

Clause 181 states that this division applies where a person pleads guilty to a charge and it is alleged or appears the person was, or may have been, of unsound mind when the offence was allegedly committed or is unfit for trial.

182 Power to order plea of not guilty

Clause 182 enables a Supreme Court or District Court to enter a plea of not guilty for the person.

183 Power to make reference to Mental Health Court and related orders

Clause 183 provides that the Supreme Court or District Court may refer the matter to the Mental Health Court. The court may also remand the person in custody, order that the person be detained in an authorised mental health service, or grant the person bail.

184 How reference to Mental Health Court is made

Clause 184 states how a reference is to be made to the Mental Health Court under this division.

185 Persons who may give agreement for detention

Clause 185 states that an administrator of an authorised mental health service or the chief psychiatrist may give agreement for detention under this division.

186 Agreement for detention—administrator

Clause 186 outlines the criteria for the agreement of the detention by an administrator.

187 Agreement for detention—chief psychiatrist

Clause 187 outlines the criteria for the agreement of the detention by the chief psychiatrist.

188 Effect of order for detention

Clause 188 states that the person may be transported and detained in an authorised mental health service under the order.

Division 2 Forensic orders (Criminal Code)

189 Application of div 2

Clause 189 applies where a court makes a forensic order (Criminal Code) as a result of findings under the Criminal Code, namely:

- a 'section 613 finding' that the person is not capable of understanding proceedings at a trial
- a 'section 645 finding' that the person is not of sound mind, or
- a 'section 647 finding' that the person is not guilty on account of the person being of unsound mind when the alleged offence occurred.

190 Registrar of court to give notice of order

Clause 190 provides that the registrar of the court must give notice of the making of the order to the Mental Health Review Tribunal. The tribunal is then required to review the order under chapter 12.

191 Power to transport person to authorised mental health service

Clause 191 provides that an authorised person may transport the person under the order to an authorised mental health service.

Part 4 Detention in authorised mental health service during trial

192 Definition for pt 4

Clause 192 outlines the definitions for this part.

193 Power to order person's detention in authorised mental health service

Clause 193 applies where a court decides a person should be detained in an authorised mental health service during an adjournment in a trial. In these circumstances, the court may order the person be detained if there is an agreement for the detention of the person by the administrator of an authorised mental health service.

194 Persons who may give agreement for detention

Clause 194 provides that an administrator of an authorised mental health service or the chief psychiatrist may agree to the detention.

195 Agreement for detention—administrator

Clause 195 outlines the criteria for the agreement of the detention by an administrator.

196 Agreement for detention—chief psychiatrist

Clause 196 outlines the criteria for the agreement of the detention by the chief psychiatrist.

197 Effect of order for detention

Clause 197 gives an authorised person the power to transport the person subject to an order to an authorised mental health service.

Chapter 7 Treatment and care of patients**Part 1 Preliminary****198 Purpose of ch 7**

Clause 198 outlines the purpose of this chapter, namely to provide for:

- the responsibilities of authorised doctors and administrators of authorised mental health services in providing treatment and care to patients under this Bill
- the assessment of patients subject to a treatment authority to decide whether the continuation of the authority is appropriate
- the authorisation of treatment in the community for involuntary patients
- the approval of temporary absences for particular involuntary patients
- the appointment of nominated support persons and the recording of advance health directives, enduring powers of attorney and details relating to nominated support persons
- the placing of restrictions on the use of electroconvulsive therapy and non-ablative neurosurgery, and
- the prohibition of psychosurgery and other treatments.

199 Relationship between this Act and custodial status of particular patients

Clause 199 clarifies the relationship between powers that may be exercised under this Bill and the custodial status of a person. This applies, for example, where a person on a treatment authority may be serving a period of imprisonment. In these cases, decisions about the person's authority or order are not to take into account the person's custodial status. However, the custodial status of the patient takes precedence. This means, for example, a person on a treatment authority on an inpatient category may be lawfully held in custody, as the custodial status takes precedence. These provisions are subject to the classified patient provisions in chapter 3.

Part 2 Responsibility to provide treatment and care**200 Application of pt 2**

Clause 200 states who this part applies to, namely:

- a patient subject to a treatment authority, forensic order or treatment support order
- a person from another State detained under clause 366
- a classified patient (voluntary)
- a person receiving treatment and care under an advance health directive, or with the consent of a personal guardian or attorney.

It should be noted that classified patients (involuntary) are covered under this part, as they will be subject to a treatment authority, forensic order or treatment support order.

201 Examination of patient for purpose of providing treatment and care

Clause 201 provides that an authorised doctor must examine the patient and decide, and record in the patient's health records, the treatment and care to be provided to the patient. The authorised doctor must decide the treatment and care in consultation with the patient and having regard to any wishes or preferences of the patient such as those expressed in an advanced health directive.

202 Authorised doctor's responsibilities for treatment and care

Clause 202 requires an authorised doctor to ensure that the treatment and care provided to a patient is, and continues to be, appropriate to the patient's needs and in accordance with the Bill. The authorised doctor must record in the patient's health records the proposed and actual treatment and care provided to a patient.

203 Administrator's responsibilities for treatment and care

Clause 203 outlines the responsibilities of the administrator of an authorised mental health service, namely:

- to take reasonable steps to ensure that the patient receives the treatment and care recorded in the patient's health records by the authorised doctor, and the treatment and care appropriate for any other illness or condition affecting the patient
- to ensure that the systems for recording the patient's treatment and care, both planned and provided, can be audited
- to ensure that regular assessments of the patient happen as decided by an authorised doctor, and
- take reasonable steps to ensure that the patient's treatment and care is provided in accordance with the requirements of this Bill.

Part 3 Patients subject to treatment authorities

Division 1 Preliminary

204 Application of pt 3

Clause 204 states that this part applies to patients on a treatment authority.

Division 2 Regular assessment

205 Authorised doctor must assess patient

Clause 205 requires an authorised doctor to regularly assess the patient to decide whether the treatment criteria continue to apply and whether there is a less restrictive way for the patient to receive treatment and care. This clause also sets out the obligations of an authorised doctor in relation to discussing the assessment with the patient.

Division 3 Actions that may be taken after assessment

206 Authorised doctor may revoke treatment authority

Clause 206 deals with an authorised doctor revoking a treatment authority.

207 Authorised psychiatrist may revoke treatment authority if patient missing

Clause 207 enables an authorised psychiatrist to revoke a treatment authority if a person has not been located for a period of 6 months.

208 Chief psychiatrist may revoke treatment authority

Clause 208 gives the chief psychiatrist the ability to revoke a treatment authority at any time.

209 Amendment of treatment authority to change category, limited community treatment or conditions

Clause 209 enables an authorised doctor to amend a treatment authority in a number of ways, namely:

- to change the category of the authority
- to authorise, revoke, or change limited community treatment, or
- to impose or change a condition of the authority.

These provisions do not apply if the patient is also a classified patient.

These amendments cannot change a condition imposed by the tribunal. Also, if the tribunal decided that a patient must have a stated amount of treatment in the community which can't be reduced by an authorised doctor, the authorised doctor cannot reduce the extent of treatment in the community. This is subject to the following clause.

210 Amendment of treatment authority to change category to inpatient

Clause 210 enables an authorised doctor to change the category of a treatment authority from community to inpatient in limited circumstances, even if the tribunal has ordered that the person be on a community category. This applies where there has been a material change in the patient's mental state, and the patient requires urgent treatment and care as an inpatient. When this occurs, the administrator of the patient's treating health service must give the tribunal written notice of the amendment for the purpose of reviewing the authority.

Part 4 Patients subject to forensic orders**211 Application of pt 4**

Clause 211 states that this part applies to a patient of an authorised mental health service on a forensic order (mental health) or a forensic order (disability). However, these provisions do not apply if the patient is also a classified patient.

212 Amendment of forensic order (mental health) or forensic order (disability) to change category, limited community treatment or conditions

Clause 212 enables an authorised doctor to amend a forensic order in a number of ways, namely:

- to change the category of the order
- to authorise, revoke, or change limited community treatment, or
- to impose or change a condition of the order.

In making these amendments, the authorised doctor cannot make a decision contrary to a decision of the Mental Health Court or the Mental Health Review Tribunal. For example, if the Mental Health Court decided that the patient must be on inpatient category, the authorised doctor cannot change the category of the order.

213 Amendment of forensic order to change category to inpatient

Clause 213 enables an authorised doctor to change the category of a treatment authority from community to inpatient in limited circumstances, even if the Court or tribunal has ordered that the person be treated on a community category. This applies where there has been a material change in the patient's mental state, and the patient requires urgent treatment and care as an inpatient. When this occurs, the administrator of the patient's treating health service must give the tribunal written notice of the amendment for the purpose of reviewing the authority.

214 Limited community treatment for patient subject to forensic order (Criminal Code)

Clause 214 provides that persons on a forensic order (Criminal Code) may receive limited community treatment with the approval of the chief psychiatrist. This is only to apply until the Mental Health Review Tribunal reviews the order.

Part 5 Patients subject to treatment support orders**215 Application of pt 5**

Clause 215 states that this part applies to persons on treatment support orders unless the person is a classified patient.

216 Amendment of treatment support order to change category, limited community treatment or conditions

Clause 216 enables an authorised doctor to amend a treatment support order in a number of ways, namely:

- to change the category of the order
- to authorise, revoke, or change, limited community treatment, or
- to impose or change a condition of the order.

These amendments cannot change a condition imposed by the Mental Health Court or tribunal. Also, if the Court or tribunal decided that a patient must have a stated amount of treatment in the community which can't be reduced by an authorised doctor, the authorised doctor cannot reduce the extent of treatment in the community. This is subject to the following clause.

217 Amendment of treatment support order to change category to inpatient

Clause 217 enables an authorised doctor to change the category of a treatment authority from community to inpatient in limited circumstances, even if the Court or tribunal has ordered that the person be on a community category. This applies where there has been a material change in the patient's mental state, and the patient requires urgent treatment and care as an inpatient. When this occurs, the administrator of the patient's treating health service must give the tribunal written notice of the amendment for the purpose of reviewing the authority.

Part 6 Classified patients and patients subject to judicial orders

218 Application of pt 6

Clause 218 states that this part applies to classified patients and patients subject to judicial orders (as defined). Classified patients are patients transferred from custody to an authorised mental health service under chapter 3 of the Bill. There are various provisions in the Bill where courts may make orders requiring a person to be detained in an authorised mental health service for a limited period of time (called judicial orders).

219 Authorisation of limited community treatment

Clause 219 provides for limited community treatment for classified patients and judicial order patients. This limited community treatment must be approved by the chief psychiatrist and is restricted to escorted leave on the grounds of an authorised mental health service.

Part 7 Obligations in relation to treatment in the community

220 Patient's obligations to be recorded and explained

Clause 220 requires an authorised doctor to decide, in consultation with the patient, the treatment and care to be provided to the patient while in the community. This includes the obligations the patient will have, for example, to attend for scheduled health appointments. The authorised doctor must record this in the patient's health records.

221 Chief psychiatrist may approve temporary absence

Clause 221 enables the chief psychiatrist to approve temporary absences for particular patients, namely forensic patients, classified patients and judicial order patients. Temporary absences may be approved for matters such as medical treatment, to appear before a court, or on compassionate grounds.

Part 8 Advance health directives, nominated support persons and records system

Division 1 Advance health directives

222 Advance health directive may include views about treatment and care

Clause 222 states an advance health directive under the *Powers of Attorney Act 1998* may include the principal's views, wishes and preferences about his or her future treatment or care for a mental illness.

Division 2 Nominated support persons

223 Who is a *nominated support person*

Clause 223 provides for the appointment of one or two nominated support persons. The appointing person must have capacity to make the appointment at the time of the appointment.

224 Functions of nominated support person

Clause 224 provides for the functions of a nominated support person. This includes receiving notices for the appointing person under the Bill, receiving confidential information about the person's treatment and care, making a request for a psychiatric report if the appointing person is charged with a serious offence, and representing or acting as a support person at the Mental Health Review Tribunal.

Division 3 Records system

225 Chief psychiatrist to maintain records system

Clause 225 requires the chief psychiatrist to maintain a record of advance health directives, enduring powers of attorney, and nominated support persons.

226 Request to keep record

Clause 226 enables a person to request that an advance health directive, enduring power of attorney or nominated support person be kept on the system.

227 Requirement to give notice—matters relating to advance health directive

Clause 227 requires notice be given to the administrator of certain matters, such as the revocation of advance health directives.

228 Requirement to give notice—revocation of appointment of nominated support person

Clause 228 requires notice to be given of the revocation of the appointment of nominated support persons.

229 Requirement to give notice – resignation of nominated support person

Clause 229 requires a nominated support person to notify the relevant administrator of a resignation as a nominated support person.

230 Copy in records system is proof

Clause 230 states that a copy of an advance health directive or enduring power of attorney on the records system is proof of the making of the advance health directive.

Part 9 Regulated treatment**Division 1 Preliminary****231 Meaning of *regulated treatment***

Clause 231 defines regulated treatment for this part, namely electroconvulsive therapy and a 'non-ablative' neurosurgical procedure (such as deep brain stimulation).

Division 2 Informed consent**232 Requirements for informed consent**

Clause 232 outlines how a person may give informed consent under this division for a regulated treatment.

233 Explanation to be given

Clause 233 requires an explanation to be given of the nature of the treatment before informed consent is given.

Division 3 Electroconvulsive therapy**234 Offence to perform electroconvulsive therapy**

Clause 234 establishes an offence for performing electroconvulsive therapy on a person other than under this Bill.

235 Performance of electroconvulsive therapy with consent or tribunal approval

Clause 235 provides that a doctor in an authorised mental health service may perform electroconvulsive therapy on a person if:

- the person is an adult and has given informed consent to the therapy
- the person is an adult, is unable to give informed consent to the therapy, and the Mental Health Review Tribunal has approved the performance of the therapy on the person, or
- the person is a minor and the tribunal has approved the performance of the therapy on the person.

236 Performance of electroconvulsive therapy in emergency

Clause 236 outlines how certain involuntary patients (subject to a treatment authority, forensic order or treatment support order, or a person from another State detained under clause 366) may be treated with electroconvulsive therapy in an emergency. This can only be undertaken if a doctor and the senior medical administrator of the patient's treating health service certify that the therapy is necessary to save the patient's life or prevent the patient from suffering irreparable harm. An application must also be made to the Mental Health Review Tribunal to approve future electroconvulsive therapy. To meet this requirement, an application may have already been made to the tribunal, or an application may be made when the certificate is made.

Division 4 Non-ablative neurosurgical procedures**237 Offence to perform non-ablative neurosurgical procedure**

Clause 237 establishes an offence for performing a 'non-ablative neurosurgical procedure' on a person for treating the person's mental illness, other than under this Bill. A non-ablative neurosurgical procedure is a procedure on the brain that does not involve the deliberate damage or removal of brain tissue. An example of this procedure is deep brain stimulation.

238 Performance of non-ablative neurosurgical procedure with consent and tribunal approval

Clause 238 provides that the procedure may only be performed if the person gives informed consent to the procedure and it is approved by the Mental Health Review Tribunal.

Part 10 Prohibited treatment**239 Particular therapies prohibited**

Clause 239 establishes an offence for performing certain procedures, namely, insulin induced coma therapy and deep sleep therapy.

240 Psychosurgery prohibited

Clause 240 establishes an offence for performing 'psychosurgery'. Psychosurgery is a procedure on the brain, involving the deliberate damage or removal of brain tissue for the purpose of treating a mental illness.

Chapter 8 Use of mechanical restraint, seclusion, physical restraint and other practices

Part 1 Preliminary

241 Purpose of ch 8

Clause 241 provides that the purpose of this chapter is to place restrictions on the use of mechanical restraint, seclusion and physical restraint, and provide for the appropriate use of medications for patients in authorised mental health services.

242 Definitions for ch 8

Clause 242 provides the definitions for this chapter.

Part 2 Mechanical restraint

Division 1 Preliminary

243 Meaning of *mechanical restraint*

Clause 243 states the meaning of mechanical restraint. Mechanical restraint does not include restraint authorised or permitted under another law. This includes common law authorisations.

244 Offence

Clause 244 establishes an offence for using mechanical restraint on a patient other than under this Act. It should be noted that this offence applies in relation to any patient in a service.

Division 2 Authorised mechanical restraint

245 Requirements for use of mechanical restraint on relevant patients

Clause 245 provides that mechanical restraint may be used on certain involuntary patients (patients subject to a treatment authority, forensic order or treatment support order, or a person from another State detained under clause 366) under specific requirements, namely:

- the authorised mental health service is a high security unit or another authorised mental health service approved by the chief psychiatrist
- the device used is an approved device
- the chief psychiatrist has given approval for an authorised doctor to authorise the use of mechanical restraint
- the restraint is authorised by an authorised doctor
- the restraint complies with the restraint and seclusion policy
- if a reduction and elimination plan providing for mechanical restraint of the patient is approved—the restraint complies with the reduction and elimination plan

- the restraint is used with no more force than is necessary and reasonable in the circumstances, and
- the patient is observed continuously while restrained.

246 Application for chief psychiatrist's approval

Clause 246 outlines how an authorised doctor is to apply to the chief psychiatrist for approval to use mechanical restraint. As stated in the previous clause, the chief psychiatrist must approve all uses of mechanical restraint.

247 Chief psychiatrist may require amendment of application to include reduction and elimination plan

Clause 247 enables the chief psychiatrist to require an application to include a reduction and elimination plan for the use of the restraint. The purpose of these plans is to enable the chief psychiatrist to approve the use of mechanical restraint in the context of reducing and eliminating its use.

248 Chief psychiatrist may approve authorisation of use of mechanical restraint

Clause 248 provides that the chief psychiatrist may approve use of mechanical restraint on the patient if the chief psychiatrist is satisfied there is no other reasonably practicable way to protect the patient and others from physical harm.

249 Authorisation of use of mechanical restraint by authorised doctor

Clause 249 outlines how an authorised doctor may approve the use of mechanical restraint, namely:

- there is no other reasonably practicable way to protect the patient and others from physical harm
- the authorisation complies with an approval given by the chief psychiatrist
- the authorisation complies with the restraint and seclusion policy, and
- if a reduction and elimination plan providing for the use of mechanical restraint on the patient is approved - the authorisation complies with the reduction and elimination plan.

Mechanical restraint may only be applied for a period of up to 3 hours. The total period of restraint must not exceed 9 hours in a 24 hour period unless a reduction and elimination plan is in place.

250 Duties of health practitioner in charge of unit

Clause 250 outlines the duties of a person in charge of an inpatient or other unit for a patient if mechanical restraint is used.

251 Removal of mechanical restraint before authorisation ends

Clause 251 sets out the obligations of the authorised doctor and health practitioner in charge of the relevant unit in relation to the removal of mechanical restraint.

252 Reuse of mechanical restraint

Clause 252 enables mechanical restraint to be re-applied during the previously approved period.

Part 3 Seclusion**Division 1 Preliminary****253 Meaning of seclusion**

Clause 253 defines seclusion as the confinement of a person, at any time of the day or night alone in a room or area from which free exit is prevented.

254 Offence

Clause 254 establishes an offence for keeping a patient in seclusion in an authorised mental health service other than under this Act. It should be noted that this offence applies in relation to all patients in a service.

Division 2 Authorised seclusion**255 Requirements for seclusion of relevant patients**

Clause 255 provides that seclusion may be used for certain involuntary patients (patients subject to a treatment authority, forensic order or treatment support order, or a person from another State detained under clause 366) under specific requirements, namely:

- the seclusion is authorised by an authorised doctor
- if a written direction about seclusion is given to the authorised mental health service—the seclusion complies with the direction
- the seclusion complies with the restraint and seclusion policy
- if a reduction and elimination plan providing for seclusion of the patient is approved—the seclusion complies with the reduction and elimination plan
- the seclusion is done with no more force than is necessary and reasonable in the circumstances, and
- the patient is observed continuously or at intervals of no more than 15 minutes.

256 Chief psychiatrist may give written direction about seclusion

Clause 256 enables the chief psychiatrist to issue written directions about seclusion, including that an authorised mental health service may not keep any patient in seclusion or that a reduction and elimination plan must always be used to reduce and eliminate the use of seclusion.

257 Authorisation of seclusion by authorised doctor

Clause 257 outlines how an authorised doctor may approve seclusion, namely:

- there is no other reasonably practicable way to protect the patient or others from physical harm
- if a written direction about seclusion is given to the authorised mental health service—the seclusion complies with the direction
- the seclusion complies with the restraint and seclusion policy, and
- if a reduction and elimination plan providing for seclusion of the patient is approved—the seclusion complies with the reduction and elimination plan.

Seclusion may only be used for a period of up to 3 hours. The total period of seclusion must not exceed 9 hours in a 24 hour period unless a reduction and elimination plan is in place.

258 Extension of period of seclusion

Clause 258 enables seclusion to be extended beyond nine hours in a 24 hour period, for up to a further 12 hours, if an authorised doctor believes the seclusion should continue, which requires the authorised doctor to prepare a reduction and elimination plan for the patient. As an additional safeguard, an extension must be authorised by the senior medical administrator of the service. As soon as practicable after giving an extension, the authorised doctor must notify the chief psychiatrist and make an application for a reduction and elimination plan for the patient. The power under this section must only be exercised once for each occasion the patient receives treatment and care in the authorised mental health service.

259 Duties of health practitioner in charge of unit

Clause 259 outlines the duty of a person in charge of an inpatient or other unit for a patient if seclusion is used.

260 Removal from seclusion before authorisation ends

Clause 260 sets out the obligations of the authorised doctor and health practitioner in charge of the relevant unit in relation to removal of a patient from seclusion.

261 Return to seclusion after removal

Clause 261 enables a patient to be returned to seclusion during the approved period when removed under the previous clause.

Division 3 Emergency seclusion

262 Requirements for emergency seclusion by health practitioner in charge of unit

Clause 262 enables emergency seclusion if the health practitioner in charge of the inpatient or other unit is satisfied:

- there is no other reasonably practicable way to protect the patient or others from physical harm
- the seclusion is not prevented by, or otherwise inconsistent with, a direction given by the chief psychiatrist
- it is not practicable in the circumstances to seek authorisation from an authorised doctor.

Part 4 Reduction and elimination plans

263 What is a *reduction and elimination plan*

Clause 263 outlines a definition of a reduction and elimination plan.

264 Content of plan

Clause 264 outlines the content of a reduction and elimination plan, which includes strategies to reduce and eliminate the use of mechanical restraint and seclusion for a patient.

265 Application for chief psychiatrist's approval of plan

Clause 265 states an authorised doctor may apply to the chief psychiatrist for the approval of the plan.

266 Chief psychiatrist may approve plan

Clause 266 states how the chief psychiatrist may approve a plan.

Part 5 Physical restraint and clinical need for medication

Division 1 Physical restraint

267 Meaning of *physical restraint*

Clause 267 defines physical restraint. This does not include the giving of physical support or assistance, physical restraint that is authorised under another law, or the use of physical restraint in urgent circumstances.

268 Offence

Clause 268 establishes an offence for the use of physical restraint on a patient other than in accordance with the Act.

269 Requirements for use of physical restraint

Clause 269 requires the use of physical restraint to be authorised by an authorised doctor or a health practitioner in charge of an inpatient or other unit. This clause specifies that the use of physical restraint may only occur if it is necessary to:

- protect the person from physical harm
- provide treatment to the person
- prevent the person from causing serious damage to property, or
- prevent a patient that is detained in an authorised mental health service from leaving the service.

Division 2 Clinical need for medication**270 Meaning of *medication***

Clause 270 provides that medication includes the sedation of a patient.

271 Offence

Clause 271 establishes an offence for the use of medication on a patient unless it is clinically necessary for the patient's treatment and care.

Part 6 Policies**272 Chief psychiatrist must make policy**

Clause 272 requires the chief psychiatrist to develop policies on the use of mechanical restraint, seclusion, physical restraint and the appropriate use of medication, including ways to minimise adverse impacts on patients. The policy must also include requirements for the recording of information, and giving information to the chief psychiatrist.

Authorised doctors, authorised mental health practitioners, administrators and other persons performing functions under the Act must comply with the policy.

Chapter 9 Rights of patients and others**Part 1 Preliminary****273 Purpose of ch 9**

Clause 273 provides that the purpose of this chapter is to provide for:

- a statement of rights

- the right of a patient to be visited by nominated support persons, family, carers, other support persons, health practitioner, lawyers and other advisers
- the right of a patient to request a second opinion about the patient's treatment and care
- the right of a patient to be given oral explanations of matters under the Act
- the roles and responsibilities of a patient's nominated support person, family, carers and other support persons when supporting the patient's treatment and care, and
- the appointment and functions of independent patient rights advisers.

274 Definition for ch 9

Clause 274 outlines the definition of 'patient' for this chapter, namely:

- an involuntary patient, or
- a person receiving treatment and care for a mental illness in an authorised mental health service, other than as an involuntary patient, including a person receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.

Part 2 Statement of rights

275 Preparing statement of rights

Clause 275 requires the chief psychiatrist to prepare a written statement about the rights of patients, nominated support persons, families, carers and other support persons under this Bill.

276 Giving statement of rights to patients and others

Clause 276 requires the administrator of an authorised mental health service to ensure the patient is given an oral explanation of the information contained in the statement of rights and, if requested, provide a copy of the statement to the patient and support persons.

277 Display of signs

Clause 277 requires the administrator of an authorised mental health service to display signs stating the availability of the statement of rights.

Part 3 Rights of patients

278 Definition for pt 3

Clause 278 provides a definition for this part.

279 Visits by nominated support persons, family, carers and other support persons

Clause 279 states that a patient may be visited in an authorised mental health service by a nominated support person, family, carers and other support persons during any reasonable hours decided by the administrator.

280 Visits by health practitioners

Clause 280 states that a patient may be visited in an authorised mental health service by a health practitioner during any reasonable hours decided by the administrator.

281 Visits by legal or other advisers

Clause 281 states that a patient may be visited in an authorised mental health service by a lawyer or other adviser during any reasonable hours decided by the administrator.

282 Communication with others

Clause 282 states that a patient may communicate with other persons by post, telephone, mobile phone or an electronic communication device. However, an administrator for an authorised mental health service may place a restriction or prohibition on the use of phones or electronic devices by a patient if this is necessary to protect the safety and welfare of the patient and other persons in the service.

283 Information about treatment and care

Clause 283 provides that the patient's treating doctor is to provide timely and accurate information to the patient about the patient's treatment and care.

284 Understanding of oral information

Clause 284 applies if a provision of this Bill requires persons such as an authorised mental health practitioner, an authorised doctor or the administrator to tell or explain something to a patient, or discuss something with a patient. The person explaining the information must take reasonable steps to ensure the patient understands the information including in a way that has appropriate regard to the patient's age, culture, mental illness, communication ability and any disability.

The person must also tell, explain or discuss the matter with a nominated support person or, if there is no nominated support person, at least one of the patient's family, carer or other support person. This is subject to clause 286.

285 Written notices to be given to nominated support persons and others

Clause 285 applies if a provision of this Bill requires an authorised doctor, the administrator, the chief psychiatrist or the Mental Health Review Tribunal to give a written notice to a patient. This also applies for admission as a classified patient or when the transfer of a patient occurs. The notice must also be given to a nominated support person and, if the person is aware the patient has a personal guardian or attorney, the guardian or attorney. If there is no nominated support person, attorney or guardian, the notice may be given to one or more of the patient's family, carer or other support person.

286 Communication about patient with others

Clause 286 qualifies the obligation stated elsewhere in the Bill to tell, explain or discuss a matter with a person's nominated support person, family, carer or other support person. The obligation does not apply if:

- the patient requests, at a time when the patient has capacity to make the request, that the communication not take place
- the person is not readily available or willing for the communication to take place, or
- the communication with the person is likely to be detrimental to the patient's health and wellbeing.

287 Disclosure of confidential information under Hospital and Health Boards Act not limited

Clause 287 clarifies that the provisions under the Bill requiring certain communications to take place does not limit the ability to disclose information to other persons if permitted under the confidentiality provisions of the *Hospital and Health Boards Act 2011*. This includes section 144 (Disclosure with consent), section 145 (Disclosure of confidential information for care and treatment of person), and section 146 (Disclosure to person who has sufficient interest in health and welfare of person).

288 Second opinion about treatment and care

Clause 288 applies if an authorised mental health service has been unable to resolve a complaint about the provision of treatment and care to a patient. The patient or another person on the patient's behalf, may request the administrator to obtain a second opinion from another health practitioner who is independent of the patient's treating team.

Part 4 Roles and responsibilities of nominated support persons, family, carers and support persons**289 Roles**

Clause 289 outlines various roles for nominated support persons, family, carers and other support persons, namely to:

- contact the patient while the patient is receiving treatment and care
- participate in decisions about treatment, including being consulted by health practitioners about treatment options
- receive timely, accurate and appropriate information about the patient's treatment, care, support, rehabilitation and recovery, and
- arrange support services for the patient including, for example, counselling, community care and respite care.

290 Responsibilities

Clause 290 outlines the responsibilities of the patient's nominated support person, family, carers and other support persons.

Part 5 Independent patient rights advisers

291 Appointment

Clause 291 provides that an authorised mental health service must have systems in place to ensure that patients are advised of their rights under this Bill. Also, for public sector authorised mental health services, an independent patient rights adviser or advisers must be appointed in accordance with policies issued by the chief psychiatrist.

An independent patient rights adviser may be an employee of an entity that a Hospital and Health Service has engaged to provide services, or an employee of a Hospital and Health Service, but not employed in the Service's mental health service.

292 Functions

Clause 292 outlines the functions of independent patient rights advisers, primarily to ensure that patients, and patients' nominated support persons, family, carers and other support persons, are advised of their rights under this Bill.

293 Independence

Clause 293 provides that an independent patient rights adviser must be independent and impartial in the performance of a function under the Bill and cannot be subject to the direction of another person.

Chapter 10 Chief psychiatrist

Part 1 Preliminary

294 Purpose of ch 10

Clause 294 provides a purpose for this chapter, related to the functions of the chief psychiatrist.

295 Definition for ch 10

Clause 295 defines 'patient' for this chapter, namely:

- an involuntary patient, or
- a person receiving treatment and care for a mental illness in an authorised mental health service, other than as an involuntary patient, including a person receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.

Part 2 Appointment, functions and powers**296 Appointment**

Clause 296 states that there must be a chief psychiatrist appointed by the Governor-in-Council under this Bill.

297 Resignation

Clause 297 enables the chief psychiatrist to resign.

298 Termination of appointment

Clause 298 sets out the grounds for the Governor in Council to terminate the appointment of the chief psychiatrist.

299 Functions and powers

Clause 299 outlines the functions of the chief psychiatrist, namely:

- to the extent it is reasonably practicable, ensuring the protection of the rights of patients under this Bill while balancing the rights of others
- to the extent it is reasonably practicable, ensuring the involuntary examination assessment, treatment, care and detention of persons complies with this Bill
- facilitating the proper and efficient administration of this Bill
- monitoring and auditing compliance with this Bill
- promoting community awareness and understanding of this Bill
- advising and reporting to the Minister on any matter relating to this Bill, and
- other functions prescribed under this Bill.

300 Independence of chief psychiatrist

Clause 300 states that the chief psychiatrist is not under the control of the Minister or another person.

301 Delegation

Clause 301 enables the chief psychiatrist to delegate functions to an appropriately qualified public service employee in the department or a health service employee. In some instances, a delegation may only be made to a senior executive or health executive.

302 Power to require administrator to give documents or information

Clause 302 allows the chief psychiatrist to require an administrator of an authorised mental health service to provide the chief psychiatrist with information about a patient's treatment and care, or other information relevant to the performance of the chief psychiatrist's functions.

Part 3 Policies, practice guidelines and annual report**303 Making policies or practice guidelines**

Clause 303 states that the chief psychiatrist must make policies about the following:

- the application of the treatment criteria and least restrictive ways to treat patients
- record keeping for patients
- managing complaints
- how a second opinion may be requested
- treatment and care of forensic patients, including patients whose orders relate to 'prescribed offences'
- treatment and care of persons subject to treatment support orders
- minimising the risk of patients absconding, and returning those patients who have absconded, and
- the competencies necessary for a person to be an authorised doctor or authorised mental health practitioner.

The chief psychiatrist may also make policies and practice guidelines about any other matter related to the administration of the Bill. If any policy or practice guideline is inconsistent with the Bill it is invalid to the extent of its inconsistency. The policy and practice guidelines must be complied with by authorised doctors, authorised mental health practitioners, administrators and other persons involved in administering the Act.

304 Publication of policies and practice guidelines

Clause 304 states that policies and practice guidelines must be publically available and copies must be given to the administrator of each authorised mental health service. This must occur as soon as practicable after they are made. The administrator must ensure the policies and practice guidelines are given effect, and take reasonable steps to ensure the policy and practice guidelines are available to any person who must comply with them. The definition of 'policy' means that this applies to a policy made under clause 272 in relation to mechanical restraint, seclusion, physical restraint and the appropriate use of medications.

305 Annual report

Clause 305 provides for the requirements of the annual report. It must be given to the Minister 90 days after the end of each financial year detailing the administration of the Bill. The report is to include statistical data for each authorised mental health service about various functions performed under the Bill, the appointment of independent patient rights advisers, and recommendations from any investigations. The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives it.

Part 4 Investigations**306 Chief psychiatrist may investigate**

Clause 306 enables the chief psychiatrist to investigate a matter or direct an inspector to investigate a matter. For the purpose of investigating a matter, the chief psychiatrist or an inspector may exercise the powers under chapter 14.

307 Investigation report

Clause 307 provides that, after an investigation, a report must be prepared containing information, comment or recommendations for improvement. If an inspector prepared the report, the inspector must give the report to the chief psychiatrist. The chief psychiatrist may give the report to the person or entity the subject of the investigation.

308 Recommendations for improvement

Clause 308 provides that if the investigation report makes recommendations for improvement, the chief psychiatrist may, by written notice, direct the administrator of an authorised mental health service to take action to address the recommendations, and to report on the action taken.

Part 5 Serious risks to persons or public safety**309 Purpose of pt 5**

Clause 309 provides a purpose for this part.

310 Minister may direct chief psychiatrist to review matter

Clause 310 enables the Minister to direct the chief psychiatrist to investigate a matter related to a forensic patient or patients where there may be a serious risk to the health and safety of the public.

311 Actions chief psychiatrist may take

Clause 311 outlines the decisions that the chief psychiatrist may make, including suspending limited community treatment for a forensic patient or forensic patients, or changing categories from community to inpatient. An order is in effect for up to 7 days. The chief psychiatrist is to consult with certain persons before making a decision under this part.

312 Chief psychiatrist's order

Clause 312 states the information the order must contain.

313 Chief psychiatrist may vary period or end order

Clause 313 enables the chief psychiatrist to extend the order.

Part 6 Information notices**Division 1 Preliminary****314 Purpose of pt 6**

Clause 314 states the purpose of this part, namely, to enable victims and other persons affected by unlawful acts committed by a person on a forensic order or treatment support order to receive particular information about the person.

315 Definitions for pt 6

Clause 315 provides the definitions for this part.

Division 2 Application, amendment and revocation**316 Application**

Clause 316 outlines who may apply for an information notice, namely:

- a victim of an unlawful act
- a close relative of the victim, or
- another person affected by the unlawful act.

The application may request that a nominee receive the information from the chief psychiatrist under the notice. The purpose of this is to assist the victim by having the information provided to a person such as a close relative who can talk to the victim about the information.

317 Decision on application

Clause 317 provides that the chief psychiatrist must decide to approve or refuse the application. For a victim or a close relative of the victim, the chief psychiatrist must approve the application unless the application is considered frivolous or vexatious, or

the disclosure of the information is likely to cause serious harm to the patient's health or welfare or put the safety of the patient or someone else at serious risk.

318 Right to receive information under notice

Clause 318 establishes the right for a person who has an information notice for a patient to receive the specific information stated in Schedule 1 for the patient. This information is to be provided to the patient by the chief psychiatrist, with the clause stating that the chief psychiatrist may enter into an arrangement with the victim support service to give information to the person.

319 Amendment of notice to change applicant's nominee

Clause 319 enables an information notice to be amended to change the applicant's nominee.

320 Mandatory revocation

Clause 320 outlines circumstances when an information notice must be revoked, including where the patient's forensic order or treatment support order ends.

321 Discretionary revocation

Clause 321 outlines circumstances where an information notice may be revoked, including where the chief psychiatrist is unable, after making reasonable efforts, to locate the person entitled to receive information under the notice.

Division 3 Miscellaneous

322 Tribunal must give particular information to chief psychiatrist about relevant patient

Clause 322 requires the tribunal to give the chief psychiatrist information that the chief psychiatrist must give to the applicant, namely, a brief explanation of the decision that increases the level of treatment in the community.

323 Telling relevant patient about information notice

Clause 323 outlines the circumstances in which the chief psychiatrist may advise the patient of an information notice being made.

324 Misuse of information made available under an information notice

Clause 324 makes it an offence for a person that receives information under an information notice to publish the information.

325 Application of part to forensic disability client

Clause 325 applies this part to forensic disability clients, who are clients of the forensic disability service. In these instances, the director of forensic disability performs the function that the chief psychiatrist performs in this part.

Chapter 11 Authorised mental health services**Part 1 Preliminary****326 Purpose of ch 11**

Clause 326 outlines the purpose of this chapter.

Part 2 Declaration of authorised mental health services**327 Declaration of authorised mental health service**

Clause 327 enables the chief psychiatrist, by gazette notice, to declare a health service, or part of a health service to be an authorised mental health service. If the health service is not a public sector health service this may only be done by written agreement. The declaration may include any conditions the chief psychiatrist considers appropriate.

328 Declaration of high security unit

Clause 328 enables the chief psychiatrist, by gazette notice, to declare a public sector mental health service or part of the service a high security unit.

329 Declaration of authorised mental health service (rural and remote)

Clause 329 enables the chief psychiatrist, by gazette notice, to declare an authorised mental health service, or part of the service, to be an authorised mental health service (rural and remote) if the chief psychiatrist is satisfied the service is in a rural or remote area.

Part 3 Administrators of authorised mental health services**330 Appointment**

Clause 330 enables the chief psychiatrist, by gazette notice, to appoint an administrator of an authorised mental health service. The appointment may state the administrator by name or by reference to a stated office.

331 Functions

Clause 331 provides for the functions of the administrator of an authorised mental health service.

332 Powers

Clause 332 provides that the administrator of an authorised mental health service has the powers given under this Bill and may do all things necessary and convenient to perform their functions.

333 Register of authorised doctors and authorised mental health practitioners

Clause 333 provides that the administrator of an authorised mental health service must keep a register of authorised doctors and authorised mental health practitioners appointed by the administrator.

334 Record of relevant patients

Clause 334 provides that the administrator of an authorised mental health service must keep a record of relevant patients (involuntary or voluntary classified patients) of the service.

335 Delegation

Clause 335 enables the administrator of an authorised mental health service to delegate functions under this Act to an appropriately qualified health service employee of the service.

Part 4 Authorised doctors and authorised mental health practitioners**Division 1 Appointment, functions and powers****336 Appointment of authorised doctor**

Clause 336 enables the administrator of an authorised mental health service to appoint, in writing, a doctor as an authorised doctor. The administrator must be satisfied the doctor is qualified for the appointment.

337 When administrator is authorised doctor

Clause 337 provides that if an administrator is a psychiatrist, the administrator is also an authorised doctor.

338 Appointment of authorised mental health practitioner

Clause 338 enables the administrator of an authorised mental service to appoint, in writing, a health practitioner as an authorised mental health practitioner. The administrator must be satisfied the health practitioner is qualified for the appointment.

339 Appointment of health practitioner to perform particular functions of authorised doctor

Clause 339 provides that an administrator may appoint a health practitioner, other than a doctor, to perform some or all functions of an authorised doctor. A person may only be appointed if they belong to a class of practitioner prescribed by regulation. Particular nurse practitioners may, for example, be prescribed to perform some of these functions. The administrator must also be satisfied the person is appropriately qualified.

340 Appointment conditions and limit on powers

Clause 340 states that an authorised doctor, authorised mental health practitioner or health practitioner holds office on any conditions stated in the instrument of appointment or a signed notice given to them. This instrument of appointment or signed notice may limit the person's powers.

341 When office ends

Clause 341 states that the office of a person as an authorised doctor, authorised mental health practitioner or health practitioner ends if the authorised doctor ceases to be a doctor or the health practitioner ceases to be a health practitioner that was the basis for the person's appointment.

342 Functions and powers

Clause 342 provides that an authorised doctor, authorised mental health practitioner or health practitioner has the functions and powers given under the Bill.

343 Requirement to give notice of particular decisions

Clause 343 provides that any decision made under this Bill about an involuntary patient or a voluntary classified patient by an authorised doctor or authorised mental health practitioner must be given in writing to the administrator of the patient's treating health service.

Division 2 Identity cards**344 Issue of identity card**

Clause 344 provides that an administrator of an authorised mental health service must issue an identity card to each authorised doctor, authorised mental health practitioner or health practitioner appointed by the administrator.

345 Production or display of identity card

Clause 345 provides that when an authorised doctor, authorised mental health practitioner or health practitioner exercises a power in relation to a person, they must produce their identity card for the person's inspection before exercising the power or display the card so it is clearly visible when exercising the power. If this is not practicable, then the identity card must be produced for inspection by the person at the first reasonable opportunity.

346 Return of identity card

Clause 346 provides that once the office of a person as an authorised doctor, authorised mental health practitioner or health practitioner ends, the person must return the identity card to the administrator of the authorised mental health service who appointed the person within 21 days after the office ends unless the person has a reasonable excuse.

Part 5 Transfer of patients**Division 1 Preliminary****347 Purpose of pt 5**

Clause 347 outlines the purpose of this part, namely, to provide for the transfer of particular patients. For this part, a transfer occurs when the responsibility for a patient changes from one service authorised mental health service, to another service, or the forensic disability service.

348 Definition for pt 5

Clause 348 provides the definition for this part.

Division 2 Authorised mental health service transfers**349 Transfer between services by agreement of administrators**

Clause 349 enables administrators of authorised mental health services to agree to the transfer of persons between services.

350 Transfer between services by requirement of chief psychiatrist

Clause 350 enables the chief psychiatrist to direct a transfer of an involuntary patient or a classified patient (voluntary) between authorised mental health services.

Division 3 Forensic disability service transfers

351 Transfer between authorised mental health service and forensic disability service

Clause 351 applies to the transfer of persons between an authorised mental health service and the forensic disability service with the agreement of the chief psychiatrist and the director of forensic disability.

Division 4 Interstate transfers

352 Transfer of person subject to treatment authority to another State

Clause 352 provides for the transfer of persons on a treatment authority to an interstate mental health service.

353 Transfer of person subject to interstate order from another State

Clause 353 provides for the transport of persons on an 'interstate order' (the equivalent of a treatment authority) into Queensland.

Division 5 General provisions

354 Responsibility for person

Clause 354 states how responsibility for a patient is transferred. This does not apply to interstate transfers.

355 Power to transport

Clause 355 states the power to transport persons.

356 Notice to tribunal

Clause 356 requires the Mental Health Review Tribunal to be notified of a transfer.

Part 6 Transport of persons

Division 1 Preliminary

357 Who is an *authorised person*

Clause 357 states that authorised persons are administrators, ambulance officers, authorised doctors, authorised mental health practitioners and police officers. In addition, administrators may authorise health service employees to be authorised persons. If a person is to be transported to or from a corrective services facility or youth detention centre, corrective services officers and youth detention employees are also authorised persons. Authorised persons, other than police officers, are public officials for the *Police Powers and Responsibilities Act 2000*.

Division 2 Transport of persons within and to and from authorised mental health services and other particular places

358 Transport within authorised mental health service

Clause 358 enables an administrator, an authorised doctor or another approved person to transport an involuntary patient or classified patient (voluntary) within a service. It should be noted that the definition of ‘transport’ includes the use of physical restraint to move a person.

359 Transport to or from authorised mental health service and other particular places

Clause 359 provides that an authorised person may transport an involuntary patient or classified patient (voluntary) to or from an authorised mental health service, public sector health service facility, place of custody, court or a place in the community for the purposes of this Act. Various sections of the Bill provide for specific circumstances where persons may be transported. However, not all circumstances are specifically stated in the Bill. This clause extends these authorities by providing a general power to transport persons if the transport is within the purposes of the Act.

360 Taking person after treatment and care to person’s requested place

Clause 360 requires a person to be returned to the community when involuntarily transported from the community in particular circumstances.

Division 3 Transport of absent persons

361 Application of div 3

Clause 361 states the persons who may be transported involuntarily to an authorised mental health service. This includes:

- a person who absconds while being lawfully detained under this Bill
- a person subject to a treatment authority, forensic order or treatment support order being treated in the community who does not attend for treatment as required, and
- a person on approved temporary absence or limited community treatment who does not return to the authorised mental health service at the end of the absence or treatment.

362 Administrator or person in charge may require return of absent person

Clause 362 enables an administrator to authorise an authorised person or request a police officer to transport a person to an authorised mental health service.

363 Limitation on requirement to return particular absent persons

Clause 363 provides that an authorisation or request is only in force for 3 days if it relates to a person who has absconded while being detained under a recommendation for assessment, during an assessment period, under an examination authority, or being detained while a recommendation for assessment was being made.

364 Authorised person may transport absent person

Clause 364 authorises an authorised person to transport the person under the authorisation or request.

365 Effect on assessment period

Clause 365 provides that, for a person who absconds, a period of detention under a recommendation for assessment recommences when the person returns to the authorised mental health service.

Division 4 Transport of persons to and from interstate mental health services**366 Apprehension of person absent from interstate mental health service**

Clause 366 provides that a police officer may apprehend a person who is absent without permission from an interstate mental health service. The person may be transported interstate or taken temporarily to an authorised mental health service.

367 Transport of person in Queensland to interstate mental health service

Clause 367 provides that a person in Queensland who may be transported to an authorised mental health service or a public sector health service facility for emergency examination or who is subject to a recommendation for assessment, may instead be transported to an interstate mental health service.

368 Transport of person outside Queensland to authorised mental health service

Clause 368 provides that a person outside of Queensland who may be transported to an interstate mental health service for emergency examination or assessment may instead be transported to an authorised mental health service or public sector health service facility.

369 Making of emergency examination authority

Clause 369 provides that, where a person is transported under the previous clause for emergency examination, an emergency examination authority must be made for the person.

Division 5 Transport powers

370 Application of div 5

Clause 370 states that this division applies if a provision authorises or requires an authorised person to transport a person. This includes an authorisation under clause 359 (Transport to or from authorised mental health service and other particular places).

371 Power to detain

Clause 371 states that an authorised person may exercise the power to detain and transport the person with the help, and using the force, that is necessary and reasonable in the circumstances.

372 Power to administer medication

Clause 372 enables medication to be administered to a person being transported under the Bill. However, the medication:

- may be administered to the person only if the doctor is satisfied it is necessary to ensure the safety of the person or others while being transported, and
- must be administered by a doctor or a registered nurse under the instruction of a doctor.

373 Power to use mechanical restraint

Clause 373 enables mechanical restraint to be used to transport involuntary patients, with the approval of the chief psychiatrist, if necessary to protect the patient and others from physical harm. If the purpose of the transport is for examining, carrying out a diagnostic test or providing other treatment and care, the approval can include using the mechanical restraint during the examination, diagnostic test or other treatment.

374 Power to enter particular places

Clause 374 states that an authorised person may enter a place if an occupier consents to the entry or it is a public place. This clause also states how entry under consent is to occur.

The note to this clause refers to other powers of a police officer under section 21 of the *Police Powers and Responsibilities Act 2000*. This includes the power to enter a place to detain a person under another Act.

Division 6 Warrant for apprehension of person to transport person

375 Application for warrant for apprehension of person

Clause 375 outlines how an application for a warrant for apprehension of a person is made. This applies to persons who need to be transported to an authorised mental health service.

376 Issue of warrant

Clause 376 outlines how a warrant is issued.

377 Electronic application

Clause 377 outlines how an electronic application for a warrant is made.

378 Additional procedure if electronic application

Clause 378 outlines additional procedures for an electronic application.

379 Defect in relation to a warrant

Clause 379 outlines how a defect in a warrant affects its validity.

380 Warrants—entry procedure

Clause 380 outlines procedures that are to be followed in entering premises under a warrant.

Part 7 Security

Division 1 Preliminary

381 Purpose of pt 7

Clause 381 provides a purpose for this part, namely:

- the delivery to, and sending of, postal articles to patients in authorised mental health services, including high security units
- searches of particular patients in authorised mental health services and particular public sector health service facilities
- searches of persons on admission to, or entry into, a high security unit or other particular services, and
- searches of visitors to a high security unit or other particular services, and
- the power of administrators to exclude particular visitors.

382 Definitions for pt 7

Clause 382 states the definitions for part 7.

Division 2 Postal articles and other things in authorised mental health services**383 Patient may receive and send postal article**

Clause 383 states that a patient at an authorised mental health service may receive and send postal articles, and makes it an offence for a person to prevent or impede the delivery or sending of a postal article addressed to a patient. A person does not commit an offence if the addressee of the postal article:

- is the subject of a non-contact condition of the patient's forensic order or treatment support order, or
- has given written notice to the administrator of the service asking that postal articles addressed by the patient to the addressee be withheld.

384 Administrator may search thing received for patients

Clause 384 enables the administrator of an authorised mental health service to open or search anything received at the service for a patient. The patient is to be present or given the opportunity to be present. The right for a patient to be present or to be given the opportunity to be present does not apply if the patient obstructs the administrator in the exercise of the administrator's powers.

Division 3 Searches of patients of authorised mental health services or public sector health service facilities**385 Application of div 3**

Clause 385 states that this division applies to an involuntary patient of an authorised mental health service or a public sector health service facility, or a classified patient (voluntary).

386 Power to search on belief of possession of harmful thing

Clause 386 states that this section applies if a doctor or health practitioner believes the patient may have possession of a harmful thing (as defined). The clause enables a doctor or health practitioner to:

- conduct a general search, scanning search or personal search of the person
- conduct a search requiring the removal of clothing with the approval of the administrator of the service or the person in charge of the public sector health service facility, and
- conduct a search of the person's possessions.

Division 4 Searches of involuntary patients on admission to or entry into high security unit or other approved services**387 Application of div 4**

Clause 387 states that this division applies to a person who is admitted as an involuntary patient to, or enters as an involuntary patient into, a high security unit or another authorised mental health service approved by the chief psychiatrist.

388 Power to search on admission or entry

Clause 388 states that on the patient's admission to, or entry into, the service, an authorised security officer may, for detecting harmful things:

- conduct a general search, scanning search or personal search of the person
- conduct a search requiring the removal of clothing, with the approval of administrator of the service, and
- conduct a search of the person's possessions.

Division 5 Searches of visitors to high security units or other approved services**389 Application of div 5**

Clause 389 states that this division applies to a visitor to a high security unit or another authorised mental health service or part of a service approved by the chief psychiatrist.

390 Power to search visitor

Clause 390 states that an authorised security officer for the service may ask the visitor to submit to a general search, scanning search or personal search by the authorised security officer, or to submit the visitor's possessions to a search.

391 Requirement to explain to visitor

Clause 391 provides that an authorised security officer must tell the visitor in general terms of:

- the officer's powers in relation to the search
- how the search is to be carried out, and
- the visitor's rights under this division.

392 Direction to leave

Clause 392 provides that if a visitor does not agree to a search request, an authorised security officer may refuse the visitor permission to enter the service or, if the person is in the service, direct the person to immediately leave the service. If a visitor is directed to leave, the visitor must comply with the direction.

393 Visitor may leave thing with authorised security officer

Clause 393 states that if a visitor does not want the authorised security officer to inspect anything in the visitor's possession, the visitor may leave the thing with the officer until the visitor leaves the service.

394 Authorised security officer may ask visitor to leave thing with officer

Clause 394 states that an authorised security officer may ask a visitor to leave a thing the officer reasonably believes is a harmful thing with the officer until the visitor leaves the service. If the visitor refuses to comply with such a request, the officer may refuse the visitor permission to enter or service or, if the person is in the service, direct the person to immediately leave the service.

395 Visitor may ask for search to stop

Clause 395 provides that the authorised security officer must stop the search if the visitor tells the officer the visitor does not want the search to continue and is prepared to leave the service immediately. If the visitor does not leave immediately, an offence is committed.

396 Return of thing to visitor

Clause 396 states that if a visitor has left a thing with an authorised security officer, the officer must ensure the thing is returned to the visitor if:

- the visitor asks for its return, and
- the officer is reasonably satisfied the visitor is about to leave the service.

Division 6 Requirements for searches**397 Requirements for personal search**

Clause 397 enables a person authorised to carry out a personal search to do any one or more of the following:

- remove and inspect an outer garment or footwear of the person
- remove and inspect all things from the pockets of the person's clothing
- touch the clothing worn by the person to the extent reasonably necessary to detect things in the person's possession, but only if the searcher is the same gender as the person and the search is carried out in a part of a building that ensures the person's privacy, and
- remove and inspect any detected thing.

This clause provides that the searcher must carry out such searches in a way that respects the person's dignity to the greatest possible extent, and causes as little inconvenience to the person as is practicable in the circumstances.

398 Requirements for search requiring removal of clothing

Clause 398 outlines certain requirements that a person authorised to carry out a search requiring the removal of clothing must observe, including that such a search must be carried out by at least 2 persons of the same gender.

399 Requirements for search of possessions

Clause 399 provides that a person authorised to carry out a search of a person's possessions can open or inspect a thing in the person's possession and remove and inspect any detected thing. The person is to be present, or given the opportunity to be present. The requirement that the person is present or has been given the opportunity to be present does not apply if the person obstructs the searcher in the exercise of the searcher's powers.

Division 7 Records of searches**400 Record of search must be made**

Clause 400 states that the section applies if a search requiring the removal of clothing is carried out or a searcher seizes anything found during a search under this part. As soon as possible after carrying out the search, the person who conducted the search must make a written record of specified details pertaining to the search.

Division 8 Seizure**401 Seizure of harmful or other thing**

Clause 401 allows a person authorised to carry out a search under this part to seize anything found during the search that the searcher reasonably suspects is connected with of an offence against an Act, or is a harmful thing.

402 Receipt for seized thing

Clause 402 provides that a person authorised to carry out a search under this part must give a receipt for the thing to the person from whom the thing was seized.

403 Access to seized things

Clause 403 provides that this section applies to a thing seized on a search under this part. Until the thing is forfeited or returned under this division, the searcher must allow its owner to inspect it and, if it is a document, to copy it, unless it is impracticable or would be unreasonable to allow the inspection or copying.

Division 9 Identity cards

404 Approval of identity card

Clause 404 requires that the administrator of a high security unit or approved service to approve identity cards for authorised security officers for the service which contain a recent photograph of the officer and identifies the person as an authorised security officer.

Division 10 Compensation

405 Compensation for damage to possessions

Clause 405 enables a patient or visitor to claim from the State the cost of repairing or replacing possessions damaged in the exercise or purported exercise of a power under this part. A court may order an amount be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

Division 11 Exclusion of visitors

406 Administrator may refuse to allow person to visit patient

Clause 406 allows the administrator of an authorised mental health service to refuse to allow a person to visit a patient in the service if the administrator is satisfied the proposed visit will adversely affect the patient's treatment or care. This power does not apply to a person performing a function under an Act, such as a community visitor, a legal representative or a health practitioner, but includes persons such as nominated support persons, family, carers, and other support persons. The administrator must give written notice of the decision, which may be appealed.

Chapter 12 Mental Health Review Tribunal proceedings

Part 1 Preliminary

407 Purpose of ch 12

Clause 407 outlines the purpose of this chapter, which is for the tribunal to review the following:

- treatment authorities
- forensic orders
- treatment support orders
- the fitness for trial of particular persons, and
- the detention of minors in high security units.

The tribunal also hears applications for:

- examination authorities
- the approval of regulated treatments (electroconvulsive therapy and non-ablative neurosurgery), and

- the transfer of forensic patients and persons on treatment support orders into and out of Queensland.

408 Particular decisions of no effect for classified patient

Clause 408 provides that the tribunal may decide that a classified patient can have treatment in the community but this is of no effect while the person is a classified patient.

Part 2 Review of treatment authorities

Division 1 Preliminary

409 Definitions for pt 2

Clause 409 states the defined terms for the part.

410 Matters to which tribunal must have regard

Clause 410 requires the tribunal to regard to the person's relevant circumstances (as defined in the dictionary) in making a decision. This clause does not limit the other matters the tribunal must consider where it is stated in the Bill. For example, clause 423 states that the tribunal must have regard to the purpose of limited community treatment in making a decision under that clause.

Division 2 When particular reviews are conducted

411 When reviews are conducted

Clause 411 outlines when reviews of treatment authorities must occur. The first periodic review must take place within 28 days after the authority is made.

The tribunal must also review a treatment authority on application. The tribunal may also review a treatment authority on its own initiative. Under this clause, the tribunal is required to have a tribunal review within 14 days if it is notified of a change of category to inpatient under clause 210.

412 When periodic review deferred

Clause 412 states that a periodic review may be deferred if the relevant matters were recently considered in an applicant review or tribunal review.

413 When tribunal must not conduct review

Clause 413 provides that the tribunal must not conduct a review if, on appeal to the Mental Health Court, the court has stayed a tribunal decision for the authority.

414 When particular tribunal review is not required

Clause 414 applies where a tribunal is required to conduct a review when notified under clause 411 that the category of an authority has been changed to inpatient. The tribunal is not required to conduct a review if the tribunal receives a subsequent notice that the category has been changed back to community.

Division 3 Applications and notices of hearings

415 Application for applicant review to state orders sought

Cause 415 provides other matters that may be sought in an applicant review.

416 Notice of hearing

Clause 416 outlines who must receive a notice of hearing for a review.

Division 4 Decisions and orders

Subdivision 1 Decisions to be made on review

417 Decisions

Clause 417 states the decisions that must be made on a review including, for a periodic review, whether to confirm or revoke the treatment authority.

418 Administrator to provide report

Clause 418 provides, for a periodic review of a treatment authority, the administrator of the person's treating health service must give the tribunal a report about whether the appointment of a personal guardian for the person may lead to a less restrictive way for the person to receive treatment and care.

419 Requirement to revoke treatment authority

Clause 419 states when a treatment authority must be revoked.

Subdivision 2 Confirmation of treatment authority—related orders

420 Application of sdiv 2

Clause 420 states that this subdivision applies if the tribunal confirms the authority on a review.

421 Change of category to community

Clause 421 provides that the tribunal may amend the category of the authority to community.

422 Community category - deciding whether authorised doctor may reduce treatment in community

Clause 422 provides that, if the category is community, the tribunal must decide whether an authorised doctor, may at a future time reduce the extent of treatment in the community for the person. This is consistent with taking a least restrictive approach to treatment.

423 Inpatient category - limited community treatment

Clause 423 provides that the tribunal may approve limited community treatment or the extension of limited community treatment for the person.

424 Conditions

Clause 424 provides that the tribunal may impose conditions on the treatment authority.

425 Transfer to another authorised mental health service

Clause 425 provides that the tribunal may order that the patient be transferred to another authorised mental health service.

426 Change of category to inpatient

Clause 426 provides that the tribunal may amend the category of the authority to inpatient in limited circumstances. This only applies if the tribunal believes the patient needs examination as an inpatient to review the patient's treatment and care needs. Once the examination is complete, the authorised doctor can then decide the level of treatment in the community for the patient.

427 Other orders

Clause 427 provides that the tribunal may provide for other matters it considers appropriate.

Part 3 Review of forensic orders (mental health) and forensic orders (disability)

Division 1 Preliminary

428 Application of pt 3

Clause 428 states that this division applies to the review of persons on forensic orders (mental health) and forensic order (disability).

429 Definitions for pt 3

Clause 429 states definitions for this part.

430 Matters to which tribunal must have regard

Clause 430 sets out the matters which the tribunal must have regard to when making a decision in relation to a review of a forensic order under this part. These matters include the relevant circumstances of the person (as defined in the dictionary), any victim impact statement, and any recommendations made by the Mental Health Court regarding intervention programs. This clause does not limit the other matters the tribunal must consider where it is stated in the Bill. For example, clause 443 states additional matters that the tribunal must consider in deciding whether a person on an inpatient category has treatment in the community.

Division 2 When particular reviews are conducted

431 When reviews are conducted

Clause 431 states when reviews of forensic orders must take place. For periodic reviews these must take place within 6 months after the order is made and at intervals of not more than 6 months. The tribunal must also review a forensic order on application. The tribunal may also review a forensic order on its own initiative. Under this clause, the tribunal is required to have a tribunal review within 21 days if it is notified of a change of category to inpatient under clause 213.

432 When periodic review deferred

Clause 432 states that a periodic review may be deferred if the relevant matters were recently considered in an applicant review or tribunal review.

433 Requirement to conduct periodic review suspended

Clause 433 provides that the tribunal is not required to conduct a review if the patient has been transferred interstate.

434 When tribunal must not conduct review

Clause 434 states that the tribunal must not conduct a review of a forensic order if an appeal is pending to the Mental Health Court and the court has stayed the tribunal's decision.

435 When particular tribunal review is not required

Clause 435 applies where a tribunal is required to conduct a review when notified under clause 431 that the category of an order has been changed to inpatient. The tribunal is not required to conduct a review if the tribunal receives a subsequent notice that the category has been changed back to community.

Division 3 Applications and notices of hearings**436 Application for applicant review to state orders sought**

Clause 436 provides other matters that may be sought in an applicant review.

437 Notice of hearing

Clause 437 outlines who must receive a notice of a hearing for a review. For reviews of forensic orders, the Attorney-General also receives a notice of hearing.

Division 4 Decisions and orders**Subdivision 1 Decisions to be made on review****438 Application of div 4**

Clause 438 states that this division is subject to division 5 which places restrictions on revoking or amending forensic orders.

439 Decisions

Clause 439 states the decisions that must be made on a review including, for a periodic review, whether to confirm or revoke the forensic order.

440 Requirement to confirm forensic order

Clause 440 states when the tribunal must confirm a forensic order. These criteria are equivalent to those that apply to the Mental Health Court on the making of a forensic order. The tribunal must confirm the order if the tribunal considers that the order is necessary to protect the safety and welfare of the community, because of the person's mental condition, including from serious harm being caused to other persons or property. The tribunal must also confirm the forensic order during a non-revocation period for the order.

Subdivision 2 Confirmation of forensic order – related orders

441 Application of sdiv 2

Clause 441 provides that this subdivision applies if, on review of a forensic order, the tribunal confirms the order.

442 Change or confirmation of category

Clause 442 provides that the tribunal may change the category of the order. A community category can only be decided if the tribunal is satisfied that there is not an unacceptable risk to the safety of the community, because of the person's mental condition.

443 Inpatient category - orders about treatment in community

Clause 443 outlines the decisions the tribunal may make if the category of the order is inpatient. The tribunal may decide that:

- the person is to receive no limited community treatment
- at a future time, an authorised doctor (or a senior practitioner under the Forensic Disability Act) may authorise treatment in the community up to the extent, and subject to the conditions decided by the tribunal (initially the patient would be an inpatient with no limited community treatment), or
- the patient must have limited community treatment of a stated extent; in making this decision, the tribunal must also decide whether or not an authorised doctor (or senior practitioner) may amend the level treatment in the community at a future time.

444 Community category - orders about treatment in community

Clause 444 outlines the decisions the tribunal may make if the category of the order is community. The tribunal may decide that:

- the category of the order must be a community category, or
- at a future time, an authorised doctor (or a senior practitioner under the Forensic Disability Act) may change the extent of treatment in the community, to the extent, and subject to the conditions decided by the tribunal. For example, the tribunal may approve changing a community category to an inpatient category if stated circumstances happened.

445 Conditions

Clause 445 permits the tribunal to change, remove or impose a condition on a forensic order including conditions that the person subject to the order not contact a stated person. Under the definition of 'condition', the tribunal may require a forensic patient to wear a tracking device. However, the tribunal cannot impose a condition that requires a person to take a particular medication or dose of medication.

446 Other Orders

Clause 446 allows the tribunal to provide for any other matter the tribunal considers appropriate.

Subdivision 3 Revocation of forensic order (mental health) – related orders**447 Application of sdiv 3**

Clause 447 states that this subdivision applies if the tribunal revokes a forensic order (mental health).

448 Making of treatment support order

Clause 448 enables the tribunal to make a treatment support order for the person.

449 Making of treatment authority or no further order

Clause 449 provides for the making of a treatment authority if a forensic order is revoked. This can only occur on the recommendation of an authorised psychiatrist if the treatment criteria apply and there is no less restrictive way of treating the person.

Division 5 Restrictions on revoking or amending forensic orders**450 Orders with non-revocation period**

Clause 450 states that the tribunal must not revoke a forensic order during a non-revocation period for the order set by the Mental Health Court.

451 Order for person temporarily unfit for trial

Clause 451 states that the tribunal must not revoke a forensic order for a patient who remains temporarily unfit for trial, other than to make a treatment support order.

452 Order for person charged with prescribed offence

Clause 452 relates to persons on forensic orders in relation to a prescribed offence. Prescribed offences, as defined in the dictionary, are the most serious violent offences such as murder, manslaughter, grievous bodily harm and rape. For forensic orders of this type, the tribunal must not revoke the order until it has received an independent report on the patient's medical condition from an examining practitioner.

453 Tribunal's order takes effect after suspension or change of category ends

Clause 453 applies where the chief psychiatrist decides to suspend limited community treatment or change a category to in-patient under clause 311. The

tribunal may decide that a patient can have treatment in the community but this is of no effect until the suspension or change of category ends.

Division 6 Other provisions

454 Transfer of responsibility for forensic patient

Clause 454 provides that, on a review of a forensic order, the tribunal may order the transfer of the patient to another authorised mental health service or the forensic disability service.

455 Person with dual disability

Clause 455 applies to persons who are subject to a forensic order (mental health) who have a dual disability (a mental health illness and an intellectual disability). Chapter 5 of the Bill provides that persons in this situation may be placed on a forensic order (mental health) for treatment and care for a mental illness as well as for care for an intellectual disability. If the tribunal is satisfied the person no longer requires involuntary treatment and care for a mental illness, the tribunal must change the order to a forensic order (disability).

Part 4 Review of forensic orders (Criminal Code)

456 Application of pt 4

Clause 456 states that this part applies to a person subject to a forensic order (Criminal Code). (See chapter 6, part 3, division 2).

457 Tribunal to conduct hearing

Clause 457 requires the tribunal to decide whether the order should be made a forensic order (mental health) or a forensic order (disability).

458 Notice of hearing

Clause 458 provides for a notice of hearing.

459 Making of forensic order

Clause 459 provides for the making of a forensic order, including the category of the order.

460 Application of ch 5 provisions

Clause 460 applies provisions in chapter 5 for making decisions under this part.

Part 5 Review of treatment support orders

Division 1 Preliminary

461 Definitions for pt 5

Clause 461 outlines the definitions for this part.

462 Matters to which tribunal must have regard

Clause 462 sets out the matters which the tribunal must have regard to when making a decision in relation to a review of a treatment support order under this part. These matters include the relevant circumstances of the person (as defined in the dictionary), any victim impact statement, and any recommendations made by the Mental Health Court regarding intervention programs. This clause does not limit the other matters the tribunal must consider where it is stated in the Bill. For example, clause 475 states additional matters that the tribunal must consider in deciding whether a person on an inpatient category has treatment in the community.

Division 2 When particular reviews are conducted

463 When reviews are conducted

Clause 463 outlines when reviews of treatment support orders must occur. Periodic reviews must take place at 6 monthly intervals. The tribunal must also review a treatment authority on application. The tribunal may also review a treatment support order on its own initiative. Under this clause, the tribunal is required to have a tribunal review within 14 days if it is notified of a change of category to inpatient under clause 217.

464 When periodic review deferred

Clause 464 states that a periodic review may be deferred if the relevant matters were recently considered in an applicant review or tribunal review.

465 Requirement to conduct periodic review suspended

Clause 465 provides that a review of a treatment support order is not required if a person is transferred interstate.

466 When tribunal must not conduct review

Clause 466 provides that the tribunal must not conduct a review if, on appeal to the Mental Health Court, the court has stayed a tribunal decision for the order.

467 When particular tribunal review is not required

Clause 467 applies where a tribunal is required to conduct a review when notified under clause 463 that the category of an order has been changed to inpatient. The tribunal is not required to conduct a review if the tribunal receives a subsequent notice that the category has been changed back to community.

Division 3 Applications and notices of hearings**468 Application for applicant review to state orders sought**

Clause 468 provides for matters that may be sought in an applicant review.

469 Notice of hearing

Clause 469 outlines who must receive a notice of hearing for a review.

Division 4 Decisions and orders**Subdivision 1 Decisions to be made on review****470 Decisions**

Clause 470 states the decisions that must be made on a review including, for a periodic review, whether to confirm or revoke the order.

471 Requirement to confirm treatment support order

Clause 471 states when the tribunal must confirm a treatment support order.

Subdivision 2 Confirmation of treatment support order – related orders**472 Application of sdiv 2**

Clause 472 states that this subdivision applies if the tribunal confirms the treatment support order on a review.

473 Change of category to community

Clause 473 provides that the tribunal may amend the category of the treatment support order to community.

474 Community category - deciding whether authorised doctor may reduce treatment in community

Clause 474 provides that, if the category is community, the tribunal must decide whether an authorised doctor, may at a future time, reduce the extent of treatment in

the community for the person. This is consistent with taking a least restrictive approach to treatment.

475 Inpatient category - limited community treatment

Clause 475 provides that the tribunal may approve limited community treatment or the extension of limited community treatment for the person.

476 Conditions

Clause 476 provides that the tribunal may impose conditions on the treatment support order.

477 Transfer to another authorised mental health service

Clause 477 provides that the tribunal may order that the patient be transferred to another authorised mental health service.

478 Change of category to inpatient

Clause 478 provides that the tribunal may amend the category of the treatment support order to inpatient in limited circumstances. This only applies if the tribunal believes the patient needs examination as an inpatient to review the patient's treatment and care needs. Once the examination is complete, the authorised doctor can then decide the level of treatment in the community for the patient.

479 Other orders

Clause 479 provides that the tribunal may provide for other matters it considers appropriate.

Subdivision 3 Revocation of treatment support order – related orders

480 Application of sdiv 3

Clause 480 states that this subdivision applies if the tribunal decides to revoke a treatment support order.

481 Making of treatment authority or no further order

Clause 481 provides that the tribunal may make a treatment authority on the revocation of a treatment support order on the recommendation of an authorised psychiatrist if the treatment criteria apply and there is no less restrictive way of treating the person.

Part 6 Review of fitness for trial

Division 1 Review

482 Application of div 1

Clause 482 states that this division applies where a 'finding of unfitness' has been made for a person.

483 Meaning of *finding of unfitness*

Clause 483 defines 'finding of unfitness' for this division. This applies where the Mental Health Court has found a person unfit for trial of a temporary nature, or where an order has been made based on a jury finding under section 613 or 645 of the Criminal Code that a person is unfit for trial.

484 When reviews are conducted

Clause 484 states when reviews must be conducted, namely:

- for the period of 1 year starting on the day of the unfitness finding - at intervals of not more than 3 months, and
- at intervals of not more than 6 months after the last review is conducted under the preceding paragraph.

The tribunal must also undertake a review on application or on its own initiative.

485 Notice of hearing

Clause 485 outlines who must receive a notice of a review, including the Attorney-General.

486 Decisions on review

Clause 486 provides that the tribunal must decide whether the person is fit for trial, and if the tribunal decides the person is unfit for trial, whether the person is likely to be fit for trial within a reasonable time.

Division 2 Procedures following review if person unfit for trial

487 Application of div 2

Clause 487 states that this division applies if the tribunal decides the person is unfit for trial.

488 Director of public prosecutions to decide whether proceedings to be discontinued

Clause 488 requires the director of public prosecutions to decide, within 28 days of receiving a notice from the tribunal that the person is unfit for trial, whether to discontinue proceedings against the person.

489 Proceeding discontinued at end of prescribed period

Clause 489 provides that proceedings are automatically discontinued at the end of a prescribed period if the proceedings have not been otherwise discontinued or the tribunal has not decided the person is fit for trial. The prescribed period is:

- for proceedings for an offence for which an offender is liable to life imprisonment - 7 years from the finding of unfitness, or
- for other proceedings - 3 years from the finding of unfitness.

490 Effect of discontinuing proceeding

Clause 490 requires the director of public prosecutions to notify specified people if proceedings are discontinued. Despite the discontinuing of the proceeding, the forensic order or treatment support order to which the person is subject continues in force.

491 Proceeding may be discontinued at other time

Clause 491 states that this division does not prevent proceedings against the person being discontinued at any time by the director of public prosecutions or the complainant other than under the preceding clauses. In these cases, the relevant order ends.

Division 3 Procedures following review if person fit for trial**492 Application of div 3**

Clause 492 states that this division applies if the tribunal decides a person is fit for trial.

493 Definitions for div 3

Clause 493 outlines definitions for this division.

494 Director of public prosecutions to give notice of fitness for trial

Clause 494 requires the director of public prosecutions to notify specified people that proceedings for the person are to continue.

495 Listing proceeding for mention

Clause 495 requires the registrar of the relevant court to arrange for the proceedings to be continued.

Part 7 Review of detention of minors in high security units

496 Application of pt 7

Clause 496 states that this part applies where the chief psychiatrist has agreed to the admission or transfer of a minor to the high security unit.

497 When reviews are conducted

Clause 497 requires the tribunal to review the minor's detention within 7 days after being notified by the chief psychiatrist, and at 3 monthly intervals thereafter. The tribunal must also review the minor's detention in the high security unit on application by the minor or an interested person for the minor, and may review the minor's detention on the tribunal's initiative at any time.

498 Notice of hearing

Clause 498 outlines who is to be given a notice of the hearing.

499 Decision on review

Clause 499 states the decisions the tribunal must make on review, namely, to continue the minor's detention in a high security unit or to transfer the minor to another authorised mental health service.

Part 8 Applications for examination authorities

500 Application for examination authority

Clause 500 states who may apply for an examination authority for another person. An application may be made by:

- the administrator of an authorised mental health service
- a person authorised in writing by the administrator of an authorised mental health service to make an application under this clause, or
- another person who has received advice, from a doctor or authorised mental health practitioner, about the clinical matters (as defined) for the person who is the subject of the application.

The clause requires that the approved form for the application must include a statement by a doctor or authorised mental health practitioner about whether the behaviour of the person, or other relevant factors, could reasonably be considered grounds for the involuntary examination of the person under the Bill.

501 Notice of hearing

Clause 501 outlines who is to be given a notice of the hearing.

502 Decision on application

Clause 502 states that the tribunal may decide to issue or refuse to issue an examination authority. The tribunal can only issue an examination authority if:

- the person has, or may have, a mental illness
- the person lacks, or may lack, capacity to consent to treatment for the mental illness
- reasonable attempts have been made to encourage the person to be treated voluntarily or it is not practicable to attempt to encourage the person to be treated voluntarily, and
- there is, or may be, an imminent risk, because of person's mental illness, that the person might cause serious harm to the person or someone else, or suffer serious mental or physical deterioration.

503 Duration of examination authority

Clause 503 states that an examination authority is in force for 7 days.

504 Copy of examination authority to be given to administrator of authorised mental health service

Clause 504 requires the tribunal to give a copy of the examination authority to the relevant administrator of the authorised mental health service stated in the authority.

Part 9 Applications for approval of regulated treatment**Division 1 Electroconvulsive therapy****505 Who may apply**

Clause 505 provides that a doctor may apply to the tribunal for approval to perform electroconvulsive therapy on another person if the doctor is satisfied:

- the person is an adult and is unable to give informed consent to the therapy, or
- the person is a minor.

506 Notice of hearing

Clause 506 outlines who is to be given a notice of the hearing of an application for approval to perform electroconvulsive therapy.

507 Decision on application

Clause 507 states that the tribunal must give, or refuse to give, approval for electroconvulsive therapy to be performed. The tribunal may approve electroconvulsive therapy for the person only if the tribunal is satisfied:

- the performance of the therapy in the person's best interests
- evidence supports the effectiveness of the therapy for the person's particular mental illness

- if the therapy has previously been performed on the person - of the effectiveness of the therapy for the person, and
- if the person is a minor - evidence supports the effectiveness of the therapy for persons of the minor's age.

If the tribunal gives approval, the approval must state the number of treatments that may be performed in a stated period and any conditions the tribunal considers appropriate.

Division 2 Non-ablative neurosurgical procedures

508 Who may apply

Clause 508 provides that a doctor may apply to the tribunal for approval to perform a non-ablative neurosurgical procedure on another person if the doctor is satisfied the person has given informed consent to the treatment.

509 Notice of hearing

Clause 509 outlines who is to be given a notice of the hearing.

510 Decision on application

Clause 510 states that the tribunal must give, or refuse to give, approval for a non-ablative neurosurgical procedure to be performed on a person. The tribunal may approve the non-ablative neurosurgical procedure for the person only if the tribunal is satisfied:

- the applicant has given informed consent
- the procedure has clinical merit, and
- alternative procedures have not been of sufficient and lasting benefit.

Part 10 Applications for approval to transfer particular persons into and out of Queensland

Division 1 Transfers into Queensland

511 Definitions for div 1

Clause 511 outlines definitions for this division, including 'interstate transfer requirements'.

512 Who may apply

Clause 512 provides that a patient subject to an interstate forensic order (as defined), or an interested person for the person, may apply to the tribunal for a transfer into Queensland.

513 Requirements for application

Clause 513 requires the application to include:

- the reasons the transfer would be in the best interests of the person, including, for example, closer proximity to family, carers and other support persons, and
- a written statement from the chief psychiatrist or the director of forensic disability about whether the interstate transfer requirements may be met.

514 Notice of hearing

Clause 514 outlines who is to be given a notice of the hearing.

515 Decision on application

Clause 515 provides that the tribunal may approve or refuse to approve the transfer.

516 Making of forensic order

Clause 516 provides that, on transfer into Queensland, the person is placed on a forensic order (mental health) or a forensic order (disability).

517 When approval takes effect

Clause 517 states a transfer takes effect when the interstate transfer requirements have been satisfied.

518 Transport of person

Clause 518 authorises the transport of a person who has been approved to transfer into Queensland.

Division 2 Transfers out of Queensland**519 Definition for div 2**

Clause 519 outlines the definition of 'interstate transfer requirements'.

520 Who may apply

Clause 520 provides that a person subject to a forensic order or a treatment support order, or an interested person for the person, may apply to the tribunal for a transfer out of Queensland.

521 Requirements for application

Clause 521 requires the application to include:

- the reasons the transfer would be in the best interests of the patient, including, for example, closer proximity to family, carers and other support persons, and

- a written statement from the chief psychiatrist or the director of forensic disability about whether the 'interstate transfer requirements' may be met.

522 Notice of hearing

Clause 522 outlines who is to be given a notice of the hearing.

523 Decision on application

Clause 523 provides that the tribunal may approve or refuse to approve the transfer.

524 When approval takes effect

Clause 524 states that the transfer is only effective when the interstate transfer requirements for the person have been satisfied.

525 Transport of person

Clause 525 authorises the transport of a person who has been approved to transfer out of Queensland.

526 Effect on order

Clause 526 states that the forensic order for the person is only in force if the person returns to Queensland. If the person is out of Queensland for a continuous period of 3 years, the forensic order ends. However, if there is a non-revocation period for the order, the order does not end until the end of the non-revocation period.

Part 11 Miscellaneous

527 Relationship with ch 16, pt 2

Clause 527 states that this chapter prevails over chapter 16, part 2 if there is any inconsistency.

528 Use of victim impact statement by tribunal

Clause 528 provides that the tribunal may place the weight on a victim impact statement it considers appropriate.

Chapter 13 Appeals

Part 1 Preliminary

529 Purpose of ch 13

Clause 529 outlines the purpose of this chapter, namely, to provide for appeals to the Mental Health Review Tribunal, the Mental Health Court and the Court of Appeal.

Part 2 Appeals to tribunal

530 Definitions for pt 2

Clause 530 outlines definitions for this part.

531 Appeal to tribunal

Clause 531 provides that a person who has been given or is entitled to be given a decision notice may appeal to the tribunal, namely:

- decisions of the chief psychiatrist in relation to information notices
- a decision of the chief psychiatrist to suspend limited community treatment or change a community category of a forensic order, and
- a decision of an administrator to refuse a person to visit a patient in an authorised mental health service.

532 How to start appeal

Clause 532 outlines how to start an appeal.

533 Notice of appeal and hearing

Clause 533 outlines who must be given notice of the appeal.

534 Stay of decision pending appeal

Clause 534 enables the tribunal, in hearing an appeal, to stay the decision.

535 Appeal powers

Clause 535 provides that on hearing an appeal, the tribunal may confirm the decision, set aside the decision and substitute another decision, or set aside the decision and return the matter to the decision maker with appropriate directions.

Part 3 Appeals to Mental Health Court

Division 1 Preliminary

536 Definition for pt 3

Clause 536 outlines a definition for this part.

Division 2 Making and hearing appeals

537 Who may appeal

Clause 537 outlines who may appeal to the Mental Health Court against a decision of the Mental Health Review Tribunal by reference to Schedule 2.

538 Parties to appeal

Clause 538 outlines the parties to an appeal.

539 How to start appeal

Clause 539 states how to start an appeal.

540 Frivolous or vexatious appeal

Clause 540 enables the Mental Health Court to dismiss frivolous or vexatious appeals.

541 Notice of appeal and hearing

Clause 541 outlines who must be given notice of the appeal.

542 Stay of decision pending appeal

Clause 542 enables the Court, in hearing an appeal, to stay the decision.

543 Notice of stay of decision on review of person's fitness for trial

Clause 543 applies where an appeal is made against a decision of the tribunal about a person's fitness for trial and the Mental Health Court stays the decision. If the court stays the decision, the registrar must give written notice to the chief executive of justice about the stay. The chief executive of justice must then give a copy of the notice to specified persons.

544 Appeal powers

Clause 544 provides that on hearing an appeal, the Court may confirm the decision, set aside the decision and substitute another decision, or set aside the decision and return the matter to the decision maker with appropriate directions.

545 Mental Health Court may make forensic order or treatment support order

Clause 545 applies to appeals against a decision of the tribunal that a person is fit for trial and the person's forensic order or treatment support order has ended. If the court determines that the person is unfit for trial, the court may make any order it could have made on a reference to the Court, such as making a forensic order or treatment support order.

546 Mental Health Court's decision final

Clause 546 states that the Court's decision on appeal is final unless the Supreme Court decides that the Mental Health Court's decision was affected by jurisdictional error.

Part 4 Appeals to Court of Appeal

547 Who may appeal

Clause 547 states who may appeal to the Court of Appeal against a decision of the Mental Health Court.

548 How to start appeal

Clause 548 states how to start an appeal.

549 Appeal powers

Clause 549 provides that on hearing an appeal, the Court of Appeal may confirm the decision, set aside the decision and substitute another decision, or set aside the decision and return the matter to the Mental Health Court with appropriate directions.

550 Notice of decision

Clause 550 requires the registrar of the Court of Appeal to give a copy of the Court's decision to the registrar of the Mental Health Court.

Chapter 14 Monitoring and enforcement

Part 1 Preliminary

551 Purpose of ch 14

Clause 551 provides that the purpose of the chapter is to provide for the appointment, functions and powers of inspectors for investigating, monitoring and enforcing compliance with this Bill.

552 Definitions for ch 14

Clause 552 outlines the definitions for this chapter.

Part 2 General provisions about inspectors

Division 1 Appointment

553 Appointment and qualifications

Clause 553 provides for the appointment of inspectors.

554 Functions of inspectors

Clause 554 states an inspector's functions under the Bill – namely to carry out investigations under the Bill (as provided for under chapter 10), and to investigate, monitor and enforce compliance with the Act.

555 Appointment conditions and limit on powers

Clause 555 provides that an inspector is to hold office on specified conditions.

556 When office ends

Clause 556 states when the office of an inspector ends.

557 Resignation

Clause 557 provides that an inspector may resign.

Division 2 Identity cards

558 Issue of identity card

Clause 558 provides that inspectors are to be provided with identity cards in the form specified in the clause.

559 Production or display of identity card

Clause 559 requires an inspector to produce his or her identity card when exercising a power under this Act.

560 Return of identity card

Clause 560 provides that an identity card must be returned when a person ceases to be an inspector.

Division 3 Miscellaneous provisions

561 References to exercise of powers

Clause 561 states that if a provision of this part refers to the exercise of a power and there is no reference to a specific power, then the reference is to the exercise of all or any of the inspector's powers that are relevant.

562 Reference to document includes reference to reproductions from electronic document

Clause 562 states that a reference in this part to a document includes a reference to an electronic document.

Part 3 Entry of places by inspectors

Division 1 Power to enter

563 General power to enter places

Clause 563 states that an inspector may enter a place if:

- an occupier consents to the entry
- it is a public place and entry is made when the place is open to the public
- the entry is authorised under a warrant, or
- the place is an authorised mental health service or public sector health service facility and is open for entry.

Division 2 Entry by consent

564 Application of div 2

Clause 564 outlines the procedures to be followed where an inspector intends to enter a place by consent.

565 Incidental entry to ask for access

Clause 565 allows incidental entry to ask for access.

566 Matters inspector must tell occupier

Clause 566 outlines the procedures to be followed where an inspector intends to enter a place by consent.

567 Consent acknowledgement

Clause 567 outlines the consent acknowledgement requirements for entry by consent.

Division 3 Entry under warrant

Subdivision 1 Obtaining warrant

568 Application for warrant

Clause 568 outlines the procedures that apply for the application of a warrant.

569 Issue of warrant

Clause 569 outlines the procedures that apply for the issuing of a warrant by a magistrate.

570 Electronic application

Clause 570 outlines the procedures that apply for the application of an electronic warrant.

571 Additional procedure if electronic application

Clause 571 outlines additional procedures that apply for electronic warrants.

572 Defect in relation to a warrant

Clause 572 provides that a warrant does not become invalid by a defect in the warrant or compliance with the division of the Bill, unless the defect materially affects the substance of the warrant.

Subdivision 2 Entry procedure**573 Entry procedure**

Clause 573 outlines the entry procedures under a warrant.

Part 4 General powers of inspectors after entering places**574 Application of pt 4**

Clause 574 states the powers that may be exercised if an inspector enters a place with consent or under a warrant if the place is open for carrying on business or otherwise open for entry.

575 General powers

Clause 575 states the general powers that an inspector may exercise after entering a place including, for example, searching any part of the place or inspecting, examining or filming any part of the place or anything at the place.

576 Power to require reasonable help

Clause 576 states that an inspector may require a person at a place to give the inspector reasonable help to exercise a general power including, for example, the power to produce a document or to give information.

577 Offence to contravene help requirement

Clause 577 states that a person must comply with a requirement made of an inspector under the previous clause unless the person has a reasonable excuse, including that complying with the requirement might tend to incriminate the individual. An offence applies for contravening this provision.

Part 5 Seizure by inspectors and forfeiture

Division 1 Power to seize

578 Seizing evidence at a place that may be entered without consent or warrant

Clause 578 provides that an inspector who enters a place without consent or a warrant may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Bill.

579 Seizing evidence at a place that may be entered only with consent or warrant

Clause 579 outlines the powers of seizure that an inspector has when entry is authorised with consent or under a warrant.

580 Seizure of property subject to security

Clause 580 states that an inspector may seize a thing despite a lien or other security over the thing claimed by another person.

Division 2 Powers to support seizure

581 Power to secure seized thing

Clause 581 specifies the powers an inspector may exercise to support the seizure of a thing.

582 Offence to contravene other seizure requirement

Clause 582 specifies that a person must comply with a requirement made of them under the previous clause unless the person has a reasonable excuse.

583 Offence to interfere

Clause 583 provides that if access to a seized thing is restricted, a person must not tamper with the thing or with anything used to restrict access to the thing. A person cannot enter a place in contravention of a restriction or tamper with anything used to restrict access to the place.

Division 3 Safeguards for seized things

584 Receipt and information notice for seized thing

Clause 584 provides safeguards for things seized under the Bill. This clause deals with providing receipts and information notices in relation to a seized thing, providing access to the seized thing by the owner, and returning of the seized thing. The provision of an information notice triggers a right of review and appeal under this part.

585 Access to seized thing

Clause 585 provides for access to seized things.

586 Return of seized thing

Clause 586 provides for the return of seized things.

Division 4 Forfeiture

587 Forfeiture by chief psychiatrist decision

Clause 587 provides for the forfeiture of things under the Bill. Under the provisions, a thing may be forfeited to the State by decision of the chief psychiatrist.

588 Information notice about forfeiture decision

Clause 588 requires that the chief psychiatrist must give the owner of the forfeited thing an information notice about the decision, which triggers a right of review and appeal.

589 Forfeiture on conviction

Clause 589 provides for the forfeiture of things on conviction.

590 Procedure and powers for making forfeiture order

Clause 590 provides for making a forfeiture order.

Division 5 Dealing with property forfeited or transferred to State

591 When thing becomes property of the State

Clause 591 specifies how a thing becomes the property of the State.

592 How property may be dealt with

Clause 592 specifies how a thing seized may be dealt with by the chief psychiatrist.

Part 6 Other information-obtaining powers of inspectors

593 Power to require name and address

Clause 593 applies where an inspector finds a person committing an offence against this Bill or where an inspector reasonably suspects a person has just committed an offence against this Bill. In these circumstances, the inspector may require the person to state the person's name and residential address.

594 Offence to contravene personal details requirement

Clause 594 states that a person must comply with a requirement to state their name and residential address unless the person has a reasonable excuse.

595 Power to require information

Clause 595 applies if an inspector reasonably believes an offence has just been committed against this Bill and a person may be able to give information about the offence. This clause also applies if an inspector reasonably believes a person may be able to give information about a matter being investigated. The inspector may, by written notice, require the person to give the inspector information related to the offence or matter at a stated reasonable time and place.

596 Offence to contravene information requirement

Clause 596 states that a person must comply with a requirement to provide information under the previous clause. It is a reasonable excuse not to give the information if giving the information would tend to incriminate the individual.

Part 7 Miscellaneous provisions relating to inspectors

Division 1 Damage

597 Duty to avoid inconvenience and minimise damage

Clause 597 requires an inspector in exercising powers to cause as little inconvenience and damage as possible.

598 Notice of damage

Clause 598 deals with damage that may be caused by an inspector in exercising powers under this part, including provisions related to giving notice of the damage to the person who appears to be the owner or in control of the damaged thing.

Division 2 Compensation

599 Claim

Clause 599 provides that a person may claim compensation from the State if the person incurs loss because of the exercise of a power by an inspector. Compensation may be claimed in a relevant court.

600 Court order

Clause 600 provides that a court may order payment of compensation if satisfied it is just to make the order in the particular circumstances.

Part 8 Reviews and appeals about seizure and forfeiture

601 Definitions for pt 8

Clause 601 states the definitions for this part.

602 Right of appeal

Clause 602 states that a person who has a right to be given an information notice for a decision has a right to appeal against the decision.

603 Appeal process starts with internal review

Clause 603 states said every appeal must, in the first instance, be by way of an internal review.

604 How to apply for internal review

Clause 604 states how an application for internal review is to be made.

605 Stay of operation of decision

Clause 605 provides that an applicant may apply to a court for a stay of the decision.

606 Internal review decision

Clause 606 provides that the chief executive must, within 28 days of receiving an application, make a decision on the review.

607 Who may appeal

Clause 607 provides that a person who has applied for an internal review of the decision, and is dissatisfied with the decision, may appeal to a court.

608 Procedure for an appeal to the court

Clause 608 outlines how an appeal is to be made.

609 Stay of operation of internal review decision

Clause 609 provides that an applicant may apply to a court for a stay of the decision.

610 Powers of court on appeal

Clause 610 states that a court may confirm the internal review decision, set aside the decision and substitute another decision, or set aside the decision and return the matter to the chief executive with appropriate directions.

611 Effect of decision of court on appeal

Clause 611 provides that, where the matter is returned to the chief executive with directions, the new decision is not subject to appeal. If the court substitutes another decision, the decision is taken to be the decision of the chief executive.

Chapter 15 Suspension of criminal proceedings, offences and other legal matters**Part 1 Preliminary****612 Purpose of ch 15**

Clause 612 outlines the purpose of this chapter, including for the suspension of particular proceedings and providing for particular offences under the Bill.

Part 2 Suspension of criminal proceedings**613 Purpose of pt 2**

Clause 613 provides that this part deals with the suspension of criminal proceedings for offences where:

- a person becomes a classified patient
- a direction is given for a psychiatrist report to be prepared, or
- a reference is made to the Mental Health Court.

614 Suspension of proceedings

Clause 614 provides that, for the relevant offences, proceedings are suspended.

615 Giving notice of particular suspensions

Clause 615 provides for giving notices of the suspension of proceedings.

616 Ending of suspension

Clause 616 outlines when the suspension of proceedings ends.

617 Giving notice of ending of suspension

Clause 617 provides for giving notices of the end of the suspension of proceedings.

618 Effect on powers relating to bail, discontinuance of proceedings and other matters

Clause 618 provides that certain matters may continue despite the suspension of proceedings, such as granting bail, or the prosecution for an offence being discontinued.

Part 3 Offences relating to patients

619 Offence relating to ill-treatment

Clause 619 establishes an offence for the ill-treatment of a patient.

620 Offences relating to patients absconding

Clause 620 establishes an offence for wilfully allowing a patient to abscond while in the person's charge.

621 Offences relating to patients unlawfully absent

Clause 621 establishes an offence for a person to induce, or knowingly help, a patient detained in an authorised mental health service or a public sector health service facility to unlawfully absent himself or herself from the service. The clause also establishes an offence for knowingly harbouring a patient who is unlawfully absent.

Part 4 Offences relating to officials

622 Definition for pt 4

Clause 622 defines the term 'official' for this part.

623 Obstructing official

Clause 623 establishes an offence for obstructing an official.

624 Impersonating official

Clause 624 establishes an offence for impersonating an official.

625 Giving official false or misleading information

Clause 625 establishes an offence for giving false or misleading information to an official.

Part 5 Detention and use of reasonable force**626 Classified patient (voluntary) may be detained**

Clause 626 provides that an authorised mental health service may detain a classified patient (voluntary).

627 Detention of person in authorised mental health service with use of reasonable force

Clause 627 enables an administrator of an authorised mental health service, and anyone lawfully helping the administrator, to detain a person in the service with the help, and using the force, that is necessary and reasonable in the circumstances.

628 Detention of person in public sector health service with use of reasonable force

Clause 628 enables a person in charge of a public sector health service facility, and anyone lawfully helping the person, to detain the person in the service with the help, and using the force, that is necessary and reasonable in the circumstances.

629 Examination or assessment of involuntary patient without consent and with use of reasonable force

Clause 629 enables an examination or assessment of an involuntary patient under this Bill to be made without the consent of the person or anyone else. An examination or assessment may be made using the force that is necessary and reasonable in the circumstances. However, force may only be used in an authorised mental health service or public sector health service facility. Clause 33 provides additional powers for the use of force in relation to an examination authority.

630 Treatment and care of patient without consent and with use of reasonable force

Clause 630 applies to persons on a treatment authority, forensic order, treatment support order, or a person apprehended from interstate. This clause enables these persons to be treated for the person's mental illness without the consent of the person or anyone else. Treatment may be provided using the force that is necessary and reasonable in the circumstances. However, force may only be used in an authorised mental health service or public sector health service facility. This clause also clarifies that this does not extend to treatment that is inconsistent with another provision of this Bill, for example, where there is a requirement for a doctor to obtain the consent of the tribunal for electroconvulsive therapy.

631 Relationship with use of physical restraint

Clause 631 states that this part is subject to clause 269 in relation to the use of physical restraint.

Part 6 Evidence and legal proceedings**632 Evidentiary aids**

Clause 632 outlines the evidentiary provisions for the Bill.

633 Proceedings for offences

Clause 633 outlines how proceedings for offences are to be taken.

Chapter 16 Establishment and administration of court and tribunal**Part 1 Mental Health Court****Division 1 Preliminary****634 Purpose of pt 1**

Clause 634 outlines the purpose of this part, primarily to continue the Mental Health Court and provide for its constitution, jurisdiction, powers and procedural matters.

Division 2 Continuation, constitution, jurisdiction and powers**635 Continuation of Mental Health Court**

Clause 635 continues in existence the Mental Health Court.

636 Constitution

Clause 636 provides that the constitution of the Mental Health Court is a member of the court sitting alone. The Court is to be assisted by 1 or 2 assisting clinicians. Assisting clinicians may be psychiatrists or, persons with expertise in the care of persons with an intellectual disability.

637 Jurisdiction

Clause 637 establishes the jurisdiction of the Mental Health Court, namely:

- to hear references to the court under chapter 5
- to hear appeals under the Bill
- to review a person's detention in an authorised mental health service or the forensic disability service.

638 Powers

Clause 638 states that the court may do all things necessary or convenient to be done for the exercise of its jurisdiction.

Division 3 Membership

639 Appointment of members

Clause 639 provides that members of the Court are Supreme Court judges appointed by the Governor-in-Council.

640 Appointment does not affect judge's tenure of office

Clause 640 states that the appointment does not affect the person's appointment as a judge.

641 Resignation of office

Clause 641 enables a member to resign.

642 When member's office ends

Clause 642 states when the member's office ends.

Division 4 President

643 Appointment of president

Clause 643 provides that the Governor-in-Council is to appoint a member of the Mental Health Court to be the president.

644 Arrangement of business

Clause 644 states that the president is responsible for the administration of the court.

645 President holds office while member of court

Clause 645 provides the president holds office while he or she is a member of the court.

646 Delegation of particular powers

Clause 646 enables the President to delegate certain matters.

647 Resignation of office

Clause 647 provides for the resignation of the president.

648 Appointment of acting president

Clause 648 provides that the Governor-in-Council may appoint a member to be the president in an acting capacity.

Division 5 Assisting clinicians**649 Functions**

Clause 649 outlines the functions of assisting clinicians in assisting the court.

650 Appointment

Clause 650 provides that the Governor-in-Council may appoint a psychiatrist or a person with expertise in the care of persons with an intellectual disability to be an assisting clinician.

651 Conditions of appointment

Clause 651 provides for the conditions of appointment for an assisting clinician.

652 Resignation

Clause 652 provides that an assisting clinician may resign.

653 Termination of appointment

Clause 653 provides that the Governor-in-Council may terminate the appointment of an assisting clinician.

Division 6 Mental Health Court Registry and registrar**654 Mental Health Court Registry**

Clause 654 provides for the establishment of the Mental Health Court registry, consisting of the registrar and other staff.

655 Registry's functions

Clause 655 provides that the functions of the registry are to:

- act as the registry for the Mental Health Court
- to provide administrative support to the Mental Health Court
- to perform any other functions conferred on the registry under this Bill.

656 Registrar's functions

Clause 656 states that the registrar administers the registry.

657 Registrar's powers—general

Clause 657 provides for the general powers of the registrar.

658 Registrar's power to issue subpoena

Clause 658 provides that the registrar may issue subpoenas.

659 Registrar's power to require administrator to produce document

Clause 659 gives the registrar the power to require the administrator of an authorised mental health service or the forensic disability service to give the registrar a stated document.

660 Registrar's power to require person to be brought before Mental Health Court

Clause 660 gives the registrar the power to require an administrator to bring a person before the Mental Health Court.

661 Registrar's power to require prosecuting authority to give particular documents

Clause 661 gives the registrar the power to require the prosecuting authority to provide specific documents.

662 Delegation by registrar

Clause 662 enables the registrar to delegate functions.

Division 7 Protection and immunities

663 Contempt of court

Clause 663 outlines the contempt provisions for the court.

664 Conduct that is contempt and offence

Clause 664 states what constitutes contempt.

665 Protection and immunity for member of Mental Health Court and assisting clinician

Clause 665 deals with the protection and immunities for members of the Court and assisting clinicians.

Division 8 Court examination orders**666 Making of court examination order**

Clause 666 gives the Court the power to make a court examination order requiring the person the subject of the proceeding to submit to an examination by an examining practitioner.

667 Recommendation or request for court examination order on reference

Clause 667 deals with circumstances where an assisting clinician recommends, or the director of public prosecutions requests, the Court to make a court examination order for the person.

668 Transport, detention, and examination under court examination order

Clause 668 provides that a person the subject of a court examination order may be taken to an authorised mental health service for the purpose of the examination.

669 What happens at end of examination

Clause 669 provides for the return of a person to an appropriate place after the completion of the court examination order, such as a place of custody, another authorised mental health service, or the community.

Division 9 Reviews of detention in authorised mental health service or forensic disability service**670 Definitions for div 9**

Clause 670 provides definitions for this division.

671 Power to review detention

Clause 671 enables the Court to review the detention of a person in a relevant service (an authorised mental health service or the forensic disability service) on its own initiative or on the application of the relevant person, an interested person for the person, or the Attorney-General.

672 Notice of hearing

Clause 672 outlines who must be given notice of hearing.

673 Parties to proceeding

Clause 673 outlines the parties to a proceeding.

674 Consideration of application

Clause 674 enables the court to refuse the application if the matter would be more appropriately dealt with by the tribunal, or the application is frivolous or vexatious.

675 Appointment of person to inquire into detention

Clause 675 enables the court to appoint a person to inquire into the detention.

676 Administrator to ensure help given to appointed person

Clause 676 requires the administrator to give the appointed person reasonable help.

677 General powers of appointed person

Clause 677 outlines the powers of the appointed person in carrying out the inquiry.

678 Appointed person's power to ask questions

Clause 678 enables the appointed person to ask questions about a person's detention.

679 Mental Health Court may direct person's discharge

Clause 679 provides that the Court may direct the person be discharged from the relevant service if the court is satisfied that person's detention is unlawful.

680 Other remedies not affected

Clause 680 provides that this division does not limit any other remedy available to the person.

Division 10 Procedural provisions

681 General right of appearance and representation

Clause 681 provides that a party to a proceeding may appear in person or be represented by a lawyer or, with the leave of the court, another person.

682 Evidence

Clause 682 provides that the Court is not bound by the rules of evidence.

683 Proof of matters

Clause 683 provides that no party bears the onus of proof in a proceeding and matters are to be decided by the Court on the balance of probabilities.

684 Directions

Clause 684 enables the Court to give directions about the hearing of a proceeding.

685 Assisting clinician's advice before or during adjournment of hearing

Clause 685 requires the Court to advise the parties of advice given by an assisting clinician before the hearing or during an adjournment in the hearing. However, this does not apply to advice in relation to the hearing of proceedings or the administration of the court.

686 Assisting clinician's advice during hearing

Clause 686 requires that advice given by an assisting clinician during a hearing must be given in a way that can be heard by the parties. However, this does not apply to advice in relation to the hearing of proceedings or the administration of the court.

687 Particular advice of assisting clinician to be stated in reasons for decision

Clause 687 requires the Court to state advice provided by an assisting clinician in the Court's reasons for its decision if it materially contributed to the Court's decision.

688 When court may conduct hearing in absence of person

Clause 688 enables the Court to proceed in the absence of the person the subject of proceeding if satisfied it is expedient and in the interests of justice to do so.

689 Appointing assistant

Clause 689 provides that the Court may appoint a person to assist in a hearing including, for example, a person with appropriate communication skills or cultural experience.

690 Court may sit and adjourn hearing

Clause 690 provides that the Court may sit at any time and place, and adjourn hearings.

691 Hearing of reference generally open to public

Clause 691 provides that hearings on references are generally to be open to the public. However, the Court may direct a hearing or part of a hearing not to be open to the public if satisfied it is in the interests of justice.

692 Particular hearings not generally open to public

Clause 692 provides that appeals and reviews of the detention of a person are not generally open to the public.

693 Hearings about minor not open to public

Clause 693 provides that hearings for minors are not open to the public. However, the Court may permit a person to be present during the hearing if the Court is satisfied it is in the interests of justice.

694 Confidentiality order

Clause 694 enables the Court to prohibit or restrict the disclosure of information to the person the subject of the proceeding if it would cause serious harm to the health of the person or put the safety of someone else at risk. Where this occurs, the Court must disclose the information to a lawyer or other representative for the person.

695 Costs

Clause 695 provides that each party is to bear their own costs of proceedings.

696 Death or incapacity of member after hearing started

Clause 696 outlines the processes to be followed if a member dies or becomes incapacitated during a hearing.

Division 11 Rules and practices**697 Rule-making power**

Clause 697 provides that the Governor-in-Council may make rules under this Act in relation to the Mental Health Court with the consent of the president of court.

698 Directions about practice

Clause 698 provides that, subject to this Act and the court rules, the practices and procedures of the court are as directed by the president.

Division 12 Miscellaneous**699 Annual report**

Clause 699 requires the Court to prepare an annual report.

Part 2 Mental Health Review Tribunal**Division 1 Preliminary****700 Purpose of pt 2**

Clause 700 outlines the purpose of this part, primarily to continue the Mental Health Review Tribunal and provide for its constitution, jurisdiction, powers and procedural matters.

701 Definition for pt 2

Clause 701 provides the definitions for this part.

Division 2 Continuation, jurisdiction and powers**702 Continuation of Mental Health Review Tribunal**

Clause 702 states that the tribunal continues and consists of a president, deputy president and other members.

703 Jurisdiction and independence

Clause 703 outlines the tribunal's jurisdiction, namely:

- reviewing treatment authorities, forensic orders, treatment support orders, fitness for trial and the detention of minors in a high security unit
- deciding applications for examination authorities, approval to perform regulated treatment and the transfer of particular patients in and out of Queensland, and
- deciding appeals.

This clause also states that the tribunal must act independently and is not subject to the direction or control of anyone else.

704 Powers

Clause 704 gives the tribunal powers to perform its functions.

Division 3 Members and staff of tribunal**705 Appointment of members**

Clause 705 provides for the appointment of the president on a full time basis, and the appointment of a deputy president and other members on a part time or full time basis. It also outlines the qualifications and experience the person must possess to be appointed and other matters the Minister must consider in making the appointment, including that the person has the relevant competencies developed by the president.

706 Duration of appointment

Clause 706 provides that the president holds office for no longer than 5 years and the deputy president and other members hold office for no longer than 3 years.

707 Terms of appointment

Clause 707 provides that the Governor-in-Council decides tribunal members' remuneration, allowances and other matters not set out in the Bill.

708 Resignation

Clause 708 provides that tribunal members may resign by signed notice given to Minister.

709 Termination of appointment

Clause 709 states when the Governor-in-Council must, and may, terminate a tribunal member's appointment.

710 Deputy president to act as president

Clause 710 states that the deputy president is to act in the office of the president when the office is vacant, when the president is absent from duty or the State, or at other times when the president cannot perform the functions of president.

711 Executive officer and other staff

Clause 711 provides that there is to be an executive officer and other staff for the tribunal. The president controls and is responsible for the efficient and effective administration of the organisational unit made up of these staff. The executive officer and other staff of the tribunal are subject to the direction and control of the president.

712 President's functions generally

Clause 712 outlines the president's functions, including the quick and efficient discharge of the tribunal's business, giving directions about tribunal hearings, and ensuring members are appropriately trained and possess the necessary competencies.

713 President's powers

Clause 713 states that the president of the tribunal has the powers given under this Bill.

Division 4 Constitution of tribunal for hearings**714 Particular proceedings**

Clause 714 sets out the constitution for tribunal hearings.

715 Application for examination authority

Clause 715 provides that examination authority applications must be decided by a single tribunal member who is a lawyer or additional persons approved by the president.

716 Application for approval to perform non-ablative neurosurgical procedure

Clause 716 provides the constitution of the tribunal for approving applications to perform non-ablative neurosurgical procedures.

717 Matters president to consider in constituting tribunal

Clause 717 provides that, for proceedings related to an involuntary patient, the tribunal's constitution must have regard to the safety and wellbeing of the patient, and the safety of others. Where practicable, the tribunal is to include a member who is culturally appropriate to the patient. For a proceeding for a minor, the tribunal is to include a member with expertise in child and adolescent psychiatry.

718 Presiding member

Clause 718 provides for the presiding member for tribunal proceedings.

Division 5 Examinations, confidentiality orders and reports**719 Tribunal may order examination**

Clause 719 enables the tribunal to order an examination by a stated psychiatrist, doctor or other health practitioner for an involuntary patient, and to provide a written report to the tribunal. The order must state matters which the examiner must report on.

720 Confidentiality order

Clause 720 provides that the tribunal may prohibit or restrict the disclosure of particular information to a person who is subject to a proceeding. A confidentiality order may only be made if the tribunal is satisfied the disclosure would cause serious harm to the person, or put the safety of the person or others at risk. If the tribunal makes a confidentiality order, the tribunal must disclose the information, to the person's lawyer or another representative.

721 Reports for particular review proceedings

Clause 721 provides that, for reviews, the treating practitioner for a person subject to the review must provide a written report to the tribunal and the person at least 7 days before a tribunal hearing. However, the treating practitioner does not have to comply if they intend to apply for a confidentiality order for the report.

Division 6 Procedural provisions for ch 12 proceedings

Subdivision 1 Applications

722 Application of sdiv 1

Clause 722 applies to applications made under chapter 12.

723 Approved form

Clause 723 states the application must be in the approved form.

724 Frivolous or vexatious application

Clause 724 states that the tribunal may dismiss an application if satisfied it is frivolous or vexatious.

725 Hearing of application

Clause 725 states applications for examination authorities and urgent electroconvulsive therapy must be heard as soon as practicable. Other electroconvulsive therapy applications must be heard within 14 days, and all other applications within 28 days.

Subdivision 2 Adjourment of hearing of particular periodic reviews

726 Application of sdiv 2

Clause 726 states that the subdivision applies if a patient is absent prior to a periodic review.

727 Definitions for sdiv 2

Clause 727 provides the definitions for this subdivision.

728 Adjourment of hearing

Clause 728 requires the administrator to notify the tribunal of the absence. The hearing is then adjourned.

729 Hearing of scheduled review to be conducted on relevant person's return

Clause 729 states that a periodic review is re-scheduled when the absent person returns.

Division 7 General procedural provisions

Subdivision 1 Preliminary

730 Application of div 7

Clause 730 states that this division applies to any proceeding in the tribunal.

731 Conducting proceedings generally

Clause 731 enables the procedure of a proceeding to be at the tribunal's discretion, subject to this Bill and the tribunal rules.

732 Presentation of party's case and inspection of documents

Clause 732 requires parties to be given a reasonable opportunity to present the party's case and to inspect documents for the hearing.

Subdivision 2 Pre-hearing matters

733 Matters to be stated in notice of hearing

Clause 733 states what must be included in the notice of hearing.

734 Right to appear

Clause 734 states who has a right to appear at the hearing.

735 Attorney-General to give notice of intention to appear

Clause 735 requires the Attorney-General to give a notice of intention to appear. The purpose of this is for the tribunal to arrange legal representation for the person as required under the Bill.

736 Disclosure of documents to be relied on in hearing

Clause 736 provides that if a party to a proceeding intends to rely on a document in the hearing, they must give a copy to each party at least 3 days in advance of the hearing. However, if the party intends to apply for a confidentiality order in relation to the document, the party does not have to give the document to the person subject to the proceeding but must give it to the person's lawyer or another representative. For this clause, the document does not include a victim impact statement.

Subdivision 3 Hearings

737 Right of representation and support

Clause 737 states that a person the subject of a proceeding may be represented at the hearing by a nominated support person, a lawyer or another person. The person may also be accompanied by a nominated support person, family member, carer or other support person.

738 Appointment of representative

Clause 738 deals with the appointment of representatives for a person at a tribunal hearing. The tribunal may appoint a lawyer or another person to represent the person if the tribunal considers it would be in the person's best interests.

Also, the tribunal must appoint a lawyer to represent the person at a hearing at no cost to the patient:

- if the person is a minor
- for a fitness for trial review
- for an application for approval to perform electroconvulsive therapy
- where the State is represented at the hearing by the Attorney-General, or
- another hearing prescribed by regulation.

An adult person with capacity may, in writing, waive the right to be represented.

739 Hearing not open to public

Clause 739 provides that a hearing of a proceeding must not be open to the public unless the tribunal directs the hearing or part of the hearing be open to the public. The tribunal must not order a hearing be open to the public unless the person agrees. Hearings in relation to minors are not to be open to the public. This clause also provides for the ability of an observer to attend a hearing. This requires the approval of the president and the consent of the person the subject of the hearing. The president may not give approval for an observer's attendance at a hearing if the person the subject of the hearing is a minor.

740 Victim impact statement

Clause 740 provides that a victim of an unlawful act may give the tribunal a victim impact statement. This can include a request by the victim that the tribunal impose a condition that the person not contact the victim or a close relative of the victim. This clause does not require the victim to make another statement if one was already provided to the Mental Health Court.

741 Restrictions on disclosing victim impact statement

Clause 741 provides that a victim impact statement must not be disclosed to the person the subject of the hearing unless the victim requests it. If the victim makes such a request and the tribunal considers the victim impact statement may adversely

affect the health and wellbeing of the person charged with the offence, the tribunal may prohibit the disclosure of the statement to the person.

742 Requiring witness to attend or produce document or thing

Clause 742 provides that the presiding member of the tribunal can, by written notice given to a person, require the person to attend a hearing at a stated time and place to give evidence, or produce a stated document or thing that is relevant to the hearing.

743 Tribunal to allow party to call or give evidence

Clause 743 provides that in a proceeding, the tribunal must allow a party to the proceeding to call or give any evidence.

744 Proceeding by remote conferencing or on the papers

Clause 744 provides that the tribunal may conduct a proceeding or part of a proceeding by remote conferencing. For a review of a treatment authority, the tribunal may conduct the proceedings on the basis of documents, without the parties, their representatives or witnesses appearing, if the relevant person does not wish to attend or be represented.

745 Proceeding in absence of involuntary patient

Clause 745 enables proceedings to proceed in the absence of an involuntary patient if the tribunal considers the patient is absent because of the patient's own free will or is unfit to appear.

746 Conducting hearings of proceedings at same time

Clause 746 enables the tribunal to conduct concurrent hearings for different proceedings relating to the same person.

747 Adjourning hearing of proceeding

Clause 747 states that the tribunal may adjourn a proceeding.

748 Appointing assistant

Clause 748 provides that the tribunal may appoint a person with appropriate knowledge or experience to assist it in a proceeding, including a person with appropriate cultural or social knowledge or experience, or a person with expertise in the care of persons with an intellectual disability.

749 Dealing with documents or other things

Clause 749 provides how the tribunal may deal with a document or other thing produced to it in a proceeding.

750 Way questions decided

Clause 750 provides how decisions on a question of law and other matters are decided.

751 Referring question of law to Mental Health Court

Clause 751 enables the tribunal to refer questions of law to the Mental Health Court.

752 Costs

Clause 752 states that each party to a proceeding is to bear the party's own costs.

Subdivision 4 Decisions of tribunal

753 Notice of decision

Clause 753 outlines how the tribunal must give notices of decisions.

754 Written reasons for decision

Clause 754 outlines how the tribunal must give written reasons for decisions.

755 Requirement to give effect to tribunal decision

Clause 755 requires relevant persons to give effect to tribunal decisions, namely the administrator of an authorised mental health service or the forensic disability service.

756 Publishing decision and reasons

Clause 756 provides that the tribunal may publish its final decision in a proceeding and any reasons for the decision, including if the tribunal is satisfied the decision or reasons may be used as a precedent. The publication must not identify any person.

Subdivision 5 Revocation of particular forensic orders and treatment support orders

757 Order for missing person

Clause 757 enables the tribunal to revoke a forensic order or a treatment support order for a person missing for 3 years.

Division 8 Offences and contempt

758 Offences by witnesses

Clause 758 makes it an offence if a person who is given an attendance notice fails to attend as required by the notice, fails to continue to attend as required by the

presiding member, or fails to produce a document or other thing the person is required to produce by an attendance notice.

759 False or misleading information or document

Clause 759 makes it an offence for a person to state to the tribunal or staff of the tribunal anything the person knows is false or misleading in a material particular.

760 Fabricating evidence

Clause 760 states that the tribunal is a tribunal for the Criminal Code, section 126.

761 Contempt of tribunal

Clause 761 specifies when a person is in contempt of the tribunal. If a person is in contempt of the tribunal, the tribunal may order the person be excluded from the place where the proceeding is being conducted. A staff member of the tribunal or a health practitioner, acting under the tribunal's order can, with the help that is necessary and reasonable in the circumstances, exclude the person from the place.

762 Punishment of contempt

Clause 762 provides that a person's contempt of the tribunal may be punished under this clause.

763 Conduct that is contempt and offence

Clause 763 provides that if conduct of a person is both contempt of the tribunal and an offence, the person may be proceeded against for the contempt or for the offence, but the person is not liable to be punished twice for the same conduct.

Division 9 Protection and immunities

764 Protection and immunity for members

Clause 764 provides that a member has, in the exercise of jurisdiction for this Bill, the protection and immunities of a Supreme Court judge exercising the jurisdiction of a judge.

765 Protection and immunity for other persons

Clause 765 provides that a lawyer or another person who represents a party to a proceeding in the tribunal has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court. This clause also provides that a person given an attendance notice or appearing before the tribunal in a proceeding has the same protection and immunity as a witness in a proceeding in the Supreme Court.

Division 10 Rules and practice

766 Rule-making power

Clause 766 provides that the Governor-in-Council may make rules for the tribunal under this Bill about a prescribed list of matters, which are rules of court.

767 Directions about practice

Clause 767 states that, subject to this Bill and the rules, the practice and procedure of the tribunal are as directed by the president of the tribunal.

Division 11 Miscellaneous

768 Authentication of documents

Clause 768 specifies that a document requiring authentication by the tribunal is sufficiently authenticated if it is signed by a member.

769 Judicial notice of particular signatures

Clause 769 states that judicial notice must be taken of the signature of a member if it appears on a document issued by the tribunal.

770 Delegation

Clause 770 allows the president of the tribunal to delegate the president's powers under this Bill to the deputy president or another member of the tribunal.

771 Register

Clause 771 requires the president of the tribunal to keep a register of applications, reviews heard by the tribunal, decisions of the tribunal and reasons for the decisions.

772 Annual report

Clause 772 provides that, the president of the tribunal must prepare and give to the Minister a report on the tribunal's operations each financial year. The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it.

Chapter 17 Confidentiality

Part 1 Preliminary

773 Purpose of ch 17

Clause 773 provides the purpose of this chapter.

774 Definitions for ch 17

Clause 774 provides the definitions for this chapter.

775 Relationship of ch 17 with other Acts

Clause 775 states that this chapter applies to the use or disclosure of information despite any prohibitions or limitations on the use or disclosure under the *Hospital and Health Boards Act 2011*, the *Information Privacy Act 2009* or another Act.

Part 2 Duty of confidentiality**776 Confidentiality of information obtained by designated person**

Clause 776 applies to persons performing a function under this Bill, including an independent patient rights adviser. The person may use or disclose personal information to perform a function under this Bill. Also, a designated person (as defined under the *Hospital and Health Boards Act 2011*) may disclose information to a person if it enables that person to perform a function under this Bill.

777 Confidentiality of information obtained by other persons

Clause 777 states that a member of the tribunal or an assisting clinician must not use or disclose personal information to anyone else. However, the person may use or disclose personal information if it is necessary to perform their function under this Bill, if the use or disclosure is permitted by law, or if the person to whom the information relates consent to the use or disclosure.

Part 3 Permitted use and disclosure**778 Disclosure to identify person with mental health defence**

Clause 778 enables an employee of the department, a Hospital or Health Service or another government entity to use or disclose personal information to assist to identify a person who may have been of unsound mind at the time of an alleged offence or may be unfit for trial, and to enable the application to a person of the provisions relating to unsoundness of mind and unfitness for trial.

779 Disclosure to identify and offer support to victims

Clause 779 enables an employee of the department, a Hospital or Health Service or another government entity to use or disclose personal information to assist in the identification of a possible victim of an unlawful act committed by a person with a mental illness, intellectual disability or other mental condition for the purposes of offering support services.

780 Disclosure for report by private psychiatrist

Clause 780 enables a designated person to disclose personal information about a patient, including the patient's health records, to assist in the preparation of a private psychiatrist's report for the patient.

781 Disclosure of particular information relating to classified patient

Clause 781 enables a designated person to disclose personal information about a classified patient to the victim of an unlawful act. The person the information is disclosed to must give a written undertaking to preserve the confidentiality of the information.

782 Disclosure of particular information relating to person in contact with forensic disability service

Clause 782 relates to the transfer of persons between an authorised mental health service and the forensic disability service, and the provision a care to a person on a forensic order (disability). This clause enables the exchange of information for these purposes.

783 Disclosure to lawyer

Clause 783 enables a designated person to disclose personal information about a patient, including the patient's health records, to a lawyer if it assists the lawyer to provide legal services to the patient for a Mental Health Court, Mental Health Review Tribunal or other proceeding.

784 Disclosure of photograph of patient required to return

Clause 784 enables the administrator of an authorised mental health service to disclose a photograph of an involuntary patient or a classified patient (voluntary) who is absent to the commissioner of the police service, or another person, to help locate the person.

785 Disclosure of information for research purposes

Clause 785 enables the Mental Health Court and the tribunal to disclose confidential information for genuine research purposes.

Part 4 Offences relating to publication of judicial proceedings**786 Definition for pt 4**

Clause 786 provides a definition of 'report'.

787 Publication of report and decisions on references—Mental Health Court and Court of Appeal

Clause 787 provides that a person must not publish a report or a decision of a proceeding in the Mental Health Court or the Court of Appeal before the end of the 'prescribed day' (as defined) without the leave of the Court.

788 Publication of reports of other proceedings

Clause 788 applies to a proceeding of the tribunal, an appeal to the Mental Health Court against a decision of the tribunal, or the proceeding of the Mental Health Court relating to an inquiry into detention. A person must not publish a report of the proceeding without leave of the Court or tribunal.

789 Publication of information disclosing identity of party to proceedings

Clause 789 provides that a person must not publish information that identifies or is likely to identify a minor who is or has been party to a proceeding in the tribunal, Mental Health Court or Court of Appeal.

Also, a person must not publish a report that identifies a party to a proceeding stated in the previous clause, other than a minor, without leave of the Court or tribunal.

790 Publication of date of hearing permitted

Clause 790 provides that nothing in this part prevents the disclosure of a date, or time, of a hearing to be held in the Mental Health Court.

791 Publication of information disclosed at hearing permitted

Clause 791 provides that subject to previous clauses, nothing in this part prevents the disclosure of information disclosed in a hearing of the Mental Health Court.

Chapter 18 General provisions**792 Detention of involuntary patient must be in inpatient unit**

Clause 792 provides that an involuntary patient detained under this Bill must be detained in an inpatient unit of the service.

793 Use of audiovisual link for examination or assessment

Clause 793 provides that an examination or assessment under this Bill may be done using audio-visual facilities.

794 Disclosure by QCAT of information about personal guardian

Clause 794 enables QCAT to disclose information about personal guardians to the tribunal or another person involved in the administration of this Bill.

795 Protection of official from liability

Clause 795 protects officials from liability for an act done, or omission made, honestly and without negligence under this Bill. If this prevents a civil liability attaching to an official, the liability attaches instead to the State.

796 Approved forms

Clause 796 provides that the president of the Mental Health Court, the president of the Mental Health Review Tribunal, and the chief psychiatrist may approve forms for use under this Bill.

797 Electronic format for notices and other information

Clause 797 provides that notices and other information may be given or stored in electronic form.

798 Regulation-making power

Clause 798 enables the Governor-in-Council to make regulations under this Bill.

Chapter 19 Repeal**799 Repeal**

Clause 799 repeals the *Mental Health Act 2000*.

Chapter 20 Transitional provisions**Part 1 Preliminary****800 Definitions for ch 20**

Clause 800 outlines the definitions for this chapter.

801 Application of new Act in relation to proceedings for alleged offences

Clause 801 provides that, where a matter in the Bill relates to a proceeding for an alleged offence, the Bill applies as if the proceeding started after the commencement. This enables, for example, the magistrates powers under chapter 6 to apply to any hearing after commencement, regardless of when the alleged offence occurred or when the proceeding commenced.

802 Detention under repealed Act

Clause 802 continues lawful detention under the repealed Act.

Part 2 Provisions about assessment and detention under chapters 2 and 3 of repealed Act

803 Assessment documents

Clause 803 continues recommendations for assessment under the repealed Act.

804 Persons subject to assessment documents

Clause 804 enables a person on assessment documents under the repealed Act to continue to be taken to a place under the repealed Act.

805 Justices examination order

Clause 805 enables justices examination orders under the repealed Act to continue.

806 Emergency examination order

Clause 806 enables emergency examination orders under the repealed Act to continue.

807 Detention for assessment

Clause 807 enables the detention of a person for assessment to continue.

808 Agreement for assessment

Clause 808 continues in force an agreement for assessment under the repealed Act.

809 Custodian's assessment authority

Clause 809 continues in force a custodian's assessment authority under the repealed Act.

810 Taking person to authorised mental health service

Clause 810 continues the authority to transport person under a recommendation for assessment under the repealed Act.

811 Classified patients

Clause 811 transitions classified patients under the repealed Act to being classified patients under this Bill.

812 Report of authorised doctor

Clause 812 continues in force a report by an authorised doctor to the chief psychiatrist in relation to returning a classified patient to custody.

813 Involuntary treatment orders

Clause 813 transitions involuntary treatment orders to treatment authorities under this Bill, with the same categories and conditions that applied under the repealed Act.

Part 3 Provisions about assessment or detention of persons before a court or in custody under chapter 3 of repealed Act**814 Court assessment order**

Clause 814 continues in force court assessment orders under the repealed Act.

Part 4 Provisions about treatment and care of patients under chapter 4 of repealed Act**815 Treatment plans**

Clause 815 provides that treatment plans under the repealed Act are taken to be health records under this Bill.

816 Limited community treatment

Clause 816 continues the authorisation of limited community treatment under the repealed Act.

817 Monitoring conditions

Clause 817 continues in force monitoring conditions imposed by the director of mental health on a forensic patient under the repealed Act. However, this does not apply if the condition involved the wearing of a tracking device.

Part 5 Provisions about electroconvulsive therapy under chapter 4 of repealed Act**818 Consent to electroconvulsive therapy**

Clause 818 continues in effect an informed consent given for electroconvulsive therapy under the repealed Act.

819 Emergency electroconvulsive therapy

Clause 819 continues in force a certificate to perform emergency electroconvulsive therapy under the repealed Act.

Part 6 Provisions about movement, transfer and temporary absence of patients under chapter 5 of repealed Act

820 Move of patients interstate

Clause 820 states that a person moved interstate under the repealed Act is taken to be transferred under this Bill.

821 Temporary absences

Clause 821 states that an approval for a temporary absence under the repealed act continues in force.

Part 7 Provisions about tribunal reviews under chapter 6 of repealed Act

Division 1 Orders and decisions made before commencement

822 Particular orders and decisions not given effect before commencement

Clause 822 states that particular orders in relation to the transfer of patients that were made before commencement but not given effect must be given effect.

823 Particular decisions unaffected by new Act

Clause 823 states that particular decisions made under the repealed Act are unaffected, including a decision about a person's fitness for trial.

Division 2 Reviews and applications not completed before commencement

824 Existing applications to tribunal

Clause 824 enables applications to the tribunal under the repealed Act to continue.

825 Existing reviews started other than by an application

Clause 825 enables reviews under the repealed Act to continue.

826 Effect of tribunal's decision on existing review

Clause 826 continues in effect decisions made by the tribunal under the repealed Act.

Division 3 Other provisions

827 When first periodic review under new Act must be conducted

Clause 827 states when periodic reviews of authorities and orders must commence for orders transitioned from the repealed Act.

828 Discontinuing proceeding for offence following review of fitness for trial

Clause 828 outlines the transitional arrangements for decisions related to fitness for trial reviews.

829 Non-contact order ends

Clause 829 states that a non-contact order under the repealed Act ends.

Part 8 Provisions about examinations, references and orders under chapter 7 of repealed Act

Division 1 Examinations under chapter 7, part 2 of repealed Act

830 Making of reference under repealed Act by director or director of public prosecutions

Clause 830 continues the chapter 7 part 2 processes for psychiatrist reports under the repealed Act.

Division 2 References

831 Application of div 2

Clause 831 states that this division applies to references made to the Mental Health Court that had not been decided.

832 Hearing of reference continues under repealed Act

Clause 832 provides that hearings of references to the Mental Health Court continue.

833 Appeal against Mental Health Court's decision

Clause 833 provides that appeals may be made against decisions made before the repeal.

Division 3 Forensic orders (Mental Health Court) and forensic orders (Mental Health Court—Disability)

834 Forensic order (Mental Health Court)

Clause 834 transitions a forensic order (Mental Health Court) that was in force immediately before commencement to a forensic order (mental health).

835 Forensic order (Mental Health Court—Disability)

Clause 835 transitions a forensic order (Mental Health Court—Disability) that was in force immediately before commencement to a forensic order (disability).

836 Limited community treatment for forensic patient

Clause 836 continues limited community treatment under the repealed Act.

837 Review of forensic order under new Act

Clause 837 requires the tribunal, on the first review of a forensic order after the commencement to decide the category of the order. This is required as the Bill establishes a new community category.

Division 4 Other provisions

838 Order approving interstate transfer under s 288B of repealed Act

Clause 838 provides that a person who was moved out of Queensland by decision of the Mental Health Court is taken to have been transferred under this Bill.

839 Forensic order (Criminal Code)

Clause 839 continues in force a forensic order (Criminal Code).

840 Custody order

Clause 840 continues in force a custody order.

841 Forensic order (Minister)

Clause 841 continues in force a forensic order (Minister) as a forensic order (mental health).

842 Forensic disability client temporarily detained in authorised mental health service

Clause 842 continues in force a detention under section 309B of the repealed Act.

Part 9 Provisions about information orders under chapter 7A of repealed Act

843 Forensic information orders

Clause 843 continues the entitlement of a person to receive information under a forensic information order, to be re-named an information notice.

844 Classified patient information orders

Clause 844 enables persons who are receiving information under a classified patient information order to continue to receive information.

Part 10 Provisions about security of authorised mental health services under chapter 10 of repealed Act

845 Exclusion of visitors

Clause 845 continues in force a decision by an administrator of an authorised mental health service to exclude visitors.

Part 11 Provisions about Mental Health Court under chapter 11 of repealed Act

846 Mental Health Court registry

Clause 846 continues in force the Mental Health Court registry, including the employment of the registrar and staff.

847 Court examination order

Clause 847 continues in force a court examination order.

848 Inquiry into detention of patient in authorised mental health service

Clause 848 enables an inquiry into the detention of a person to continue.

Part 12 Miscellaneous

849 Mental Health Court, tribunal or another court may make orders about transition from repealed Act to new Act

Clause 849 enables the Mental Health Court, the tribunal or another court to make orders about transitioning from the repealed Act to the Bill.

850 Notices generally

Clause 850 requires persons to give notices for similar matters that were required to be given under the repealed Act.

851 Records made under repealed Act

Clause 851 requires records required to be held under the repealed Act to be retained.

852 Material submitted by victim or concerned person

Clause 852 provides that victim statements given under the repealed Act are taken to have been made under the Bill.

853 Subpoenas

Clause 853 provides that a subpoena issued by the registrar is taken to be issued under this Bill.

854 Authorised mental health services and high security units

Clause 854 continues authorised mental health services and high security units under the Bill.

855 Office holders

Clause 855 retains the appointment of persons appointed under the repealed Act, namely:

- the director of mental health (to be renamed chief psychiatrist)
- authorised mental health service (and high security unit) administrators
- authorised doctors
- authorised mental health practitioners
- the Mental Health Court president
- Mental Health Court members
- assisting psychiatrists (to be re-named assisting clinicians)
- the Mental Health Court registrar
- the Mental Health Review Tribunal president
- Mental Health Review Tribunal members, and
- the Mental Health Review Tribunal executive officer.

856 Suspended proceedings

Clause 856 continues the suspension of proceedings under the repealed Act, which will end in accordance with this Bill.

857 Reviews relating to serious risks

Clause 857 continues in force reviews about serious risks.

858 Appeals

Clause 858 enables appeals to continue.

859 Annual reports

Clause 859 deals with annual reports during the transition period.

860 References to orders and authorities under repealed Act

Clause 860 continues an order made by the chief psychiatrist if there was a serious risk under the repealed Act.

861 Application of new Act, s 418

Clause 861 provides that the requirements under clause 418 do not apply until 1 year after commencement.

862 Transitional regulation-making power

Clause 862 provides for transitional regulations. (See “Consistency with Fundamental Legislative Principles” section of these Explanatory Notes).

Chapter 21 Amendment of Acts**Part 1 Amendment of this Act****863 Act amended**

Clause 863 provides that this part amends this Bill.

864 Amendment of long title

Clause 864 amends the long title for the Bill.

Part 2 Amendment of Criminal Code**865 Code amended**

Clause 865 states that this part amends the Criminal Code.

866 Amendment of ss 145A(a), 227C(3), definition *lawful custody*, 266 and 358

Clause 866 amends the reference to the *Mental Health Act 2015*.

867 Amendment of s 613 (Want of understanding of accused person)

Clause 867 amends section 613 to provide that, where a jury makes a finding under section 613, the court may order that the person be admitted to an authorised mental health service to be dealt with under the *Mental Health Act 2015*.

868 Amendment of s 645 (Accused person insane during trial)

Clause 868 amends section 645 to provide that, where a jury makes a finding under section 645, the court is required to order that the person be admitted to an authorised mental health service to be dealt with under the *Mental Health Act 2015*.

869 Amendment of s 647 (Acquittal on ground of insanity)

Clause 869 amends section 647 to provide that, where a jury makes a finding under section 647, the court is required to order that the person be admitted to an authorised mental health service to be dealt with under the *Mental Health Act 2015*.

870 Amendment of s 668F (Powers of Court in special cases)

Clause 870 amends section 668F to provide that, where the Court of Appeal quashes a sentence under this section, it may order that the appellant be admitted to an authorised mental health service to be dealt with under the *Mental Health Act 2015*.

871 Amendment of s 678 (Definitions)

Clause 871 amends a reference to the *Mental Health Act 2015*.

Part 3 Amendment of *Forensic Disability Act 2011***872 Act amended**

Clause 872 provides that this part amends the *Forensic Disability Act 2011*.

873 Amendment of s 4 (How purpose is to be achieved)

Clause 873 amends section 4 by removing the word 'limited' to reflect the new definition of community treatment in the *Forensic Disability Act 2011*.

874 Amendment of s 6 (Application of Act)

Clause 874 amends section 6 by replacing the term 'forensic order (Mental Health Court – Disability)' with 'forensic order (disability)'.

875 Amendment of s 7 (General principles)

Clause 875 removes the example in the section.

876 Amendment of s 10 (Who is a forensic disability client)

Clause 876 amends section 10 by revising the definition of 'forensic disability client'.

877 Amendment of s 14 (Preparing plan for client)

Clause 877 replaces the definition of 'relevant plan'.

878 Amendment of s 15 (Content of plan)

Clause 878 amends section 15(3) by removing the word 'limited' to reflect the new definition of community treatment in the Act.

879 Replacement of ch 2, pt 2, hdg (Limited community treatment)

Clause 879 removes the word 'limited' from the heading of chapter 2, part 2.

880 Amendment of s 20 (Authorising limited community treatment)

Clause 880 inserts criteria for a senior practitioner to authorise community treatment.

881 Amendment of s 21 (Limited community treatment on order of tribunal or Mental Health Court)

Clause 881 removes 'limited' to reflect the new definition of community treatment in the Act.

882 Amendment of s 22 (What individual development plan must state about limited community treatment)

Clause 882 removes 'limited' to reflect the new definition of community treatment in the Act.

883 Amendment of s 26 (Who is allied person if client does not have capacity to choose)

Clause 883 removes the term 'or the Mental Health Act', as allied persons are not appointed under the Mental Health Bill.

884 Insertion of new ch 4, pts 3 and 4

Clause 884 inserts two new parts into the *Forensic Disability Act 2011*. Part 3 contains provisions that enable the director of forensic disability to provide approval for a forensic disability client to access periods of temporary absence, which replaces section 41 of the Act. Part 4 requires that the allied person of a forensic disability client be notified when the client is transferred between the forensic disability services and an authorised mental health service.

885 Omission of ch 5 (Transfer and temporary absence of forensic disability clients)

Clause 885 removes chapter 5 as these provisions are addressed in the Mental Health Bill and in other amendments to the *Forensic Disability Act 2011*.

886 Amendment of s 47 (Relationship with Disability Services Act)

Clause 886 removes 'limited' to reflect the new definition of community treatment in the Act.

887 Amendment of s 84 (Procedure for appeal)

Clause 887 applies the appeal provisions from the Mental Health Bill where the administrator refuses to allow a person to visit a client.

888 Amendment of s 91 (Policies and procedures about detention, care and support of clients)

Clause 888 amends section 91 by removing the term 'special notification clients' to reflect the changes in terminology in the Mental Health Bill.

889 Omission of s 92 (Giving information about client to director (mental health) or nominee)

Clause 889 removes section 92 as this is addressed in the Mental Health Bill.

890 Omission of s 98 (Administrator's obligation to ensure forensic order is given effect)

Clause 890 removes section 98 as this is addressed in the Mental Health Bill.

891 Amendment of s 113 (Taking client to forensic disability service or authorised mental health service)

Clause 891 revises section 113 to reflect the revised approach to transporting persons under the Mental Health Bill.

892 Insertion of new s 113A

Clause 892 inserts a new section that relates to temporary admissions of forensic disability clients to authorised mental health services. An equivalent provision was previously in the *Mental Health Act 2000*.

893 Amendment of s 114 (Application of pt 2)

Clause 893 amends section 114 by removing the word 'limited'.

894 Amendment of s 115 (Entry of places)

Clause 894 amends section 115 by removing the word 'limited'.

895 Amendment of s 116 (Offences relating to ill-treatment)

Clause 895 amends section 116 by removing the word 'limited'.

896 Amendment of s 117 (Offences relating to forensic disability clients absconding)

Clause 896 removes paragraph (1)(d) as it is addressed under the Mental Health Bill.

897 Amendment of s 122 (Confidentiality of information—other persons)

Clause 897 replaces the term ‘director (mental health)’ with ‘chief psychiatrist’.

898 Omission of s 123 (Disclosure of confidential information)

Clause 898 removes section 123 as it is addressed under the Mental Health Bill.

899 Amendment of s 126 (Evidentiary provisions)

Clause 899 replaces the term ‘director (mental health)’ with ‘chief psychiatrist’.

900 Amendment of s 128 (Protection of officials from liability)

Clause 900 replaces the term ‘director (mental health)’ with ‘chief psychiatrist’.

901 Omission of ch 10 (Application of Mental Health Act)

Clause 901 removes chapter 10 as it is redundant under the Mental Health Bill.

902 Amendment of s 141 (Review by director)

Clause 902 amends section 141 to reflect the Mental Health Bill.

903 Omission of s 142 (Transfer from forensic disability service to authorised mental health service)

Clause 903 removes section 142 as this is addressed under the Mental Health Bill.

904 Amendment of s 144 (Administration of medication for particular purposes)

Clause 904 updates terms used in this section.

905 Omission of s 149 (Director taken to have complied with particular requirements)

Clause 905 removes section 149 as it is addressed under the Mental Health Bill.

906 Omission of s 152 (Care of client detained temporarily in authorised mental health service)

Clause 906 removes section 152 as it is redundant.

907 Amendment of s 155 (Use of reasonable force)

Clause 907 updates section references.

908 Amendment of ch 13, hdg (Transitional provision)

Clause 908 amends the chapter heading.

909 Insertion of new ch 13, pt 1, hdg

Clause 909 inserts a heading for Part 1.

910 Insertion of new ch 13, pt 2

Clause 910 inserts a new part 'Part 2 - Transitional provisions for Mental Health Act 2015'. This part includes a transitional regulation-making power (See "Consistency with Fundamental Legislative Principles" section of these Explanatory Notes).

911 Amendment of sch 2 (Dictionary)

Clause 911 amends Schedule 2 by inserting or amending the definitions of various terms in the dictionary of the *Forensic Disability Act 2011*.

Part 4 Amendment of Powers of Attorney Act 1998

912 Act amended

Clause 912 states that this part amends the *Powers of Attorney Act 1998*.

913 Amendment of s 6A (Relationship with Guardianship and Administration Act 2000)

Clause 913 replaces the reference to 'psychosurgery' in the note with 'a non-ablative neurosurgical procedure'.

914 Amendment of s 38 (Act's relationship with Mental Health Act)

Clause 914 replaces reference to the *Mental Health Act 2000* with the *Mental Health Act 2015*.

915 Amendment of sch 2 (Types of matters)

Clause 915 replaces reference to 'psychosurgery' with 'a non-ablative neurosurgical procedure'. This reflects the prohibition of psychosurgery under the Mental Health Bill, and includes a non-ablative neurosurgical procedure as special health care.

916 Amendment of sch 3 (Dictionary)

Clause 916 amends Schedule 3 (Dictionary) of the *Powers of Attorney Act 1998* to include the definition of 'non-ablative neurosurgical procedure' as defined by the *Mental Health Act 2015*.

Part 5 Amendment of *Public Health Act 2005***917 Act amended**

Clause 917 provides that this part amends the *Public Health Act 2005*.

918 Amendment of s 7 (How object is mainly achieved)

Clause 918 inserts an additional object for the *Public Health Act 2005*, namely, to provide for persons who have a major disturbance in mental capacity to be transported to a treatment or care place.

919 Insertion of new ch 4A

Clause 919 inserts a new chapter 4A in the Act (Health of persons with major disturbance in mental capacity).

Part 1 inserts the definitions for chapter 4A as a new section 157A.

Part 2 allows for persons to be taken to a treatment or care place, such as a public sector health service facility or an authorised mental health service, if certain criteria are met. An ambulance or police officer may detain and transport a person to a treatment or care place, if:

- the person's behaviour indicates that the person is at immediate risk of serious harm, and
- the risk appears to be the result of a major disturbance in the person's mental capacity, whether caused by illness, disability, injury, intoxication or another reason, and
- the person appears to require urgent examination, or treatment and care for the disturbance.

This part also provides that, if an ambulance or police officer takes a person to a treatment or care place that is a public sector health service facility or authorised mental health service, the officer must immediately make an emergency examination authority for the person. This authority provides authorisation for a person to be detained in the treatment or care place for a period of not more than 6 hours starting when the authority is made. The examination period can be extended by a doctor or health practitioner to a period of not more than 12 hours after it starts, if this is necessary to carry out or finish an examination of the person.

Part 3 provides for the return of persons who abscond from a public sector health service facility or authorised mental health service while being detained under this chapter. A person in charge of a public sector health service facility or administrator of an authorised mental health service may authorise an authorised person, or ask a police officer, to transport the person to the public sector health service facility or authorised mental health service. Before giving an authorisation or making a request, reasonable efforts to contact the person and encourage their return must be made, unless there is a risk of harm occurring to the person or others. An authorisation to transport a person under the previous clause lasts for 3 days after the person absconds.

Part 4 outlines the powers which may be exercised in transporting a person under this chapter, including the use of reasonable force. This part also gives authority to detain and examine a person under this chapter without consent and with the use of reasonable force.

This part also requires a person detained under an examination authority to be returned to a place in the community.

Part 5 relates to searches of persons detained under this chapter for an examination. Under this part, a doctor or health practitioner may carry out a search of a person without their consent if the doctor or health practitioner believes the person may be in possession of a harmful thing (as defined). Various safeguards apply, including requiring the approval of the person in charge of the facility or the administrator of the service if the search requires the removal of clothing.

Part 6 contains provisions about warrants for the apprehension of persons if necessary to transport the person to a public sector health service facility or authorised mental health service for an examination under this chapter. Under this part, an authorised person may apply to a magistrate for a warrant for apprehension of a person. A warrant allows an authorised person to enter and search places, and to transport the person, using the help and force that is reasonable in the circumstances.

Part 7 inserts a new section that states that this chapter does not affect the operation of section 63 of the *Guardianship and Administration Act 2000* in relation to providing urgent healthcare under that Act to a person.

Clause 920 Amendment of sch 2 (Dictionary)

Clause 920 inserts various definitions into the dictionary of the *Public Health Act 2005*.

Chapter 22 Minor and consequential amendments

921 Acts amended

Clause 921 states that minor and consequential amendments are made in Schedule 4.

**Schedule 1 Information that applicant, or applicant’s nominee,
is entitled to receive under an information notice**

Schedule 1 outlines the information that is to be given under an information notice.

Schedule 2 Who may appeal to Mental Health Court

Schedule 2 outlines who may appeal to the Mental Health Court.

Schedule 3 Dictionary

Schedule 3 outlines the dictionary for the Bill.

**Schedule 4 Minor or consequential amendments of particular
legislation**

Schedule 4 outlines the minor and consequential amendments.