Queensland

Mental Health Act 2016

Current as at [Not applicable]

Indicative reprint note
This is an ***unofficial*** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Health and Other Legislation Amendment Bill 2021. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act***.

The point-in-time date for this indicative reprint is the introduction date for the Health and Other Legislation Amendment Bill 2021—1 December 2021.

Detailed information about indicative reprints is available on the **Information** page of this website.

© State of Queensland 2021

This work is licensed under a Creative Commons Attribution 4.0 International License.

Queensland

Mental Health Act 2016

Contents

		Page
Chapter 1	**Preliminary**	
Part 1	**Introduction**	
1	Short title	39
2	Commencement	39
3	Main objects of Act	39
4	Act binds all persons	40
Part 2	**Principles for administration of Act**	
5	Principles for persons with mental illness	40
6	Principles for victims and others	43
7	Regard to principles	44
8	Application to person with intellectual disability	45
Part 3	**Interpretation**	
9	Definitions	45
10	Meaning of mental illness	45
11	Meaning of involuntary patient	46
12	Meaning of treatment criteria	47
13	Meaning of less restrictive way	47
14	Meaning of capacity to consent to be treated	49
15	Responsibility for involuntary patient or forensic disability client	49
16	Purpose of limited community treatment	50
Part 4	**Overview of Act**	
17	Purpose of pt 4	50
18	Treatment authorities	50
19	Persons in custody	51
20	Psychiatrist reports	51
21	Mental Health Court	52
22	Magistrates Courts	52

Not authorised—indicative only

Contents

23	Treatment and care of patients	52
24	Mechanical restraint, seclusion, physical restraint and other practices	53
25	Rights of patients	53
26	Chief psychiatrist	54
27	Information notices	54
28	Mental Health Review Tribunal	54
29	Appeals	55
Chapter 2	**Making of treatment authorities after examination and assessment**	
Part 1	**Preliminary**	
30	Purpose of ch 2	56
Part 2	**Examinations and recommendations for assessment**	
Division 1	**Examinations generally**	
31	Examination	57
Division 2	**Powers under examination authorities**	
32	Powers of doctor or authorised mental health practitioner	57
33	Reasonable help and force to exercise powers	59
34	Asking police officer for help	59
35	Action before exercising powers	59
Division 3	**Detention of particular persons to make recommendation for assessment**	
36	Powers of doctor or authorised mental health practitioner	60
37	Reasonable help and force to exercise powers	61
38	Action before exercising powers	61
Division 4	**Recommendations for assessment**	
39	Making recommendation for assessment	61
40	Notice of making	62
41	Duration	62
42	Revocation	62
Part 3	**Assessments**	
43	Making assessment	63
44	Where and how person may be assessed	63
45	Detention for assessment	64
46	Start of assessment period to be noted	65
47	Explaining decision not to make treatment authority	65
Part 4	**Treatment authorities**	

Not authorised—indicative only

48	Application of pt 4	66
49	Making treatment authority	66
50	Form of treatment authority	66
51	Category	67
52	Limited community treatment	68
53	Nature and extent of treatment and care	68
54	When advance health directive not followed	69
55	Notice of making	69
56	Review of treatment authority if not made by psychiatrist	70
57	Decision on review	71
58	Notice about review	72
59	Date for first assessment	73
60	Relationship with forensic order (disability)	73
Chapter 3	**Persons in custody**	
Part 1	**Preliminary**	
61	Purpose of ch 3	73
62	Definitions for ch 3	74
63	Meaning of person in custody	74
64	Meaning of classified patient	75
Part 2	**Transport of persons in custody to authorised mental health services**	
65	Transport for assessment	77
66	Transport for treatment and care under treatment authority or particular orders	77
67	Transport for treatment and care by consent	78
68	Transfer recommendation	79
69	Administrator consent	80
70	Prior approval of chief psychiatrist for transport of minor to high security unit	81
71	Custodian consent	81
72	Notice to chief psychiatrist if person in custody not transported within 72 hours	82
73	Chief psychiatrist consent for transport	83
Part 3	**Persons in custody remaining in authorised mental health services**	
74	Person subject to examination order or court examination order remaining in authorised mental health service	84
Part 4	**Requirements applying when person in custody becomes classified patient**	

Not authorised—indicative only

Not authorised—indicative only

Contents

75	Explanation to person in custody who becomes classified patient	87
76	Notice to chief psychiatrist of person in custody becoming classified patient	87
77	Notice to tribunal of minor in custody becoming classified patient in high security unit	87
78	Examination of classified patient under s 201	88
79	Classified patient (involuntary) may become classified patient (voluntary)	88
80	Notice to chief psychiatrist if classified patient (voluntary) withdraws consent	89
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	90
82	Chief psychiatrist may decide to return classified patient to place of custody	91
83	Return of classified patient to custody	92
84	Person stops being classified patient if Mental Health Court makes decision on reference	93
85	Release of classified patient	94
Chapter 4	**Psychiatrist reports for serious offences**	
Part 1	**Preliminary**	
86	Purpose of ch 4	95
87	Definitions for ch 4	95
Part 2	**Psychiatrist report on request**	
88	Application of pt 2	95
89	Administrator must explain effect of request	96
90	Request for psychiatrist report	96
91	Direction to prepare psychiatrist report	97
Part 3	**Psychiatrist report on chief psychiatrist's own initiative**	
92	Application of pt 3	98
93	Direction to prepare psychiatrist report	98
94	Notice of direction	99
Part 4	**Preparation of psychiatrist reports**	
95	Authorised psychiatrist must prepare psychiatrist report	99
96	Information from prosecuting authority	100
97	Support person	102
98	Person must participate in examination in good faith—report on request	102

99	Person must attend examination—report on chief psychiatrist's initiative	104
100	Second psychiatrist report	104
Part 5	**References by chief psychiatrist**	
101	Reference by chief psychiatrist to Mental Health Court	105
Part 6	**Miscellaneous**	
102	Copies of reports	106
103	Chapter stops applying to person if prosecution for offence discontinued	108
104	Application of chapter to person with intellectual disability	108
Chapter 5	**Mental Health Court references**	
Part 1	**Preliminary**	
105	Purpose of ch 5	109
106	Definitions for ch 5	109
107	Meaning of associated offence	110
108	Meaning of diminished responsibility	110
109	Meaning of unsound mind	110
Part 2	**Making of references by particular persons**	
110	When reference may be made	111
111	How reference is made	112
Part 3	**Proceedings for references**	
Division 1	**Preliminary**	
112	Application of pt 3	113
Division 2	**Notice requirements etc.**	
113	Notice of reference	113
114	Parties to proceeding	114
115	Notice of hearing	114
Division 3	**Particular decisions**	
116	Decision about unsoundness of mind and diminished responsibility	115
117	Substantial dispute about whether person committed offence	115
117A	Substantial dispute about fact relied on in expert report	116
118	Decision about fitness for trial	116
Division 4	**Procedural provisions**	
119	Unsound mind—discontinuance of proceeding	117
120	Diminished responsibility—discontinuance of proceeding	118
121	Temporary unfitness for trial—stay of proceeding	118

Not authorised—indicative only

Not authorised—indicative only

122	Permanent unfitness for trial—discontinuance of proceeding	118
123	Fit for trial—continuation of proceeding	119
124	Related orders if person fit for trial	119
Division 5	**Withdrawal of particular references**	
125	Application of div 5	120
126	Application to withdraw reference	120
127	Notices if application to withdraw filed	121
128	Decision on application	121
Part 4	**Forensic orders and treatment support orders**	
Division 1	**Preliminary**	
129	Definition for pt 4	122
130	Explanation about operation of forensic orders and treatment support orders	122
131	Orders if unsound mind or permanent unfitness for trial	123
132	Orders if temporary unfitness for trial	123
133	Matters to which Mental Health Court must have regard	124
Division 2	**Forensic orders**	
Subdivision 1	**Making of forensic orders**	
134	Requirements for making forensic order	124
135	Conditions	125
136	Recommendations about intervention programs	126
137	Non-revocation period	126
Subdivision 2	**Treatment in the community**	
138	Mental Health Court to decide category	127
139	Inpatient category	127
140	Community category	128
Subdivision 3	**Other provisions**	
141	When category of forensic order (disability) may be described as residential	129
142	Admission to high security unit—stay of order	129
Division 3	**Treatment support orders**	
Subdivision 1	**Making of treatment support orders**	
143	Requirements for making treatment support order	130
144	Conditions	131
Subdivision 2	**Treatment in the community**	
145	Mental Health Court to decide category and community treatment	131

Division 4 **Responsibility for treatment and care**

146 Responsibility for person subject to forensic order (mental health) or treatment support order 132

147 Responsibility for person subject to forensic order (disability) . . 133

148 Certificate of forensic disability service availability 133

Division 5 **Transport**

149 Transport to authorised mental health service 134

150 Transport to forensic disability service 134

Division 6 **Other provisions**

151 Matters authorised by forensic order (mental health) or treatment support order 135

152 Matters authorised by forensic orders (disability) 136

153 Status of forensic order or treatment support order if amended . 136

154 Ending of order made because of temporary unfitness for trial . . 137

Part 5 **Other provisions**

Division 1 **Notice of decisions and orders**

155 Notice of decisions and orders 137

Division 2 **Admissibility and use of evidence**

156 Definition for div 2 138

157 Admissibility of expert's report at trial 138

157A Admissibility of expert's report in proceeding before Magistrates Court 139

158 Particular statements not admissible 139

159 Issue of mental condition may be raised at trial 140

160 Other use of expert's report 140

Division 3 **Victim impact statements**

161 Application of div 3 140

162 Preparation of victim impact statement 141

163 Production of victim impact statement by prosecuting authority . 141

164 Restrictions on disclosing victim impact statement 141

165 Use of victim impact statement by Mental Health Court 142

Division 4 **Persons subject to existing orders or authorities**

Subdivision 1 **Making forensic orders**

166 Person subject to existing forensic order 143

166A Person subject to existing treatment support order 143

167 Person subject to existing treatment authority 144

Subdivision 2 **Making treatment support orders**

Not authorised—indicative only

Not authorised—indicative only

167A	Person subject to existing treatment support order	144
167B	Person subject to existing forensic order	145
167C	Person subject to existing treatment authority	145
Division 5	**Miscellaneous**	
168	Relationship with ch 16, pt 1	146
Chapter 6	**Powers of courts hearing criminal proceedings and related processes**	
Part 1	**Preliminary**	
169	Purpose of ch 6	146
170	Childrens Court	147
Part 2	**Magistrates Courts**	
Division 1	**General**	
171	Definition for div 1	147
172	Power to dismiss complaint—unsound mind or unfitness for trial	147
173	Power to adjourn hearing of complaint—temporary unfitness for trial	148
174	Power to refer person to appropriate agency or entity	148
Division 2	**References to Mental Health Court**	
175	When reference may be made	149
176	How reference is made	150
Division 3	**Examination orders**	
177	Power to make examination order for person charged with simple offence	150
178	Examination of person	152
179	Examination report	153
180	Admissibility of examination report at trial	154
180A	Particular statements not admissible	154
180B	Other use of examination report and particular statements	154
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	155
182	Power to order plea of not guilty	156
183	Power to make reference to Mental Health Court and related orders	156
184	How reference to Mental Health Court is made	157
185	Persons who may give agreement for detention	158

186	Agreement for detention—administrator	158
187	Agreement for detention—chief psychiatrist	159
188	Effect of order for detention	159
Division 2	**Forensic orders (Criminal Code)**	
189	Application of div 2	159
190	Registrar of court to give notice of order	160
191	Power to transport person to authorised mental health service	160
Part 4	**Detention in authorised mental health service during trial**	
192	Definition for pt 4	161
193	Power to order person's detention in authorised mental health service	161
194	Persons who may give agreement for detention	162
195	Agreement for detention—administrator	162
196	Agreement for detention—chief psychiatrist	163
197	Effect of order for detention	163
Chapter 7	**Treatment and care of patients**	
Part 1	**Preliminary**	
198	Purpose of ch 7	163
199	Relationship between this Act and custodial status of particular patients	164
Part 2	**Responsibility to provide treatment and care**	
200	Application of pt 2	165
201	Examination of patient for purpose of providing treatment and care	165
202	Authorised doctor's responsibilities for treatment and care	166
203	Administrator's responsibilities for treatment and care	166
Part 3	**Patients subject to treatment authorities**	
Division 1	**Preliminary**	
204	Application of pt 3	167
Division 2	**Regular assessment**	
205	Authorised doctor must assess patient	167
Division 3	**Actions that may be taken after assessment**	
206	Authorised doctor may revoke treatment authority	169
207	Authorised psychiatrist may revoke treatment authority if patient missing	169
208	Chief psychiatrist may revoke treatment authority	170
209	Amendment of treatment authority to change category, limited community treatment or conditions	170

Not authorised—indicative only

Not authorised—indicative only

210	Amendment of treatment authority to change category to inpatient	172
Part 4	**Patients subject to forensic orders**	
211	Application of pt 4	173
212	Amendment of forensic order (mental health) or forensic order (disability) to change category, limited community treatment or conditions	173
213	Amendment of forensic order to change category to inpatient	174
214	Limited community treatment for patient subject to forensic order (Criminal Code)	175
Part 5	**Patients subject to treatment support orders**	
215	Application of pt 5	176
216	Amendment of treatment support order to change category, limited community treatment or conditions	176
217	Amendment of treatment support order to change category to inpatient	178
Part 6	**Classified patients and patients subject to judicial orders**	
218	Application of pt 6	179
219	Authorisation of limited community treatment	179
Part 7	**Obligations in relation to treatment in the community**	
220	Patient's obligations to be recorded and explained	180
221	Chief psychiatrist may approve temporary absence	181
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	182
Division 2	**Nominated support persons**	
223	Who is a nominated support person	183
224	Functions of nominated support person	184
Division 3	**Records system**	
225	Chief psychiatrist to maintain records system	185
226	Request to keep record	185
227	Requirement to give notice—matters relating to advance health directive or enduring power of attorney	186
228	Requirement to give notice—revocation of appointment of nominated support person	186
229	Requirement to give notice—resignation of nominated support person	187
230	Copy in records system is proof	187
Part 9	**Reporting on minors admitted to particular authorised mental**	

	health services	
231	Obligation to notify public guardian	188
Part 10	**Regulated treatment**	
Division 1	**Preliminary**	
232	Meaning of regulated treatment	189
Division 2	**Informed consent**	
233	Requirements for informed consent	189
234	Explanation to be given	190
Division 3	**Electroconvulsive therapy**	
235	Offence to perform electroconvulsive therapy	190
236	Performance of electroconvulsive therapy with consent or tribunal approval	190
237	Performance of electroconvulsive therapy in emergency	191
Division 4	**Non-ablative neurosurgical procedures**	
238	Offence to perform non-ablative neurosurgical procedure	192
239	Performance of non-ablative neurosurgical procedure with consent and tribunal approval	192
Part 11	**Prohibited treatment**	
240	Particular therapies prohibited	193
241	Psychosurgery prohibited	193
Chapter 8	**Use of mechanical restraint, seclusion, physical restraint and other practices**	
Part 1	**Preliminary**	
242	Purpose of ch 8	194
243	Definitions for ch 8	194
Part 2	**Mechanical restraint**	
Division 1	**Preliminary**	
244	Meaning of mechanical restraint	195
245	Offence	196
Division 2	**Authorised mechanical restraint**	
246	Requirements for use of mechanical restraint on relevant patients	196
247	Application for chief psychiatrist's approval	197
248	Chief psychiatrist may require amendment of application to include reduction and elimination plan	198
249	Chief psychiatrist may approve authorisation of use of mechanical restraint	198
250	Authorisation of use of mechanical restraint by authorised doctor	199

Not authorised—indicative only

Not authorised—indicative only

251	Duties of health practitioner in charge of unit	200
252	Removal of mechanical restraint before authorisation ends	201
253	Reuse of mechanical restraint	202
Part 3	**Seclusion**	
Division 1	**Preliminary**	
254	Meaning of seclusion	202
255	Offence	203
Division 2	**Authorised seclusion**	
256	Requirements for seclusion of relevant patients	203
257	Chief psychiatrist may give written direction about seclusion	204
258	Authorisation of seclusion by authorised doctor	204
259	Extension of period of seclusion	205
260	Duties of health practitioner in charge of unit	207
261	Removal from seclusion before authorisation ends	207
262	Return to seclusion after removal	208
Division 3	**Emergency seclusion**	
263	Requirements for emergency seclusion by health practitioner in charge of unit	209
Part 4	**Reduction and elimination plans**	
264	What is a reduction and elimination plan	210
265	Content of plan	210
266	Application for chief psychiatrist's approval of plan	211
267	Chief psychiatrist may approve plan	211
Part 5	**Physical restraint and clinical need for medication**	
Division 1	**Physical restraint**	
268	Meaning of physical restraint	211
269	Offence	212
270	Requirements for use of physical restraint	212
Division 2	**Clinical need for medication**	
271	Meaning of medication	213
272	Offence	213
Part 6	**Miscellaneous**	
273	Chief psychiatrist must make policy	213
274	Obligation to notify public guardian of treatment of minors	214
Chapter 9	**Rights of patients and others**	
Part 1	**Preliminary**	

275	Purpose of ch 9	215
276	Definition for ch 9	215
Part 2	**Statement of rights**	
277	Preparing statement of rights	216
278	Giving statement of rights to patients and others	216
279	Display of signs	217
Part 3	**Rights of patients**	
280	Definition for pt 3	217
281	Visits by nominated support persons, family, carers and other support persons	217
282	Visits by health practitioners	217
283	Visits by legal or other advisers	218
284	Communication with others	218
285	Information about treatment and care	219
286	Understanding of oral information	219
287	Written notices to be given to nominated support persons and others 221	
288	Communication about patient with others	223
289	Disclosure of confidential information under Hospital and Health Boards Act not limited	223
290	Second opinion about treatment and care	224
Part 4	**Roles and responsibilities of nominated support persons, family, carers and other support persons**	
291	Roles	224
292	Responsibilities	225
Part 5	**Independent patient rights advisers**	
293	Appointment	225
294	Functions	226
295	Independence	227
Chapter 10	**Chief psychiatrist**	
Part 1	**Preliminary**	
296	Purpose of ch 10	227
297	Definition for ch 10	228
Part 2	**Appointment, functions and powers**	
298	Appointment	228
299	Resignation	228
300	Termination of appointment	229

Not authorised—indicative only

Contents

301	Functions and powers	229
302	Independence of chief psychiatrist	230
303	Delegation	230
304	Power to require administrator to give documents or information	231
Part 3	**Policies, practice guidelines and annual report**	
305	Making policies or practice guidelines	232
306	Publication of policies and practice guidelines	234
307	Annual report	235
Part 4	**Investigations**	
308	Chief psychiatrist may investigate	236
309	Investigation report	237
310	Recommendations for improvement	237
Part 5	**Serious risks to persons or public safety**	
311	Purpose of pt 5	238
312	Minister may direct chief psychiatrist to review matter	238
313	Actions chief psychiatrist may take	239
314	Chief psychiatrist's order	240
315	Chief psychiatrist may vary period or end order	242
Part 6	**Information notices**	
Division 1	**Preliminary**	
316	Purpose of pt 6	242
317	Definitions for pt 6	243
Division 2	**Application, amendment and revocation**	
318	Application	243
319	Decision on application	244
320	Right to receive information under notice	246
321	Amendment of notice to change applicant's nominee	247
322	Duration of information notice	248
323	Revocation of information notice	249
Division 3	**Miscellaneous**	
324	Tribunal must give particular information to chief psychiatrist about relevant patient	250
325	Telling relevant patient about information notice	251
326	Misuse of information made available under an information notice	252
327	Application of part to forensic disability client	252
Chapter 11	**Authorised mental health services**	

Not authorised—indicative only

Part 1	**Preliminary**	
328	Purpose of ch 11	252
Part 2	**Declaration of authorised mental health services**	
329	Declaration of authorised mental health service	253
330	Declaration of high security unit	254
331	Declaration of authorised mental health service (rural and remote)	254
Part 3	**Administrators of authorised mental health services**	
332	Appointment	254
333	Functions	254
334	Powers	255
335	Register of authorised doctors and authorised mental health practitioners	255
336	Record of relevant patients	255
337	Delegation	256
Part 4	**Authorised doctors and authorised mental health practitioners**	
Division 1	**Appointment, functions and powers**	
338	Appointment of authorised doctor	256
339	When administrator is authorised doctor	257
340	Appointment of authorised mental health practitioner	257
341	Appointment of health practitioner to perform particular functions of authorised doctor	257
342	Appointment conditions and limit on powers	258
343	When office ends	258
344	Functions and powers	260
345	Requirement to give notice of particular decisions	260
Division 2	**Identity cards**	
346	Issue of identity card	260
347	Production or display of identity card	261
348	Return of identity card	261
Part 5	**Transfer of patients**	
Division 1	**Preliminary**	
349	Purpose of pt 5	262
350	Definition for pt 5	262
Division 2	**Authorised mental health service transfers**	
351	Transfer between services by agreement of administrators	263
352	Transfer between services by requirement of chief psychiatrist	264

Not authorised—indicative only

Contents

Division 3	**Forensic disability service transfers**	
353	Transfer between authorised mental health service and forensic disability service	264
Division 4	**Interstate transfers**	
354	Transfer of person subject to treatment authority to another State	265
355	Transfer of person subject to interstate order from another State	266
Division 5	**General provisions**	
356	Responsibility for person	267
357	Power to transport	268
358	Notice to tribunal	268
Part 6	**Transport of persons**	
Division 1	**Preliminary**	
359	Who is an authorised person	269
Division 2	**Transport of persons within and to and from authorised mental health services and other particular places**	
360	Transport within authorised mental health service	270
361	Transport to or from authorised mental health service and other particular places	270
362	Taking person after treatment and care to person's requested place 270	
Division 3	**Transport of absent persons**	
363	Application of div 3	271
364	Particular persons may require return of absent person	272
365	Limitation on requirement to return particular absent persons	274
366	Authorised person may transport absent person	274
367	Effect on assessment period	275
Division 4	**Transport of persons to and from interstate mental health services**	
368	Apprehension, detention and transport of person absent from interstate mental health service	276
369	Transport of person in Queensland to interstate mental health service 277	
370	Transport of person outside Queensland to authorised mental health service	277
371	Making of emergency examination authority	278
Division 5	**Transport powers**	
372	Application of div 5	279
373	Power to detain	279
374	Power to administer medication	279

Not authorised—indicative only

375	Power to use mechanical restraint	280
376	Power to enter particular places	281
Division 6	**Warrant for apprehension of person to transport person**	
377	Application for warrant for apprehension of person	282
378	Issue of warrant	283
379	Electronic application	284
380	Additional procedure if electronic application	285
381	Defect in relation to a warrant	286
382	Warrants—entry procedure	286
Part 7	**Security**	
Division 1	**Preliminary**	
383	Purpose of pt 7	287
384	Definitions for pt 7	288
Division 2	**Postal articles and other things in authorised mental health services**	
385	Patient may receive and send postal article	289
386	Administrator may search thing received for patient	290
Division 3	**Searches of patients of authorised mental health services or public sector health service facilities**	
387	Application of div 3	291
388	Power to search on belief of possession of harmful thing	291
Division 4	**Searches of involuntary patients on admission to or entry into high security units or other approved services**	
389	Application of div 4	292
390	Power to search on admission or entry	292
Division 5	**Searches of visitors to high security units or other approved services**	
391	Application of div 5	293
392	Power to search visitor	293
393	Requirement to explain to visitor	294
394	Direction to leave	294
395	Visitor may leave thing with authorised security officer	294
396	Authorised security officer may ask visitor to leave thing with officer	294
397	Visitor may ask for search to stop	295
398	Return of thing to visitor	295
Division 6	**Requirements for searches**	
399	Requirements for personal search	295

Not authorised—indicative only

Not authorised—indicative only

Contents

400	Requirements for search requiring removal of clothing	296
401	Requirements for search of possessions	297
Division 7	**Records of searches**	
402	Record of search must be made	297
Division 8	**Seizure**	
403	Seizure of harmful or other thing	298
404	Receipt for seized thing	300
405	Access to seized thing	300
Division 9	**Identity cards**	
406	Approval of identity card	300
Division 10	**Compensation**	
407	Compensation for damage to possessions	301
Division 11	**Exclusion of visitors**	
408	Administrator may refuse to allow person to visit patient	302
Chapter 12	**Mental Health Review Tribunal proceedings**	
Part 1	**Preliminary**	
409	Purpose of ch 12	303
410	Particular decisions of no effect for classified patient	303
Part 2	**Review of treatment authorities**	
Division 1	**Preliminary**	
411	Definitions for pt 2	304
412	Matters to which tribunal must have regard	304
Division 2	**When particular reviews are conducted**	
413	When reviews are conducted	305
414	When periodic review deferred	306
415	When tribunal must not conduct review	306
416	When particular tribunal review is not required	307
Division 3	**Applications and notices of hearings**	
417	Application for applicant review to state orders sought	307
418	Notice of hearing	307
Division 4	**Decisions and orders**	
Subdivision 1	**Decisions to be made on review**	
419	Decisions	308
420	Administrator to provide report	308
421	Requirement to revoke treatment authority	309
Subdivision 2	**Confirmation of treatment authority—related orders**	

422	Application of sdiv 2	310
423	Change of category to community	310
424	Community category—deciding whether authorised doctor may reduce treatment in community	310
425	Inpatient category—limited community treatment	310
426	Conditions	311
427	Transfer to another authorised mental health service	311
428	Change of category to inpatient	312
429	Other orders	312
Part 3	**Review of forensic orders (mental health) and forensic orders (disability)**	
Division 1	**Preliminary**	
430	Application of pt 3	313
431	Definitions for pt 3	313
432	Matters to which tribunal must have regard	313
Division 2	**When particular reviews are conducted**	
433	When reviews are conducted	314
434	When periodic review deferred	315
435	Requirement to conduct periodic review suspended	315
436	When tribunal must not conduct review	316
437	When particular tribunal review is not required	316
Division 3	**Applications and notices of hearings**	
438	Application for applicant review to state orders sought	316
439	Notice of hearing	317
Division 4	**Decisions and orders**	
Subdivision 1	**Decisions to be made on review**	
440	Application of div 4	317
441	Decisions	318
442	Requirement to confirm forensic order	318
Subdivision 2	**Confirmation of forensic order—related orders**	
443	Application of sdiv 2	319
444	Change or confirmation of category	319
445	Inpatient category—orders about treatment in community	319
446	Community category—orders about treatment in community	321
447	Conditions	322
448	Other orders	322

Not authorised—indicative only

Not authorised—indicative only

Subdivision 3	**Revocation of forensic order (mental health)—related orders**	
449	Application of sdiv 3	322
450	Making of treatment support order	322
451	Making of treatment authority or no further order	323
Division 5	**Restrictions on revoking or amending forensic orders**	
452	Orders with non-revocation period	325
453	Order for person temporarily unfit for trial	325
454	Order for person charged with prescribed offence	325
455	Tribunal's order takes effect after suspension or change of category ends	326
Division 6	**Other provisions**	
456	Transfer of responsibility for forensic patient	327
457	Person with dual disability	328
Part 4	**Review of forensic orders (Criminal Code)**	
458	Application of pt 4	329
459	Tribunal to conduct hearing	329
460	Notice of hearing	329
461	Making of forensic order	330
462	Application of ch 5 provisions	330
Part 5	**Review of treatment support orders**	
Division 1	**Preliminary**	
463	Definitions for pt 5	331
464	Matters to which tribunal must have regard	331
Division 2	**When particular reviews are conducted**	
465	When reviews are conducted	332
466	When periodic review deferred	333
467	Requirement to conduct periodic review suspended	333
468	When tribunal must not conduct review	334
469	When particular tribunal review is not required	334
Division 3	**Applications and notices of hearings**	
470	Application for applicant review to state orders sought	334
471	Notice of hearing	334
Division 4	**Decisions and orders**	
Subdivision 1	**Decisions to be made on review**	
472	Decisions	335
473	Requirement to confirm treatment support order	336

Subdivision 2	**Confirmation of treatment support order—related orders**	
474	Application of sdiv 2	336
475	Change of category to community	336
476	Community category—deciding whether authorised doctor may reduce treatment in community	337
477	Inpatient category—limited community treatment	337
478	Conditions	338
479	Transfer to another authorised mental health service	338
480	Change of category to inpatient	339
481	Other orders	339
Subdivision 3	**Revocation of treatment support order—related orders**	
482	Application of sdiv 3	339
483	Making of treatment authority or no further order	340
Part 6	**Review of fitness for trial**	
Division 1	**Review**	
484	Application of div 1	341
485	Meaning of finding of unfitness	342
486	When reviews are conducted	342
487	Notice of hearing	343
488	Decisions on review	343
Division 2	**Procedures following review if person unfit for trial**	
489	Application of div 2	344
490	Director of public prosecutions to decide whether proceeding to be discontinued	344
491	Proceeding discontinued at end of prescribed period	344
492	Effect of discontinuing proceeding	345
493	Proceeding may be discontinued at other time	346
Division 3	**Procedures following review if person fit for trial**	
494	Application of div 3	346
495	Definitions for div 3	346
496	Director of public prosecutions to give notice of fitness for trial	347
497	Listing proceeding for mention	347
497A	Prosecuting authority to give chief psychiatrist notice of ending of order	348
497B	Disclosure of particular information on ending of order	348
Part 7	**Review of detention of minors in high security units**	
498	Application of pt 7	350

Not authorised—indicative only

Not authorised—indicative only

499	When reviews are conducted	350
500	Notice of hearing	351
501	Decision on review	351
Part 8	**Applications for examination authorities**	
502	Application for examination authority	352
503	Notice of hearing	353
504	Decision on application	353
505	Duration of examination authority	354
506	Copy of examination authority to be given to administrator of authorised mental health service	354
Part 9	**Applications for approval of regulated treatment**	
Division 1	**Electroconvulsive therapy**	
507	Who may apply	354
508	Notice of hearing	355
509	Decision on application	355
Division 2	**Non-ablative neurosurgical procedures**	
510	Who may apply	357
511	Notice of hearing	358
512	Decision on application	358
Part 10	**Applications for approval to transfer particular persons into and out of Queensland**	
Division 1	**Transfers into Queensland**	
513	Definitions for div 1	359
514	Who may apply	359
515	Requirements for application	360
516	Notice of hearing	361
517	Decision on application	361
518	Making of forensic order	362
519	When interstate transfer approval takes effect	363
520	Transport of patient seeking transfer under interstate transfer approval 363	
Division 2	**Transfers out of Queensland**	
521	Definitions for division	364
522	Who may apply	365
523	Requirements for application	366
524	Notice of hearing	367
525	Decision on application	368

526 When interstate transfer approval or international transfer approval takes effect 369
527 Transport of patient seeking transfer under interstate transfer approval 369
527A Transport of patient seeking transfer under international transfer approval 370
528 Effect on order 371
Part 11 Miscellaneous
529 Relationship with ch 16, pt 2 372
530 Use of victim impact statement by tribunal 372
Chapter 13 Appeals
Part 1 Preliminary
531 Purpose of ch 13 372
Part 2 Appeals to tribunal
532 Definitions for pt 2 373
533 Appeal to tribunal 373
534 How to start appeal 373
534A Frivolous or vexatious appeal 374
535 Notice of appeal and hearing 374
536 Stay of decision pending appeal 375
537 Appeal powers 375
Part 3 Appeals to Mental Health Court
Division 1 Preliminary
538 Definition for pt 3 376
Division 2 Making and hearing appeals
539 Who may appeal 376
540 Parties to appeal 376
541 How to start appeal 377
542 Frivolous or vexatious appeal 377
543 Notice of appeal and hearing 377
544 Stay of decision pending appeal 378
545 Notice of stay of decision on review of person's fitness for trial . 379
546 Appeal powers 379
547 Mental Health Court may make forensic order or treatment support order 380
548 Mental Health Court's decision final 381
Part 4 Appeals to Court of Appeal

Not authorised—indicative only

Not authorised—indicative only

549	Who may appeal	381
550	How to start appeal	381
551	Appeal powers	382
552	Notice of decision	383
Chapter 14	**Monitoring and enforcement**	
Part 1	**Preliminary**	
553	Purpose of ch 14	383
554	Definitions for ch 14	384
Part 2	**General provisions about inspectors**	
Division 1	**Appointment**	
555	Appointment and qualifications	385
556	Functions of inspectors	385
557	Appointment conditions and limit on powers	386
558	When office ends	386
559	Resignation	387
Division 2	**Identity cards**	
560	Issue of identity card	387
561	Production or display of identity card	387
562	Return of identity card	388
Division 3	**Miscellaneous provisions**	
563	References to exercise of powers	388
564	Reference to document includes reference to reproductions from electronic document	388
Part 3	**Entry of places by inspectors**	
Division 1	**Power to enter**	
565	General power to enter places	389
Division 2	**Entry by consent**	
566	Application of div 2	389
567	Incidental entry to ask for access	390
568	Matters inspector must tell occupier	390
569	Consent acknowledgement	390
Division 3	**Entry under warrant**	
Subdivision 1	**Obtaining warrant**	
570	Application for warrant	391
571	Issue of warrant	392
572	Electronic application	393

573	Additional procedure if electronic application	393
574	Defect in relation to a warrant	394
Subdivision 2	**Entry procedure**	
575	Entry procedure	395
Part 4	**General powers of inspectors after entering places**	
576	Application of pt 4	396
577	General powers	396
578	Power to require reasonable help	397
579	Offence to contravene help requirement	398
Part 5	**Seizure by inspectors and forfeiture**	
Division 1	**Power to seize**	
580	Seizing evidence at a place that may be entered without consent or warrant	398
581	Seizing evidence at a place that may be entered only with consent or warrant	399
582	Seizure of property subject to security	400
Division 2	**Powers to support seizure**	
583	Power to secure seized thing	400
584	Offence to contravene other seizure requirement	401
585	Offence to interfere	401
Division 3	**Safeguards for seized things**	
586	Receipt and information notice for seized thing	401
587	Access to seized thing	402
588	Return of seized thing	403
Division 4	**Forfeiture**	
589	Forfeiture by chief psychiatrist decision	403
590	Information notice about forfeiture decision	404
591	Forfeiture on conviction	405
592	Procedure and powers for making forfeiture order	405
Division 5	**Dealing with property forfeited or transferred to State**	
593	When thing becomes property of the State	405
594	How property may be dealt with	406
Part 6	**Other information-obtaining powers of inspectors**	
595	Power to require name and address	406
596	Offence to contravene personal details requirement	407
597	Power to require information	407

Not authorised—indicative only

Not authorised—indicative only

598	Offence to contravene information requirement	408
Part 7	**Miscellaneous provisions relating to inspectors**	
Division 1	**Damage**	
599	Duty to avoid inconvenience and minimise damage	409
600	Notice of damage	409
Division 2	**Compensation**	
601	Claim	410
602	Court order	411
Part 8	**Reviews and appeals about seizure and forfeiture**	
603	Definitions for pt 8	411
604	Right of appeal	411
605	Appeal process starts with internal review	412
606	How to apply for internal review	412
607	Stay of operation of decision	412
608	Internal review decision	413
609	Who may appeal	414
610	Procedure for an appeal to the court	414
611	Stay of operation of internal review decision	414
612	Powers of court on appeal	415
613	Effect of decision of court on appeal	415
Chapter 15	**Suspension of criminal proceedings, offences and other legal matters**	
Part 1	**Preliminary**	
614	Purpose of ch 15	416
Part 2	**Suspension of criminal proceedings**	
615	Purpose of pt 2	417
616	Suspension of proceedings	417
617	Giving notice of particular suspensions	418
618	Ending of suspension	418
619	Giving notice of ending of suspension	419
620	Effect on powers relating to bail, discontinuance of proceedings and other matters	420
Part 3	**Offences relating to patients**	
621	Offence relating to ill-treatment	420
622	Offences relating to patients absconding	421
623	Offences relating to patients unlawfully absent	422

Part 4 **Offences relating to officials**

624 Definition for pt 4 423

625 Obstructing official 423

626 Impersonating official 424

627 Giving official false or misleading information 424

Part 5 **Detention and use of reasonable force**

628 Classified patient (voluntary) may be detained 424

629 Detention of person in authorised mental health service with use of reasonable force 424

630 Detention of person in public sector health service facility with use of reasonable force 425

631 Examination or assessment of involuntary patient without consent and with use of reasonable force 425

632 Treatment and care of patient without consent and with use of reasonable force 425

633 Relationship with use of physical restraint 426

Part 6 **Evidence and legal proceedings**

634 Evidentiary aids 426

635 Proceedings for offences 428

Chapter 16 **Establishment and administration of court and tribunal**

Part 1 **Mental Health Court**

Division 1 **Preliminary**

636 Purpose of pt 1 429

Division 2 **Continuation, constitution, jurisdiction and powers**

637 Continuation of Mental Health Court 429

638 Constitution 430

639 Jurisdiction 431

640 Powers 432

Division 3 **Membership**

641 Appointment of members 432

642 Appointment does not affect judge's tenure of office 432

643 Resignation of office 432

644 When member's office ends 433

Division 4 **President**

645 Appointment of president 433

646 Arrangement of business 433

647 President holds office while member of court 434

Not authorised—indicative only

Not authorised—indicative only

648	Delegation of particular powers	434
649	Resignation of office	434
650	Appointment of acting president	434
Division 5	**Assisting clinicians**	
651	Functions	435
652	Appointment	435
653	Conditions of appointment	436
654	Resignation	436
655	Termination of appointment	436
Division 6	**Mental Health Court Registry and registrar**	
656	Mental Health Court Registry	437
657	Registry's functions	437
658	Registrar's functions	437
659	Registrar's powers—general	438
660	Registrar's power to issue subpoena	438
661	Registrar's power to require administrator to produce document	438
662	Registrar's power to require person to be brought before Mental Health Court	439
663	Registrar's power to require prosecuting authority to give particular documents	440
664	Delegation by registrar	440
Division 7	**Protection and immunities**	
665	Contempt of court	440
666	Conduct that is contempt and offence	441
667	Protection and immunity for member of Mental Health Court and assisting clinician	441
Division 8	**Court examination orders**	
668	Making of court examination order	441
669	Recommendation or request for court examination order on reference 442	
670	Transport, detention and examination of person under court examination order	442
671	What happens at end of examination	443
Division 9	**Reviews of detention in authorised mental health service or forensic disability service**	
672	Definitions for div 9	444
673	Power to review detention	445
674	Notice of hearing	445

675 Parties to proceeding 446
676 Consideration of application 446
677 Appointment of person to inquire into detention 446
678 Administrator to ensure help given to appointed person 447
679 General powers of appointed person 447
680 Appointed person's power to ask questions 447
681 Mental Health Court may direct person's discharge 448
682 Other remedies not affected 448
Division 10 Procedural provisions
683 General right of appearance and representation 448
684 Evidence 449
685 Proof of matters 449
686 Directions 449
687 Assisting clinician's advice before or during adjournment of hearing 449
688 Assisting clinician's advice during hearing 450
689 Particular advice of assisting clinician to be stated in reasons for decision 450
690 When court may conduct hearing in absence of person 450
691 Appointing assistant 450
692 Court may sit and adjourn hearing 451
693 Hearing of reference generally open to public 451
694 Particular hearings not generally open to public 451
695 Hearing about minor not open to public 452
696 Confidentiality order 452
697 Costs 453
698 Death or incapacity of member after hearing started 453
Division 11 Rules and practice
699 Rule-making power 454
700 Directions about practice 454
Division 12 Miscellaneous
701 Annual report 455
Part 2 Mental Health Review Tribunal
Division 1 Preliminary
702 Purpose of pt 2 455
703 Definition for pt 2 455
Division 2 Continuation, jurisdiction and powers

Not authorised—indicative only

Not authorised—indicative only

704	Continuation of Mental Health Review Tribunal	456
705	Jurisdiction and independence	456
706	Powers	457
Division 3	**Members and staff of tribunal**	
707	Appointment of members	457
708	Duration of appointment	458
709	Terms of appointment	458
710	Resignation	458
711	Termination of appointment	459
712	Deputy president to act as president	459
713	Executive officer and other staff	459
714	President's functions generally	460
715	President's powers	461
Division 4	**Constitution of tribunal for hearings**	
716	Particular proceedings	461
717	Application for examination authority	462
718	Application for approval to perform non-ablative neurosurgical procedure	462
719	Matters president to consider in constituting tribunal	463
720	Presiding member	463
Division 5	**Examinations, confidentiality orders and reports**	
721	Tribunal may order examination	464
722	Confidentiality order	465
723	Reports for particular review proceedings	466
Division 6	**Procedural provisions for ch 12 proceedings**	
Subdivision 1	**Applications**	
724	Application of sdiv 1	467
725	Approved form	467
726	Frivolous or vexatious application	467
727	Hearing of application	468
Subdivision 2	**Adjournment of hearing of particular periodic reviews**	
728	Application of sdiv 2	468
729	Definitions for sdiv 2	469
730	Adjournment of hearing	469
731	Hearing of scheduled review to be conducted on relevant person's return	470

Division 7 General procedural provisions

Subdivision 1 Preliminary

732 Application of div 7 470

733 Conducting proceedings generally 470

734 Presentation of party's case and inspection of documents 471

Subdivision 2 Pre-hearing matters

735 Matters to be stated in notice of hearing 471

736 Right to appear 471

737 Attorney-General to give notice of intention to appear 472

738 Disclosure of documents to be relied on in hearing 472

Subdivision 3 Hearings

739 Right of representation and support 473

740 Appointment of representative 474

741 Hearing not open to public 475

742 Victim impact statement 476

743 Restrictions on disclosing victim impact statement 476

744 Requiring witness to attend or produce document or thing 477

745 Tribunal to allow party to call or give evidence 478

746 Proceeding by remote conferencing or on the papers 478

747 Proceeding in absence of involuntary patient 478

748 Conducting hearings of proceedings at same time 479

749 Adjourning hearing of proceeding 479

750 Appointing assistant 480

751 Dealing with documents or other things 480

752 Way questions decided 480

753 Referring question of law to Mental Health Court 481

754 Costs 482

Subdivision 4 Decisions of tribunal

755 Notice of decision 482

756 Written reasons for decision 482

757 Requirement to give effect to tribunal decision 483

758 Publishing decision and reasons 483

Subdivision 5 Revocation of particular forensic orders and treatment support orders

759 Order for missing person 484

Division 8 Offences and contempt

Not authorised—indicative only

Not authorised—indicative only

760	Offences by witnesses	485
761	False or misleading information or document	485
762	Fabricating evidence	486
763	Contempt of tribunal	486
764	Punishment of contempt	487
765	Conduct that is contempt and offence	488
Division 9	**Protection and immunities**	
766	Protection and immunity for members	488
767	Protection and immunity for other persons	488
Division 10	**Rules and practice**	
768	Rule-making power	489
769	Directions about practice	489
Division 11	**Miscellaneous**	
770	Authentication of documents	489
771	Judicial notice of particular signatures	490
772	Delegation	490
773	Register	490
774	Annual report	491
Chapter 17	**Confidentiality**	
Part 1	**Preliminary**	
775	Purpose of ch 17	491
776	Definitions for ch 17	491
777	Relationship of ch 17 with other Acts	493
Part 2	**Duty of confidentiality**	
778	Offence to use or disclose personal information	493
Part 3	**Permitted use and disclosure**	
780	Disclosure to identify person with mental health defence	494
781	Disclosure to identify and offer support to victims	494
782	Disclosure for report by private psychiatrist	495
783	Disclosure of particular information relating to classified patient	495
784	Disclosure of particular information relating to person in contact with forensic disability service	496
785	Disclosure to lawyer	496
786	Disclosure of photograph of patient required to return	497
787	Disclosure of information for research purposes	497
Part 4	**Offences relating to publication of judicial proceedings**	

788	Definition for pt 4	498
789	Publication of reports and decisions on references—Mental Health Court and Court of Appeal	498
790	Publication of report of other proceedings	501
791	Publication of information disclosing identity of party to proceeding	501
792	Publication of date of hearing permitted	502
793	Publication of information disclosed at hearing permitted	502
Chapter 18	**General provisions**	
794	Detention of involuntary patient must be in inpatient unit	503
795	Use of audiovisual link for examination or assessment	503
796	Disclosure by QCAT of information about personal guardian or administrator	503
797	Protection of official from liability	504
797A	Particular periods counted as imprisonment or detention	505
798	Approved forms	505
799	Electronic format for notices and other information	506
800	Regulation-making power	507
Chapter 18A	**Validation of appointment to tribunal and related provisions**	
Part 1	**Preliminary**	
800A	Definitions for chapter	507
Part 2	**Validation**	
800B	Validation provision for purported appointment of ineligible person	507
Part 3	**Referral of particular decisions to special tribunal**	
800C	Special tribunal	508
800D	Request to refer relevant decision to the special tribunal	509
800E	When chief executive may refer relevant decision	509
800F	Decision by special tribunal on referral	510
Part 4	**Decisions by tribunal**	
800G	Decision by tribunal on referral	510
Chapter 18B	**COVID-19 emergency provisions**	
800H	Definition for chapter	511
800I	Power of chief psychiatrist to approve absences during COVID-19 emergency period	511
800K	Modification of s 336 (Record of relevant patients)	513
800L	Modification of s 363 (Application of div 3)	513
800M	Modification of s 622 (Offences relating to patients absconding)	514
800N	Modification of s 783 (Disclosure of particular information relating to	

Not authorised—indicative only

Not authorised—indicative only

	classified patient)	514
800O	Modification of sch 1, s 5 (Information about absences)	514
800P	Expiry of chapter	514
Chapter 19	**Repeal**	
801	Repeal	515
Chapter 20	**Transitional provisions for Act No. 5 of 2016**	
Part 1	**Preliminary**	
802	Definitions for ch 20	515
803	Application of new Act in relation to proceedings for alleged offences	515
804	Detention under repealed Act	516
Part 2	**Provisions about assessment and detention under chapters 2 and 3 of repealed Act**	
805	Assessment documents	516
806	Persons subject to assessment documents	516
807	Justices examination order	517
808	Emergency examination order	517
809	Detention for assessment	518
810	Agreement for assessment	519
811	Custodian's assessment authority	519
812	Taking person to authorised mental health service	519
813	Classified patients	520
814	Report of authorised doctor	520
815	Involuntary treatment orders	520
Part 3	**Provisions about assessment or detention of persons before a court or in custody under chapter 3 of repealed Act**	
816	Court assessment order	522
Part 4	**Provisions about treatment and care of patients under chapter 4 of repealed Act**	
817	Treatment plans	522
818	Limited community treatment	522
819	Monitoring conditions	523
Part 5	**Provisions about electroconvulsive therapy under chapter 4 of repealed Act**	
820	Consent to electroconvulsive therapy	523
821	Emergency electroconvulsive therapy	523
Part 6	**Provisions about movement, transfer and temporary absence of patients under chapter 5 of repealed Act**	

822 Move of patients interstate 524
823 Temporary absences 525
Part 7 Provisions about tribunal reviews under chapter 6 of repealed Act
Division 1 Orders and decisions made before commencement
824 Particular orders and decisions not given effect before commencement 525
825 Particular decisions unaffected by new Act 526
Division 2 Reviews and applications not completed before commencement
826 Existing applications to tribunal 526
827 Existing reviews started other than by an application 527
828 Effect of tribunal's decision on existing review 528
Division 3 Other provisions
829 When first periodic review under new Act must be conducted . . 529
830 Discontinuing proceeding for offence following review of fitness for trial 531
831 Non-contact order ends 532
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
832 Making of reference under repealed Act by director or director of public prosecutions 532
Division 2 References
833 Application of div 2 533
834 Hearing of reference continues under repealed Act 533
835 Appeal against Mental Health Court's decision 534
Division 3 Forensic orders (Mental Health Court) and forensic orders (Mental Health Court—Disability)
836 Forensic order (Mental Health Court) 534
837 Forensic order (Mental Health Court—Disability) 535
838 Limited community treatment for forensic patient 536
839 Review of forensic order under new Act 537
Division 4 Other provisions
840 Order approving interstate transfer under s 288B of repealed Act 538
841 Forensic order (Criminal Code) 538
842 Custody order 538
843 Forensic order (Minister) 539
844 Forensic disability client temporarily detained in authorised mental health service 539

Not authorised—indicative only

Contents

Part 9	**Provisions about information orders under chapter 7A of repealed Act**	
845	Forensic information orders	540
846	Classified patient information orders	540
Part 10	**Provisions about security of authorised mental health services under chapter 10 of repealed Act**	
847	Exclusion of visitors	541
Part 11	**Provisions about Mental Health Court under chapter 11 of repealed Act**	
848	Mental Health Court registry	541
849	Court examination order	541
850	Inquiry into detention of patient in authorised mental health service	542
Part 12	**Miscellaneous**	
851	Mental Health Court, tribunal or another court may make orders about transition from repealed Act to new Act	542
852	Notices generally	543
853	Records made under repealed Act	543
854	Material submitted by victim or concerned person	544
855	Subpoenas	544
856	Authorised mental health services and high security units	544
857	Office holders	544
858	Suspended proceedings	545
859	Reviews relating to serious risks	545
860	Appeals	545
861	Annual reports	546
862	References to orders and authorities under repealed Act	546
863	Application of new Act, s 420	547
Chapter 21	**Other transitional provisions**	
Part 1	**Transitional provision for Hospital Foundations Act 2018**	
864	Application of s 797A to particular periods	547
Part 2	**Transitional provisions for Health and Other Legislation Amendment Act 2021**	
865	Definitions for part	548
866	Application of new s 117A to reference made before commencement	548
867	Application of new s 157A to reference made before commencement	548
868	Application of new ss 317, 322 and 323	549

Not authorised—indicative only

869	Apprehension and transport of persons	549
870	Application of new s 509	549
871	Application of new ch 12, pt 10	550
872	Application of new s 778	550
Schedule 1	**Information that applicant, or applicant's nominee, is entitled to receive under an information notice**	551
1	Information about reviews	551
2	Information about transfer application	551
3	Information about tribunal decisions	551
4	Information about appeals	552
5	Information about absences	552
6	Miscellaneous information	552
Schedule 2	**Who may appeal to Mental Health Court**	554
Schedule 3	**Dictionary**	557

Not authorised—indicative only

Not authorised—indicative only

Mental Health Act 2016

An Act to provide for the treatment and care of people who have mental illnesses and for other purposes

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Mental Health Act 2016*.

2 Commencement

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

3 Main objects of Act

(1) The main objects of this Act are—

(a) to improve and maintain the health and wellbeing of persons who have a mental illness who do not have the capacity to consent to be treated; and

(b) to enable persons to be diverted from the criminal justice system if found to have been of unsound mind at the time of committing an unlawful act or to be unfit for trial; and

(c) to protect the community if persons diverted from the criminal justice system may be at risk of harming others.

Not authorised—indicative only

Not authorised—indicative only

(2) The main objects are to be achieved in a way that—

(a) safeguards the rights of persons; and

(b) is the least restrictive of the rights and liberties of a person who has a mental illness; and

(c) promotes the recovery of a person who has a mental illness, and the person's ability to live in the community, without the need for involuntary treatment and care.

(3) For subsection (2)(b), a way is the least restrictive of the rights and liberties of a person who has a mental illness if the way adversely affects the person's rights and liberties only to the extent required to protect the person's safety and welfare or the safety of others.

4 Act binds all persons

(1) This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) Nothing in this Act makes the State liable to be prosecuted for an offence.

Part 2 Principles for administration of Act

5 Principles for persons with mental illness

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

(a) Same human rights

- the right of all persons to the same basic human rights must be recognised and taken into account

- a person's right to respect for his or her human worth and dignity as an individual must be recognised and taken into account

(b) Matters to be considered in making decisions

- to the greatest extent practicable, a person is to be encouraged to take part in making decisions affecting the person's life, especially decisions about treatment and care
- to the greatest extent practicable, in making a decision about a person, the person's views, wishes and preferences are to be taken into account
- a person is presumed to have capacity to make decisions about the person's treatment and care and other matters under this Act

(c) Support persons

- to the greatest extent practicable, family, carers and other support persons of a person who has a mental illness are to be involved in decisions about the person's treatment and care, subject to the person's right to privacy

(d) Provision of support and information

- to the greatest extent practicable, a person is to be provided with necessary support and information to enable the person to exercise rights under this Act, including, for example, providing access to other persons to help the person express the person's views, wishes and preferences

(e) Achievement of maximum potential and self-reliance

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

(f) Acknowledgement of needs

Not authorised—indicative only

Not authorised—indicative only

- a person's age-related, gender-related, religious, communication and other special needs must be recognised and taken into account
- a person's hearing, visual or speech impairment must be recognised and taken into account

(g) Aboriginal people and Torres Strait Islanders

- the unique cultural, communication and other needs of Aboriginal people and Torres Strait Islanders must be recognised and taken into account
- Aboriginal people and Torres Strait Islanders should be provided with treatment, care and support in a way that recognises and is consistent with Aboriginal tradition or Island custom, mental health and social and emotional wellbeing, and is culturally appropriate and respectful
- to the extent practicable and appropriate in the circumstances, communication with Aboriginal people and Torres Strait Islanders is to be assisted by an interpreter

(h) Persons from culturally and linguistically diverse backgrounds

- the unique cultural, communication and other needs of persons from culturally and linguistically diverse backgrounds must be recognised and taken into account
- services provided to persons from culturally and linguistically diverse backgrounds must have regard to the person's cultural, religious and spiritual beliefs and practices
- to the extent practicable and appropriate in the circumstances, communication with persons from culturally and linguistically diverse backgrounds is to be assisted by an interpreter

(i) Minors

- to the greatest extent practicable, a minor receiving treatment and care must have the minor's best interests recognised and promoted, including, for example, by receiving treatment and care separately from adults if practicable and by having the minor's specific needs, wellbeing and safety recognised and protected

(j) Maintenance of supportive relationships and community participation

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

(k) Importance of recovery-oriented services and reduction of stigma

- the importance of recovery-oriented services and the reduction of stigma associated with mental illness must be recognised and taken into account

(l) Provision of treatment and care

- treatment and care provided under this Act must be provided to a person who has a mental illness only if it is appropriate for promoting and maintaining the person's health and wellbeing

(m) Privacy and confidentiality

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

6 Principles for victims and others

(1) The principles mentioned in subsection (2) apply to the administration of this Act in relation to each of the following (each a ***victim***)—

Not authorised—indicative only

Not authorised—indicative only

(a) a victim of an unlawful act;

(b) a close relative of a victim of an unlawful act;

(c) another individual who has suffered harm because of an unlawful act committed against a person mentioned in paragraph (a).

(2) The principles are the following—

(a) the physical, psychological and emotional harm caused to the victim by the unlawful act must be recognised with compassion;

(b) the benefits of counselling, advice on the nature of proceedings under this Act and other support services to the recovery of the victim from the harm caused by the unlawful act must be recognised;

(c) the benefits to the victim of being advised in a timely way of proceedings under this Act against a person in relation to the unlawful act must be recognised;

(d) the benefits to the victim of the timely completion of proceedings against a person in relation to the unlawful act must be recognised;

(e) the benefits to the victim of being advised in a timely way of a decision to allow a person to be treated in the community must be recognised;

(f) the benefits to the victim of being given the opportunity to express the victim's views on the impact of the unlawful act to decision-making entities under this Act must be recognised.

7 Regard to principles

In performing a function or exercising a power under this Act, a person is to have regard to the principles mentioned in sections 5 and 6.

8 Application to person with intellectual disability

To the extent this Act applies to a person who has an intellectual disability—

(a) sections 3 and 5 apply in relation to the person as if a reference in the sections to a person who has a mental illness were a reference to a person who has an intellectual disability; and

(b) a reference in the Act to treatment and care of a person means a reference to care of the person; and

(c) a reference in the Act to recovery of a person means a reference to the rehabilitation, and development of living skills, of the person.

Part 3 Interpretation

9 Definitions

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

10 Meaning of *mental illness*

(1) ***Mental illness*** is a condition characterised by a clinically significant disturbance of thought, mood, perception or memory.

(2) However, a person must not be considered to have a mental illness merely because—

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

(b) the person is a member of a particular racial group; or

(c) the person has a particular economic or social status; or

(d) the person has a particular sexual preference or sexual orientation; or

(e) the person engages in sexual promiscuity; or

Not authorised—indicative only

Not authorised—indicative only

(f) the person engages in immoral or indecent conduct; or

(g) the person takes drugs or alcohol; or

(h) the person has an intellectual disability; or

(i) the person engages in antisocial behaviour or illegal behaviour; or

(j) the person is or has been involved in family conflict; or

(k) the person has previously been treated for a mental illness or been subject to involuntary assessment or treatment.

(3) Subsection (2) does not prevent a person mentioned in the subsection having a mental illness.

Examples for subsection (3)—

1 A person may have a mental illness caused by taking drugs or alcohol.

2 A person may have a mental illness as well as an intellectual disability.

(4) A decision that a person has a mental illness must be made in accordance with internationally accepted medical standards.

11 Meaning of *involuntary patient*

An ***involuntary patient*** means—

(a) a person subject to any of the following—

(i) an examination authority;

(ii) a recommendation for assessment;

(iii) a treatment authority;

(iv) a forensic order;

(v) a treatment support order;

(vi) a judicial order; or

(b) a person detained in an authorised mental health service or public sector health service facility under section 36; or

(c) a person from another State detained in an authorised mental health service under section 368(3)(b).

12 Meaning of *treatment criteria*

(1) The ***treatment criteria*** for a person are all of the following—

(a) the person has a mental illness;

(b) the person does not have capacity to consent to be treated for the illness;

(c) 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 others; or

(ii) the person suffering serious mental or physical deterioration.

(2) For subsection (1)(b), the person's own consent only is relevant.

(3) Subsection (2) applies despite the *Guardianship and Administration Act 2000*, the *Powers of Attorney Act 1998* or any other law.

13 Meaning of *less restrictive way*

(1) For this Act, there is a ***less restrictive way*** for a person to receive treatment and care for the person's mental illness if, instead of receiving involuntary treatment and care, the person is able to receive the treatment and care that is reasonably necessary for the person's mental illness in 1 of the following ways—

(a) if the person is a minor—with the consent of the minor's parent;

(b) if the person has made an advance health directive—under the advance health directive;

(c) if a personal guardian has been appointed for the person—with the consent of the personal guardian;

Not authorised—indicative only

Not authorised—indicative only

(d) if an attorney has been appointed by the person—with the consent of the attorney;

(e) otherwise—with the consent of the person's statutory health attorney.

Examples of when there may not be a less restrictive way for a person to receive the treatment and care that is reasonably necessary for the person's mental illness—

1 An advance health directive does not cover the matters that are clinically relevant or appropriate for the person's treatment and care.

2 An advance health directive does not authorise the administration of the medications that are clinically necessary for the person's treatment and care.

3 An attorney does not consent to the administration of the medications that are clinically necessary for the person's treatment and care.

(2) In deciding whether there is a less restrictive way for a person to receive the treatment and care that is reasonably necessary for the person's mental illness, a person performing a function or exercising a power under this Act must—

(a) consider the ways mentioned in subsection (1) in the listed order set out in the subsection; and

(b) comply with the policy that must be made by the chief psychiatrist under section 305(1)(a) about when it may not be appropriate for a person to receive treatment and care for the person's mental illness under an advance health directive or with the consent of a personal guardian, attorney or statutory health attorney for the person.

(3) To remove any doubt, it is declared that this section does not limit the power of the public guardian to act as a statutory health attorney for a person under the *Powers of Attorney Act 1998*.

(4) In this section—

statutory health attorney means the person's statutory health attorney under the *Powers of Attorney Act 1998*, section 63(1).

14 Meaning of *capacity* to consent to be treated

(1) A person has ***capacity*** to consent to be treated if the person—

(a) is capable of understanding, in general terms—

(i) that the person has an illness, or symptoms of an illness, that affects the person's mental health and wellbeing; and

(ii) the nature and purpose of the treatment for the illness; and

(iii) the benefits and risks of the treatment, and alternatives to the treatment; and

(iv) the consequences of not receiving the treatment; and

(b) is capable of making a decision about the treatment and communicating the decision in some way.

(2) A person may have ***capacity*** to consent to be treated even though the person decides not to receive treatment.

(3) A person may be supported by another person in understanding the matters mentioned in subsection (1)(a) and making a decision about the treatment.

(4) This section does not affect the common law in relation to—

(a) the capacity of a minor to consent to be treated; or

(b) a parent of a minor consenting to treatment of the minor.

15 Responsibility for involuntary patient or forensic disability client

(1) This section applies if a provision of this Act states that—

(a) an authorised mental health service is responsible for an involuntary patient; or

(b) the forensic disability service is responsible for a person subject to a forensic order (disability).

(2) If subsection (1)(a) applies, the administrator of the authorised mental health service is responsible for the

Not authorised—indicative only

Not authorised—indicative only

treatment and care of the involuntary patient under the authority or order to which the person is subject.

(3) If subsection (1)(b) applies, the administrator of the forensic disability service is responsible for the care of the person under the forensic order (disability) to which the person is subject.

16 Purpose of limited community treatment

The purpose of limited community treatment is 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

This part gives an overview of this Act.

18 Treatment authorities

(1) A treatment authority is a lawful authority to provide treatment and care to a person who has a mental illness who does not have capacity to consent to be treated.

(2) A treatment authority may be made for a person if an authorised doctor considers the treatment criteria apply to the person and there is no less restrictive way for the person to receive treatment and care for the person's mental illness, including, for example, under an advance health directive.

(3) Key elements of the treatment criteria are that the person does not have capacity to consent to be treated and there is a risk of imminent serious harm to the person or others.

(4) The category of a treatment authority is—

(a) community, if the person's treatment and care needs can be met in the community; or

(b) inpatient, if the person's treatment and care needs can be met only by being an inpatient.

(5) If the category of a person's treatment authority is inpatient, the person may receive limited community treatment, for a period of not more than 7 consecutive days, if authorised under this Act.

19 Persons in custody

A person in custody, including, for example, in a watch house or prison, may be transferred to an authorised mental health service for an assessment to decide if a treatment authority should be made for the person, or for treatment and care for the person's mental illness.

20 Psychiatrist reports

(1) If a person subject to a treatment authority, forensic order or treatment support order is charged with a serious offence, the person, or someone on the person's behalf, may request that a psychiatrist prepare a report stating the psychiatrist's opinion about whether the person—

(a) may have been of unsound mind at the time of the alleged commission of the serious offence; or

(b) may be unfit for trial.

(2) Also, if a person is charged with a serious offence, whether or not the person is subject to a treatment authority, forensic order or treatment support order, the chief psychiatrist may direct that a psychiatrist prepare a report about the matters mentioned in subsection (1) if the chief psychiatrist considers it is in the public interest.

(3) A serious offence is an indictable offence, other than an offence that, under the Criminal Code, must be heard and decided summarily.

Not authorised—indicative only

Not authorised—indicative only

21 Mental Health Court

(1) The Mental Health Court decides whether a person charged with a serious offence or other particular offences was of unsound mind or, for the offence of murder, of diminished responsibility, when the offence was allegedly committed or is unfit for trial.

(2) If the court decides a person was of unsound mind when the offence was allegedly committed, or is unfit for trial, the court may make a forensic order or treatment support order for the person.

(3) The forensic order may be a forensic order (mental health) or a forensic order (disability).

(4) The court must also decide the category of the order and, if the category is inpatient, any limited community treatment for the person.

(5) If the court decides a person is unfit for trial and the unfitness for trial is not permanent, the person's fitness for trial is periodically reviewed by the Mental Health Review Tribunal.

22 Magistrates Courts

(1) A Magistrates Court may dismiss a complaint for a simple offence if the court is reasonably satisfied, on the balance of probabilities, that the person charged with the offence was, or appears to have been, of unsound mind when the offence was allegedly committed or is unfit for trial.

(2) A Magistrates Court may also order that a person appearing before the court be examined by an authorised doctor to decide whether to make a treatment authority for the person or to make recommendations about the person's treatment and care.

23 Treatment and care of patients

(1) The treatment and care of a patient is the responsibility of authorised doctors and administrators of authorised mental health services.

(2) A person subject to a treatment authority must be regularly assessed to decide if the treatment authority should continue.

(3) An authorised doctor may amend a person's treatment authority, forensic order or treatment support order by changing the category of the authority or order, its conditions, or the nature or extent of limited community treatment.

(4) An amendment of an authority or order by an authorised doctor must be in accordance with decisions of the Mental Health Court and the Mental Health Review Tribunal.

(5) To the extent practicable, decisions in relation to treatment and care for a patient must be made in consultation with the patient and the patient's family, carers and other support persons, subject to the patient's right to privacy.

(6) The performance of electroconvulsive therapy and non-ablative neurosurgical procedures is regulated under this Act.

(7) Psychosurgery is prohibited under this Act.

24 Mechanical restraint, seclusion, physical restraint and other practices

(1) The use of mechanical restraint, seclusion, physical restraint, and other practices are regulated under this Act.

(2) The use of mechanical restraint on an involuntary patient in an authorised mental health service must be approved by the chief psychiatrist.

(3) Mechanical restraint and seclusion may be used only if there is no other reasonably practicable way to protect the patient or others from physical harm.

25 Rights of patients

(1) This Act provides for a statement of rights for involuntary patients and other patients of authorised mental health services.

Not authorised—indicative only

Not authorised—indicative only

(2) A person may appoint 1 or 2 nominated support persons to support the person under this Act if the person becomes an involuntary patient.

(3) The health service chief executive responsible for a public sector mental health service must appoint 1 or more independent patient rights advisers to advise patients and their nominated support persons, family, carers and other support persons of their rights under this Act.

26 Chief psychiatrist

(1) The chief psychiatrist protects the rights of patients in authorised mental health services.

(2) The chief psychiatrist makes policies and practice guidelines that must be complied with by persons performing functions in authorised mental health services.

(3) The chief psychiatrist has powers to investigate matters under this Act.

27 Information notices

Victims of unlawful acts, close relatives of the victims, and other particular persons may apply to the chief psychiatrist to receive specific information about the person who committed the unlawful act, including when treatment in the community is authorised for the person.

28 Mental Health Review Tribunal

(1) The Mental Health Review Tribunal reviews the following—

(a) treatment authorities;

(b) forensic orders;

(c) treatment support orders;

(d) the fitness for trial of particular persons;

(e) the detention of minors in high security units.

(2) The Mental Health Review Tribunal also hears applications for the following—

(a) examination authorities;

(b) the approval of regulated treatment;

(c) the transfer of particular patients into and out of Queensland.

(3) This Act states when periodic reviews of treatment authorities, forensic orders and treatment support orders must take place.

(4) An involuntary patient, or an interested person for the patient, may apply for a review at any time.

29 Appeals

This Act provides for—

(a) an appeal to the Mental Health Review Tribunal against particular decisions of the chief psychiatrist or the administrator of an authorised mental health service; and

(b) an appeal to the Mental Health Court against particular decisions of the Mental Health Review Tribunal; and

(c) an appeal to the Court of Appeal against a decision of the Mental Health Court on a reference in relation to a person.

Not authorised—indicative only

Not authorised—indicative only

Chapter 2 Making of treatment authorities after examination and assessment

Part 1 Preliminary

30 Purpose of ch 2

The purpose of this chapter is to provide for—

(a) matters relating to the examination and assessment of persons who may have a mental illness; and

(b) the making of treatment authorities for persons who have a mental illness if—

(i) the treatment criteria apply to the person; and

(ii) there is no less restrictive way for the person to receive treatment and care for the person's mental illness.

Note—

See also chapter 3 for other matters in relation to persons in custody who have or may have a mental illness.

Part 2 Examinations and recommendations for assessment

Division 1 Examinations generally

31 Examination

(1) A doctor or authorised mental health practitioner may examine a person to decide whether to make a recommendation for assessment for the person.

(2) Without limiting subsection (1), the examination may be carried out—

(a) if the person asks for, or consents to, the examination; or

(b) under this Act or another Act providing for the examination, including, for example, under an examination authority or emergency examination authority.

Note—

See chapter 12, part 8 in relation to applications for examination authorities.

(3) However, a doctor or authorised mental health practitioner must not examine a person subject to a forensic order (mental health), forensic order (Criminal Code) or treatment support order to decide whether to make a recommendation for assessment for the person.

Division 2 Powers under examination authorities

32 Powers of doctor or authorised mental health practitioner

(1) This section applies if a person is subject to an examination authority.

Not authorised—indicative only

Not authorised—indicative only

(2) A doctor or authorised mental health practitioner may—

(a) enter a place stated in the authority or another place in which the doctor or authorised mental health practitioner considers the person may be found, and any other place necessary for entry to either of those places, to find the person; and

(b) examine the person, without the person's consent, at—

(i) the place at which the person is found; or

(ii) if the doctor or authorised mental health practitioner considers it clinically appropriate—an authorised mental health service or public sector health service facility; and

(c) detain the person at the place at which the person is examined—

(i) if the place is an authorised mental health service or public sector health service facility—for a period, of not more than 6 hours, starting when the person first attends at the service or facility for the examination; or

(ii) otherwise—for a period, of not more than 1 hour, starting when the person is found at the place.

(3) If subsection (2)(b)(ii) applies to the person, an authorised person may transport the person to the authorised mental health service or public sector health service facility for the examination.

(4) The doctor or authorised mental health practitioner examining the person may extend, or further extend, the period under subsection (2)(c)(i) before it ends if the doctor or authorised mental health practitioner considers the extension is necessary to carry out or finish the examination.

(5) An extension under subsection (4) may be for a period, of not more than 12 hours, starting when the person first attends at the service or facility for the examination.

33 Reasonable help and force to exercise powers

A doctor or authorised mental health practitioner may exercise a power under section 32 with the help, and using the force, that is necessary and reasonable in the circumstances.

34 Asking police officer for help

For performing a function or exercising a power under section 32 in relation to a person, a doctor or authorised mental health practitioner is a public official for the *Police Powers and Responsibilities Act 2000*.

Note—

For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16.

35 Action before exercising powers

(1) Before performing a function or exercising a power under section 32 in relation to a person, a doctor or authorised mental health practitioner must do or make a reasonable attempt to do each of the following—

(a) identify himself or herself to the person;

(b) tell the person an examination authority has been made;

(c) explain to the person, in general terms, the nature and effect of the authority;

(d) give the person a copy of the authority, if requested;

(e) if the doctor or health practitioner is entering a place—give the person an opportunity to allow the doctor or health practitioner immediate entry to the place without using force.

(2) However, the doctor or authorised mental health practitioner need not comply with subsection (1) if the doctor or health practitioner believes on reasonable grounds that not complying with the subsection is required to ensure the execution of the authority is not frustrated.

Not authorised—indicative only

Not authorised—indicative only

(3) The doctor or authorised mental health practitioner must give a copy of the authority to the person's nominated support persons, personal guardian or attorney, if requested.

Division 3 Detention of particular persons to make recommendation for assessment

36 Powers of doctor or authorised mental health practitioner

(1) This section applies if—

(a) a person asks for, or consents to, an examination under section 31 by a doctor or authorised mental health practitioner in an authorised mental health service or public sector health service facility; and

(b) after examining the person, the doctor or authorised mental health practitioner decides under section 39 to make a recommendation for assessment for the person; and

(c) there is a risk the person will leave the authorised mental health service or public sector health service facility in which the person is being examined before the recommendation for assessment is made.

(2) The doctor or authorised mental health practitioner may detain the person in the authorised mental health service or public sector health service facility for the period, of not more than 1 hour, reasonably necessary to make the recommendation for assessment.

(3) The doctor or authorised mental health practitioner must record in the person's health records—

(a) the reasons for detaining the person under subsection (2); and

(b) the duration of the detention.

37 Reasonable help and force to exercise powers

A doctor or authorised mental health practitioner may exercise a power under section 36 with the help, and using the force, that is necessary and reasonable in the circumstances.

38 Action before exercising powers

Before exercising a power under section 36 in relation to a person, a doctor or authorised mental health practitioner must do or make a reasonable attempt to do the following—

(a) identify himself or herself to the person;

(b) tell the person a recommendation for assessment will be made;

(c) explain to the person, in general terms, the nature and effect of a recommendation for assessment;

(d) explain to the person that the person will be detained in the authorised mental health service or public sector health service facility for the period, of not more than 1 hour, reasonably necessary to make the recommendation for assessment;

(e) give the person an opportunity to allow the doctor or health practitioner to make the recommendation for assessment without detaining the person.

Division 4 Recommendations for assessment

39 Making recommendation for assessment

(1) A doctor or authorised mental health practitioner may, after examining a person under section 31, make a recommendation for assessment for the person if satisfied—

(a) the treatment criteria may apply to the person; and

(b) there appears to be no less restrictive way for the person to receive treatment and care for the person's mental illness.

Not authorised—indicative only

Not authorised—indicative only

(2) The recommendation for assessment must be made within 7 days after the examination.

(3) The recommendation for assessment must be in the approved form.

40 Notice of making

(1) As soon as practicable after deciding to make the recommendation for assessment, the doctor or authorised mental health practitioner must—

(a) tell the person of the decision; and

(b) explain to the person the effect of the recommendation; and

(c) give the person a copy of the recommendation, if requested.

(2) Subsection (1)(c) does not apply if the doctor or authorised mental health practitioner considers giving the person a copy may adversely affect the health and wellbeing of the person.

(3) Also, the doctor or authorised mental health practitioner must give a copy of the recommendation to the person's nominated support persons, personal guardian or attorney, if requested.

41 Duration

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

42 Revocation

(1) A doctor or authorised mental health practitioner who makes a recommendation for assessment for a person may revoke the recommendation at any time before the start of the assessment period for the person.

(2) The doctor or authorised mental health practitioner may act under subsection (1) only if the doctor or health practitioner is no longer satisfied—

(a) the treatment criteria may apply to the person; or

(b) there appears to be no less restrictive way for the person to receive treatment and care for the person's mental illness.

Part 3 Assessments

43 Making assessment

(1) An authorised doctor may make an assessment of a person subject to a recommendation for assessment to decide—

(a) whether the treatment criteria apply to the person; and

(b) whether there is a less restrictive way for the person to receive treatment and care for the person's mental illness.

(2) The authorised doctor who makes the assessment under subsection (1) must not be the authorised doctor who made the recommendation for assessment for the person.

(3) Subsection (2) does not apply if the authorised doctor is an authorised doctor for an authorised mental health service (rural and remote) and is the only authorised doctor reasonably available to make the assessment.

(4) For subsection (1)(b), the authorised doctor must take reasonable steps to find out whether there is a less restrictive way for the person to receive treatment and care for the person's mental illness, including, for example, by searching the person's health records to find out whether the person has made an advance health directive or has a personal guardian.

44 Where and how person may be assessed

(1) A person subject to a recommendation for assessment may be assessed in—

(a) an authorised mental health service; or

Not authorised—indicative only

Not authorised—indicative only

(b) a public sector health service facility; or

(c) another place considered clinically appropriate by the authorised doctor making the assessment.

(2) An authorised person may transport the person to an authorised mental health service or a public sector health service facility for assessment.

Notes—

1 For a person in custody subject to a recommendation for assessment, see section 65.

2 For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

(3) An authorised doctor making an assessment of a person must discuss the assessment with the person.

45 Detention for assessment

(1) If a person subject to a recommendation for assessment is to be assessed in an authorised mental health service or public sector health service facility, the person may be detained for assessment in the service or facility for a period of not more than 24 hours starting—

(a) if the person is at the service or facility when the recommendation for assessment is made—when the recommendation is made; or

(b) otherwise—when the person first attends at the service or facility for the assessment.

(2) The authorised doctor making the assessment of the person may extend, or further extend, the period under subsection (1) before it ends to a period of not more than 72 hours after it starts if the authorised doctor considers the extension is necessary to carry out or finish the assessment.

(3) If, at any time during the period mentioned in subsection (1), or extended under subsection (2), the authorised doctor making the assessment makes a decision on the assessment, the period for which the person may be detained for assessment ends.

(4) The period under this section for which the person may be detained for assessment is the ***assessment period*** for the person.

46 Start of assessment period to be noted

(1) If the assessment period for a person starts as mentioned in section 45(1)(a)—

(a) the doctor or authorised mental health practitioner who made the recommendation for assessment for the person must make a note on the recommendation of the time when the assessment period starts; and

(b) the note must be made when the recommendation for assessment is made.

(2) If the assessment period for a person starts as mentioned in section 45(1)(b)—

(a) an employee of the service or facility must make a note on the recommendation for assessment of the time when the assessment period starts; and

(b) the note must be made as soon as practicable after the person is admitted to the service or facility.

47 Explaining decision not to make treatment authority

(1) This section applies if, on making an assessment of a person subject to a recommendation for assessment, an authorised doctor decides—

(a) the treatment criteria do not apply to the person; or

(b) there is a less restrictive way for the person to receive treatment and care for the person's mental illness.

(2) The authorised doctor must—

(a) tell the person of the decision; and

(b) explain its effect to the person; and

Not authorised—indicative only

Not authorised—indicative only

(c) make a note on the recommendation for assessment of the decision not to make a treatment authority for the person.

Part 4 Treatment authorities

48 Application of pt 4

This part applies if, on making an assessment of a person under part 3, the authorised doctor making the assessment is satisfied—

(a) the treatment criteria apply to the person; and

(b) there is no less restrictive way for the person to receive treatment and care for the person's mental illness.

49 Making treatment authority

The authorised doctor may make an authority (a ***treatment authority***) for the person.

50 Form of treatment authority

(1) The treatment authority must—

(a) be in the approved form; and

(b) state the following—

(i) the grounds on which the authorised doctor is satisfied the treatment criteria apply to the person;

(ii) the authorised mental health service responsible for the person's treatment and care under the authority;

(iii) the category of the authority;

(iv) if the authorised doctor decides under section 51(1) that the category of the authority is

inpatient—whether limited community treatment is authorised for the person;

(v) any conditions the authorised doctor considers necessary for the person's treatment and care.

Note—

See schedule 3, definition *condition*.

(2) For subsection (1)(b)(ii), if the authorised doctor decides under section 51(1) that the category of the authority is inpatient, the authorised mental health service responsible for the person's treatment and care must not be a high security unit without the prior written approval of the chief psychiatrist.

51 Category

(1) If the authorised doctor makes a treatment authority for the person, and the person is not a classified patient, the authorised doctor must decide whether the category of the authority is—

(a) inpatient; or

(b) community.

(2) In deciding the category of the authority, the authorised doctor must have regard to the relevant circumstances of the person.

(3) However, the authorised doctor may decide the category of the authority is inpatient only if the authorised doctor considers, after having regard to the relevant circumstances of the person, that 1 or more of the following can not reasonably be met if the category of the authority is community—

(a) the person's treatment and care needs;

(b) the safety and welfare of the person;

(c) the safety of others.

(4) If the person is a classified patient, the category of the authority is inpatient.

Not authorised—indicative only

Not authorised—indicative only

52 Limited community treatment

(1) If the authorised doctor decides under section 51(1) that the category of the treatment authority is inpatient, the authorised doctor must decide whether to authorise limited community treatment.

Note—

See chapter 7, part 6 for the authorisation of limited community treatment for classified patients.

(2) The authorised doctor may decide to authorise limited community treatment only if satisfied limited community treatment is appropriate having regard to—

(a) the relevant circumstances of the person; and

(b) the purpose of limited community treatment.

(3) If limited community treatment is authorised under this section, the person's treatment authority must state—

(a) the nature and conditions of the limited community treatment; and

(b) the period, of not more than 7 consecutive days, of the limited community treatment; and

(c) the duration for which the authorisation is in force.

Example for paragraphs (b) and (c)—

limited community treatment may be authorised for a period of 1 day per week for a duration of 8 weeks

53 Nature and extent of treatment and care

(1) The authorised doctor must decide the nature and extent of the treatment and care to be provided to the person under the treatment authority.

(2) In deciding the nature and extent of the treatment and care, the authorised doctor must—

(a) discuss the treatment and care to be provided with the person; and

(b) have regard to the views, wishes and preferences of the person, to the extent they can be expressed, including, for example, in an advance health directive.

54 When advance health directive not followed

(1) This section applies if—

(a) the person has an advance health directive relating to the person's future treatment and care for a mental illness; and

(b) either—

(i) the authorised doctor decides to make a treatment authority despite the person having an advance health directive; or

(ii) the nature and extent of the treatment and care decided by the authorised doctor under section 53 is inconsistent with the views, wishes and preferences of the person expressed in the advance health directive.

(2) The authorised doctor must—

(a) explain to the person the reasons why the authorised doctor made the decision mentioned in subsection (1)(b); and

(b) record the reasons in the person's health records.

55 Notice of making

(1) As soon as practicable after making a treatment authority for a person, the authorised doctor must—

(a) tell the person of the decision; and

(b) explain its effect to the person.

(2) If the authorised doctor is a psychiatrist, the administrator of the person's treating health service must, within 7 days after the treatment authority is made—

Not authorised—indicative only

Not authorised—indicative only

(a) give the person a copy of the authority; and

(b) give the person's nominated support persons, personal guardian or attorney a copy of the authority, if requested; and

(c) give the tribunal written notice of its making.

(3) If the authorised doctor is not a psychiatrist, the administrator of the person's treating health service must—

(a) give the person a copy of the authority, if requested; and

(b) give the person's nominated support persons, personal guardian or attorney a copy of the authority, if requested.

56 Review of treatment authority if not made by psychiatrist

(1) This section applies if a treatment authority is made by an authorised doctor who is not a psychiatrist.

(2) An authorised psychiatrist must review the treatment authority and decide whether—

(a) to confirm the treatment authority, with or without amendment; or

(b) to revoke the treatment authority.

(3) The review must happen—

(a) within 3 days (the ***review period***) after the treatment authority is made; or

(b) if the person subject to the treatment authority is a patient of an authorised mental health service (rural and remote) and it is not reasonably practicable to complete the review within 3 days—within 7 days (also the ***review period***) after the treatment authority is made.

(4) An authorised doctor may give the person subject to the treatment authority a written notice directing the person to attend for the review at a stated authorised mental health service or public sector health service facility on a stated day within the review period.

Note—

See chapter 11, part 6, division 3 for the powers that may be used in relation to a person who does not comply with a direction under subsection (4).

(5) The person subject to the treatment authority may be detained for the review in the stated service or facility for a period of not more than 6 hours starting when the person attends for the review at the service or facility.

(6) A review of a treatment authority does not affect the operation of the treatment authority before a decision is made to confirm or revoke it under subsection (2).

57 Decision on review

(1) On a review under section 56 of a treatment authority, the authorised psychiatrist may decide to confirm the treatment authority only if satisfied—

(a) the treatment criteria apply to the person; and

(b) there is no less restrictive way for the person to receive treatment and care for the person's mental illness.

(2) If the authorised psychiatrist decides to confirm the treatment authority, the authorised psychiatrist must—

(a) decide whether to amend the treatment authority in any of the following ways—

(i) to change the category of the authority;

(ii) to authorise or revoke, or change the nature or extent of, limited community treatment;

(iii) to impose a condition on, or change a condition of, the authority; and

(b) decide the nature and extent of the treatment and care to be provided to the person under the treatment authority.

(3) In deciding—

(a) whether to change the category of the authority, section 51 applies to the authorised psychiatrist as if a

Not authorised—indicative only

Not authorised—indicative only

reference in the section to an authorised doctor were a reference to the authorised psychiatrist; and

(b) whether to authorise or revoke, or change the nature or extent of, limited community treatment, section 52 applies to the authorised psychiatrist as if a reference in the section to an authorised doctor were a reference to the authorised psychiatrist; and

(c) the nature and extent of the treatment and care to be provided to the person, section 53 applies to the authorised psychiatrist as if a reference in the section to an authorised doctor were a reference to the authorised psychiatrist.

(4) If, after reviewing the treatment authority, the authorised psychiatrist is not satisfied of the matters mentioned in subsection (1), the authorised psychiatrist must decide to revoke the treatment authority.

(5) The authorised psychiatrist must make a note on the treatment authority of the decision on the review.

(6) If a treatment authority made by an authorised doctor who is not an authorised psychiatrist is not confirmed under subsection (1) or revoked under subsection (4) within the review period for the treatment authority, the treatment authority is revoked at the end of the review period.

(7) However, subsection (6) does not apply if the person does not attend for the review as directed under section 56(4).

58 Notice about review

(1) As soon as practicable after making a decision under section 57 on a review of a treatment authority for a person, the authorised psychiatrist must—

(a) tell the person of the decision; and

(b) explain its effect to the person.

(2) If the decision on the review is to confirm the treatment authority, the administrator of the person's treating health service must, within 7 days after the decision—

(a) give the person a copy of the authority; and

(b) give the person's nominated support persons, personal guardian or attorney a copy of the authority, if requested; and

(c) give the tribunal written notice of the decision.

59 Date for first assessment

(1) If an authorised doctor makes a treatment authority for a person, the authorised doctor must decide and record in the person's health records a date for the first regular assessment of the patient under section 205.

(2) The date for the assessment must be not later than 3 months after the day the treatment authority is made.

60 Relationship with forensic order (disability)

If a treatment authority for a person is inconsistent with a forensic order (disability) for the person, the forensic order (disability) prevails to the extent of the inconsistency.

Chapter 3 Persons in custody

Part 1 Preliminary

61 Purpose of ch 3

The purpose of this chapter is to provide for—

Not authorised—indicative only

Not authorised—indicative only

(a) the transport of persons in custody to an inpatient unit of an authorised mental health service—

(i) for assessment under chapter 2, part 3; or

(ii) to receive treatment and care under this Act for the person's mental illness; and

(b) persons subject to examination orders or court examination orders remaining in an inpatient unit of an authorised mental health service to receive treatment and care under this Act for the person's mental illness; and

(c) particular requirements that apply when persons become classified patients; and

(d) the return to custody, or release from detention in an authorised mental health service, of classified patients.

62 Definitions for ch 3

In this chapter—

administrator consent, for a person in custody, means consent given by the administrator of an authorised mental health service under section 69 for the transport of the person.

classified patient see section 64(1).

classified patient (involuntary) see section 64(2).

classified patient (voluntary) see section 64(3).

custodian consent, for a person in custody, means consent given under section 71 for the transport of the person.

notice event see section 81(1).

person in custody see section 63.

transfer recommendation see section 68(2).

63 Meaning of *person in custody*

(1) A ***person in custody*** is a person who is in lawful custody—

(a) on a charge of an offence or awaiting sentence on conviction for an offence; or

(b) without charge under—

(i) an Act of the State, other than this Act; or

(ii) an Act of the Commonwealth; or

(c) serving a sentence of imprisonment, or period of detention under a court order, for an offence and who is not released on parole.

(2) To remove any doubt, it is declared that an offence mentioned in subsection (1) includes an offence against a law of the Commonwealth.

Note—

See the *Judiciary Act 1903* (Cwlth), section 68 (Jurisdiction of State and Territory courts in criminal cases).

64 Meaning of *classified patient*

(1) A ***classified patient*** is—

(a) a classified patient (involuntary); or

(b) a classified patient (voluntary).

(2) A ***classified patient (involuntary)*** is—

(a) a person who is—

(i) subject to any of the following—

(A) a recommendation for assessment;

(B) a treatment authority;

(C) a forensic order (mental health);

(D) a treatment support order; and

(ii) transported under part 2 from a place of custody to an inpatient unit of an authorised mental health service; and

(iii) admitted to the inpatient unit of the authorised mental health service; or

Not authorised—indicative only

Not authorised—indicative only

(b) a person who—

(i) is subject to any of the following—

(A) a treatment authority;

(B) a forensic order (mental health);

(C) a treatment support order; and

(ii) remains in an inpatient unit of an authorised mental health service under section 74.

(3) A ***classified patient (voluntary)*** is—

(a) a person who—

(i) is transported under part 2 from a place of custody to an inpatient unit of an authorised mental health service; and

(ii) is admitted to the inpatient unit of the authorised mental health service; and

(iii) consents under section 67 or 79 to receiving treatment and care for the person's mental illness in the inpatient unit of the authorised mental health service; or

(b) a person who—

(i) remains in an inpatient unit of an authorised mental health service under section 74; and

(ii) consents under section 74 to receiving treatment and care for the person's mental illness in the inpatient unit of the authorised mental health service.

Part 2 Transport of persons in custody to authorised mental health services

65 Transport for assessment

(1) This section applies to a person in custody who is subject to a recommendation for assessment.

(2) The person may be transported by an authorised person from the person's place of custody to an inpatient unit of an authorised mental health service for assessment under chapter 2, part 3.

(3) The authorised person may transport the person only if both of the following have been made for the person—

(a) an administrator consent;

(b) a custodian consent.

(4) Despite section 44(1) and (2), the person may be transported only to, and assessed only in, an inpatient unit of an authorised mental health service.

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

(1) This section applies to a person in custody who is subject to a treatment authority, forensic order (mental health) or treatment support order.

(2) The person may be transported by an authorised person from the person's place of custody to an inpatient unit of an authorised mental health service to receive treatment and care for the person's mental illness.

(3) The authorised person may transport the person only if all of the following have been made for the person—

(a) a transfer recommendation;

(b) an administrator consent;

Not authorised—indicative only

Not authorised—indicative only

(c) a custodian consent.

(4) When the person is admitted to the inpatient unit of the authorised mental health service—

(a) if the category of the person's treatment authority, forensic order (mental health) or treatment support order is community—the category is changed to inpatient; and

(b) if limited community treatment has been authorised for the person by an authorised doctor under section 52, 57, 209, 212 or 216—the authorisation is revoked; and

(c) if limited community treatment has been ordered or approved by the Mental Health Court or tribunal—the order or approval is of no effect while the person is receiving treatment and care for the person's mental illness in the inpatient unit.

67 Transport for treatment and care by consent

(1) This section applies to a person in custody who—

(a) is not subject to a treatment authority, forensic order (mental health) or treatment support order; and

(b) consents to receiving treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service.

(2) The person may be transported by an authorised person from the person's place of custody to an inpatient unit of an authorised mental health service to receive treatment and care for the person's mental illness.

(3) The authorised person may transport the person only if all of the following have been made for the person—

(a) a transfer recommendation;

(b) an administrator consent;

(c) a custodian consent.

(4) The person may withdraw the person's consent under subsection (1)(b) at any time.

Note—

If the person withdraws consent, see sections 80 and 83.

(5) Subsection (4) does not prevent a treatment authority being made under chapter 2 for the person.

68 Transfer recommendation

(1) This section applies to a person in custody who—

(a) is subject to a treatment authority, forensic order (mental health) or treatment support order; or

(b) consents to receiving treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service.

(2) A doctor or authorised mental health practitioner may, in the approved form, make a recommendation (a ***transfer recommendation***) for the person to be transported by an authorised person from the person's place of custody to an inpatient unit of an authorised mental health service to receive treatment and care for the person's mental illness.

(3) The doctor or authorised mental health practitioner may make the transfer recommendation only if satisfied—

(a) for a person who is not subject to a treatment authority, forensic order (mental health) or treatment support order—the person may have a mental illness; and

(b) it is clinically appropriate for the person to receive treatment and care for the person's mental illness in an authorised mental health service.

(4) As soon as practicable after making the transfer recommendation, the doctor or authorised mental health practitioner must—

(a) tell the person of the making of the transfer recommendation; and

(b) explain its effect to the person; and

Not authorised—indicative only

Not authorised—indicative only

(c) give the person a copy of the transfer recommendation, if requested.

(5) Subsection (4)(c) does not apply if the doctor or authorised mental health practitioner considers giving the copy may adversely affect the health and wellbeing of the person.

(6) Also, the doctor or authorised mental health practitioner must give a copy of the transfer recommendation to the person's nominated support persons, personal guardian or attorney, if requested.

69 Administrator consent

(1) This section applies to a person in custody who—

(a) is subject to a recommendation for assessment; or

(b) is subject to a treatment authority, forensic order (mental health) or treatment support order; or

(c) consents to receiving treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service.

(2) The administrator of an authorised mental health service may, in the approved form, consent to the person in custody being transported by an authorised person from the person's place of custody to an inpatient unit of the authorised mental health service—

(a) for a person mentioned in subsection (1)(a)—for assessment under chapter 2, part 3; or

(b) for a person mentioned in subsection (1)(b) or (c)—to receive treatment and care for the person's mental illness.

(3) The administrator may consent only if satisfied—

(a) the authorised mental health service has capacity—

(i) for a person mentioned in subsection (1)(a)—to carry out the assessment; or

(ii) for a person mentioned in subsection (1)(b) or (c)—to provide treatment and care for the person's mental illness; and

(b) for an authorised mental health service that is not a high security unit—that carrying out the assessment, or providing the treatment and care, would not pose an unreasonable risk to the safety of the person or others having regard to—

(i) the person's mental state and psychiatric history; and

(ii) the person's treatment and care needs; and

(iii) the security requirements for the person.

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

(1) If a person in custody mentioned in section 69(1) is a minor, the administrator of an authorised mental health service that is a high security unit must not give consent under section 69 for the transport of the minor from the minor's place of custody to the high security unit unless the chief psychiatrist has given prior written approval of the giving of the consent.

(2) In deciding whether to give the approval, the chief psychiatrist must have regard to the following—

(a) the minor's mental state and psychiatric history;

(b) the minor's treatment and care needs;

(c) the security requirements for the minor.

(3) As soon as practicable after deciding to give the approval, the chief psychiatrist must give a copy of the written approval to the administrator.

71 Custodian consent

(1) This section applies to a person in custody who—

(a) is subject to a recommendation for assessment; or

Not authorised—indicative only

Not authorised—indicative only

(b) is subject to a treatment authority, forensic order (mental health) or treatment support order; or

(c) consents to receiving treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service.

(2) The custodian of the person in custody must, in the approved form, consent to the person being transported by an authorised person from the person's place of custody to an inpatient unit of an authorised mental health service—

(a) for a person mentioned in subsection (1)(a)—for assessment under chapter 2, part 3; or

(b) for a person mentioned in subsection (1)(b) or (c)—to receive treatment and care for the person's mental illness.

(3) However, subsection (2) does not apply if the custodian is satisfied that carrying out the assessment, or providing the treatment and care, would pose an unreasonable risk to the safety of the person or others having regard to the security requirements for the person.

(4) The approved form must state the particular authorised mental health service to which the person is to be transported for the assessment or the treatment and care.

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

(1) This section applies if—

(a) a person mentioned in section 65 is not transported to an inpatient unit of an authorised mental health service within 72 hours after the recommendation for assessment for the person is made; or

(b) a person mentioned in section 66 or 67 is not transported to an inpatient unit of an authorised mental health service within 72 hours after the transfer recommendation for the person is made.

(2) As soon as practicable after the end of the 72 hour period, a doctor or authorised mental health practitioner must give the chief psychiatrist written notice that the person has not been transported to an inpatient unit of an authorised mental health service under the recommendation for assessment or transfer recommendation.

73 Chief psychiatrist consent for transport

(1) This section applies if the chief psychiatrist—

(a) receives a written notice under section 72(2) about a person in custody; or

(b) otherwise becomes aware a person has not been transported to an inpatient unit of an authorised mental health service under a recommendation for assessment or transfer recommendation for the person.

(2) The chief psychiatrist may decide to consent to the person being transported to an inpatient unit of an authorised mental health service for the assessment or for the treatment and care.

(3) In deciding whether to give consent, the chief psychiatrist must have regard to the matters to which an administrator of an authorised mental health service must have regard under section 69(3) in giving consent under section 69(2).

(4) As soon as practicable after the chief psychiatrist decides to give consent, the chief psychiatrist must give written notice of the decision to the administrator of the authorised mental health service to which the person is to be transported.

(5) The chief psychiatrist's consent has the same effect as if the administrator had given consent under section 69(2) for the transport of the person.

(6) As soon as practicable after receiving the notice under subsection (4), and subject to a custodian consent being given for the person, the administrator must arrange for the person to be transported by an authorised person to the inpatient unit of the authorised mental health service.

Not authorised—indicative only

Not authorised—indicative only

Part 3 Persons in custody remaining in authorised mental health services

74 Person subject to examination order or court examination order remaining in authorised mental health service

(1) This section applies if—

(a) a person is transported by an authorised person, under an examination order or a court examination order, from the person's place of custody to an authorised mental health service; and

(b) the authorised doctor making the examination considers it is clinically appropriate for the person to receive treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service; and

(c) either—

(i) the person is subject to a treatment authority, forensic order (mental health) or treatment support order; or

(ii) the person consents to receiving treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service.

(2) The person may remain in the inpatient unit of the authorised mental health service to receive treatment and care for the person's mental illness if all of the following have been made for the person—

(a) a recommendation in writing by the authorised doctor for the person to receive treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service;

(b) an administrator consent;

(c) a custodian consent.

(3) For subsection (2)(a), the authorised doctor may make the recommendation only if satisfied the person may have a mental illness and it is clinically appropriate for the person to receive treatment and care for the person's mental illness in an authorised mental health service.

(4) For subsection (2)(b), the administrator of an authorised mental health service may, in the approved form, consent to the person remaining in an inpatient unit of the authorised mental health service to receive treatment and care for the person's mental illness.

(5) The administrator may consent only if satisfied—

(a) the authorised mental health service has capacity to provide treatment and care for the person's mental illness; and

(b) for an authorised mental health service that is not a high security unit—that providing the treatment and care would not pose an unreasonable risk to the safety of the person or others having regard to—

(i) the person's mental state and psychiatric history; and

(ii) the person's treatment and care needs; and

(iii) the security requirements for the person.

(6) For subsection (2)(c), the custodian of the person must, in the approved form, consent to the person remaining in an inpatient unit of the authorised mental health service to receive treatment and care for the person's mental illness.

(7) However, subsection (6) does not apply if the custodian is satisfied that providing the treatment and care would pose an unreasonable risk to the safety of the person or others having regard to the security requirements for the person.

(8) The authorised doctor may detain the person, under the order, in the authorised mental health service for the period, of not more than 7 days, reasonably necessary to obtain an administrator consent and custodian consent for the person.

Not authorised—indicative only

Not authorised—indicative only

(9) When a person mentioned in subsection (1)(c)(i) starts receiving treatment and care for the person's mental illness as a classified patient in the inpatient unit of the authorised mental health service—

(a) if the category of the person's treatment authority, forensic order (mental health) or treatment support order is community—the category is changed to inpatient; and

(b) if limited community treatment has been authorised for the person by an authorised doctor under section 52, 57, 209, 212 or 216—the authorisation is revoked; and

(c) if limited community treatment has been approved or ordered by the Mental Health Court or tribunal—the approval or order is of no effect while the person is receiving treatment and care in the inpatient unit.

(10) Also, as soon as practicable after the person remains in the inpatient unit of the authorised mental health service to receive treatment and care for the person's mental illness, the authorised doctor must—

(a) tell the person of the making of the recommendation under subsection (2)(a); and

(b) explain its effect to the person; and

(c) give the person a copy of the recommendation, if requested.

(11) Subsection (10)(c) does not apply if the authorised doctor considers giving the copy may adversely affect the health and wellbeing of the person.

(12) In this section—

administrator consent means consent given under subsection (4).

custodian, of a person, means the custodian of the person immediately before the making of an examination order or a court examination order for the person.

custodian consent means consent given under subsection (6).

Part 4 Requirements applying when person in custody becomes classified patient

Note—

See chapter 15, part 2 for the suspension of criminal proceedings against a person who becomes a classified patient.

75 Explanation to person in custody who becomes classified patient

If a person in custody becomes a classified patient (involuntary) or classified patient (voluntary), an authorised doctor must explain to the person how this Act applies to the person.

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

As soon as practicable after a person in custody becomes a classified patient, the administrator of the authorised mental health service to which the person is transported must give the chief psychiatrist written notice that the person is a classified patient.

77 Notice to tribunal of minor in custody becoming classified patient in high security unit

(1) This section applies if a person in custody who is a minor becomes a classified patient in a high security unit.

(2) As soon as practicable after the minor becomes a classified patient, the administrator of the high security unit must give the tribunal written notice that the minor has been admitted to the high security unit.

(3) If the minor stops being detained in the high security unit, the administrator of the high security unit must, as soon as practicable, give the tribunal written notice of that fact.

Not authorised—indicative only

Not authorised—indicative only

78 Examination of classified patient under s 201

In examining a classified patient under section 201, the authorised doctor examining the patient must consider whether it is clinically appropriate for the patient to receive treatment and care for the patient's mental illness in an inpatient unit of an authorised mental health service.

Note—

See section 81 for the requirement to give notice to the chief psychiatrist if the authorised doctor decides it is not clinically appropriate.

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

(1) This section applies to—

(a) a classified patient (involuntary) who is subject to a recommendation for assessment, if the assessment period for the patient ends and a treatment authority is not made for the patient; or

(b) a classified patient (involuntary) who is subject to a treatment authority, forensic order (mental health) or treatment support order, if the authority or order is revoked.

(2) Despite subsection (1)(b), this section does not apply if the tribunal—

(a) on revoking the forensic order (mental health), makes either of the following for the patient—

(i) a treatment support order under section 450;

(ii) a treatment authority under section 451(1)(b); or

(b) on revoking the treatment support order, makes a treatment authority under section 483(1)(b) for the patient.

(3) The person may be detained in an inpatient unit of an authorised mental health service as a classified patient (voluntary) if—

(a) an authorised doctor or authorised mental health practitioner is satisfied—

(i) the person has, or may have, a mental illness; and

(ii) it is clinically appropriate for the person to receive treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service; and

(b) the person consents to receiving treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service.

(4) The person may withdraw consent under subsection (3)(b) at any time.

Note—

If the person withdraws consent, see sections 80 and 83.

(5) Subsection (4) does not prevent a treatment authority being made under chapter 2 for the person.

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

(1) This section applies if a person withdraws consent, under section 67(4) or 79(4), to receiving treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service.

(2) As soon as practicable after the person withdraws consent, an authorised doctor must give the chief psychiatrist written notice of the person's withdrawal of consent.

Note—

See section 83 for the return of the classified patient to custody.

Not authorised—indicative only

Not authorised—indicative only

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

(1) This section applies if any of the following happens (each a ***notice event***)—

(a) for a person in custody who has become a classified patient (involuntary) due to a recommendation for assessment—

(i) the assessment period for the person ends and a treatment authority is not made for the person; and

(ii) the person does not become a classified patient (voluntary) under section 79;

(b) for a person in custody who has become a classified patient (involuntary) due to a treatment authority, forensic order (mental health) or treatment support order—

(i) the authority or order is revoked; and

(ii) the person does not become a classified patient (voluntary) under section 79;

(c) for a person in custody who has become a classified patient to receive treatment and care for the patient's mental illness—an authorised doctor is satisfied it is not, or is no longer, clinically appropriate for the person to receive treatment and care for the patient's mental illness in an inpatient unit of an authorised mental health service.

(2) Despite subsection (1)(b)(i), this section does not apply if the tribunal—

(a) on revoking the forensic order (mental health), makes either of the following for the person—

(i) a treatment support order under section 450;

(ii) a treatment authority under section 451(1)(b); or

(b) on revoking the treatment support order, makes a treatment authority under section 483(1)(b) for the person.

(3) As soon as practicable after the notice event happens, an authorised doctor must give the chief psychiatrist written notice of the notice event.

(4) The notice must—

(a) be in the approved form; and

(b) if the notice is about a notice event mentioned in subsection (1)(c)—state the reasons the authorised doctor is satisfied under that subsection.

(5) For a notice about a notice event mentioned in subsection (1)(a) or (b), the authorised doctor must—

(a) tell the classified patient of the notice; and

(b) explain its effect to the classified patient.

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

(1) The chief psychiatrist, on receiving a notice about a notice event mentioned in section 81(1)(c), may decide—

(a) it is not clinically appropriate for the classified patient to receive treatment and care for the patient's mental illness in an inpatient unit of an authorised mental health service; and

(b) the classified patient should be returned under section 83 to a place of custody.

(2) Also, the chief psychiatrist may, on the chief psychiatrist's own initiative, decide—

(a) it is not clinically appropriate for a classified patient to receive treatment and care for the patient's mental

Not authorised—indicative only

Not authorised—indicative only

illness in an inpatient unit of an authorised mental health service; and

(b) the classified patient should be returned under section 83 to a place of custody.

(3) As soon as practicable after the chief psychiatrist makes a decision under subsection (1) or (2), the chief psychiatrist must give the administrator of the classified patient's treating health service written notice of the decision.

(4) As soon as practicable after receiving a notice under subsection (3), an authorised doctor for the classified patient's treating health service must—

(a) tell the classified patient of the decision; and

(b) explain its effect to the classified patient.

83 Return of classified patient to custody

(1) This section applies if any of the following happens (a ***return event***)—

(a) the chief psychiatrist receives notice of a notice event mentioned in section 81(1)(a) or (b) about a classified patient;

(b) the chief psychiatrist decides under section 82(1) or (2) that a classified patient should be returned to a place of custody;

(c) the chief psychiatrist receives notice under section 80 that a classified patient (voluntary) has withdrawn consent to receiving treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service and a treatment authority has not been made for the person.

(2) As soon as practicable after the return event happens, the chief psychiatrist must give written notice to the following persons of the return event—

(a) the custodian who gave the custodian consent for the person (the ***first custodian***);

(b) if the person is charged with an offence or awaiting sentence on conviction for an offence—the chief executive (justice).

(3) Within 1 day after receiving the notice, the first custodian must make arrangements for an authorised person to transport the person from the authorised mental health service—

(a) to a place in which the person will be in the first custodian's custody; or

(b) if the first custodian agrees with another person (the ***second custodian***) that the person should be transported to a place in which the person will be in the second custodian's custody—to the place in which the person will be in the second custodian's custody.

(4) An authorised person may transport the person from the authorised mental health service to the place in which the person will be in the custody of the first custodian or second custodian.

(5) The person stops being a classified patient when the person is discharged from the authorised mental health service into the custody of the first custodian or second custodian.

(6) As soon as practicable after the chief executive (justice) receives a notice under subsection (2)(b) about a person, the chief executive (justice) must give the following persons a copy of the notice—

(a) the registrar of the court in which the proceeding for the offence has been brought;

(b) the prosecuting authority for the offence;

(c) if the person is a minor—the chief executive (youth justice).

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

If a reference in relation to a person is made to the Mental Health Court, the person stops being a classified patient in

Not authorised—indicative only

Not authorised—indicative only

relation to the reference when the Mental Health Court makes a decision on the reference.

85 Release of classified patient

(1) This section applies if an event happens that means there is no longer a reason for a classified patient to be in lawful custody if the person were not a classified patient (a ***release event***).

Examples of when there is no longer a reason for a classified patient to be in lawful custody—

- the person would be in lawful custody on a charge of an offence, but the person has been granted bail or the prosecution of the charge is discontinued
- the person would be in lawful custody awaiting sentence on conviction for an offence, but the person has been sentenced to a term of imprisonment which has been suspended or an order of imprisonment has not been made
- the person would be in lawful custody serving a term of imprisonment, but the person has been released on parole or the term of imprisonment ends

(2) Within 1 day after the release event happens, the person's custodian must give the administrator of the person's treating health service written notice of the release event.

(3) Immediately after the administrator receives the notice—

(a) the person stops being a classified patient; and

(b) the administrator must not detain the person in the treating health service as a classified patient.

(4) As soon as practicable after receiving the notice, the administrator must give the chief psychiatrist written notice of the release event.

(5) Subsection (3) does not limit a power under this Act to detain a person in an authorised mental health service other than as a classified patient.

Chapter 4 Psychiatrist reports for serious offences

Part 1 Preliminary

86 Purpose of ch 4

The purpose of this chapter is to provide for the preparation of a psychiatrist report and, in particular circumstances, a second psychiatrist report, about a person charged with a serious offence, other than an offence against a law of the Commonwealth.

87 Definitions for ch 4

In this chapter—

psychiatrist report, about a person in relation to a charge of a serious offence, means a report prepared by an authorised psychiatrist stating whether the authorised psychiatrist considers the person—

(a) may have been of unsound mind when the serious offence was allegedly committed; or

(b) may be unfit for trial.

second psychiatrist report see section 100(2).

Part 2 Psychiatrist report on request

88 Application of pt 2

(1) This part applies to a person charged with a serious offence, other than an offence against a law of the Commonwealth, who, at the time of the alleged commission of the offence or any time after the alleged commission of the offence but

Not authorised—indicative only

Not authorised—indicative only

before a court makes a final decision in the proceeding for the offence, is subject to—

(a) a treatment authority; or

(b) a forensic order under which a stated authorised mental health service is responsible for the person; or

(c) a treatment support order.

(2) For subsection (1), it is immaterial if the authority or order is revoked before the court makes a final decision in the proceeding for the offence.

89 Administrator must explain effect of request

(1) As soon as practicable after the administrator of the person's treating health service becomes aware this part applies to the person, the administrator must—

(a) tell the person a request may be made under this part for a psychiatrist report about the person in relation to the charge of the serious offence; and

(b) explain to the person the effect of a request if made.

(2) If the person is a minor, the administrator must also explain the effect of a request to 1 or more of the minor's parents.

(3) Subsection (2) does not apply if explaining the effect to 1 or more of the minor's parents does not appear to be in the minor's best interests.

90 Request for psychiatrist report

The following persons may ask the chief psychiatrist for a psychiatrist report about the person in relation to the charge of the serious offence—

(a) the person;

(b) the person's nominated support person, if the nominated support person believes the request is in the person's best interests;

(c) a personal guardian authorised to make decisions for the person under the *Guardianship and Administration Act 2000*, if the request is within the guardian's authority;

(d) an attorney authorised to make decisions for personal matters for the person under the *Powers of Attorney Act 1998*, if the request is within the attorney's authority;

(e) a parent of the person, if the person is a minor;

(f) the person's lawyer, if the person has given instructions to the lawyer to make the request.

91 Direction to prepare psychiatrist report

(1) Within 7 days after receiving a request under section 90, the chief psychiatrist must direct the administrator of the person's treating health service to arrange for an authorised psychiatrist to prepare a psychiatrist report about the person in relation to the charge of the serious offence.

(2) However, the chief psychiatrist may decide not to give the direction if a direction to prepare a psychiatrist report about the person in relation to the serious offence has been previously revoked under section 98.

(3) The direction may include a direction for the report to be prepared about the person also in relation to an associated offence.

(4) If the chief psychiatrist does not give a direction under subsection (1), the chief psychiatrist must give the person making the request a written statement explaining the reasons for not giving the direction.

Not authorised—indicative only

Not authorised—indicative only

Part 3 Psychiatrist report on chief psychiatrist's own initiative

92 Application of pt 3

This part applies to a person charged with a serious offence, other than an offence against a law of the Commonwealth.

93 Direction to prepare psychiatrist report

(1) The chief psychiatrist may, on the chief psychiatrist's own initiative—

(a) direct the administrator of the person's treating health service to arrange for an authorised psychiatrist to prepare a psychiatrist report about the person in relation to the charge of the serious offence; or

(b) direct an authorised psychiatrist to prepare a psychiatrist report about the person in relation to the charge of the serious offence.

(2) The chief psychiatrist may give the direction only if satisfied—

(a) the person may have a mental condition; and

(b) the person—

(i) may have been of unsound mind when the serious offence was allegedly committed; or

(ii) may be unfit for trial; and

(c) the preparation of the psychiatrist report is in the public interest.

(3) The direction may include a direction for the report to be prepared about the person also in relation to an associated offence.

94 Notice of direction

(1) As soon as practicable after giving the direction, the chief psychiatrist must give the following persons written notice of the direction—

(a) the person;

(b) if an authorised mental health service is responsible for the person—the administrator of the service.

(2) A notice given to a person under subsection (1)(a) must include information about a support person accompanying the person for the examination under section 97.

Part 4 Preparation of psychiatrist reports

Note—

See chapter 15, part 2 for the suspension of criminal proceedings against a person in relation to whom a direction is given for a psychiatrist report to be prepared.

95 Authorised psychiatrist must prepare psychiatrist report

(1) An authorised psychiatrist who is required under section 91(1) or 93(1)(a), or directed under section 93(1)(b), to prepare a psychiatrist report about a person in relation to a charge of a serious offence must prepare the report within 60 days after the requirement is made or the direction given.

(2) The chief psychiatrist may extend the period mentioned in subsection (1) to not more than 90 days after the requirement is made or the direction given.

(3) In preparing the psychiatrist report, the authorised psychiatrist must—

(a) examine the person; and

(b) obtain and consider health records for the person relevant to the examination of the person; and

Not authorised—indicative only

Not authorised—indicative only

(c) consider any information obtained under section 96.

(4) Also, the authorised psychiatrist may obtain and consider any other information the authorised psychiatrist considers relevant to preparing the psychiatrist report.

(5) The psychiatrist report must include information about the following—

(a) the person's mental state and, to the extent practicable, the person's mental state when the serious offence was allegedly committed;

(b) whether the authorised psychiatrist considers the person was of unsound mind when the serious offence was allegedly committed;

(c) whether the authorised psychiatrist considers the person is fit for trial;

(d) if the authorised psychiatrist considers the person is unfit for trial—whether the authorised psychiatrist considers the unfitness for trial is permanent.

(6) Also, the psychiatrist report may include information about the matters mentioned in subsection (5) in relation to an associated offence.

(7) The authorised psychiatrist must give the chief psychiatrist a copy of the report as soon as practicable after it is prepared.

96 Information from prosecuting authority

(1) This section applies if—

(a) an administrator of an authorised mental health service is directed under section 91(1) or 93(1)(a) to arrange for the preparation of a psychiatrist report about a person in relation to a charge of a serious offence; or

(b) an authorised psychiatrist is required under section 91(1) or 93(1)(a), or directed under section 93(1)(b), to prepare a psychiatrist report about a person in relation to a charge of a serious offence.

(2) The administrator, authorised psychiatrist or chief psychiatrist may ask the prosecuting authority for the serious offence or associated offence to which the report relates to give the administrator or authorised psychiatrist copies of the documents mentioned in schedule 3, definition *brief of evidence*, paragraph (a) relating to the offence.

(3) The prosecuting authority must comply with the request as soon as practicable.

(4) Subsection (2) does not apply to information contained in a document if the prosecuting authority considers—

(a) giving the information could reasonably be expected to—

(i) prejudice the investigation of a contravention or possible contravention of a law in a particular case; or

(ii) prejudice an investigation under the *Coroners Act 2003*; or

(iii) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of a law, to be ascertained; or

(iv) endanger a person's life, health or safety; or

(v) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law; and

(b) it would not be in the public interest to give the information.

(5) Also, subsection (2) does not apply to information, contained in a document—

(a) that is sensitive evidence under the Criminal Code, section 590AF; or

(b) that the prosecution would be prevented under another Act or law from giving to the accused person or a lawyer

Not authorised—indicative only

Not authorised—indicative only

acting for the accused person during a proceeding for the offence; or

(c) identifying witnesses to the alleged commission of the offence; or

(d) consisting of contact details for witnesses to the alleged commission of the offence.

(6) The duty imposed on the prosecuting authority to comply with the request applies only to documents in the possession of the prosecuting authority or to which the prosecuting authority has access.

(7) In complying with the request, the prosecuting authority may delete from a copy of a document given to the administrator, authorised psychiatrist or chief psychiatrist any information mentioned in subsection (4) or (5).

Example—

If a document includes the name of a witness to the alleged commission of the offence, or information from which the witness could be identified, the prosecuting authority may delete the name or information from a copy of the document given to the administrator, authorised psychiatrist or chief psychiatrist.

97 Support person

(1) A person being examined for a psychiatrist report may be accompanied by a support person, including, for example, a nominated support person, lawyer or personal guardian.

(2) A support person must not interfere with the examination.

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

(1) If a psychiatrist report about a person is being prepared on a request under section 90, the person and any support person must participate in an examination for the psychiatrist report in good faith.

Examples of participating in an examination in good faith—

- attending appointments in relation to the examination

- answering questions during the examination
- allowing access to the person's health records

(2) If the authorised psychiatrist preparing the psychiatrist report is satisfied the person or support person is not participating in the examination in good faith, the authorised psychiatrist must give the administrator of the authorised mental health service who appointed the psychiatrist written notice of the psychiatrist's belief.

(3) If the administrator receives a notice under subsection (2), the administrator may decide to revoke the direction to prepare the psychiatrist report.

(4) However, before revoking the direction, the administrator must—

(a) give the person the subject of the examination a written notice (a ***show cause notice***) stating the following—

(i) that the administrator proposes to revoke the direction to prepare the psychiatrist report (the ***proposed action***);

(ii) the grounds for the proposed action;

(iii) the facts and circumstances forming the basis for the grounds;

(iv) that the person may make submissions about the show cause notice to the administrator;

(v) a day and time within which submissions must be made; and

(b) consider any submissions given in response to the show cause notice.

(5) If the administrator revokes the direction, the administrator must give the following persons written notice of the revocation—

(a) the person the subject of the examination;

(b) the person who made the request under section 90;

(c) the chief psychiatrist.

Not authorised—indicative only

Not authorised—indicative only

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

(1) If a psychiatrist report about a person is being prepared on the chief psychiatrist's own initiative under section 93, the person must attend for an examination.

(2) If the person is not an inpatient of an authorised mental health service, the chief psychiatrist must give the person a written notice directing the person to attend at a stated authorised mental health service within a stated period, of not more than 28 days, after the notice is given.

Note—

See chapter 11, part 6, division 3 for the powers that may be used in relation to a person who does not comply with a direction under subsection (2).

100 Second psychiatrist report

(1) This section applies if the chief psychiatrist considers the matters in a psychiatrist report about a person in relation to a charge of a serious offence (the ***first psychiatrist report***) require further examination, including, for example, because of the complexity of the matters in the report.

(2) The chief psychiatrist may—

(a) direct the administrator of the person's treating health service to arrange for an authorised psychiatrist to prepare another psychiatrist report (a ***second psychiatrist report***) about the person in relation to the charge of the serious offence; or

(b) direct an authorised psychiatrist to prepare a psychiatrist report (also a ***second psychiatrist report***) about the person in relation to the charge of the serious offence.

(3) The direction to prepare the second psychiatrist report must be given within 7 days after the chief psychiatrist receives the first psychiatrist report.

(4) The direction to prepare the second psychiatrist report may include a direction for the second psychiatrist report to be

prepared about the person also in relation to an associated offence.

(5) Sections 95 to 99 apply to the second psychiatrist report as if a reference in the sections to a psychiatrist report were a reference to the second psychiatrist report.

Part 5 References by chief psychiatrist

101 Reference by chief psychiatrist to Mental Health Court

(1) This section applies if—

(a) a psychiatrist report, or second psychiatrist report, about a person in relation to a charge of a serious offence has been prepared; and

(b) the chief psychiatrist is satisfied—

(i) the person may have been of unsound mind when the serious offence was allegedly committed or may be unfit for trial; and

(ii) having regard to the report and the protection of the community, there is a compelling reason in the public interest for the person's mental state in relation to the serious offence to be referred to the Mental Health Court; and

(c) the person's mental state in relation to the serious offence has not been referred to the Mental Health Court under section 110.

(2) The chief psychiatrist may, in the way set out in section 111, refer the matter of the person's mental state in relation to the serious offence to the Mental Health Court.

(3) The reference must be made—

(a) for a psychiatrist report prepared on a request under section 90 and if a second psychiatrist report is not directed under section 100—within 28 days after a copy

Not authorised—indicative only

Not authorised—indicative only

of the psychiatrist report is given to a person under section 102(1) or (2); or

(b) for a psychiatrist report prepared on the chief psychiatrist's own initiative under section 93 and if a second psychiatrist report is not directed under section 100—within 28 days after the chief psychiatrist receives a copy of the psychiatrist report; or

(c) if a second psychiatrist report is prepared under section 100—within 28 days after the chief psychiatrist receives a copy of the second psychiatrist report.

(4) The reference may include a reference of the person's mental state in relation to an associated offence.

(5) The chief psychiatrist may, within the period mentioned in subsection (3), extend the period to not more than 4 months after the period would otherwise end if the chief psychiatrist considers the person is unfit for trial but may be fit for trial within the extended period.

Part 6 Miscellaneous

102 Copies of reports

(1) The chief psychiatrist must give a copy of a psychiatrist report, or second psychiatrist report, about a person in relation to a charge of a serious offence to—

(a) the person; and

(b) the administrator of the person's treating health service; and

(c) for a psychiatrist report prepared on a request under section 90 (the ***first psychiatrist report***) or a second psychiatrist report relating to the first psychiatrist report—the person who made the request.

(2) However, for subsection (1)(a) or (c), if the chief psychiatrist is satisfied that giving a copy of a psychiatrist report, or second psychiatrist report, to the person the subject of the

report may adversely affect the person's health and wellbeing, the chief psychiatrist may instead give a copy of the report to another person who the chief psychiatrist considers has a sufficient interest in the person's health and wellbeing.

Examples of a person who may have a sufficient interest in the person's health and wellbeing—

the person's nominated support person, a lawyer acting for the person, or the person's personal guardian

(3) A psychiatrist report must be given under subsection (1)—

(a) if a second psychiatrist report is not directed—within 7 days after receiving the psychiatrist report; or

(b) if a second psychiatrist report is directed—within 7 days after receiving the second psychiatrist report.

(4) A second psychiatrist report must be given under subsection (1) within 7 days after receiving the second psychiatrist report.

(5) The administrator of the person's treating health service must include the copy of the psychiatrist report, or second psychiatrist report, in the person's health records.

(6) If the matter of the person's mental state relating to the serious offence is referred to the Mental Health Court, the chief psychiatrist must give a copy of a psychiatrist report, or second psychiatrist report, about the person to the Mental Health Court.

(7) Subject to subsections (2) and (6), the chief psychiatrist must not give a copy of a psychiatrist report, or second psychiatrist report, to anyone else without the consent of—

(a) the person the subject of the report; or

(b) the personal guardian or attorney of the person the subject of the report, if giving the consent is within the guardian's or attorney's authority.

Not authorised—indicative only

Not authorised—indicative only

103 Chapter stops applying to person if prosecution for offence discontinued

If action is taken under this chapter in relation to a person charged with a serious offence or associated offence and the prosecution of the person for the offence is discontinued, this chapter stops applying to the person in relation to the offence.

104 Application of chapter to person with intellectual disability

If a person has, or may have, an intellectual disability, without limiting the application of this chapter to the person, the chapter also applies to the person as if—

(a) a reference to an authorised mental health service were a reference to the forensic disability service; and

(b) a reference to the chief psychiatrist were a reference to the director of forensic disability; and

(c) a reference to a psychiatrist report, or second psychiatrist report, were a reference to a report prepared by a senior practitioner appointed under the Forensic Disability Act after an assessment of the person; and

(d) a reference to the administrator of a person's treating health service were a reference to the administrator of the forensic disability service; and

(e) a reference to an authorised psychiatrist were a reference to a senior practitioner under the Forensic Disability Act; and

(f) a reference in section 93(2)(a) to the chief psychiatrist being satisfied that a person may have a mental condition were a reference to the director of forensic disability being satisfied that a person may have an intellectual disability; and

(g) a reference in section 99(2) to an inpatient of an authorised mental health service were a reference to a forensic disability client who is subject to a forensic order (disability) that has a category of inpatient.

Chapter 5 Mental Health Court references

Note—

See chapter 16, part 1 in relation to the procedure for proceedings in the Mental Health Court.

Part 1 Preliminary

105 Purpose of ch 5

The purpose of this chapter is to provide for—

(a) the making of references to the Mental Health Court in relation to the mental state of persons charged with serious offences; and

(b) the hearing of references—

(i) made under chapter 4, or this chapter, in relation to persons charged with serious offences; or

(ii) made under chapter 6 in relation to persons charged with indictable offences; and

(c) the decisions the court may make on a reference, including the making of a forensic order or treatment support order; and

(d) the admissibility and use of evidence, victim impact statements and other matters.

106 Definitions for ch 5

In this chapter—

associated offence see section 107.

diminished responsibility see section 108.

Not authorised—indicative only

Not authorised—indicative only

offence, in relation to a reference, means each alleged offence mentioned in the notice of the reference filed under section 111, 176 or 184.

reference, in relation to a person, means a reference to the Mental Health Court, made under section 101, 110, 175 or 183, of the person's mental state relating to an offence the person is alleged to have committed.

unsound mind see section 109.

107 Meaning of *associated offence*

An ***associated offence***, in relation to an indictable offence with which a person is charged, means an offence, other than an offence against a law of the Commonwealth, that the person is alleged to have committed at or about the same time as the indictable offence.

108 Meaning of diminished responsibility

A person is of ***diminished responsibility*** if the person has a state of abnormality of mind described in the Criminal Code, section 304A(1).

109 Meaning of unsound mind

(1) ***Unsound mind*** means—

(a) a state of mental disease or natural mental infirmity described in the Criminal Code, section 27(1); or

(b) a state of mind described in the Criminal Code, section 28(1) for which the Criminal Code, section 27(1) applies to a person.

(2) However, ***unsound mind*** does not include a state of mind resulting, to any extent, from intentional intoxication or stupefaction alone or in combination with some other agent at or about the time of the alleged offence.

Part 2 Making of references by particular persons

110 When reference may be made

(1) This section applies if—

(a) a person is charged with a serious offence, other than an offence against a law of the Commonwealth; and

(b) a relevant person has reasonable cause to believe the person mentioned in paragraph (a)—

(i) was of unsound mind when the offence was allegedly committed; or

(ii) is unfit for trial.

(2) This section also applies if—

(a) a person is charged with the offence of murder; and

(b) a relevant person has reasonable cause to believe the person mentioned in paragraph (a) was of diminished responsibility when the offence was allegedly committed.

(3) The relevant person may, in the way set out in section 111, refer the matter of the person's mental state in relation to the serious offence to the Mental Health Court.

(4) A reference of a person's mental state in relation to a serious offence may include a reference of the person's mental state in relation to an associated offence.

(5) In this section—

relevant person, in relation to a person alleged to have committed an offence, means any of the following—

(a) the person;

(b) the person's lawyer;

(c) the director of public prosecutions.

Not authorised—indicative only

Not authorised—indicative only

Note—

A reference in relation to a person may also be made by the following—

- the chief psychiatrist or director of forensic disability under section 101
- a Magistrates Court under section 175
- the Supreme Court or District Court under section 183.

111 How reference is made

(1) A reference under section 110 in relation to a person is made by filing a notice of the reference in the approved form in the registry.

(2) The notice must state each offence in relation to which the person's mental state is referred.

(3) The notice must be accompanied by a copy of any psychiatrist report or other clinical report in relation to the person that is relevant to the reference and in the possession of the person making the reference.

Example—

a psychiatrist report prepared under chapter 4

(4) Subsection (3) applies even if giving the copy of the report would disclose information adverse to the case of the person.

(5) The person who made the reference may amend it with the leave of the Mental Health Court.

Example of an amendment of the reference—

including another offence in the reference

Part 3 Proceedings for references

Note—

See chapter 15, part 2 for the suspension of criminal proceedings against a person in relation to whom a reference is made to the Mental Health Court.

Division 1 Preliminary

112 Application of pt 3

This part applies to a reference in relation to a person made under section 101, 110, 175 or 183.

Division 2 Notice requirements etc.

113 Notice of reference

(1) The registrar must, as soon as practicable after the reference is made, give each of the following persons written notice of the reference and of the suspension of the proceeding for the offence under chapter 15, part 2—

(a) the person the subject of the reference or, if known, the person's lawyer;

(b) the director of public prosecutions;

(c) the chief psychiatrist;

(d) the chief executive (justice);

(e) the director of forensic disability;

(f) if the person the subject of the reference is a minor—the chief executive (youth justice);

(g) if known, any nominated support person, personal guardian or attorney for the person the subject of the reference.

(2) The chief executive (justice) must, as soon as practicable after receiving the notice mentioned in subsection (1), give both of the following persons written notice of the reference and of the suspension of the proceeding for the offence under chapter 15, part 2—

(a) the registrar of the court in which the proceeding for the offence has been brought;

Not authorised—indicative only

Not authorised—indicative only

(b) if the prosecuting authority for the offence is not the director of public prosecutions—the prosecuting authority for the offence.

114 Parties to proceeding

(1) The parties to the proceeding for the reference are—

(a) the person the subject of the reference; and

(b) the director of public prosecutions; and

(c) the chief psychiatrist.

(2) If the person has an intellectual disability—

(a) the director of forensic disability may elect to be a party to the proceeding; and

(b) if the director of forensic disability makes an election under paragraph (a), the chief psychiatrist may elect not to be a party to the proceeding.

(3) An election made under subsection (2) by the director of forensic disability or the chief psychiatrist must be made by filing a notice in the registry.

115 Notice of hearing

(1) The registrar must give each of the following persons written notice of the hearing of the proceeding for the reference—

(a) each party to the proceeding;

(b) if an authorised mental health service is responsible for the person the subject of the reference—the administrator of the service;

(c) if the forensic disability service is responsible for the person the subject of the reference—the administrator of the service;

(d) if the person the subject of the reference is in lawful custody—the person's custodian.

(2) The registrar must give the notice at least 7 days before the hearing.

(3) The notice must state the following—

(a) the time and place of the hearing;

(b) the nature of the hearing;

(c) the rights at the hearing of the person the subject of the reference.

Division 3 Particular decisions

116 Decision about unsoundness of mind and diminished responsibility

(1) On hearing the proceeding for the reference, the Mental Health Court must decide—

(a) whether the person was of unsound mind when the offence was allegedly committed; and

(b) if the person is alleged to have committed the offence of murder and the court decides the person was not of unsound mind when the offence was allegedly committed—whether the person was of diminished responsibility when the offence was allegedly committed.

(2) This section is subject to sections 117 and 117A.

117 Substantial dispute about whether person committed offence

(1) The Mental Health Court may not make a decision under section 116(1)(a) or (b) if the court is satisfied there is a substantial dispute about whether the person committed the offence as particularised (the ***disputed offence***).

(2) However, subsection (1) does not apply if the dispute exists only because of 1 or both of the following—

Not authorised—indicative only

Not authorised—indicative only

(a) the person's mental condition;

(b) the operation of the Criminal Code, section 304, 304A or 304B.

(3) If elements of the disputed offence are elements of another offence (the ***alternative offence***) and there is not a substantial dispute about whether the person committed the alternative offence, subsection (1) does not prevent the court making a decision under section 116(1)(a) for the alternative offence.

(4) If the court decides the person was of unsound mind when the alternative offence was committed, the proceeding against the person for the disputed offence is discontinued.

(5) In this section—

particularised, for an offence with which a person is charged, means particularised in the bench charge sheet, complaint, notice to appear or indictment containing the charge against the person.

117A Substantial dispute about fact relied on in expert report

(1) The Mental Health Court may not make a decision under section 116(1)(a) or (b) if the court is satisfied there is a substantial dispute about a fact (a ***material fact***) that is material to an opinion stated in an expert's report received in evidence by the court on the reference.

(2) Without limiting subsection (1), a material fact may relate to—

(a) the person's relevant circumstances before, at the time, or after the offence was allegedly committed; or

(b) an event, act or omission related to the offence, whether the event, act or omission happened before, at the time, or after the offence was allegedly committed.

118 Decision about fitness for trial

(1) This section applies if—

(a) the Mental Health Court decides the person was not of unsound mind when the offence was allegedly committed; or

(b) because of section 117 or 117A, the court may not decide whether the person was of unsound mind when the offence was allegedly committed.

(2) The court must decide whether the person is fit for trial.

(3) If the court decides the person is unfit for trial, the court must also decide whether the unfitness for trial is permanent.

(4) This section does not apply if, under section 117(4), the proceeding against the person for the offence is discontinued.

Division 4 Procedural provisions

119 Unsound mind—discontinuance of proceeding

(1) If the Mental Health Court decides the person was of unsound mind when the offence was allegedly committed—

(a) the proceeding against the person for the offence is discontinued; and

(b) further proceedings may not be taken against the person for the act or omission constituting the offence.

(2) Despite the court's decision, the person may elect to be tried for the offence.

(3) The election must be made by giving the director of public prosecutions written notice of the election within 28 days after the person receives written notice of the court's decision.

(4) The director of public prosecutions must, within 7 days after receiving the notice of the person's election, give written notice of the person's election to—

(a) if an authorised mental health service is responsible for the person—the chief psychiatrist; or

Not authorised—indicative only

Not authorised—indicative only

(b) if the forensic disability service is responsible for the person—the director of forensic disability.

(5) If a forensic order or treatment support order is made for the person under part 4, the order continues in force until a final decision is made in the proceeding against the person for the offence.

(6) The director of public prosecutions must ensure the proceeding against the person for the offence is continued according to law within 28 days after receiving the notice of the person's election.

120 Diminished responsibility—discontinuance of proceeding

(1) If the person was charged with the offence of murder and the Mental Health Court decides the person was of diminished responsibility when the offence was allegedly committed, the proceeding against the person for the offence of murder is discontinued.

(2) However, the proceeding may be continued against the person for another offence constituted by the act or omission to which the proceeding for the offence of murder relates.

121 Temporary unfitness for trial—stay of proceeding

(1) This section applies if the Mental Health Court decides the person is unfit for trial and the unfitness for trial is not permanent.

(2) The proceeding for the offence is stayed until, on a review under chapter 12, part 6, the tribunal decides the person is fit for trial.

122 Permanent unfitness for trial—discontinuance of proceeding

If the Mental Health Court decides the person is unfit for trial and the unfitness for trial is permanent—

(a) the proceeding against the person for the offence is discontinued; and

(b) further proceedings may not be taken against the person for the act or omission constituting the offence.

123 Fit for trial—continuation of proceeding

If the Mental Health Court decides the person is fit for trial, the court must order that the proceeding against the person for the offence be continued according to law.

124 Related orders if person fit for trial

(1) If the Mental Health Court orders that the proceeding against the person for the offence be continued, the court may order that—

(a) either—

(i) the person be remanded in custody and any bail granted under the *Bail Act 1980* for the person be revoked; or

(ii) bail be granted, enlarged or varied under the *Bail Act 1980* for the person; or

(b) the person be detained in a stated authorised mental health service until the person is—

(i) granted bail under the *Bail Act 1980*; or

(ii) brought before a court for continuing the proceeding.

Note—

An order made under paragraph (b) is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person.

(2) For subsection (1)(b), an authorised person may transport the person to—

(a) an inpatient unit of the authorised mental health service stated in the order; or

Not authorised—indicative only

Not authorised—indicative only

(b) for the continuation of the proceeding against the person for the offence—the court in which the proceeding is being heard.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

(3) The administrator of the authorised mental health service stated in the order may detain the person in the service under the order.

(4) Also, subsection (5) applies if—

(a) the court has made an order under subsection (1)(b) for the person; and

(b) for continuing the proceeding against the person for the offence, the person appears before the court in which the proceeding is being heard by remote conferencing while remaining at the authorised mental health service stated in the order; and

(c) the court does not grant the person bail under the *Bail Act 1980*.

(5) The administrator of the authorised mental health service may detain the person in the service until the person is taken into custody.

Division 5 Withdrawal of particular references

125 Application of div 5

This division applies to a reference in relation to a person made under section 101 or 110.

126 Application to withdraw reference

(1) At any time before the Mental Health Court decides the reference, the person who made the reference may apply to the court to withdraw the reference.

(2) The application must be made by—

(a) filing a notice in the approved form with the registrar; or

(b) making an oral submission at the hearing of the proceeding for the reference.

127 Notices if application to withdraw filed

(1) The registrar must—

(a) within 7 days after the notice of the application to withdraw the reference is filed, give written notice of the application to the other parties to the proceeding; and

(b) at least 7 days before the hearing of the application, give the parties written notice of the hearing of the application.

(2) The notice of the hearing must state the following—

(a) the time and place of the hearing;

(b) the nature of the hearing;

(c) the parties' rights to be represented at the hearing.

Note—

See section 683 in relation to representation at the hearing.

128 Decision on application

(1) The Mental Health Court must grant the application or refuse to grant it.

(2) However, the court may refuse to grant the application only if it considers the withdrawal of the reference would be contrary to the interests of justice.

Not authorised—indicative only

Not authorised—indicative only

Part 4 Forensic orders and treatment support orders

Division 1 Preliminary

129 Definition for pt 4

In this part—

relevant unlawful act, in relation to a reference, means the unlawful act or omission that constitutes the offence to which the reference relates.

130 Explanation about operation of forensic orders and treatment support orders

(1) Under this part, the Mental Health Court may, on a reference in relation to a person, make the following types of orders—

(a) a forensic order (mental health) or forensic order (disability)—see division 2;

(b) a treatment support order—see division 3.

Note—

See section 151 for the matters authorised under a forensic order (mental health) or treatment support order. See section 152 for the matters authorised under a forensic order (disability).

(2) A forensic order (mental health) operates in a way that is more restrictive of a person's rights and liberties than a treatment support order.

Examples—

1 The Mental Health Court may decide the category of a forensic order (mental health) is community only if the court considers there is not an unacceptable risk to the safety of the community.

2 The court may decide the category of a treatment support order is inpatient only if the court considers the person's treatment and care needs, the safety and welfare of the person, or the safety of others, can not reasonably be met if the category of the order is community.

3 An authorised doctor may authorise treatment in the community for a person subject to a forensic order (mental health) only to the extent approved by the court or the tribunal.

4 An authorised doctor may authorise treatment in the community for a person subject to a treatment support order, subject only to the court or the tribunal deciding whether the authorised doctor may reduce the extent of treatment in the community received by the person.

5 Requirements imposed under a policy made by the chief psychiatrist may be more onerous for a person subject to a forensic order (mental health) than a person subject to a treatment support order.

131 Orders if unsound mind or permanent unfitness for trial

(1) This section applies if, on a reference in relation to a person, the Mental Health Court decides the person—

(a) was of unsound mind when the offence was allegedly committed; or

(b) is unfit for trial and the unfitness for trial is permanent.

(2) The court must make the order required under division 2 or 3 for the person.

(3) However, if the court is not required under division 2 or 3 to make an order for the person, the court may make no order for the person.

132 Orders if temporary unfitness for trial

(1) This section applies if, on a reference in relation to a person, the Mental Health Court decides the person is unfit for trial and the unfitness for trial is not permanent.

(2) The court must make an order for the person under division 2 or 3.

Not authorised—indicative only

Not authorised—indicative only

133 Matters to which Mental Health Court must have regard

(1) In making a decision under this part in relation to an order for a person, the Mental Health Court must have regard to the following—

(a) the relevant circumstances of the person;

(b) the nature of the offence to which the reference relates and the period of time that has passed since the offence was allegedly committed;

(c) any victim impact statement produced by the prosecuting authority for the offence under part 5, division 3.

Examples of decisions under this part in relation to an order—

- deciding whether a forensic order or treatment support order is necessary
- deciding the category of the order
- deciding whether the person is to receive any treatment in the community
- deciding the conditions, if any, to impose on the order

(2) Subsection (1) does not limit any other provision of this part that requires the court to have regard to a stated matter.

Division 2 Forensic orders

Subdivision 1 Making of forensic orders

134 Requirements for making forensic order

(1) The Mental Health Court must make an order (a ***forensic order (mental health)*** or ***forensic order (disability)***) for the person if the court considers a forensic order is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.

Note—

If the court does not consider a forensic order is necessary, see division 3 in relation to the making of a treatment support order.

(2) In deciding whether a forensic order is necessary, the court must have regard to the policies mentioned in section 305(1)(e) and (f).

(3) If the court makes a forensic order for the person, the order must be—

(a) a forensic order (mental health) if the court considers—

(i) the person's unsoundness of mind was, or unfitness for trial is, because of a mental condition other than an intellectual disability; or

(ii) the person has a dual disability and needs involuntary treatment and care for the person's mental illness, as well as care for the person's intellectual disability; or

(b) a forensic order (disability) if the court considers—

(i) the person's unsoundness of mind was, or unfitness for trial is, because of an intellectual disability; and

(ii) the person needs care for the person's intellectual disability but does not need treatment and care for any mental illness.

(4) Subsection (3)(a)(ii) applies regardless of the basis on which the court decides the person was of unsound mind when the offence was allegedly committed, or is unfit for trial.

135 Conditions

(1) The Mental Health Court may, in a forensic order for a person, impose the conditions it considers appropriate.

(2) Without limiting subsection (1), the court may impose a condition that the person must not contact a stated person, including, for example, a victim of the relevant unlawful act.

Not authorised—indicative only

Not authorised—indicative only

(3) However, the court may not impose a condition requiring the person to take a particular medication or a particular dosage of a medication.

136 Recommendations about intervention programs

The Mental Health Court may, in a forensic order for a person, make the recommendations it considers appropriate about particular intervention programs that a stated authorised mental health service or the forensic disability service should provide for the person.

Examples of intervention programs—

drug and alcohol programs, anger management counselling programs, sexual offender programs

137 Non-revocation period

(1) This section applies if, on a reference in relation to a person charged with a prescribed offence, the Mental Health Court—

(a) decides the person—

(i) was of unsound mind when the offence was allegedly committed; or

(ii) is unfit for trial and the unfitness for trial is permanent; and

(b) makes a forensic order for the person.

(2) The court may state in the order a period of not more than 10 years (the ***non-revocation period***) during which the tribunal may not revoke the order, other than under section 457.

(3) In deciding the non-revocation period, the court must have regard to the object of this Act in relation to protecting the community.

Subdivision 2 Treatment in the community

138 Mental Health Court to decide category

(1) If the Mental Health Court decides to make a forensic order for a person, the court must also decide the category of the order.

(2) The court may decide the category of the order is community only if the court considers there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.

(3) The forensic order must state the category of the order.

139 Inpatient category

(1) If the Mental Health Court decides the category of a forensic order for a person is inpatient, the court must do 1 of the following—

(a) order that the person have no limited community treatment;

Note—

An order made under paragraph (a) may be amended by the tribunal, but may not be amended by an authorised doctor. See sections 212(2) and 445(2)(b) and (c).

(b) approve that an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may, at a future time—

(i) authorise limited community treatment for the person, to the extent and subject to the conditions decided by the court; or

(ii) change the category of the order to community, subject to the conditions decided by the court;

(c) order that the person have limited community treatment—

Not authorised—indicative only

Not authorised—indicative only

(i) of a stated extent; and

(ii) subject to the conditions decided by the court, including whether, or the extent to which, an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may amend the forensic order in relation to treatment in the community.

(2) The court may make an order under subsection (1)(b) or (c) only if the court is satisfied there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.

(3) In deciding whether the court is satisfied of the matters mentioned in subsection (2), the court must have regard to—

(a) the purpose of limited community treatment; and

(b) the fact that—

(i) if an authorised mental health service is responsible for the person—an authorised doctor may increase the extent of treatment in the community for the person only if satisfied of the matters mentioned in section 212(3); or

(ii) if the forensic disability service is responsible for the person—a senior practitioner under the Forensic Disability Act may authorise treatment in the community for the person only if satisfied of the matters mentioned in the Forensic Disability Act, section 20(2).

140 Community category

If the Mental Health Court decides the category of a forensic order for a person is community, the court must—

(a) order that an authorised doctor or a senior practitioner under the Forensic Disability Act must not change the category of the order to inpatient; or

Note—

The category of the order may be changed by the tribunal. See section 444.

(b) approve that an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may, at a future time, change the nature or extent of treatment in the community received by the person, to the extent and subject to the conditions decided by the court.

Example of a change of the nature or extent of treatment in the community—

changing the category of the forensic order from community to inpatient, with or without limited community treatment

Subdivision 3 Other provisions

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

(1) This section applies to a forensic order (disability) for a person if—

(a) the category of the order is inpatient; and

(b) the forensic disability service is responsible for the person.

(2) The category of the order may be described as residential.

142 Admission to high security unit—stay of order

(1) This section applies if—

(a) the Mental Health Court makes a forensic order for a person; and

(b) under the order, the person is to be detained in a high security unit; and

(c) the chief psychiatrist asks the court to stay the order for a period of not more than 7 days to enable the high

Not authorised—indicative only

Not authorised—indicative only

security unit to make a physical place available for the person.

(2) The court may stay the order for the period requested by the chief psychiatrist.

(3) However, if the court is satisfied the person needs urgent treatment and care in the high security unit, the court may—

(a) refuse to stay the order; or

(b) stay the order for a shorter period than requested.

(4) If the court stays the order and the person is being held in custody, the person must remain in custody until the person is admitted to the high security unit.

Division 3 Treatment support orders

Subdivision 1 Making of treatment support orders

143 Requirements for making treatment support order

(1) The Mental Health Court must make an order (a ***treatment support order***) for the person if the court considers a treatment support order, but not a forensic order, is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.

(2) In deciding whether a treatment support order, but not a forensic order, is necessary, the court must have regard to the policy that must be made by the chief psychiatrist under section 305(1)(g) in relation to persons subject to treatment support orders.

(3) This section does not apply if the court considers—

(a) the person's unsoundness of mind was, or unfitness for trial is, because of an intellectual disability; and

(b) the person does not need treatment and care for any mental illness.

144 Conditions

(1) The Mental Health Court may, in a treatment support order for a person, impose the conditions it considers appropriate.

(2) Without limiting subsection (1), the court may impose a condition that the person must not contact a stated person, including, for example, a victim of the relevant unlawful act.

(3) However, the court may not impose a condition requiring the person to take a particular medication or a particular dosage of a medication.

Subdivision 2 Treatment in the community

145 Mental Health Court to decide category and community treatment

(1) If the Mental Health Court decides to make a treatment support order for a person, the court must also decide the category of the order.

(2) However, the court may decide the category of the treatment support order is inpatient only if the court considers 1 or more of the following can not reasonably be met if the category of the order is community—

(a) the person's treatment and care needs;

(b) the safety and welfare of the person;

(c) the safety of others.

(3) If the court decides the category of the treatment support order is inpatient, the court may approve limited community treatment for the person, to the extent and subject to the conditions decided by the court.

Not authorised—indicative only

Not authorised—indicative only

(4) In deciding whether to approve limited community treatment under subsection (3), the court must have regard to the purpose of limited community treatment.

(5) If the court decides the category of the treatment support order is community, or approves limited community treatment for the person under subsection (3), the court must also decide whether an authorised doctor may, under section 216(1), amend the person's treatment support order to reduce the extent of treatment in the community received by the person.

Notes—

1 On a review of the order, the tribunal may change the nature or extent of the person's treatment in the community. See sections 475 and 476.

2 For the powers of an authorised doctor in relation to a treatment support order, see section 216.

(6) The treatment support order must state the category of the order.

Division 4 Responsibility for treatment and care

146 Responsibility for person subject to forensic order (mental health) or treatment support order

(1) If the Mental Health Court makes a forensic order (mental health) or treatment support order for a person, the order must state the authorised mental health service responsible for the person.

(2) The stated authorised mental health service is responsible for the person.

(3) Subsection (2) does not prevent treatment and care being provided to the person by another authorised mental health service if the person seeks treatment and care by the service.

(4) This section is subject to section 356.

147 Responsibility for person subject to forensic order (disability)

(1) If the Mental Health Court makes a forensic order (disability) for a person, the order must state—

(a) the authorised mental health service responsible for the person; or

(b) that the forensic disability service is responsible for the person.

(2) However, the court may decide the forensic disability service is responsible for the person only if the chief executive (forensic disability) certifies, in writing, that the forensic disability service has the required capacity.

(3) If the court makes an order under subsection (1)(a), the stated authorised mental health service is responsible for the person.

(4) If the court makes an order under subsection (1)(b), the forensic disability service is responsible for the person.

(5) Subsection (3) does not prevent treatment and care being provided to the person by another authorised mental health service if the person seeks treatment and care by the service.

(6) Subsection (4) does not prevent treatment and care being provided to the person by an authorised mental health service if the person seeks treatment and care by the service.

(7) This section is subject to section 356.

(8) In this section—

required capacity means—

(a) the physical capacity to accommodate the person; and

(b) the capacity to provide care for the person under the order.

148 Certificate of forensic disability service availability

(1) This section applies for the purpose of the Mental Health Court deciding under section 147 whether the forensic disability service will be responsible for the person.

Not authorised—indicative only

Not authorised—indicative only

(2) The court may ask the director of forensic disability to give the court a certificate prepared by the chief executive (forensic disability) stating whether or not the forensic disability service has the required capacity within the meaning of section 147.

(3) If asked by the director of forensic disability to prepare a certificate mentioned in subsection (2), the chief executive (forensic disability) must prepare, and give the director, the certificate.

(4) If the court makes a request under subsection (2), the director of forensic disability must give the court the certificate within—

(a) 7 days after receiving the request; or

(b) any longer period allowed by the court.

Division 5 Transport

149 Transport to authorised mental health service

(1) This section applies if—

(a) the Mental Health Court makes a forensic order or treatment support order for a person and the category of the order is inpatient; and

(b) an authorised mental health service is responsible for the person under the order.

(2) An authorised person may transport the person to the authorised mental health service.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

150 Transport to forensic disability service

(1) This section applies if—

(a) the Mental Health Court makes a forensic order (disability) for a person and the category of the order is inpatient; and

(b) the forensic disability service is responsible for the person under the order.

(2) An authorised person, or an authorised practitioner under the Forensic Disability Act, may transport the person to the forensic disability service.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

Division 6 Other provisions

151 Matters authorised by forensic order (mental health) or treatment support order

(1) A forensic order (mental health), or treatment support order, for a person authorises each of the following in accordance with the order—

(a) if the person has a mental condition other than an intellectual disability—the provision of involuntary treatment and care for the person's mental illness or other mental condition;

(b) if the person has a dual disability—

(i) the provision of involuntary treatment and care for the person's mental illness; and

(ii) the provision of involuntary care for the person's intellectual disability;

(c) if the category of the order is inpatient—the detention of the person in the authorised mental health service that is responsible for the person.

(2) The person responsible for the treatment and care must ensure the order is given effect.

Not authorised—indicative only

Not authorised—indicative only

Note—

See section 15 for the person responsible for the treatment and care of a person subject to a forensic order (mental health) or treatment support order.

152 Matters authorised by forensic orders (disability)

(1) A forensic order (disability) for a person authorises each of the following in accordance with the order—

(a) the provision of involuntary care for the person's intellectual disability;

(b) if the category of the order is inpatient, the person's detention in—

(i) if an authorised mental health service is responsible for the person—the authorised mental health service; or

(ii) if the forensic disability service is responsible for the person—the forensic disability service.

(2) The person responsible for the care must ensure the order is given effect.

Note—

See section 15 for the person responsible for the care of a person subject to a forensic order (disability).

153 Status of forensic order or treatment support order if amended

(1) A forensic order or treatment support order made under this part has effect subject to any amendment of the order—

(a) by the tribunal under chapter 12; or

(b) by an authorised doctor under section 212 or 216.

(2) The order, as amended, continues as an order of the Mental Health Court.

154 Ending of order made because of temporary unfitness for trial

(1) This section applies to any of the following orders to which a person is subject—

(a) a forensic order (mental health), forensic order (disability) or treatment support order made because the Mental Health Court decides the person is unfit for trial and the unfitness for trial is not permanent;

(b) if the tribunal revokes a forensic order (mental health) mentioned in paragraph (a) and makes a forensic order (disability) for the person under section 457—the forensic order (disability);

(c) if the tribunal revokes a forensic order (mental health) mentioned in paragraph (a) and makes a treatment support order for the person under section 450—the treatment support order.

(2) The order ends if the proceeding against the person for the offence to which the reference relates is discontinued other than under section 490 or 491.

Notes—

1 See section 493 in relation to the discontinuance of the proceeding other than under section 490 or 491.

2 Also, if the tribunal decides on a review under chapter 12, part 6 that the person is fit for trial, the order ends under section 497(2).

Part 5 Other provisions

Division 1 Notice of decisions and orders

155 Notice of decisions and orders

(1) The registrar must, within 7 days after the Mental Health Court makes its decision on a reference, give the following persons written notice of the court's decision, and any orders made by the court—

Not authorised—indicative only

Not authorised—indicative only

(a) each person who was entitled to be given notice of the reference under section 113(1);

(b) the tribunal.

(2) Also, if a victim impact statement was given to the court on the hearing of the reference, the registrar must give the tribunal a copy of the statement.

(3) The chief executive (justice) must, as soon as practicable after receiving the notice mentioned in subsection (1), give each of the following persons written notice of the court's decision—

(a) the registrar of the court in which the proceeding for the offence has been brought;

(b) if the prosecuting authority for the offence is not the director of public prosecutions—the prosecuting authority for the offence.

Division 2 Admissibility and use of evidence

156 Definition for div 2

In this division—

expert's report includes a clinical record relevant to a person's mental condition.

157 Admissibility of expert's report at trial

An expert's report received in evidence by the Mental Health Court on a reference is admissible at the trial of the person for the offence in relation to the reference only for the following purposes—

(a) deciding whether—

(i) for the application of the Criminal Code, section 613, the person is not capable of understanding the proceedings; or

(ii) for the application of the Criminal Code, section 645, the person is not of sound mind; or

(iii) the person was of unsound mind or diminished responsibility when the offence was allegedly committed; or

(iv) the person should be admitted to an authorised mental health service under a forensic order (Criminal Code);

(b) sentencing the person.

157A Admissibility of expert's report in proceeding before Magistrates Court

(1) This section applies if an expert's report is received in evidence by the Mental Health Court on a reference in relation to a person for an offence.

(2) The report is admissible in a proceeding before a Magistrates Court for the purpose of deciding whether—

(a) to dismiss a complaint for the offence under section 172; or

(b) to adjourn the hearing of a complaint for the offence under section 173.

158 Particular statements not admissible

(1) A statement made by the person the subject of a reference at the hearing of the reference is not admissible in evidence in any civil or criminal proceeding against the person.

(2) Subsection (1) applies to statements made orally or in writing and whether on oath or otherwise.

(3) However, subsection (1) does not apply to a proceeding for—

(a) contempt of the Mental Health Court; or

(b) an offence against the Criminal Code, chapter 16.

Not authorised—indicative only

Not authorised—indicative only

159 Issue of mental condition may be raised at trial

(1) A decision by the Mental Health Court on a reference in relation to a person does not prevent the person raising the issue of the person's mental condition at the person's trial for the offence.

(2) If the issue of the person's mental condition is raised at the person's trial, the Mental Health Court's decision is admissible for sentencing, but is not otherwise admissible at the trial.

160 Other use of expert's report

(1) An expert's report received in evidence by the Mental Health Court on a reference in relation to a person may be given to—

(a) if an authorised mental health service is responsible for the person—the administrator of the service; or

(b) if the forensic disability service is responsible for the person—the administrator of the service; or

(c) the tribunal for conducting a review.

(2) The report may be given to, and used by, another person only with the leave of the court.

(3) The court may grant the leave subject to the conditions it considers appropriate.

Division 3 Victim impact statements

161 Application of div 3

This division applies if, on a reference in relation to a person, the Mental Health Court decides the person—

(a) was of unsound mind when the offence was allegedly committed; or

(b) is unfit for trial.

162 Preparation of victim impact statement

(1) A victim of the relevant unlawful act, or a close relative of the victim, may prepare, and give the prosecuting authority for the relevant unlawful act, a victim impact statement in relation to the relevant unlawful act, for the purpose of the prosecuting authority producing the statement to the Mental Health Court.

(2) The victim impact statement may include—

(a) the views of the victim or close relative about the risk the person the subject of the reference represents to the victim or close relative or another person; and

(b) a request by the victim or close relative that the Mental Health Court impose, in any forensic order or treatment support order made for the person the subject of the reference, a condition that the person must not contact—

(i) the victim or close relative; or

(ii) another individual, including, for example, another close relative of the victim.

163 Production of victim impact statement by prosecuting authority

If a victim of the relevant unlawful act, or a close relative of the victim, gives the prosecuting authority a victim impact statement, the prosecuting authority must give the statement to the Mental Health Court.

164 Restrictions on disclosing victim impact statement

(1) The Mental Health Court must not disclose the victim impact statement to the person the subject of the reference unless the victim or close relative asks that the statement be disclosed to the person.

(2) Despite a request mentioned in subsection (1), the court may, by order, prohibit the disclosure of the victim impact statement to the person if satisfied the disclosure may adversely affect the health and wellbeing of the person.

Not authorised—indicative only

Not authorised—indicative only

(3) A person must not contravene an order made under subsection (2) unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(4) This section does not prevent the court disclosing the victim impact statement to a lawyer of the person the subject of the reference if satisfied the disclosure is in the best interests of the person.

(5) Subject to subsection (3), the person's lawyer may disclose the victim impact statement to the person only if the victim or close relative asks that the statement be disclosed to the person.

(6) The person's lawyer must not disclose the victim impact statement to the person in contravention of subsection (5) unless the lawyer has a reasonable excuse.

Maximum penalty—200 penalty units.

(7) In this section—

lawyer, of a person, includes another representative of the person.

165 Use of victim impact statement by Mental Health Court

(1) This section applies if the Mental Health Court is required to have regard to a victim impact statement in deciding a matter under part 4.

(2) The court may place the weight on the victim impact statement it considers appropriate.

Division 4 Persons subject to existing orders or authorities

Subdivision 1 Making forensic orders

166 Person subject to existing forensic order

(1) This section applies if the Mental Health Court is required under this chapter to make a forensic order (a ***new forensic order***) for a person who is already subject to a forensic order (the ***existing forensic order***).

(2) The court may—

(a) amend the existing forensic order for the person; or

(b) revoke the existing forensic order for the person and make a new forensic order for the person.

Note—

If there is an information notice relating to the person, the revocation of the existing forensic order under this section does not affect the information notice. See section 322.

166A Person subject to existing treatment support order

(1) This section applies if the Mental Health Court is required under this chapter to make a forensic order for a person who is already subject to a treatment support order.

(2) The court may—

(a) revoke the treatment support order and make a forensic order for the person; or

(b) amend the treatment support order to—

(i) convert the treatment support order into a forensic order for the person; and

(ii) make other necessary changes to the order.

Not authorised—indicative only

Not authorised—indicative only

Note—

If there is an information notice relating to the person, the revocation or amendment of the treatment support order under subsection (2) does not affect the information notice. See section 322.

167 Person subject to existing treatment authority

(1) This section applies if the Mental Health Court makes a forensic order (mental health) for a person who is subject to a treatment authority.

(2) On the making of the forensic order (mental health), the treatment authority ends.

(3) Nothing in this section prevents the court making a forensic order (disability) for a person who is subject to a treatment authority.

(4) If a treatment authority for a person is inconsistent with a forensic order (disability) for the person, the forensic order (disability) prevails to the extent of the inconsistency.

Subdivision 2 Making treatment support orders

167A Person subject to existing treatment support order

(1) This section applies if the Mental Health Court is required under this chapter to make a treatment support order (a ***new treatment support order***) for a person who is already subject to a treatment support order (the ***existing treatment support order***).

(2) The court may—

(a) amend the existing treatment support order for the person; or

(b) revoke the existing treatment support order for the person and make a new treatment support order for the person.

Note—

If there is an information notice relating to the person, the revocation of the existing treatment support order under this section does not affect the information notice. See section 322.

167B Person subject to existing forensic order

(1) This section applies if the Mental Health Court is required under this chapter to make a treatment support order for a person who is already subject to a forensic order.

(2) The court may—

(a) revoke the forensic order and make a treatment support order for the person; or

(b) amend the forensic order to—

(i) convert the forensic order into a treatment support order for the person; and

(ii) make other necessary changes to the order.

Note—

If there is an information notice relating to the person, the revocation or amendment of the forensic order under subsection (2) does not affect the information notice. See section 322.

167C Person subject to existing treatment authority

(1) This section applies if the Mental Health Court makes a treatment support order for a person who is already subject to a treatment authority.

(2) On the making of the treatment support order, the treatment authority ends.

Not authorised—indicative only

Not authorised—indicative only

Division 5 Miscellaneous

168 Relationship with ch 16, pt 1

To the extent of any inconsistency with chapter 16, part 1, this chapter prevails.

Chapter 6 Powers of courts hearing criminal proceedings and related processes

Part 1 Preliminary

169 Purpose of ch 6

The purpose of this chapter is to provide for appropriate powers and processes for courts hearing criminal proceedings and for related matters, including—

(a) powers for Magistrates Courts, the District Court and the Supreme Court to deal with cases where there is a concern about the mental state of a person charged with an offence, including by making a reference to the Mental Health Court; and

(b) the admission of persons subject to forensic orders (Criminal Code) to authorised mental health services; and

(c) the detention of persons in authorised mental health services during trial.

170 Childrens Court

In this chapter, a reference to a Magistrates Court, in relation to a person charged with an offence, is taken to include a reference to the Childrens Court if the person charged with the offence is being dealt with under the *Youth Justice Act 1992*.

Note—

See the *Youth Justice Act 1992*, section 63 in relation to the powers and jurisdiction of the District Court in its criminal jurisdiction conferred on a Childrens Court judge.

Part 2 Magistrates Courts

Division 1 General

171 Definition for div 1

In this division—

simple offence see the *Justices Act 1886*, section 4.

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

(1) This section applies if—

(a) a complaint for a simple offence is to be heard and determined by a Magistrates Court; and

(b) the court is reasonably satisfied, on the balance of probabilities, that the person charged with the offence—

(i) was, or appears to have been, of unsound mind when the offence was allegedly committed; or

(ii) is unfit for trial.

(2) The court may dismiss the complaint.

Not authorised—indicative only

Not authorised—indicative only

Note—

See the *Justices Act 1886*, section 222 in relation to appeals to a District Court judge from an order made in a summary way on a complaint for an offence.

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

(1) This section applies if—

(a) a complaint for a simple offence is to be heard and determined by a Magistrates Court; and

(b) the court is reasonably satisfied, on the balance of probabilities, that the person charged with the offence—

(i) is unfit for trial; but

(ii) is likely to become fit for trial within 6 months.

(2) The court may adjourn the hearing of the complaint.

(3) However, if the court is reasonably satisfied, on the balance of probabilities, that the person is still unfit for trial 6 months after the hearing of the complaint was adjourned, the court may dismiss the complaint under section 172(2).

(4) This section does not limit the court's power under section 172.

174 Power to refer person to appropriate agency or entity

(1) This section applies if a Magistrates Court—

(a) has dismissed a complaint under section 172 or adjourned the hearing of a complaint under section 173; and

(b) is reasonably satisfied the person charged with the offence does not appear to have a mental illness.

(2) The court may refer the person to—

(a) a relevant agency for appropriate care; or

(b) the health department or another entity the court considers appropriate for treatment and care.

(3) In this section—

health department means the department in which the *Hospital and Health Boards Act 2011* is administered.

relevant agency means—

(a) the department in which the *Disability Services Act 2006* is administered; or

(b) the National Disability Insurance Scheme Launch Transition Agency established under the *National Disability Insurance Scheme Act 2013* (Cwlth).

Division 2 References to Mental Health Court

175 When reference may be made

(1) This section applies if, in a proceeding before a Magistrates Court against a person charged with an indictable offence other than an offence against a law of the Commonwealth, the court is reasonably satisfied, on the balance of probabilities, that—

(a) the person—

(i) was, or appears to have been, of unsound mind when the offence was allegedly committed; or

(ii) is unfit for trial; and

(b) both of the following apply—

(i) the nature and circumstances of the offence create an exceptional circumstance in relation to the protection of the community;

(ii) the making of a forensic order or treatment support order for the person may be justified.

Not authorised—indicative only

Not authorised—indicative only

(2) The court may, in the way set out in section 176, refer to the Mental Health Court the matter of the person's mental state relating to—

(a) the indictable offence; and

(b) an associated offence.

176 How reference is made

(1) The registrar of a Magistrates Court that makes a reference under section 175 in relation to a person must file a notice of the reference in the approved form in the Mental Health Court Registry.

(2) The notice must state each offence in relation to which the person's mental state is referred.

(3) The notice must be accompanied by a copy of any report produced to the court relating to the person's mental state.

Division 3 Examination orders

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

(1) This section applies if—

(a) a Magistrates Court—

(i) has dismissed a complaint under section 172 or adjourned the hearing of a complaint under section 173; or

(ii) is reasonably satisfied that a person charged with a simple offence would benefit from an examination by an authorised doctor; and

(b) the court—

(i) is reasonably satisfied the person has a mental illness; or

(ii) is unable to decide whether the person has a mental illness or another mental condition.

(2) The court may make an order (an ***examination order***) in relation to the person.

Note—

An examination order is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person.

(3) Also, if the complaint has not been dismissed under section 172 and the hearing of the complaint has not been adjourned under section 173, the court may adjourn the hearing of the complaint.

(4) The examination order authorises an authorised doctor for the authorised mental health service or public sector health service facility stated in the order to examine the person, without the person's consent, to decide whether to—

(a) make a treatment authority for the person; or

(b) make a recommendation for the person's treatment and care; or

(c) if the person is already subject to a treatment authority, forensic order (mental health), forensic order (disability) or treatment support order—change the nature and extent of the treatment and care to be provided to the person under the authority or order.

(5) Also, the examination order may—

(a) direct an authorised person to transport the person immediately to the authorised mental health service; or

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

(b) direct the person to attend at the authorised mental health service or public sector health service facility within a stated time, of not more than 28 days, after the order is made.

Not authorised—indicative only

Not authorised—indicative only

Note—

See chapter 11, part 6, division 3 for the powers that may be used in relation to a person who does not comply with a direction under paragraph (b).

(6) The registrar of the court must, as soon as practicable after the examination order is made, give written notice of the order to—

(a) if an authorised mental health service is stated in the order—the administrator of the service; or

(b) if a public sector health service facility is stated in the order—the person in charge of the facility.

178 Examination of person

(1) For the purpose of examining the person, the person may be detained in the relevant service for a period (the ***examination period***) of not more than 6 hours starting—

(a) if the person is at the relevant service when the examination order is made—when the order is made; or

(b) if the person is transported to the relevant service under the examination order—when the person first arrives at the relevant service for the examination; or

(c) if the person attends at the relevant service under the order—when the person first attends at the service under the order.

(2) However, an authorised doctor or authorised mental health practitioner may extend, or further extend, the examination period before it ends to not more than 12 hours after it starts if the authorised doctor or authorised mental health practitioner reasonably believes the extension is necessary to carry out or finish the examination of the person.

(3) The authorised doctor who examines the person may—

(a) make a treatment authority for the person; or

(b) make a recommendation for the person's treatment and care; or

(c) decide the person does not require treatment and care; or

(d) if the person is already subject to a treatment authority, forensic order (mental health), forensic order (disability) or treatment support order—change the nature and extent of the treatment and care to be provided to the person under the authority or order.

(4) For subsection (3)(a), section 48 applies as if a reference in the section to the assessment of a person under chapter 2, part 3 were a reference to the examination of the person under an examination order.

(5) If the authorised doctor makes a recommendation under subsection (3)(b) for the person's treatment and care, the authorised doctor must explain to the person the benefits of being treated voluntarily in accordance with the recommendation.

Note—

See section 55 for the matters the authorised doctor must tell, and explain to, the person if the authorised doctor makes a treatment authority for the person as mentioned in subsection (3)(a).

(6) In this section—

relevant service means the authorised mental health service or public sector health service facility stated in the examination order.

179 Examination report

The authorised doctor must prepare a report (an ***examination report***) stating each of the following—

(a) details of the examination carried out under the examination order;

(b) the recommendation or decision made under section 178(3);

(c) if the authorised doctor makes a recommendation under section 178(3)(b) for the person's treatment and care—details of the explanation given to the person of

Not authorised—indicative only

Not authorised—indicative only

the benefits of being treated voluntarily in accordance with the recommendation.

180 Admissibility of examination report at trial

An examination report is admissible at the trial of the person for an offence only for the following purposes—

(a) deciding under this Act whether to make another examination order for the person;

(b) deciding under this Act whether to refer to the Mental Health Court the matter of the person's mental state relating to the offence.

180A Particular statements not admissible

(1) Neither of the following is admissible in evidence against the person in any civil or criminal proceeding—

(a) a statement made by the person during an examination of the person under an examination order;

(b) a statement made by the person to a health practitioner for the purpose of a Magistrates Court making a decision about the person under section 172 or 173.

(2) Subsection (1) applies to statements made orally or in writing and whether on oath or otherwise.

(3) However, subsection (1) does not apply to a proceeding for—

(a) contempt of the court; or

(b) an offence against the Criminal Code, chapter 16.

(4) Also, subsection (1)(b) does not apply to a proceeding before the Mental Health Court.

180B Other use of examination report and particular statements

(1) This section applies to each of the following relating to a person—

(a) an examination report made for the person;

(b) a statement made by the person to a health practitioner for the purpose of a Magistrates Court making a decision about the person under section 172 or 173.

(2) The report or statement may be given to—

(a) if an authorised mental health service is responsible for the person—the administrator of the service; or

(b) if the forensic disability service is responsible for the person—the administrator of the service.

(3) If the report or statement is received in evidence by a Magistrates Court, the report or statement may be given to, and used by, another person only with the leave of the court.

(4) The court may grant the leave subject to the conditions it considers appropriate.

(5) An administrator who receives a report or statement under subsection (2) must include the report or statement in the person's health records.

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

(1) This division applies if—

(a) a person appears before the Supreme Court or District Court in a relevant proceeding for a charge of an indictable offence, other than an offence against a law of the Commonwealth; and

Not authorised—indicative only

Not authorised—indicative only

(b) the court is reasonably satisfied, on the balance of probabilities, that the person—

(i) was, or appears to have been, of unsound mind when the offence was allegedly committed; or

(ii) for the offence of murder—was, or appears to have been, of diminished responsibility when the offence was allegedly committed; or

(iii) is unfit for trial.

(2) In this section—

relevant proceeding, for a person charged with an indictable offence, means—

(a) if the person pleads guilty to the charge at the person's trial—the person's trial; or

(b) if the person has pleaded guilty to the charge before a court and has been committed by the court for sentence—the person's appearance for sentence.

182 Power to order plea of not guilty

The court may order that a plea of not guilty be entered for the person for—

(a) the indictable offence with which the person is charged; and

(b) if, under the Criminal Code, section 651, a charge of a summary offence laid against the person is to be heard and decided by the court—the summary offence.

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

On the making of the order under section 182, the court must—

(a) adjourn the trial; and

(b) in the way set out in section 184, refer to the Mental Health Court the matter of the person's mental state relating to—

(i) the indictable offence with which the person is charged; and

(ii) any summary offence mentioned in section 182(b) that is an associated offence; and

(c) order that—

(i) either—

(A) the person be remanded in custody and any bail granted under the *Bail Act 1980* for the person be revoked; or

(B) bail be granted, enlarged or varied under the *Bail Act 1980* for the person; or

(ii) if a written agreement has been given under this division for the person's detention in an authorised mental health service—the person be detained in an inpatient unit of the service.

Note—

An order made under subparagraph (ii) is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person.

184 How reference to Mental Health Court is made

(1) The registrar of the court that made the reference under section 183(b) must file a notice of the reference in the approved form in the Mental Health Court Registry.

(2) The notice must state each offence in relation to which the person's mental state is referred.

(3) The notice must be accompanied by a copy of any report produced to the court relating to the person's mental state.

Not authorised—indicative only

Not authorised—indicative only

185 Persons who may give agreement for detention

An agreement for the person's detention in an authorised mental health service may be given by—

(a) the administrator of the service; or

(b) the chief psychiatrist.

186 Agreement for detention—administrator

(1) The administrator of an authorised mental health service may agree to a person's detention in the service only if the administrator is satisfied the service has the capacity to detain the person for treatment and care.

(2) Without limiting subsection (1), if the authorised mental health service is not a high security unit, the administrator must be satisfied the person's detention in the service does not present an unreasonable risk to the safety of the person or others having regard to the following—

(a) the person's mental state and psychiatric history;

(b) the person's treatment and care needs;

(c) the security requirements for the person.

(3) If the person is a minor, the administrator of the service must not agree under this division to the minor's detention in a high security unit unless the chief psychiatrist has given prior written approval of the giving of the agreement.

(4) In deciding whether to give the approval, the chief psychiatrist must have regard to the following—

(a) the minor's mental state and psychiatric history;

(b) the minor's treatment and care needs;

(c) the security requirements for the minor.

(5) As soon as practicable after deciding to give the approval, the chief psychiatrist must give a copy of the written approval to the administrator.

187 Agreement for detention—chief psychiatrist

(1) The chief psychiatrist may agree to a person's detention in an authorised mental health service only if the administrator of the service has refused to agree under section 186 to the person's detention in the service.

(2) In deciding whether to agree, the chief psychiatrist must be satisfied of the matters mentioned in section 186(2).

188 Effect of order for detention

(1) This section applies if a court makes an order under section 183(c)(ii) in relation to a person.

(2) An authorised person may—

(a) transport the person to an inpatient unit of the authorised mental health service stated in the order; and

(b) at the end of the adjournment, transport the person from the authorised mental health service to appear before the court.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

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

Division 2 Forensic orders (Criminal Code)

189 Application of div 2

(1) This division applies if, on the trial of a person charged with an indictable offence—

(a) the jury makes a relevant finding; and

(b) the Supreme Court or District Court makes a forensic order (Criminal Code).

(2) In this section—

Not authorised—indicative only

Not authorised—indicative only

relevant finding means—

(a) a finding under the Criminal Code, section 613 (a ***section 613 finding***) that the person is not capable of understanding the proceedings at the trial for the reason that the person is of unsound mind or for another reason stated by the jury; or

(b) a finding under the Criminal Code, section 645 (a ***section 645 finding***) that the person is not of sound mind; or

(c) a finding under the Criminal Code, section 647 that the person is not guilty of the offence on account of the person being of unsound mind when the act or omission alleged to constitute the offence occurred.

190 Registrar of court to give notice of order

The registrar of the court that made the forensic order (Criminal Code) must, within 7 days after the order is made, give notice of the order in the approved form to—

(a) the chief psychiatrist; and

(b) the tribunal.

Notes—

1 See chapter 7, part 2 in relation to the examination of a person subject to a forensic order (Criminal Code).

2 See chapter 12, part 4 for the review of forensic orders (Criminal Code) by the tribunal.

3 If a jury makes a section 613 finding or section 645 finding in relation to a person, the person's fitness for trial must be reviewed by the tribunal. See chapter 12, part 6.

191 Power to transport person to authorised mental health service

For the purpose of giving effect to the forensic order (Criminal Code), an authorised person may transport the person to the authorised mental health service stated in the order.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

Part 4 Detention in authorised mental health service during trial

192 Definition for pt 4

In this part—

court means—

(a) the Supreme Court; or

(b) the District Court; or

(c) a Magistrates Court.

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

(1) This section applies if, after the trial of a person charged with an indictable offence has started, the court hearing the proceeding—

(a) decides the person should be remanded in custody during an adjournment; and

(b) is satisfied that, because of the person's mental condition, the person should be detained in an authorised mental health service for treatment and care during the adjournment.

(2) The court may order that the person be detained, during the adjournment, in an inpatient unit of a stated authorised mental health service if a written agreement has been given under this part for the person's detention in the service.

Note—

An order made under subsection (2) is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person.

Not authorised—indicative only

Not authorised—indicative only

194 Persons who may give agreement for detention

An agreement for the person's detention in an authorised mental health service may be given by—

(a) the administrator of the service; or

(b) the chief psychiatrist.

195 Agreement for detention—administrator

(1) The administrator of an authorised mental health service may agree to a person's detention in the service only if the administrator is satisfied the service has the capacity to detain the person for treatment and care.

(2) Without limiting subsection (1), if the authorised mental health service is not a high security unit, the administrator must be satisfied the person's detention in the service does not present an unreasonable risk to the safety of the person or others having regard to the following—

(a) the person's mental state and psychiatric history;

(b) the person's treatment and care needs;

(c) the security requirements for the person.

(3) If the person is a minor, the administrator of the service must not agree under this part to the minor's detention in a high security unit unless the chief psychiatrist has given prior written approval of the giving of the agreement.

(4) In deciding whether to give the approval, the chief psychiatrist must have regard to the following—

(a) the minor's mental state and psychiatric history;

(b) the minor's treatment and care needs;

(c) the security requirements for the minor.

(5) As soon as practicable after deciding to give the approval, the chief psychiatrist must give a copy of the written approval to the administrator.

196 Agreement for detention—chief psychiatrist

(1) The chief psychiatrist may agree to a person's detention in an authorised mental health service only if the administrator of the service has refused to agree under section 195 to the person's detention in the service.

(2) In deciding whether to agree, the chief psychiatrist must be satisfied of the matters mentioned in section 195.

197 Effect of order for detention

(1) This section applies if a court makes an order under section 193(2) in relation to a person.

(2) An authorised person may—

(a) transport the person to an inpatient unit of the authorised mental health service stated in the order; and

(b) at the end of the adjournment, transport the person from the authorised mental health service to appear before the court.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

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

Chapter 7 Treatment and care of patients

Part 1 Preliminary

198 Purpose of ch 7

The purpose of this chapter is to provide for the following—

Not authorised—indicative only

Not authorised—indicative only

(a) the responsibilities of authorised doctors and administrators of authorised mental health services in providing treatment and care to patients;

(b) the assessment of patients subject to a treatment authority to decide whether continuation of the authority is appropriate;

(c) the authorisation of treatment in the community for involuntary patients;

(d) the approval of temporary absences for particular involuntary patients;

(e) the appointment of nominated support persons and the recording of advance health directives, enduring powers of attorney and details relating to nominated support persons;

(f) the placing of restrictions on the use of electroconvulsive therapy and non-ablative neurosurgical procedures to treat a mental illness;

(g) the prohibition of psychosurgery and other treatments.

199 Relationship between this Act and custodial status of particular patients

(1) This section applies to a patient of an authorised mental health service who is subject to any of the following—

(a) a treatment authority;

(b) a forensic order;

(c) a treatment support order.

(2) A person making a decision about the patient's treatment in the community must make the decision without regard to whether the patient is in custody under another Act.

(3) However, a decision made under this Act about the patient's treatment in the community is subject to any custodial requirement under the other Act.

(4) Subsection (3) does not apply to a patient who is detained in the authorised mental health service—

(a) as a classified patient under chapter 3; or

(b) under an order mentioned in schedule 3, definition *judicial order*, paragraph (c).

Part 2 Responsibility to provide treatment and care

200 Application of pt 2

This part applies to each of the following patients of an authorised mental health service—

(a) an involuntary patient subject to—

(i) a treatment authority; or

(ii) a forensic order; or

(iii) a treatment support order;

(b) a person from another State detained in an authorised mental health service under section 368(3)(b);

(c) a classified patient (voluntary);

(d) a patient receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.

201 Examination of patient for purpose of providing treatment and care

(1) This section does not apply to a patient subject to a treatment authority, other than a patient subject to a treatment authority who becomes a classified patient.

Note—

See section 53 for deciding the nature and extent of treatment and care under a treatment authority.

Not authorised—indicative only

Not authorised—indicative only

(2) An authorised doctor must examine the patient and decide the nature and extent of treatment and care to be provided to the patient.

(3) The examination must be made—

(a) as soon as practicable after the person becomes a patient to whom this part applies; or

(b) if a patient subject to a treatment authority, forensic order or treatment support order becomes a classified patient—as soon as practicable after the patient becomes a classified patient.

(4) In deciding the treatment and care to be provided to the patient, the authorised doctor must—

(a) discuss the treatment and care to be provided with the patient; and

(b) have regard to the views, wishes and preferences of the patient, to the extent they can be expressed, including, for example, in an advance health directive.

202 Authorised doctor's responsibilities for treatment and care

(1) An authorised doctor must ensure the treatment and care to be provided to the patient is, and continues to be, appropriate for the patient's treatment and care needs and in compliance with the requirements of this Act.

(2) The authorised doctor must record in the patient's health records the treatment and care planned to be provided, and that is provided, to the patient.

203 Administrator's responsibilities for treatment and care

(1) The administrator of the authorised mental health service has the following responsibilities for the patient—

(a) to take reasonable steps to ensure the patient receives—

(i) the treatment and care planned to be provided to the patient, as recorded in the patient's health records under section 202; and

(ii) to the extent practicable, the treatment and care appropriate for any other illness or condition affecting the patient;

(b) to ensure the systems for recording the patient's treatment and care, both planned and provided, can be audited;

(c) to ensure regular assessments of the patient under section 205 happen as decided by an authorised doctor for the authorised mental health service.

(2) The administrator must also take reasonable steps to ensure the patient's treatment and care complies with the requirements of this Act.

Part 3 Patients subject to treatment authorities

Division 1 Preliminary

204 Application of pt 3

This part applies to a patient of an authorised mental health service who is subject to a treatment authority.

Division 2 Regular assessment

205 Authorised doctor must assess patient

(1) An authorised doctor must make a first assessment of the patient under this section on or before the date recorded in the patient's health records under section 59.

Not authorised—indicative only

Not authorised—indicative only

(2) Subsequent assessments of the patient under this section must be completed within 3 months after the date of the patient's previous assessment.

(3) Also, an authorised doctor must make an assessment of the patient under this section if the authorised doctor considers at any time that—

(a) the treatment criteria may no longer apply to the patient; or

(b) there may be a less restrictive way for the patient to receive treatment and care for the patient's mental illness.

(4) On an assessment under this section, the authorised doctor must—

(a) assess the patient; and

(b) discuss the assessment with the patient; and

(c) decide and record in the patient's health records—

(i) whether the treatment criteria continue to apply to the patient; and

(ii) whether there is a less restrictive way for the patient to receive treatment and care for the patient's mental illness; and

(iii) if, because of the decisions required under subparagraphs (i) and (ii), the patient's treatment authority continues—

(A) whether the category of the patient's treatment authority continues to be appropriate; and

(B) if the category is inpatient—whether the extent of any limited community treatment under the authority continues to be appropriate; and

(iv) the date of the patient's next assessment under this section.

Division 3 Actions that may be taken after assessment

206 Authorised doctor may revoke treatment authority

(1) This section applies if, after making an assessment of the patient, an authorised doctor considers—

(a) the treatment criteria no longer apply to the patient; or

(b) there is a less restrictive way for the patient to receive treatment and care for the patient's mental illness.

(2) The authorised doctor must revoke the patient's treatment authority.

(3) However, the authorised doctor is not required to revoke the treatment authority if the authorised doctor considers the patient's capacity to consent to be treated for the patient's mental illness is not stable.

Example of when a patient's capacity to consent to be treated is not stable—

the patient gains and loses capacity to consent to be treated during a short time period

(4) Also, if the authorised doctor is not an authorised psychiatrist, the revocation takes effect only if the authorised doctor has consulted with an authorised psychiatrist about the revocation.

(5) An authorised doctor must tell a patient of a revocation of the patient's treatment authority under this section as soon as practicable after the revocation.

(6) The administrator of the authorised mental health service must give written notice of the revocation to the patient, and the tribunal, within 7 days after the revocation.

207 Authorised psychiatrist may revoke treatment authority if patient missing

(1) An authorised psychiatrist for an authorised mental health service may revoke the patient's treatment authority if the authorised psychiatrist is satisfied the authorised mental

Not authorised—indicative only

Not authorised—indicative only

health service has not been able to locate the patient for a period of at least 6 months.

(2) The administrator of the authorised mental health service must give written notice of the revocation to the tribunal within 7 days after the revocation.

208 Chief psychiatrist may revoke treatment authority

(1) This section applies if the chief psychiatrist considers—

(a) the treatment criteria no longer apply to the patient; or

(b) there is a less restrictive way for the patient to receive treatment and care for the patient's mental illness.

(2) The chief psychiatrist may revoke the patient's treatment authority.

(3) The chief psychiatrist must give written notice of the revocation to the administrator of the patient's treating health service as soon as practicable after the revocation.

(4) An authorised doctor must tell the patient of the revocation as soon as practicable after the revocation.

(5) The administrator of the patient's treating health service must give written notice of the revocation to the tribunal within 7 days after the revocation.

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

(1) An authorised doctor may amend the patient's treatment authority under this section in any of the following ways—

(a) to change the category of the authority;

(b) to authorise or revoke, or change the nature or extent of, limited community treatment;

(c) to impose a condition on, or change a condition of, the authority.

(2) However, the authorised doctor may change the category of the authority to inpatient only if the authorised doctor considers, after having regard to the relevant circumstances of the patient, that 1 or more of the following can not reasonably be met if the category of the authority is community—

(a) the patient's treatment and care needs;

(b) the safety and welfare of the patient;

(c) the safety of others.

(3) Also, the authorised doctor may make the amendment only if satisfied the amendment is appropriate having regard to—

(a) the relevant circumstances of the patient; and

(b) for an amendment mentioned in subsection (1)(b)—the purpose of limited community treatment.

(4) The amendment must not change a condition decided by the tribunal, or be contrary to a decision of the tribunal under section 424 or 425.

(5) If limited community treatment is authorised under this section, the patient's treatment authority must state—

(a) the nature and conditions of the limited community treatment; and

(b) the period, of not more than 7 consecutive days, for which limited community treatment is authorised; and

(c) the duration for which the authorisation is in force.

Example for paragraphs (b) and (c)—

limited community treatment may be authorised for a period of 1 day per week for a duration of 8 weeks

(6) The authorised doctor must tell the patient of any proposed amendment of the patient's treatment authority and explain the effect of the amendment to the patient.

(7) This section does not apply if the patient is a classified patient.

Note—

See part 6 in relation to classified patients.

Not authorised—indicative only

Not authorised—indicative only

210 Amendment of treatment authority to change category to inpatient

(1) This section applies if—

(a) the category of the patient's treatment authority is community; and

(b) an authorised doctor reasonably believes—

(i) there has been a material change in the patient's mental state; and

(ii) the patient requires urgent treatment and care as an inpatient in an authorised mental health service.

(2) Despite section 209, the authorised doctor may amend the patient's treatment authority to change the category of the authority to inpatient.

(3) The administrator of the patient's treating health service must, as soon as practicable after the treatment authority is amended under subsection (2), give the tribunal written notice of the amendment.

Note—

The tribunal must review the treatment authority within 14 days after receiving written notice of the amendment of the authority. See section 413(4).

(4) Also, subsection (5) applies if, before the tribunal conducts, or completes the hearing of, the review of the treatment authority mentioned in section 413(4), an authorised doctor amends the authority to change the category of the authority to community.

(5) The administrator of the patient's treating health service must, as soon as practicable after the treatment authority is amended, give the tribunal written notice of the amendment.

Note—

Under section 416, the tribunal is not required to conduct, or complete the hearing of, the review.

Part 4 Patients subject to forensic orders

211 Application of pt 4

(1) This part applies to a patient of an authorised mental health service who is subject to a forensic order.

(2) However, this part does not apply if the patient is a classified patient.

Note—

See part 6 in relation to classified patients.

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

(1) If the patient's forensic order is a forensic order (mental health) or a forensic order (disability), an authorised doctor may amend the patient's forensic order under this section in any of the following ways—

(a) to change the category of the order;

(b) to authorise or revoke, or change the nature or extent of, limited community treatment;

(c) to impose a condition on, or change a condition of, the order.

(2) The amendment must not be contrary to a decision of the Mental Health Court or the tribunal.

Example of a decision that would be contrary to a decision of the Mental Health Court or tribunal—

authorising limited community treatment for the person to a greater extent than the Mental Health Court or the tribunal has decided under section 139(1)(c) or 445(2)(c)

(3) The authorised doctor may amend the order to increase the extent of treatment in the community only if satisfied, after having regard to the matters mentioned in subsection (4), that there is not an unacceptable risk to the safety of the

Not authorised—indicative only

Not authorised—indicative only

community, because of the person's mental condition, including the risk of serious harm to other persons or property.

(4) The matters to which the authorised doctor must have regard are—

(a) the patient's relevant circumstances; and

(b) for an amendment mentioned in subsection (1)(b)—the purpose of limited community treatment; and

(c) the nature of the relevant unlawful act and the period of time that has passed since the act happened.

(5) The authorised doctor must tell the patient of any proposed amendment of the patient's forensic order and explain the effect of the amendment to the patient.

213 Amendment of forensic order to change category to inpatient

(1) This section applies if—

(a) the category of the patient's forensic order is community; and

(b) an authorised doctor reasonably believes—

(i) there has been a material change in the patient's mental state; and

(ii) the patient requires urgent treatment and care as an inpatient in an authorised mental health service.

(2) Despite section 212(2), the authorised doctor may amend the patient's forensic order to change the category of the order to inpatient.

(3) The administrator of the patient's treating health service must, as soon as practicable after the forensic order is amended under subsection (2), give the tribunal written notice of the amendment.

Note—

The tribunal must review the forensic order within 21 days after receiving written notice of the amendment of the order. See section 433(4).

(4) Also, subsection (5) applies if, before the tribunal conducts, or completes the hearing of, the review of the forensic order mentioned in section 433(4), an authorised doctor amends the order to change the category of the order to community.

(5) The administrator of the patient's treating health service must, as soon as practicable after the forensic order is amended, give the tribunal written notice of the amendment.

Note—

Under section 437, the tribunal is not required to conduct, or complete the hearing of, the review.

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

(1) An authorised doctor may authorise or revoke, or change the nature or extent of, limited community treatment for the patient if—

(a) the patient's forensic order is a forensic order (Criminal Code); and

(b) the chief psychiatrist has given written approval for the limited community treatment.

(2) The authorised doctor may authorise or revoke, or change the nature or extent of, limited community treatment only if satisfied, after having regard to the matters mentioned in subsection (4), that there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.

(3) The chief psychiatrist may give written approval for the limited community treatment only if satisfied, after having regard to the matters mentioned in subsection (4), that there is not an unacceptable risk to the safety of the community,

Not authorised—indicative only

Not authorised—indicative only

because of the person's mental condition, including the risk of serious harm to other persons or property.

(4) The matters to which the authorised doctor or chief psychiatrist must have regard are—

(a) the patient's relevant circumstances; and

(b) the purpose of limited community treatment; and

(c) the nature of the relevant unlawful act and the period of time that has passed since the act happened.

(5) The limited community treatment ends on the day the tribunal makes a decision under section 461 in relation to the patient's forensic order (Criminal Code).

Part 5 Patients subject to treatment support orders

215 Application of pt 5

(1) This part applies to a patient of an authorised mental health service who is subject to a treatment support order.

(2) However, this part does not apply if the patient is a classified patient.

Note—

See part 6 for provisions applying to classified patients.

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

(1) An authorised doctor may amend the patient's treatment support order under this section in any of the following ways—

(a) to change the category of the order;

(b) to authorise or revoke, or change the nature or extent of, limited community treatment;

(c) to impose a condition on, or change a condition of, the order.

(2) However, the authorised doctor may change the category of the order to inpatient only if the authorised doctor considers, after having regard to the relevant circumstances of the patient, that 1 or more of the following can not reasonably be met if the category of the order is community—

(a) the patient's treatment and care needs;

(b) the safety and welfare of the patient;

(c) the safety of others.

(3) Also, the authorised doctor may make the amendment only if satisfied the amendment is appropriate having regard to—

(a) the patient's relevant circumstances; and

(b) for an amendment mentioned in subsection (1)(b)—the purpose of limited community treatment; and

(c) the nature of the relevant unlawful act and the amount of time that has passed since the act happened.

(4) The amendment must not—

(a) change a condition decided by the Mental Health Court or tribunal; or

(b) reduce the extent of treatment in the community received by the patient contrary to a decision of the Mental Health Court under section 145(5) or the tribunal under section 476 or 477(4).

(5) Subject to subsection (4), the power of an authorised doctor under subsection (1) is not limited by a decision of the Mental Health Court or tribunal.

(6) If limited community treatment is authorised under this section, the patient's treatment support order must state—

(a) the nature and conditions of the limited community treatment; and

(b) the period, of not more than 7 consecutive days, for which limited community treatment is authorised; and

Not authorised—indicative only

Not authorised—indicative only

(c) the duration for which the order is in force.

Example for paragraphs (b) and (c)—

limited community treatment may be authorised for a period of 1 day per week for a duration of 8 weeks

(7) The authorised doctor must tell the patient of any proposed amendment of the patient's treatment support order and explain the effect of the amendment to the patient.

217 Amendment of treatment support order to change category to inpatient

(1) This section applies if—

(a) the category of the patient's treatment support order is community; and

(b) an authorised doctor reasonably believes—

(i) there has been a material change in the patient's mental state; and

(ii) the patient requires urgent treatment and care as an inpatient in an authorised mental health service.

(2) Despite section 216, the authorised doctor may amend the patient's treatment support order to change the category of the order to inpatient.

(3) The administrator of the patient's treating health service must, as soon as practicable after the treatment support order is amended under subsection (2), give the tribunal written notice of the amendment.

Note—

The tribunal must review the treatment support order within 14 days after receiving written notice of the amendment of the order. See section 465(4).

(4) Also, subsection (5) applies if, before the tribunal conducts, or completes the hearing of, the review of the treatment support order mentioned in section 465(4), an authorised doctor amends the order to change the category of the order to community.

(5) The administrator of the patient's treating health service must, as soon as practicable after the treatment support order is amended, give the tribunal written notice of the amendment.

Note—

Under section 469, the tribunal is not required to conduct, or complete the hearing of, the review.

Part 6 Classified patients and patients subject to judicial orders

218 Application of pt 6

This part applies to each of the following patients of an authorised mental health service if the patient is detained at the service—

(a) a classified patient;

(b) a patient subject to a judicial order.

219 Authorisation of limited community treatment

(1) An authorised doctor may authorise limited community treatment for the patient if—

(a) the chief psychiatrist has given written approval for the limited community treatment; and

(b) the authorised doctor is satisfied the patient is unlikely to abscond from the authorised mental health service while receiving the limited community treatment.

(2) The chief psychiatrist may give written approval under subsection (1)(a) if the chief psychiatrist is satisfied the patient is unlikely to abscond from the authorised mental health service while receiving the limited community treatment.

(3) For this section, the patient's limited community treatment must be confined to the grounds and buildings of the

Not authorised—indicative only

Not authorised—indicative only

authorised mental health service in which the patient is detained.

(4) The patient must remain in the physical presence of an employee of the authorised mental health service while the patient is receiving the limited community treatment.

Part 7 Obligations in relation to treatment in the community

220 Patient's obligations to be recorded and explained

(1) This section applies if a patient who is subject to a treatment authority, forensic order or treatment support order is authorised under this Act to receive treatment in the community outside an authorised mental health service.

(2) An authorised doctor must decide—

(a) the treatment and care to be provided to the patient while receiving the treatment in the community; and

(b) the patient's obligations while receiving the treatment in the community, including, for example, obligations to attend scheduled appointments with the patient's treating health service.

(3) In deciding the matters mentioned in subsection (2), the authorised doctor must discuss the matters with the person.

(4) Before the patient physically leaves the authorised mental health service to receive the treatment in the community, the authorised doctor must—

(a) explain to the patient the matters mentioned in subsection (2); and

(b) record in the patient's health records the matters mentioned in subsection (2); and

(c) give the patient a written notice summarising the matters mentioned in subsection (2).

(5) An authorised doctor is required to comply with subsection (4) only once for each type of treatment in the community authorised for the patient under this Act.

Example—

If a patient is authorised to receive treatment in the community in the form of day leave on each day of 1 week, an authorised doctor for the authorised mental health service is required to comply with subsection (4) only once, and not on each day of the week.

(6) This section does not apply if the treatment in the community authorised for the patient under this Act is escorted day leave.

(7) In this section—

escorted day leave, for a patient in an authorised mental health service, means the patient, for a period of not more than 1 day and not overnight—

(a) is authorised to be physically away from the service; and

(b) is required to remain in the physical presence of an employee of the service while physically away from the service.

221 Chief psychiatrist may approve temporary absence

(1) This section applies to each of the following patients—

(a) a patient subject to a forensic order if the category is inpatient;

(b) a classified patient;

(c) a patient subject to a judicial order.

(2) The chief psychiatrist may approve the patient's temporary absence from an authorised mental health service—

(a) to receive medical, dental or other health treatment; or

(b) to appear before a court, tribunal or other body; or

(c) to look for accommodation for the patient for when the patient is discharged from the service; or

(d) for a purpose based on compassionate grounds; or

Not authorised—indicative only

Not authorised—indicative only

(e) for another purpose the chief psychiatrist is satisfied justifies approving the absence.

(3) As soon as practicable after approving the temporary absence, the chief psychiatrist must give written notice of the approval to the administrator of the authorised mental health service.

(4) The written notice must state—

(a) the approved period of temporary absence; and

(b) any conditions to which the approval is subject, including, for example, that the patient remain in the physical presence of a stated person for the period of the temporary absence.

(5) If the patient does not return to the authorised mental health service after the approved period of temporary absence, an authorised person may transport the patient to the authorised mental health service.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

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

(1) This section applies if, by an advance health directive, a principal gives a direction about health matters or special health matters, or appoints an attorney to exercise power for health matters, relating to the principal's future treatment and care for a mental illness.

Note—

An advance health directive may be made under the *Powers of Attorney Act 1998* only by an adult.

(2) Without limiting the *Powers of Attorney Act 1998*, section 35(1)(b), the advance health directive may include the principal's views, wishes and preferences about the principal's future treatment and care for a mental illness.

Note—

Views, wishes and preferences about treatment and care expressed in an advance health directive must be taken into account under section 53 in deciding the nature and extent of treatment and care to be provided under a treatment authority.

(3) In this section—

health matter see the *Powers of Attorney Act 1998*, schedule 2, section 4.

principal see the *Powers of Attorney Act 1998*, section 5.

special health matter see the *Powers of Attorney Act 1998*, schedule 2, section 6.

Division 2 Nominated support persons

223 Who is a nominated support person

(1) A person is a ***nominated support person*** of another person (the ***appointing person***) if—

(a) the person has been appointed, by written notice, as a nominated support person by the appointing person; and

(b) the appointing person had capacity to make the appointment at the time of the appointment; and

(c) a record for the appointment is kept in the records system.

(2) The appointing person may appoint no more than 2 nominated support persons.

Not authorised—indicative only

Not authorised—indicative only

(3) The appointing person may revoke the appointment of a nominated support person by written notice given to the nominated support person.

(4) A revocation takes effect only if the appointing person has capacity to revoke the appointment at the time of the revocation.

(5) A nominated support person may resign by written notice given to the appointing person.

(6) For this section, a person has capacity to make or revoke an appointment of a nominated support person if the person has the ability to—

(a) understand the nature and effect of the appointment or revocation; and

(b) freely and voluntarily make the appointment or revocation; and

(c) communicate the appointment or revocation.

224 Functions of nominated support person

A nominated support person may, if the appointing person is or becomes an involuntary patient, do any of the following—

(a) receive notices for the appointing person under this Act;

(b) receive confidential information, under the *Hospital and Health Boards Act 2011*, relating to the appointing person;

(c) request a psychiatrist report under section 90;

(d) to the extent permitted under chapter 12 or 16—

(i) act as the appointing person's support person in the tribunal; or

(ii) represent the appointing person in the tribunal.

Division 3 Records system

225 Chief psychiatrist to maintain records system

(1) The chief psychiatrist must establish and maintain a system (the ***records system***) for keeping electronic records of—

(a) advance health directives; and

(b) enduring powers of attorney for a personal matter; and

(c) appointments of nominated support persons.

(2) The records system must be capable of keeping an electronic record for a matter mentioned in subsection (1) consisting of—

(a) a record stating the directive, power of attorney or appointment has been made by a stated person on a stated date; and

(b) an electronic copy of the directive, power of attorney or notice of appointment.

226 Request to keep record

(1) This section applies if a person—

(a) makes an advance health directive, or enduring power of attorney for a personal matter, relating to the person's future treatment and care for a mental illness; or

(b) appoints a nominated support person.

(2) The person may—

(a) give the administrator of an authorised mental health service a copy of the directive, power of attorney or notice of appointment; and

(b) ask the administrator to keep a record for the matter in the records system.

(3) The administrator must—

(a) comply with the request; and

Not authorised—indicative only

Not authorised—indicative only

(b) on complying with the request, give the person written notice confirming compliance with the request.

227 Requirement to give notice—matters relating to advance health directive or enduring power of attorney

(1) This section applies if—

(a) a record for an advance health directive or enduring power of attorney for a personal matter is kept in the records system; and

(b) under the *Powers of Attorney Act 1998*—

(i) the directive or power of attorney is revoked by the person who made it, including, to the extent of an inconsistency, by the making of a later advance health directive or power of attorney; or

(ii) to the extent the directive or power of attorney appoints an attorney to exercise power for a personal matter—the attorney resigns.

(2) The person who made the directive or power of attorney must give the administrator of an authorised mental health service written notice of the revocation or resignation.

(3) If subsection (1)(b)(ii) applies, the person is taken to have complied with subsection (2) if the attorney gives the administrator of an authorised mental health service written notice of the resignation.

(4) On receiving a notice under subsection (2) or (3), the administrator must remove or, for an inconsistency mentioned in subsection (1)(b)(i), update the record for the advance health directive or power of attorney in the records system.

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

(1) This section applies if—

(a) a record for an appointment of a nominated support person is kept in the records system; and

(b) the appointment is revoked by the person who made it.

(2) The person must give the administrator of an authorised mental health service written notice of the revocation.

(3) On receiving the notice, the administrator must remove the record for the appointment from the records system.

229 Requirement to give notice—resignation of nominated support person

(1) This section applies if—

(a) a record for an appointment of a nominated support person is kept in the records system; and

(b) the person resigns as nominated support person.

(2) The person must give the administrator of an authorised mental health service written notice of the resignation.

(3) On receiving the notice, the administrator must remove the record for the appointment from the records system.

230 Copy in records system is proof

(1) This section applies if a record for an advance health directive or enduring power of attorney for a personal matter is kept in the records system.

(2) The directive or power of attorney may be proved by a copy produced from the records system.

Note—

See also the *Powers of Attorney Act 1998*, section 45 for other ways in which the directive or power of attorney may be proved.

Not authorised—indicative only

Not authorised—indicative only

Part 9 Reporting on minors admitted to particular authorised mental health services

231 Obligation to notify public guardian

(1) This section applies if a minor is admitted to—

(a) a high security unit; or

(b) an inpatient mental health unit of an authorised mental health service, other than a child and adolescent unit.

(2) The administrator of the authorised mental health service must, within 72 hours after the minor is admitted, give the public guardian written notice of the admission.

(3) The administrator of an authorised mental health service may enter into arrangements with the chief psychiatrist for the giving of notices under subsection (2), on behalf of the administrator, to the public guardian.

(4) In this section—

child and adolescent unit means an inpatient mental health unit of an authorised mental health service that provides treatment and care only to minors or young adults.

Example—

an inpatient mental health unit of an authorised mental health service that admits only minors, or patients between 16 and 21 years

inpatient mental health unit, of an authorised mental health service, means a part of the service to which patients are admitted for treatment and care and discharged on a day other than the day of admission.

Part 10 Regulated treatment

Division 1 Preliminary

232 Meaning of *regulated treatment*

In this part—

regulated treatment means—

(a) electroconvulsive therapy; or

(b) a non-ablative neurosurgical procedure.

Division 2 Informed consent

233 Requirements for informed consent

(1) A person gives ***informed consent*** to the person's treatment by regulated treatment only if—

(a) the person has capacity to give consent to the treatment; and

(b) the consent is in writing signed by the person.

(2) For subsection (1)(a), the person has capacity to give consent to the treatment if the person has the ability to—

(a) understand the nature and effect of a decision relating to the treatment; and

(b) freely and voluntarily make the decision; and

(c) communicate the decision.

(3) A person can give informed consent in an advance health directive.

Not authorised—indicative only

Not authorised—indicative only

234 Explanation to be given

Before a person gives informed consent to the person's treatment by regulated treatment, the doctor proposing to provide the treatment must give the person a full explanation, in a form and language able to be understood by the person, about—

(a) the purpose, method, likely duration and expected benefit of the treatment; and

(b) possible pain, discomfort, risks and side effects associated with the treatment; and

(c) alternative methods of treatment available to the person; and

(d) the consequences of not receiving treatment.

Division 3 Electroconvulsive therapy

235 Offence to perform electroconvulsive therapy

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

Maximum penalty—200 penalty units or 2 years imprisonment.

236 Performance of electroconvulsive therapy with consent or tribunal approval

(1) A doctor for an authorised mental health service may perform electroconvulsive therapy on a patient in the authorised mental health service if—

(a) for a patient who is an adult—

(i) if the adult is unable to give informed consent to the treatment or is subject to a treatment authority, forensic order or treatment support order—the tribunal has approved under section 509 the performance of the therapy on the adult; or

(ii) otherwise—the adult has given informed consent to the treatment; or

(b) for a patient who is a minor—the tribunal has approved under section 509 the performance of the therapy on the minor.

(2) If a doctor makes an application under section 507 to the tribunal for approval to perform the therapy on the patient, the doctor must, as soon as practicable after the application is made and to the extent practicable—

(a) tell the patient the application has been made; and

(b) explain the application to the patient.

237 Performance of electroconvulsive therapy in emergency

(1) This section applies to the following (each a ***relevant patient***)—

(a) an involuntary patient subject to a treatment authority, forensic order or treatment support order;

(b) a person from another State detained in an authorised mental health service under section 368(3)(b).

(2) A doctor for an authorised mental health service may perform electroconvulsive therapy on the relevant patient in the authorised mental health service if—

(a) a certificate under subsection (3) is in force for the relevant patient; and

(b) an application under section 507 has been made to the tribunal to perform electroconvulsive therapy on the relevant patient and is not decided.

(3) The doctor and the senior medical administrator of the relevant patient's treating health service may certify in writing that performing electroconvulsive therapy on the relevant patient is necessary—

(a) to save the relevant patient's life; or

Not authorised—indicative only

Not authorised—indicative only

(b) to prevent the relevant patient from suffering irreparable harm.

(4) A certificate given under subsection (3) is in force for the period that—

(a) starts on the day the application under section 507 is made; and

(b) ends on the day the application under section 507 is decided.

Note—

Section 727(a) provides that an application under section 507 must be heard as soon as practicable after the application is made.

Division 4 Non-ablative neurosurgical procedures

238 Offence to perform non-ablative neurosurgical procedure

(1) A person must not perform a non-ablative neurosurgical procedure on another person for the purpose of treating the other person's mental illness other than under this Act.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) To remove any doubt, it is declared that, for subsection (1), none of the following is a mental illness—

(a) chronic tic disorder, dystonia, epilepsy, Gilles de la Tourette syndrome, Parkinson's disease or tremor;

(b) another neurological disorder prescribed by regulation.

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

A doctor for an authorised mental health service may perform a non-ablative neurosurgical procedure on a person in the authorised mental health service if—

(a) the person has given informed consent to the treatment; and

(b) the tribunal has approved under section 512 the performance of the procedure on the person.

Example of a non-ablative neurosurgical procedure—

deep brain stimulation

Part 11 Prohibited treatment

240 Particular therapies prohibited

A person must not administer to another person—

(a) insulin induced coma therapy; or

(b) deep sleep therapy.

Maximum penalty—200 penalty units or 2 years imprisonment.

241 Psychosurgery prohibited

A person must not perform psychosurgery on another person.

Maximum penalty—200 penalty units or 2 years imprisonment.

Not authorised—indicative only

Not authorised—indicative only

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

Part 1 Preliminary

242 Purpose of ch 8

The purpose of this chapter is to provide for restrictions on the use of mechanical restraint, seclusion and physical restraint, and the appropriate use of medication, on patients in authorised mental health services.

Notes—

1 See section 374 for the power to administer medication to a person for the purpose of transporting the person.

2 See section 375 for the power to use mechanical restraint on an involuntary patient for the purpose of transporting the patient.

243 Definitions for ch 8

In this chapter—

approved device means a device approved by the chief psychiatrist, including, for example, in the restraint, seclusion and other practices policy.

mechanical restraint see section 244.

medication, for part 5, division 2, see section 271.

patient means—

(a) an involuntary patient; or

(b) 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.

physical restraint see section 268.

reduction and elimination plan see section 264.

relevant patient means—

(a) an involuntary patient in an authorised mental health service who is subject to a treatment authority, forensic order or treatment support order; or

(b) a person from another State detained in an authorised mental health service under section 368(3)(b).

required information means information required by the chief psychiatrist in the restraint, seclusion and other practices policy.

required time and way means the time and way required by the chief psychiatrist in the restraint, seclusion and other practices policy.

seclusion see section 254.

unit, within an authorised mental health service, includes an emergency department or other assessment or treatment unit within the service.

Part 2 Mechanical restraint

Division 1 Preliminary

244 Meaning of *mechanical restraint*

(1) ***Mechanical restraint*** is the restraint of a person by the application of a device to the person's body, or a limb of the person, to restrict the person's movement.

(2) However, mechanical restraint does not include—

Not authorised—indicative only

Not authorised—indicative only

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

(b) restraint of a person that is authorised or permitted under a law other than this part.

Example for paragraph (b)—

The restraint of a person by a police officer may be authorised under the *Police Powers and Responsibilities Act 2000*, section 615.

245 Offence

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

Maximum penalty—200 penalty units.

Division 2 Authorised mechanical restraint

246 Requirements for use of mechanical restraint on relevant patients

(1) This section applies to a relevant patient.

(2) An authorised doctor, or a health practitioner authorised by an authorised doctor, may use mechanical restraint on the relevant patient in the authorised mental health service if—

(a) the authorised mental health service is—

(i) a high security unit; or

(ii) another authorised mental health service approved by the chief psychiatrist for the purposes of this part; and

(b) the device used is an approved device; and

(c) the chief psychiatrist has given approval under section 249 for an authorised doctor to authorise the use of mechanical restraint on the relevant patient; and

(d) the use of mechanical restraint on the relevant patient is authorised by an authorised doctor under section 250; and

(e) the use of mechanical restraint on the relevant patient complies with the restraint, seclusion and other practices policy; and

(f) if a reduction and elimination plan for the relevant patient has been approved under section 267—the use of mechanical restraint on the relevant patient complies with the plan; and

(g) the use of mechanical restraint on the relevant patient, including applying the device to the relevant patient, is with no more force than is necessary and reasonable in the circumstances; and

(h) the relevant patient is observed continuously while restrained.

247 Application for chief psychiatrist's approval

(1) An authorised doctor may apply to the chief psychiatrist for an approval enabling the authorised doctor to authorise, under section 250, the use of mechanical restraint on a relevant patient in an authorised mental health service.

(2) The application must be in the approved form and state the following—

(a) the name of the relevant patient and the relevant patient's treating health service;

(b) information about the relevant patient's mental condition;

(c) the reasons why the authorised doctor considers there is no other reasonably practicable way to protect the relevant patient or others from physical harm;

(d) the period, of not more than 7 days, for which the approval is sought;

(e) the approved device for which the approval is sought;

Not authorised—indicative only

Not authorised—indicative only

(f) any proposed limitations on the use of mechanical restraint on the relevant patient;

(g) the way in which the relevant patient is to be observed continuously while restrained.

(3) The application may include an application under section 266 for approval of a reduction and elimination plan for the relevant patient.

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

(1) This section applies if an application made by an authorised doctor under section 247 does not include an application under section 266 for approval of a reduction and elimination plan for the relevant patient.

(2) The chief psychiatrist may, by written notice given to the authorised doctor, require the authorised doctor to amend the application to include an application under section 266 for approval of a reduction and elimination plan for the relevant patient.

249 Chief psychiatrist may approve authorisation of use of mechanical restraint

(1) The chief psychiatrist may give approval enabling an authorised doctor to authorise, under section 250, the use of mechanical restraint on a relevant patient if the chief psychiatrist is satisfied there is no other reasonably practicable way to protect the relevant patient or others from physical harm.

(2) The approval must state—

(a) the period, of not more than 7 days, during which an authorised doctor may authorise the use of mechanical restraint on the relevant patient; and

(b) the approved device that must be used; and

(c) any limitations to be included in the authorisation relating to the use of mechanical restraint on the relevant patient; and

(d) the way in which the relevant patient must be observed continuously while restrained; and

(e) any other conditions the chief psychiatrist considers appropriate.

(3) The approval may include approval under section 267 of a reduction and elimination plan for the relevant patient.

250 Authorisation of use of mechanical restraint by authorised doctor

(1) An authorised doctor may authorise the use of mechanical restraint on a relevant patient in an authorised mental health service if the authorised doctor is satisfied—

(a) there is no other reasonably practicable way to protect the relevant patient or others from physical harm; and

(b) the authorisation complies with the approval given by the chief psychiatrist under section 249; and

(c) the authorisation complies with the restraint, seclusion and other practices policy; and

(d) if a reduction and elimination plan for the relevant patient has been approved under section 267—the authorisation complies with the plan.

(2) The authorisation must be in writing and state the following—

(a) the period, of not more than 3 hours, during which mechanical restraint may be used on the relevant patient;

(b) the approved device that must be used;

(c) the time at which the use of mechanical restraint on the relevant patient is to start (the ***start time***);

(d) the time at which the use of mechanical restraint on the relevant patient is to end (the ***end time***);

Not authorised—indicative only

Not authorised—indicative only

(e) the measures that must be taken to ensure the health, safety and comfort of the relevant patient;

(f) the way in which the relevant patient must be observed continuously while restrained;

(g) whether a health practitioner may end the use of mechanical restraint before the end time.

(3) The authorisation may state a start time that is immediately after the end time of a previous authorisation.

(4) However, an authorisation (the ***proposed authorisation***) may not be given if the total period for which mechanical restraint has been used on the relevant patient under any previous authorisation, and may be used on the relevant patient under the proposed authorisation, is more than 9 hours in a 24-hour period.

(5) Subsection (4) does not apply if a reduction and elimination plan approved under section 267 provides for the use of mechanical restraint on the relevant patient for more than 9 hours in a 24-hour period.

251 Duties of health practitioner in charge of unit

The health practitioner in charge of an inpatient unit or other unit within an authorised mental health service must, if mechanical restraint is used on a relevant patient while the health practitioner is in charge of the unit—

(a) ensure the use complies with the authorisation under section 250; and

(b) ensure the relevant patient's reasonable needs are met, including, for example, being given—

(i) sufficient bedding and clothing; and

(ii) sufficient food and drink; and

(iii) access to toilet facilities; and

(c) record the required information about the use of mechanical restraint on the relevant patient in the required time and way.

252 Removal of mechanical restraint before authorisation ends

(1) The chief psychiatrist must direct an authorised doctor, or the health practitioner in charge of the unit, to end the use of mechanical restraint on a relevant patient, before the end time stated in the authorisation under section 250, if the chief psychiatrist is satisfied the use of mechanical restraint on the relevant patient is no longer necessary to protect the relevant patient or others from physical harm.

(2) An authorised doctor must end the use of mechanical restraint on a relevant patient, before the end time stated in the authorisation under section 250, if the authorised doctor is satisfied the use of mechanical restraint on the relevant patient is no longer necessary to protect the relevant patient or others from physical harm.

(3) The health practitioner in charge of the unit must end the use of mechanical restraint on a relevant patient, before the end time stated in the authorisation under section 250, if—

(a) the authorisation states a health practitioner may end the use of mechanical restraint before the end time; and

(b) the health practitioner is satisfied the use of mechanical restraint on the relevant patient is no longer necessary to protect the relevant patient or others from physical harm.

(4) If the health practitioner in charge of the unit ends the use of mechanical restraint under subsection (3), the health practitioner must tell the authorised doctor who gave the authorisation as soon as practicable after the use is ended.

Not authorised—indicative only

Not authorised—indicative only

253 Reuse of mechanical restraint

(1) This section applies if an authorised doctor or the health practitioner in charge of the unit ends the use of mechanical restraint under section 252.

(2) The authorised doctor or health practitioner may, at any time before the end time stated in the authorisation under section 250, reuse mechanical restraint on the relevant patient if satisfied there is no other reasonably practicable way to protect the relevant patient or others from physical harm.

(3) The reuse must comply with the authorisation under section 250 including the end time stated in the authorisation.

(4) If the health practitioner in charge of the unit reuses mechanical restraint under subsection (2), the health practitioner must tell the authorised doctor who gave the authorisation as soon as practicable after the reuse.

Part 3 Seclusion

Division 1 Preliminary

254 Meaning of *seclusion*

(1) ***Seclusion*** is 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.

(2) However, seclusion does not include—

(a) confinement of a person in a high security unit, or in another authorised mental health service approved by the chief psychiatrist for the purposes of this part, if the confinement is—

(i) for a period, approved by the administrator of the service, of not more than 10 hours between 8p.m. and 8a.m.; and

(ii) for security purposes; or

(b) confinement that is authorised under a law other than this part.

255 Offence

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

Maximum penalty—200 penalty units.

Division 2 Authorised seclusion

256 Requirements for seclusion of relevant patients

(1) This section applies to a relevant patient.

(2) An authorised doctor, or a health practitioner authorised by an authorised doctor, may keep the relevant patient in seclusion in the authorised mental health service if—

(a) the seclusion of the relevant patient is authorised by an authorised doctor under section 258 or 259; and

(b) if a written direction about seclusion has been given under section 257 to the authorised mental health service—the seclusion of the relevant patient complies with the direction; and

(c) the seclusion of the relevant patient complies with the restraint, seclusion and other practices policy; and

(d) if a reduction and elimination plan for the relevant patient has been approved under section 267—the seclusion of the relevant patient complies with the plan; and

(e) the seclusion of the relevant patient is done with no more force than is necessary and reasonable in the circumstances; and

(f) the relevant patient is observed, while kept in seclusion, either—

Not authorised—indicative only

Not authorised—indicative only

(i) continuously; or

(ii) at intervals of not more than 15 minutes.

257 Chief psychiatrist may give written direction about seclusion

The chief psychiatrist may give an authorised mental health service a written direction stating any of the following—

(a) that no relevant patients may be kept in seclusion;

(b) that a class of relevant patients may not be kept in seclusion;

(c) that a particular relevant patient may not be kept in seclusion;

(d) requirements about the way in which all relevant patients, a class of relevant patients, or a particular relevant patient are to be kept in seclusion;

(e) that all relevant patients, a class of relevant patients, or a particular relevant patient may be kept in seclusion only if the seclusion is provided for under a reduction and elimination plan for the relevant patient approved under section 267.

258 Authorisation of seclusion by authorised doctor

(1) An authorised doctor may authorise the seclusion of a relevant patient in an authorised mental health service if the authorised doctor is satisfied—

(a) there is no other reasonably practicable way to protect the relevant patient or others from physical harm; and

(b) if a written direction about seclusion has been given under section 257 to the authorised mental health service—the seclusion complies with the direction; and

(c) the seclusion of the relevant patient complies with the restraint, seclusion and other practices policy; and

(d) if a reduction and elimination plan for the relevant patient has been approved under section 267—the seclusion of the relevant patient complies with the plan.

(2) The authorisation must be in writing and state the following—

(a) the period, of not more than 3 hours, during which the relevant patient may be kept in seclusion;

(b) the time at which the seclusion of the relevant patient is to start (the ***start time***);

(c) the time at which the seclusion of the relevant patient is to end (the ***end time***);

(d) the measures that must be taken to ensure the health, safety and comfort of the relevant patient;

(e) the way in which the relevant patient must be observed while kept in seclusion including whether the relevant patient must be observed continuously or at stated intervals of not more than 15 minutes;

(f) whether a health practitioner may remove the relevant patient from seclusion before the end time.

(3) The authorisation may state a start time that is immediately after the end time of a previous authorisation.

(4) However, an authorisation (the ***proposed authorisation***) may not be given if the total period for which the relevant patient has been kept in seclusion under any previous authorisation or under section 263, and may be kept in seclusion under the proposed authorisation, is more than 9 hours in a 24-hour period.

(5) Subsection (4) does not apply if a reduction and elimination plan approved under section 267 provides for the seclusion of the relevant patient, including under section 263, for more than 9 hours in a 24-hour period.

259 Extension of period of seclusion

(1) This section applies if the total period for which a relevant patient has been or may be kept in seclusion in an authorised

Not authorised—indicative only

Not authorised—indicative only

mental health service under an authorisation made under section 258 is more than 9 hours in a 24-hour period.

(2) An authorised doctor for the authorised mental health service may extend the period during which the relevant patient may be kept in seclusion, for a further period of not more than 12 hours, if—

(a) the authorised doctor is satisfied—

(i) of the matters mentioned in section 258(1)(a) to (c); and

(ii) it has not been reasonably practicable for a reduction and elimination plan for the relevant patient to be approved during the 9 hours; and

(b) the clinical director of the authorised mental health service, upon being satisfied of the matters mentioned in paragraph (a), has given written approval for the extension.

(3) The extension must be in writing and state the following—

(a) the further period, of not more than 12 hours, during which the relevant patient may be kept in seclusion;

(b) the time at which the further period of seclusion of the relevant patient is to start (the ***start time***);

(c) the time at which the further period of seclusion of the relevant patient is to end (the ***end time***);

(d) the measures that must be taken to ensure the health, safety and comfort of the relevant patient;

(e) the way in which the relevant patient must be observed while kept in the further period of seclusion, including whether the relevant patient must be observed continuously or at stated intervals of not more than 15 minutes;

(f) whether a health practitioner may remove the relevant patient from seclusion before the end time.

(4) As soon as practicable after giving the extension, the authorised doctor must—

(a) notify the chief psychiatrist of the extension; and

(b) make an application under section 266 for a reduction and elimination plan for the relevant patient.

260 Duties of health practitioner in charge of unit

The health practitioner in charge of an inpatient unit or other unit within an authorised mental health service must, if the relevant patient is kept in seclusion while the health practitioner is in charge of the unit—

(a) ensure the seclusion complies with the authorisation under section 258 or 259; and

(b) ensure the relevant patient's reasonable needs are met, including, for example, being given—

(i) sufficient bedding and clothing; and

(ii) sufficient food and drink; and

(iii) access to toilet facilities; and

(c) record the required information about the seclusion of the relevant patient in the required time and way.

261 Removal from seclusion before authorisation ends

(1) The chief psychiatrist must direct an authorised doctor, or the health practitioner in charge of the unit, to remove a relevant patient from seclusion, before the end time stated in the authorisation under section 258 or 259, if the chief psychiatrist is satisfied that seclusion of the relevant patient is no longer necessary to protect the relevant patient or others from physical harm.

(2) An authorised doctor must remove a relevant patient from seclusion, before the end time stated in the authorisation under section 258 or 259, if the authorised doctor is satisfied that seclusion of the relevant patient is no longer necessary to protect the relevant patient or others from physical harm.

Not authorised—indicative only

Not authorised—indicative only

(3) The health practitioner in charge of the unit must remove a relevant patient from seclusion, before the end time stated in the authorisation under section 258 or 259, if—

(a) the authorisation states a health practitioner may remove the relevant patient from seclusion before the end time; and

(b) the health practitioner is satisfied that seclusion of the relevant patient is no longer necessary to protect the relevant patient or others from physical harm.

(4) If the health practitioner in charge of the unit removes a relevant patient from seclusion under subsection (3), the health practitioner must tell the authorised doctor who gave the authorisation as soon as practicable after the removal.

262 Return to seclusion after removal

(1) This section applies if an authorised doctor or the health practitioner in charge of the unit removes a relevant patient from seclusion under section 261.

(2) The authorised doctor or health practitioner may, at any time before the end time stated in the authorisation under section 258 or 259, return the relevant patient to seclusion if satisfied there is no other reasonably practicable way to protect the relevant patient or others from physical harm.

(3) The return to seclusion must comply with the authorisation under section 258 or 259 including the end time stated in the authorisation.

(4) If the health practitioner in charge of the unit returns the relevant patient to seclusion under subsection (2), the health practitioner must tell the authorised doctor who gave the authorisation as soon as practicable after the return.

Division 3 Emergency seclusion

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

(1) The health practitioner in charge of an inpatient unit or other unit within an authorised mental health service, or an appropriately qualified person authorised by the health practitioner, may keep a relevant patient in seclusion in the unit if—

(a) the health practitioner is satisfied—

(i) there is no other reasonably practicable way to protect the relevant patient or others from physical harm; and

(ii) if a written direction about seclusion has been given under section 257 to the authorised mental health service—the seclusion of the relevant patient complies with the direction; and

(iii) it is not practicable in the circumstances for an authorised doctor to authorise the seclusion of the relevant patient under section 258; and

(b) the relevant patient is observed continuously during the seclusion; and

(c) the seclusion is for a period of not more than 1 hour; and

(d) as soon as practicable after the start of the seclusion, the health practitioner tells an authorised doctor of the seclusion.

(2) The authorised doctor notified under subsection (1)(d) must—

(a) examine the relevant patient; or

(b) ensure the relevant patient is examined by another authorised doctor.

(3) The authorised doctor who examines the relevant patient must decide whether to authorise the seclusion of the relevant patient under section 258.

Not authorised—indicative only

Not authorised—indicative only

(4) Subject to subsection (1)(c), seclusion of the relevant patient under this section ends when the authorised doctor makes the decision mentioned in subsection (3).

(5) This section does not prevent the health practitioner in charge of the unit removing the relevant patient from seclusion before the end of the period mentioned in subsection (1)(c), if satisfied seclusion is no longer necessary to protect the relevant patient or others from physical harm.

(6) Removal of the relevant patient from seclusion under subsection (5) does not affect the authorised doctor's obligation under subsection (2).

(7) The relevant patient may be kept in seclusion under this section for not more than 3 hours in a 24-hour period.

Part 4 Reduction and elimination plans

264 What is a *reduction and elimination plan*

A ***reduction and elimination plan*** is a written plan, for a relevant patient, developed by an authorised doctor that provides for the reduction and elimination of either or both of the following—

(a) the use of mechanical restraint on the relevant patient;

(b) the seclusion of the relevant patient.

265 Content of plan

A reduction and elimination plan must include—

(a) the name of the relevant patient; and

(b) information, if any, about—

(i) the previous use of mechanical restraint on, or seclusion of, the relevant patient; and

(ii) strategies previously used to reduce the use of mechanical restraint on, or seclusion of, the relevant patient; and

(iii) the effectiveness of the strategies mentioned in subparagraph (ii); and

(c) information about the strategies proposed to reduce, and eliminate, the use of mechanical restraint on, or seclusion of, the relevant patient in the future.

266 Application for chief psychiatrist's approval of plan

An authorised doctor may apply to the chief psychiatrist for approval of a reduction and elimination plan for a relevant patient.

267 Chief psychiatrist may approve plan

(1) The chief psychiatrist may approve the reduction and elimination plan for the relevant patient if the chief psychiatrist is satisfied the strategies mentioned in section 265(c) are appropriate for the relevant patient.

(2) The approval must be in writing and may include any conditions the chief psychiatrist considers appropriate.

Part 5 Physical restraint and clinical need for medication

Division 1 Physical restraint

268 Meaning of *physical restraint*

(1) ***Physical restraint***, of a patient, is the use by a person of his or her body to restrict the patient's movement.

(2) However, physical restraint of a patient does not include—

Not authorised—indicative only

Not authorised—indicative only

(a) the giving of physical support or assistance reasonably necessary—

(i) to enable the patient to carry out daily living activities; or

(ii) to redirect the patient because the patient is disoriented; or

(b) physical restraint of the patient that is authorised under a law other than this part; or

(c) physical restraint of the patient that is required in urgent circumstances.

269 Offence

A person must not use physical restraint on a patient other than under this Act.

Maximum penalty—200 penalty units.

270 Requirements for use of physical restraint

An authorised doctor, or a health practitioner in charge of an inpatient unit or other unit within an authorised mental health service, may authorise the use of physical restraint on a patient for 1 or more of the following purposes if there is no other reasonably practicable way to achieve the purpose—

(a) to protect the patient or others from physical harm;

(b) to provide treatment and care to the patient;

(c) to prevent the patient from causing serious damage to property;

(d) for a patient detained in an authorised mental health service—to prevent the patient from leaving the service.

Division 2 Clinical need for medication

271 Meaning of *medication*

Medication, of a patient, includes sedation of the patient.

272 Offence

(1) A person must not administer medication to a patient unless the medication is clinically necessary for the patient's treatment and care for a medical condition.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not limit section 374.

(3) To remove any doubt, it is declared that, for subsection (1), a patient's treatment and care for a medical condition includes preventing imminent serious harm to the patient or others.

Part 6 Miscellaneous

273 Chief psychiatrist must make policy

(1) The chief psychiatrist must make a policy (the ***restraint, seclusion and other practices policy***) about—

(a) the use of mechanical restraint, seclusion and physical restraint under section 268(1), and the appropriate use of medication, including ways of minimising any adverse impacts on patients; and

(b) the information to be recorded relating to the use on patients of mechanical restraint, seclusion, physical restraint under section 268(1) and medication; and

(c) the information to be given to the chief psychiatrist relating to the use on patients of mechanical restraint, seclusion, physical restraint under section 268(1) and medication; and

Not authorised—indicative only

Not authorised—indicative only

(d) the information to be given to the public guardian relating to the use on patients, who are minors, of mechanical restraint, seclusion and physical restraint; and

(e) the time and way in which the information mentioned in paragraph (c) is to be given to the chief psychiatrist; and

(f) the time and way in which the information mentioned in paragraph (d) is to be given to the public guardian.

(2) An authorised doctor, authorised mental health practitioner, administrator of an authorised mental health service or other person performing a function or exercising a power under this Act must comply with the restraint, seclusion and other practices policy.

274 Obligation to notify public guardian of treatment of minors

(1) This section applies if mechanical restraint, seclusion or physical restraint is used in an authorised mental health service on a patient who is a minor.

(2) The administrator of the authorised mental health service must give to the public guardian, in the required time and way, the required information about the use of the mechanical restraint, seclusion or physical restraint on the minor.

(3) The administrator of an authorised mental health service may enter into arrangements with the chief psychiatrist for the giving of the required information, on behalf of the administrator, to the public guardian.

(4) This section does not limit an obligation of the administrator, under the restraint, seclusion and other practices policy, to give information to the chief psychiatrist.

Chapter 9 Rights of patients and others

Part 1 Preliminary

275 Purpose of ch 9

The purpose of this chapter is to provide for—

(a) a statement of rights; and

(b) the right of a patient to be visited by the patient's nominated support persons, family, carers and other support persons; and

(c) the right of a patient to be visited by a health practitioner, and legal or other advisers, and to communicate with other persons; and

(d) the right of a patient to be given oral explanations of the patient's treatment and care; and

(e) the giving of written notices to a patient's nominated support persons, family, carers and other support persons; and

(f) the right for a second opinion to be obtained about a patient's treatment and care; and

(g) the roles and responsibilities of a patient's nominated support persons, family, carers and other support persons when supporting the patient's treatment and care; and

(h) the appointment and functions of independent patient rights advisers.

276 Definition for ch 9

In this chapter—

patient means—

Not authorised—indicative only

Not authorised—indicative only

(a) an involuntary patient; or

(b) 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

277 Preparing statement of rights

(1) The chief psychiatrist must prepare a written statement (the ***statement of rights***) containing information about—

(a) the rights of patients, and of nominated support persons, family, carers and other support persons, under this Act; and

(b) the rights of patients to make complaints about the treatment and care provided at an authorised mental health service and how complaints are made.

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

278 Giving statement of rights to patients and others

After admission of a patient to an authorised mental health service, the administrator of the authorised mental health service must ensure—

(a) the statement of rights is explained to the patient; and

(b) a copy of the statement of rights is given to the patient, if requested; and

(c) a copy of the statement of rights is given to the patient's nominated support person, family, carers and other support persons, if requested.

279 Display of signs

(1) The administrator of an authorised mental health service must display signs in prominent positions in the service stating that a copy of the statement of rights is available on request.

(2) The signs must be easily visible to patients and nominated support persons, family, carers and other support persons.

Part 3 Rights of patients

280 Definition for pt 3

In this part—

reasonable time of the day or night, in relation to an authorised mental health service, means a time decided by the administrator of the service having regard to the practices of the service and the comfort of patients.

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

(1) A patient in an authorised mental health service may be visited by the patient's nominated support persons, family, carers and other support persons at any reasonable time of the day or night.

(2) Subsection (1) does not apply if—

(a) the person is excluded from visiting the patient under another provision of this Act; or

(b) the patient does not wish to be visited by the person.

282 Visits by health practitioners

(1) A patient in an authorised mental health service may be visited and examined by a health practitioner at any reasonable time of the day or night.

Not authorised—indicative only

Not authorised—indicative only

(2) The health practitioner may also consult with an authorised doctor for the authorised mental health service about the patient's treatment and care.

(3) The health practitioner may exercise a power under subsection (1) or (2) only—

(a) if asked by the patient or 1 or more of the patient's nominated support persons, family, carers or other support persons; and

(b) under arrangements made with the administrator of the authorised mental health service.

283 Visits by legal or other advisers

(1) A patient in an authorised mental health service may be visited by a legal or other adviser at any reasonable time of the day or night.

(2) The adviser may exercise a power under subsection (1) only—

(a) if asked by the patient or 1 or more of the patient's nominated support persons, family, carers or other support persons; and

(b) under arrangements made with the administrator of the authorised mental health service.

284 Communication with others

(1) A patient of an authorised mental health service may communicate, in a reasonable way, with another person by—

(a) post; or

Note—

See sections 385 and 386 for provisions relating to postal articles.

(b) a fixed line telephone in the authorised mental health service; or

(c) a mobile telephone or other electronic communication device.

(2) Subsection (1) does not apply if—

(a) the other person has asked the administrator of the authorised mental health service to ensure the patient does not communicate with the person; or

(b) the communication is prohibited under another provision of this Act.

(3) The administrator of an authorised mental health service may prohibit or restrict a patient from communicating in the way mentioned in subsection (1)(b) or (c) if communicating in the way is likely to be detrimental to the health or wellbeing of the person or others.

(4) In exercising a power under subsection (3), the administrator must have regard to the privacy of the patient and others in the service.

285 Information about treatment and care

An authorised doctor providing treatment and care to a patient must, to the extent practicable, provide timely, accurate and appropriate information to the patient about the treatment and care.

286 Understanding of oral information

(1) This section applies if a provision of this Act requires any of the following persons to tell or explain something to, or discuss something with, a patient—

(a) an authorised mental health practitioner;

(b) an authorised doctor, including an authorised psychiatrist;

(c) a doctor;

(d) the administrator of an authorised mental health service;

Not authorised—indicative only

Not authorised—indicative only

(e) an authorised person transporting a person to an authorised mental health service or public sector health service facility under section 366.

(2) The person must—

(a) take reasonable steps to ensure the patient understands the information; and

(b) tell or explain the thing to, or discuss the thing with, the patient—

(i) in an appropriate way having regard to the patient's age, culture, mental illness, ability to communicate and any disability; and

Examples for subparagraph (i)—

1 If a patient is acutely unwell and does not appear to understand the information given, an authorised doctor may explain the information again when the patient's condition improves.

2 After providing information to a patient, an authorised doctor may ask the patient to restate the information to ensure it has been understood.

3 An authorised doctor may explain information to a patient in the presence of a family member who can help the patient understand it.

(ii) in a way the patient is most likely to understand, including, for example, in the patient's language; and

(c) if the patient has a nominated support person—tell or explain the thing to, or discuss the thing with, the patient's nominated support person; and

(d) if the patient does not have a nominated support person—tell or explain the thing to, or discuss the thing with, 1 or more of the patient's family, carers or other support persons.

(3) For subsection (2)(b), the person may tell or explain the thing to, or discuss the thing with, a patient at a time later than the time provided for under this Act if the person considers the patient would better understand the thing at the later time.

(4) In this section—

patient includes a person who may become a patient.

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

(1) This section applies if—

(a) a provision of this Act requires any of the following persons to give a written notice to a patient—

(i) an authorised doctor;

(ii) the administrator of an authorised mental health service;

(iii) the chief psychiatrist;

(iv) the tribunal; or

(b) any of the following events (each a ***significant event***) happens to a patient—

(i) admission to an authorised mental health service as a classified patient;

(ii) responsibility for the patient is transferred under chapter 11, part 5 from an authorised mental health service to another entity.

(2) If the patient has a nominated support person—

(a) for a written notice mentioned in subsection (1)(a)—

(i) the person must give a copy of the required written notice to the nominated support person; and

(ii) the person is not required to give the notice to the patient if the patient may not understand or benefit from receiving the notice; and

(b) for a significant event mentioned in subsection (1)(b)—the administrator of the authorised mental health service must give a copy of the required written notice to the nominated support person.

Not authorised—indicative only

Not authorised—indicative only

(3) If the person giving a required written notice to a patient is aware the patient has a personal guardian or attorney—

(a) the person must give a copy of the required written notice to the personal guardian or attorney; and

(b) for a written notice mentioned in subsection (1)(a)—the person is not required to give the notice to the patient if the patient may not understand or benefit from receiving the notice.

(4) If the patient does not have a nominated support person, or a personal guardian or attorney, the person may give the required written notice to 1 or more of the patient's family, carers or other support persons (the ***other person***) as well as, or instead of, to the patient if—

(a) the patient may not understand or benefit from receiving the notice; and

(b) giving the notice to the other person appears to be in the patient's best interests; and

(c) the patient has not asked for communication with the other person not to happen.

(5) If the patient is a minor, the person may give the required written notice to 1 or more of the minor's parents as well as, or instead of, to the minor if—

(a) the minor may not understand or benefit from receiving the notice; and

(b) giving the notice to the parent appears to be in the minor's best interests.

(6) In this section—

required written notice means—

(a) a written notice mentioned in subsection (1)(a); or

(b) a written notice explaining the significant event mentioned in subsection (1)(b).

288 Communication about patient with others

(1) This section applies if a provision of this Act requires a person to tell or explain something to, or discuss something with, a patient's nominated support persons, family, carers or other support persons.

(2) The provision does not apply if—

(a) the patient requests, at a time when the patient has capacity to make the request, that the communication not take place; or

(b) the person is not readily available or willing for the communication to take place; or

Example—

the person is not willing to visit the patient in hospital while the patient is receiving treatment and care

(c) the communication with the person is likely to be detrimental to the patient's health and wellbeing.

Example—

the person has previously disrupted the patient's treatment and care resulting in the patient's condition deteriorating

(3) In this section—

capacity, of a patient to make a request, means the patient has the ability to—

(a) understand the nature and effect of the request; and

(b) freely and voluntarily make the request; and

(c) communicate the request.

patient includes a person who may become a patient.

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

(1) This section applies if a provision of this Act requires or permits information about a person to be given to the person's nominated support persons, family, carers or other support persons.

Not authorised—indicative only

Not authorised—indicative only

(2) The provision does not limit the *Hospital and Health Boards Act 2011*, sections 144, 145 or 146.

Note—

The *Hospital and Health Boards Act 2011*, sections 144, 145 and 146 provide for a person's family, carers and other support persons to receive information about the person in particular circumstances.

290 Second opinion about treatment and care

(1) This section applies if an authorised mental health service has been unable to resolve a complaint about the provision of treatment and care to a patient.

(2) The patient, or an interested person for the patient, may request the administrator of the service to obtain a second opinion from another health practitioner, including another psychiatrist, about the patient's treatment and care.

(3) The administrator must make arrangements to obtain the second opinion—

(a) from a health practitioner who is independent of the patient's treating team; and

(b) in the way required under a policy or practice guideline.

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

291 Roles

A patient's nominated support persons, family, carers and other support persons, subject to this or another Act, may—

(a) contact the patient while the patient is receiving treatment and care; and

(b) participate in decisions about the patient's treatment and care, including by being consulted by health practitioners about treatment options; and

(c) receive timely, accurate and appropriate information about the patient's treatment, care, support, rehabilitation and recovery; and

(d) arrange support services for the patient, including, for example, counselling, community care and respite care.

292 Responsibilities

A patient's nominated support persons, family, carers and other support persons have a responsibility to—

(a) respect the patient's dignity and humanity; and

(b) consider the opinions and skills of health practitioners who provide treatment and care, and other services, to the patient; and

(c) cooperate, to the extent practicable, with reasonable programs of assessment, treatment, care, support, rehabilitation and recovery of the patient.

Part 5 Independent patient rights advisers

293 Appointment

(1) An authorised mental health service must have systems in place to ensure that patients are advised of their rights under this Act.

(2) Without limiting subsection (1), the health service chief executive responsible for a public sector mental health service must appoint 1 or more independent patient rights advisers in the way required under a policy or practice guideline.

(3) An independent patient rights adviser may be—

Not authorised—indicative only

Not authorised—indicative only

(a) an employee of an entity that a Hospital and Health Service has engaged to provide services; or

(b) an employee of a Hospital and Health Service but not employed in the Service's mental health service.

294 Functions

The functions of an independent patient rights adviser are to—

(a) ensure that a patient, and the patient's nominated support persons, family, carers and other support persons are advised of their rights and responsibilities under this Act; and

(b) help the patient, and the patient's nominated support persons, family, carers and other support persons to communicate to health practitioners the patient's views, wishes and preferences about the patient's treatment and care; and

(c) work cooperatively with community visitors performing functions under the *Public Guardian Act 2014*; and

(d) consult with authorised mental health practitioners, authorised doctors, administrators of authorised mental health services, and the chief psychiatrist on the rights of patients under this Act, the *Guardianship and Administration Act 2000*, the *Powers of Attorney Act 1998* and other laws; and

(e) in relation to tribunal hearings—

(i) advise the patient, and the patient's nominated support persons, family, carers and other support persons of the patient's rights at the hearings; and

(ii) if requested, help the patient engage a representative for the hearings; and

(f) identify whether the patient has a personal guardian or attorney and, if the patient has a personal guardian or

attorney, work cooperatively with the personal guardian or attorney to further the patient's interests; and

(g) if appropriate, advise the patient of the benefits of an advance health directive or enduring power of attorney for a personal matter.

295 Independence

An independent patient rights adviser, in performing the adviser's functions—

(a) must act independently and impartially; and

(b) is not subject to direction or control by any person in relation to advice given, or help provided, to a patient or a patient's nominated support persons, family, carers or other support persons.

Chapter 10 Chief psychiatrist

Part 1 Preliminary

296 Purpose of ch 10

The purpose of this chapter is to provide for—

(a) the appointment, functions and powers of the chief psychiatrist; and

(b) the making of policies and practice guidelines, and the preparation of the annual report, by the chief psychiatrist; and

(c) the investigation of matters by the chief psychiatrist; and

(d) the actions the chief psychiatrist may take if there is a serious risk to persons or public safety because of a

Not authorised—indicative only

Not authorised—indicative only

forensic patient who is the responsibility of an authorised mental health service; and

(e) the giving by the chief psychiatrist of particular information to victims of unlawful acts committed by particular patients, and other persons affected by the unlawful acts.

297 Definition for ch 10

In this chapter—

patient means—

(a) an involuntary patient; or

(b) 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

298 Appointment

(1) There is a Chief Psychiatrist.

(2) The chief psychiatrist is appointed by the Governor in Council under this Act and not the *Public Service Act 2008*.

(3) The chief psychiatrist must be a psychiatrist.

299 Resignation

The chief psychiatrist may resign by signed notice given to the Minister.

300 Termination of appointment

(1) The Governor in Council may terminate the appointment of the chief psychiatrist if the Governor in Council is satisfied the chief psychiatrist—

(a) has become incapable of satisfactorily performing the chief psychiatrist's functions; or

(b) has performed the chief psychiatrist's functions carelessly, incompetently or inefficiently; or

(c) has been guilty of misconduct that could warrant dismissal from the public service if the chief psychiatrist were a public service officer.

(2) The Governor in Council must terminate the appointment of the chief psychiatrist if the chief psychiatrist—

(a) is no longer eligible for appointment as the chief psychiatrist; or

(b) is convicted of an indictable offence.

301 Functions and powers

(1) The chief psychiatrist has the following functions—

(a) to the extent practicable, ensuring the protection of the rights of patients under this Act while balancing their rights with the rights of others;

(b) to the extent practicable, ensuring the involuntary examination, assessment, treatment, care and detention of persons under this Act complies with this Act;

(c) facilitating the proper and efficient administration of this Act;

(d) monitoring and auditing compliance with this Act;

(e) promoting community awareness and understanding of this Act;

(f) advising and reporting to the Minister on any matter relating to the administration of this Act—

Not authorised—indicative only

Not authorised—indicative only

(i) on the chief psychiatrist's own initiative; or

(ii) on the written request of the Minister;

(g) preparing and giving to the Minister a report on the competencies the chief psychiatrist considers necessary for a health practitioner to perform a function or exercise a power of an authorised doctor.

(2) Also, the chief psychiatrist has the functions and powers given to the chief psychiatrist under this or another Act.

(3) Also, the chief psychiatrist may do all things necessary or convenient to be done to perform the chief psychiatrist's functions.

302 Independence of chief psychiatrist

(1) In performing a function or exercising a power, the chief psychiatrist is not under the control of the Minister or another person.

(2) Despite subsection (1), the Minister may give the chief psychiatrist a direction under section 312.

303 Delegation

(1) The chief psychiatrist may delegate a function of the chief psychiatrist to an appropriately qualified—

(a) public service employee in the department; or

(b) health service employee.

(2) Despite subsection (1), the chief psychiatrist may delegate a function of the chief psychiatrist under a prescribed provision only to an appropriately qualified—

(a) senior executive employed in the department; or

(b) health executive employed by a Hospital and Health Service.

(3) In this section—

function includes a power.

prescribed provision means—

(a) part 3; or

(b) section 313(2)(a) or (b); or

(c) chapter 11, part 2; or

(d) section 332.

304 Power to require administrator to give documents or information

(1) For the performance of the chief psychiatrist's functions, the chief psychiatrist may, by written notice, require the administrator of an authorised mental health service to give to the chief psychiatrist—

(a) a stated document (including a health record), or a copy of a stated document, about a patient receiving treatment and care in the service or another document relevant to the performance of the chief psychiatrist's functions; or

(b) stated information about—

(i) a patient who has been examined or assessed, or is being examined or assessed, in the service; or

(ii) a patient who has received, or is receiving, treatment in the service; or

(iii) another matter relevant to the performance of the chief psychiatrist's functions.

(2) The notice must state the day (the ***stated day***) on which the document, record or information is to be given.

(3) The stated day must be a reasonable time after the notice is given.

(4) The administrator must comply with the notice.

(5) If a document is given to the chief psychiatrist, the chief psychiatrist—

Not authorised—indicative only

Not authorised—indicative only

(a) may inspect it and make copies of, or take extracts from, the document if it is relevant to the performance of the chief psychiatrist's functions; and

(b) for an original document—must return it to the administrator within a reasonable time after it is given.

Part 3 Policies, practice guidelines and annual report

305 Making policies or practice guidelines

(1) The chief psychiatrist must make a policy about each of the following—

(a) the application of the treatment criteria to patients and less restrictive ways for patients to receive treatment and care for their mental illness, including ways of assessing the capacity of patients to consent to being treated and whether the capacity is stable;

(b) the way in which records for patients are to be kept;

(c) the management of complaints by patients and their nominated support persons, family, carers and other support persons in relation to the treatment and care of patients;

(d) the way in which patients and interested persons for patients may request the administrator of an authorised mental health service to obtain a second opinion about the treatment and care of the patient;

(e) the treatment and care of forensic patients and the assessment and management of risks relating to forensic patients receiving treatment in the community;

(f) without limiting paragraph (e), the treatment and care of forensic patients whose forensic order was made on a reference in relation to a prescribed offence allegedly committed by the person, and the assessment and

management of risks relating to those forensic patients receiving treatment in the community;

(g) the treatment and care of persons subject to treatment support orders;

(h) the minimisation of the risk of patients absconding and processes to be followed in returning patients who have absconded;

(i) the competencies necessary for a person to be an authorised doctor or authorised mental health practitioner.

Note—

See section 273 for the obligation of the chief psychiatrist to make the restraint, seclusion and other practices policy.

(2) Also, the chief psychiatrist may make a policy or practice guideline relating to the administration of this Act, including, for example, about the following—

(a) the examination and assessment of persons under this Act;

(b) the treatment and care of patients in authorised mental health services, other than forensic patients or patients subject to treatment support orders;

(c) the performance of functions, or exercise of powers, by administrators of authorised mental health services, authorised doctors or authorised mental health practitioners;

(d) the administration of authorised mental health services, including safety and security;

(e) the preparation of psychiatrist reports and second psychiatrist reports;

(f) the way in which the tribunal is to be supported in performing its functions, including, for example, providing facilities for proceedings;

(g) the authorisation of treatment in the community;

Not authorised—indicative only

Not authorised—indicative only

(h) supporting the rights of patients and their nominated support persons, family, carers and other support persons, including the ways in which information is to be communicated to the patients and their support persons;

(i) the appointment and functions of independent patient rights advisers;

(j) the support of victims of unlawful acts, close relatives of the victims, and other persons affected by unlawful acts;

(k) the way in which the chief psychiatrist is to be notified of matters under this Act;

(l) the information to be recorded or given to the chief psychiatrist about—

(i) the treatment and care of patients under this Act; and

(ii) critical incidents relating to patients, including the death of a patient.

(3) An authorised doctor, authorised mental health practitioner, administrator of an authorised mental health service, or other person performing a function or exercising a power under this Act must comply with a policy or practice guideline.

(4) If a policy or practice guideline is inconsistent with this Act, the policy or practice guideline is invalid to the extent of the inconsistency.

306 Publication of policies and practice guidelines

(1) As soon as practicable after making a policy or practice guideline, the chief psychiatrist must—

(a) make the policy or practice guideline publicly available; and

Example of making a policy or practice guideline publicly available—

publication on a website

(b) give a copy of the policy or practice guideline to the administrator of each authorised mental health service.

(2) If a person in an authorised mental health service is required to comply with a policy or practice guideline, the administrator of the service must take reasonable steps to ensure the policy or practice guideline is available to the person.

(3) Also, the administrator of an authorised mental health service must ensure a policy or practice guideline relevant to the service is given effect.

307 Annual report

(1) Within 90 days after the end of each financial year, the chief psychiatrist must give the Minister a report on the administration of this Act during the year.

(2) The report must include the following information for the financial year to which the report relates—

(a) a summary of key developments in the administration of this Act;

(b) statistical data, generally and for each authorised mental health service, about the following—

(i) the making of examination authorities;

(ii) the making of recommendations for assessment and transfer recommendations;

(iii) the making and revocation of treatment authorities;

(iv) the preparation of psychiatrist reports and second psychiatrist reports;

(v) the making and revocation of forensic orders and treatment support orders;

(vi) the use of mechanical restraint and seclusion;

(vii) actions taken under part 5 in relation to serious risks to persons or public safety;

Not authorised—indicative only

Not authorised—indicative only

(c) the number of forensic patients who absconded from each authorised mental health service;

(d) the details of the appointments of independent patient rights advisers;

(e) information about compliance with the restraint, seclusion and other practices policy;

(f) details of directions given, and actions taken, under section 310(1) in relation to recommendations included in an investigation report;

(g) details of directions given under section 312 by the Minister to the chief psychiatrist;

(h) statistical data about information notices given under part 6.

Example of statistical data about information notices—

the number of applications for information notices made

(3) The report may state any other information the chief psychiatrist considers appropriate.

(4) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it.

Part 4 Investigations

308 Chief psychiatrist may investigate

(1) The chief psychiatrist may, for the purpose of performing the chief psychiatrist's functions—

(a) investigate a matter; or

(b) direct an inspector to investigate a matter.

Note—

See section 555(2) for appointment of an inspector to investigate a matter under this part.

(2) An investigation must be completed as quickly as is reasonable in all the circumstances.

(3) The chief psychiatrist or inspector may exercise the powers under chapter 14 for the purpose of the investigation.

(4) To remove any doubt, it is declared that an investigation under subsection (1) may include an investigation about any matter relating to the treatment and care of any patient in an authorised mental health service.

309 Investigation report

(1) After completing an investigation, the chief psychiatrist, or an inspector investigating the matter, must prepare a report on the investigation (an ***investigation report***).

(2) The investigation report may include recommendations relating to the improvement of the operation of an authorised mental health service.

(3) The chief psychiatrist may give a copy of the investigation report to a person or entity the subject of the investigation.

310 Recommendations for improvement

(1) If an investigation report includes recommendations relating to the improvement of the operation of an authorised mental health service, the chief psychiatrist may, by written notice, direct the administrator of the service to—

(a) take action, or particular action, to address the recommendations; and

(b) report to the chief psychiatrist about the action taken to address the recommendations.

(2) However, before giving the notice, the chief psychiatrist must—

(a) give the administrator a written notice (a ***show cause notice***) stating the following—

(i) that the chief psychiatrist proposes to direct the administrator to take action, or particular action, to address recommendations included in an investigation report (the ***proposed action***);

Not authorised—indicative only

Not authorised—indicative only

(ii) the grounds for the proposed action;

(iii) the facts and circumstances forming the basis for the grounds;

(iv) that the administrator may make submissions about the show cause notice to the chief psychiatrist;

(v) the date by which the submission must be made; and

(b) consider any submissions given in response to the show cause notice.

(3) The administrator must comply with a notice under subsection (1) unless the administrator has a reasonable excuse.

Part 5 Serious risks to persons or public safety

311 Purpose of pt 5

This purpose of this part is to provide for the actions the chief psychiatrist may take in relation to a forensic patient for whom an authorised mental health service is responsible (a ***relevant forensic patient***) if there is a serious risk to the life, health or safety of a person or to public safety because of a matter relating to the relevant forensic patient.

312 Minister may direct chief psychiatrist to review matter

(1) This section applies if the Minister considers—

(a) a matter has arisen in relation to 1 or more relevant forensic patients; and

(b) there is a serious risk to the life, health or safety of a person or to public safety because of the matter.

(2) The Minister may direct the chief psychiatrist to—

(a) immediately review the matter and serious risk to decide—

(i) whether action is necessary to remove, or to control or manage, the risk; and

(ii) whether there are systemic issues that need to be addressed to remove the risk; and

(b) consider taking action under section 313(2) to address the matter and stop the serious risk recurring; and

(c) report to the Minister—

(i) on the outcome of the review; and

(ii) if action is taken as a result of the review—on the action taken.

(3) To remove any doubt, it is declared that the Minister's power under this section—

(a) is limited to directing the chief psychiatrist to do a thing mentioned in subsection (2)(a), (b) or (c); and

(b) does not allow the Minister to direct the chief psychiatrist to take action, or any particular action, in relation to the matter or serious risk.

313 Actions chief psychiatrist may take

(1) This section applies—

(a) if the chief psychiatrist considers—

(i) a matter has arisen in relation to 1 or more relevant forensic patients; and

(ii) there is a serious risk to the life, health or safety of a person or to public safety because of the matter; and

(b) whether or not a direction has been given to the chief psychiatrist about the matter or risk under section 312.

(2) The chief psychiatrist may do any of the following—

Not authorised—indicative only

Not authorised—indicative only

(a) order the suspension of limited community treatment for a relevant forensic patient, or each member of a class of relevant forensic patients, for a stated period of not more than 7 days;

(b) order the category of the forensic order for a relevant forensic patient, or each member of a class of relevant forensic patients, to be changed to inpatient for a stated period of not more than 7 days;

(c) order an administrator of an authorised mental health service to report to the chief psychiatrist on the circumstances that led to the matter and serious risk;

(d) review, or order an administrator of an authorised mental health service to review and report to the chief psychiatrist on, any treatment and care provided to a relevant forensic patient or class of relevant forensic patients to the extent it relates to the matter or serious risk or a similar matter or serious risk that might arise in the future;

(e) review any policies or practice guidelines about treatment in the community;

(f) take any other action necessary to prevent a similar matter or serious risk arising.

(3) Before making an order under subsection (2)(a) or (b), the chief psychiatrist must consult with the administrator of each authorised mental health service likely to be affected by the order about the likely effect of the order on—

(a) the operations of the authorised mental health service; and

(b) the relevant forensic patients proposed to be subject to the order.

314 Chief psychiatrist's order

(1) This section applies if the chief psychiatrist makes an order under section 313(2)(a) or (b) in relation to a relevant forensic patient or class of relevant forensic patients.

(2) The chief psychiatrist's order must include the following—

(a) if the order relates to a particular relevant forensic patient—the name of the patient;

(b) if the order relates to a class of relevant forensic patients—sufficient details to identify the class;

Example of a class of relevant forensic patients for paragraph (b)—

all relevant forensic patients in an inpatient unit of a particular authorised mental health service who are receiving limited community treatment

(c) if the order is made under section 313(2)(a)—the period of the suspension of limited community treatment;

(d) if the order is made under section 313(2)(b)—the period for which the category of the forensic order is changed to inpatient;

(e) if the order requires a relevant forensic patient, or each member of a class of relevant forensic patients, to return to an authorised mental health service—the name of the service and the time or date by which the patient must return to the service.

(3) For subsection (2)(e), the order may state an authorised mental health service other than the patient's treating health service.

(4) The chief psychiatrist must give each relevant forensic patient subject to the order a copy of the order and a written notice stating—

(a) that the patient may appeal to the tribunal against the chief psychiatrist's decision to make the order; and

(b) the period within which the patient may appeal to the tribunal; and

(c) how the appeal is made.

Not authorised—indicative only

Not authorised—indicative only

315 Chief psychiatrist may vary period or end order

(1) The chief psychiatrist may, for an order made under section 313(2)(a) or (b), at any time while the order is in force—

(a) extend, or further extend, the stated period for a period of not more than 7 days if the chief psychiatrist is satisfied the matter or serious risk for which the order was made still exists; or

(b) end the order.

(2) The chief psychiatrist must give written notice of an extension of the stated period, or the ending of the order, to each relevant forensic patient subject to the order.

(3) If the chief psychiatrist decides to extend the stated period, the notice must state—

(a) that the patient may appeal to the tribunal against the chief psychiatrist's decision to extend the period; and

(b) the period within which the patient may appeal to the tribunal; and

(c) how the appeal is made.

Part 6 Information notices

Division 1 Preliminary

316 Purpose of pt 6

The purpose of this part is to provide for victims of unlawful acts committed by relevant patients, and other persons affected by the unlawful act, to obtain particular information about the relevant patient.

Note—

See section 327 for the application of this part to forensic disability clients.

317 Definitions for pt 6

In this part—

applicant's nominee see section 318(2)(b).

information notice, relating to a relevant patient, is a notice that entitles the applicant for the notice, or the applicant's nominee, to receive information mentioned in schedule 1 about the relevant patient from the chief psychiatrist.

relevant day, for a forensic order or treatment support order that has ended, whether by revocation by the tribunal or otherwise, means the later of the following days—

(a) the day the order ended;

(b) if an appeal against the ending of the order may be started under chapter 13, part 3—

(i) the last day on which the notice of appeal may be filed under section 541; or

(ii) if the notice of appeal is filed under section 541—the day the appeal is decided or otherwise discontinued.

relevant patient means a patient of an authorised mental health service who—

(a) is subject to a forensic order or treatment support order; or

(b) was subject to a forensic order or treatment support order that has ended, if the relevant day for the order has not passed.

Division 2 Application, amendment and revocation

318 Application

(1) An application for an information notice relating to a relevant patient may be made to the chief psychiatrist by—

Not authorised—indicative only

Not authorised—indicative only

(a) a victim of the relevant unlawful act in relation to the relevant patient's forensic order or treatment support order; or

(b) a close relative of a victim mentioned in paragraph (a); or

(c) another individual who—

(i) has suffered harm because of the relevant unlawful act in relation to the relevant patient's forensic order or treatment support order; and

(ii) has a sufficient personal interest in receiving information under the notice about the relevant patient.

(2) The application must—

(a) be in the approved form; and

(b) state whether the applicant, or another person (the ***applicant's nominee***), will be entitled to receive information under the notice; and

(c) be accompanied by a statutory declaration by the applicant and the applicant's nominee, if any, that the applicant or applicant's nominee will not publish information received under the notice in contravention of section 326.

(3) In this section—

forensic order includes a forensic order that has ended if the relevant day for the order has not passed.

treatment support order includes a treatment support order that has ended if the relevant day for the order has not passed.

319 Decision on application

(1) The chief psychiatrist must decide to approve or refuse to approve the application—

(a) if the application is made by an applicant mentioned in section 318(1)(a) or (b)—within 14 days after receiving the application; or

(b) otherwise—within 28 days after receiving the application.

(2) The chief psychiatrist may refuse to approve the application if the chief psychiatrist is satisfied—

(a) the application is frivolous or vexatious; or

(b) for an application made under section 318(1)(c)—the applicant is not an individual mentioned in section 318(1)(c); or

(c) disclosure of information under the notice is likely to—

(i) result in serious harm to the relevant patient's health or welfare; or

(ii) put the safety of the relevant patient or someone else at serious risk; or

(d) a previous information notice obtained by the applicant was revoked under section 323(2)(b).

(3) For subsection (2)(b), in deciding whether the applicant has a sufficient personal interest in receiving information under the notice, the chief psychiatrist must have regard to the following matters—

(a) whether the relevant patient is a risk to the safety and welfare of the person;

(b) whether it is likely the relevant patient will come into contact with the person;

(c) the nature of the relevant unlawful act in relation to the relevant patient's forensic order or treatment support order.

(4) The chief psychiatrist must refuse to approve the application if the chief psychiatrist is satisfied—

Not authorised—indicative only

Not authorised—indicative only

(a) if the application states that the applicant's nominee will be entitled to receive information under the notice—the nominee is not suitable to receive the information; or

(b) the person in relation to whom the application was made is not, or is no longer, a relevant patient.

(5) The chief psychiatrist must give the applicant written notice of the decision within 7 days after making it.

(6) If the decision is to approve the application, the written notice must state—

(a) the name of the person entitled to receive information under the information notice; and

(b) if the person entitled to receive information under the information notice is the applicant's nominee—that the nominee is entitled to receive the information only for the purpose of providing the information to the applicant.

(7) If the decision is to refuse to approve the application, the written notice must state—

(a) the reasons for the decision; and

(b) that the applicant may appeal to the tribunal against the decision within 28 days after the applicant receives the notice; and

(c) how the appeal is made.

(8) In this section—

forensic order includes a forensic order that has ended if the relevant day for the order has not passed.

treatment support order includes a treatment support order that has ended if the relevant day for the order has not passed.

320 Right to receive information under notice

(1) This section applies if a person is entitled to receive information about a relevant patient under an information notice.

(2) The chief psychiatrist must ensure the person receives the information mentioned in schedule 1 about the relevant patient.

(3) The information must be given to the person—

(a) for information mentioned in schedule 1, section 5—as soon as practicable after the chief psychiatrist becomes aware of the information; or

(b) otherwise—within 14 days after the chief psychiatrist becomes aware of the information.

(4) However, the chief psychiatrist must not disclose under subsection (2)—

(a) details about the specific treatment and care provided to the relevant patient, including, for example, the type of medication being given to the relevant patient; or

(b) the address of a place in the community at which the relevant patient is living.

(5) The chief psychiatrist may enter into arrangements with a victim support service to enable the service, on behalf of the chief psychiatrist, to give the information to the person.

321 Amendment of notice to change applicant's nominee

(1) A person who is entitled to receive information about a relevant patient under an information notice may apply to the chief psychiatrist to amend the notice by adding, or changing, the applicant's nominee.

(2) The application must be in the approved form and be accompanied by—

(a) the name of the applicant's proposed nominee; and

(b) a statutory declaration by the nominee stating that the nominee will not publish information received under the notice in contravention of section 326.

Not authorised—indicative only

Not authorised—indicative only

(3) The chief psychiatrist must decide to approve or refuse to approve the application within 14 days after receiving the application.

(4) The chief psychiatrist must approve the application if the chief psychiatrist is satisfied the nominee is suitable to receive information under the notice.

(5) The chief psychiatrist must give the applicant notice of the decision within 7 days after making it.

(6) If the decision is to approve the application, the chief psychiatrist must give the applicant an amended information notice.

(7) If the decision is to refuse to approve the application, the notice must state—

(a) the reasons for the decision; and

(b) that the applicant may appeal to the tribunal against the decision within 28 days after the applicant receives the notice; and

(c) how the appeal is made.

322 Duration of information notice

(1) An information notice relating to a relevant patient ceases to have effect on the earliest of the following days—

(a) if the relevant patient's forensic order or treatment support order ends and the patient is not subject to any other forensic order or treatment support order—the relevant day for the forensic order or treatment support order that has ended;

(b) if the relevant patient has been transferred under chapter 12, part 10, division 2 to an interstate mental health service or another country—the day the patient leaves Queensland;

(c) if the person entitled to receive information under the notice notifies the chief psychiatrist the person no longer

wishes to receive the information—the day the person gives the notice;

(d) if the chief psychiatrist revokes the information notice under section 323—the day the notice is revoked.

(2) Within 7 days after an information notice ceases to have effect under subsection (1)(a), (b) or (c), the chief psychiatrist must give the person who was entitled to receive information under the notice a written notice stating—

(a) the information notice has ceased to have effect; and

(b) the reason the information notice ceased to have effect; and

(c) if the information notice ceased to have effect under subsection (1)(a) or (b)—the person is not entitled to appeal the ceasing of effect of the information notice.

(3) Despite subsection (1)(b), if the relevant patient returns to Queensland before the patient's forensic order or treatment support order ends under section 528—

(a) the information notice is reinstated on the day the relevant patient returns to Queensland; and

(b) within 7 days after the chief psychiatrist becomes aware the relevant patient has returned to Queensland, the chief psychiatrist must give notice of the reinstatement of the information notice to the person entitled to receive information under the notice.

323 Revocation of information notice

(1) The chief psychiatrist must revoke an information notice relating to a relevant patient if the chief psychiatrist is satisfied disclosure of information under the notice is likely to—

(a) result in serious harm to the relevant patient's health or welfare; or

(b) put the safety of the relevant patient or someone else at serious risk.

Not authorised—indicative only

Not authorised—indicative only

(2) The chief psychiatrist may revoke an information notice relating to a relevant patient if—

(a) the chief psychiatrist is unable, after making reasonable efforts, to locate the person entitled to receive information under the notice; or

(b) the person entitled to receive information under the notice has contravened section 326.

(3) However, before revoking an information notice under subsection (2)(b), the chief psychiatrist must give the person a reasonable opportunity to make a submission to the chief psychiatrist about why the notice should not be revoked.

(4) Within 7 days after an information notice is revoked under this section, the chief psychiatrist must give the person who was entitled to receive information under the information notice a written notice stating—

(a) the information notice has been revoked and has ceased to have effect; and

(b) the reasons for the decision to revoke the information notice; and

(c) that the person may appeal to the tribunal against the decision within 28 days after the person receives the written notice; and

(d) how the appeal may be made.

Division 3 Miscellaneous

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

(1) This section applies if the tribunal makes a decision that increases the extent of treatment in the community received by a relevant patient.

(2) The tribunal must, for the purpose of enabling the chief psychiatrist to comply with section 320(2), give the chief

psychiatrist a written notice containing a brief explanation of the decision.

(3) The chief psychiatrist may use the written notice only for the purpose for which it is given.

(4) To remove any doubt, it is declared that the written notice is not a statement of reasons for the tribunal's decision.

325 Telling relevant patient about information notice

(1) This section applies if an information notice relating to a relevant patient is made.

(2) The chief psychiatrist, or another person performing a function under this Act in relation to the relevant patient, must not tell the relevant patient about the making of the notice, or any other matter that may identify the applicant for the information notice.

(3) However, the chief psychiatrist or other person may tell the relevant patient the prescribed information about the information notice if—

(a) the applicant for the information notice requests that the prescribed information be given to the relevant patient; and

(b) the chief psychiatrist, or an authorised doctor, considers telling the relevant patient the prescribed information is in the patient's best interests.

(4) In this section—

prescribed information, about an information notice, means—

(a) the fact of the making of the notice; or

(b) the fact of the making of the notice and the name of the applicant for the information notice.

Not authorised—indicative only

Not authorised—indicative only

326 Misuse of information made available under an information notice

(1) This section applies in relation to information a person has because it has been made available to a person under an information notice.

(2) The person must not publish the information unless the publication is required or permitted under the information notice, or an Act or law.

Maximum penalty—200 penalty units.

327 Application of part to forensic disability client

This part applies in relation to a forensic disability client as if—

(a) a reference in the part to a relevant patient were a reference to a forensic disability client; and

(b) a reference in the part to the chief psychiatrist were a reference to the director of forensic disability; and

(c) a reference in the part to an authorised mental health service were a reference to the forensic disability service.

Chapter 11 Authorised mental health services

Part 1 Preliminary

328 Purpose of ch 11

The purpose of this chapter is to provide for—

(a) the declaration of authorised mental health services; and

(b) the appointment, functions and powers of administrators of authorised mental health services, authorised doctors and authorised mental health practitioners; and

(c) the transfer of the responsibility for particular patients—

(i) between authorised mental health services; and

(ii) between an authorised mental health service and the forensic disability service; and

(iii) between an authorised mental health service and an interstate mental health service; and

Note—

See chapter 12, part 10 for approvals to transfer forensic and other patients into and out of Queensland.

(d) powers of authorised persons in relation to transporting persons under this Act; and

(e) matters relating to the security of authorised mental health services and other particular services.

Part 2 Declaration of authorised mental health services

329 Declaration of authorised mental health service

(1) The chief psychiatrist may, by gazette notice, declare a health service, or part of a health service, providing treatment and care to persons who have a mental illness to be an authorised mental health service.

(2) However, if the health service is not a public sector health service, the declaration may be made only with the written agreement of the health service.

(3) The declaration may include conditions the chief psychiatrist considers appropriate, including, for example, a condition to facilitate the provision of treatment and care to persons who have a mental illness in rural or remote areas.

Not authorised—indicative only

Not authorised—indicative only

330 Declaration of high security unit

The chief psychiatrist may, by gazette notice, declare a public sector mental health service, or part of a public sector mental health service, to be a high security unit.

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

(1) The chief psychiatrist may, by gazette notice, declare an authorised mental health service, or part of an authorised mental health service, to be an authorised mental health service (rural and remote).

(2) The chief psychiatrist may act under subsection (1) only if satisfied the authorised mental health service is in a rural or remote area.

Part 3 Administrators of authorised mental health services

332 Appointment

(1) The chief psychiatrist may, by gazette notice, appoint a person to be the administrator of an authorised mental health service.

(2) The appointment may identify the administrator by name or by reference to the holder of a stated office.

333 Functions

(1) The administrator of an authorised mental health service has the following functions—

(a) to the extent practicable, ensuring the operation of the authorised mental health service complies with this Act;

(b) taking reasonable steps to ensure patients of the authorised mental health service receive appropriate treatment and care;

(c) notifying patients of the authorised mental health service, the chief psychiatrist, the tribunal and others of decisions and other matters as required under this Act;

(d) appointing authorised doctors and authorised mental health practitioners.

(2) Also, the administrator has the other functions given to the administrator under this or another Act.

334 Powers

(1) The administrator of an authorised mental health service has the powers given under this Act.

(2) Also, the administrator may do all things necessary or convenient to be done to perform the administrator's functions.

335 Register of authorised doctors and authorised mental health practitioners

The administrator of an authorised mental health service must keep a register of persons holding office as an authorised doctor, authorised mental health practitioner, or health practitioner appointed under section 341 to perform particular functions, appointed by the administrator.

336 Record of relevant patients

(1) The administrator of an authorised mental health service must keep a record of each relevant patient of the service.

(2) Without limiting subsection (1), the record must contain the following information—

(a) the day the person becomes a relevant patient of the authorised mental health service;

(b) the day the person stops being a relevant patient;

(c) details of the basis on which the person is a relevant patient;

Not authorised—indicative only

Not authorised—indicative only

(d) details of any change to the basis on which the person is a relevant patient and the day the change happens;

(e) the category of a treatment authority, forensic order or treatment support order for the relevant patient and details of any limited community treatment;

(f) the conditions of a treatment authority, forensic order or treatment support order for the relevant patient;

(g) details of temporary absences approved under section 221 for the relevant patient and the reason for the absences.

(3) In this section—

relevant patient means an involuntary patient or classified patient (voluntary).

337 Delegation

(1) The administrator of an authorised mental health service may delegate the administrator's functions under this Act to an appropriately qualified employee of the service.

(2) In this section—

function includes a power.

Part 4 Authorised doctors and authorised mental health practitioners

Division 1 Appointment, functions and powers

338 Appointment of authorised doctor

(1) The administrator of an authorised mental health service may, by instrument in writing, appoint a doctor as an authorised doctor.

(2) However, the administrator may appoint a person under subsection (1) only if satisfied the person has the competencies, stated in a policy, necessary to be an authorised doctor.

339 When administrator is authorised doctor

If the administrator of an authorised mental health service is a psychiatrist, the administrator is an authorised doctor.

340 Appointment of authorised mental health practitioner

(1) The administrator of an authorised mental health service may, by instrument in writing, appoint a health practitioner as an authorised mental health practitioner.

(2) However, the administrator may appoint a person under subsection (1) only if satisfied the person has the competencies, stated in a policy, necessary to be an authorised mental health practitioner.

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

(1) The administrator of an authorised mental health service may appoint a health practitioner of a class prescribed by regulation to perform the functions or exercise the powers of an authorised doctor that are prescribed by regulation for the class of health practitioner.

(2) However, the administrator may appoint a person under subsection (1) only if satisfied the person is appropriately qualified.

(3) Before recommending to the Governor in Council the making of a regulation under subsection (1), the Minister must be of the opinion that the class of health practitioner proposed to be prescribed has the competencies the chief psychiatrist considers necessary to perform the functions or exercise the powers of an authorised doctor proposed to be prescribed for the class.

Not authorised—indicative only

Not authorised—indicative only

(4) In this section—

health practitioner means a health practitioner other than a doctor.

342 Appointment conditions and limit on powers

(1) This section applies to each of the following—

(a) an authorised doctor appointed under section 338;

(b) an authorised mental health practitioner appointed under section 340;

(c) a health practitioner appointed under section 341 to perform particular functions.

(2) The person holds office—

(a) on any conditions stated in—

(i) the person's instrument of appointment; or

(ii) a signed notice given to the person; and

(b) for an authorised doctor or authorised mental health practitioner—on the condition that the doctor or authorised mental health practitioner continues to have the competencies, stated in a policy, necessary to be an authorised doctor or authorised mental health practitioner.

(3) The instrument of appointment or signed notice given to the person may limit the person's powers.

(4) In this section—

signed notice, given to a person, means a notice signed by the administrator of the authorised mental health service who appointed the person.

343 When office ends

(1) This section applies to each of the following—

(a) an authorised doctor appointed under section 338;

(b) an authorised mental health practitioner appointed under section 340;

(c) a health practitioner appointed under section 341 to perform particular functions.

(2) The office of the person under the appointment ends if any of the following happens—

(a) for an authorised doctor appointed under section 338—the authorised doctor stops being a doctor;

(b) for an authorised mental health practitioner appointed under section 340—the authorised mental health practitioner stops being a health practitioner of the type that was the basis for the person's appointment;

(c) for a health practitioner appointed under section 341 to perform particular functions—the health practitioner stops being a health practitioner of the class prescribed by regulation that was the basis for the person's appointment;

(d) the term of office stated in a condition of office ends;

(e) the office ends under another condition of office;

(f) the chief psychiatrist—

(i) is satisfied the person is unable to perform the functions of the office, including, for example, because the person does not have the competencies, stated in a policy, necessary for the office; and

(ii) gives written notice to the person stating the person stops holding office on a date stated in the notice;

(g) the person resigns by written notice given to the administrator of the authorised mental health service who appointed the person.

(3) Subsection (2) does not limit the ways in which the person may stop holding office.

(4) In this section—

Not authorised—indicative only

Not authorised—indicative only

condition of office means a condition under which a person mentioned in subsection (1) holds office.

344 Functions and powers

Subject to section 342, an authorised doctor, authorised mental health practitioner, or health practitioner appointed under section 341 to perform particular functions, has the functions and powers given under this Act.

345 Requirement to give notice of particular decisions

(1) This section applies if an authorised doctor, authorised mental health practitioner, or health practitioner appointed under section 341 to perform particular functions (each a ***decision-maker***) makes a decision under this Act in relation to an involuntary patient or classified patient (voluntary).

(2) The decision-maker must give written notice of the decision to the administrator of the patient's treating health service.

Division 2 Identity cards

346 Issue of identity card

(1) The administrator of an authorised mental health service must issue an identity card to each of the following persons appointed by the administrator—

(a) an authorised doctor;

(b) an authorised mental health practitioner;

(c) a health practitioner appointed under section 341 to perform particular functions.

(2) The identity card must—

(a) contain a recent photo of the person; and

(b) identify the person as an authorised doctor, authorised mental health practitioner, or health practitioner

appointed to perform particular functions, under this Act; and

(c) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

347 Production or display of identity card

(1) In exercising a power in relation to a person in the person's presence, an authorised doctor, authorised mental health practitioner, or health practitioner appointed under section 341 to perform particular functions (each a ***practitioner***), must—

(a) produce the practitioner's identity card for the person's inspection before exercising the power; or

(b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the practitioner must produce the identity card for the person's inspection at the first reasonable opportunity.

348 Return of identity card

If the office of a person mentioned in section 346(1) ends, the person must return the person's 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.

Maximum penalty—20 penalty units.

Not authorised—indicative only

Not authorised—indicative only

Part 5 Transfer of patients

Division 1 Preliminary

349 Purpose of pt 5

The purpose of this part is to provide for the transfer of the responsibility for particular patients—

(a) between authorised mental health services; and

(b) between an authorised mental health service and the forensic disability service; and

(c) between an authorised mental health service and an interstate mental health service.

Note—

See chapter 12, part 10 for approvals to transfer forensic and other patients into and out of Queensland.

350 Definition for pt 5

In this part—

transfer considerations, for a person, means—

(a) the person's mental state and psychiatric history; and

(b) the person's treatment and care needs; and

(c) if relevant, security requirements for the person; and

(d) without limiting paragraphs (a) to (c), whether the transfer is appropriate in the circumstances.

Example of when a transfer under this part may be appropriate—

to allow the person to be in closer proximity to their family, carers or other support persons

Division 2 Authorised mental health service transfers

351 Transfer between services by agreement of administrators

(1) This section applies to a person who is an involuntary patient, or a classified patient (voluntary), of an authorised mental health service.

(2) The administrator of the authorised mental health service (the ***first AMHS***) may agree with the administrator of another authorised mental health service (the ***second AMHS***) to transfer the responsibility for the person from the first AMHS to the second AMHS.

(3) In deciding whether to agree to a transfer under subsection (2), the administrator of the first AMHS and the administrator of the second AMHS must have regard to—

(a) the transfer considerations for the person; and

(b) to the greatest extent practicable, the views, wishes and preferences of the person.

(4) If any of the following circumstances apply, the transfer must not happen unless the chief psychiatrist has approved the transfer in writing—

(a) the person is subject to a forensic order;

(b) the person is subject to a judicial order;

(c) the person is subject to a treatment authority but is not a classified patient, and the transfer is to a high security unit;

(d) the person is a minor, and the transfer is to a high security unit.

(5) In deciding whether to approve a transfer under subsection (4), the chief psychiatrist must have regard to—

(a) the transfer considerations for the person; and

Not authorised—indicative only

Not authorised—indicative only

(b) to the greatest extent practicable, the views, wishes and preferences of the person.

(6) If a person transferred under this section is a classified patient and the chief psychiatrist is not required to approve the transfer under subsection (4), the administrator of the first AMHS must give written notice of the transfer to the chief psychiatrist within 7 days after the transfer.

352 Transfer between services by requirement of chief psychiatrist

(1) This section applies to a person who is an involuntary patient, or a classified patient (voluntary), of an authorised mental health service.

(2) The chief psychiatrist may, by written notice, require the administrator of the authorised mental health service to transfer the responsibility for the person from the authorised mental health service to another authorised mental health service.

(3) In deciding whether to require a transfer under this section, the chief psychiatrist must have regard to—

(a) the transfer considerations for the person; and

(b) to the greatest extent practicable, the views, wishes and preferences of the person.

Division 3 Forensic disability service transfers

353 Transfer between authorised mental health service and forensic disability service

(1) This section applies to a person subject to a forensic order (disability).

(2) The chief psychiatrist and the director of forensic disability may agree to transfer the responsibility for the person from an authorised mental health service to the forensic disability service, or vice versa.

(3) In deciding whether to agree to a transfer under subsection (2), the chief psychiatrist and the director of forensic disability must have regard to—

(a) the transfer considerations for the person; and

(b) the person's intellectual disability; and

(c) to the greatest extent practicable, the views, wishes and preferences of the person.

Division 4 Interstate transfers

354 Transfer of person subject to treatment authority to another State

(1) This section applies to a person subject to a treatment authority who—

(a) is a patient of an authorised mental health service (the ***AMHS***); and

(b) is not a classified patient or a person subject to a forensic order (disability).

(2) The administrator of the AMHS may agree with a responsible officer of an interstate mental health service to transfer the responsibility for the person from the AMHS to the interstate mental health service if the administrator is satisfied—

(a) appropriate treatment and care is available for the person at the interstate mental health service; and

(b) the transfer is otherwise appropriate in the circumstances.

Example of when a transfer under this section may be appropriate—

to allow the person to be in closer proximity to their family, carers or other support persons

(3) In deciding whether the transfer is appropriate in the circumstances under subsection (2)(b), the administrator

Not authorised—indicative only

Not authorised—indicative only

must, to the greatest extent practicable, have regard to the views, wishes and preferences of the person.

(4) The person's treatment authority ends when the person leaves Queensland.

355 Transfer of person subject to interstate order from another State

(1) This section applies to a person subject to an interstate order who is a patient of an interstate mental health service.

(2) The administrator of an authorised mental health service (the ***AMHS***) may agree with a responsible officer of the interstate mental health service to transfer the responsibility for the person from the interstate mental health service to the AMHS if the administrator of the AMHS is satisfied—

(a) appropriate treatment and care is available for the person at the AMHS; and

(b) an authorised doctor is likely to consider, on the person's admission to the AMHS, that—

(i) the treatment criteria apply to the person; and

(ii) there is no less restrictive way for the person to receive treatment and care for the person's mental illness; and

(c) the transfer is otherwise appropriate in the circumstances.

Example of when a transfer under this section may be appropriate—

to allow the person to be in closer proximity to their family, carers or other support persons

(3) In deciding whether the transfer is appropriate in the circumstances under subsection (2)(b), the administrator must, to the greatest extent practicable, have regard to the views, wishes and preferences of the person.

(4) On the person's arrival at the AMHS, an authorised doctor must make an assessment of the person to decide—

(a) whether the treatment criteria apply to the person; and

(b) whether there is a less restrictive way for the person to receive treatment and care for the person's mental illness.

(5) The person may be detained for assessment in the AMHS for a period of not more than 6 hours starting when the person arrives at the AMHS.

(6) If, on making the assessment, the authorised doctor is satisfied the treatment criteria apply to the person and there is no less restrictive way for the person to receive treatment and care for the person's mental illness, the authorised doctor may decide to make an authority for the person.

(7) The authority is taken to be a treatment authority made under section 49 by the authorised doctor for the person.

(8) In this section—

interstate order means an order, however described, made under a corresponding law that provides for similar matters to a treatment authority.

Division 5 General provisions

356 Responsibility for person

(1) If the responsibility for a person is transferred, under division 2 or 3, from a service to another service, the responsibility for the person's treatment and care under the person's order or authority is transferred from the administrator of the first service to the administrator of the second service.

(2) An order or authority to which the person is subject, under this Act or the Forensic Disability Act, is otherwise affected by the transfer only to the extent this Act or the Forensic Disability Act expressly provides.

(3) In this section—

Not authorised—indicative only

Not authorised—indicative only

service means an authorised mental health service or the forensic disability service.

357 Power to transport

(1) This section applies if the responsibility for a person is transferred, under this part, from an entity to another entity.

(2) An authorised person may transport the person from the first entity to the second entity.

(3) If 1 of the entities is the forensic disability service, a person who is authorised under the Forensic Disability Act to transport a forensic disability client under that Act may transport the person to or from the entity.

(4) If 1 of the entities is an interstate mental health service, a person who is authorised under a corresponding law to transport a person may transport the person to or from the entity.

358 Notice to tribunal

(1) This section applies if the responsibility for a person is transferred from an authorised mental health service, or the forensic disability service, to another entity.

(2) The administrator of the authorised mental health service or forensic disability service must give written notice of the transfer to the tribunal within 7 days after the day of the transfer.

(3) Subsection (2) does not apply if the person is subject only to a recommendation for assessment.

Part 6 Transport of persons

Division 1 Preliminary

359 Who is an *authorised person*

(1) Each of the following is an ***authorised person***—

(a) the administrator of an authorised mental health service;

(b) an ambulance officer;

(c) a health practitioner;

(d) a police officer.

(2) Also, if a person is to be transported to or from a corrective services facility, a youth detention centre or a court, each of the following is an ***authorised person***—

(a) a corrective services officer for the purpose of taking the person to or from the facility or court;

(b) a youth detention employee for the purpose of taking the person to or from the centre or court.

(3) Also, the administrator of an authorised mental health service may in writing appoint an employee of the authorised mental health service as an ***authorised person***.

(4) An authorised person, other than a police officer, is a public official for the *Police Powers and Responsibilities Act 2000.*

(5) In this section—

corrective services facility see the *Corrective Services Act 2006*, schedule 4.

corrective services officer see the *Corrective Services Act 2006*, schedule 4.

youth detention centre means a detention centre established under the *Youth Justice Act 1992*, section 262.

youth detention employee means a detention centre employee under the *Youth Justice Act 1992*.

Not authorised—indicative only

Not authorised—indicative only

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

360 Transport within authorised mental health service

The administrator of an authorised mental health service, a health practitioner, or another person approved by the administrator or health practitioner, may transport an involuntary patient or classified patient (voluntary) from 1 place in the authorised mental health service to another place in the authorised mental health service.

Examples—

- a patient may be transported to a different inpatient unit within the service
- a patient may be transported to another place in the service for an examination or diagnostic test

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

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.

362 Taking person after treatment and care to person's requested place

(1) This section applies if—

(a) a person is transported from a place in the community to an authorised mental health service, or public sector health service facility, under an examination authority or recommendation for assessment; or

(b) a person is transported from a place in the community to an authorised mental health service, or public sector health service facility, under an emergency examination

authority and a recommendation for assessment is made for the person.

(2) At the end of the person's detention in an authorised mental health service, or public sector health service facility, including under a recommendation for assessment or treatment authority made for the person after the examination or assessment of the person, the administrator of the service or person in charge of the facility must take reasonable steps to ensure the person is returned to a place reasonably requested by the person.

Division 3 Transport of absent persons

363 Application of div 3

This division applies if—

(a) a person absconds while being lawfully detained under this Act or in a person's charge under section 622(2); or

(b) a person subject to a treatment authority, forensic order or treatment support order is being treated in the community and the person does not attend at an authorised mental health service or public sector health service facility as required under the authority or order; or

(c) a treatment authority, forensic order, treatment support order or judicial order is made for a person requiring the person to be detained in an authorised mental health service and the person is not in an authorised mental health service when the authority or order is made; or

(d) the category of a patient's treatment authority, forensic order or treatment support order is changed to inpatient; or

(e) a forensic patient is receiving limited community treatment and the chief psychiatrist orders the suspension of the treatment under section 313(2)(a); or

Not authorised—indicative only

Not authorised—indicative only

(f) the chief psychiatrist orders the category of a patient's forensic order to be changed to inpatient under section 313(2)(b); or

(g) a patient is temporarily absent from an authorised mental health service under section 221, or receiving limited community treatment, and either of the following applies—

(i) the patient does not return to the authorised mental health service at the end of the absence or treatment;

(ii) the approval of the absence, or authorisation of the treatment, is revoked; or

(h) a person does not attend at an authorised mental health service as directed under section 56 or 99; or

(i) a person subject to an examination order does not attend at an authorised mental health service or public sector health service facility as directed under the order; or

(j) a person does not attend at an examining practitioner as directed under section 721(4)(b).

364 Particular persons may require return of absent person

(1) A responsible person may—

(a) authorise an authorised person, other than a police officer, to transport a person mentioned in section 363 to an authorised mental health service or public sector health service facility; or

(b) ask a police officer to transport a person mentioned in section 363 to an authorised mental health service or public sector health service facility.

(2) The authorisation or request must—

(a) be in the approved form; and

(b) state the name of the person to be transported; and

(c) state the name of the authorised mental health service or public sector health service facility to which the person is to be transported; and

(d) identify the risk the person presents to himself or herself, the authorised person or police officer, and others; and

(e) for a request to a police officer—state the reasons why the responsible person considers it necessary for a police officer to transport the person.

(3) Before acting under this section, the responsible person must make reasonable efforts to contact the person and encourage the person to come or return to the authorised mental health service or public sector health service facility.

(4) Subsection (3) does not apply if the responsible person considers there is a risk the person may harm himself or herself or others if the administrator or person in charge complies with the subsection.

Note—

See also section 377 for applying for a warrant for the apprehension of a person.

(5) The person in charge of a public sector health service facility may delegate a function under this section to an appropriately qualified health service employee.

(6) In this section—

function includes a power.

responsible person means—

(a) the administrator of an authorised mental health service; or

(b) the person in charge of a public sector health service facility; or

(c) an authorised doctor; or

(d) an authorised mental health practitioner.

Not authorised—indicative only

Not authorised—indicative only

365 Limitation on requirement to return particular absent persons

(1) This section applies if a person absconds while being lawfully detained—

(a) under a recommendation for assessment; or

(b) before the end of the assessment period for the person; or

(c) under an examination authority; or

(d) under section 36.

(2) An authorisation or request under section 364 to transport the person is in force for 3 days after the day the person absconds.

366 Authorised person may transport absent person

(1) This section applies if an authorised person is authorised to transport a person under section 364(1)(a).

(2) The authorised person may transport the person named in the authorisation to the authorised mental health service or public sector health service facility stated in the authorisation.

(3) Subsection (4) applies if an authorised person mentioned in section 364(1)(a) asks a police officer, under the *Police Powers and Responsibilities Act 2000*, section 16, to help transport the named person.

Note—

Under section 359(4), an authorised person, other than a police officer, is a public official for the *Police Powers and Responsibilities Act 2000*. Under section 16 of that Act, a public official may ask a police officer to help the public official perform the public official's functions.

(4) The request must—

(a) be in the approved form; and

(b) state the name of the person to be transported; and

(c) state the name of the authorised mental health service or public sector health service facility to which the person is to be transported; and

(d) identify the risk the person presents to himself or herself, the authorised person or police officer, and others; and

(e) state the reasons why the authorised person considers it necessary to ask the police officer to help transport the person.

(5) Before transporting the person, the authorised person must—

(a) tell the person the authorised person is detaining the person and transporting the person to the authorised mental health service or public sector health service facility stated in the authorisation; and

(b) explain to the person how taking action under paragraph (a) may affect the person.

367 Effect on assessment period

If a person transported under an authorisation or request under section 364 was subject to a recommendation for assessment when the person absconded or the person absconded before the end of the assessment period for the person—

(a) despite section 41, the recommendation for assessment continues in force; and

(b) despite section 45, the assessment period for the person starts when the person arrives at the service or facility to which the person has been transported; and

(c) an employee of the service or facility to which the person has been transported must note on the recommendation for assessment when the assessment period starts under paragraph (b).

Not authorised—indicative only

Not authorised—indicative only

Division 4 Transport of persons to and from interstate mental health services

368 Apprehension, detention and transport of person absent from interstate mental health service

(1) An authorised person may apprehend, in Queensland, a person (the ***absent person***)—

(a) who is absent without permission from an interstate mental health service; and

(b) for whom an apprehension authority has been issued under a corresponding law of the State (the ***other State***) in which the interstate mental health service is located.

(2) The apprehension authority is taken to be a warrant for apprehension of the absent person, by an authorised person, under this Act.

(3) If the absent person is apprehended under this section, the absent person may be—

(a) transported, by an authorised person, to—

(i) an interstate mental health service in the other State; or

(ii) an authorised mental health service; or

(b) detained in an authorised mental health service for the period reasonably necessary to enable the administrator of the service to make arrangements for the absent person to be transported to an interstate mental health service under paragraph (a).

(4) Before the absent person is detained or transported under this section, an authorised person must explain to the absent person why the absent person is being detained or transported.

(5) Subsection (6) applies if a corresponding law confers a function or power on a person (an ***interstate person***) in relation to the apprehension of the absent person.

(6) The interstate person may, in Queensland, perform the function, or exercise the power, to the extent necessary to assist in the apprehension, detention or transport, under this section, of the absent person.

(7) In this section—

apprehension authority, in relation to a person, means a warrant, or another document (however described), that authorises the apprehension of the person.

369 Transport of person in Queensland to interstate mental health service

(1) This section applies to a person in Queensland who—

(a) appears to have a mental illness and may be detained and transported to a public sector health service facility under the *Public Health Act 2005*, section 157B; or

(b) is subject to a recommendation for assessment.

(2) If permitted under a corresponding law, the person may be transported to an interstate mental health service by—

(a) an authorised person; or

(b) a person who, under a corresponding law, is authorised to transport the person to an interstate mental health service.

370 Transport of person outside Queensland to authorised mental health service

(1) This section applies to a person outside Queensland who, under a corresponding law, may be transported to an interstate mental health service for—

(a) emergency involuntary examination or treatment and care relating to a mental illness; or

(b) an involuntary assessment of whether the person should be involuntarily treated for a mental illness.

Not authorised—indicative only

Not authorised—indicative only

(2) If subsection (1)(a) applies, the person may be transported to either of the following places for emergency examination or treatment and care—

(a) an authorised mental health service;

(b) a public sector health service facility.

(3) If the public sector health service facility mentioned in subsection (2)(b) is not an inpatient hospital, the person may be transported to the facility only with the approval of the person in charge of the facility.

(4) If subsection (1)(b) applies, the person may be transported to an authorised mental health service for an involuntary assessment of whether the person should be involuntarily treated for a mental illness.

(5) The person may be transported to a place mentioned in subsection (2) or (4) by—

(a) an authorised person; or

(b) a person who, under a corresponding law, is authorised to transport the person to an interstate mental health service.

(6) A document under a corresponding law that recommends assessment of a person to decide whether the person should be involuntarily treated for a mental illness is taken to be a recommendation for assessment for the purposes of this Act.

(7) In this section—

inpatient hospital means a hospital at which a person may be discharged on a day other than the day on which the person was admitted to the hospital.

371 Making of emergency examination authority

(1) This section applies if a person mentioned in section 370(5)(b) (an ***interstate officer***) transports a person to whom section 370(1)(a) applies, to an authorised mental health service or public sector health service facility.

(2) The interstate officer must immediately give an authority for the person.

(3) The authority must—

(a) be in the approved form; and

(b) state the time when it is given.

(4) The authority is taken to be an emergency examination authority given for the person under the *Public Health Act 2005*, section 157D.

Division 5 Transport powers

372 Application of div 5

This division applies if an authorised person is required or permitted under this Act to transport a person for a stated purpose.

373 Power to detain

(1) The power of the authorised person to transport the person includes the power to detain the person.

(2) The authorised person may exercise the power to transport the person, including the power to detain the person, with the help, and using the force, that is necessary and reasonable in the circumstances.

374 Power to administer medication

(1) Despite the absence or refusal of the person's consent, the power of the authorised person to transport the person includes the power to administer medication to the person.

(2) However, the medication—

(a) may be administered to the person only if a doctor is satisfied there is no other reasonably practicable way to protect the person or others from physical harm; and

Not authorised—indicative only

Not authorised—indicative only

(b) must be administered by a doctor or by a registered nurse under the instruction of a doctor.

(3) The doctor or registered nurse may administer the medication with the help, and using the force, that is necessary and reasonable in the circumstances.

(4) For subsection (2)(b), the doctor's instruction must include the medication's name, the dose, and route and frequency of administration.

(5) A doctor or registered nurse who administers medication under this section must keep a written record of the matters mentioned in subsection (4).

(6) This section applies despite the *Guardianship and Administration Act 2000*, chapter 5, part 2, division 1.

(7) This section does not apply to a classified patient (voluntary).

(8) In this section—

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

(a) to practise in the nursing profession, other than as a student; and

(b) in the registered nurses division of that profession.

375 Power to use mechanical restraint

(1) The power of the authorised person to transport the person includes the power to use mechanical restraint on the person if the person is an involuntary patient.

(2) However, the mechanical restraint may be used only if—

(a) the chief psychiatrist has given approval, under subsection (3), for the authorised person to use mechanical restraint on the person; and

(b) there is no other reasonably practicable way to protect the person or others from physical harm; and

(c) the device used is an approved device; and

(d) the use of mechanical restraint on the person, including applying the device to the person, is with no more force than is necessary and reasonable in the circumstances; and

(e) the person is observed continuously while restrained.

(3) The chief psychiatrist may give approval for an authorised person to use, under this section, mechanical restraint on the person if the chief psychiatrist is satisfied there is no other reasonably practicable way to protect the person or others from physical harm.

(4) The approval must state—

(a) the purpose for which mechanical restraint may be used on the person; and

(b) the period during which an authorised person may use mechanical restraint on the person; and

(c) the approved device that must be used; and

(d) any other conditions the chief psychiatrist considers appropriate.

(5) For subsection (4)(a), the purpose for which mechanical restraint may be used on the person includes examining, carrying out a diagnostic test on, or providing treatment and care to, the person.

376 Power to enter particular places

(1) The power of the authorised person to transport the person includes the power to enter a place in which the authorised person reasonably believes the person is if—

(a) an occupier of the place consents to the entry; or

(b) it is a public place and the entry is made when the place is open to the public.

(2) For asking an occupier of a place to consent to the entry, chapter 14, part 3, division 2 applies as if—

Not authorised—indicative only

Not authorised—indicative only

(a) a reference in the division to an inspector were a reference to the authorised person; and

(b) a reference in the division to an inspector asking an occupier of a place to consent to an inspector entering the place under section 565(1)(a) were a reference to the authorised person asking the occupier of the place to consent to the authorised person entering the place under this section.

Note—

See also the *Police Powers and Responsibilities Act 2000*, section 21 for other powers of a police officer.

(3) If the power to enter a place arises only because an occupier of the place consents to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.

(4) If an authorised person lawfully enters a place under subsection (1) for the purpose of transporting a person, the power of the authorised person to transport the person also includes the power—

(a) to search the place to find the person; and

(b) to remain in the place for as long as the authorised person considers it reasonably necessary to find the person.

Division 6 Warrant for apprehension of person to transport person

377 Application for warrant for apprehension of person

(1) This section applies if an authorised person considers a warrant for apprehension of a person is necessary to enable an authorised person to transport the person under this Act to an authorised mental health service or public sector health service facility for examination, assessment, or treatment and care.

(2) The authorised person may apply to a magistrate for a warrant for apprehension of the person.

(3) The authorised person must prepare a written application stating the grounds on which the warrant is sought.

(4) The written application must be sworn.

(5) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

378 Issue of warrant

(1) A magistrate may issue the warrant for apprehension of the person if the magistrate is satisfied the warrant is necessary to enable an authorised person to transport the person to an authorised mental health service or public sector health service facility for examination, assessment, or treatment and care.

(2) The warrant authorises an authorised person—

(a) to enter a place the authorised person reasonably believes the person is; and

(b) to search the place to find the person; and

(c) to remain in the place for as long as the authorised person considers it reasonably necessary to find the person; and

(d) to transport the person to a stated authorised mental health service or public sector health service facility.

Note—

For a police officer's entry and search powers, see the *Police Powers and Responsibilities Act 2000*, section 21. Also, for the use of force by a police officer, see the *Police Powers and Responsibilities Act 2000*, section 615.

Not authorised—indicative only

Not authorised—indicative only

(3) The warrant must state—

(a) the person to whom the warrant applies; and

(b) that an authorised person may, with necessary and reasonable help and force, exercise—

(i) the powers under the warrant mentioned in subsection (2); and

(ii) the powers mentioned in division 5; and

(c) the hours of the day or night when a place mentioned in subsection (2)(a) may be entered; and

(d) the magistrate's name; and

(e) the day and time of the warrant's issue; and

(f) the day, within 7 days after the warrant's issue, the warrant ends.

(4) An authorised person may exercise a power under the warrant with the help, and using the force, that is necessary and reasonable in the circumstances.

379 Electronic application

(1) An application under section 377 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the authorised person's remote location.

(2) The application—

(a) may not be made before the authorised person prepares the written application under section 377(3); but

(b) may be made before the written application is sworn.

380 Additional procedure if electronic application

(1) For an application made under section 379, the magistrate may issue the warrant for apprehension of the person (the ***original warrant***) only if the magistrate is satisfied—

(a) it was necessary to make the application under section 379; and

(b) the way the application was made under section 379 was appropriate.

(2) After the magistrate issues the original warrant—

(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or

(b) otherwise—

(i) the magistrate must tell the authorised person the information mentioned in section 378(3); and

(ii) the authorised person must complete a form of warrant, including by writing on it the information mentioned in section 378(3) told to the person by the magistrate.

(3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.

(4) The authorised person must, at the first reasonable opportunity, send to the magistrate—

(a) the written application complying with section 377(3) and (4); and

(b) if the authorised person completed a form of warrant under subsection (2)(b), the completed form of warrant.

(5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—

Not authorised—indicative only

Not authorised—indicative only

(a) attach the documents to the original warrant; and

(b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.

(6) Despite subsection (3), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and

(b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(7) In this section—

relevant magistrates court, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

381 Defect in relation to a warrant

(1) A warrant for apprehension of a person is not invalidated by a defect in—

(a) the warrant; or

(b) compliance with this division;

unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

warrant for apprehension includes a duplicate warrant under section 380(3).

382 Warrants—entry procedure

(1) This section applies if an authorised person is intending to enter a place under a warrant for apprehension of a person.

(2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person present at the place who is an occupier of the place;

Note—

See also the *Police Powers and Responsibilities Act 2000*, section 637.

(b) give the person a copy of the warrant or, if the entry is authorised by a duplicate warrant under section 380(3), a copy of the duplicate warrant;

(c) tell the person the authorised person is permitted by the warrant to enter and search the place to find the person named in the warrant;

(d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.

(3) However, the authorised person need not comply with subsection (2) if the authorised person reasonably believes immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

Part 7 Security

Division 1 Preliminary

383 Purpose of pt 7

The purpose of this part is to provide for—

(a) the delivery to, and sending of postal articles for, patients in authorised mental health services; and

(b) searches of particular patients in authorised mental health services and public sector health service facilities; and

Not authorised—indicative only

Not authorised—indicative only

(c) searches of persons on admission to, or entry into, high security units or other authorised mental health services approved by the chief psychiatrist; and

(d) searches of visitors to high security units or other authorised mental health services approved by the chief psychiatrist; and

(e) the power of administrators of authorised mental health services to exclude particular visitors to the service.

384 Definitions for pt 7

In this part—

authorised security officer means—

(a) a security officer; or

(b) an appropriately qualified employee of an authorised mental health service who is authorised by the administrator of the service to provide security services to the service.

general search, of a person, means a search—

(a) to reveal the contents of the person's outer garments, general clothes or hand luggage without touching the person or the luggage; or

(b) in which the person may be required to—

(i) open his or her hands or mouth for visual inspection; or

(ii) shake his or her hair vigorously.

personal search, of a person, means a search in which light pressure is momentarily applied to the person over the person's general clothes without direct contact being made with—

(a) the person's genital or anal areas; or

(b) for a female—the person's breasts.

postal article includes a postal article carried by a courier service.

scanning search, of a person, means a search of the person by electronic or other means that does not require the person to remove the person's general clothes or to be touched by another person.

Examples of a scanning search—

- using a portable electronic apparatus or another portable apparatus that can be passed over the person
- using an electronic apparatus through which the person is required to pass

search requiring the removal of clothing, of a person, means a search in which the person removes all garments during the course of the search, but in which direct contact is not made with the person.

security officer means a person employed or engaged by an authorised mental health service to provide security services, regardless of how the person's employment or engagement is described.

Division 2 Postal articles and other things in authorised mental health services

385 Patient may receive and send postal article

(1) A person must not prevent or impede in any way—

(a) the delivery, to a patient of an authorised mental health service, of a postal article addressed to the patient; or

(b) the sending of a postal article for a patient of an authorised mental health service.

Maximum penalty—20 penalty units.

(2) Subsection (1)(a) has effect subject to section 386.

(3) A person does not commit an offence against subsection (1)(b) if the addressee of the postal article—

Not authorised—indicative only

Not authorised—indicative only

(a) is the subject of a non-contact condition of a forensic order or treatment support order to which the patient is subject; or

(b) has given written notice to the administrator of the service asking that postal articles addressed by the patient to the addressee be withheld.

(4) In this section—

non-contact condition, of a forensic order or treatment support order to which a patient is subject, means a condition of the order that requires the patient not to contact a stated person.

patient means—

(a) an involuntary patient; or

(b) 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.

386 Administrator may search thing received for patient

(1) The administrator of an authorised mental health service, or an appropriately qualified person authorised by the administrator, may open or search anything received at the service for a patient.

(2) However, the administrator may exercise a power under subsection (1) only if the patient is present or has been given the opportunity to be present.

(3) Subsection (2) does not apply if the patient obstructs the administrator in the exercise of the administrator's powers under subsection (1).

(4) In this section—

patient means—

(a) an involuntary patient; or

(b) 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.

search includes search by—

(a) an electronic scanning device; and

(b) a physical examination.

Division 3 Searches of patients of authorised mental health services or public sector health service facilities

387 Application of div 3

This division applies to—

(a) an involuntary patient of an authorised mental health service or public sector health service facility; or

(b) a classified patient (voluntary) of an authorised mental health service.

388 Power to search on belief of possession of harmful thing

(1) This section applies if a doctor or health practitioner believes the patient may have possession of a harmful thing.

(2) The doctor or health practitioner may—

(a) carry out a general search, scanning search or personal search of the patient; and

(b) if the administrator of the authorised mental health service, or the person in charge of the public sector health service facility, gives approval for a search requiring the removal of clothing—carry out a search requiring the removal of clothing; and

(c) carry out a search of the patient's possessions.

Not authorised—indicative only

Not authorised—indicative only

(3) The administrator of the service, or the person in charge of the facility, may give approval under subsection (2)(b) if the administrator or person in charge believes a search requiring the removal of clothing is necessary in the circumstances.

(4) A search under this section may be carried out without the patient's consent.

(5) However, before carrying out a search under this section, the doctor or health practitioner must tell the patient the reasons for the search and how it is to be carried out.

(6) A doctor or health practitioner may carry out a search under this section with the help, and using the force, that is necessary and reasonable in the circumstances.

Division 4 Searches of involuntary patients on admission to or entry into high security units or other approved services

389 Application of div 4

This division applies to person who is admitted as an involuntary patient to, or enters as an involuntary patient in, an authorised mental health service that is—

(a) a high security unit; or

(b) another authorised mental health service, or part of an authorised mental health service, approved by the chief psychiatrist for the purpose of this division.

390 Power to search on admission or entry

(1) On the patient's admission to, or entry into, the service, an authorised security officer may, for detecting harmful things—

(a) carry out a general search, scanning search or personal search of the patient; and

(b) if the administrator of the service gives approval for a search requiring the removal of clothing—carry out a search requiring the removal of clothing; and

(c) carry out a search of the patient's possessions.

(2) The administrator of the service may give approval under subsection (1)(b) if the administrator believes a search requiring the removal of clothing is necessary in the circumstances.

(3) A search under this section may be carried out without the patient's consent.

(4) However, before carrying out a search under this section, the authorised security officer must tell the patient the reasons for the search and how it is to be carried out.

(5) An authorised security officer may carry out a search under this section with the help, and using the force, that is necessary and reasonable in the circumstances.

Division 5 Searches of visitors to high security units or other approved services

391 Application of div 5

This division applies to a visitor to an authorised mental health service that is—

(a) a high security unit; or

(b) another authorised mental health service, or part of an authorised mental health service, approved by the chief psychiatrist for the purpose of this division.

392 Power to search visitor

An authorised security officer for the service may ask the visitor—

Not authorised—indicative only

Not authorised—indicative only

(a) to submit to a general search, scanning search or personal search by the authorised security officer; or

(b) to submit the visitor's possessions to a search.

393 Requirement to explain to visitor

The authorised security officer must tell the visitor in general terms of—

(a) the officer's powers in relation to the search; and

(b) how the search is to be carried out; and

(c) the visitor's rights under this division.

394 Direction to leave

(1) If the visitor does not agree to a request under section 392, the 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.

(2) If the visitor is directed to leave the service, the visitor must comply with the direction.

Maximum penalty—20 penalty units.

395 Visitor may leave thing with authorised security officer

If the visitor does not want the authorised security officer to search anything in the visitor's possession, the visitor may leave the thing with the officer until the visitor leaves the service.

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

(1) The authorised security officer may ask the visitor to leave a thing the officer believes is a harmful thing with the officer until the visitor leaves the service.

(2) If the visitor refuses to comply with a request under subsection (1), the 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.

(3) If the visitor is directed to leave the service, the visitor must comply with the direction.

Maximum penalty—20 penalty units.

397 Visitor may ask for search to stop

(1) 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.

(2) The visitor must leave the service immediately.

Maximum penalty—20 penalty units.

398 Return of thing to visitor

If the visitor has left a thing with an authorised security officer, the officer must ensure the thing is returned to the visitor if—

(a) the visitor asks for its return; and

(b) the officer is satisfied the visitor is about to leave the service.

Division 6 Requirements for searches

399 Requirements for personal search

(1) A person authorised under division 3, 4 or 5 to carry out a personal search (the ***searcher***) may do any 1 or more of the following in relation to the person being searched—

(a) remove and inspect an outer garment or footwear of the person;

Not authorised—indicative only

Not authorised—indicative only

(b) remove and inspect all things from the pockets of the person's clothing;

(c) touch the clothing worn by the person to the extent necessary to detect things in the person's possession;

(d) remove and inspect any detected thing.

(2) The searcher may exercise a power under subsection (1)(c) only if—

(a) the searcher is the same gender as the person; and

(b) the search is carried out in a part of a building that ensures the person's privacy.

(3) The searcher must—

(a) carry out the search in a way that respects the person's dignity to the greatest possible extent; and

(b) cause as little inconvenience to the person as is practicable in the circumstances.

400 Requirements for search requiring removal of clothing

(1) A search under division 3 or 4 requiring the removal of clothing of a person must be carried out by at least 2 persons authorised to carry out the search, but by no more persons than are reasonably necessary to carry out the search.

(2) Each person carrying out the search (each a ***searcher***) must be of the same gender as the person being searched.

(3) Before carrying out the search, 1 of the searchers must tell the person—

(a) that the person will be required to remove the person's clothing during the search; and

(b) why it is necessary to remove the clothing.

(4) The searcher must—

(a) ensure the search is carried out in a part of a building that ensures the person's privacy; and

(b) ensure, to the extent practicable, that the way in which the person is searched causes minimal embarrassment to the person; and

(c) take reasonable care to protect the person's dignity; and

(d) carry out the search as quickly as practicable; and

(e) allow the person to dress as soon as the search is finished.

(5) The searcher must, if reasonably practicable, give the person the opportunity to remain partly clothed during the search, including, for example, by allowing the person to dress the person's upper body before being required to remove clothing from the lower part of the body.

(6) If the searcher seizes clothing because of the search, the searcher must ensure the person is left with, or given, reasonably appropriate clothing.

401 Requirements for search of possessions

(1) A person authorised under division 3, 4 or 5 to carry out a search of a person's possessions (the ***searcher***) may—

(a) open or inspect a thing in the person's possession; and

(b) remove and inspect any detected thing.

(2) However, the searcher may exercise a power to inspect a thing under subsection (1) only if the person is present or has been given the opportunity to be present.

(3) Subsection (2) does not apply if the person obstructs the searcher in the exercise of the searcher's powers.

Division 7 Records of searches

402 Record of search must be made

(1) This section applies if—

Not authorised—indicative only

Not authorised—indicative only

(a) a search requiring the removal of clothing is carried out under division 3 or 4; or

(b) a person seizes anything found during a search under this part.

(2) As soon as practicable after carrying out the search, the person who carried out the search must make a written record of the following details of the search—

(a) the reasons for the search;

(b) the names of the persons present during the search;

(c) how the search was carried out;

(d) details of anything seized, including the reasons for seizing.

Division 8 Seizure

403 Seizure of harmful or other thing

(1) A person authorised under this part to carry out a search (the ***searcher***) may seize anything found during the search that the searcher reasonably suspects is—

(a) connected with, or is evidence of, the commission or intended commission of an offence against an Act; or

(b) for a search under division 2, 3 or 4—a harmful thing.

(2) If the searcher believes a seized thing is connected with, or is evidence of, the commission or intended commission of an offence against an Act, the searcher must give it to an authorised inspector for the Act.

(3) The seizure provisions of the Act mentioned in subsection (2) apply to the thing as if the searcher had seized it under the provisions of the Act that relate to the offence.

(4) If the authorised inspector is not reasonably satisfied the thing is evidence of the commission or intended commission of an

offence against the Act, the authorised inspector must return it to the searcher who must deal with it under this section.

(5) If the searcher believes a thing seized from a patient, or a thing returned under subsection (4), is a harmful thing, the searcher must—

(a) keep it for the patient and give it to the patient on the patient's discharge from the authorised mental health service or public sector health service facility; or

(b) give it to someone else if the patient is able to give, and has given, agreement to do so; or

(c) if the searcher is satisfied someone else is entitled to possession of the thing—give or send it to the person; or

(d) if the searcher is satisfied it is of negligible value—dispose of it in the way the administrator of the authorised mental health service, or the person in charge of the public sector health service facility, believes appropriate.

(6) A thing seized from a visitor, and returned to the searcher under subsection (4), is forfeited to the State if the searcher—

(a) can not find the visitor from whom it was seized, after making reasonable inquiries; or

(b) can not return it to the visitor, after making reasonable efforts.

(7) In applying subsection (6)—

(a) subsection (6)(a) does not require the searcher to make inquiries if it would be unreasonable in the particular circumstances to make inquiries to find the visitor; and

(b) subsection (6)(b) does not require the searcher to make efforts if it would be unreasonable in the particular circumstances to make efforts to return the thing to the visitor.

(8) Regard must be had to a thing's nature, condition and value in deciding—

(a) whether it is reasonable to make inquiries or efforts; and

Not authorised—indicative only

Not authorised—indicative only

(b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

(9) In this section—

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

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

404 Receipt for seized thing

(1) A person authorised under this part to carry out a search must give a receipt for a thing seized to the person from whom it was seized.

(2) The receipt must describe generally the thing seized and its condition.

405 Access to seized thing

(1) This section applies to a thing seized on a search under this part.

(2) 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.

(3) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

Division 9 Identity cards

406 Approval of identity card

(1) The administrator of an authorised mental health service that is a high security unit or approved service must approve an

identity card for each authorised security officer for the service.

(2) An approved identity card for an authorised security officer must—

(a) contain a recent photograph of the officer; and

(b) identify the person as an authorised security officer.

(3) In this section—

approved service means an authorised mental health service, or part of an authorised mental health service, approved by the chief psychiatrist under section 389(b) for the purpose of division 4, or under section 391(b) for the purpose of division 5.

Division 10 Compensation

407 Compensation for damage to possessions

(1) A patient or visitor (the ***claimant***) may claim from the State the cost of repairing or replacing the claimant's possessions damaged in the exercise or purported exercise of a power under this part.

(2) The cost may be claimed and ordered in a proceeding—

(a) brought in a court of competent jurisdiction; or

(b) for an offence against this Act brought against the claimant.

(3) A court may order an amount be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

Not authorised—indicative only

Not authorised—indicative only

Division 11 Exclusion of visitors

408 Administrator may refuse to allow person to visit patient

(1) The administrator of an authorised mental health service may refuse to allow a person to visit a patient of the service if the administrator is satisfied the proposed visit will adversely affect the patient's treatment and care.

Example for subsection (1)—

The administrator may be satisfied a patient's treatment and care will be adversely affected if, on a previous visit by a person, the patient's mental state deteriorated.

(2) The administrator must give the person written notice of the decision.

(3) The notice must state—

(a) the reasons for the decision; and

(b) that the person may appeal to the tribunal against the decision within 28 days after the person receives the notice; and

(c) how the appeal is made.

(4) This section does not permit the administrator to refuse to allow either of the following to visit a patient of the service—

(a) a person performing a function under an Act, including, for example, a community visitor performing a function under the *Public Guardian Act 2014*;

(b) a legal representative or health practitioner requested by the patient to visit.

Chapter 12 Mental Health Review Tribunal proceedings

Part 1 Preliminary

409 Purpose of ch 12

The purpose of this chapter is to provide for the tribunal—

(a) to review the following—

(i) treatment authorities;

(ii) forensic orders;

(iii) treatment support orders;

(iv) the fitness for trial of particular persons;

(v) the detention of minors in high security units; and

(b) to hear applications for the following—

(i) examination authorities;

(ii) approvals of regulated treatment;

(iii) approvals of transfers of particular persons into and out of Queensland.

410 Particular decisions of no effect for classified patient

(1) This section applies if the tribunal does any of the following on a review of a treatment authority, forensic order or treatment support order for a person who is a classified patient—

(a) changes the category of the authority or order to community;

(b) orders limited community treatment for the person;

(c) approves limited community treatment for the person.

Not authorised—indicative only

Not authorised—indicative only

(2) The change, order or approval is of no effect while the person is a classified patient.

Part 2 Review of treatment authorities

Division 1 Preliminary

411 Definitions for pt 2

In this part—

applicant review, of a treatment authority, see section 413(2).

periodic review, of a treatment authority, see section 413(1).

review, of a treatment authority, means any of the following—

(a) a periodic review of the authority;

(b) an applicant review of the authority;

(c) a tribunal review of the authority.

tribunal review, of a treatment authority, see section 413(3) and (4).

412 Matters to which tribunal must have regard

(1) In making a decision under this part in relation to a review of a treatment authority, the tribunal must have regard to the relevant circumstances of the person subject to the authority.

Examples of decisions in relation to a review of a treatment authority—

- deciding whether to confirm or revoke the authority
- deciding whether to confirm or change the category of the authority
- deciding whether the person is to receive any treatment in the community
- deciding whether to change or remove a condition to which the authority is subject or to impose a condition on the authority

(2) Subsection (1) does not limit any other provision of this part that requires the tribunal to have regard to a stated matter.

Division 2 When particular reviews are conducted

413 When reviews are conducted

(1) The tribunal must review (a ***periodic review***) a treatment authority—

(a) within 28 days after the authority is made; and

(b) within 6 months after the review under paragraph (a) is completed; and

(c) within 6 months after the review under paragraph (b) is completed; and

(d) at intervals of not more than 12 months after the review under paragraph (c) is completed.

(2) Also, the tribunal must review (an ***applicant review***) a treatment authority on application by—

(a) the person subject to the authority; or

(b) an interested person for the person mentioned in paragraph (a); or

(c) the chief psychiatrist.

(3) Further, the tribunal may at any time, on its own initiative, review (a ***tribunal review***) a treatment authority.

(4) If the tribunal receives written notice under section 210(3) of the amendment of a treatment authority, the tribunal must review (also a ***tribunal review***) the authority within 14 days after receiving the notice.

(5) This section is subject to sections 414 to 416 and chapter 16, part 2, division 6, subdivision 2.

Not authorised—indicative only

Not authorised—indicative only

414 When periodic review deferred

(1) This section applies if—

(a) an applicant review or a tribunal review (each a ***previous review***) of a treatment authority has been completed—

(i) within 6 months before a periodic review (the ***next scheduled review***) of the treatment authority must be conducted under section 413(1)(b) or (c); or

(ii) within 12 months before a periodic review (also the ***next scheduled review***) of the treatment authority must be conducted under section 413(1)(d); and

(b) the tribunal is satisfied there are no matters relevant to the next scheduled review that were not considered by the tribunal on the previous review.

(2) Section 413(1) is taken to require the next scheduled review of the treatment authority to be conducted—

(a) if the next scheduled review is to be conducted under section 413(1)(b) or (c)—within 6 months after the previous review was completed; or

(b) if the next scheduled review is to be conducted under section 413(1)(d)—within 12 months after the previous review was completed.

415 When tribunal must not conduct review

The tribunal must not conduct a review of a treatment authority if—

(a) an appeal to the Mental Health Court against the tribunal's decision on a review of the authority is pending; and

(b) the court has stayed the tribunal's decision on the review of the authority.

416 When particular tribunal review is not required

(1) This section applies to a tribunal review of a treatment authority mentioned in section 413(4), if the tribunal receives written notice under section 210(5) of the amendment of the authority.

(2) The tribunal is not required to conduct, or complete the hearing of, the review.

Division 3 Applications and notices of hearings

417 Application for applicant review to state orders sought

(1) An application for an applicant review of a treatment authority must state the orders sought by the applicant.

(2) An order sought must be an order mentioned in division 4.

418 Notice of hearing

(1) The tribunal must give each of the following persons written notice of the hearing of a review of a treatment authority—

(a) the person subject to the authority;

(b) for an applicant review, if the person is not the applicant—the applicant;

(c) the administrator of the authorised mental health service responsible for the person;

(d) if the person is a classified patient—the chief psychiatrist.

(2) The notice must be given at least 7 days before the hearing.

(3) If the review is a tribunal review, the notice must state—

(a) for a tribunal review mentioned in section 413(4)—that the tribunal proposes to consider whether to confirm the category of the treatment authority as inpatient; or

Not authorised—indicative only

Not authorised—indicative only

(b) for another tribunal review—any particular matter the tribunal proposes to consider on the review.

Division 4 Decisions and orders

Subdivision 1 Decisions to be made on review

419 Decisions

(1) On a periodic review of a treatment authority, the tribunal must decide to—

(a) confirm the authority; or

(b) revoke the authority.

Note—

See subdivision 2 for the orders the tribunal may make if it confirms the authority.

(2) On an applicant review of a treatment authority, the tribunal—

(a) must decide whether to make the orders sought by the applicant; and

(b) may make the orders under this division it considers appropriate.

(3) On a tribunal review of a treatment authority, the tribunal—

(a) must decide any particular matter stated in the notice given under section 418(3); and

(b) may make the orders under this division it considers appropriate.

420 Administrator to provide report

(1) For a periodic review of a treatment authority under section 413(1)(c), if the person subject to the authority does not have a personal guardian—

(a) 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 result in there being a less restrictive way for the person to receive treatment and care for the person's mental illness; and

(b) the tribunal must consider whether the appointment of a personal guardian for the person may result in there being a less restrictive way for the person to receive treatment and care for the person's mental illness.

(2) In this section—

health matter see the *Guardianship and Administration Act 2000*, schedule 2, section 4.

personal guardian, of a person, means a guardian for a health matter appointed by QCAT for the person under the *Guardianship and Administration Act 2000*.

421 Requirement to revoke treatment authority

(1) On a review of a treatment authority, the tribunal must revoke the authority if the tribunal considers—

(a) the treatment criteria no longer apply to the person subject to the authority; or

(b) there is a less restrictive way for the person to receive treatment and care for the person's mental illness.

(2) However, subsection (1) does not apply if the tribunal considers the person's capacity to consent to be treated for the person's mental illness is not stable.

Example of when a person's capacity to consent is not stable—

the person gains and loses capacity to consent to be treated during a short time period

Not authorised—indicative only

Not authorised—indicative only

Subdivision 2 Confirmation of treatment authority—related orders

422 Application of sdiv 2

This subdivision applies if, on a review of a treatment authority, the tribunal confirms the authority.

423 Change of category to community

If the category of the treatment authority is inpatient, the tribunal must change the category of the authority to community unless the tribunal considers that 1 or more of the following can not reasonably be met if the category of the authority is community—

(a) the person's treatment and care needs;

(b) the safety and welfare of the person;

(c) the safety of others.

424 Community category—deciding whether authorised doctor may reduce treatment in community

(1) This section applies if—

(a) the category of the treatment authority is community; or

(b) the tribunal changes the category of the treatment authority to community under section 423.

(2) The tribunal must decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.

425 Inpatient category—limited community treatment

(1) This section applies if the category of the treatment authority is inpatient.

(2) The tribunal may approve limited community treatment, or an extension of limited community treatment, for the person.

(3) In deciding whether to approve or extend limited community treatment under subsection (2), the tribunal must have regard to the purpose of limited community treatment.

(4) If the tribunal approves or extends limited community treatment under subsection (2), the tribunal must decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.

426 Conditions

(1) The tribunal may—

(a) change or remove a condition to which the treatment authority is subject; or

(b) impose a condition on the treatment authority.

(2) However, the tribunal may not impose a condition on the treatment authority that requires the person to take a particular medication or a particular dosage of a medication.

427 Transfer to another authorised mental health service

(1) The tribunal may order the person's transfer to another authorised mental health service to provide treatment and care for the person.

(2) In deciding whether to order the person's transfer under subsection (1), the tribunal must have regard to the following—

(a) the person's mental state and psychiatric history;

(b) the person's treatment and care needs;

(c) the capacity of the authorised mental health service to which the person is to be transferred;

(d) to the greatest extent practicable, the views, wishes and preferences of the person;

Not authorised—indicative only

Not authorised—indicative only

(e) without limiting paragraphs (a) to (d), whether the transfer is appropriate in the circumstances.

Example of when a transfer under this section may be appropriate—

to allow the person to be in closer proximity to their family, carers or other support persons

428 Change of category to inpatient

(1) This section applies if the category of the treatment authority is community.

(2) The tribunal may change the category of the treatment authority to inpatient, but only if the tribunal considers it is reasonably necessary for an authorised doctor to examine the person in order to review the person's treatment and care needs.

Note—

Under section 209, the authorised doctor who examines the person may change the nature or extent of the person's treatment in the community.

(3) If the tribunal changes the category of the treatment authority under this section to inpatient, the tribunal may authorise an authorised person to transport the person to an inpatient unit of a stated authorised mental health service.

(4) For subsection (3), an authorised person may transport the person to an inpatient unit of the stated authorised mental health service.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

429 Other orders

Subject to the other provisions of this subdivision, the tribunal may provide for any other matter the tribunal considers appropriate.

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

Division 1 Preliminary

430 Application of pt 3

This part applies to a forensic order (mental health) or forensic order (disability).

431 Definitions for pt 3

In this part—

applicant review, of a forensic order (mental health) or forensic order (disability), see section 433(2).

periodic review, of a forensic order (mental health) or forensic order (disability), see section 433(1).

review, of a forensic order (mental health) or forensic order (disability), means—

(a) an applicant review of the order; or

(b) a periodic review of the order; or

(c) a tribunal review of the order.

tribunal review, of a forensic order (mental health) or forensic order (disability), see section 433(3) and (4).

432 Matters to which tribunal must have regard

(1) In making a decision under this part in relation to a review of a forensic order (mental health) or forensic order (disability), the tribunal must have regard to the following—

(a) the relevant circumstances of the person subject to the order;

Not authorised—indicative only

Not authorised—indicative only

(b) the nature of the relevant unlawful act and the period of time that has passed since the act happened;

(c) any victim impact statement given to the tribunal under section 155 or 742 relating to the relevant unlawful act;

(d) if the Mental Health Court made a recommendation in the order about an intervention program for the person—the person's willingness to participate in the program if offered to the person.

Examples of decisions in relation to a review of a forensic order—

- deciding whether to confirm or revoke the order
- deciding whether to confirm or change the category of the order
- deciding whether the person is to receive any treatment in the community
- deciding whether to change or remove a condition to which the order is subject or to impose a condition on the order

(2) Subsection (1) does not limit any other provision of this part that requires the tribunal to have regard to a stated matter.

Division 2 When particular reviews are conducted

433 When reviews are conducted

(1) The tribunal must review (a ***periodic review***) the forensic order—

(a) within 6 months after the order is made; and

(b) at intervals of not more than 6 months after the review under paragraph (a) is completed.

(2) Also, the tribunal must review (an ***applicant review***) the forensic order on application by—

(a) the person subject to the order; or

(b) an interested person for the person mentioned in paragraph (a); or

(c) the Attorney-General; or

(d) if an authorised mental health service is responsible for the person—the chief psychiatrist; or

(e) if the forensic disability service is responsible for the person—the director of forensic disability.

(3) Further, the tribunal may at any time, on its own initiative, review (a ***tribunal review***) the forensic order.

(4) If the tribunal receives written notice under section 213(3) of the amendment of the forensic order, the tribunal must review (also a ***tribunal review***) the order within 21 days after receiving the notice.

(5) This section is subject to sections 434 to 437 and chapter 16, part 2, division 6, subdivision 2.

434 When periodic review deferred

(1) This section applies if—

(a) an applicant review or a tribunal review (each a ***previous review***) of the forensic order has been completed within 6 months before a periodic review (the ***next scheduled review***) of the order must be conducted under section 433(1)(a) or (b); and

(b) the tribunal is satisfied there are no matters relevant to the next scheduled review that were not considered by the tribunal on the previous review.

(2) Section 433(1) is taken to require the next scheduled review of the forensic order to be conducted within 6 months after the previous review was completed.

435 Requirement to conduct periodic review suspended

(1) This section applies if the person who is subject to the forensic order is transferred to an interstate mental health service or another country under part 10, division 2.

Not authorised—indicative only

Not authorised—indicative only

(2) The tribunal is not required to conduct a periodic review of the forensic order under section 433(1) while the person is out of Queensland because of the person's transfer under part 10, division 2.

436 When tribunal must not conduct review

The tribunal must not conduct a review of the forensic order if—

(a) an appeal to the Mental Health Court against the tribunal's decision on a review of the order is pending; and

(b) the court has stayed the tribunal's decision on the review of the order.

437 When particular tribunal review is not required

(1) This section applies to a tribunal review of the forensic order mentioned in section 433(4), if the tribunal receives written notice under section 213(5) of the amendment of the order.

(2) The tribunal is not required to conduct, or complete the hearing of, the review.

Division 3 Applications and notices of hearings

438 Application for applicant review to state orders sought

(1) An application for an applicant review of the forensic order must state the orders sought by the applicant.

(2) An order sought must be an order mentioned in division 4 or 6.

(3) However, during any non-revocation period for the forensic order, the application may seek an order revoking the forensic order only if the revocation is sought under section 457.

439 Notice of hearing

(1) The tribunal must give each of the following persons written notice of the hearing of a review of the forensic order—

(a) the person subject to the order;

(b) for an applicant review, if the person is not the applicant—the applicant;

(c) if an authorised mental health service is responsible for the person—

(i) the administrator of the service; and

(ii) the chief psychiatrist;

(d) if the forensic disability service is responsible for the person—

(i) the administrator of the service; and

(ii) the director of forensic disability;

(e) the Attorney-General.

(2) The notice must be given at least 14 days before the hearing.

(3) If the review is a tribunal review, the notice must state—

(a) for a tribunal review mentioned in section 433(4)—that the tribunal proposes to consider whether to confirm the category of the forensic order as inpatient; or

(b) for another tribunal review—any particular matter the tribunal proposes to consider on the review.

Division 4 Decisions and orders

Subdivision 1 Decisions to be made on review

440 Application of div 4

This division is subject to division 5.

Not authorised—indicative only

Not authorised—indicative only

441 Decisions

(1) On a periodic review of the forensic order, the tribunal must decide to—

(a) confirm the order; or

(b) revoke the order.

Notes—

1 See subdivision 2 for the orders the tribunal may make if it confirms the order.

2 See subdivision 3 for the orders the tribunal may make if the order is a forensic order (mental health) and the tribunal revokes the order.

(2) On an applicant review of the forensic order, the tribunal—

(a) must decide whether to make the orders sought by the applicant; and

(b) may make the orders under this division it considers appropriate.

Example for paragraph (b)—

If an applicant seeks an order changing the category of the forensic order from inpatient to community, the tribunal may decide not to change the category of the order, but may order that the person have limited community treatment of a stated extent.

(3) On a tribunal review of the forensic order, the tribunal—

(a) must decide any particular matter stated in the notice given under section 439(3); and

(b) may make the orders under this division it considers appropriate.

442 Requirement to confirm forensic order

(1) The tribunal must confirm the forensic order if the tribunal considers the order is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.

(2) Also, during any non-revocation period for the forensic order, the tribunal is taken, for section 443, to have confirmed the order.

Note—

The tribunal must not revoke the forensic order during the non-revocation period for the order. See section 452.

(3) Subsection (2) does not apply if the forensic order is a forensic order (mental health) and the tribunal decides to revoke the order under section 457.

Subdivision 2 Confirmation of forensic order—related orders

443 Application of sdiv 2

This subdivision applies if, on a review of the forensic order, the tribunal confirms the order.

444 Change or confirmation of category

(1) The tribunal may change the category of the forensic order.

(2) However, the tribunal may change the category of the forensic order to community, or confirm the category of the order as community, only if the tribunal is satisfied there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.

(3) This section is subject to section 445.

445 Inpatient category—orders about treatment in community

(1) This section applies if the tribunal—

(a) confirms the category of the forensic order as inpatient; or

(b) changes the category of the forensic order to inpatient.

Not authorised—indicative only

Not authorised—indicative only

(2) The tribunal must do 1 of the following—

(a) order that the person have no limited community treatment;

Note—

An order made under paragraph (a) may not be amended by an authorised doctor. See section 212(2).

(b) approve that an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may, at a future time—

(i) authorise limited community treatment for the person, to the extent and subject to the conditions decided by the tribunal; or

(ii) change the category of the order to community, subject to the conditions decided by the tribunal;

(c) order that the person have limited community treatment—

(i) of a stated extent; and

(ii) subject to the conditions decided by the tribunal, including whether, or the extent to which, an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may amend the forensic order in relation to treatment in the community.

(3) The tribunal may make an order under subsection (2)(b) or (c) only if the tribunal is satisfied there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.

(4) In deciding whether the tribunal is satisfied of the matters mentioned in subsection (3), the tribunal must have regard to—

(a) the purpose of limited community treatment; and

(b) the fact that—

(i) if an authorised mental health service is responsible for the person—an authorised doctor may increase the extent of treatment in the community for the person only if satisfied of the matters mentioned in section 212(3); or

(ii) if the forensic disability service is responsible for the person—a senior practitioner under the Forensic Disability Act may authorise treatment in the community for the person only if satisfied of the matters mentioned in the Forensic Disability Act, section 20(2).

446 Community category—orders about treatment in community

(1) This section applies if the tribunal—

(a) confirms the category of the forensic order as community; or

(b) changes the category of the forensic order to community.

(2) The tribunal must—

(a) order that an authorised doctor or a senior practitioner under the Forensic Disability Act must not change the category of the order to inpatient; or

(b) approve that an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may, at a future time, change the nature or extent of treatment in the community received by the person, to the extent and subject to the conditions decided by the tribunal.

Example of a change of extent of treatment in the community—

changing the category of the forensic order from community to inpatient, with or without limited community treatment

Not authorised—indicative only

Not authorised—indicative only

447 Conditions

(1) The tribunal may—

(a) change or remove a condition to which the forensic order is subject; or

(b) impose a condition on the forensic order.

(2) Without limiting subsection (1), the tribunal may impose a condition that the person must not contact a stated person, including, for example, a victim of the relevant unlawful act.

(3) However, the tribunal may not impose a condition on the forensic order that requires the person to take a particular medication or a particular dosage of a medication.

448 Other orders

Subject to the other provisions of this subdivision, the tribunal may provide for any other matter the tribunal considers appropriate.

Subdivision 3 Revocation of forensic order (mental health)—related orders

449 Application of sdiv 3

This subdivision applies if—

(a) the forensic order is a forensic order (mental health); and

(b) the tribunal decides to revoke the forensic order.

450 Making of treatment support order

(1) The tribunal must decide to make a treatment support order for the person if the tribunal considers a treatment support order, but not a forensic order, is necessary, because of the person's mental condition, to protect the safety of the

community, including from the risk of serious harm to other persons or property.

(2) For making a treatment support order under subsection (1), sections 144 and 145 apply as if—

(a) a reference in the sections to the Mental Health Court were a reference to the tribunal; and

(b) a reference in the sections to the person the subject of the reference were a reference to the person subject to the forensic order.

451 Making of treatment authority or no further order

(1) If the tribunal considers that neither a forensic order nor a treatment support order is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property, the tribunal may—

(a) make no further order for the person; or

(b) make a treatment authority for the person.

(2) The tribunal may make a treatment authority for the person under subsection (1)(b) only on the recommendation of an authorised psychiatrist who considers, after examining the person, that—

(a) the treatment criteria apply to the person; and

(b) there is no less restrictive way for the person to receive treatment and care for the person's mental illness.

(3) The treatment authority must state the following—

(a) the category of the authority;

(b) the authorised mental health service responsible for the person;

(c) the nature and extent of any limited community treatment the person is to receive;

(d) any conditions the tribunal considers necessary for the person's treatment and care, other than a condition

Not authorised—indicative only

Not authorised—indicative only

requiring the person to take a particular medication or a particular dosage of a medication.

(4) The tribunal may decide the category of the treatment authority is inpatient only if the tribunal is satisfied that 1 or more of the following can not reasonably be met if the category of the authority is community—

(a) the person's treatment and care needs;

(b) the safety and welfare of the person;

(c) the safety of others.

(5) However, if the person is a classified patient, the tribunal must decide the category of the authority is inpatient.

(6) In deciding the nature and extent of any limited community treatment under subsection (3)(c), the tribunal must have regard to the purpose of limited community treatment.

(7) If the tribunal decides the category of the treatment authority is community, the tribunal must decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.

(8) The treatment authority is taken to be a treatment authority made under section 49 by the authorised psychiatrist mentioned in subsection (2).

(9) Despite subsection (8) and section 413(1), the tribunal must review the treatment authority—

(a) within 6 months after the authority is made; and

(b) within 6 months after the review under paragraph (a) is completed; and

(c) at intervals of not more than 12 months after the review under paragraph (b) is completed.

(10) Sections 53 and 59 apply to the treatment authority as if a reference in the sections to the authorised doctor were a reference to the authorised psychiatrist mentioned in subsection (2).

(11) As soon as practicable after the treatment authority is made, the authorised psychiatrist mentioned in subsection (2) must decide the nature and extent of the treatment and care to be provided to the person under the authority.

Division 5 Restrictions on revoking or amending forensic orders

452 Orders with non-revocation period

(1) The tribunal must not revoke a forensic order under division 4 during any non-revocation period for the order.

(2) Subsection (1) is subject to section 457.

453 Order for person temporarily unfit for trial

(1) This section applies to a person subject to a forensic order if—

(a) a finding of unfitness has been made in relation to the person; and

(b) the proceeding against the person in relation to which the finding of unfitness was made has not been discontinued under section 490 or 491.

(2) The tribunal must not revoke the forensic order unless a treatment support order is made for the person under section 450.

Note—

If, on a review under part 6, the tribunal decides the person is fit for trial, the forensic order ends on the person's appearance at the mention of the proceeding for the relevant offence. See section 497(2).

454 Order for person charged with prescribed offence

(1) This section applies if a forensic order for a person was made on a reference in relation to a prescribed offence allegedly committed by the person.

Not authorised—indicative only

Not authorised—indicative only

(2) The tribunal must not revoke the forensic order unless—

(a) the person has been examined, under an order made under section 721, by an examining practitioner; and

(b) the tribunal has obtained and considered the examining practitioner's written report on the examination.

(3) This section is subject to section 452.

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

(1) This section applies if—

(a) the chief psychiatrist has, under section 313, suspended limited community treatment for the person or changed the category of the forensic order for the person to inpatient; and

Note—

Under section 313, the suspension of limited community treatment or change of category of the forensic order is for a period of not more than 7 days. The person may appeal to the tribunal against the chief psychiatrist's decision. See section 533.

(b) the suspension, or the change of category, is in effect when the tribunal—

(i) orders or approves limited community treatment for the person; or

(ii) orders that the category of the forensic order be changed to community.

(2) The tribunal's order or approval takes effect when the suspension, or change of category, ends.

Division 6 Other provisions

456 Transfer of responsibility for forensic patient

(1) On a review of a forensic order, the tribunal may order that responsibility for the person subject to the order be transferred to—

(a) if an authorised mental health service is responsible for the person—another authorised mental health service; or

(b) if an authorised mental health service is responsible for the person and the person is subject to a forensic order (disability)—another authorised mental health service or the forensic disability service; or

(c) if the forensic disability service is responsible for the person—an authorised mental health service.

(2) In deciding whether to make an order under subsection (1), the tribunal must have regard to each of the following—

(a) the person's mental state and psychiatric history;

(b) any intellectual disability of the person;

(c) the person's treatment and care needs;

(d) the security requirements for the person;

(e) if responsibility for the person is to be transferred to an authorised mental health service—the capacity of the authorised mental health service to which the person is to be transferred;

(f) to the greatest extent practicable, the views, wishes and preferences of the person;

(g) without limiting paragraphs (a) to (f), whether the transfer is appropriate in the circumstances.

Example of when a transfer under this section may be appropriate—

to allow the person to be in closer proximity to their family, carers or other support persons

Not authorised—indicative only

Not authorised—indicative only

(3) However, the tribunal may order under subsection (1) that responsibility for the person be transferred to the forensic disability service only if the chief executive (forensic disability) certifies, in writing, that the forensic disability service has—

(a) the physical capacity to accommodate the person; and

(b) the capacity to provide care for the person under the order.

(4) For subsection (3), section 148 applies as if—

(a) a reference in the section to the Mental Health Court were a reference to the tribunal; and

(b) a reference in the section to section 147 were a reference to subsection (1).

457 Person with dual disability

(1) This section applies to a person who—

(a) has a dual disability; and

(b) is subject to a forensic order (mental health).

(2) If the tribunal is satisfied the person no longer requires involuntary treatment and care for the person's mental illness, the tribunal must—

(a) revoke the forensic order (mental health); and

(b) make a forensic order (disability) for the person.

(3) For making the forensic order (disability), section 135 and chapter 5, part 4, division 2, subdivision 2 apply as if—

(a) a reference in the provisions to the Mental Health Court were a reference to the tribunal; and

(b) a reference in the provisions to the person the subject of the reference were a reference to the person subject to the forensic order (mental health).

(4) If there was a non-revocation period for the forensic order (mental health), the forensic order (disability) is taken to have the same non-revocation period.

(5) For subsection (4), the forensic order (disability) is taken to have been made when the forensic order (mental health) was made.

(6) The revocation of the forensic order (mental health) under this section does not affect any recommendation made by the court under section 136.

Part 4 Review of forensic orders (Criminal Code)

458 Application of pt 4

This part applies to a forensic order (Criminal Code).

459 Tribunal to conduct hearing

The tribunal must, within 21 days after the tribunal is notified of the making of the forensic order (Criminal Code) for a person, conduct a hearing for the purpose of making a forensic order (mental health) or forensic order (disability) for the person.

460 Notice of hearing

(1) The tribunal must give the following persons written notice of the hearing—

(a) the person;

(b) the Attorney-General;

(c) the chief psychiatrist;

(d) the director of forensic disability;

Not authorised—indicative only

Not authorised—indicative only

(e) the administrator of the authorised mental health service to which the person has been admitted under the forensic order (Criminal Code).

(2) The notice must be given at least 14 days before the hearing.

461 Making of forensic order

(1) The tribunal must make a forensic order (mental health) for the person unless subsection (2) applies.

(2) The tribunal must make a forensic order (disability) for the person if the tribunal considers—

(a) the person has an intellectual disability but does not have a dual disability; or

(b) the person has a dual disability but does not require involuntary treatment and care for the person's mental illness.

(3) On the making of the forensic order under subsection (1) or (2), the forensic order (Criminal Code) ends.

462 Application of ch 5 provisions

For making a forensic order (mental health) or forensic order (disability) under section 461, section 135 and chapter 5, part 4, division 2, subdivision 2 apply as if—

(a) a reference in the provisions to the Mental Health Court were a reference to the tribunal; and

(b) a reference in the provisions to the person the subject of the reference were a reference to the person subject to the forensic order (Criminal Code).

Part 5 Review of treatment support orders

Division 1 Preliminary

463 Definitions for pt 5

In this part—

applicant review, of a treatment support order, see section 465(2).

periodic review, of a treatment support order, see section 465(1).

review, of a treatment support order, means any of the following—

(a) a periodic review of the order;

(b) an applicant review of the order;

(c) a tribunal review of the order.

tribunal review, of a treatment support order, see section 465(3) and (4).

464 Matters to which tribunal must have regard

(1) In making a decision under this part in relation to a review of a treatment support order, the tribunal must have regard to the following—

(a) the relevant circumstances of the person subject to the order;

(b) the nature of the relevant unlawful act and the period of time that has passed since the act happened;

(c) any victim impact statement given to the tribunal under section 155 or 742 relating to the relevant unlawful act;

(d) if the order was made because a forensic order (mental health) for the person was revoked and the Mental

Not authorised—indicative only

Not authorised—indicative only

Health Court made a recommendation in the forensic order about an intervention program for the person—the person's willingness to participate in the program if offered to the person.

Note—

See section 450 for when the tribunal, on deciding to revoke a forensic order (mental health) for a person, may make a treatment support order for the person.

Examples of decisions in relation to a review of a treatment support order—

- deciding whether to confirm or revoke the order
- deciding whether to confirm or change the category of the order
- deciding whether the person is to receive any treatment in the community
- deciding whether to change or remove a condition to which the order is subject or to impose a condition on the order

(2) Subsection (1) does not limit any other provision of this part that requires the tribunal to have regard to a stated matter.

Division 2 When particular reviews are conducted

465 When reviews are conducted

(1) The tribunal must review (a ***periodic review***) a treatment support order—

(a) within 6 months after the order is made; and

(b) at intervals of not more than 6 months after the review under paragraph (a) is completed.

(2) Also, the tribunal must review (an ***applicant review***) a treatment support order on application by—

(a) the person subject to the order; or

(b) an interested person for the person mentioned in paragraph (a); or

(c) the chief psychiatrist.

(3) Further, the tribunal may at any time, on its own initiative, review (a ***tribunal review***) a treatment support order.

(4) If the tribunal receives written notice under section 217(3) of the amendment of a treatment support order, the tribunal must review (also a ***tribunal review***) the order within 14 days after receiving the notice.

(5) This section is subject to sections 466 to 469 and chapter 16, part 2, division 6, subdivision 2.

466 When periodic review deferred

(1) This section applies if—

(a) an applicant review or a tribunal review (each a ***previous review***) of a treatment support order has been completed within 6 months before a periodic review (the ***next scheduled review***) of the order must be conducted under section 465(1)(a) or (b); and

(b) the tribunal is satisfied there are no matters relevant to the next scheduled review that were not considered by the tribunal on the previous review.

(2) Section 465(1) is taken to require the next scheduled review of the treatment support order to be conducted within 6 months after the previous review was completed.

467 Requirement to conduct periodic review suspended

(1) This section applies if a person who is subject to a treatment support order is transferred to an interstate mental health service or another country under part 10, division 2.

(2) The tribunal is not required to conduct a periodic review of the treatment support order under section 465(1) while the person is out of Queensland because of the person's transfer under part 10, division 2.

Not authorised—indicative only

Not authorised—indicative only

468 When tribunal must not conduct review

The tribunal must not conduct a review of a treatment support order if—

(a) an appeal to the Mental Health Court against the tribunal's decision on a review of the order is pending; and

(b) the court has stayed the tribunal's decision on the review of the order.

469 When particular tribunal review is not required

(1) This section applies to a tribunal review of a treatment support order mentioned in section 465(4), if the tribunal receives written notice under section 217(5) of the amendment of the order.

(2) The tribunal is not required to conduct, or complete the hearing of, the review.

Division 3 Applications and notices of hearings

470 Application for applicant review to state orders sought

(1) An application for an applicant review of a treatment support order must state the orders sought by the applicant.

(2) An order sought must be an order mentioned in division 4.

471 Notice of hearing

(1) The tribunal must give each of the following persons written notice of the hearing of a review of a treatment support order—

(a) the person subject to the order;

(b) for an applicant review, if the person is not the applicant—the applicant;

(c) the administrator of the authorised mental health service responsible for the person;

(d) the chief psychiatrist.

(2) The notice must be given at least 7 days before the hearing.

(3) If the review is a tribunal review, the notice must state—

(a) for a tribunal review mentioned in section 465(4)—that the tribunal proposes to consider whether to confirm the category of the treatment support order as inpatient; or

(b) for another tribunal review—any particular matter the tribunal proposes to consider on the review.

Division 4 Decisions and orders

Subdivision 1 Decisions to be made on review

472 Decisions

(1) On a periodic review of a treatment support order, the tribunal must decide to—

(a) confirm the order; or

(b) revoke the order.

Notes—

1 See subdivision 2 for the orders the tribunal may make if it confirms the order.

2 See subdivision 3 for the orders the tribunal may make if it revokes the order.

(2) On an applicant review of a treatment support order, the tribunal—

(a) must decide whether to make the orders sought by the applicant; and

(b) may make the orders under this division it considers appropriate.

Not authorised—indicative only

Not authorised—indicative only

(3) On a tribunal review of a treatment support order, the tribunal—

(a) must decide any particular matter stated in the notice given under section 471(3); and

(b) may make the orders under this division it considers appropriate.

473 Requirement to confirm treatment support order

(1) On a review of a treatment support order, the tribunal must confirm the order if the tribunal considers the order is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.

(2) Also, the tribunal must confirm the treatment support order if—

(a) a finding of unfitness has been made in relation to the person; and

(b) the person has not been found fit for trial on a review of the person's fitness for trial under chapter 12, part 6; and

(c) the proceeding for the relevant offence has not been discontinued under section 490 or 491.

Subdivision 2 Confirmation of treatment support order—related orders

474 Application of sdiv 2

This subdivision applies if, on a review of a treatment support order, the tribunal confirms the order.

475 Change of category to community

If the category of the treatment support order is inpatient, the tribunal must change the category of the order to community

unless the tribunal considers that 1 or more of the following can not reasonably be met if the category of the order is community—

(a) the person's treatment and care needs;

(b) the safety and welfare of the person;

(c) the safety of others.

476 Community category—deciding whether authorised doctor may reduce treatment in community

(1) This section applies if—

(a) the category of the treatment support order is community; or

(b) the tribunal changes the category of the treatment support order to community under section 475.

(2) The tribunal must decide whether an authorised doctor may, under section 216(1), amend the person's treatment support order to reduce the extent of treatment in the community received by the person.

477 Inpatient category—limited community treatment

(1) This section applies if the category of the treatment support order is inpatient.

(2) The tribunal may approve limited community treatment, or an extension of limited community treatment, for the person.

(3) In deciding whether to approve or extend limited community treatment under subsection (2), the tribunal must have regard to the purpose of limited community treatment.

(4) If the tribunal approves or extends limited community treatment under subsection (2), the tribunal must also decide whether an authorised doctor may, under section 216(1), amend the person's treatment support order to reduce the extent of treatment in the community received by the person.

Not authorised—indicative only

Not authorised—indicative only

478 Conditions

(1) The tribunal may—

(a) change or remove a condition to which the treatment support order is subject; or

(b) impose a condition on the treatment support order.

(2) Without limiting subsection (1), the tribunal may impose a condition that the person must not contact a stated person, including, for example, a victim of the relevant unlawful act.

(3) However, the tribunal may not impose a condition on the treatment support order that requires the person to take a particular medication or a particular dosage of a medication.

479 Transfer to another authorised mental health service

(1) The tribunal may order the person's transfer to another authorised mental health service to provide treatment and care for the person.

(2) In deciding whether to order the person's transfer under subsection (1), the tribunal must have regard to the following—

(a) the person's mental state and psychiatric history;

(b) the person's treatment and care needs;

(c) the security requirements for the person;

(d) the capacity of the authorised mental health service to which the person is to be transferred;

(e) to the greatest extent practicable, the views, wishes and preferences of the person;

(f) without limiting paragraphs (a) to (e), whether the transfer is appropriate in the circumstances.

Example of when a transfer under this section may be appropriate—

to allow the person to be in closer proximity to their family, carers or other support persons

480 Change of category to inpatient

(1) This section applies if the category of the treatment support order is community.

(2) The tribunal may change the category of the order to inpatient, but only if the tribunal considers it is reasonably necessary for an authorised doctor to examine the person in order to review the person's treatment and care needs.

Note—

Under section 216, the authorised doctor who examines the person may change the nature or extent of the person's treatment in the community.

(3) If the tribunal changes the category of the treatment support order under this section to inpatient, the tribunal may authorise an authorised person to transport the person to an inpatient unit of a stated authorised mental health service.

(4) For subsection (3), an authorised person may transport the person to an inpatient unit of the stated authorised mental health service.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

481 Other orders

Subject to the other provisions of this subdivision, the tribunal may provide for any other matter the tribunal considers appropriate.

Subdivision 3 Revocation of treatment support order—related orders

482 Application of sdiv 3

This subdivision applies if the tribunal decides to revoke the treatment support order.

Not authorised—indicative only

Not authorised—indicative only

483 Making of treatment authority or no further order

(1) The tribunal may—

(a) make no further order for the person; or

(b) make a treatment authority for the person.

(2) The tribunal may make a treatment authority for the person under subsection (1)(b) only on the recommendation of an authorised psychiatrist who considers, after examining the person, that—

(a) the treatment criteria apply to the person; and

(b) there is no less restrictive way for the person to receive treatment and care for the person's mental illness.

(3) The treatment authority must state the following—

(a) the category of the authority;

(b) the authorised mental health service responsible for the person;

(c) the nature and extent of any limited community treatment the person is to receive;

(d) any conditions the tribunal considers necessary for the person's treatment and care, other than a condition requiring the person to take a particular medication or a particular dosage of a medication.

(4) The tribunal may decide the category of the treatment authority is inpatient only if the tribunal is satisfied that 1 or more of the following can not reasonably be met if the category of the authority is community—

(a) the person's treatment and care needs;

(b) the safety and welfare of the person;

(c) the safety of others.

(5) In deciding the nature and extent of any limited community treatment under subsection (3)(c), the tribunal must have regard to the purpose of limited community treatment.

(6) If the tribunal decides the category of the treatment authority is community, the tribunal must decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.

(7) The treatment authority is taken to be a treatment authority made under section 49 by the authorised psychiatrist mentioned in subsection (2).

(8) Despite subsection (7) and section 413(1), the tribunal must review the treatment authority—

(a) within 6 months after the authority is made; and

(b) within 6 months after the review under paragraph (a) is completed; and

(c) at intervals of not more than 12 months after the review under paragraph (b) is completed.

(9) Sections 53 and 59 apply to the treatment authority as if a reference in the sections to the authorised doctor were a reference to the authorised psychiatrist mentioned in subsection (2).

(10) As soon as practicable after the treatment authority is made, the authorised psychiatrist mentioned in subsection (2) must decide the nature and extent of the treatment and care to be provided to the person under the authority.

Part 6 Review of fitness for trial

Division 1 Review

484 Application of div 1

This division applies to a person charged with an offence if—

(a) a finding of unfitness has been made in relation to the person; and

(b) the person has not been found fit for trial; and

Not authorised—indicative only

Not authorised—indicative only

(c) the proceeding against the person for the offence has not been discontinued under this Act or otherwise.

485 Meaning of *finding of unfitness*

For this division, a ***finding of unfitness*** is made in relation to a person if—

(a) on a reference in relation to the person, the Mental Health Court decides under section 118 the person is unfit for trial and the unfitness for trial is not permanent; or

Note—

Under section 132, the Mental Health Court must make a forensic order (mental health), forensic order (disability) or treatment support order for the person.

(b) on the trial of the person for an indictable offence, a jury makes a section 613 finding or section 645 finding in relation to the person.

486 When reviews are conducted

(1) The tribunal must review the person's fitness for trial—

(a) for the period of 1 year starting on the day the finding of unfitness is made—at intervals of not more than 3 months; and

(b) after the period mentioned in paragraph (a) has ended—at intervals of not more than 6 months after the last review under paragraph (a) is completed.

(2) Also, the tribunal must review the person's fitness for trial on application by—

(a) the person; or

(b) an interested person for the person mentioned in paragraph (a); or

(c) the chief psychiatrist; or

(d) the director of forensic disability.

(3) Further, the tribunal may at any time, on its own initiative, review the person's fitness for trial.

487 Notice of hearing

(1) The tribunal must give each of the following persons written notice of the hearing of a review of the person's fitness for trial—

(a) the person;

(b) for a review under section 486(2), if the person is not the applicant—the applicant;

(c) if an authorised mental health service is responsible for the person—

(i) the administrator of the service; and

(ii) the chief psychiatrist;

(d) if the forensic disability service is responsible for the person—

(i) the administrator of the service; and

(ii) the director of forensic disability;

(e) the Attorney-General.

(2) The notice must be given at least 7 days before the hearing.

488 Decisions on review

(1) On the hearing of the review, the tribunal must consider the person's mental state and decide whether the person is fit for trial.

(2) If, on the last review conducted under section 486(1)(a), or on a review conducted under section 486(1)(b), the tribunal decides the person is unfit for trial, the tribunal must also decide whether the person is likely to be fit for trial in a reasonable time.

Not authorised—indicative only

Not authorised—indicative only

Division 2 Procedures following review if person unfit for trial

489 Application of div 2

This division applies if, on a review under division 1 of the fitness for trial of a person charged with an offence (the ***relevant offence***), the tribunal decides the person is unfit for trial.

490 Director of public prosecutions to decide whether proceeding to be discontinued

The director of public prosecutions must—

(a) within 28 days after receiving written notice of the tribunal's decision, decide whether to discontinue the proceeding against the person for the relevant offence; and

Note—

The tribunal must give the director of public prosecutions written notice of the tribunal's decision. See section 755(3).

(b) within 7 days after making the decision under paragraph (a), give the tribunal written notice of the decision.

491 Proceeding discontinued at end of prescribed period

(1) The proceeding against the person for the relevant offence is discontinued at the end of the prescribed period if—

(a) the director of public prosecutions has not decided under section 490 to discontinue the proceeding; or

(b) the tribunal has not decided the person is fit for trial.

(2) For subsection (1), the ***prescribed period*** is—

(a) for a proceeding for an offence for which the person is liable to life imprisonment—7 years from the day the finding of unfitness was made; or

(b) for a proceeding for another offence—3 years from the day the finding of unfitness was made.

(3) In calculating the prescribed period, the following periods must be disregarded—

(a) a period for which the person is a patient required to return;

(b) a period for which the Forensic Disability Act, section 113 applies to the person.

492 Effect of discontinuing proceeding

(1) This section applies if the proceeding against the person for the relevant offence is discontinued—

(a) by the director of public prosecutions under section 490; or

(b) under section 491.

(2) The director of public prosecutions must, within 7 days after the proceeding is discontinued, give each of the following persons written notice of the discontinuance of the proceeding—

(a) the person;

(b) the registrar of the court in which the proceeding for the relevant offence was being conducted;

(c) if the director of public prosecutions was not the prosecuting authority for the relevant offence—the prosecuting authority for the relevant offence;

(d) the tribunal;

(e) if an authorised mental health service is responsible for the person—the chief psychiatrist;

(f) if the forensic disability service is responsible for the person—the director of forensic disability;

(g) the Attorney-General.

Not authorised—indicative only

Not authorised—indicative only

(3) The person can not be prosecuted again for the relevant offence.

(4) Despite the discontinuance of the proceeding, the forensic order or treatment support order to which the person is subject continues in force.

Note—

If the proceeding against the person for the offence is discontinued other than under section 490 or 491, the order to which the person is subject ends. See section 154.

493 Proceeding may be discontinued at other time

Nothing in this division prevents the proceeding against the person for the relevant offence being discontinued at any time, other than under section 490 or 491.

Division 3 Procedures following review if person fit for trial

494 Application of div 3

This division applies if, on a review under division 1 of the fitness for trial of a person charged with an offence (the ***relevant offence***), the tribunal decides the person is fit for trial.

495 Definitions for div 3

In this division—

relevant court means the court in which the proceeding for the relevant offence has been brought.

relevant offence see section 494.

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

The director of public prosecutions must, within 7 days after receiving written notice of the tribunal's decision, give written notice of the tribunal's decision to—

(a) the registrar of the relevant court; and

(b) if the director of public prosecutions is not the prosecuting authority for the relevant offence—the prosecuting authority for the relevant offence.

Note—

The tribunal must give the director of public prosecutions written notice of the tribunal's decision. See section 755(3).

497 Listing proceeding for mention

(1) The registrar of the relevant court must arrange for the proceeding for the relevant offence to be listed for mention—

(a) within 7 days after being notified of the tribunal's decision; or

(b) if the court can not be constituted within the period mentioned in paragraph (a)—at the earliest opportunity after the end of that period.

(2) On the person's appearance at the mention of the proceeding, the forensic order or treatment support order to which the person is subject ends.

(3) An authorised person may transport the person from the authorised mental health service in which the person is being detained to the relevant court for the person's appearance at the mention of the proceeding.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

(4) However, subsection (3) does not prevent the person appearing at the mention of the proceeding by remote

Not authorised—indicative only

Not authorised—indicative only

conferencing while remaining at the authorised mental health service.

(5) The person may be detained at the authorised mental health service until—

(a) the person leaves the service to appear at the mention of the proceeding; or

(b) if the person appears at the mention of the proceeding by remote conferencing while remaining at the service—the person is taken into custody.

(6) In this section—

mention includes review.

497A Prosecuting authority to give chief psychiatrist notice of ending of order

The prosecuting authority for the relevant offence must, within 7 days after the forensic order or treatment support order for the person ends under section 497(2), give the chief psychiatrist written notice that the order has ended under that section on a stated day.

497B Disclosure of particular information on ending of order

(1) The chief psychiatrist must, within 7 days after receiving notice under section 497A of the ending of the forensic order or treatment support order for the person, give the chief executive (justice) written notice under subsection (2).

(2) The notice must state each period for which the category of the forensic order or treatment support order, or of any previous related order, was inpatient.

Note—

See section 797A for the effect of a period for which the category of a forensic order or treatment support order is inpatient.

(3) The chief executive (justice) must, within 7 days after receiving the notice, give a copy of the notice to—

(a) the director of public prosecutions; and

(b) if the person is a child—the chief executive (youth justice); and

(c) if the person has at any time been in, or immediately after the relevant appearance is in, the custody of the chief executive (corrective services) in relation to the relevant offence—the chief executive (corrective services).

Note—

See the *Corrective Services Act 2006*, section 7 for when a person is taken to be in the custody of the chief executive (corrective services).

(4) In this section—

previous related order, in relation to a forensic order or treatment support order (each a ***relevant order***), means—

(a) a forensic order that ended or was revoked on the making of the relevant order; or

(b) a forensic order that ended or was revoked on the making of the forensic order mentioned in paragraph (a).

Notes—

1 See section 461 for the making of a forensic order (mental health) or forensic order (disability) for a person subject to a forensic order (Criminal Code).

2 See section 457 for the making of a forensic order (disability) on the revocation of a forensic order (mental health).

3 See section 450 for the making of a treatment support order on the revocation of a forensic order (mental health).

relevant appearance, for a person who was subject to a forensic order or treatment support order that ended under section 497(2), means the appearance of the person at the mention of the proceeding for the relevant offence that resulted in the ending of the order.

Not authorised—indicative only

Not authorised—indicative only

Part 7 Review of detention of minors in high security units

498 Application of pt 7

This part applies if the chief psychiatrist approves—

(a) under section 70, that the administrator of a high security unit may give consent for a minor to be transported to the high security unit for assessment, treatment and care; or

(b) under section 351, the transfer of responsibility for a minor to a high security unit.

Note—

The administrator of the high security unit must give the tribunal written notice of the minor's admission, or transfer, to the high security unit. See sections 77 and 358.

499 When reviews are conducted

(1) The tribunal must review the minor's detention in the high security unit—

(a) within 7 days after the tribunal is notified of the chief psychiatrist's approval; and

(b) at intervals of not more than 3 months after the review under paragraph (a) is completed.

(2) Also, the tribunal must review the minor's detention in the high security unit on application by—

(a) the minor; or

(b) an interested person for the minor.

(3) Further, the tribunal may at any time, on its own initiative, review the minor's detention in the high security unit.

500 Notice of hearing

(1) The tribunal must give each of the following persons written notice of the hearing of a review of the minor's detention in the high security unit—

(a) the minor;

(b) for a review under section 499(2), if the minor is not the applicant—the applicant;

(c) the administrator of the high security unit;

(d) the chief psychiatrist.

Note—

See section 287(5) for when the notice may be given to the minor's parent as well as, or instead of, the minor.

(2) The notice must be given at least 7 days before the hearing.

(3) However, subsection (2) does not apply for the first review of the minor's detention.

501 Decision on review

(1) On a review of the minor's detention in the high security unit, the tribunal must decide whether—

(a) the minor should continue to be detained in the high security unit; or

(b) responsibility for the minor should be transferred from the high security unit to an authorised mental health service that is not a high security unit.

(2) In deciding the review, the tribunal must have regard to the following—

(a) the minor's mental state and psychiatric history;

(b) the minor's treatment and care needs;

(c) the minor's security requirements.

Not authorised—indicative only

Not authorised—indicative only

Part 8 Applications for examination authorities

502 Application for examination authority

(1) The following persons may apply to the tribunal for an authority (an ***examination authority***) for another person—

(a) the administrator of an authorised mental health service;

(b) a person authorised in writing by the administrator of an authorised mental health service to make an application under this section;

(c) a person who has received advice, from a doctor or authorised mental health practitioner, about the clinical matters for the person who is the subject of the application.

Note—

See section 32 for the powers of a doctor or authorised mental health practitioner under an examination authority.

(2) 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 to satisfy the requirements under section 504(2) for making an examination authority for the person.

Note—

The application must be made in the approved form. See section 725.

(3) In this section—

clinical matters, for a person, means—

(a) general information about the treatment criteria, their application to the person, and whether there is a less restrictive way for the person to receive treatment and care for the person's mental illness; and

(b) whether the behaviour of the person, or other relevant factors, could reasonably be considered to satisfy the

requirements under section 504(2) for making an examination authority for the person; and

(c) options for the treatment and care of the person; and

(d) how the person might be encouraged to have a voluntary examination relating to the person's mental illness.

503 Notice of hearing

(1) The tribunal must give the applicant written notice of the hearing of the application.

(2) The notice must be given—

(a) at least 3 days before the hearing; or

(b) if the applicant agrees to a shorter period before the hearing—at least the agreed period before the hearing.

504 Decision on application

(1) In deciding the application, the tribunal must issue, or refuse to issue, an examination authority for the person.

(2) However, the tribunal may issue an examination authority for the person only if the tribunal considers—

(a) the person has, or may have, a mental illness; and

(b) the person does not, or may not, have capacity to consent to be treated for the mental illness; and

(c) either—

(i) reasonable attempts have been made to encourage the person to have a voluntary examination relating to the person's mental illness; or

(ii) it is not practicable to attempt to encourage the person to have a voluntary examination relating to the person's mental illness; and

(d) there is, or may be, an imminent risk, because of the person's mental illness, of—

Not authorised—indicative only

Not authorised—indicative only

(i) serious harm to the person or someone else; or

(ii) the person suffering serious mental or physical deterioration.

(3) An examination authority must—

(a) be in the approved form; and

(b) state the authorised mental health service responsible for the examination of the person under the authority.

505 Duration of examination authority

An examination authority is in force for 7 days after the day it is issued.

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

The tribunal must give a copy of an examination authority to the administrator of the authorised mental health service stated in the authority.

Part 9 Applications for approval of regulated treatment

Division 1 Electroconvulsive therapy

507 Who may apply

A doctor may apply to the tribunal for approval to perform electroconvulsive therapy on another person if the doctor is satisfied—

(a) the person is an adult who is—

(i) subject to a treatment authority, forensic order or treatment support order; or

(ii) unable to give informed consent to the therapy; or

(b) the person is a minor.

508 Notice of hearing

(1) The tribunal must give the following persons written notice of the hearing of the application—

(a) the person the subject of the application;

(b) the applicant;

(c) the administrator of the authorised mental health service identified in the application as the service in which the electroconvulsive therapy is to be performed.

(2) The notice must be given—

(a) if a certificate under section 237(3) is in force for the person—

(i) at least 3 days before the hearing; or

(ii) if the person, or an interested person for the person, agrees to a shorter period before the hearing—at least the agreed period before the hearing; or

(b) otherwise—

(i) at least 7 days before the hearing; or

(ii) if the person, or an interested person for the person, agrees to a shorter period before the hearing—at least the agreed period before the hearing.

509 Decision on application

(1) In deciding the application, the tribunal must give, or refuse to give, approval for electroconvulsive therapy to be performed on the person.

(2) In deciding whether to give, or refuse to give, the approval, the tribunal must have regard to—

(a) if the person is an adult—

Not authorised—indicative only

Not authorised—indicative only

(i) whether the adult is able to give informed consent to the therapy; and

(ii) to the greatest extent practicable, any views, wishes and preferences the adult has expressed about the therapy, whether in an advance health directive or otherwise; or

(b) if the person is a minor—

(i) the views of the minor's parents; and

(ii) the views, wishes and preferences of the minor.

(3) Subject to subsections (4) to (6), the tribunal may give the approval only if the tribunal is satisfied the person is—

(a) an adult who is not able to give informed consent to the therapy, whether or not the adult is subject to a treatment authority, forensic order or treatment support order; or

(b) an adult who is—

(i) able to give informed consent to the therapy; and

(ii) subject to a treatment authority, forensic order or treatment support order; or

(c) a minor.

(4) If subsection (3)(a) applies, the tribunal must also be satisfied—

(a) the therapy has clinical merit and is appropriate in the circumstances; and

(b) evidence supports the effectiveness of the therapy for the adult's particular mental illness; and

(c) if the therapy has previously been performed on the adult—of the effectiveness of the therapy for the adult.

(5) If subsection (3)(b) applies, the tribunal must also be satisfied—

(a) the applicant has given the adult the explanation required under section 234; and

(b) the adult has given informed consent to the therapy under chapter 7, part 10.

(6) If subsection (3)(c) applies, the tribunal must also be satisfied—

(a) the therapy has clinical merit and is appropriate in the circumstances; and

(b) evidence supports the effectiveness of the therapy for—

(i) the minor's particular mental illness; and

(ii) persons of the minor's age; and

(c) if the therapy has previously been performed on the minor—of the effectiveness of the therapy for the minor; and

(d) the performance of the therapy on the minor is in the minor's best interests.

(7) If the tribunal gives the approval, the approval—

(a) must state the number of treatments that may be performed in a stated period under the approval; and

(b) may be made subject to the conditions the tribunal considers appropriate.

Division 2 Non-ablative neurosurgical procedures

510 Who may apply

(1) 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 under chapter 7, part 10.

(2) The application must be accompanied by a copy of the person's consent.

Not authorised—indicative only

Not authorised—indicative only

511 Notice of hearing

(1) The tribunal must give the following persons written notice of the hearing of the application—

(a) the person the subject of the application;

(b) the applicant;

(c) the administrator of the authorised mental health service identified in the application as the service in which the non-ablative neurosurgical procedure is to be performed.

(2) The notice must be given at least 7 days before the hearing.

512 Decision on application

(1) In deciding the application, the tribunal must give, or refuse to give, approval for the non-ablative neurosurgical procedure to be performed on the person.

(2) The tribunal may give the approval only if the tribunal is satisfied—

(a) the applicant has given the person the explanation required under section 234; and

(b) the person has given informed consent to the procedure under chapter 7, part 10; and

(c) the procedure has clinical merit and is appropriate in the circumstances; and

(d) alternatives to the procedure that could reasonably be expected to produce a sufficient and lasting benefit for the person have previously been provided to the person without a sufficient and lasting benefit; and

(e) the procedure is to be performed by an appropriately qualified person.

(3) The tribunal may give the approval subject to the conditions the tribunal considers appropriate.

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

Division 1 Transfers into Queensland

513 Definitions for div 1

In this division—

interstate forensic order means an order made under a corresponding law of another State, however described, that provides for similar matters to a forensic order (mental health) or forensic order (disability).

interstate transfer approval, in relation to a person, means an approval under this division for the transfer of the person from an interstate mental health service to an authorised mental health service or the forensic disability service.

patient seeking transfer means—

(a) in relation to an interstate transfer approval, the person who is the subject of the approval; or

(b) in relation to an application for an interstate transfer approval, the person who would be the subject of the approval if the approval were granted.

514 Who may apply

A person subject to an interstate forensic order, or an interested person for the person, may apply to the tribunal for approval of the transfer of the person from an interstate mental health service to—

(a) a stated authorised mental health service; or

(b) the forensic disability service.

Not authorised—indicative only

Not authorised—indicative only

515 Requirements for application

(1) The application must—

(a) state the reasons why the transfer is appropriate in the circumstances; and

Example of when a transfer under this division may be appropriate—

to allow the patient seeking transfer to be in closer proximity to their family, carers or other support persons

(b) state—

(i) the authorised mental health service proposed to be responsible for the patient seeking transfer; or

(ii) that the forensic disability service is proposed to be responsible for the patient seeking transfer; and

(c) include a written statement from the responsible person that complies with subsection (2).

(2) For subsection (1)(c), the written statement must state the responsible person considers—

(a) either—

(i) if subsection (1)(b)(i) applies—appropriate treatment and care is available for the patient seeking transfer at the authorised mental health service; or

(ii) if subsection (1)(b)(ii) applies—appropriate care is available for the patient seeking transfer at the forensic disability service; and

(b) the arrangements for the transfer are adequate to protect the safety of the community.

(3) In this section—

responsible person means—

(a) if an authorised mental health service is proposed to be responsible for the patient seeking transfer—the chief psychiatrist; or

(b) if the forensic disability service is proposed to be responsible for the patient seeking transfer—the director of forensic disability.

516 Notice of hearing

(1) The tribunal must give each of the following persons written notice of the hearing of the application—

(a) the patient seeking transfer;

(b) if the patient seeking transfer is not the applicant—the applicant;

(c) if an authorised mental health service is stated in the application—

(i) the administrator of the service; and

(ii) the chief psychiatrist;

(d) if the forensic disability service is stated in the application—

(i) the administrator of the service; and

(ii) the director of forensic disability;

(e) the Attorney-General.

(2) The notice must be given at least 14 days before the hearing.

517 Decision on application

(1) In deciding the application, the tribunal must—

(a) to the greatest extent practicable, have regard to the views, wishes and preferences of the patient seeking transfer; and

(b) approve, or refuse to approve, the transfer.

(2) The tribunal may approve the transfer only if satisfied—

(a) the transfer is appropriate in the circumstances; and

Not authorised—indicative only

Not authorised—indicative only

Example of when a transfer under this division may be appropriate—

to allow the patient seeking transfer to be in closer proximity to their family, carers or other support persons

(b) either—

(i) if an authorised mental health service is stated in the application—appropriate treatment and care is available for the patient seeking transfer at the authorised mental health service; or

(ii) if the forensic disability service is stated in the application—appropriate care is available for the patient seeking transfer at the forensic disability service; and

(c) a forensic order (mental health) or forensic order (disability) is necessary, because of the mental condition of the patient seeking transfer, to protect the safety of the community, including, for example, from the risk of serious harm to other persons or property; and

(d) the arrangements for the transfer are adequate to protect the safety of the community.

(3) The tribunal may give the approval subject to the conditions the tribunal considers appropriate.

518 Making of forensic order

(1) If the tribunal approves the transfer under section 517, the tribunal must make a forensic order (mental health) for the patient seeking transfer unless subsection (2) applies.

(2) The tribunal must make a forensic order (disability) for the patient seeking transfer if the tribunal considers—

(a) the patient seeking transfer has an intellectual disability but does not have a dual disability; or

(b) the patient seeking transfer has a dual disability but does not require involuntary treatment and care for the patient's mental illness.

(3) The forensic order (mental health) or forensic order (disability) takes effect when the patient seeking transfer arrives in Queensland.

(4) For making a forensic order (mental health) or forensic order (disability) under this division, section 135 and chapter 5, part 4, division 2, subdivision 2 apply as if—

(a) a reference in the provisions to the Mental Health Court were a reference to the tribunal; and

(b) a reference in the provisions to the person the subject of the reference were a reference to the patient seeking transfer.

519 When interstate transfer approval takes effect

An interstate transfer approval takes effect—

(a) if the tribunal imposes 1 or more conditions on the approval that must be satisfied before the approval takes effect—when all of the conditions are satisfied; or

(b) otherwise—on the granting of the approval.

520 Transport of patient seeking transfer under interstate transfer approval

(1) This section applies if an interstate transfer approval is in effect.

(2) The patient seeking transfer may be transported under the approval by—

(a) if the approval states that a particular entity may transport the patient seeking transfer under the approval—the stated entity; or

(b) otherwise—

(i) an authorised person; or

Not authorised—indicative only

Not authorised—indicative only

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

(ii) if the patient seeking transfer is to be transported to the forensic disability service—an authorised practitioner under the Forensic Disability Act; or

(iii) a person who is authorised under a corresponding law to transport the patient seeking transfer from an interstate mental health service to an authorised mental health service or the forensic disability service.

(3) As soon as practicable after the approval takes effect, the administrator of the responsible service for the patient seeking transfer must arrange for the patient to be transported to the responsible service by an entity authorised under subsection (2).

(4) In this section—

responsible service, for a patient seeking transfer under an interstate transfer approval, means—

(a) if an authorised mental health service is stated in the approval—the authorised mental health service; or

(b) if the forensic disability service is stated in the approval—the forensic disability service.

Division 2 Transfers out of Queensland

521 Definitions for division

In this division—

international transfer approval, in relation to a person, means an approval under this division for the transfer of the person from an authorised mental health service, or the forensic disability service, to another country.

interstate transfer approval, in relation to a person, means an approval under this division for the transfer of the person from an authorised mental health service, or the forensic disability service, to an interstate mental health service.

patient seeking transfer means—

(a) in relation to an international transfer approval or interstate transfer approval, the person who is the subject of the approval; or

(b) in relation to an application for an international transfer approval or interstate transfer approval, the person who would be the subject of the approval if the approval were granted.

responsible service, for a patient seeking transfer, means—

(a) if an authorised mental health service is responsible for the patient seeking transfer before the patient is transferred under this division—the authorised mental health service; or

(b) if the forensic disability service is responsible for the patient seeking transfer before the patient is transferred under this division—the forensic disability service.

522 Who may apply

(1) A person subject to a forensic order (mental health), forensic order (disability) or treatment support order, or an interested person for the person, may apply to the tribunal for approval of the transfer of the person from an authorised mental health service, or the forensic disability service, to—

(a) a stated interstate mental health service; or

(b) a stated country.

(2) However, this section does not apply to—

(a) a person who is a classified patient; or

(b) a person charged with an offence if—

Not authorised—indicative only

Not authorised—indicative only

(i) a finding of unfitness has been made in relation to the person; and

(ii) the person has not been found fit for trial; and

(iii) the proceeding against the person for the offence has not been discontinued under this Act or otherwise.

523 Requirements for application

(1) The application must—

(a) state the reasons why the transfer is appropriate in the circumstances; and

Example of when a transfer under this division may be appropriate—

to allow the patient seeking transfer to be in closer proximity to their family, carers or other support persons

(b) include a written statement from the responsible person that complies with subsection (2).

(2) For subsection (1)(b), the written statement must state the responsible person considers—

(a) either—

(i) if an authorised mental health service is responsible for the patient seeking transfer—

(A) for an application for an interstate transfer approval—appropriate treatment and care is available for the patient seeking transfer at the interstate mental health service stated in the application; or

(B) for an application for an international transfer approval—appropriate treatment and care is available for the patient seeking transfer in the country stated in the application; or

(ii) if the forensic disability service is responsible for the patient seeking transfer—

(A) for an application for an interstate transfer approval—appropriate care is available for the patient seeking transfer at the interstate mental health service stated in the application; or

(B) for an application for an international transfer approval—appropriate care is available for the patient seeking transfer in the country stated in the application; and

(b) the arrangements for the transfer are adequate to protect the safety of the community; and

(c) for an application for an interstate transfer approval—the transfer is, or may be, permitted under a law of the State in which the interstate mental health service stated in the application is located.

(3) In this section—

responsible person means—

(a) if an authorised mental health service is responsible for the patient seeking transfer—the chief psychiatrist; or

(b) if the forensic disability service is responsible for the patient seeking transfer—the director of forensic disability.

524 Notice of hearing

(1) The tribunal must give each of the following persons written notice of the hearing of the application—

(a) the patient seeking transfer;

(b) if the patient seeking transfer is not the applicant—the applicant;

(c) if an authorised mental health service is responsible for the patient seeking transfer—

(i) the administrator of the service; and

(ii) the chief psychiatrist;

Not authorised—indicative only

Not authorised—indicative only

(d) if the forensic disability service is responsible for the patient seeking transfer—

(i) the administrator of the service; and

(ii) the director of forensic disability;

(e) the Attorney-General.

(2) The notice must be given at least 14 days before the hearing.

525 Decision on application

(1) In deciding the application, the tribunal must—

(a) to the greatest extent practicable, have regard to the views, wishes and preferences of the patient seeking transfer; and

(b) approve, or refuse to approve, the transfer.

(2) The tribunal may approve the transfer only if satisfied—

(a) the transfer is appropriate in the circumstances; and

Example of when a transfer under this division may be appropriate—

to allow the patient seeking transfer to be in closer proximity to their family, carers or other support persons

(b) either—

(i) if an authorised mental health service is responsible for the patient seeking transfer—

(A) for an application for an interstate transfer approval—appropriate treatment and care is available for the patient seeking transfer at the interstate mental health service stated in the application; or

(B) for an application for an international transfer approval—appropriate treatment and care is available for the patient seeking transfer in the country stated in the application; or

(ii) if the forensic disability service is responsible for the patient seeking transfer—

(A) for an application for an interstate transfer approval—appropriate care is available for the patient seeking transfer at the interstate mental health service stated in the application; or

(B) for an application for an international transfer approval—appropriate care is available for the patient seeking transfer in the country stated in the application; and

(c) the arrangements for the transfer are adequate to protect the safety of the community; and

(d) for an application for an interstate transfer approval—the transfer is, or may be, permitted under a law of the State in which the interstate mental health service stated in the application is located.

(3) The tribunal may give the approval subject to the conditions the tribunal considers appropriate.

526 When interstate transfer approval or international transfer approval takes effect

An interstate transfer approval or international transfer approval takes effect—

(a) if the tribunal imposes 1 or more conditions on the approval that must be satisfied before the approval takes effect—when all of the conditions are satisfied; or

(b) otherwise—on the granting of the approval.

527 Transport of patient seeking transfer under interstate transfer approval

(1) This section applies if an interstate transfer approval is in effect.

Not authorised—indicative only

Not authorised—indicative only

(2) The patient seeking transfer may be transported under the approval by—

(a) if the approval states that a particular entity may transport the patient seeking transfer under the approval—the stated entity; or

(b) otherwise—

(i) an authorised person; or

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

(ii) if the patient seeking transfer is to be transported from the forensic disability service—an authorised practitioner under the Forensic Disability Act; or

(iii) a person who is authorised under a corresponding law to transport the patient seeking transfer from the responsible service for the patient to the interstate mental health service stated in the approval.

(3) As soon as practicable after the approval takes effect, the administrator of the responsible service for the patient seeking transfer must arrange for the patient to be transported to the interstate mental health service stated in the approval by an entity authorised under subsection (2).

527A Transport of patient seeking transfer under international transfer approval

(1) This section applies if an international transfer approval is in effect.

(2) The patient seeking transfer may be transported under the approval by—

(a) if the approval states that a particular entity may transport the patient seeking transfer under the approval—the stated entity; or

(b) otherwise—

(i) an authorised person; or

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

(ii) if the patient seeking transfer is to be transported from the forensic disability service—an authorised practitioner under the Forensic Disability Act.

(3) As soon as practicable after the approval takes effect, the administrator of the responsible service for the patient seeking transfer must arrange for the patient to be transported to the country stated in the approval by an entity authorised under subsection (2).

528 Effect on order

(1) This section applies to a forensic order (mental health), forensic order (disability) or treatment support order to which a patient seeking transfer is subject when the patient is transferred under an interstate transfer approval or an international transfer approval.

(2) The order has effect only if the patient seeking transfer returns to Queensland and while the patient is in Queensland.

(3) Also, the order ends—

(a) on the last day of any non-revocation period for the order if, on that day, the patient seeking transfer has been out of Queensland for a continuous period of at least 3 years; or

(b) if paragraph (a) does not apply—if the patient seeking transfer is out of Queensland for a continuous period of 3 years.

(4) In this section—

out of Queensland, in relation to a patient seeking transfer, means out of Queensland because of the transfer of the patient

Not authorised—indicative only

Not authorised—indicative only

under an interstate transfer approval or international transfer approval.

Part 11 Miscellaneous

529 Relationship with ch 16, pt 2

To the extent of any inconsistency with chapter 16, part 2, this chapter prevails.

530 Use of victim impact statement by tribunal

(1) This section applies if the tribunal is required to have regard to a victim impact statement in deciding a matter under this chapter.

(2) The tribunal may place the weight on the victim impact statement that it considers appropriate.

Chapter 13 Appeals

Part 1 Preliminary

531 Purpose of ch 13

This chapter provides for the following—

(a) appeals to the tribunal;

(b) appeals to the Mental Health Court against a decision of the tribunal;

(c) appeals to the Court of Appeal against a decision of the Mental Health Court.

Part 2 Appeals to tribunal

532 Definitions for pt 2

In this part—

decision notice means a notice about a decision given under section 314(4), 315(3), 319(7), 321(7), 323(4) or 408(3).

Note—

A decision to which a notice under section 319(7), 321(7), 322(3) or 323(4) relates may be made in relation to a forensic disability client. See section 327.

party, to an appeal, means—

(a) for an appeal against a decision of the administrator of an authorised mental health service—the appellant or the administrator; or

(b) for an appeal against a decision of the chief psychiatrist—the appellant or the chief psychiatrist; or

(c) for an appeal against a decision of the director of forensic disability—the appellant or the director.

533 Appeal to tribunal

A person who has been given, or is entitled to be given, a decision notice may appeal to the tribunal against the decision to which the notice relates.

534 How to start appeal

(1) The appeal is started by giving the tribunal a notice of appeal.

(2) The notice of appeal must be given within 28 days after—

(a) the day the person is given the decision notice; or

(b) if the person is not given a decision notice—the day the person otherwise becomes aware of the decision.

Not authorised—indicative only

Not authorised—indicative only

(3) The tribunal may, at any time, extend the time for giving the notice of appeal.

(4) The notice of appeal must—

(a) be in the approved form; and

(b) state fully the grounds of the appeal and the facts relied on.

534A Frivolous or vexatious appeal

(1) The tribunal may dismiss the appeal if the tribunal is satisfied the appeal is frivolous or vexatious.

(2) The tribunal may dismiss an appeal under this section without a hearing.

535 Notice of appeal and hearing

(1) The tribunal must give the parties to the appeal written notice of the hearing of the appeal.

(2) The notice must be given—

(a) for an appeal against a decision for which a decision notice must be given under section 314(4) or 315(3)—

(i) at least 3 days before the hearing; or

(ii) if the appellant agrees to a shorter period before the hearing—at least the agreed period before the hearing; or

(b) for an appeal against another decision—at least 7 days before the hearing.

(3) The notice must state the following—

(a) the time and place of the hearing of the appeal;

(b) the nature of the hearing;

(c) the parties' rights to be represented at the hearing.

536 Stay of decision pending appeal

(1) The tribunal may stay the decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

(a) may be given on the reasonable conditions the tribunal considers appropriate; and

(b) operates for the period fixed by the tribunal; and

(c) may be amended or revoked by the tribunal.

(3) The period of a stay must not extend past the time when the appeal is decided.

(4) A notice of appeal affects the decision the subject of the notice, or the carrying out of the decision, only if the decision is stayed.

537 Appeal powers

(1) The procedure for the appeal is in accordance with the tribunal rules or, if the rules make no provision or insufficient provision, as directed by the tribunal.

(2) The appeal is by way of rehearing.

(3) In deciding the appeal, the tribunal may—

(a) confirm the decision appealed against; or

(b) set aside the decision appealed against and substitute another decision; or

(c) set aside the decision appealed against and return the matter to the person who made the decision with the directions the tribunal considers appropriate.

(4) If the tribunal substitutes another decision, the substituted decision is for this Act, other than this chapter, taken to be the decision of the person who made the decision appealed against.

Not authorised—indicative only

Not authorised—indicative only

Part 3 Appeals to Mental Health Court

Division 1 Preliminary

538 Definition for pt 3

In this part—

party, to an appeal against a decision, means a person who is a party to the appeal under section 540.

Division 2 Making and hearing appeals

539 Who may appeal

A person mentioned in schedule 2, column 2 may appeal to the Mental Health Court against a decision of the tribunal mentioned opposite the person in schedule 2, column 1.

540 Parties to appeal

(1) Each person entitled to appeal against the decision is a party to the appeal.

(2) However, if the person is entitled to appeal against the decision only because the person is an interested person for a person who is the subject of the decision, the person is not a party to the appeal.

(3) If subsection (2) applies, the person who is the subject of the decision is taken to be a party to the appeal.

(4) Also, unless the chief psychiatrist is the appellant, the chief psychiatrist is a party to the appeal only if the chief psychiatrist elects to be a party to the appeal.

(5) Further, unless the director of forensic disability is the appellant, the director of forensic disability is a party to the

appeal only if the director of forensic disability elects to be a party to the appeal.

541 How to start appeal

(1) The appeal is started by filing a notice of appeal in the registry.

(2) The notice of appeal must be filed—

(a) if the chief psychiatrist is the appellant—within 60 days after the decision is made; or

(b) if paragraph (a) does not apply—within 60 days after the appellant receives written notice of the decision.

(3) The Mental Health Court may, at any time, extend the time for filing the notice of appeal.

(4) The notice of appeal must—

(a) be in the approved form; and

(b) state fully the grounds of the appeal and the facts relied on.

542 Frivolous or vexatious appeal

(1) The Mental Health Court may dismiss the appeal if the court is satisfied the appeal is frivolous or vexatious.

(2) The court may dismiss an appeal under this section without a hearing.

543 Notice of appeal and hearing

(1) Within 7 days after the notice of appeal is filed, the registrar must give written notice of the appeal to each other person entitled to appeal against the decision, other than an interested person for the person the subject of the decision.

(2) The registrar must also give at least 7 days written notice of the hearing of the appeal to—

Not authorised—indicative only

Not authorised—indicative only

(a) the parties to the appeal; and

(b) if an authorised mental health service is responsible for the person the subject of the appeal—the administrator of the service; and

(c) if the forensic disability service is responsible for the person the subject of the appeal—the administrator of the service.

(3) The notice of the hearing of the appeal must state the following—

(a) the time and place of the hearing of the appeal;

(b) the nature of the hearing;

(c) the parties' rights to be represented at the hearing.

544 Stay of decision pending appeal

(1) The Mental Health Court may stay the decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

(a) may be given on the conditions the court considers appropriate; and

(b) operates for the period fixed by the court; and

(c) may be amended or revoked by the court.

(3) The period of a stay must not extend past the time when the appeal is decided.

(4) The court may order that the person the subject of the appeal be detained in a stated authorised mental health service for the period of the stay.

Note—

An order made under subsection (4) is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person.

(5) For subsection (4), an authorised person may transport the person to an inpatient unit of the authorised mental health service stated in the order.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

(6) The administrator of the authorised mental health service stated in the order may detain the person in the service under the order.

545 Notice of stay of decision on review of person's fitness for trial

(1) This section applies if—

(a) the decision appealed against is a decision of the tribunal on a review of a person's fitness for trial; and

(b) under section 544, the Mental Health Court stays the decision.

(2) The registrar must give the chief executive (justice) written notice of the stay of the decision.

(3) As soon as practicable after receiving a notice under subsection (2), the chief executive (justice) must give a copy of the notice to—

(a) the registrar of the court in which the proceeding for the offence in relation to the review of the fitness for trial of the person is to be heard; and

(b) the prosecuting authority for the offence; and

(c) if the person the subject of the decision is a minor—the chief executive (youth justice).

546 Appeal powers

(1) The procedure for the appeal is in accordance with court rules for the Mental Health Court or, if the rules make no provision

Not authorised—indicative only

Not authorised—indicative only

or insufficient provision, as directed by the Mental Health Court.

(2) The appeal is by way of rehearing.

(3) In deciding the appeal, the Mental Health Court may—

(a) confirm the decision appealed against; or

(b) set aside the decision appealed against and substitute another decision; or

(c) set aside the decision appealed against and return the matter to the tribunal with the directions the Mental Health Court considers appropriate.

(4) If the Mental Health Court substitutes another decision, the substituted decision is taken for this Act, other than this chapter, to be a decision of the tribunal.

547 Mental Health Court may make forensic order or treatment support order

(1) This section applies if—

(a) the decision appealed against is a decision of the tribunal that a person is fit for trial; and

Note—

The tribunal may decide a person is fit for trial on a review under chapter 12, part 6.

(b) the forensic order or treatment support order to which the person was subject has ended under section 497(2); and

(c) the Mental Health Court decides on the appeal that the person is unfit for trial.

(2) The Mental Health Court may make the orders the court may make under chapter 5, part 4 as if a reference in the part to a reference in relation to a person were a reference to an appeal against a decision of the tribunal that a person is fit for trial.

548 Mental Health Court's decision final

(1) Unless the Supreme Court decides the Mental Health Court's decision on the appeal is affected by jurisdictional error, the decision—

(a) is final and conclusive; and

(b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and

(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

(2) The *Judicial Review Act 1991*, part 5 applies to the Mental Health Court's decision to the extent it is affected by jurisdictional error.

Part 4 Appeals to Court of Appeal

549 Who may appeal

The following persons may appeal to the Court of Appeal against a decision of the Mental Health Court on a reference in relation to a person—

(a) the person;

(b) the Attorney-General;

(c) the chief psychiatrist;

(d) the director of forensic disability.

550 How to start appeal

(1) An appeal is started by filing a notice of appeal with the registrar of the Court of Appeal.

Not authorised—indicative only

Not authorised—indicative only

(2) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision or otherwise becomes aware of the decision.

(3) However, the Court of Appeal may at any time extend the period for filing the notice of appeal.

(4) The notice of appeal must—

(a) be in the approved form; and

(b) state fully the grounds of the appeal and the facts relied on.

551 Appeal powers

(1) The procedure for the appeal is to be in accordance with court rules for the Court of Appeal or, if the rules make no provision or insufficient provision, as directed by the Court of Appeal.

(2) In deciding the appeal, the Court of Appeal may—

(a) confirm the decision appealed against; or

(b) set aside the decision appealed against and substitute another decision; or

(c) set aside the decision appealed against and return the matter to the Mental Health Court with the directions the Court of Appeal considers appropriate.

(3) If the Court of Appeal substitutes another decision, the substituted decision is taken for this Act, other than this chapter, to be the decision of the Mental Health Court.

(4) If the Court of Appeal returns the matter to the Mental Health Court, the Court of Appeal must order that—

(a) either—

(i) the person be remanded in custody and any bail granted under the *Bail Act 1980* for the person be revoked; or

(ii) bail be granted, enlarged or varied under the *Bail Act 1980* for the person; or

(b) the person be detained in a stated authorised mental health service.

Note—

An order made under paragraph (b) is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person.

(5) For subsection (4)(b), an authorised person may transport the person to an inpatient unit of the authorised mental health service stated in the order.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

(6) The person the subject of the reference may be detained under the court's order in an inpatient unit of the authorised mental health service stated in the order.

552 Notice of decision

The registrar of the Court of Appeal must give a copy of the decision on the appeal to the registrar of the Mental Health Court.

Chapter 14 Monitoring and enforcement

Part 1 Preliminary

553 Purpose of ch 14

This purpose of this chapter is to provide for—

(a) the appointment of inspectors; and

(b) the functions and powers of inspectors in relation to—

Not authorised—indicative only

Not authorised—indicative only

(i) investigating, monitoring and enforcing compliance with this Act; and

(ii) investigating a matter under chapter 10, part 4.

554 Definitions for ch 14

In this chapter—

court means a Magistrates Court.

electronic document means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

former owner see section 590(1).

general power see section 577(1).

help requirement see section 578(1).

identity card, for an inspector, means an identity card issued under section 560(1).

information notice, about a decision, means a notice stating the following—

(a) the decision;

(b) the reasons for it;

(c) that the person to whom the notice is given may apply to the chief psychiatrist for a review of the decision within 28 days after the person receives the notice;

(d) how to apply for a review.

information requirement see section 597(3).

inspector means a person who holds office under this chapter as an inspector.

offence warning, for a help requirement or personal details requirement, means a warning that, without a reasonable excuse, it is an offence for the person to whom the requirement is made not to comply with it.

owner, of a thing that has been seized under this chapter, includes a person who would be entitled to possession of the thing had it not been seized.

personal details requirement see section 595(5).

person in control, of a thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

Part 2 General provisions about inspectors

Division 1 Appointment

555 Appointment and qualifications

(1) The chief psychiatrist may, by instrument in writing, appoint any of the following persons as inspectors—

(a) a public service employee of the department;

(b) a health service employee;

(c) other persons prescribed by regulation.

(2) Also, the chief psychiatrist may, by instrument in writing, appoint a health practitioner, lawyer or another person as an inspector for investigating a matter under chapter 10, part 4.

(3) However, the chief psychiatrist may appoint a person as an inspector under subsection (1) or (2) only if the chief psychiatrist is satisfied the person is appropriately qualified.

(4) Also, the chief psychiatrist is an inspector.

556 Functions of inspectors

An inspector's functions are as follows—

Not authorised—indicative only

Not authorised—indicative only

(a) for an inspector appointed under section 555(1)—to investigate, monitor and enforce compliance with this Act;

(b) for an inspector appointed under section 555(1) or (2)—to investigate a matter under chapter 10, part 4;

(c) for the chief psychiatrist—each of the functions mentioned in paragraphs (a) and (b).

557 Appointment conditions and limit on powers

(1) An inspector holds office on any conditions stated in—

(a) the inspector's instrument of appointment; or

(b) a signed notice given to the inspector; or

(c) a regulation.

(2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers.

(3) In this section—

signed notice means a notice signed by the chief psychiatrist.

558 When office ends

(1) The office of a person as an inspector ends if any of the following happens—

(a) the term of office stated in a condition of office ends;

(b) under another condition of office, the office ends;

(c) the inspector's resignation under section 559 takes effect.

(2) Subsection (1) does not limit the ways the office of a person as an inspector ends.

(3) In this section—

condition of office means a condition under which the inspector holds office.

559 Resignation

An inspector may resign by signed notice given to the chief psychiatrist.

Division 2 Identity cards

560 Issue of identity card

(1) The chief psychiatrist must issue an identity card to each inspector.

(2) The identity card must—

(a) contain a recent photo of the inspector; and

(b) contain a copy of the inspector's signature; and

(c) identify the person as an inspector under this Act; and

(d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

561 Production or display of identity card

(1) In exercising a power in relation to a person in the person's presence, an inspector must—

(a) produce the inspector's identity card for the person's inspection before exercising the power; or

(b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 565(1)(b) or (d).

Not authorised—indicative only

Not authorised—indicative only

562 Return of identity card

If the office of a person as an inspector ends, the person must return the person's identity card to the chief psychiatrist within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

Division 3 Miscellaneous provisions

563 References to exercise of powers

If—

(a) a provision of this chapter refers to the exercise of a power by an inspector; and

(b) there is no reference to a specific power;

the reference is to the exercise of all or any inspectors' powers under this chapter or a warrant, to the extent the powers are relevant.

564 Reference to document includes reference to reproductions from electronic document

A reference in this chapter to a document includes a reference to an image or writing—

(a) produced from an electronic document; or

(b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

Part 3 Entry of places by inspectors

Division 1 Power to enter

565 General power to enter places

(1) An inspector may enter a place if—

(a) an occupier of the place consents under division 2 to the entry and section 568 has been complied with for the occupier; or

(b) it is a public place and the entry is made when the place is open to the public; or

(c) the entry is authorised under a warrant and, if there is an occupier of the place, section 575 has been complied with for the occupier; or

(d) it is an authorised mental health service or public sector health service facility and is—

(i) open to the public; or

(ii) otherwise open for entry.

(2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.

(3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

Division 2 Entry by consent

566 Application of div 2

This division applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 565(1)(a).

Not authorised—indicative only

Not authorised—indicative only

567 Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an inspector may, without the occupier's consent or a warrant—

(a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or

(b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

568 Matters inspector must tell occupier

Before asking for the consent, the inspector must give a reasonable explanation to the occupier—

(a) about the purpose of the entry, including the powers intended to be exercised; and

(b) that the occupier is not required to consent; and

(c) that the consent may be given subject to conditions and may be withdrawn at any time.

569 Consent acknowledgement

(1) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.

(2) The acknowledgement must state—

(a) the purpose of the entry, including the powers to be exercised; and

(b) the following has been explained to the occupier—

(i) the purpose of the entry, including the powers intended to be exercised;

(ii) that the occupier is not required to consent;

(iii) that the consent may be given subject to conditions and may be withdrawn at any time; and

(c) the occupier gives the inspector or another inspector consent to enter the place and exercise the powers; and

(d) the time and day the consent was given; and

(e) any conditions of the consent.

(3) If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier.

(4) If—

(a) an issue arises in a proceeding about whether the occupier consented to the entry; and

(b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Division 3 Entry under warrant

Subdivision 1 Obtaining warrant

570 Application for warrant

(1) An inspector may apply to a magistrate for a warrant for a place.

(2) The inspector must prepare a written application that states the grounds on which the warrant is sought.

(3) The written application must be sworn.

(4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

Not authorised—indicative only

Not authorised—indicative only

571 Issue of warrant

(1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence—

(a) about a matter being investigated by the inspector under chapter 10, part 4; or

(b) of an offence against this Act.

(2) The warrant must state—

(a) the place to which the warrant applies; and

(b) that a stated inspector or any inspector may with necessary and reasonable help and force—

(i) enter the place and any other place necessary for entry to the place; and

(ii) exercise the inspector's powers; and

(c) particulars of the matter being investigated, or offence, that the magistrate considers appropriate; and

(d) the name of the person involved in the matter being investigated, or suspected of having committed the offence, unless the name is unknown or the magistrate considers it inappropriate to state the name; and

(e) the evidence that may be seized under the warrant; and

(f) the hours of the day or night when the place may be entered; and

(g) the magistrate's name; and

(h) the day and time of the warrant's issue; and

(i) the day, within 14 days after the warrant's issue, the warrant ends.

572 Electronic application

(1) An application under section 570 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector reasonably considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the inspector's remote location.

(2) The application—

(a) may not be made before the inspector prepares the written application under section 570(2); but

(b) may be made before the written application is sworn.

573 Additional procedure if electronic application

(1) For an application made under section 572, the magistrate may issue the warrant (the ***original warrant***) only if the magistrate is satisfied—

(a) it was necessary to make the application under section 572; and

(b) the way the application was made under section 572 was appropriate.

(2) After the magistrate issues the original warrant—

(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or

(b) otherwise—

(i) the magistrate must tell the inspector the information mentioned in section 571(2); and

(ii) the inspector must complete a form of warrant, including by writing on it the information

Not authorised—indicative only

Not authorised—indicative only

mentioned in section 571(2) provided by the magistrate.

(3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.

(4) The inspector must, at the first reasonable opportunity, send to the magistrate—

(a) the written application complying with section 570(2) and (3); and

(b) if the inspector completed a form of warrant under subsection (2)(b), the completed form of warrant.

(5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—

(a) attach the documents to the original warrant; and

(b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.

(6) Despite subsection (3), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and

(b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(7) In this section—

relevant magistrates court, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

574 Defect in relation to a warrant

(1) A warrant is not invalidated by a defect in—

(a) the warrant; or

(b) compliance with this subdivision;

unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

warrant includes a duplicate warrant mentioned in section 573(3).

Subdivision 2 Entry procedure

575 Entry procedure

(1) This section applies if an inspector is intending to enter a place under a warrant issued under subdivision 1.

(2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person who is an occupier of the place and is present by producing the inspector's identity card or another document evidencing the inspector's appointment;

(b) give the person a copy of the warrant;

(c) tell the person the inspector is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the inspector immediate entry to the place without using force.

(3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.

(4) In this section—

warrant includes a duplicate warrant mentioned in section 573(3).

Not authorised—indicative only

Not authorised—indicative only

Part 4 General powers of inspectors after entering places

576 Application of pt 4

(1) The powers under this part may be exercised if an inspector enters a place under section 565(1)(a), (c) or (d).

(2) However, if the inspector enters the place under section 565(1)(a) or (c), the powers under this part are subject to any conditions of the consent or terms of the warrant.

577 General powers

(1) The inspector may do any of the following (each a ***general power***)—

(a) search any part of the place;

(b) confer alone with a patient in the place;

(c) make inquiries about the admission, assessment, examination, detention, or treatment and care, of a patient in the place;

(d) inspect, examine or film any part of the place or anything at the place, including, for example—

(i) inspect any document (including a health record) about a patient who—

(A) has been, or is being, assessed or examined in the place; or

(B) has received, or is receiving, treatment and care in the place; and

(ii) inspect any record or register required to be kept under this Act;

(e) take for examination a thing, or a sample of or from a thing, at the place;

(f) place an identifying mark in or on anything at the place;

(g) take an extract from, or copy, a document at the place, or take the document to another place to copy;

(h) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;

(i) take to, into or onto the place and use any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under this part;

(j) remain at the place for the time necessary to achieve the purpose of the entry.

(2) The inspector may take a necessary step to allow the exercise of a general power.

(3) If the inspector takes a document from the place to copy it, the inspector must copy the document and return it to the place as soon as practicable.

(4) If the inspector takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the inspector must produce the document and return the article or device to the place as soon as practicable.

(5) In this section—

examine includes analyse, test, account, measure, weigh, grade, gauge and identify.

film includes photograph, videotape and record an image in another way.

inspect, a thing, includes open the thing and examine its contents.

578 Power to require reasonable help

(1) The inspector may make a requirement (a ***help requirement***) of an occupier of the place or a person at the place to give the

Not authorised—indicative only

Not authorised—indicative only

inspector reasonable help to exercise a general power, including, for example, to produce a document or to give information.

(2) When making the help requirement, the inspector must give the person an offence warning for the requirement.

579 Offence to contravene help requirement

(1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.

(3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept under this Act.

Part 5 Seizure by inspectors and forfeiture

Division 1 Power to seize

580 Seizing evidence at a place that may be entered without consent or warrant

An inspector who enters a place the inspector may enter under section 565 without the consent of an occupier of the place and without a warrant may seize a thing at the place if the inspector reasonably believes the thing is evidence—

(a) about a matter being investigated by the inspector under chapter 10, part 4; or

(b) of an offence against this Act.

581 Seizing evidence at a place that may be entered only with consent or warrant

(1) This section applies if—

(a) an inspector is authorised to enter a place only with the consent of an occupier of the place or a warrant; and

(b) the inspector enters the place after obtaining the consent or under a warrant.

(2) If the inspector enters the place with the occupier's consent, the inspector may seize a thing at the place only if—

(a) the inspector reasonably believes the thing is evidence—

(i) about a matter being investigated by the inspector under chapter 10, part 4; or

(ii) of an offence against this Act; and

(b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.

(3) If the inspector enters the place under a warrant, the inspector may seize the evidence for which the warrant was issued.

(4) The inspector may also seize anything else at the place if the inspector reasonably believes—

(a) the thing is evidence—

(i) about a matter being investigated by the inspector under chapter 10, part 4; or

(ii) of an offence against this Act; and

(b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

(5) The inspector may also seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against this Act.

Not authorised—indicative only

Not authorised—indicative only

582 Seizure of property subject to security

(1) An inspector may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.

(2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting under the direction or authority of the inspector.

Division 2 Powers to support seizure

583 Power to secure seized thing

(1) Having seized a thing under division 1, an inspector may—

(a) leave it at the place where it was seized (the ***place of seizure***) and take reasonable action to restrict access to it; or

(b) move it from the place of seizure.

(2) For subsection (1)(a), the inspector may, for example—

(a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or

(b) for equipment—make it inoperable; or

Example—

make it inoperable by dismantling it or removing a component without which the equipment can not be used

(c) require a person the inspector reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subsection (1)(a).

584 Offence to contravene other seizure requirement

A person must comply with a requirement made of the person under section 583(2)(c) unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

585 Offence to interfere

(1) If access to a seized thing is restricted under section 583, a person must not tamper with the thing or with anything used to restrict access to the thing without—

(a) an inspector's approval; or

(b) a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If access to a place is restricted under section 583, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

(a) an inspector's approval; or

(b) a reasonable excuse.

Maximum penalty—100 penalty units.

Division 3 Safeguards for seized things

586 Receipt and information notice for seized thing

(1) This section applies if an inspector seizes anything under division 1 unless—

(a) the inspector reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or

Not authorised—indicative only

Not authorised—indicative only

(b) because of the condition, nature and value of the thing it would be unreasonable to require the inspector to comply with this section.

(2) The inspector must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—

(a) a receipt for the thing that generally describes the thing and its condition; and

(b) an information notice about the decision to seize it.

(3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.

(4) The receipt and information notice may—

(a) be given in the same document; and

(b) relate to more than 1 seized thing.

(5) The inspector may delay giving the receipt and information notice if the inspector reasonably suspects giving them may frustrate or otherwise hinder an investigation by the inspector under this Act.

(6) However, the delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

587 Access to seized thing

(1) Until a seized thing is forfeited or returned, the inspector who seized the thing must allow an owner of the thing—

(a) to inspect it at any reasonable time and from time to time; and

(b) if it is a document—to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

(3) The inspection or copying must be allowed free of charge.

588 Return of seized thing

(1) This section applies if a seized thing has some intrinsic value and is not forfeited or transferred under division 4 or 5.

(2) The inspector must return the seized thing to an owner—

(a) generally—at the end of 6 months after the seizure; or

(b) if a proceeding for an offence involving the thing is started within 6 months after the seizure—at the end of the proceeding and any appeal from the proceeding.

(3) Despite subsection (2), if the thing was seized as evidence, the inspector must return the thing seized to an owner as soon as practicable after the inspector is satisfied—

(a) its continued retention as evidence is no longer necessary; and

(b) it is lawful for the owner to possess it.

(4) Nothing in this section affects a lien or other security over the seized thing.

Division 4 Forfeiture

589 Forfeiture by chief psychiatrist decision

(1) The chief psychiatrist may decide a seized thing is forfeited to the State if an inspector—

(a) after making reasonable inquiries, can not find an owner; or

(b) after making reasonable efforts, can not return it to an owner.

(2) However, the inspector is not required to—

Not authorised—indicative only

Not authorised—indicative only

(a) make inquiries if it would be unreasonable to make inquiries to find an owner; or

(b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

Example for paragraph (b)—

the owner of the thing has migrated to another country

(3) Regard must be had to the thing's condition, nature and value in deciding—

(a) whether it is reasonable to make inquiries or efforts; and

(b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

590 Information notice about forfeiture decision

(1) If the chief psychiatrist decides under section 589(1) to forfeit a thing, the chief psychiatrist must as soon as practicable give a person who owned the thing immediately before the forfeiture (the ***former owner***) an information notice about the decision.

(2) The information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.

(3) The information notice must state that the former owner may apply for a stay of the decision if the former owner appeals against the decision.

(4) However, subsections (1) to (3) do not apply if the place where the thing was seized is—

(a) a public place; or

(b) a place where the notice is unlikely to be read by the former owner.

591 Forfeiture on conviction

(1) On the conviction of a person for an offence against this Act, the court may order the forfeiture to the State of—

(a) anything used to commit the offence; or

(b) anything else the subject of the offence.

(2) The court may make the order—

(a) whether or not the thing has been seized; or

(b) if the thing has been seized—whether or not the thing has been returned to the former owner of the thing.

(3) The court may make any order to enforce the forfeiture it considers appropriate.

(4) This section does not limit the court's powers under another law.

592 Procedure and powers for making forfeiture order

(1) A forfeiture order may be made on a conviction on the court's initiative or on an application by the prosecution.

(2) In deciding whether to make a forfeiture order for a thing, the court—

(a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and

(b) must hear any submissions that any person claiming to have any property in the thing may wish to make.

Division 5 Dealing with property forfeited or transferred to State

593 When thing becomes property of the State

A thing becomes the property of the State if—

Not authorised—indicative only

Not authorised—indicative only

(a) the thing is forfeited to the State under section 589(1) or 591(1); or

(b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

594 How property may be dealt with

(1) This section applies if, under section 593, a thing becomes the property of the State.

(2) The chief psychiatrist may deal with the thing as the chief psychiatrist considers appropriate, including, for example, by destroying it or giving it away.

(3) The chief psychiatrist must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under part 8.

(4) If the chief psychiatrist sells the thing, the chief psychiatrist may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.

Part 6 Other information-obtaining powers of inspectors

595 Power to require name and address

(1) This section applies if an inspector—

(a) finds a person committing an offence against this Act; or

(b) finds a person in circumstances that lead the inspector to reasonably suspect the person has just committed an offence against this Act; or

(c) has information that leads the inspector to reasonably suspect a person has just committed an offence against this Act.

(2) The inspector may require the person to state the person's name and residential address.

(3) The inspector may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—

(a) be in possession of evidence of the correctness of the stated name or address; or

(b) otherwise be able to give the evidence.

(4) When making a personal details requirement, the inspector must give the person an offence warning for the requirement.

(5) A requirement under this section is a ***personal details requirement***.

596 Offence to contravene personal details requirement

(1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

597 Power to require information

(1) This section applies if an inspector reasonably believes—

(a) an offence against this Act has been committed and a person may be able to give information about the offence; or

(b) a person may be able to give information about a matter being investigated by the inspector under chapter 10, part 4.

(2) The inspector may, by written notice given to the person, require the person to give the inspector information related to

Not authorised—indicative only

Not authorised—indicative only

the offence, or matter being investigated, at a stated reasonable time and place.

(3) A requirement under subsection (2) is an ***information requirement***.

(4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.

(5) In this section—

information includes a document.

598 Offence to contravene information requirement

(1) A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

(3) However, subsection (2) does not apply if information the subject of the information requirement is required to be held or kept under this Act.

(4) In this section—

information includes a document.

Part 7 Miscellaneous provisions relating to inspectors

Division 1 Damage

599 Duty to avoid inconvenience and minimise damage

In exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

600 Notice of damage

(1) This section applies if—

(a) an inspector damages something when exercising, or purporting to exercise, a power; or

(b) a person (the ***assistant***) acting under the direction or authority of an inspector damages something.

(2) However, this section does not apply to damage the inspector reasonably considers is trivial or if the inspector reasonably believes—

(a) there is no-one apparently in possession of the thing; or

(b) the thing has been abandoned.

(3) The inspector must give written notice of the damage to the person who appears to the inspector to be an owner, or person in control, of the thing.

(4) However, if for any reason it is not practicable to comply with subsection (3), the inspector must—

(a) leave the notice at the place where the damage happened; and

(b) ensure it is left in a conspicuous position and in a reasonably secure way.

Not authorised—indicative only

Not authorised—indicative only

(5) The inspector may delay complying with subsection (3) or (4) if the inspector reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the inspector's functions.

(6) The delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place.

(7) If the inspector believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the inspector or the assistant, the inspector may state the belief in the notice.

(8) The notice must state—

(a) particulars of the damage; and

(b) that the person who suffered the damage may claim compensation under section 601.

Division 2 Compensation

601 Claim

(1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an inspector including a loss arising from compliance with a requirement made of the person under part 5 or 6.

(2) The compensation may be claimed and ordered in a proceeding—

(a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or

(b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.

(3) In this section—

loss includes costs and damage.

602 Court order

(1) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.

(2) In considering whether it is just to order compensation, the court must have regard to—

(a) any relevant offence committed by the claimant; and

(b) whether the loss arose from a lawful seizure or lawful forfeiture.

(3) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

(4) Section 599 does not provide for a statutory right of compensation other than as provided by this section.

Part 8 Reviews and appeals about seizure and forfeiture

603 Definitions for pt 8

In this part—

internal review decision see section 608(1)(b).

original decision see section 608(1)(a).

review notice see section 608(1)(c).

review notice day see section 608(2)(a).

604 Right of appeal

A person who has a right to be given an information notice about a decision made under this chapter has a right to appeal against the decision.

Note—

Information notices are given under sections 586 and 590.

Not authorised—indicative only

Not authorised—indicative only

605 Appeal process starts with internal review

(1) Every appeal against a decision must be, in the first instance, by way of an application for internal review.

(2) A person who has a right to appeal against a decision may apply to the chief executive for internal review of the decision.

606 How to apply for internal review

(1) An application for internal review of a decision must—

(a) be in the approved form; and

(b) include enough information to enable the chief executive to decide the application.

(2) The application must be made within 28 days after—

(a) the day the person is given an information notice about the decision; or

(b) if the person is not given an information notice about the decision—the day the person otherwise becomes aware of the decision.

(3) The chief executive may, at any time, extend the time for making the application.

(4) The application must not be dealt with by—

(a) the person who made the decision; or

(b) a person in a less senior office than the person who made the decision.

(5) Subsection (4) applies despite the *Acts Interpretation Act 1954*, section 27A.

607 Stay of operation of decision

(1) The making of an application for internal review of a decision does not affect the operation of the decision or prevent it being implemented.

(2) However, the applicant may apply to the court for a stay of the decision.

(3) The court may stay the decision to secure the effectiveness of the internal review and a later appeal to the court.

(4) The stay—

(a) may be given on conditions the court considers appropriate; and

(b) operates for the period decided by the court.

(5) The period of the stay must not extend past the day when the chief executive decides the application for internal review and any later period the court allows the applicant to enable the applicant to appeal against the internal review decision.

608 Internal review decision

(1) The chief executive must, within 28 days after receiving an application for review of a decision—

(a) review the decision (the ***original decision***); and

(b) make a decision (the ***internal review decision***) to—

(i) confirm the original decision; or

(ii) amend the original decision; or

(iii) substitute another decision for the original decision; and

(c) give the applicant written notice (the ***review notice***) of the internal review decision.

(2) If the internal review decision is not the decision sought by the applicant, the review notice must state the following—

(a) the day the notice is given to the applicant (the ***review notice day***);

(b) the reasons for the decision;

(c) that the applicant may appeal against the decision to the court within 28 days after the review notice day;

Not authorised—indicative only

Not authorised—indicative only

(d) how to appeal;

(e) that the applicant may apply to the court for a stay of the decision.

(3) If the chief executive does not give the review notice within the 28 days, the chief executive is taken to have made an internal review decision confirming the original decision.

609 Who may appeal

A person who has applied for internal review of an original decision and is dissatisfied with the internal review decision may appeal to the court against the decision.

610 Procedure for an appeal to the court

(1) An appeal to the court is started by filing a notice of appeal with the registrar of the court.

(2) The notice of appeal must be filed within 28 days after—

(a) if the applicant is given a review notice—the review notice day; or

(b) otherwise—the day the chief executive is taken to have made an internal review decision confirming the original decision.

(3) The court may, at any time, extend the period for filing the notice of appeal.

(4) The notice of appeal must state fully the grounds of the appeal.

(5) A copy of the notice must be served on the chief executive.

611 Stay of operation of internal review decision

(1) An appeal against an internal review decision does not affect the operation of the decision or prevent the decision being implemented.

(2) However, the appellant may apply to the court for a stay of the internal review decision.

(3) The court may stay the internal review decision to secure the effectiveness of the appeal.

(4) The stay—

(a) may be given on conditions the court considers appropriate; and

(b) operates for the period decided by the court.

(5) The period of the stay must not extend past the day when the court decides the appeal.

612 Powers of court on appeal

(1) In deciding an appeal against an internal review decision, the court—

(a) has the same powers as the chief executive for making the internal review decision; and

(b) is not bound by the rules of evidence; and

(c) must comply with natural justice.

(2) An appeal is by way of rehearing.

(3) The court may—

(a) confirm the internal review decision; or

(b) set aside the internal review decision and substitute another decision; or

(c) set aside the internal review decision and return the matter to the chief executive with directions the court considers appropriate.

613 Effect of decision of court on appeal

(1) If the court sets aside the internal review decision and returns the matter to the chief executive with directions the court considers appropriate, and the chief executive makes a new

Not authorised—indicative only

Not authorised—indicative only

decision, the new decision is not subject to internal review or appeal under this part.

(2) If the court substitutes another decision—

(a) the substituted decision is taken to be the decision of the chief executive; and

(b) the chief executive may give effect to the decision as if—

(i) the decision were the original decision of the chief executive; and

(ii) no application for internal review or appeal had been made.

Chapter 15 Suspension of criminal proceedings, offences and other legal matters

Part 1 Preliminary

614 Purpose of ch 15

The purpose of this chapter is to provide for—

(a) matters relating to the suspension of criminal proceedings against a person who becomes subject to this Act; and

(b) offences relating to patients; and

(c) offences relating to officials; and

(d) the detention of, and use of reasonable force in relation to, particular patients; and

(e) matters relating to evidence and legal proceedings.

Part 2 Suspension of criminal proceedings

615 Purpose of pt 2

(1) The purpose of this part is to provide for—

(a) the suspension of criminal proceedings against a person—

(i) who becomes a classified patient; or

(ii) in relation to whom a direction is given under chapter 4 for a psychiatrist report to be prepared; or

(iii) in relation to whom a reference is made to the Mental Health Court; and

(b) the ending of the suspension of the criminal proceedings; and

(c) the giving of notices in relation to the suspension, and the ending of the suspension, of the criminal proceedings.

616 Suspension of proceedings

(1) This section applies if any of the following happens—

(a) a person charged with an offence, other than an offence against a law of the Commonwealth, becomes a classified patient;

Note—

A person becomes a classified patient if the person is transported to, or remains in, an inpatient unit of an authorised mental health service under chapter 3, part 2 or 3.

(b) the chief psychiatrist gives a direction under section 91 or 93 for a psychiatrist report to be prepared about a person in relation to a charge of a serious offence or an associated offence;

Not authorised—indicative only

Not authorised—indicative only

(c) a person's mental state in relation to an offence is referred to the Mental Health Court under section 101, 110, 175 or 183.

(2) A proceeding against a person mentioned in subsection (1)(a) for the offence is suspended.

(3) A proceeding against a person mentioned in subsection (1)(b) for the serious offence or associated offence to which the chief psychiatrist's direction relates is suspended.

(4) A proceeding against a person mentioned in subsection (1)(c) for the offence to which the reference relates is suspended.

(5) If more than 1 of the events happens in relation to a proceeding against a person, the proceeding is suspended on and from the happening of the earliest of the events.

617 Giving notice of particular suspensions

(1) This section applies if a proceeding is suspended under section 616(2) or (3).

(2) As soon as practicable after the proceeding is suspended, the chief psychiatrist must give written notice to the chief executive (justice) of the suspension.

(3) As soon as practicable after receiving a notice under subsection (2), the chief executive (justice) must give each of the following a copy of the notice—

(a) the registrar of the court in which the proceeding for the offence has been brought;

(b) the prosecuting authority for the offence;

(c) if the person is a minor—the chief executive (youth justice).

618 Ending of suspension

(1) This section applies to a proceeding against a person that is suspended under section 616.

(2) The suspension of the proceeding ends only if each of the following is satisfied—

(a) the person is not, or is no longer, a classified patient;

(b) if the chief psychiatrist has given a direction under section 91 or 93 for a psychiatrist report to be prepared about the person in relation to a charge of a serious offence or associated offence—the direction has been revoked;

(c) if the chief psychiatrist has decided not to make a reference under section 101 to the Mental Health Court—the period mentioned in section 101(3), or any extended period mentioned in section 101(5), in which the chief psychiatrist may make the reference has ended;

(d) if the person's mental state in relation to the offence has been referred to the Mental Health Court under section 101, 110, 175 or 183—the Mental Health Court has made a decision on the reference or the reference has been withdrawn.

619 Giving notice of ending of suspension

(1) As soon as practicable after the ending of the suspension of a proceeding under section 616, the chief psychiatrist must give each of the following written notice of the ending of the suspension—

(a) the person;

(b) the person's lawyer, if any;

(c) the chief executive (justice);

(d) if an authorised mental health service is responsible for the person—the administrator of the service;

(e) if the forensic disability service is responsible for the person—the administrator of the service.

(2) As soon as practicable after receiving a notice under subsection (1), the chief executive (justice) must give each of the following a copy of the notice—

Not authorised—indicative only

Not authorised—indicative only

(a) the registrar of the court in which the proceeding for the offence has been brought;

(b) the prosecuting authority for the offence;

(c) if the person is a minor—the chief executive (youth justice).

(3) The registrar of the court in which the proceeding for the offence has been brought must arrange for the charge for the offence to be brought before the court within 7 days after receiving a copy of the notice under subsection (2) or, if the court can not be constituted in that period, at the earliest opportunity after the end of the period.

620 Effect on powers relating to bail, discontinuance of proceedings and other matters

The suspension, under this part, of a proceeding against a person for an offence does not prevent—

(a) a court making an order granting the person bail, or enlarging, varying or revoking bail granted to the person, under the *Bail Act 1980*; or

(b) a court remanding the person in custody in relation to the proceeding for the offence; or

(c) a court adjourning the proceeding against the person for the offence until a stated date; or

(d) the prosecution of the person for the offence being discontinued at any time; or

(e) the presentation of an indictment under the Criminal Code, section 590 for the person.

Part 3 Offences relating to patients

621 Offence relating to ill-treatment

(1) This section applies to a person who, under this Act—

(a) is assessing, examining, providing treatment and care to, or detaining, a person (the ***patient***); or

(b) is responsible for the detention of a person (also the ***patient***).

(2) The person must not ill-treat the patient.

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) In this section—

ill-treat includes to wilfully abuse, neglect or exploit.

622 Offences relating to patients absconding

(1) This section applies if a person is—

(a) transporting a person (the ***patient***) under this Act—

(i) to an authorised mental health service; or

(ii) to the forensic disability service; or

(iii) to appear before a court; or

(iv) to a place of custody; or

(b) accompanying a classified patient, forensic patient or person subject to a judicial order (also the ***patient***) while the patient is receiving limited community treatment or on a temporary absence under section 221.

(2) For this section, while the person is acting as mentioned in subsection (1), the patient is in the person's charge.

(3) The person must not wilfully allow the patient to abscond from the person's charge.

Maximum penalty—200 penalty units or 2 years imprisonment.

(4) A person must not knowingly help the patient to abscond from the person's charge.

Maximum penalty—200 penalty units or 2 years imprisonment.

Not authorised—indicative only

Not authorised—indicative only

623 Offences relating to patients unlawfully absent

(1) A person must not—

(a) induce, or knowingly help, a patient of an authorised mental health service or public sector health service facility to unlawfully absent himself or herself from the service or facility; or

(b) knowingly harbour a patient who is unlawfully absent from an authorised mental health service or public sector health service facility.

Maximum penalty—

(a) for a classified patient, forensic patient or a person subject to a judicial order—200 penalty units or 2 years imprisonment; or

(b) otherwise—200 penalty units.

(2) Without limiting subsection (1)(b), a patient mentioned in section 622(1) is unlawfully absent from an authorised mental health service or public sector health service facility if the patient has absconded from the charge of a person mentioned in section 622(2).

(3) A person employed in an authorised mental health service or public sector health service facility must not wilfully allow a patient detained in the service or facility to unlawfully absent himself or herself from the service or facility.

Maximum penalty—

(a) for a classified patient, forensic patient or a person subject to a judicial order—200 penalty units or 2 years imprisonment; or

(b) otherwise—200 penalty units.

(4) In this section—

unlawfully means without authority under this Act or other legal authority, justification or excuse.

Part 4 Offences relating to officials

624 Definition for pt 4

In this part—

official means the following persons—

(a) the chief psychiatrist;

(b) the administrator of an authorised mental health service;

(c) an authorised person other than a police officer;

(d) an inspector.

625 Obstructing official

(1) A person must not obstruct an official exercising a power, or someone helping an official exercising a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If a person has obstructed an official, or someone helping an official, and the official decides to proceed with the exercise of the power, the official must warn the person that—

(a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and

(b) the official considers the person's conduct an obstruction.

(3) However, a person who is a patient does not commit an offence against subsection (1) merely because the person resists the exercise of the power in relation to himself or herself.

(4) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

Not authorised—indicative only

Not authorised—indicative only

626 Impersonating official

A person must not impersonate an official.

Maximum penalty—100 penalty units.

627 Giving official false or misleading information

(1) A person must not, in relation to the administration of this Act, give an official information, or a document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) Subsection (1) applies to information or a document given in relation to the administration of this Act whether or not the information or document was given in response to a specific power under this Act.

Part 5 Detention and use of reasonable force

628 Classified patient (voluntary) may be detained

A classified patient (voluntary) may be detained in an authorised mental health service for treatment and care for the person's mental illness.

629 Detention of person in authorised mental health service with use of reasonable force

(1) This section applies if, under a provision of this Act, a person is required or permitted to be detained in an authorised mental health service.

(2) The administrator of the authorised mental health service, and anyone lawfully helping the administrator, may exercise the power to detain the person in the service with the help, and using the force, that is necessary and reasonable in the circumstances.

630 Detention of person in public sector health service facility with use of reasonable force

(1) This section applies if, under a provision of this Act, a person is required or permitted to be detained in a public sector health service facility.

(2) The person in charge of the public sector health service facility, and anyone lawfully helping the person in charge, may exercise the power to detain the person in the public sector health service facility with the help, and using the force, that is necessary and reasonable in the circumstances.

631 Examination or assessment of involuntary patient without consent and with use of reasonable force

(1) This section applies to an involuntary patient.

(2) Subject to this Act, an examination or assessment of the patient may be made under this Act without the consent of the patient or anyone else.

(3) A person lawfully making, or lawfully helping to make, an examination or assessment of the patient in an authorised mental health service or public sector health service facility may use the force that is necessary and reasonable in the circumstances to make, or help make, the examination or assessment.

Notes—

1 See section 33 for the use of force in relation to a person subject to an examination authority.

2 See the *Guardianship and Administration Act 2000*, sections 63 and 75 for carrying out urgent health care and the use of force to carry out health care authorised under that Act.

632 Treatment and care of patient without consent and with use of reasonable force

(1) This section applies to the following (each a ***patient***)—

(a) an involuntary patient subject to a treatment authority, forensic order or treatment support order;

Not authorised—indicative only

Not authorised—indicative only

(b) a person from another State detained in an authorised mental health service under section 368(3)(b).

(2) Subject to this Act, treatment and care for the patient's mental condition may be provided to the patient under this Act without the consent of the patient or anyone else.

(3) A person lawfully providing, or lawfully helping to provide, treatment and care to the patient in an authorised mental health service or public sector health service facility may use the force that is necessary and reasonable in the circumstances to provide, or help provide, the treatment and care.

(4) To remove any doubt, it is declared that this section does not authorise the provision of treatment and care to an involuntary patient that is inconsistent with this Act.

Example of treatment and care that is inconsistent with this Act—

a doctor performing electroconvulsive therapy on a person other than under section 236 or 237.

633 Relationship with use of physical restraint

This part is subject to section 270.

Part 6 Evidence and legal proceedings

634 Evidentiary aids

(1) This section applies to a proceeding under this Act.

(2) The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

(a) the chief psychiatrist's appointment;

(b) an appointment of the administrator of an authorised mental health service;

(c) an authorised doctor's appointment;

(d) an authorised mental health practitioner's appointment;

(e) an appointment under section 341 of a health practitioner to perform particular functions;

(f) an inspector's appointment;

(g) an authorised person's appointment;

(h) the authority of any of the following persons to do anything under this Act—

(i) the Minister;

(ii) the chief psychiatrist;

(iii) the administrator of an authorised mental health service;

(iv) an authorised doctor;

(v) an authorised mental health practitioner;

(vi) a health practitioner appointed under section 341 to perform particular functions;

(vii) an inspector;

(viii) an authorised person.

(3) A signature purporting to be the signature of any of the following persons is evidence of the signature it purports to be—

(a) the Minister;

(b) the chief psychiatrist;

(c) the president;

(d) the administrator of an authorised mental health service;

(e) an authorised doctor;

(f) an authorised mental health practitioner;

(g) a health practitioner appointed under section 341 to perform particular functions;

(h) an inspector;

(i) an authorised person.

Not authorised—indicative only

Not authorised—indicative only

(4) A certificate purporting to be signed by the chief psychiatrist and stating any of the following matters is evidence of the matter—

(a) a stated document is a copy of a document made, given or issued under this Act, including, for example, an authority, order, notice, declaration, direction or decision;

(b) on a stated day, or during a stated period, a stated person was or was not an involuntary patient, a stated type of involuntary patient or a classified patient (voluntary);

(c) a stated place is, or was on a stated day or during a stated period, an authorised mental health service or stated type of authorised mental health service;

(d) on a stated day, a stated person was given or issued a stated document under this Act, including, for example, an authority, order, notice, declaration, direction or decision;

(e) on a stated day, a stated requirement was made of a stated person;

(f) a stated document is a copy of a part of a register kept under this Act.

(5) A document purporting to be signed by a member or the executive officer of the tribunal and to be an order or decision, or copy of an order or decision, of the tribunal, is evidence of the order or decision.

635 Proceedings for offences

(1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

(2) The proceeding must start within the later of—

(a) 1 year after the offence is committed; or

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

Chapter 16 Establishment and administration of court and tribunal

Part 1 Mental Health Court

Division 1 Preliminary

636 Purpose of pt 1

The purpose of this part is to provide for the following—

(a) the continuation of the Mental Health Court, as formerly established under the repealed *Mental Health Act 2000*;

(b) the constitution, jurisdiction and powers of the court;

(c) procedural provisions for proceedings of the court;

(d) the review of the detention of particular persons in an authorised mental health service or the forensic disability service.

Division 2 Continuation, constitution, jurisdiction and powers

637 Continuation of Mental Health Court

(1) The Mental Health Court, as formerly established as a superior court of record by the repealed *Mental Health Act 2000*, section 381 is continued in existence.

(2) The court has a seal that must be judicially noticed.

(3) The court consists of the president and other members of the court.

Not authorised—indicative only

Not authorised—indicative only

638 Constitution

(1) The Mental Health Court is constituted by a member of the court sitting alone.

(2) In exercising jurisdiction under this Act, the court must be assisted by 1 or 2 assisting clinicians.

(3) However, subsection (2) does not apply to—

(a) a directions hearing; or

(b) a hearing that is only about a question of law.

(4) If the court is assisted by 2 assisting clinicians for a hearing, the assisting clinicians must be—

(a) for a hearing other than a hearing relating to a person who has an intellectual disability—2 psychiatrists; or

(b) for a hearing relating to a person who has an intellectual disability—

(i) 2 psychiatrists; or

(ii) 1 psychiatrist and 1 person with expertise in the care of persons who have an intellectual disability.

(5) If the court is assisted by 1 assisting clinician for a hearing, the assisting clinician must be—

(a) for a hearing other than a hearing relating to a person who has an intellectual disability—1 psychiatrist; or

(b) for a hearing relating to a person who has an intellectual disability—

(i) 1 psychiatrist; or

(ii) 1 person with expertise in the care of persons who have an intellectual disability.

(6) The president must decide, for a hearing other than a hearing mentioned in subsection (3)—

(a) whether the court is to be assisted by 1 or 2 assisting clinicians, and the assisting clinicians who are to assist the court; or

(b) if a hearing is adjourned under subsection (7)—whether the court is to be assisted by a second assisting clinician and, if so, the second assisting clinician who is to assist the court.

(7) If the court is assisted by 1 assisting clinician and the member constituting the court considers, because of the nature of the evidence or issues arising in the proceeding, that it would be beneficial for the court to be assisted by 2 assisting clinicians, the member may adjourn the hearing—

(a) if the member is the president—to decide the second assisting clinician for the hearing; or

(b) otherwise—to allow the president to decide whether the court should be assisted for the hearing by a second assisting clinician.

639 Jurisdiction

(1) The Mental Health Court has jurisdiction to hear and decide—

(a) references under chapter 5; and

(b) appeals under chapter 13, part 3; and

(c) reviews under division 9 of the detention of persons in authorised mental health services or the forensic disability service.

(2) In exercising its jurisdiction, the court—

(a) must inquire into the matter before it; and

(b) may inform itself in relation to the matter before it in any way it considers appropriate.

(3) The court's jurisdiction is not limited, by implication, by a provision of this or another Act.

(4) A member of the court retains all of the member's jurisdiction as a Supreme Court judge.

Not authorised—indicative only

Not authorised—indicative only

640 Powers

Without limiting the powers conferred on it under this or another Act, the Mental Health Court may do all things necessary or convenient to be done for the exercise of its jurisdiction.

Division 3 Membership

641 Appointment of members

(1) The Governor in Council may, by commission, appoint a Supreme Court judge to be a member of the Mental Health Court.

(2) The judge is appointed for the term, of not more than 3 years, stated in the commission.

642 Appointment does not affect judge's tenure of office

(1) The appointment of, or service by, the judge as a member of the Mental Health Court does not affect—

(a) the person's tenure of office as a judge; or

(b) the person's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of the person's office as a judge.

(2) The person's service as a member of the court is taken to be service as a Supreme Court judge for all purposes.

643 Resignation of office

(1) The judge may resign as a member of the Mental Health Court by signed notice of resignation given to—

(a) if the judge is the Chief Justice—the Governor; or

(b) otherwise—the Chief Justice.

(2) The notice takes effect when it is given under subsection (1) or, if a later time is stated in the notice, at the later time.

644 When member's office ends

(1) The judge holds office as a member of the Mental Health Court until the earlier of the following days—

(a) the day the person's appointment as a member of the court ends;

(b) if the person resigns as a member of the court—the day the notice of resignation takes effect under section 643;

(c) the day the person ceases to be a Supreme Court judge.

(2) However, if the judge ceases to hold office as a member of the court while hearing a matter, the Governor in Council may, without reappointing the person as a member of the court, continue the person in office for the time necessary to enable the hearing to be completed.

(3) The person continued in office may exercise the jurisdiction and powers of the court that are necessary or convenient for the hearing to be completed.

Division 4 President

645 Appointment of president

(1) The Governor in Council is to appoint a member of the Mental Health Court to be the president.

(2) A person may be appointed as the president at the same time the person is appointed as a member of the court.

646 Arrangement of business

(1) The president is responsible for the administration of the Mental Health Court and for ensuring the orderly and

Not authorised—indicative only

Not authorised—indicative only

expeditious exercise of the jurisdiction and powers of the court.

(2) The president has power to do all things necessary or convenient to be done for the administration of the court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the court.

647 President holds office while member of court

The president holds office as the president while he or she is a member of the Mental Health Court.

648 Delegation of particular powers

The president may delegate, to another member of the Mental Health Court, the president's powers under section 638(6).

649 Resignation of office

(1) The president may resign as president by signed notice of resignation given to—

(a) if the president is the Chief Justice—the Governor; or

(b) otherwise—the Chief Justice.

(2) The notice takes effect when it is given under subsection (1) or, if a later time is stated in the notice, at the later time.

(3) Resignation as the president does not affect the person's membership of the Mental Health Court.

650 Appointment of acting president

The Governor in Council may appoint a member of the Mental Health Court to act as the president—

(a) for any period the office is vacant; or

(b) for any period, or all periods, when the president is absent from duty or from Queensland or, for another reason, can not perform the duties of the office.

Division 5 Assisting clinicians

651 Functions

(1) The functions of an assisting clinician are to—

(a) examine material received for a hearing to identify matters requiring further examination and to make recommendations to the Mental Health Court about the matters; and

(b) make recommendations about the making of court examination orders under section 668; and

(c) assist the court by advising it—

(i) on the meaning and significance of clinical evidence; and

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

(d) assisting the court and the registry by advising them about matters relating to the hearing of proceedings or the administration of the court.

(2) However, an assisting clinician's functions are limited to matters within the clinician's professional expertise.

652 Appointment

(1) The Governor in Council may, on the recommendation of the Minister, appoint a following person (an ***assisting clinician***) by gazette notice to assist the Mental Health Court—

(a) a psychiatrist;

(b) a person with expertise in the care of persons who have an intellectual disability.

(2) In recommending a person for appointment as an assisting clinician, the Minister must be satisfied the person has the qualifications and experience necessary to perform an assisting clinician's functions.

Not authorised—indicative only

Not authorised—indicative only

(3) An assisting clinician holds office for the term, of not more than 3 years, stated in the gazette notice.

(4) An assisting clinician is to be appointed under this Act and not under the *Public Service Act 2008*.

653 Conditions of appointment

(1) An assisting clinician is entitled to be paid the remuneration and allowances decided by the Governor in Council.

(2) An assisting clinician holds office on the terms and conditions, not provided for under this Act, decided by the Governor in Council.

654 Resignation

An assisting clinician may resign by signed notice given to the Minister.

655 Termination of appointment

(1) The Governor in Council may terminate the appointment of an assisting clinician if the Governor in Council is satisfied the assisting clinician—

(a) has become incapable of performing the assisting clinician's duties; or

(b) has performed the assisting clinician's duties carelessly, incompetently or inefficiently; or

(c) has been guilty of misconduct that could warrant dismissal from the public service if the assisting clinician were a public service officer.

(2) The Governor in Council must terminate the appointment of an assisting clinician if the assisting clinician—

(a) no longer has the qualifications or experience necessary to perform an assisting clinician's functions; or

Example—

a psychiatrist stops holding specialist registration in the specialty of psychiatry under the *Health Practitioner Regulation National Law (Queensland) 2009*

(b) is convicted of an indictable offence.

Division 6 Mental Health Court Registry and registrar

656 Mental Health Court Registry

(1) There is a Mental Health Court Registry.

(2) The registry consists of—

(a) the registrar; and

(b) the other staff necessary for the Mental Health Court to exercise its jurisdiction.

(3) The registrar and other staff are to be employed under the *Public Service Act 2008*.

657 Registry's functions

The registry has the following functions—

(a) to act as the registry for the Mental Health Court;

(b) to provide administrative support to the court;

(c) any other functions conferred on the registry under this Act.

658 Registrar's functions

The registrar administers the registry and has the functions conferred on the registrar under this or another Act.

Not authorised—indicative only

Not authorised—indicative only

659 Registrar's powers—general

(1) The registrar has the power to do all things necessary or convenient to be done to perform the registrar's functions.

(2) In performing a function or exercising a power, the registrar must comply with a direction relating to the performance or exercise given by—

(a) a member of the Mental Health Court for a proceeding being heard by the member; or

(b) the president.

660 Registrar's power to issue subpoena

(1) For the Mental Health Court exercising its jurisdiction, the registrar may issue a subpoena requiring the person to whom the subpoena is directed—

(a) to produce a stated or described document; or

(b) to attend before the court to give evidence.

(2) The subpoena may be issued—

(a) on the registrar's own initiative; or

(b) at the direction of the court; or

(c) at the request of a party to a proceeding.

(3) The person to whom the subpoena is directed must comply with the subpoena.

(4) Failure to comply with the subpoena without lawful excuse is contempt of court and a person who fails to comply may be dealt with for contempt of court.

661 Registrar's power to require administrator to produce document

(1) For the Mental Health Court exercising its jurisdiction, the registrar may require the administrator of an authorised mental health service or of the forensic disability service to give the registrar a stated or described document.

(2) The requirement must be made by written notice given to the administrator.

(3) The administrator must comply with the notice despite an obligation under an Act or law not to give the document or disclose information in the document.

662 Registrar's power to require person to be brought before Mental Health Court

(1) For the Mental Health Court exercising its jurisdiction, the registrar may—

(a) require the administrator of an authorised mental health service or of the forensic disability service to bring a person for whom the service is responsible before the court at a stated time and place; or

(b) require the custodian of a person in lawful custody to bring the person before the court at a stated time and place.

(2) The requirement must be made by written notice given to the administrator or custodian.

(3) The administrator or custodian must comply with the notice.

(4) For subsection (1), an authorised person may—

(a) transport the person from the authorised mental health service or forensic disability service to appear before the court; and

(b) on the adjournment of the hearing, transport the person from the court to the authorised mental health service or forensic disability service.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

Not authorised—indicative only

Not authorised—indicative only

663 Registrar's power to require prosecuting authority to give particular documents

(1) For the Mental Health Court exercising its jurisdiction for a reference in relation to a person, the registrar may require the prosecuting authority for the offence to give the registrar—

(a) a written report about the criminal history of the person; or

(b) a brief of evidence in relation to the offence.

(2) The requirement must be made by written notice given to the prosecuting authority.

(3) The prosecuting authority must comply with the notice.

(4) Subsection (1) applies to the criminal history in the possession of the prosecuting authority or to which the prosecuting authority has access.

664 Delegation by registrar

(1) The registrar may delegate a function of the registrar under this or another Act to an appropriately qualified member of the staff of the registry.

(2) In this section—

function includes a power.

Division 7 Protection and immunities

665 Contempt of court

(1) The Mental Health Court has all the protection, powers, jurisdiction and authority the Supreme Court has for a contempt of court.

(2) The court must comply with the provisions of the *Uniform Civil Procedure Rules 1999* relating to contempt of court, with necessary changes.

(3) The registrar may apply to the court for an order that a person be committed to prison for contempt of court.

(4) The court's jurisdiction to punish a contempt of court may be exercised on the initiative of a member of the court.

(5) The court has jurisdiction to punish an act or omission as a contempt of court, even if a penalty is prescribed for the act or omission.

666 Conduct that is contempt and offence

(1) If conduct of a person is both contempt of the Mental Health Court and an offence, the person may be proceeded against for the contempt or for the offence.

(2) However, the person is not liable to be punished twice for the same conduct.

667 Protection and immunity for member of Mental Health Court and assisting clinician

(1) A member of the Mental Health Court has, in the exercise of jurisdiction under this Act, the same protection and immunity as a Supreme Court judge has in the performance of a judge's functions.

(2) An assisting clinician has, in the performance of the assisting clinician's functions under this Act, the same protection and immunity as a Supreme Court judge has in the performance of a judge's functions.

Division 8 Court examination orders

668 Making of court examination order

(1) The Mental Health Court may make an order (a ***court examination order***) requiring the person the subject of a proceeding before the court to submit to an examination by a stated examining practitioner.

Not authorised—indicative only

Not authorised—indicative only

Note—

A court examination order is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person.

(2) The court examination order must—

(a) be in the approved form; and

(b) state the matters on which the examining practitioner must report to the court.

(3) The examining practitioner must give a written report on the examination to the court.

669 Recommendation or request for court examination order on reference

(1) This section applies if, for a proceeding for a reference in relation to a person, an assisting clinician recommends, or the director of public prosecutions asks, that the Mental Health Court make a court examination order for the person.

(2) The registrar must give the parties to the proceeding written notice of the recommendation or request.

(3) The notice must state that the parties may make written submissions on the recommendation or request within the reasonable time stated in the notice.

(4) The registrar must give the court—

(a) the recommendation or request; and

(b) any submission made by a party on it.

(5) The director of public prosecutions must pay the costs of an examination requested by the director of public prosecutions.

670 Transport, detention and examination of person under court examination order

(1) This section applies if the Mental Health Court makes a court examination order for a person the subject of a proceeding before the court.

(2) For examining the person, the order may authorise an authorised person to transport the person to an inpatient unit of a stated authorised mental health service.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

(3) However, the court may make an order under subsection (2) only if the court is satisfied there is no other reasonably practicable way to ensure a thorough examination of the person's mental condition.

(4) The person may be detained in the authorised mental health service for the examination for—

(a) if the order states a period of more than 3 days—the stated period; or

(b) otherwise—not more than 3 days.

(5) The examining practitioner may examine the person without the consent of the person or anyone else.

(6) Also, the examining practitioner, or anyone lawfully helping the examining practitioner, may use the force that is necessary and reasonable in the circumstances to examine the person.

671 What happens at end of examination

(1) This section applies after the end of the time allowed for the person's examination or on the earlier completion of the person's examination.

(2) If the person was taken from lawful custody for the examination, an authorised person may transport the person from the authorised mental health service to the person's place of custody.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

(3) If the person was not taken from another authorised mental health service or the forensic disability service, or from lawful

Not authorised—indicative only

Not authorised—indicative only

custody, for the examination, the administrator of the authorised mental health service in which the person is detained must ensure arrangements are made for the person to be transported to—

(a) the place from which the person was taken for the examination; or

(b) another place to which the person reasonably asks to be taken.

(4) The person may be detained in the authorised mental health service until the person is transported, under subsection (2), from the service.

(5) Subsections (2) and (3) do not apply if the person is, or becomes—

(a) an involuntary patient who may be detained in an authorised mental health service or the forensic disability service; or

(b) a classified patient (voluntary).

Division 9 Reviews of detention in authorised mental health service or forensic disability service

672 Definitions for div 9

In this division—

appointed person see section 677.

relevant service means—

(a) an authorised mental health service; or

(b) the forensic disability service.

673 Power to review detention

(1) The Mental Health Court may, on application by a prescribed person or on its own initiative, review a person's detention in a relevant service to decide whether the person's detention is lawful.

(2) However, subsection (1) does not apply if the person's detention in the relevant service has been ordered by the Mental Health Court.

(3) An application for review must—

(a) be in the approved form; and

(b) state the grounds on which it is made.

(4) In this section—

prescribed person means the following—

(a) a person who is detained in a relevant service;

(b) an interested person for the person mentioned in paragraph (a);

(c) the Attorney-General.

674 Notice of hearing

(1) The registrar must give each of the following persons written notice of the hearing of a review of a person's detention in a relevant service—

(a) the person who is detained in the relevant service;

(b) if the person is not the applicant—the applicant;

(c) the administrator of the relevant service;

(d) if the relevant service is an authorised mental health service—the chief psychiatrist;

(e) if the relevant service is the forensic disability service—the director of forensic disability;

(f) the Attorney-General.

(2) The notice must be given at least 7 days before the hearing.

Not authorised—indicative only

Not authorised—indicative only

(3) The notice must state the following—

(a) the time and place of the hearing;

(b) the nature of the hearing;

(c) the person's rights at the hearing.

675 Parties to proceeding

(1) The parties to the proceeding for the review are—

(a) the person who is detained in the relevant service; and

(b) if the person is not the applicant—the applicant; and

(c) if the relevant service is an authorised mental health service—the chief psychiatrist; and

(d) if the relevant service is the forensic disability service—the director of forensic disability.

(2) Also, the Attorney-General may elect to be a party to the proceeding.

(3) An election under subsection (2) must be made by filing a notice in the registry.

676 Consideration of application

(1) The Mental Health Court must consider the application as soon as practicable after it is made.

(2) The court may refuse the application if the court is satisfied the application—

(a) may more properly be dealt with by the tribunal on a review under chapter 12; or

(b) is frivolous or vexatious.

677 Appointment of person to inquire into detention

For reviewing a person's detention in a relevant service, the Mental Health Court may, by order, direct a stated person (the

appointed person) to inquire into, and report to the court on, the person's detention in the service.

678 Administrator to ensure help given to appointed person

The administrator of the relevant service must ensure the appointed person is given reasonable help to carry out the inquiry.

679 General powers of appointed person

(1) For carrying out the inquiry, the appointed person may exercise 1 or more of the following powers—

(a) enter the relevant service;

(b) examine the person who is detained in the relevant service;

(c) search any part of the relevant service;

(d) inspect, examine, test, measure, photograph or film any part of the relevant service or any documents or other thing in the service;

(e) take extracts from, or make copies of, any documents in the relevant service;

(f) take into the relevant service any persons, equipment and materials the appointed person reasonably requires for exercising powers in relation to the service.

(2) The appointed person may exercise a power under subsection (1) with the help, and using the force, that is necessary and reasonable in the circumstances.

680 Appointed person's power to ask questions

(1) The appointed person may require another person to answer a question about the person's detention.

Not authorised—indicative only

Not authorised—indicative only

(2) When making the requirement, the appointed person must warn the other person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

(3) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(4) It is a reasonable excuse for the person to fail to answer the question if complying with the requirement might tend to incriminate the person.

(5) The person does not commit an offence against subsection (3) if the information sought by the appointed person is not in fact relevant to the person's detention.

681 Mental Health Court may direct person's discharge

(1) This section applies if, after considering the evidence before it, including any report prepared by the appointed person, the Mental Health Court is satisfied the person's detention in the relevant service is unlawful.

(2) The court must, by order, direct that the person be immediately discharged from the relevant service.

(3) The administrator of the relevant service must ensure the order is complied with.

682 Other remedies not affected

This division does not limit any other remedy available to the person.

Division 10 Procedural provisions

683 General right of appearance and representation

A party to a proceeding in the Mental Health Court may—

(a) appear in person at the hearing of the proceeding; or

(b) be represented at the hearing by—

(i) a lawyer; or

(ii) with the leave of the court, a person who is not a lawyer.

684 Evidence

(1) In conducting a proceeding, the Mental Health Court is not bound by the rules of evidence unless the court decides it is in the interests of justice that it be bound for the proceeding or a part of the proceeding.

(2) The court may make the decision on application by a party to the proceeding or on its own initiative.

685 Proof of matters

(1) No party to a proceeding bears the onus of proof of any matter in the proceeding.

(2) A matter to be decided by the Mental Health Court must be decided on the balance of probabilities.

686 Directions

The Mental Health Court may give directions about the hearing of a proceeding.

Note—

See also the *Evidence Act 1977*, part 3A. The stated purposes of the part include the facilitation of the giving and receiving of evidence, and the making and receiving of submissions, in Queensland court proceedings by audio visual link or audio link.

687 Assisting clinician's advice before or during adjournment of hearing

(1) This section applies to advice given by an assisting clinician to the Mental Health Court—

(a) before the hearing of a proceeding starts; or

Not authorised—indicative only

Not authorised—indicative only

(b) during an adjournment of the hearing of a proceeding, other than an adjournment for the court to make its decision.

(2) During the hearing, the court must inform each party to the proceeding of the advice unless the party tells the court it does not require the information.

(3) However, this section does not apply to advice mentioned in section 651(1)(d) that an assisting clinician gives the court.

688 Assisting clinician's advice during hearing

(1) Advice given by an assisting clinician to the Mental Health Court during the hearing of a proceeding must be given in a way that can be heard by the parties to the proceeding.

(2) However, this section does not apply to advice mentioned in section 651(1)(d).

689 Particular advice of assisting clinician to be stated in reasons for decision

(1) This section applies if the Mental Health Court is satisfied advice given by an assisting clinician to the court materially contributed to the court's decision in a proceeding.

(2) The court must state the advice in the court's reasons for its decision.

690 When court may conduct hearing in absence of person

The Mental Health Court may conduct the hearing of a proceeding in the absence of the person who is the subject of the proceeding only if the court is satisfied it is expedient and in the interests of justice to do so.

691 Appointing assistant

The Mental Health Court may appoint a person with appropriate knowledge or experience to assist it in a hearing,

including, for example, a person with appropriate communication skills or appropriate cultural or social knowledge or experience.

692 Court may sit and adjourn hearing

The Mental Health Court may, subject to the court rules—

(a) sit at any time and in any place for the hearing of a proceeding; and

(b) adjourn the hearing of a proceeding to any time and place.

693 Hearing of reference generally open to public

(1) The hearing of a proceeding for a reference is open to the public unless the Mental Health Court, by order, directs that the hearing or part of the hearing not be open to the public.

(2) However, the court may make an order directing that the hearing or part of the hearing not be open to the public only if the court is satisfied it is in the interests of justice.

(3) This section is subject to section 695.

694 Particular hearings not generally open to public

(1) This section applies to the following proceedings—

(a) an appeal under chapter 13 to the Mental Health Court;

(b) a review under division 9 of the detention of a person.

(2) The hearing of the proceeding must not be open to the public unless the court, by order, directs that the hearing or part of the hearing be open to the public.

(3) However, the court may make an order directing that a hearing or part of a hearing be open to the public only if the court is satisfied—

(a) the person the subject of the proceeding has agreed to the order; and

Not authorised—indicative only

Not authorised—indicative only

(b) the order will not result in serious harm to the person's health or risk the safety of anyone else.

(4) This section is subject to section 695.

695 Hearing about minor not open to public

(1) This section applies if a minor is the subject of a proceeding in the Mental Health Court.

(2) The hearing of the proceeding is not open to the public.

(3) However, the court may permit a person to be present during the hearing if the court is satisfied it is in the interests of justice.

696 Confidentiality order

(1) In a proceeding, the Mental Health Court may, by order (a ***confidentiality order***), prohibit or restrict the disclosure of any of the following to the person the subject of the proceeding—

(a) information given before it;

(b) matters contained in documents filed with, or received by, it;

(c) the reasons for its decision in the proceeding.

(2) However, the court may make a confidentiality order only if satisfied the disclosure would—

(a) cause serious harm to the health of the person; or

(b) put the safety of someone else at serious risk.

(3) If the court makes a confidentiality order, the court must—

(a) disclose to the person's lawyer, or another representative of the person, the information or matters mentioned in subsection (1) to which the order relates; and

(b) give the lawyer or other representative written reasons for the order.

Note—

For the person's general right of representation, see section 683.

(4) If the person is not represented at the hearing of the proceeding by a lawyer or another representative, the court must ensure a lawyer or another representative is appointed for subsection (3).

(5) A person must not contravene a confidentiality order unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—200 penalty units.

697 Costs

Each party to a proceeding in the Mental Health Court is to bear the party's own costs of the proceeding.

698 Death or incapacity of member after hearing started

(1) This section applies if, after a member of the Mental Health Court starts to hear a proceeding, the member dies or becomes incapable of continuing to hear the proceeding.

(2) A party to the proceeding may, after giving at least 7 days written notice to each other party to the proceeding, apply to the president for an order directing the action to be taken in the proceeding.

(3) The president may, on the application or on the president's own initiative, after consulting with the parties to the proceeding—

(a) order the proceeding be reheard; or

(b) adjourn the proceeding to allow the incapacitated member of the court to continue when able; or

(c) with the consent of the parties, make an order the president considers appropriate about—

(i) deciding the proceeding; or

(ii) completing the hearing and deciding the proceeding.

Not authorised—indicative only

Not authorised—indicative only

(4) If, under subsection (3)(a), a proceeding is reheard, the first hearing is taken not to have happened.

(5) An order mentioned in subsection (3)(c) is taken to be a decision of the Mental Health Court.

Division 11 Rules and practice

699 Rule-making power

(1) The Governor in Council may make rules under this Act.

(2) However, rules relating to the Mental Health Court or the registry may be made only with the consent of the president.

(3) Rules may be made about the following matters—

(a) the practice and procedure for proceedings in the court;

(b) fees and expenses payable to witnesses;

(c) fees and costs payable in relation to proceedings in the court and the party by or to whom they are to be paid;

(d) service of process, notices, orders or other things on parties and other persons.

(4) Rules made under this section are rules of court.

700 Directions about practice

(1) Subject to this Act and the court rules, the practice and procedure of the Mental Health Court are as directed by the president.

(2) If this Act or the rules do not provide or sufficiently provide for a particular matter, an application for directions may be made to the president.

Division 12 Miscellaneous

701 Annual report

(1) Within 90 days after the end of each financial year, the president must prepare and give the Minister a report on the operations of the Mental Health Court and the registry during the year.

(2) The report must also contain the other information required by the Minister.

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the day the Minister receives it.

Part 2 Mental Health Review Tribunal

Division 1 Preliminary

702 Purpose of pt 2

The purpose of this part is to provide for the following—

(a) the continuation of the Mental Health Review Tribunal, as formerly established under the repealed *Mental Health Act 2000*;

(b) the constitution, jurisdiction and powers of the tribunal;

(c) procedural provisions for proceedings of the tribunal.

703 Definition for pt 2

In this part—

party, to a proceeding—

(a) for a proceeding under chapter 12—means a person who has a right to appear in person at the hearing of the proceeding; or

Not authorised—indicative only

Not authorised—indicative only

(b) for an appeal to the tribunal under chapter 13—see section 532.

Division 2 Continuation, jurisdiction and powers

704 Continuation of Mental Health Review Tribunal

(1) The Mental Health Review Tribunal, as formerly established under the repealed *Mental Health Act 2000*, section 436, is continued in existence.

(2) The tribunal consists of the president, the deputy president and other members.

705 Jurisdiction and independence

(1) The tribunal has jurisdiction to—

(a) review the following under chapter 12—

(i) treatment authorities;

(ii) forensic orders;

(iii) treatment support orders;

(iv) a person's fitness for trial;

(v) the detention of a minor in a high security unit; and

(b) hear applications for the following—

(i) examination authorities;

(ii) approvals of regulated treatment;

(iii) approvals of transfers of particular patients into and out of Queensland; and

(c) decide appeals under chapter 13, part 2.

(2) In exercising its jurisdiction, the tribunal—

(a) must act independently; and

(b) is not subject to direction or control by any entity, including any Minister.

706 Powers

(1) The tribunal may do all things necessary or convenient to be done for, or in relation to, exercising its jurisdiction.

(2) Without limiting subsection (1), the tribunal has the powers conferred on it under this Act.

Division 3 Members and staff of tribunal

707 Appointment of members

(1) The president is to be appointed by the Governor in Council on a full-time basis.

(2) The deputy president and other members are to be appointed by the Governor in Council on a full-time or part-time basis.

(3) A person is eligible for appointment as the president or deputy president only if the person—

(a) is a lawyer of at least 7 years standing; and

(b) has, in the Minister's opinion, sufficient knowledge of administrative law and this Act.

(4) A person is eligible for appointment as another member only if—

(a) the person—

(i) is a lawyer of at least 5 years standing; or

(ii) is a psychiatrist; or

(iii) has other qualifications and experience the Minister considers relevant to exercising the tribunal's jurisdiction; and

(b) the Minister is satisfied the person has the competencies developed by the president under section 714(3).

Not authorised—indicative only

Not authorised—indicative only

(5) In recommending a person for appointment as a member, the Minister must have regard to—

(a) the need for a balanced gender representation in the membership of the tribunal; and

(b) the range and experience of members; and

(c) the need for the membership of the tribunal to reflect the social and cultural diversity of the general community.

(6) Also, in recommending a person for appointment as a member, if the Minister is not responsible for administering the Forensic Disability Act, the Minister must consult with the Minister responsible for administering that Act.

(7) Members are appointed under this Act and not under the *Public Service Act 2008*.

708 Duration of appointment

(1) The president holds office for the term, of not more than 5 years, stated in the president's instrument of appointment.

(2) The deputy president or another member holds office for the term, of not more than 3 years, stated in the member's instrument of appointment.

709 Terms of appointment

(1) A member is entitled to be paid the remuneration and allowances decided by the Governor in Council.

(2) For matters not provided for by this Act, a member holds office on the terms and conditions decided by the Governor in Council.

710 Resignation

A member may resign by signed notice given to the Minister.

711 Termination of appointment

(1) The Governor in Council may terminate the appointment of a member if the Governor in Council is satisfied the member—

(a) has become incapable of satisfactorily performing the member's functions; or

(b) has performed the member's functions carelessly, incompetently or inefficiently; or

(c) has been guilty of misconduct that could warrant dismissal from the public service if the member were a public service officer.

(2) The Governor in Council must terminate the appointment of a member if the member—

(a) ceases to be eligible for appointment as a member; or

(b) is convicted of an indictable offence.

712 Deputy president to act as president

The deputy president is to act in the office of the president during—

(a) any period the office is vacant; or

(b) all periods when the president is absent from duty or from Queensland or, for another reason, can not perform the functions of the office.

713 Executive officer and other staff

(1) There is to be an executive officer of the tribunal and other staff necessary for the tribunal to exercise its jurisdiction.

(2) The executive officer and other staff are appointed under the *Public Service Act 2008*.

(3) The president is responsible for the organisational unit made up of the staff of the tribunal and for the organisational unit's efficient and effective administration and operation.

Not authorised—indicative only

Not authorised—indicative only

(4) In performing a function or exercising a power under this Act, the executive officer and other staff of the tribunal are subject to the direction and control of the president.

714 President's functions generally

(1) The functions of the president include—

(a) ensuring the quick and efficient discharge of the tribunal's business; and

(b) giving directions about—

(i) the arrangement of the tribunal's business; and

(ii) the number of members to constitute the tribunal for a particular hearing; and

(iii) the members who are to constitute the tribunal for a particular hearing; and

(iv) the places and times the tribunal is to sit; and

(c) other functions conferred on the president under this Act.

(2) Also, the president must ensure the members are adequately and appropriately trained to enable the tribunal to perform its functions effectively and efficiently.

(3) For subsection (2), the president must develop competencies in the following—

(a) administrative law;

(b) the operation of this Act;

(c) mental health and intellectual disability issues, including forensic mental health and forensic disability issues.

(4) A direction mentioned in subsection (1) must not be inconsistent with this Act.

715 President's powers

(1) The president has the powers given under this Act.

(2) Also, the president may do all things necessary or convenient to be done to perform the president's functions.

Division 4 Constitution of tribunal for hearings

716 Particular proceedings

(1) This section applies to—

(a) a proceeding for a review under chapter 12; or

(b) a proceeding for hearing an application under—

(i) chapter 12, part 9, division 1 for approval to perform electroconvulsive therapy on a person; or

(ii) chapter 12, part 10, division 1 for approval of the transfer into Queensland of a person subject to an interstate forensic order; or

(iii) chapter 12, part 10, division 2 for approval of the transfer out of Queensland of a person subject to a forensic order (mental health), forensic order (disability) or treatment support order; or

(c) an appeal under chapter 13, part 2.

(2) The tribunal must be constituted by at least 3, but not more than 5, members of whom—

(a) at least 1 must be a lawyer; and

(b) at least 1 must be a psychiatrist or, if a psychiatrist is not readily available but another doctor is available, another doctor; and

(c) at least 1 person who is not a lawyer or doctor.

(3) However, for a proceeding for a review of a treatment authority for a person or for hearing an application for approval to perform electroconvulsive therapy on a person, the

Not authorised—indicative only

Not authorised—indicative only

tribunal may be constituted by fewer than 3 members if the president is satisfied—

(a) it is appropriate, expedient and in the person's best interests to do so; and

(b) for hearing an application for approval to perform electroconvulsive therapy on a person—electroconvulsive therapy has been performed on the person under section 237 or approval to perform electroconvulsive therapy on the person is required urgently.

717 Application for examination authority

(1) This section applies to a proceeding for hearing an application under chapter 12, part 8 for an examination authority.

(2) The tribunal must be constituted by at least 1 member who is a lawyer.

718 Application for approval to perform non-ablative neurosurgical procedure

(1) This section applies to a proceeding for hearing an application under chapter 12, part 9, division 2 for approval to perform a non-ablative neurosurgical procedure on a person.

(2) The tribunal must be constituted by the following 5 members—

(a) the president, deputy president or another member who is a lawyer of at least 7 years standing;

(b) 2 members who are psychiatrists;

(c) 1 member who is a neurosurgeon;

(d) 1 member who is not a lawyer or doctor.

(3) In this section—

neurosurgeon means—

(a) a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the speciality of neurosurgery, other than as a student; or

(b) a person registered under the Health Practitioner Regulation National Law with limited registration to practise in an area of need in a specialist position in neurosurgery.

719 Matters president to consider in constituting tribunal

(1) In deciding the tribunal's constitution for a proceeding, the president must—

(a) for a proceeding in relation to an involuntary patient, have regard to—

(i) the safety and welfare of the patient and the safety of others; and

(ii) the patient's mental condition; and

(b) to the extent practicable, include a member who is culturally appropriate to the person the subject of the proceeding.

(2) Also, for a proceeding in relation to a minor, if the tribunal is required to be constituted by at least 1 member who is a psychiatrist, the psychiatrist must have relevant knowledge and expertise in child and adolescent psychiatry.

Note—

See sections 716(2) and 718 for when the tribunal is required to be constituted by at least 1 member who is a psychiatrist.

720 Presiding member

(1) The presiding member for a proceeding is—

(a) if the tribunal is constituted by 1 member—the constituting member; or

Not authorised—indicative only

Not authorised—indicative only

(b) if the tribunal is constituted by more than 1 member—the member decided by the president.

(2) However, if the tribunal is constituted under section 716(2), 717 or 718, the presiding member must be a lawyer.

Division 5 Examinations, confidentiality orders and reports

721 Tribunal may order examination

(1) The tribunal may order a relevant person to submit to an examination by a stated examining practitioner.

(2) If the proceeding is for a review under chapter 12, the examining practitioner must not be responsible for the relevant person.

(3) The order must state the matters on which the examining practitioner must report to the tribunal.

(4) The order may, if the proceeding is for a review under chapter 12—

(a) direct an authorised person to transport the relevant person immediately to the examining practitioner; or

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

(b) direct the relevant person to attend at the examining practitioner within a stated time, of not more than 28 days, after the order is made.

Note—

See chapter 11, part 6, division 3 for the powers that may be used in relation to a person who does not comply with a direction under paragraph (b).

(5) The order authorises the examining practitioner to examine the relevant person without the person's consent.

(6) The examining practitioner must give the tribunal a written report on the examination.

(7) In this section—

relevant person means—

(a) a person who is the subject of a proceeding for a review under chapter 12; or

(b) a person who is the subject of an application under chapter 12, part 9, division 1 for approval to perform electroconvulsive therapy; or

(c) a person who is the subject of an application under chapter 12, part 10, division 2 for approval of the transfer of the person out of Queensland.

722 Confidentiality order

(1) In a proceeding, the tribunal may, by order (a ***confidentiality order***), prohibit or restrict the disclosure of any of the following to a person the subject of the proceeding—

(a) information given before it;

(b) matters contained in documents filed with, or received by, it;

(c) the reasons for its decision on the proceeding.

(2) However, the tribunal may make a confidentiality order only if satisfied the disclosure would—

(a) cause serious harm to the health of the person; or

(b) put the safety of someone else at serious risk.

(3) If the tribunal makes a confidentiality order, the tribunal must—

(a) disclose to the person's lawyer, or another representative, the information or matters mentioned in subsection (1) to which the order relates; and

(b) give the lawyer or other representative written reasons for the order.

Not authorised—indicative only

Not authorised—indicative only

(4) If the person is not represented at the hearing of the proceeding by a lawyer or another representative, the tribunal must ensure a lawyer or another representative is appointed for subsection (3).

(5) A person must not contravene a confidentiality order unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—200 penalty units.

723 Reports for particular review proceedings

(1) This section applies if the tribunal is reviewing any of the following—

(a) a treatment authority;

(b) a forensic order;

(c) a treatment support order;

(d) a person's fitness for trial;

(e) the detention of a minor in a high security unit.

(2) The tribunal must ensure a treating practitioner for the person the subject of the review prepares a report, in the approved form, about—

(a) for a review mentioned in subsection (1)(a), (b) or (c)—the relevant circumstances of the person; and

(b) other matters relevant to a decision the tribunal may make under chapter 12 on the review.

(3) At least 7 days before the hearing of the review, the treating practitioner must give a copy of the report to—

(a) the tribunal; and

(b) the person the subject of the review.

(4) However, the treating practitioner is not required to comply with subsection (3)(b) if the treating practitioner intends to apply to the tribunal for a confidentiality order in relation to the report.

(5) In this section—

relevant circumstances, of a person, for a review mentioned in subsection (1)(b) or (c), includes the nature of the relevant unlawful act and the period of time that has passed since the act happened.

treating practitioner, for a person the subject of a review, means—

(a) a psychiatrist treating the person; or

(b) a senior practitioner under the Forensic Disability Act responsible for performing obligations for the person under chapter 2, part 1 of that Act.

Division 6 Procedural provisions for ch 12 proceedings

Subdivision 1 Applications

724 Application of sdiv 1

This subdivision applies to an application made to the tribunal under chapter 12.

725 Approved form

The application must be made in the approved form.

726 Frivolous or vexatious application

(1) If the application is made by the person who is the subject of the proceeding or an interested person for the person, the president may dismiss the application if the president is satisfied the application is frivolous or vexatious.

(2) The president may dismiss an application under this section without a hearing.

Not authorised—indicative only

Not authorised—indicative only

727 Hearing of application

The tribunal must hear the application—

(a) for an application under chapter 12, part 8 for an examination authority or chapter 12, part 9, division 1 for approval to perform electroconvulsive therapy on a person if a certificate under section 237(3) is in force for the person—as soon as practicable after the application is made; or

(b) for any other application under chapter 12, part 9, division 1—within 14 days after the application is made; or

(c) for any other application—within 28 days after the application is made.

Subdivision 2 Adjournment of hearing of particular periodic reviews

728 Application of sdiv 2

(1) This subdivision applies if—

(a) the administrator of an authorised mental health service is responsible for a person (the ***relevant person***) subject to a treatment authority or treatment support order; and

(b) within 7 days before the hearing of a periodic review under chapter 12 (the ***scheduled review***) of the treatment authority or treatment support order—

(i) the relevant person becomes a patient required to return; and

(ii) the relevant person's treating health service can not locate the person.

(2) This subdivision also applies if—

(a) an authorised mental health service or the forensic disability service is responsible for a person (also the

relevant person) subject to a forensic order (mental health) or forensic order (disability); and

(b) within 14 days before the hearing of a periodic review under chapter 12 (also the ***scheduled review***) of the forensic order—

(i) if an authorised mental health service is responsible for the relevant person—the relevant person is a patient required to return and the service can not locate the person; or

(ii) if the forensic disability service is responsible for the relevant person—the relevant person is a person to whom the Forensic Disability Act, section 113 applies and the forensic disability service can not locate the person.

729 Definitions for sdiv 2

In this subdivision—

relevant person see section 728(1)(a) and (2)(a).

scheduled review see section 728(1)(b) and (2)(b).

730 Adjournment of hearing

(1) The administrator of the relevant person's treating health service or of the forensic disability service must give the tribunal written notice of the relevant person's absence.

(2) When the tribunal receives the notice—

(a) the tribunal may adjourn the hearing of the scheduled review; and

(b) the requirement for the tribunal to conduct the scheduled review under chapter 12, part 2, 3 or 5 stops applying.

Not authorised—indicative only

Not authorised—indicative only

731 Hearing of scheduled review to be conducted on relevant person's return

(1) On the return of the relevant person to the person's treating health service or the forensic disability service, the administrator of the person's treating health service or of the forensic disability service must give the tribunal written notice of the person's return.

(2) If the tribunal has adjourned the hearing of the scheduled review under section 730, the tribunal must, within 21 days after the day it receives the notice, hear the scheduled review.

Division 7 General procedural provisions

Subdivision 1 Preliminary

732 Application of div 7

This division applies to any proceeding in the tribunal under this Act.

733 Conducting proceedings generally

(1) The procedure for a proceeding is at the discretion of the tribunal, subject to this Act and the tribunal rules.

(2) In all proceedings, the tribunal must act fairly and according to the substantial merits of the case.

(3) In conducting a proceeding, the tribunal—

(a) must observe the rules of natural justice; and

(b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the matters before the tribunal; and

(c) is not bound by the rules of evidence; and

(d) may inform itself on a matter in a way it considers appropriate; and

(e) must ensure, to the extent practicable, all relevant material is disclosed to the tribunal to enable it to decide the proceeding with all the relevant facts.

734 Presentation of party's case and inspection of documents

(1) A party to a proceeding must be given a reasonable opportunity to present the party's case and, in particular, to inspect a document to which the tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions about the document.

(2) However, subsection (1) does not apply to the extent a party's inspection of a document would contravene a confidentiality order or section 743.

Subdivision 2 Pre-hearing matters

735 Matters to be stated in notice of hearing

If the tribunal is required to give stated persons notice of the hearing of a proceeding, the notice must state the following—

(a) the nature of the hearing;

(b) the time and place of the hearing;

(c) the rights at the hearing of the person who is the subject of the proceeding.

736 Right to appear

(1) A person who is entitled be given notice of the hearing of a proceeding has a right to appear in person at the hearing.

(2) Also, without limiting subsection (1), the chief psychiatrist may, with the leave of the tribunal, appear in person at the hearing of a proceeding.

Not authorised—indicative only

Not authorised—indicative only

(3) However, despite subsection (1), the following persons do not have a right to appear in person at the hearing of a proceeding—

(a) the administrator of an authorised mental health service;

(b) the administrator of the forensic disability service;

(c) a person who is given notice of the hearing of the proceeding under section 287.

(4) Subsection (3)(a) does not apply in relation to an application for an examination authority made under section 502 by an administrator of an authorised mental health service or a person authorised in writing by an administrator of an authorised mental health service.

737 Attorney-General to give notice of intention to appear

(1) This section applies in relation to the hearing of the following proceedings—

(a) a review under chapter 12, part 3, 4 or 6;

(b) an application under chapter 12, part 10.

(2) The Attorney-General may be represented at the hearing of the proceeding by a lawyer.

(3) If the Attorney-General intends to appear or be represented at the hearing of the proceeding, the Attorney-General must, as soon as practicable and not later than 7 days before the hearing, give written notice to the tribunal.

(4) The Attorney-General's role at the hearing of the proceeding is to represent the public interest.

738 Disclosure of documents to be relied on in hearing

(1) If a party to a proceeding intends to rely on a document in the hearing of the proceeding, the party must give a copy of the document to each other party to the proceeding at least 3 days before the hearing.

(2) However, if the party intends to apply to the tribunal for a confidentiality order in relation to a document, the party—

(a) is not required to give a copy of the document under subsection (1) to the person the subject of the proceeding; and

(b) if the person is represented by a lawyer or another person—must give a copy of the document to the lawyer or other person.

(3) In this section—

document does not include a victim impact statement.

Subdivision 3 Hearings

739 Right of representation and support

(1) The person who is the subject of a proceeding may be represented at the hearing of the proceeding by a nominated support person, a lawyer or another person.

(2) Also, the person who is the subject of a proceeding may be accompanied at the hearing of the proceeding by—

(a) 1 member of the person's support network; or

(b) with the tribunal's leave, more than 1 member of the person's support network.

Note—

See section 763 for the tribunal's power to exclude a person from a tribunal proceeding.

(3) A person who represents the person at the hearing of a proceeding must—

(a) to the extent the person is able to express the person's views, wishes and preferences—represent the person's views, wishes and preferences; and

(b) to the extent the person is unable to express the person's views, wishes and preferences—represent the person's best interests.

Not authorised—indicative only

Not authorised—indicative only

(4) In this section—

support network, of a person, means—

(a) the person's nominated support persons, if any; or

(b) the person's family, carers and other support persons.

740 Appointment of representative

(1) This section applies if the person the subject of a proceeding is not represented by a lawyer or another person at the hearing of the proceeding.

(2) The tribunal may appoint a lawyer or another person (the ***appointed representative***) to represent the person if the tribunal considers it would be in the person's best interests to be represented at the hearing.

(3) Also, the tribunal must appoint a lawyer (also an ***appointed representative***) to represent the person at the hearing if—

(a) the person is a minor; or

(b) the hearing is—

(i) for a review under chapter 12, part 6 of the person's fitness for trial;

(ii) for an application under chapter 12, part 9, division 1 for approval to perform electroconvulsive therapy on the person;

(iii) another hearing prescribed by regulation; or

(c) the Attorney-General is to appear or be represented at the hearing.

(4) If the person is an adult with capacity, the person may, in writing, waive the right to be represented by the appointed representative.

(5) For subsection (4), the person has capacity to waive the right if the person has the ability to—

(a) understand the nature and effect of the decision to waive the right; and

(b) freely and voluntarily make the decision to waive the right; and

(c) communicate the decision to waive the right.

(6) The appointment of a lawyer as the person's appointed representative under subsection (2) or (3) is at no cost to the person.

741 Hearing not open to public

(1) A hearing of a proceeding must not be open to the public unless the tribunal, by order, directs that the hearing or part of the hearing be open to the public.

(2) However, the tribunal must not make an order directing that a hearing be open to the public if the person the subject of the hearing is a minor.

(3) Also, the tribunal may make an order directing that a hearing or part of a hearing be open to the public only if the tribunal is satisfied—

(a) the person the subject of the hearing, or a lawyer or other representative of the person, has agreed to the order; and

(b) the order will not result in serious harm to the person's health or risk the safety of anyone else.

(4) A person (an ***observer***) may attend a hearing that is not open to the public under this section to observe the hearing if—

(a) the president gives approval for the observer's attendance at the hearing; and

(b) the person the subject of the hearing has agreed to the observer's attendance.

(5) However, the president may not give approval for an observer's attendance at the hearing if the person the subject of the hearing is a minor.

Not authorised—indicative only

Not authorised—indicative only

742 Victim impact statement

(1) For the hearing of a review of a forensic order or treatment support order, a victim of the relevant unlawful act, or a close relative of the victim, may give the tribunal a victim impact statement in relation to the act.

(2) The victim impact statement may include a request by the victim or close relative that the tribunal impose a condition on the forensic order or treatment support order that the person must not contact—

(a) the victim or close relative; or

(b) another individual, including, for example, another close relative of the victim.

(3) For this section, it does not matter whether the victim or the close relative has previously—

(a) prepared a victim impact statement for the Mental Health Court in relation to the relevant unlawful act; or

(b) given the tribunal a victim impact statement in relation to the relevant unlawful act.

743 Restrictions on disclosing victim impact statement

(1) The tribunal must not disclose the victim impact statement to the person the subject of the review unless the victim or close relative asks that the statement be disclosed to the person.

(2) Despite a request mentioned in subsection (1), the tribunal may, by order, prohibit the disclosure of the victim impact statement to the person if satisfied the disclosure may adversely affect the health and wellbeing of the person.

(3) A person must not contravene an order made under subsection (2) unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(4) This section does not prevent the tribunal disclosing the victim impact statement to a lawyer of the person the subject of the review if satisfied the disclosure is in the best interests of the person.

(5) Subject to subsection (3), the person's lawyer may disclose the victim impact statement to the person only if the victim or close relative asks that the statement be disclosed to the person.

(6) The person's lawyer must not disclose the victim impact statement to the person in contravention of subsection (5) unless the lawyer has a reasonable excuse.

Maximum penalty—200 penalty units.

(7) In this section—

lawyer, of a person, includes another representative of the person.

744 Requiring witness to attend or produce document or thing

(1) The tribunal may, by written notice given to a person (an ***attendance notice***), require the person to—

(a) attend the hearing of a proceeding at a stated time and place to give evidence; or

(b) produce a stated document or thing that is relevant to the hearing.

Examples of a document that may be relevant to a hearing—

a medical report or clinical file for the person the subject of the proceeding

Note—

See section 760 for the consequences of failing to comply with an attendance notice.

(2) The tribunal may—

(a) require the evidence to be given on oath; or

(b) allow a person appearing as a witness at the hearing to give information by tendering a written statement, verified, if the tribunal directs, by oath.

(3) For subsection (2)(a), the tribunal may administer an oath.

Not authorised—indicative only

Not authorised—indicative only

745 Tribunal to allow party to call or give evidence

In a proceeding, the tribunal must allow a party to the proceeding to call or give any evidence.

746 Proceeding by remote conferencing or on the papers

(1) The tribunal may, if appropriate, conduct all or a part of a proceeding by remote conferencing.

(2) Also, for the hearing of a proceeding for a review of a treatment authority, the tribunal may conduct all or a part of the proceeding entirely on the basis of documents, without the parties, their representatives or witnesses appearing at the hearing, if the person subject to the treatment authority does not wish to attend or be represented by another person at the hearing.

(3) Provisions of this Act applying to a hearing apply with necessary changes in relation to a proceeding conducted under subsection (1) or (2).

Examples of application of subsection (3)—

1 If a hearing is conducted under subsection (1) or (2), section 741 continues to apply to the proceeding as if the parties to the proceeding were present before the tribunal.

2 If a hearing is conducted under subsection (2), section 418 will have no application.

747 Proceeding in absence of involuntary patient

(1) This section applies to a proceeding in relation to an involuntary patient for whom an authorised mental health service or the forensic disability service is responsible.

(2) The tribunal may hear the proceeding in the absence of the patient if the tribunal considers—

(a) either—

(i) the administrator of the service responsible for the patient has taken reasonable steps to ensure the patient attends the hearing of the proceeding and

the patient is absent because of the patient's own free will; or

(ii) the patient is unfit to appear; and

(b) it is appropriate and expedient to do so.

(3) Subsection (2) has effect despite division 7, subdivision 1.

748 Conducting hearings of proceedings at same time

(1) Nothing in this chapter prevents the tribunal hearing different proceedings under this Act that relate to the same person at the same time.

(2) Without limiting subsection (1), the tribunal may conduct the hearings of more than 1 review under chapter 12 that relate to the same person at the same time.

Examples of hearing more than 1 review at the same time—

- hearing an applicant review of a forensic order for a person at the same time as a periodic review of the forensic order for the person
- hearing a periodic review of a forensic order for a person at the same time as a review of the person's fitness for trial

(3) In deciding whether to conduct more than 1 hearing for the same person at the same time, the tribunal must have regard to whether it is in the person's best interests to do so.

749 Adjourning hearing of proceeding

The tribunal may adjourn the hearing of a proceeding for—

(a) if the adjournment is for the purpose of obtaining an examination report under section 721 and the president has approved that the hearing be adjourned for more than 28 days—the period approved by the president; or

(b) otherwise—a period of not more than 28 days.

Not authorised—indicative only

Not authorised—indicative only

750 Appointing assistant

The tribunal may appoint a person with appropriate knowledge or experience to assist it in a proceeding, including, for example—

(a) a person with appropriate communication skills or appropriate cultural or social knowledge or experience; or

(b) a person with expertise in the care of persons with an intellectual disability.

751 Dealing with documents or other things

(1) If a document or other thing is produced to the tribunal in a proceeding, the tribunal may—

(a) inspect the document or thing; and

(b) make copies of, photograph, or take extracts from, the document or thing if it is relevant to the proceeding.

(2) The tribunal may also keep the document or thing while it is necessary for the proceeding.

(3) While the tribunal keeps the document or other thing, the tribunal must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at the reasonable time and place the tribunal decides.

752 Way questions decided

(1) The tribunal's decision on a question of law arising in a proceeding is the decision of the presiding member on the question.

(2) However, if the tribunal is constituted by 1 member who is not a lawyer—

(a) the member must refer the question of law to another member who is a lawyer to decide; and

(b) the other member must decide the question; and

(c) for subsection (1), the decision of the other member is taken to be the decision of the presiding member.

(3) If the members constituting the tribunal in a proceeding are divided in opinion about the decision to be made on another question in the proceeding, the tribunal's decision on the question is—

(a) if there is a majority of the same opinion—the decision of the majority; or

(b) otherwise—the decision of the presiding member.

753 Referring question of law to Mental Health Court

(1) The president may refer a question of law in a proceeding before the tribunal to the Mental Health Court.

(2) A referral under subsection (1) may be made on the application of a party to the proceeding or on the president's own initiative.

(3) If a question of law is referred to the Mental Health Court under subsection (1)—

(a) the Mental Health Court may decide the question and make ancillary orders and directions; and

(b) the tribunal must not make a decision about the matter to which the question relates until it receives the Mental Health Court's decision on the question; and

(c) the tribunal must not proceed in a way, or make a decision, that is inconsistent with the Mental Health Court's decision on the question.

(4) If the Mental Health Court decides a question of law referred to it under subsection (1), the tribunal's decision on the question is the decision of the Mental Health Court.

(5) This section applies despite section 752.

Not authorised—indicative only

Not authorised—indicative only

754 Costs

Each party to a proceeding is to bear the party's own costs of the proceeding.

Subdivision 4 Decisions of tribunal

755 Notice of decision

(1) The tribunal must, within 7 days after making its decision in a proceeding, give each person who was entitled to be given notice of the hearing of the proceeding written notice of the decision.

(2) The notice must—

(a) state that the person to whom the notice is given may ask the tribunal for written reasons for its decision; and

(b) state the rights under this Act to appeal the tribunal's decision.

(3) Also, if a proceeding is for a review of a person's fitness for trial under chapter 12, part 6, the tribunal must give the director of public prosecutions written notice of its decision.

756 Written reasons for decision

(1) The tribunal must, on request by a person mentioned in section 755(1), give the person written reasons for the tribunal's decision.

(2) The tribunal must comply with the request within 21 days after the day it receives the request.

(3) However, subsection (2) does not apply to the extent complying with the request would contravene a confidentiality order or section 743.

(4) Also, if the request is for written reasons for a decision in relation to an application for an examination authority by a person mentioned in section 502(1)(c), the written reasons must not disclose—

(a) the contact details of the person the subject of the application; or

(b) information about the health or health care of the person the subject of the application.

757 Requirement to give effect to tribunal decision

Each of the following persons must, as soon as practicable after receiving notice of the tribunal's decision in the proceeding, ensure the tribunal's decision is given effect—

(a) if an authorised mental health service is responsible for the person the subject of the proceeding—the administrator of the service;

(b) if the forensic disability service is responsible for the person the subject of the proceeding—the administrator of the service.

758 Publishing decision and reasons

(1) The tribunal may publish its final decision in a proceeding and any reasons for the decision, including, for example, if the tribunal is satisfied the decision or any reasons for the decision may be used as a precedent, in a way it considers appropriate.

(2) However, the publication of the decision or reasons for the decision must not identify any person.

(3) Also, the tribunal must ensure the publication of the decision or reasons does not contravene a confidentiality order or section 743.

Not authorised—indicative only

Not authorised—indicative only

Subdivision 5 Revocation of particular forensic orders and treatment support orders

759 Order for missing person

(1) This section applies if a person who is subject to a relevant order is, for a period of more than 3 years—

(a) a patient required to return; or

(b) a person to whom the Forensic Disability Act, section 113 applies.

(2) Despite subsection (1), if the relevant order is a forensic order, this section does not apply during any non-revocation period for the order.

(3) The president may revoke the relevant order for the person if the president considers, on information provided to the tribunal by the administrator of the person's treating health service, or of the forensic disability service, that—

(a) the person is unlikely to return to Queensland; or

(b) the person is presumed to have died.

(4) The tribunal must, within 7 days after the day the relevant order is revoked, give written notice of the revocation to—

(a) if an authorised mental health service is responsible for the person—the administrator of the service; or

(b) if the forensic disability service is responsible for the person—the administrator of the service.

(5) In this section—

relevant order means—

(a) a forensic order; or

(b) a treatment support order.

Division 8 Offences and contempt

760 Offences by witnesses

(1) A person given an attendance notice must not, without reasonable excuse—

(a) fail to attend as required by the notice; or

(b) fail to continue to attend as required by the tribunal until excused from further attendance; or

(c) fail to produce a document or other thing the person is required to produce by the attendance notice.

Maximum penalty—100 penalty units.

(2) A person appearing as a witness at a hearing of a proceeding must not—

(a) fail to take an oath or make an affirmation when required by the tribunal; or

(b) fail, without reasonable excuse, to answer a question the person is required to answer by the tribunal.

Maximum penalty—100 penalty units.

(3) It is a reasonable excuse for a person to fail to answer a question or to produce a document or other thing if answering the question or producing the document or thing might tend to incriminate the person.

761 False or misleading information or document

(1) A person must not state to the tribunal or staff member of the tribunal anything the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) A person must not give the tribunal or staff member of the tribunal a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

Not authorised—indicative only

Not authorised—indicative only

(3) Subsection (2) does not apply to a person if the person, when giving the document—

(a) tells the tribunal or staff member of the tribunal, to the best of the person's ability, how the document is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

762 Fabricating evidence

The tribunal is a tribunal for the Criminal Code, section 126.

Note—

The Criminal Code, section 126 deals with fabricated evidence in judicial proceedings.

763 Contempt of tribunal

(1) A person is in contempt of the tribunal if the person—

(a) insults a member or a staff member of the tribunal at a proceeding, or in going to or returning from a proceeding; or

(b) unreasonably interrupts a proceeding, or otherwise misbehaves at a proceeding; or

(c) creates or continues, or joins in creating or continuing, a disturbance in or near a place where a proceeding is being conducted; or

(d) obstructs or assaults a person attending a proceeding; or

(e) obstructs a member in the performance of the member's functions or the exercise of the member's powers; or

(f) obstructs a person acting under an order made under this Act by the tribunal or a member; or

(g) without lawful excuse, disobeys a lawful order or direction of the tribunal made or given under this Act; or

(h) does anything at a proceeding or otherwise that would be contempt of court if the tribunal were a court of record.

(2) The tribunal may order that a person who contravenes subsection (1) at a proceeding be excluded from the place where the proceeding is being conducted.

(3) A staff member of the tribunal or a health practitioner, acting under the tribunal's order, may, with the help that is necessary and reasonable in the circumstances, exclude the person from the place.

764 Punishment of contempt

(1) Without limiting the tribunal's power under section 763, a person's contempt of the tribunal may be punished under this section.

(2) The president may certify the contempt in writing to the Supreme Court (the ***court***).

(3) For subsection (2), it is enough for the president to be satisfied there is evidence of contempt.

(4) The president may issue a warrant directed to a police officer or all police officers for the arrest of the person to be brought before the court to be dealt with according to law.

(5) The *Bail Act 1980* applies to the proceeding for the contempt started by the certification in the same way it applies to a charge of an offence.

(6) The court must inquire into the alleged contempt.

(7) The court must hear—

(a) witnesses and evidence that may be produced against or for the person whose contempt was certified; and

(b) any statement given by the person in defence.

(8) If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had

Not authorised—indicative only

Not authorised—indicative only

committed the contempt in relation to a proceeding in the court.

(9) The *Uniform Civil Procedure Rules 1999* apply to the court's investigation, hearing and power to punish with necessary changes.

(10) The president's certificate of contempt is evidence of the matters contained in the certificate.

765 Conduct that is contempt and offence

(1) 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.

(2) However, the person is not liable to be punished twice for the same conduct.

Division 9 Protection and immunities

766 Protection and immunity for members

A member of the tribunal has, in the exercise of jurisdiction under this Act, the same protection and immunity as a Supreme Court judge in the performance of a judge's functions.

767 Protection and immunity for other persons

(1) A lawyer or another person who, under this Act, represents a party to a proceeding has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

(2) 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.

(3) A document produced to the tribunal in a proceeding has the same protection it would have if produced in the Supreme Court.

Division 10 Rules and practice

768 Rule-making power

(1) The Governor in Council may make rules for the tribunal under this Act.

(2) Rules may be made about the following matters—

(a) the practices and procedures of the tribunal;

(b) fees and expenses payable to witnesses;

(c) fees or costs payable in relation to proceedings and the party by or to whom they are to be paid;

(d) service of process, notices, orders or other things on parties and other persons.

(3) Rules made under this section are rules of court.

769 Directions about practice

(1) Subject to this Act and the tribunal rules, the practice and procedure of the tribunal are as directed by the president.

(2) If this Act or the rules do not provide or sufficiently provide for a particular matter, an application for directions may be made to the president.

Division 11 Miscellaneous

770 Authentication of documents

A document requiring authentication by the tribunal is sufficiently authenticated if it is signed by a member.

Not authorised—indicative only

Not authorised—indicative only

771 Judicial notice of particular signatures

Judicial notice must be taken of the signature of a member if it appears on a document issued by the tribunal.

772 Delegation

The president may delegate the president's powers under this Act to the deputy president or another member.

773 Register

(1) The president must keep a register of—

(a) applications for a review of any of the following—

(i) treatment authorities;

(ii) forensic orders;

(iii) treatment support orders;

(iv) a person's fitness for trial;

(v) the detention of a minor in a high security unit; and

(b) applications for any of the following—

(i) examination authorities;

(ii) approval to perform regulated treatment;

(iii) approval of the transfer of particular persons into and out of Queensland; and

(c) reviews and applications heard by the tribunal; and

(d) decisions of the tribunal on the reviews and applications, and the reasons for the decisions.

(2) The president may keep the register in the way the president considers appropriate.

774 Annual report

(1) Within 90 days after the end of each financial year, the president must prepare and give the Minister a report on the tribunal's operations during the year.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the day the Minister receives it.

Chapter 17 Confidentiality

Part 1 Preliminary

775 Purpose of ch 17

The purpose of this chapter is to provide for—

(a) the confidentiality of information identifying persons who have received health services for a mental illness; and

(b) the use and disclosure of particular personal information for particular purposes; and

(c) offences relating to the publication of particular judicial proceedings.

776 Definitions for ch 17

In this chapter—

designated person means a designated person under the *Hospital and Health Boards Act 2011*, section 139.

government entity means a government entity under the *Public Service Act 2008*, section 24.

personal information means—

Not authorised—indicative only

Not authorised—indicative only

(a) personal information under the *Information Privacy Act 2009*, section 12; or

(b) confidential information under the *Hospital and Health Boards Act 2011*, section 139.

relevant person means each of the following persons—

(a) the chief psychiatrist;

(b) the administrator of an authorised mental health service;

(c) the director of forensic disability;

(d) the administrator of the forensic disability service;

(e) an authorised doctor;

(f) an authorised mental health practitioner;

(g) a member of the tribunal;

(h) a member of the staff of the tribunal or registry;

(i) an assisting clinician;

(j) a person representing another person at the hearing of a proceeding in the tribunal;

(k) a member of a person's support network accompanying the person under section 739 at the hearing of a proceeding in the tribunal;

(l) an examining practitioner conducting an examination under a court examination order or an order mentioned in section 721(1);

(m) a designated person performing a function under this Act;

(n) an independent patient rights adviser;

(o) an inspector;

(p) an authorised person.

777 Relationship of ch 17 with other Acts

This chapter applies to the use or disclosure of information mentioned in this chapter despite any prohibition or limitation 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

778 Offence to use or disclose personal information

(1) This section applies to a person who—

(a) is, or has been, a relevant person; and

(b) acquires, or acquired, personal information in the person's capacity as a relevant person.

(2) The person must not use the personal information or disclose the information to anyone else.

Maximum penalty—100 penalty units.

(3) However, the person may use or disclose the personal information—

(a) to the extent necessary to allow—

(i) the person to perform the person's functions under this Act; or

(ii) another relevant person to perform the other person's functions under this Act; or

(b) if the use or disclosure is permitted under part 3 or is otherwise required or permitted by law; or

Note—

See also the *Hospital and Health Boards Act 2011*, part 7 in relation to use and disclosure of confidential information, under section 139 of that Act, by designated persons.

(c) if the person to whom the information relates consents to the use or disclosure.

Not authorised—indicative only

Not authorised—indicative only

Part 3 Permitted use and disclosure

780 Disclosure to identify person with mental health defence

(1) This section applies to an employee of the department, a Hospital and Health Service or another government entity.

(2) The employee may use or disclose personal information to—

(a) assist in the identification of a person who may have been of unsound mind at the time of an alleged offence or who may be unfit for trial; and

(b) enable the application to the person of provisions of this Act relating to unsoundness of mind and unfitness for trial.

781 Disclosure to identify and offer support to victims

(1) This section applies to an employee of the department, a Hospital and Health Service or another government entity.

(2) The employee may use or disclose personal information—

(a) to offer support services to a person who is, or may be, a victim; or

(b) to assist in the identification of a person mentioned in paragraph (a) for the purpose mentioned in that paragraph.

(3) In this section—

victim means—

(a) a victim of an unlawful act committed by a person who has, or may have, a mental condition; or

(b) a close relative of a victim mentioned in paragraph (a); or

(c) another individual who has suffered harm because of an unlawful act mentioned in paragraph (a).

782 Disclosure for report by private psychiatrist

A designated person may disclose personal information about a patient, including the patient's health records and written notices given under this Act, if the disclosure is to assist in the preparation of a report by a psychiatrist privately engaged by the patient or a lawyer or other person acting on behalf of the patient.

783 Disclosure of particular information relating to classified patient

(1) This section applies if the chief psychiatrist considers a person is, or may be, any of the following—

(a) a victim of an unlawful act committed by a person who is a classified patient;

(b) a close relative of a victim mentioned in paragraph (a);

(c) another individual who has suffered harm because of an unlawful act mentioned in paragraph (a).

(2) The chief psychiatrist may disclose the following personal information about the classified patient to the person—

(a) the fact that the patient is a classified patient in an authorised mental health service;

(b) the fact, and the date, of a transfer of the patient to another authorised mental health service;

(c) the fact that the patient has become a patient required to return, if the chief psychiatrist considers the information is relevant to the safety and welfare of the person;

(d) if the patient stops being a classified patient—the fact that, and the reasons why, the patient has stopped being a classified patient.

(3) The chief psychiatrist may enter into arrangements with a victim support service to enable the service, on behalf of the chief psychiatrist, to give the information to the person.

(4) The person must give a written undertaking to preserve the confidentiality of the information.

Not authorised—indicative only

Not authorised—indicative only

(5) The person must not contravene the undertaking.

Maximum penalty for subsection (5)—200 penalty units.

784 Disclosure of particular information relating to person in contact with forensic disability service

(1) This section applies for facilitating—

(a) the transfer of a person from the forensic disability service to an authorised mental health service; and

(b) the transfer of a person from an authorised mental health service to the forensic disability service; and

(c) the provision of care to a person subject to a forensic order (disability).

(2) The chief psychiatrist or an administrator of an authorised mental health service may disclose personal information about the person to the director of forensic disability, the administrator of the forensic disability service or another entity responsible for providing care to the person.

(3) Also, the director of forensic disability, the administrator of the forensic disability service, or another entity responsible for providing care to the person may disclose personal information about the person to the chief psychiatrist or the administrator of an authorised mental health service.

785 Disclosure to lawyer

(1) A designated person may disclose personal information about a patient, including the patient's health records and written notices given under this Act, to a lawyer if the disclosure is to enable the lawyer to provide legal services to the patient, or the State, for a proceeding in the Mental Health Court, the tribunal or another court.

(2) If the lawyer is a representative of the State, the lawyer may use the personal information, or disclose it to a victim, only to the extent necessary for the performance of the lawyer's functions under this or another Act.

(3) In this section—

victim means a person who is, or may be—

(a) a victim of an unlawful act committed by a person who is the subject of a proceeding before the Mental Health Court or the tribunal; or

(b) a close relative of a victim mentioned in paragraph (a); or

(c) another individual who has suffered harm because of an unlawful act mentioned in paragraph (a).

786 Disclosure of photograph of patient required to return

(1) This section applies if the administrator of an authorised mental health service is in possession of a photograph of a person who—

(a) is an involuntary patient or a classified patient (voluntary); and

(b) has become a patient required to return.

(2) The administrator may disclose the photograph to the commissioner of the police service, or another person performing a function in an official capacity, to help locate the person.

(3) To remove any doubt, it is declared that the administrator of an authorised mental health service may require an involuntary patient or a classified patient (voluntary) to be photographed to facilitate the future operation of subsection (2).

787 Disclosure of information for research purposes

(1) The registrar of the Mental Health Court may disclose relevant information about a patient to a person undertaking research if—

(a) the registrar is satisfied the research is genuine; and

Not authorised—indicative only

Not authorised—indicative only

(b) the president of the Mental Health Court approves the disclosure; and

(c) the person gives a written undertaking to preserve the confidentiality of the information.

(2) The executive officer of the tribunal may disclose relevant information about a patient to a person undertaking research if—

(a) the executive officer is satisfied the research is genuine; and

(b) the president of the tribunal approves the disclosure; and

(c) the person gives a written undertaking to preserve the confidentiality of the information.

(3) A person must not contravene an undertaking given under subsection (1)(c) or (2)(c).

Maximum penalty for subsection (3)—200 penalty units.

(4) In this section—

relevant information means information that is confidential information disclosed to the Mental Health Court or tribunal.

Part 4 Offences relating to publication of judicial proceedings

788 Definition for pt 4

In this part—

report, of a proceeding, includes a report of part of the proceeding.

789 Publication of reports and decisions on references—Mental Health Court and Court of Appeal

(1) A person must not publish a report of a proceeding in the Mental Health Court or the Court of Appeal on a reference in

relation to a person, or a decision on the proceeding, before the end of the prescribed day for the decision on the proceeding.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) However, a person does not commit an offence against subsection (1) if the person publishes the report with the leave of the Mental Health Court or the Court of Appeal.

(3) In this section—

decision leading to trial means a decision that—

(a) the person is fit for trial; or

(b) the person is unfit for trial and the unfitness for trial is not permanent; or

(c) the person was of diminished responsibility when the offence of murder was allegedly committed, if the proceeding is continued against the person for another offence constituted by the act or omission to which the offence of murder relates.

end day, in relation to a decision leading to trial, means—

(a) the day the trial for the relevant offence ends; or

(b) for a decision mentioned in paragraph (b) of the definition *decision leading to trial*, if the proceeding for the relevant offence is discontinued under chapter 12, part 6, division 2—the day the proceeding is discontinued.

prescribed day means—

(a) for a decision of the Mental Health Court that is a decision leading to trial—the end day; or

(b) for a decision of the Mental Health Court other than a decision leading to trial—

(i) if an appeal to the Court of Appeal against the decision is started within 28 days after the date of the decision and the appeal is not withdrawn—

Not authorised—indicative only

Not authorised—indicative only

(A) if the Court of Appeal makes a decision leading to trial—the end day; or

(B) if the Court of Appeal returns the matter to the Mental Health Court and the Mental Health Court makes a decision other than a decision leading to trial—the day that is 28 days after the date of the Mental Health Court's decision; or

(C) otherwise—the day that is 28 days after the date of the Court of Appeal's decision; or

(ii) if an appeal to the Court of Appeal against the decision is started within the 28 days but is later withdrawn—the day that is 28 days after the date of the Mental Health Court's decision; or

(iii) if an appeal to the Court of Appeal against the decision is not started within the 28 days but within that time the person elects to be brought to trial for the offence—the day the trial for the offence ends; or

(iv) otherwise—the day that is 28 days after the date of the Mental Health Court's decision.

Examples of a decision of the Mental Health Court for paragraph (b)—

- a decision made under section 116 that the person was of unsound mind when the offence was allegedly committed
- a decision made under section 118 that the person is unfit for trial and the unfitness for trial is permanent

relevant offence means—

(a) the offence to which the reference relates; or

(b) if the reference relates to the offence of murder and the person was of diminished responsibility when the offence was allegedly committed—another offence constituted by the act or omission to which the offence of murder relates.

790 Publication of report of other proceedings

(1) A person must not publish a report of a proceeding of—

(a) the tribunal; or

(b) the Mental Health Court relating to an appeal against a decision of the tribunal; or

(c) the Mental Health Court relating to a review under section 673.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) However, a person does not commit an offence against subsection (1) if the person publishes the report with the leave of the tribunal or the Mental Health Court.

(3) The tribunal or the Mental Health Court may grant leave to publish the report only if it is satisfied—

(a) publication of the report is in the public interest; and

(b) the report does not contain information that identifies, or is likely to identify—

(i) the person the subject of the proceeding; or

(ii) a person who appears as a witness before the tribunal or court in the proceeding; or

(iii) a person mentioned or otherwise involved in the proceeding.

791 Publication of information disclosing identity of party to proceeding

(1) A person must not publish information that identifies, or is likely to lead to the identification of, a minor who is or has been a party to a proceeding under this Act in the tribunal, Mental Health Court or Court of Appeal.

Maximum penalty—200 penalty units or 2 years imprisonment.

Not authorised—indicative only

Not authorised—indicative only

(2) A person must not publish information that identifies, or is likely to lead to the identification of, a person other than a minor who is or has been a party to a proceeding mentioned in section 790(1).

Maximum penalty—200 penalty units or 2 years imprisonment.

(3) However, a person does not commit an offence against subsection (2) if the person publishes the information with the leave of the tribunal, the Mental Health Court or the Court of Appeal.

(4) The tribunal, Mental Health Court or Court of Appeal may grant leave to publish the information only if it is satisfied—

(a) the publication is necessary to assist in lessening or preventing a serious risk to—

(i) the life, health or safety of a person, including the person to whom the information relates; or

(ii) public safety; or

(b) the publication is in the public interest.

792 Publication of date of hearing permitted

Nothing in this part prevents the disclosure of a date, or time, of a hearing to be held in the Mental Health Court.

793 Publication of information disclosed at hearing permitted

Subject to sections 789, 790 and 791, nothing in this part prevents the disclosure of information disclosed in a hearing of the Mental Health Court.

Note—

For provisions other than in this part that prohibit the disclosure of information disclosed in a hearing of the Mental Health Court, see, for example, sections 164 and 696.

Chapter 18 General provisions

794 Detention of involuntary patient must be in inpatient unit

If an involuntary patient is detained under this Act in an authorised mental health service, the involuntary patient must be detained in an inpatient unit of the service.

795 Use of audiovisual link for examination or assessment

An examination or assessment under this Act may be done by an audiovisual link, if the person making the examination or assessment considers it is clinically appropriate.

796 Disclosure by QCAT of information about personal guardian or administrator

(1) This section applies to the following (each a ***QCAT official***)—

(a) a member of QCAT;

(b) the principal registrar or a registrar under the QCAT Act or another member of the administrative staff of the registry under that Act;

(c) an adjudicator or assessor appointed under the QCAT Act.

(2) If requested by the executive officer of the tribunal, or an employee of the department or a Hospital and Health Service who is involved in the administration of this Act, the QCAT official may disclose to the executive officer, or the employee, the following information—

(a) whether a personal guardian, or an administrator for a financial matter, has been appointed for a stated individual;

(b) if a personal guardian, or an administrator for a financial matter, has been appointed—the name and contact details of the personal guardian or administrator.

Not authorised—indicative only

Not authorised—indicative only

(3) The QCAT official may disclose the information despite any other law that would otherwise prohibit or restrict the disclosure of the information.

(4) In this section—

administrator for a financial matter, of a person, means an administrator for a financial matter appointed by QCAT for the person under the *Guardianship and Administration Act 2000*.

797 Protection of official from liability

(1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

(3) This section does not apply to an official if the official is a State employee within the meaning of the *Public Service Act 2008*, section 26B(4).

(4) In this section—

official means—

(a) the Minister; or

(b) the chief psychiatrist; or

(c) the director of forensic disability; or

(d) the administrator of an authorised mental health service; or

(e) an authorised doctor; or

(f) an authorised mental health practitioner; or

(g) an inspector; or

(h) an authorised person; or

(i) a person acting under the direction of a person mentioned in paragraphs (a) to (h).

797A Particular periods counted as imprisonment or detention

(1) This section applies to a period for which a person—

(a) is a classified patient in relation to an offence; or

(b) is subject to a forensic order or treatment support order in relation to an offence, if the category of the order is inpatient; or

(c) is detained in an authorised mental health service, in relation to an offence, under—

(i) a court examination order; or

(ii) an order made under section 124(1)(b), 183(c)(ii), 193(2) or 551(4)(b).

(2) The period is—

(a) for the *Penalties and Sentences Act 1992*—taken to be imprisonment already served by the person under the sentence for the offence, unless the sentencing court orders otherwise; or

Note—

See the *Penalties and Sentences Act 1992*, section 159A in relation to time held in presentence custody.

(b) for the *Corrective Services Act 2006* or the *Youth Justice Act 1992*—counted as part of the person's period of imprisonment or period of detention for the offence.

(3) However, subsection (2) does not apply to a period for which the person is granted bail for the offence.

798 Approved forms

(1) The president of the Mental Health Court may approve, for this Act, forms for use by or in the Mental Health Court.

(2) The president of the tribunal may approve, for this Act, forms for use by or in the tribunal.

(3) The rules committee may approve, for this Act, forms for use by or in the Supreme Court, the District Court or the Magistrates Courts.

Not authorised—indicative only

Not authorised—indicative only

(4) The chief psychiatrist may approve, for this Act, forms for use in circumstances not mentioned in subsection (1), (2) or (3).

(5) In this section—

rules committee see the *Supreme Court of Queensland Act 1991*, section 89.

799 Electronic format for notices and other information

(1) This section applies if, under this Act, a person is required or permitted to—

(a) give a written notice or other information to another person; or

(b) record information.

(2) The person may give the written notice or other information, or record the information, electronically.

(3) The written notice or other information is given electronically if it is given—

(a) in an electronic format, and in a way, approved by the chief psychiatrist; or

(b) under the *Electronic Transactions (Queensland) Act 2001*.

Note—

Under the *Electronic Transactions (Queensland) Act 2001*, the person to whom the information is required or permitted to be given must consent to the information being given by an electronic communication. See sections 11(2) and 12(2) of that Act.

(4) The information is recorded electronically if it is recorded in an electronic format, and in a way, approved by the chief psychiatrist.

(5) Also, a requirement for a written notice or other information to be given to a person, or information to be recorded, in an approved form is complied with if the information required in the approved form is given under subsection (3) or recorded under subsection (4).

(6) To remove any doubt, it is declared that the chief psychiatrist may approve under subsection (3) or (4) an electronic format that combines 1 or more approved forms, or is designed to be used for 1 or more related purposes.

800 Regulation-making power

The Governor in Council may make regulations under this Act.

Chapter 18A Validation of appointment to tribunal and related provisions

Part 1 Preliminary

800A Definitions for chapter

In this chapter—

relevant decision see section 800D(1).

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

special tribunal see section 800C(1).

Part 2 Validation

800B Validation provision for purported appointment of ineligible person

(1) This section applies in relation to the person—

(a) who was purportedly appointed as a member of the tribunal under the repealed Act on 28 February 2002 on

Not authorised—indicative only

Not authorised—indicative only

the basis that the person was eligible for appointment because the person was a lawyer of at least 5 years standing under the repealed Act, section 440(4)(a); and

(b) whose purported appointment was continued on that basis even though the person was not eligible for appointment under the repealed Act, section 440(4)(a) during the relevant period.

(2) For the repealed Act, the person is taken—

(a) to have been eligible for appointment under the repealed Act, section 440(4)(a) during the relevant period; and

(b) to have been validly appointed on that basis as a member of the tribunal for the relevant period.

(3) Anything done or omitted to be done during the relevant period that would have been valid and lawful under the repealed Act had the person been validly appointed as a member is taken to be, and always to have been, valid and lawful.

(4) In this section—

relevant period means the period starting on 28 February 2002 and ending on 31 August 2016.

Part 3 Referral of particular decisions to special tribunal

800C Special tribunal

(1) The ***special tribunal*** is the tribunal constituted under subsection (2) for hearing a referral by the chief executive under section 800E.

(2) The special tribunal must be constituted by at least 3, but not more than 5, members of whom—

(a) at least 1 must be a lawyer; and

(b) at least 1 must be a psychiatrist or, if a psychiatrist is not readily available but another doctor is available, another doctor; and

(c) at least 1 person must be a person who is not a lawyer or doctor.

800D Request to refer relevant decision to the special tribunal

(1) This section applies in relation to a decision (a ***relevant decision***) made by the tribunal under the repealed Act as constituted by—

(a) the person mentioned in section 800B(1); or

(b) members who included the person mentioned in section 800B(1).

(2) The following persons may ask the chief executive to refer a relevant decision to the special tribunal for a decision under section 800F—

(a) the person who is or was the subject of the decision, or an interested person for the person;

(b) if the relevant decision was made under the repealed Act, section 318R in a proceeding for a forensic information order—the applicant in the proceeding.

(3) The request must be made to the chief executive within 6 months after the commencement.

800E When chief executive may refer relevant decision

The chief executive may refer a relevant decision to the special tribunal only if the chief executive considers the decision is likely to have been affected in a material way because, when the decision was made, the tribunal was constituted in a way mentioned in section 800D(1).

Not authorised—indicative only

Not authorised—indicative only

800F Decision by special tribunal on referral

(1) This section applies if, on considering a referral of a relevant decision, the special tribunal is satisfied the relevant decision is likely to have been affected in a material way because, when the decision was made, the tribunal was constituted in a way mentioned in section 800D(1).

(2) The special tribunal may—

(a) if the relevant decision is still in force—refer the matter to the tribunal for a new decision under section 800G; and

(b) make any other recommendation to the chief executive about the relevant decision the tribunal considers appropriate.

(3) However, if an appeal is or has been made against the relevant decision, the special tribunal must not make a decision under subsection (2) until the appeal is decided or withdrawn.

Part 4 Decisions by tribunal

800G Decision by tribunal on referral

(1) If the special tribunal refers the matter to the tribunal for a new decision, the tribunal must—

(a) hear and decide the matters the subject of the proceeding in which the relevant decision was made, by way of a fresh hearing on the merits; and

(b) set aside the relevant decision and substitute a new decision.

(2) The repealed Act applies in relation to a proceeding under this section as if it had not been repealed.

(3) For this Act and the repealed Act, the new decision substituted under subsection (1)(b)—

(a) is the tribunal's final decision in the proceeding; and

(b) for chapter 20, part 7—is taken to have been made on the same day as the relevant decision.

(4) To remove any doubt, it is declared that—

(a) the new decision by the tribunal may be consistent with the relevant decision; and

(b) the repealed Act, chapter 8 applies in relation to the new decision.

Chapter 18B COVID-19 emergency provisions

800H Definition for chapter

In this chapter—

COVID-19 emergency period see the *COVID-19 Emergency Response Act 2020*, schedule 1.

800I Power of chief psychiatrist to approve absences during COVID-19 emergency period

(1) This section applies in relation to each of the following patients—

(a) a patient subject to a forensic order if the category is inpatient;

(b) a classified patient;

(c) a patient subject to a judicial order;

(d) a patient subject to a treatment authority if the category is inpatient;

(e) a patient subject to a treatment support order if the category is inpatient;

Not authorised—indicative only

Not authorised—indicative only

(f) a person detained in an authorised mental health service under section 368.

(2) During the COVID-19 emergency period, the chief psychiatrist may approve the person's absence from an authorised mental health service if satisfied—

(a) the absence is reasonably necessary to comply with—

(i) a detention order made under the *Public Health Act 2005*, section 349 in relation to the COVID-19 emergency; or

(ii) a public health direction given under the *Public Health Act 2005*, section 362B; and

(b) the treatment and care needs of the person can reasonably be met for the period of the absence; and

(c) the absence will not—

(i) result in an unacceptable risk to the person's safety and welfare; or

(ii) result in an unacceptable risk to the safety of the community.

(3) The period of the approved absence must end no later than the earlier of the following days—

(a) the day the chief psychiatrist becomes aware the requirements mentioned in subsection (2)(a), (b) or (c) stop being met;

(b) 30 April 2022.

(4) The approval—

(a) must be in writing; and

(b) may include any conditions the chief psychiatrist considers appropriate, including, for example, that the person remain in the physical presence of a stated person for the period of the absence.

(5) As soon as practicable after approving the absence, the chief psychiatrist must give written notice of the approval—

(a) to the administrator of the authorised mental health service; and

(b) for a person who is subject to a forensic order, treatment support order or treatment authority—to the tribunal; and

(c) for a person who is subject to a judicial order—to the court that made the order.

(6) If the administrator of the authorised mental health service receives a written notice of an approval under subsection (5)(a), the administrator must notify the following persons of the approval—

(a) the person the subject of the approval;

(b) any nominated support person for the person the subject of the approval.

(7) In this section—

COVID-19 emergency see the *COVID-19 Emergency Response Act 2020*, schedule 1.

800K Modification of s 336 (Record of relevant patients)

During the COVID-19 emergency period, section 336(2)(g) applies as if a reference in the section to temporary absences approved under section 221 included a reference to absences approved under section 800I.

800L Modification of s 363 (Application of div 3)

During the COVID-19 emergency period, section 363(g) applies as if a reference in the section to temporarily absent under section 221 included a reference to absent under section 800I.

Not authorised—indicative only

Not authorised—indicative only

800M Modification of s 622 (Offences relating to patients absconding)

During the COVID-19 emergency period, section 622(1)(b) applies as if a reference in the section to temporarily absent under section 221 included a reference to absent under section 800I.

800N Modification of s 783 (Disclosure of particular information relating to classified patient)

During the COVID-19 emergency period, section 783(2) applies as if the following provision were inserted in that subsection—

(e) if the chief psychiatrist considers the information is relevant to the safety and welfare of the person—the fact that the patient is absent from an authorised mental health service under an approval granted under section 800I.

800O Modification of sch 1, s 5 (Information about absences)

During the COVID-19 emergency period, schedule 1, section 5 applies as if the following provision were inserted in that section—

(3) The fact that the relevant patient is absent from an authorised mental health service under an approval granted under section 800I, only if the chief psychiatrist is satisfied the information is relevant to the safety and welfare of the person entitled to receive information under the information notice.

800P Expiry of chapter

This chapter expires on 30 April 2022.

Chapter 19 Repeal

801 Repeal

The Mental Health Act 2000, No. 16 is repealed.

Chapter 20 Transitional provisions for Act No. 5 of 2016

Part 1 Preliminary

802 Definitions for ch 20

In this chapter—

commencement means the commencement of this chapter.

new Act means this Act.

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

803 Application of new Act in relation to proceedings for alleged offences

(1) To the extent a provision of the new Act relates to a proceeding for an alleged offence, the new Act applies if a proceeding is started after the commencement.

(2) For subsection (1), it is irrelevant whether the offence is alleged to have been committed before or after the commencement.

(3) To the extent subsection (1) is inconsistent with any other provision of this chapter, the other provision prevails.

Not authorised—indicative only

Not authorised—indicative only

804 Detention under repealed Act

(1) A person detained or remanded in custody under the repealed Act immediately before the commencement is taken to be detained or remanded in custody under the new Act and may be dealt with under the new Act.

(2) To the extent subsection (1) is inconsistent with any other provision of this chapter, the other provision prevails.

Part 2 Provisions about assessment and detention under chapters 2 and 3 of repealed Act

805 Assessment documents

(1) A request for assessment in force under the repealed Act immediately before the commencement stops having effect on the commencement.

(2) A recommendation for assessment in force under the repealed Act immediately before the commencement—

(a) is taken to be a recommendation for assessment under the new Act; and

(b) remains in force for 7 days after it was made under the repealed Act.

806 Persons subject to assessment documents

(1) This section applies if, immediately before the commencement, a person for whom assessment documents were in force under the repealed Act was being taken under that Act to a place.

(2) The repealed Act continues to apply in relation to the taking of the person as if that Act had not been repealed.

807 Justices examination order

(1) An application for a justices examination order made under the repealed Act but not decided before the commencement may be heard, or continue to be heard, and dealt with under that Act as if it had not been repealed.

(2) A justices examination order in force under the repealed Act immediately before the commencement continues in force for the period it would have been in force under that Act.

(3) For the purposes of a justices examination order made because of the application of subsection (1) or mentioned in subsection (2), the repealed Act, chapter 2, part 3, division 2 continues to apply as if the new Act had not commenced.

(4) On examination of a person under the repealed Act as applied under subsection (3), a doctor or authorised mental health practitioner may, under the new Act, decide to make a recommendation for assessment for the person.

(5) The recommendation for assessment is a recommendation for assessment made under the new Act, section 39.

808 Emergency examination order

(1) Subsections (2) to (4) apply if, immediately before the commencement, a police officer or an ambulance officer was taking a person to an authorised mental health service under the repealed Act, section 34.

(2) The repealed Act, sections 35 and 36 continue to apply in relation to the persons mentioned in subsection (1) as if the new Act had not commenced.

(3) On examination of a person under the repealed Act as applied under subsection (2), a doctor or authorised mental health practitioner may, under the new Act, decide to make a recommendation for assessment for the person.

(4) The recommendation for assessment is a recommendation for assessment made under the new Act, section 39.

Not authorised—indicative only

Not authorised—indicative only

(5) Subsections (6) to (8) apply if, immediately before the commencement, a person—

(a) was being taken to an authorised mental health service under the repealed Act, section 39 by a psychiatrist, police officer or ambulance officer; or

(b) was being detained in an authorised mental health service under the repealed Act, section 40.

(6) The repealed Act, sections 39 and 40 continue to apply in relation to the persons mentioned in subsection (5).

(7) On examination of a person under the repealed Act as applied under subsection (6), a doctor or authorised mental health practitioner may, under the new Act, decide to make a recommendation for assessment for the person.

(8) The recommendation for assessment is a recommendation for assessment made under the new Act, section 39.

(9) The repealed Act, section 41 continues to apply in relation to a person the subject of an examination mentioned in this section.

809 Detention for assessment

(1) This section applies if, immediately before the commencement—

(a) a person was detained in an authorised mental health service for assessment under the repealed Act, section 44; and

(b) the assessment period for the person under that Act had not ended; and

(c) an assessment of the person under that Act had not been made.

(2) The person is taken to be detained for assessment, and may be dealt with, under the new Act.

(3) The assessment period for the person under the new Act is taken to have started when the person's assessment period

started under the repealed Act, and may be extended in compliance with the new Act.

810 Agreement for assessment

(1) This section applies to an agreement for assessment under the repealed Act—

(a) for a person's assessment at an authorised mental health service; and

(b) that was in force immediately before the commencement.

(2) For the new Act, the agreement for assessment is taken to be an administrator consent under the new Act for the person's transport to an authorised mental health service.

(3) If the person has not been taken for assessment to the authorised mental health service within 72 hours from the commencement, a doctor or authorised mental health practitioner must give written notice to the chief psychiatrist of that fact.

811 Custodian's assessment authority

A custodian's assessment authority under the repealed Act is taken to be a custodian consent under the new Act for the person subject to the authority.

812 Taking person to authorised mental health service

(1) This section applies if, immediately before the commencement—

(a) a recommendation for assessment and a custodian's assessment authority under the repealed Act were in force for a person; and

(b) the person had not been taken to an authorised mental health service, under the recommendation and authority, for assessment.

Not authorised—indicative only

Not authorised—indicative only

(2) For the purposes of the new Act, the person may be transported to the authorised mental health service under the recommendation and authority.

813 Classified patients

(1) A classified patient under the repealed Act immediately before the commencement is taken to be a classified patient under the new Act.

(2) A classified patient who consented to being treated and was at an authorised mental health service immediately before the commencement is taken to be a classified patient (voluntary).

814 Report of authorised doctor

(1) This section applies if—

(a) under the repealed Act, section 74, an authorised doctor had given the director a report about a patient; and

(b) the director had not considered the report under the repealed Act, section 83 by the commencement.

(2) The report is taken to be a notice received by the chief psychiatrist under the new Act, section 82 and the chief psychiatrist must deal with the notice under that section.

815 Involuntary treatment orders

(1) An involuntary treatment order under the repealed Act that was in force immediately before the commencement is taken to be a treatment authority under the new Act.

(2) On the commencement—

(a) the category of the treatment authority is the category of the involuntary treatment order; and

(b) the new Act applies in relation to the category of the treatment authority as if the authority had been made under the new Act.

(3) Any conditions of the involuntary treatment order, including conditions about limited community treatment, are taken to be conditions of the treatment authority.

(4) Subject to section 818, if, under the repealed Act and immediately before the commencement, limited community treatment was authorised under the involuntary treatment order by an authorised doctor, the limited community treatment is taken to be authorised under the new Act.

(5) If, immediately before the commencement, the person subject to the involuntary treatment order had not been examined under the repealed Act, section 112 by an authorised psychiatrist, an authorised psychiatrist must review the treatment authority under the new Act, section 56.

(6) If, immediately before the commencement, notice of the making of the involuntary treatment order had not been given under the repealed Act, section 113, notice must be given in accordance with the new Act, section 55.

(7) An assessment of the person subject to the treatment authority must be made under the new Act, section 205 within 3 months after the commencement.

(8) Without limiting subsections (2) to (7)—

(a) for the purposes of the new Act, the treatment authority is taken to have been made when the involuntary treatment order was made under the repealed Act; and

(b) the new Act applies in relation to the treatment authority as if it were made under the new Act.

(9) To remove any doubt, it is declared that the person subject to the involuntary treatment order is taken to have been subject to the treatment authority for any period during which the person was subject to the order.

Not authorised—indicative only

Not authorised—indicative only

Part 3 Provisions about assessment or detention of persons before a court or in custody under chapter 3 of repealed Act

816 Court assessment order

A court assessment order under the repealed Act, section 58 that was in effect immediately before the commencement is taken to be an examination order under the new Act.

Part 4 Provisions about treatment and care of patients under chapter 4 of repealed Act

817 Treatment plans

(1) This section applies if, before the commencement, a treatment plan was prepared for a patient under the repealed Act, section 124.

(2) The treatment plan is taken to have been recorded by an authorised doctor in the patient's health records under the new Act, section 202 as the treatment and care planned to be provided to the patient under the new Act.

818 Limited community treatment

(1) This section applies if, immediately before the commencement, limited community treatment was authorised for a patient by an authorised doctor under the repealed Act, section 129 or 131.

(2) The limited community treatment is taken to have been authorised under the new Act, chapter 7.

(3) If the limited community treatment was authorised under the repealed Act, section 129 or 131 subject to conditions, the conditions are taken to have been imposed under the new Act, chapter 7.

819 Monitoring conditions

(1) This section applies if, immediately before the commencement, a patient was subject to a monitoring condition imposed under the repealed Act, section 131A.

(2) If the patient was a forensic patient, the monitoring condition is taken to have been imposed under the new Act for the same period and on the same conditions.

(3) However, if the monitoring condition required the person to wear a tracking device, the monitoring condition stops having effect on the commencement.

(4) If the patient was not a forensic patient, the monitoring condition stops having effect on the commencement.

Part 5 Provisions about electroconvulsive therapy under chapter 4 of repealed Act

820 Consent to electroconvulsive therapy

(1) This section applies if, immediately before the commencement, a patient had given informed consent to electroconvulsive therapy under the repealed Act, section 139.

(2) The consent is taken to have been given under the new Act, chapter 7, part 10.

821 Emergency electroconvulsive therapy

(1) This section applies if, immediately before the commencement, a certificate under the repealed Act,

Not authorised—indicative only

Not authorised—indicative only

section 140 for emergency electroconvulsive therapy was in force.

(2) The certificate is taken to have been given under the new Act, section 237(3).

Part 6 Provisions about movement, transfer and temporary absence of patients under chapter 5 of repealed Act

822 Move of patients interstate

(1) If, immediately before the commencement, the tribunal had approved the move to another State of a person subject to a forensic order—

(a) the person is taken to have been transferred to the other State under the new Act, chapter 12; and

(b) to remove any doubt, it is declared that, for the new Act, section 528(3)(b), the 3-year period includes any period before the commencement for which the person was out of Queensland.

(2) If an application for approval of a move of a person to an interstate mental health service was made under the repealed Act, section 171 but not decided before the commencement, the application may continue to be heard under the repealed Act as if the new Act had not commenced.

(3) If the application is approved, the move is taken to be a transfer approved under the new Act, chapter 12, part 10, division 2.

Note—

See the new Act, section 528 in relation to the effect of a transfer on a person's forensic order (mental health), forensic order (disability) or treatment support order.

823 Temporary absences

(1) This section applies if, immediately before the commencement, the director under the repealed Act had approved a temporary absence under the repealed Act, section 186.

(2) The temporary absence is taken to be approved by the chief psychiatrist under the new Act, chapter 7 for the same period and on the same conditions.

Part 7 Provisions about tribunal reviews under chapter 6 of repealed Act

Division 1 Orders and decisions made before commencement

824 Particular orders and decisions not given effect before commencement

(1) This section applies if—

(a) any of the following was made by the tribunal before the commencement—

(i) an order under the repealed Act, section 191(2)(c) or 203(2)(d) to transfer a patient from 1 authorised mental health service to another;

(ii) a decision under the repealed Act, section 197(1)(b) that a young patient be transferred from a high security unit to an authorised mental health service that was not a high security unit; and

(b) immediately before the commencement, the order or decision had not been given effect.

(2) The order or decision must be given effect under the repealed Act as if the new Act had not commenced.

Not authorised—indicative only

Not authorised—indicative only

825 Particular decisions unaffected by new Act

(1) This section applies to any of the following decisions made by the tribunal before the commencement—

(a) a decision under the repealed Act, section 212 about a person's fitness for trial;

(b) a decision under the repealed Act, section 233 to approve—

(i) an application for approval to administer electroconvulsive therapy on a person; or

(ii) an application for approval to perform psychosurgery that is a non-ablative neurosurgical procedure.

(2) The decision continues in effect and is not affected by the commencement of the new Act.

Division 2 Reviews and applications not completed before commencement

826 Existing applications to tribunal

(1) Subsection (2) applies if any of the following applications was made under the repealed Act, chapter 6 but not decided before the commencement—

(a) an application for a review;

(b) an application for approval to administer electroconvulsive therapy on a person;

(c) an application for approval to perform psychosurgery that is a non-ablative neurosurgical procedure.

(2) The review or application may be heard, or continue to be heard, and dealt with under the repealed Act as if the new Act had not commenced.

(3) However, the repealed Act, chapter 6, part 5A does not apply.

(4) If—

(a) an application for approval to perform psychosurgery was made under the repealed Act, chapter 6 but not decided before the commencement; and

(b) the application was not an application mentioned in subsection (1)(c);

on the commencement, the application lapses.

827 Existing reviews started other than by an application

(1) This section applies if a following review was started under the repealed Act but not decided before the commencement—

(a) a periodic review or review on the tribunal's initiative under chapter 6, part 1 of the application of the treatment criteria to a patient for whom an involuntary treatment order was in force;

(b) a periodic review or review on the tribunal's initiative under chapter 6, part 2 of the detention of a young patient in a high security unit for treatment or care;

(c) a periodic review or review on the tribunal's initiative under chapter 6, part 3 of a forensic patient's mental condition;

(d) a periodic review or review on the tribunal's initiative under chapter 6, part 4 of the mental condition of a person charged with a relevant offence.

(2) The review may be heard, or continue to be heard, and dealt with under the repealed Act as if the new Act had not commenced.

(3) However, the repealed Act, chapter 6, part 5A does not apply for the purposes of the review.

(4) On a review mentioned in subsection (1)(c), if the tribunal confirms the forensic order for the patient, the tribunal must consider each of the following for the purposes of the new Act—

Not authorised—indicative only

Not authorised—indicative only

(a) whether to change the category of the forensic order (mental health) or forensic order (disability) to which the person is subject under section 836 or 837;

(b) whether to order or approve, or revoke an existing order or approval for, limited community treatment;

(c) whether the conditions to which the order is subject remain appropriate.

(5) Subsection (4) does not limit the repealed Act, section 203.

(6) In this section

periodic review means a review under the repealed Act, section 187(1)(a), 194(1)(a), 200(1)(a) or 209(1).

828 Effect of tribunal's decision on existing review

(1) A decision made by the tribunal on a review dealt with under the repealed Act as continued in effect under this division has effect for the new Act as if the decision were made under the new Act.

(2) For subsection (1), the decision takes effect under the new Act—

(a) if the decision was made under the repealed Act, chapter 6, part 1—in relation to the treatment authority taken to be made for the person under this part; or

(b) if the decision was made under the repealed Act, chapter 6, part 3—in relation to the forensic order (mental health) or forensic order (disability) taken to be made for the person under this part.

(3) A decision by the tribunal on an application for an approval mentioned in section 826(1)(b) or (c) is taken to have been made under the new Act, chapter 12, part 9.

(4) This section is subject to section 830.

Division 3 Other provisions

829 When first periodic review under new Act must be conducted

(1) This section provides for when a periodic review must be conducted by the tribunal under the new Act, if the matter to be reviewed arose under the repealed Act.

(2) The first periodic review must be conducted under the new Act as follows—

Type of review under new Act	Section of new Act under which first periodic review must be conducted	When first periodic review under new Act must be conducted
Treatment authority taken to be made for person under s 815		
(a) if no corresponding review conducted under repealed Act	s 413(1)(a)	6 weeks after treatment authority was taken to be made
(b) if 1 corresponding review conducted under repealed Act	s 413(1)(b)	6 months after last periodic review of corresponding matter under repealed Act was completed
(c) if 2 corresponding reviews conducted under repealed Act	s 413(1)(c)	6 months after last periodic review of corresponding matter under repealed Act was completed
(d) if 3 or more corresponding reviews conducted under repealed Act	s 413(1)(d)	12 months after last periodic review of corresponding matter under repealed Act was completed
Detention of a minor in a high security unit (detention started before commencement)		
(a) if no corresponding review conducted under repealed Act	s 499(1)(a)	7 days after the detention started

Not authorised—indicative only

Not authorised—indicative only

Type of review under new Act	Section of new Act under which first periodic review must be conducted	When first periodic review under new Act must be conducted
(b) if 1 or more corresponding reviews conducted under repealed Act	s 499(1)(b)	3 months after last periodic review of corresponding matter under repealed Act was completed
Forensic order (mental health) or forensic order (disability) taken to have been made under s 836 or 837		
(a) if no corresponding review conducted under repealed Act	s 433(1)(a)	6 months after order taken to have been made
(b) if 1 or more corresponding reviews conducted under repealed Act	s 433(1)(b)	6 months after last periodic review of corresponding matter under repealed Act was completed
Person's fitness for trial—relevant court decision or jury finding made before commencement		
(a) if no corresponding review conducted under repealed Act	s 486(1)(a)	3 months from the day of the relevant court decision or jury finding
(b) if 1 or more corresponding reviews conducted under repealed Act	s 486(1)(b)	(a) during the year starting on the day of the relevant court decision or jury finding—3 months after last periodic review of corresponding matter under repealed Act was completed (b) after the period mentioned in paragraph (a)—6 months after last periodic review of corresponding matter under repealed Act was completed

(3) In this section—

corresponding review, under the repealed Act for a review under the new Act, means—

(a) for a review under the new Act of a treatment authority taken to be made for a person under section 815—a periodic review of the application of the treatment criteria to the person for whom an involuntary treatment order was in force under the repealed Act, chapter 6, part 1; or

(b) for a review under the new Act of the detention of a minor in a high security unit—a periodic review of the detention of a young patient in a high security unit for treatment or care under the repealed Act, chapter 6, part 2; or

(c) for a review under the new Act of a forensic order (mental health) or forensic order (disability) taken to be made for a person under section 836 or 837—a periodic review of the forensic patient's mental condition under the repealed Act, chapter 6, part 3; or

(d) for a review under the new Act of a person's fitness for trial—a periodic review of the person's mental condition under the repealed Act, chapter 6, part 4.

periodic review, under the repealed Act, means a review under the repealed Act, section 187(1)(a), 194(1)(a), 200(1)(a) or 209(1)(a).

relevant court decision or jury finding, for a review of a person's fitness for trial, means—

(a) the decision made by the Mental Health Court under the repealed Act that the person was unfit for trial and the unfitness for trial was not of a permanent nature; or

(b) the jury's section 613 or 645 finding within the meaning of the repealed Act in relation to the person.

830 Discontinuing proceeding for offence following review of fitness for trial

(1) This section applies if—

(a) before the commencement on a reference under the repealed Act the Mental Health Court decided a person

Not authorised—indicative only

Not authorised—indicative only

was unfit for trial and the unfitness for trial was not of a permanent nature; and

(b) the proceeding against the person for the offence was not discontinued or the person had not been found fit for trial.

(2) For a review of the person's fitness for trial under the new Act, if the tribunal decides the person is unfit for trial, chapter 12, part 6, division 2, applies as if—

(a) the decision of Mental Health Court mentioned in subsection (1)(a) were the finding of unfitness in relation to the person; and

(b) a period mentioned in the repealed Act, section 215(3)(a) or (b) were a period that must be disregarded under the new Act, section 491(3).

831 Non-contact order ends

A non-contact order made under the repealed Act and in effect immediately before the commencement stops having effect on the commencement.

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

832 Making of reference under repealed Act by director or director of public prosecutions

(1) This section applies if—

(a) before the commencement, the director was satisfied the repealed Act, chapter 7, part 2 applied to an involuntary patient; and

(b) immediately before the commencement, the director had not under the repealed Act, section 240(1) referred the matter of the patient's mental condition relating to the offence with which the patient was charged to the Mental Health Court or director of public prosecutions.

(2) The repealed Act, chapter 7, parts 1 to 3 continues to apply, as if the new Act had not commenced.

(3) A reference made to the Mental Health Court under the repealed Act, section 240 or 247 as applied by this section is taken to have been made under the new Act.

Division 2 References

833 Application of div 2

This division applies if—

(a) before the commencement, a reference of a person's mental condition was made to the Mental Health Court under the repealed Act; and

(b) immediately before the commencement, the reference had not been decided by the court.

834 Hearing of reference continues under repealed Act

(1) The reference may be heard, or continue to be heard, and dealt with under the repealed Act as if the new Act had not commenced.

Note—

See also section 858 in relation to suspension of the proceeding against the person for the unlawful act to which the reference relates.

Not authorised—indicative only

Not authorised—indicative only

(2) A decision or order made by the court under the repealed Act, chapter 7, part 6 is taken to have been made under the new Act, chapter 5.

(3) Without limiting subsection (2)—

(a) an order made by the court under the repealed Act, section 273 is taken to have been made under the new Act, section 124; and

(b) limited community treatment approved for the patient by the court under the repealed Act, section 275 is taken to be approved under the new Act.

(4) Despite subsection (1), the repealed Act, sections 278 and 279 do not apply if the court orders the detention of the patient in an authorised mental health service.

(5) If the proceeding for the offence alleged to have been committed by the person is stayed under the repealed Act, section 280, the stay ends in accordance with the new Act.

835 Appeal against Mental Health Court's decision

(1) An appeal against a decision of the Mental Health Court on the reference may be started under the repealed Act, chapter 8, part 2.

(2) The Court of Appeal may hear and decide the appeal under the repealed Act as if the new Act had not commenced.

Division 3 Forensic orders (Mental Health Court) and forensic orders (Mental Health Court—Disability)

836 Forensic order (Mental Health Court)

(1) This section applies to a forensic order (Mental Health Court) under the repealed Act that—

(a) was in force immediately before the commencement; or

(b) is made after the commencement under this chapter.

(2) The order is taken to be a forensic order (mental health) under the new Act.

(3) On the commencement or relevant start day—

(a) the category of the forensic order (mental health) is inpatient; and

(b) the new Act applies in relation to the category of the forensic order (mental health) as if the order had been made under the new Act.

(4) Any conditions of the forensic order (Mental Health Court), including a non-contact condition, are taken to be conditions of the forensic order (mental health).

(5) Without limiting subsections (1) to (4)—

(a) for the purposes of the new Act, the forensic order (mental health) is taken to have been made when the forensic order (Mental Health Court) was or is made under the repealed Act; and

(b) the new Act applies in relation to the forensic order (mental health) as if it were made under the new Act.

(6) To remove any doubt, it is declared that the person subject to the forensic order (Mental Health Court) is taken to have been subject to the forensic order (mental health) for any period during which the person was subject to the forensic order (Mental Health Court).

(7) In this section—

relevant start day, for a forensic order (mental health) taken to have been made after the commencement under this chapter, means the day the order is taken to have been made.

837 Forensic order (Mental Health Court—Disability)

(1) This section applies to a forensic order (Mental Health Court—Disability) under the repealed Act that—

(a) was in force immediately before the commencement; or

Not authorised—indicative only

Not authorised—indicative only

(b) is made after the commencement under this chapter.

(2) The order is taken to be a forensic order (disability) under the new Act.

(3) On the commencement or relevant start day—

(a) the category of the forensic order (disability) is inpatient; and

(b) the new Act applies in relation to the category of the forensic order (disability) as if the order had been made under the new Act.

(4) Any conditions of the forensic order (Mental Health Court—Disability), including a non-contact condition, are taken to be conditions of the forensic order (disability).

(5) Without limiting subsections (1) to (4)—

(a) for the purposes of the new Act, the forensic order (disability) is taken to have been made when the forensic order (Mental Health Court—Disability) was made under the repealed Act; and

(b) the new Act applies in relation to the forensic order (disability) as if it were made under the new Act.

(6) To remove any doubt, it is declared that the person subject to the forensic order (Mental Health Court—Disability) is taken to have been subject to the forensic order (disability) for any period during which the person was subject to the forensic order (Mental Health Court—Disability).

(7) In this section—

relevant start day, for a forensic order (disability) taken to have been made after the commencement under this chapter, means the day the order is taken to have been made.

838 Limited community treatment for forensic patient

(1) This section applies to a forensic order (mental health) or forensic order (disability) taken to have been made for a person under this division.

(2) If, under the repealed Act, limited community treatment for the person was ordered or approved by the Mental Health Court or the tribunal, or authorised by an authorised doctor—

(a) the limited community treatment is taken to be ordered or approved, or authorised, under the new Act; and

(b) the nature and extent of the limited community treatment continues unaffected by the commencement of the new Act.

(3) If the limited community treatment was authorised under the repealed Act by an authorised doctor, the authorisation may be amended or revoked by an authorised doctor under the repealed Act as if the new Act had not commenced.

(4) However, subsection (3) does not apply if the forensic order (mental health) or forensic order (disability) has been reviewed under the new Act.

839 Review of forensic order under new Act

(1) This section applies to a forensic order (mental health) or forensic order (disability) taken to have been made for a person under this division.

(2) When the tribunal first reviews the order under the new Act, chapter 12, the tribunal must, if it confirms the order, consider the following—

(a) whether the category of the order should be—

(i) inpatient; or

(ii) community;

(b) whether to order or approve, or revoke an existing order or approval for, limited community treatment;

(c) whether the conditions to which the order is subject remain appropriate.

(3) This section does not limit the powers of the tribunal under the new Act, chapter 12, part 3.

Not authorised—indicative only

Not authorised—indicative only

Division 4 Other provisions

840 Order approving interstate transfer under s 288B of repealed Act

(1) This section applies if, before the commencement under a forensic order (Mental Health Court) or forensic order (Mental Health Court—Disability), the Mental Health Court approved a patient move out of Queensland.

(2) On the commencement, the approval is taken to be an approval for the transfer of the patient given under the new Act, chapter 12, part 10, division 2.

(3) To remove any doubt, it is declared that, for the new Act, section 528(3)(b), the 3-year period includes any period before the commencement for which the person was out of Queensland.

Note—

See the new Act, section 528 in relation to the effect of a transfer on a person's forensic order (mental health), forensic order (disability) or treatment support order.

841 Forensic order (Criminal Code)

To remove any doubt, it is declared that the new Act applies in relation to a forensic order (Criminal Code) within the meaning of the repealed Act that was made before the commencement.

842 Custody order

(1) This section applies if a custody order was in effect under the repealed Act immediately before the commencement.

(2) The repealed Act, chapter 7, part 7, division 2, subdivision 3 continues to apply in relation to the custody order.

843 Forensic order (Minister)

(1) This section applies if a forensic order (Minister) is—

(a) in effect for a person immediately before the commencement; or

(b) made under the repealed Act, chapter 7, part 7, division 2, subdivision 3 as continued in effect under section 842(2).

(2) From the commencement or relevant start day, the order is taken to be a forensic order (mental health) under the new Act.

(3) On the commencement or relevant start day—

(a) the category of the forensic order (mental health) is inpatient; and

(b) the new Act applies in relation to the category of the forensic order (mental health) as if the order had been made under the new Act.

(4) Without limiting subsections (1) to (3)—

(a) for the purposes of the new Act, the forensic order (mental health) is taken to have been made when the forensic order (Minister) was made under the repealed Act; and

(b) the new Act applies in relation to the forensic order (mental health) as if it were made under the new Act.

(5) In this section—

relevant start day, for a forensic order (Minister) mentioned in subsection (1)(b), means the day the order is made.

844 Forensic disability client temporarily detained in authorised mental health service

(1) This section applies if, immediately before the commencement, a forensic disability client was detained in an authorised mental health service under the repealed Act, section 309B.

Not authorised—indicative only

Not authorised—indicative only

(2) The repealed Act, section 309B continues to apply for the detention of the client in the authorised mental health service.

Part 9 Provisions about information orders under chapter 7A of repealed Act

845 Forensic information orders

(1) This section applies if, immediately before the commencement, a person was entitled to receive information for a patient under a forensic information order under the repealed Act.

(2) The person is taken to be entitled to receive the information mentioned in the new Act, schedule 1 under an information notice under the new Act.

846 Classified patient information orders

(1) This section applies if, immediately before the commencement, a person was entitled to receive information for a patient under a classified patient information order under the repealed Act.

(2) The information may continue to be disclosed to the person for the purposes of the new Act, chapter 17.

Part 10 Provisions about security of authorised mental health services under chapter 10 of repealed Act

847 Exclusion of visitors

(1) This section applies if, immediately before the commencement, the administrator of an authorised mental health service had given a notice, under the repealed Act, section 374, to a person refusing to allow the person to visit a patient in the health service.

(2) The notice is taken to have been given under the new Act, section 408.

Part 11 Provisions about Mental Health Court under chapter 11 of repealed Act

848 Mental Health Court registry

(1) The Mental Health Court Registry established under the repealed Act continues in existence under the new Act.

(2) Without limiting subsection (1), the employment of the registrar and other staff under the repealed Act immediately before the commencement is not affected by the commencement of the new Act.

849 Court examination order

(1) This section applies if—

(a) a court examination order was made under the repealed Act, section 422 before the commencement; and

Not authorised—indicative only

Not authorised—indicative only

(b) immediately before the commencement, the person was detained under the repealed Act, section 424(5).

(2) The court examination order continues in effect under the repealed Act as if the new Act had not commenced.

(3) The repealed Act, sections 422 to 425 continue to apply for the purposes of the person's examination and detention under the order.

850 Inquiry into detention of patient in authorised mental health service

An inquiry started by the Mental Health Court under the repealed Act, chapter 11, part 9 but not completed before the commencement may be completed under the repealed Act as if the new Act had not commenced.

Part 12 Miscellaneous

851 Mental Health Court, tribunal or another court may make orders about transition from repealed Act to new Act

(1) If this chapter makes no or insufficient provision for the transition to the new Act of a matter before a court, the court may make the order it considers appropriate.

(2) The order may be made—

(a) on application of the chief psychiatrist or a party to a proceeding before the court; or

(b) on the initiative of the court.

(3) In this section—

court means the Mental Health Court, the tribunal or another court.

852 Notices generally

(1) Subsection (2) applies if, immediately before the commencement, a person was required under a provision of the repealed Act to give written or other notice about a particular matter under the repealed Act and had not given the notice.

(2) The person must give the notice under the provision of the new Act that deals with similar matters to the matters for which notice was required to be given under the repealed Act.

(3) Subsection (4) applies if—

(a) a person has given a written or other notice about a particular matter under the repealed Act; and

(b) on the commencement, a person who would have been required or authorised to do something under the repealed Act on receiving the notice has not yet done the thing; and

(c) a provision of the new Act deals with similar matters to the matters for which the notice was required to be given under the repealed Act and requires or authorises a person to do something on receiving notice of the matters.

(4) The requirement or authorisation under the new Act applies in relation to the person required or authorised to do the thing.

853 Records made under repealed Act

(1) A record about a person that the administrator of an authorised mental health service was required to keep under the repealed Act immediately before the commencement must be kept with the patient's health records mentioned in the new Act, section 336.

(2) Subsection (1) applies subject to a direction made by the chief psychiatrist.

Not authorised—indicative only

Not authorised—indicative only

854 Material submitted by victim or concerned person

(1) Material submitted to the Mental Health Court under the repealed Act, section 284 is taken to be a victim impact statement given to the court for the purposes of the new Act.

(2) Material submitted to the tribunal under the repealed Act, section 464 is taken to be a victim impact statement given to the tribunal for the purposes of the new Act.

855 Subpoenas

A subpoena issued under the repealed Act before the commencement is taken to have been issued under the new Act.

856 Authorised mental health services and high security units

(1) An authorised mental health service under the repealed Act is an authorised mental health service under the new Act.

(2) A high security unit under the repealed Act is a high security unit under the new Act.

857 Office holders

(1) This section applies to a person holding office under the repealed Act, by appointment or otherwise, immediately before the commencement if the person's office is provided for under the new Act.

(2) The person continues to hold the office under the new Act.

Example of persons who continue to hold office under the new Act—

- the administrator of an authorised mental health service or high security unit
- an authorised doctor or authorised mental health practitioner
- the president and other members of the Mental Health Court
- the registrar of the Mental Health Court

- the president and other members, and executive officer, of the tribunal

(3) If the name of the office has changed under the new Act, the person holds office under the changed name.

(4) Without limiting subsection (3)—

(a) the director under the repealed Act is the chief psychiatrist on the commencement; and

(b) an assisting psychiatrist is an assisting clinician on the commencement.

(5) The person holds office—

(a) for the remainder of the term, if any, provided for under the repealed Act; and

(b) on the conditions provided for under the new Act.

858 Suspended proceedings

(1) This section applies to a proceeding for an offence if, immediately before the commencement, the proceeding was suspended under the repealed Act.

(2) The suspension ends in accordance with the new Act.

859 Reviews relating to serious risks

(1) This section applies to a review under the repealed Act, section 493AC if the review was started but not completed before the commencement.

(2) The review may be continued under the new Act, chapter 10, part 5 by the chief psychiatrist as if the chief psychiatrist were directed to undertake the review under that part.

860 Appeals

(1) An appeal against a decision mentioned in the repealed Act, section 319 made before the commencement may be started or continued under the repealed Act, chapter 8, part 1.

Not authorised—indicative only

Not authorised—indicative only

(2) The Mental Health Court may hear, or continue to hear, and decide the appeal under the repealed Act as if the new Act has not commenced.

(3) An appeal against a decision of the Mental Health Court on a reference made before the commencement may be started or continued under the repealed Act, chapter 8, part 2.

(4) The Court of Appeal may hear, or continue to hear, and decide the appeal under the repealed Act as if the new Act had not commenced.

(5) For giving effect to a decision under subsection (2) or (4), the court may make the orders it considers necessary having regard to the new Act.

861 Annual reports

(1) This section applies if a person was required to give a report under the repealed Act, section 435, 487 or 494 (each a ***previous section***) and the report has not been given before the commencement.

(2) The person is not required to give the report.

(3) If, under subsection (2), the person does not give the report, the first report given under a provision of the new Act that corresponds to the previous section must include the matters that would have been required to be included in the report under the previous section.

862 References to orders and authorities under repealed Act

A reference in a document to an order or authority under the repealed Act may, if the context permits, be taken to include a reference to a corresponding order or authority provided for under the new Act.

863 Application of new Act, s 420

The new Act, section 420 does not apply to a review under the new Act, section 413(1)(c) until 1 year after the commencement of section 413.

Chapter 21 Other transitional provisions

Part 1 Transitional provision for Hospital Foundations Act 2018

864 Application of s 797A to particular periods

(1) Section 797A applies, and is taken always to have applied, as if the reference in section 797A(1) to a period included a reference to a period during the designated period.

(2) If section 797A(2)(a) or (b), as applied under subsection (1), applies in relation to a person for a period during the designated period, the period is—

(a) for the *Penalties and Sentences Act 1992*—taken to be, and to have always been, imprisonment already served by the person under the sentence for the offence; or

(b) for the *Corrective Services Act 2006* or the *Youth Justice Act 1992*—counted, and is taken to have always been counted, as part of the person's period of imprisonment or period of detention for the offence.

Note—

See also the repealed *Mental Health Act 2000*, section 543 in relation to particular periods taken to be imprisonment already served by a person or counted as part of a person's period of imprisonment or detention for an offence.

(3) In this section—

Not authorised—indicative only

Not authorised—indicative only

designated period means the period starting on 5 March 2017 and ending immediately before the commencement.

Part 2 Transitional provisions for Health and Other Legislation Amendment Act 2021

865 Definitions for part

In this part—

former, for a provision of this Act, means the provision as in force from time to time before the commencement.

new, for a provision of this Act, means the provision as in force on the commencement.

866 Application of new s 117A to reference made before commencement

(1) This section applies if—

(a) before the commencement, a reference in relation to a person was made to the Mental Health Court; and

(b) immediately before the commencement, the reference had not been decided by the court.

(2) This section also applies if—

(a) after the commencement, a reference in relation to a person is made to the Mental Health Court; and

(b) the offence in relation to the reference was allegedly committed before the commencement.

(3) New section 117A applies in relation to the reference.

867 Application of new s 157A to reference made before commencement

(1) This section applies if—

(a) before the commencement, a reference in relation to a person was made to the Mental Health Court; and

(b) immediately before the commencement, the reference had not been decided by the court.

(2) This section also applies if—

(a) after the commencement, a reference in relation to a person is made to the Mental Health Court; and

(b) the offence in relation to the reference was allegedly committed before the commencement.

(3) New section 157A applies in relation to the reference.

868 Application of new ss 317, 322 and 323

New sections 317, 322 and 323 apply in relation to an information notice in effect under chapter 10, part 6 from the commencement, whether the notice was made before or after the commencement.

869 Apprehension and transport of persons

New section 368 applies in relation to the apprehension and transport of a person from the commencement, whether the apprehension authority was issued before or after the commencement.

870 Application of new s 509

(1) Subsection (2) applies if—

(a) before the commencement, an application for an approval was made under former section 507; and

(b) immediately before the commencement, the application had not been decided.

(2) New section 509 applies in relation to the application.

Not authorised—indicative only

Not authorised—indicative only

871 Application of new ch 12, pt 10

(1) Subsection (2) applies if—

(a) before the commencement, an application for an approval was made under former chapter 12, part 10; and

(b) immediately before the commencement, the application had not been decided.

(2) New chapter 12, part 10 applies in relation to the application.

(3) If the application does not include information required under new section 515—

(a) the tribunal must give the applicant a written request for the information; and

(b) if the applicant complies with the request within any period stated in the request—the application is taken to comply, and to always have complied, with new section 515, but only to the extent the application would have complied with new section 515 if the information were included in the application when it was made.

(4) Also, new chapter 12, part 10 applies in relation to a person who is subject to an interstate forensic order, forensic order (mental health), forensic order (disability) or treatment support order, whether the order was made before or after the commencement.

872 Application of new s 778

New section 778 applies to a person mentioned in section 778(1) whether the person acquired or acquires the personal information before or after the commencement.

Schedule 1 Information that applicant, or applicant's nominee, is entitled to receive under an information notice

section 317, definition *information notice*

1 Information about reviews

The fact, and date and time of hearing, of—

(a) a review of the relevant patient's forensic order or treatment support order; or

(b) a review of the relevant patient's fitness for trial.

2 Information about transfer application

The fact, and date and time of hearing, of an application under chapter 12, part 10, division 2, for approval to transfer the relevant patient out of Queensland.

3 Information about tribunal decisions

(1) Subject to subsection (3), a written statement of a decision of the tribunal on a review mentioned in section 1 or an application mentioned in section 2 identifying—

(a) the date of the decision; and

(b) the decision made.

(2) For a decision on a review mentioned in section 1(a) that increases the extent of treatment in the community received by the relevant patient, a brief explanation of the reasons for the decision.

Examples of brief explanations of the reasons for a decision that increases the extent of treatment in the community received by a relevant patient—

- an authorised doctor has stated that the patient has responded well to treatment during a stated time period

Not authorised—indicative only

Not authorised—indicative only

- an authorised doctor has stated that the patient has complied with limited community treatment conditions
- the patient has participated in programs recommended by the Mental Health Court
- the patient has undertaken to comply with non-contact conditions

(3) If the decision on a review mentioned in section 1(a) changes a condition of the relevant patient's order, a written statement of the decision identifying the decision made, only if the chief psychiatrist is satisfied the decision is relevant to the safety and welfare of the person entitled to receive information under the information notice.

4 Information about appeals

For an appeal relating to the relevant patient's order—

(a) the fact, and date and time of hearing, of the appeal; and

(b) a brief explanation of the nature of the appeal; and

(c) a written statement of the decision on appeal identifying—

(i) the date of the decision; and

(ii) the decision made.

5 Information about absences

(1) The fact that the relevant patient is a patient required to return, only if the chief psychiatrist is satisfied the information is relevant to the safety and welfare of the person entitled to receive information under the information notice.

(2) The fact that the relevant patient has returned to an authorised mental health service, after having been required to return, if the chief psychiatrist has provided information under subsection (1) about the absence.

6 Miscellaneous information

(1) The name of the authorised mental health service responsible for the relevant patient.

(2) The fact, and date of, a transfer of the responsibility for the relevant patient to another authorised mental health service or the forensic disability service.

(3) The fact, and date of, the relevant patient's order ending under section 528.

(4) The fact, and date of, a decision of the tribunal under section 759 to revoke the relevant patient's order.

Not authorised—indicative only

Schedule 2 Who may appeal to Mental Health Court

section 539

Column 1 Decision	Column 2 Appellant
a decision of the tribunal on a review of a treatment authority under chapter 12, part 2	(a) the person subject to the authority; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the chief psychiatrist
a decision of the tribunal on a review of a forensic order (mental health) or forensic order (disability) under chapter 12, part 3	(a) the person subject to the order; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the Attorney-General; or (d) if an authorised mental health service is responsible for the person—the chief psychiatrist; or (e) if the forensic disability service is responsible for the person—the director of forensic disability

Not authorised—indicative only

Column 1 Decision	Column 2 Appellant
a decision of the tribunal on a review of a forensic order (Criminal Code) under chapter 12, part 4	(a) the person subject to the order; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the chief psychiatrist; or (d) the Attorney-General
a decision of the tribunal on a review of a treatment support order under chapter 12, part 5	(a) the person subject to the order; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the chief psychiatrist
a decision of the tribunal on a review of a person's fitness for trial under chapter 12, part 6	(a) the person the subject of the review; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the Attorney-General; or (d) if an authorised mental health service is responsible for the person—the chief psychiatrist; or (e) if the forensic disability service is responsible for the person—the director of forensic disability

Not authorised—indicative only

Column 1 Decision	Column 2 Appellant
a decision of the tribunal on a review of the detention of a minor in a high security unit under chapter 12, part 7	(a) the minor; or (b) an interested person for the minor acting on the minor's behalf; or (c) the chief psychiatrist
a decision of the tribunal on an application for approval to perform a regulated treatment on a person chapter 12, part 9	(a) the person the subject of the application; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the doctor who made the application; or (d) the chief psychiatrist
a decision of the tribunal on an application for approval of the transfer of a person into or out of Queensland under chapter 12, part 10	(a) the person the subject of the application; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the Attorney-General; or (d) if an authorised mental health service is responsible for the person—the chief psychiatrist; or (e) if the forensic disability service is responsible for the person—the director of forensic disability

Not authorised—indicative only

Schedule 3 Dictionary

section 9

administrator—

(a) of an authorised mental health service—means the person appointed under section 332 as the administrator of the service; or

(b) of the forensic disability service—means the administrator of the service under the Forensic Disability Act.

administrator consent, for chapter 3, see section 62.

advance health directive means an advance health directive under the *Powers of Attorney Act 1998*.

ambulance officer means an ambulance officer appointed under the *Ambulance Service Act 1991*, section 13.

applicant review—

(a) of a treatment authority, for chapter 12, part 2—see section 413(2); or

(b) of a forensic order (mental health) or forensic order (disability), for chapter 12, part 3—see section 433(2); or

(c) of a treatment support order, for chapter 12, part 5—see section 465(2).

applicant's nominee, for chapter 10, part 6, see section 318(2)(b).

appointed person, for chapter 16, part 1, division 9, see section 677.

approved device see section 243.

approved form means a form approved under section 798.

assessment, of a person, means an assessment of the person under—

Not authorised—indicative only

Not authorised—indicative only

(a) chapter 2, part 3; or

(b) chapter 7.

assessment period, for a person, see section 45(4).

assisting clinician see section 652(1).

associated offence see section 107.

attendance notice, for chapter 16, part 2, see section 744(1).

attorney, of a person, means—

(a) an attorney appointed by the person under an advance health directive; or

(b) an attorney appointed by the person under an enduring power of attorney for a personal matter.

audiovisual link means facilities that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places.

authorised doctor means—

(a) a doctor appointed as an authorised doctor under section 338; or

(b) an administrator of an authorised mental health service to whom section 339 applies; or

(c) for a particular function or power that a class of health practitioners is authorised to perform or exercise under section 341—a health practitioner of the class who is appointed under section 341.

authorised mental health practitioner means a health practitioner appointed as an authorised mental health practitioner under section 340.

authorised mental health service means—

(a) a health service, or part of a health service, declared to be an authorised mental health service under section 329; or

(b) an authorised mental health service (rural and remote); or

(c) a high security unit.

authorised mental health service (rural and remote) means an authorised mental health service, or part of an authorised mental health service, declared to be an authorised mental health service (rural and remote) under section 331.

authorised person see section 359.

authorised psychiatrist means an authorised doctor who is a psychiatrist.

authorised security officer see section 384.

brief of evidence means—

(a) a brief of evidence compiled by the prosecuting authority for an offence that includes any of the following—

(i) an indictment or bench charge sheets;

(ii) summaries or particulars of allegations;

(iii) witness statements;

(iv) exhibits or photographs of exhibits;

(v) transcripts of proceedings;

(vi) a record of interview or transcript of a record of interview;

(vii) a person's criminal history; or

(b) an expert's report or a person's health record.

capacity, to consent to be treated, see section 14.

care, in relation to a person who has an intellectual disability, includes the provision of rehabilitation, the development of living skills, and the giving of support, assistance, information and other services.

carer means an individual who provides, in a non-contractual and unpaid capacity, ongoing care or assistance to another person who, because of disability, frailty, chronic illness or pain, requires assistance with everyday tasks.

Not authorised—indicative only

Not authorised—indicative only

category, of a treatment authority, forensic order (mental health), forensic order (disability) or treatment support order, means—

(a) inpatient; or

(b) community.

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

chief executive (justice) means the chief executive of the department in which the Criminal Code is administered.

chief executive (youth justice) means the chief executive of the department in which the *Youth Justice Act 1992* is administered.

chief psychiatrist means the person appointed as the chief psychiatrist under section 298.

classified patient see section 64(1).

classified patient (involuntary) see section 64(2).

classified patient (voluntary) see section 64(3).

close relative, of a person, means—

(a) the person's spouse; or

(b) a child, grandchild, parent, brother, sister, grandparent, aunt or uncle (whether of whole or half-blood) of the person or the person's spouse.

community means—

(a) in relation to the category of a treatment authority, forensic order (mental health) or treatment support order—the person subject to the authority or order may live in the community while receiving treatment and care; or

(b) in relation to the category of a forensic order (disability)—the person subject to the order may live in the community while receiving care.

condition—

1 ***Condition***, generally, does not include a condition requiring a person to wear a tracking device.

2 However, for the following sections and without limitation, ***condition*** includes a condition requiring a person to wear a tracking device—

(a) sections 135, 139 and 140;

(b) sections 445 to 447;

(c) section 135, as applied by sections 457, 462, 518 and 547.

confidentiality order—

(a) for the Mental Health Court—see section 696(1); or

(b) for the tribunal—see section 722(1).

contact, a person, means—

(a) intentionally initiate contact with the person in any way, including, for example, by phone, mail, fax, email or other technology; or

(b) intentionally follow, loiter near, watch or approach the person; or

(c) intentionally loiter near, watch, approach or enter a place where the person lives, works or visits.

corresponding law means a law of another State that is prescribed by regulation to be a corresponding law.

court—

(a) for chapter 6, part 4, see section 192; or

(b) for chapter 14, see section 554.

court examination order see section 668(1).

court rules means rules of court made under section 699.

criminal history, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986* and—

Not authorised—indicative only

Not authorised—indicative only

(a) despite sections 6, 8 and 9 of that Act, includes a conviction of the person to which any of the sections applies; and

(b) despite section 5 of that Act, includes a charge made against the person for an offence.

custodian, of a person in custody, means the person having the lawful custody of the person.

custodian consent, for chapter 3, see section 62.

decision notice, for chapter 13, part 2, see section 532.

deputy president means the deputy president of the tribunal.

designated person, for chapter 17, see section 776.

diminished responsibility see section 108.

director of forensic disability means the Director of Forensic Disability under the Forensic Disability Act.

director of public prosecutions means the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1984*.

dual disability, for a person, means the person has—

(a) a mental illness; and

(b) an intellectual disability.

electroconvulsive therapy means the application of electric current to specific areas of the head to produce a generalised seizure that is modified by general anaesthesia and the administration of a muscle relaxing agent for the treatment of a mental illness.

electronic document, for chapter 14, see section 554.

emergency examination authority see the *Public Health Act 2005*, section 157D(1).

employ includes engage on a contract for services.

employee, of an authorised mental health service that is a public sector mental health service, means a health service employee in the service.

enduring power of attorney for a personal matter means an enduring power of attorney for a personal matter within the meaning of the *Powers of Attorney Act 1998*.

examination authority see section 502(1).

examination order see section 177(2).

examination report, for chapter 6, part 2, division 3, see section 179.

examining practitioner means—

(a) a psychiatrist; or

(b) a health practitioner other than a psychiatrist; or

(c) a person with expertise in the care of persons who have an intellectual disability.

executive officer, of the tribunal, means the person appointed as the executive officer mentioned in section 713.

expert's report see section 156.

finding of unfitness, in relation to a person, see section 485.

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

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

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

forensic order means—

(a) a forensic order (mental health); or

(b) a forensic order (disability); or

(c) a forensic order (Criminal Code).

forensic order (Criminal Code) means an order made under the Criminal Code, section 613, 645 or 647 that a person be admitted to a stated authorised mental health service to be dealt with under this Act.

forensic order (disability) see section 134(1).

Not authorised—indicative only

Not authorised—indicative only

forensic order (mental health) see section 134(1).

forensic patient means a person subject to a forensic order.

former owner, for chapter 14, see section 590(1).

general power, for chapter 14, see section 577(1).

general search, for chapter 11, part 7, see section 384.

government entity, for chapter 17, see section 776.

harm includes physical, psychological and emotional harm.

harmful thing means anything—

(a) that may be used to—

(i) threaten the security or good order of an authorised mental health service or public sector health service facility; or

(ii) threaten a person's health or safety; or

(b) that, if used by a patient in an authorised mental health service or public sector health service facility, is likely to adversely affect the patient's treatment or care.

Examples of harmful things—

- a dangerous drug
- alcohol
- medication
- provocative or offensive documents

health practitioner means a person registered under the Health Practitioner Regulation National Law, or another person who provides health services, including, for example, a social worker.

health record, for a person, means the person's hospital record or another document recording the person's health history, condition and treatment.

health service means a service for maintaining, improving and restoring people's health and wellbeing, and includes a community health facility.

health service chief executive see the *Hospital and Health Boards Act 2011*, schedule 2.

health service employee see the *Hospital and Health Boards Act 2011*, schedule 2.

help requirement, for chapter 14, see section 578(1).

high security unit means a public sector mental health service, or part of a public sector mental health service, declared to be a high security unit under section 330.

Hospital and Health Service means a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17.

identity card means—

(a) for an authorised doctor, authorised mental health practitioner or health practitioner appointed under section 341 to perform particular functions—an identity card issued under section 346; or

(b) for an authorised security officer—an identity card approved under section 406; or

(c) for an inspector—an identity card issued under section 560.

independent patient rights adviser means a person appointed as an independent patient rights adviser under section 293(2).

information notice—

(a) relating to a relevant patient—see section 317; or

(b) about a decision, for chapter 14—see section 554.

information requirement, for chapter 14, see section 597(3).

informed consent, to a person's treatment by regulated treatment, see section 233.

inpatient means—

(a) in relation to the category of a treatment authority, forensic order (mental health) or treatment support order, the person subject to the authority or order—

(i) must be detained in an inpatient unit of an authorised mental health service while receiving treatment and care; and

Not authorised—indicative only

Not authorised—indicative only

(ii) may receive limited community treatment; or

(b) in relation to the category of a forensic order (disability), the person subject to the order—

(i) must be detained in an inpatient unit of an authorised mental health service, or in the forensic disability service, while receiving care; and

(ii) may receive limited community treatment.

inpatient unit, of an authorised mental health service, means a part of the service to which patients are admitted for treatment and care and discharged on a day other than the day of admission.

inspector see section 554.

intellectual disability means—

(a) an intellectual disability within the meaning of the Forensic Disability Act; or

(b) a cognitive disability within the meaning of the Forensic Disability Act.

interested person, for a person, means—

(a) the person's nominated support person; or

(b) another individual who has a sufficient interest in the person.

internal review decision, for chapter 14, part 8, see section 608(1)(b).

international transfer approval, in relation to a person, for chapter 12, part 10, division 2, see section 521.

interstate forensic order, for chapter 12, part 10, division 1, see section 513.

interstate mental health service means a health service in another State that performs corresponding, or substantially corresponding, functions to an authorised mental health service.

interstate transfer approval, in relation to a person—

(a) for chapter 12, part 10, division 1, see section 513; or

(b) for chapter 12, part 10, division 2, see section 521.

investigation report, for chapter 10, see section 309(1).

involuntary patient see section 11.

judicial order means—

(a) a court examination order; or

(b) an examination order; or

(c) another order, requiring or permitting the detention of a person in an authorised mental health service, made by a court under any of the following—

(i) section 124(1)(b);

(ii) section 183(c)(ii);

(iii) section 193(2);

(iv) section 544(4);

(v) section 551(4)(b).

less restrictive way, for a person to receive treatment and care for the person's mental illness, see section 13.

limited community treatment means treatment and care of a person in the community, including in the grounds and buildings (other than an inpatient unit) of an authorised mental health service, for a period of not more than 7 consecutive days, that is authorised under this Act.

mechanical restraint see section 244.

medication, for chapter 8, part 5, division 2, see section 271.

member, of the tribunal, means a member of the tribunal, and includes the president and deputy president.

mental condition includes a mental illness and an intellectual disability.

mental illness see section 10.

nominated support person see section 223(1).

Not authorised—indicative only

Not authorised—indicative only

non-ablative neurosurgical procedure means a procedure on the brain, that does not involve deliberate damage to or removal of brain tissue, for the treatment of a mental illness.

non-revocation period, for a forensic order (mental health) or forensic order (disability), see section 137(2).

notice event, for chapter 3, see section 81(1).

occupier, of a place, includes the following—

(a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;

(b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;

(c) if no-one apparently occupies the place—any person who is an owner of the place.

of, a place, includes at or on the place.

offence, in relation to a reference, see section 106.

offence warning, for chapter 14, see section 554.

official, for chapter 15, part 4, see section 624.

original decision, for chapter 14, part 8, see section 608(1)(a).

owner, for chapter 14, see section 554.

parent, of a minor, includes—

(a) a guardian of the minor; and

(b) a person who exercises parental responsibility for the minor, other than a person standing in the place of a parent of the minor on a temporary basis; and

(c) for an Aboriginal minor—a person who, under Aboriginal tradition, is regarded as a parent of the minor; and

(d) for a Torres Strait Islander minor—a person who, under Island custom, is regarded as a parent of the minor.

party—

(a) to an appeal—

(i) for chapter 13, part 2, see section 532; or

(ii) for chapter 13, part 3, see section 538; or

(b) to a proceeding, for chapter 16, part 2, see section 703.

patient—

(a) for chapter 8—see section 243; or

(b) for chapter 9—see section 276; or

(c) for chapter 10—see section 297.

patient required to return means a patient—

(a) in relation to whom a responsible person has given an authorisation or made a request under section 364; and

(b) who has not been transported under the authorisation or request, or come or returned voluntarily, to the service or facility.

patient seeking transfer—

(a) for chapter 12, part 10, division 1, see section 513; or

(b) for chapter 12, part 10, division 2, see section 521.

periodic review—

(a) of a treatment authority, for chapter 12, part 2—see section 413(1); or

(b) of a forensic order (mental health) or forensic order (disability), for chapter 12, part 3—see section 433(1); or

(c) of a treatment support order, for chapter 12, part 5—see section 465(1).

personal details requirement, for chapter 14, see section 595(5).

personal guardian, of a person, means a guardian for a personal matter appointed by QCAT for the person under the *Guardianship and Administration Act 2000*.

personal information, for chapter 17, see section 776.

personal search, for chapter 11, part 7, see section 384.

Not authorised—indicative only

Not authorised—indicative only

person in control, for chapter 14, see section 554.

person in custody see section 63.

physical restraint see section 268.

place includes the following—

(a) premises;

(b) vacant land;

(c) a place in Queensland waters;

(d) a place held under more than 1 title or by more than 1 owner;

(e) the land or water where a building or structure, or a group of buildings or structures, is situated.

place of custody, for a person in custody, means the place at which the person is held in lawful custody under an Act of the State, other than this Act, or an Act of the Commonwealth.

policy means a policy made by the chief psychiatrist under section 273 or 305.

postal article, for chapter 11, part 7, see section 384.

practice guideline means a practice guideline made by the chief psychiatrist under section 305.

premises includes—

(a) a building or other structure; and

(b) a part of a building or other structure; and

(c) a caravan or vehicle; and

(d) a cave or tent; and

(e) premises held under more than 1 title or by more than 1 owner.

prescribed offence means an offence against any of the following provisions of the Criminal Code—

(a) section 302 (Definition of *murder*) and 305 (Punishment of murder);

(b) section 303 (Definition of *manslaughter*) and 310 (Punishment of manslaughter);

(c) section 306 (Attempt to murder);

(d) section 317 (Acts intended to cause grievous bodily harm and other malicious acts);

(e) section 320 (Grievous bodily harm);

(f) section 349 (Rape);

(g) section 350 (Attempt to commit rape);

(h) section 351 (Assault with intent to commit rape).

president means—

(a) for chapter 16, part 1—the president of the Mental Health Court; or

(b) for chapter 16, part 2—the president of the tribunal.

presiding member, of the tribunal for a proceeding, means the tribunal member who, under section 720, is the presiding member of the tribunal for the proceeding.

prosecuting authority, for an offence, means the commissioner of the police service, director of public prosecutions or other entity responsible for prosecuting the proceeding for the offence.

psychiatrist means—

(a) a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the speciality of psychiatry; or

(b) a person registered under the Health Practitioner Regulation National Law to practise in the medical profession who is able to practise psychiatry as another type of registrant prescribed by regulation.

psychiatrist report see section 87.

psychosurgery means a procedure on the brain, that involves deliberate damage to or removal of brain tissue, for the treatment of a mental illness.

Not authorised—indicative only

Not authorised—indicative only

public guardian means the public guardian under the *Public Guardian Act 2014*.

public place means—

(a) a place, or part of the place—

(i) the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

Examples of a place that may be a public place under subparagraph (i)—

a beach, a park, a road

(ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or

Examples of a place that may be a public place under subparagraph (ii)—

a saleyard, a showground

(b) a place that is a public place under another Act.

public sector health service see the *Hospital and Health Boards Act 2011*, schedule 2.

public sector health service facility—

(a) means a public sector health service facility under the *Hospital and Health Boards Act 2011*, schedule 2; and

(b) does not include an authorised mental health service.

public sector mental health service means an authorised mental health service that is a public sector health service.

publish means—

(a) publish to the public by way of television, newspaper, radio, the internet or other form of communication; and

(b) the public dissemination of information, including, for example, distributing information by leaflets in letterboxes, or announcing information at a meeting.

purpose of limited community treatment means the purpose of limited community treatment under section 16.

reasonable time of the day or night, for chapter 9, part 3, see section 280.

reasonably suspects, for chapter 14, see section 554.

recommendation for assessment, for a person, means a recommendation for assessment for the person made under section 39.

records system, for chapter 7, part 8, see section 225(1).

reduction and elimination plan, for chapter 8, see section 264.

reference, in relation to a person, see section 106.

registrar means the registrar of the Mental Health Court.

registry means the Mental Health Court Registry.

regulated treatment see section 232.

relevant circumstances, of a person, means each of the following—

(a) the person's mental state and psychiatric history;

(b) any intellectual disability of the person;

(c) the person's social circumstances, including, for example, family and social support;

(d) the person's response to treatment and care and the person's willingness to receive appropriate treatment and care;

(e) if relevant, the person's response to previous treatment in the community.

relevant court, for chapter 12, part 6, division 3, see section 495.

relevant day, for a forensic order or treatment support order that has ended, for chapter 10, part 6, see section 317.

relevant decision, for chapter 18A, see section 800D(1).

relevant forensic patient, for chapter 10, part 5, see section 311.

relevant offence—

Not authorised—indicative only

Not authorised—indicative only

(a) for chapter 12, part 6, division 2, see section 489; or

(b) for chapter 12, part 6, division 3, see section 494.

relevant patient—

(a) for chapter 8, see section 243; or

(b) for chapter 10, part 6 and schedule 1, see section 317.

relevant person—

(a) for chapter 16, part 2, division 6, subdivision 2, see section 728(1)(a) and (2)(a); or

(b) for chapter 17, see section 776.

relevant service, for chapter 16, part 1, division 9, see section 672.

relevant unlawful act—

(a) in relation to a reference—see section 129; or

(b) in relation to a forensic order (mental health), forensic order (disability), forensic order (Criminal Code) or treatment support order, means the unlawful act that led to the making of—

(i) the order; or

(ii) a forensic order that ended or was revoked on the making of the order mentioned in subparagraph (i); or

(iii) a forensic order that ended or was revoked on the making of the order mentioned in subparagraph (ii).

Notes—

1 See section 461 for the making of a forensic order (mental health) or forensic order (disability) for a person subject to a forensic order (Criminal Code).

2 See section 457 for the making of a forensic order (disability) on the revocation of a forensic order (mental health).

3 See section 450 for the making of a treatment support order on the revocation of forensic order (mental health).

remote conferencing means—

(a) teleconferencing; or

(b) videoconferencing; or

(c) another form of communication that allows persons taking part in the proceeding to hear and take part in discussions as they happen.

repealed Act, for chapter 18A, see section 800A.

report, for chapter 17, part 4, see section 788.

required information, for chapter 8, see section 243.

required time and way, for chapter 8, see section 243.

responsible officer, of an interstate mental health service, means an entity responsible for—

(a) authorising the admission of persons who have a mental illness, who are from another State, to the interstate mental health service; or

(b) authorising the transfer of persons who have a mental illness from the interstate mental health service to another State.

responsible service, for a patient seeking transfer, for chapter 12, part 10, division 2, see section 521.

restraint, seclusion and other practices policy see section 273(1).

review—

(a) of a treatment authority, for chapter 12, part 2—see section 411; or

(b) of a forensic order (mental health) or forensic order (disability), for chapter 12, part 3—see section 431; or

(c) of a treatment support order, for chapter 12, part 5—see section 463.

review notice, for chapter 14, part 8, see section 608(1)(c).

review notice day, for chapter 14, part 8, see section 608(2)(a).

review period, for chapter 2, part 4, see section 56.

Not authorised—indicative only

Not authorised—indicative only

scanning search, for chapter 11, part 7, see section 384.

scheduled review, for chapter 16, part 2, division 6, subdivision 2, see section 728(1)(b) and (2)(b).

search requiring the removal of clothing, for chapter 11, part 7, see section 384.

seclusion see section 254.

section 613 finding see section 189(2), definition *relevant finding*, paragraph (a).

section 645 finding see section 189(2), definition *relevant finding*, paragraph (b).

second psychiatrist report see section 100(2).

security officer, for chapter 11, part 7, see section 384.

serious offence means an indictable offence, other than an offence that is a relevant offence under the Criminal Code, section 552BA(4).

Note—

Under the Criminal Code, section 552BA, a charge of an indictable offence that is a relevant offence must, subject to the Criminal Code, section 552D, be heard and decided summarily.

simple offence see section 171.

special tribunal, for chapter 18A, see section 800C(1).

staff, of the tribunal, means a person employed under section 713.

statement of rights see section 277(1).

support person, of another person, includes a personal guardian or attorney of the person.

tracking device means an electronic device capable of being worn, and not removed, by a person for the purpose of finding or monitoring the geographical location of the person.

transfer considerations, for chapter 11, part 5, see section 350.

transfer recommendation, for chapter 3, see section 68(2).

transport, of a person, includes the use of physical restraint to move the person.

treatment, of a person who has a mental illness or other mental condition, includes anything done, or to be done, with the intention of having a therapeutic effect on the person's illness, including the provision of a diagnostic procedure.

treating health service, for a person, means the authorised mental health service responsible for the person's treatment and care.

treatment authority see section 49.

treatment criteria see section 12.

treatment in the community means—

(a) for a person subject to a treatment authority, forensic order (mental health) or treatment support order—

(i) if the category of the authority or order is inpatient—limited community treatment; or

(ii) if the category of the authority or order is community—treatment and care of the person under the order while the person is living in the community; or

(b) for a person subject to a forensic order (disability)—

(i) if the category of the order is inpatient—limited community treatment; or

(ii) if the category of the order is community—care of the person under the order while the person is living in the community.

treatment support order see section 143(1).

tribunal means the Mental Health Review Tribunal continued under section 704.

tribunal review—

(a) of a treatment authority, for chapter 12, part 2—see section 413(3) and (4); or

Not authorised—indicative only

Not authorised—indicative only

(b) of a forensic order (mental health) or forensic order (disability), for chapter 12, part 3—see section 433(3) and (4); or

(c) of a treatment support order, for chapter 12, part 5—see section 465(3) and (4).

tribunal rules means rules of court made under section 768.

unit, for chapter 8, see section 243.

unlawful act, of a person, includes an act or omission of the person constituting an offence with which the person is charged.

unsound mind see section 109.

vehicle—

(a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and

(b) includes a vessel under that Act.

victim, of an unlawful act, means a person against whom the unlawful act was committed or allegedly committed.

victim impact statement, in relation to an unlawful act, means a written statement that—

(a) is signed and dated; and

(b) states the particulars of the harm caused to a victim, or close relative of the victim, by the unlawful act; and

(c) may have attached to it—

(i) documents supporting the particulars, including, for example, medical reports; or

(ii) photographs, drawings or other images.

victim support service means an entity in a Hospital and Health Service, or the department, that provides support services to victims of unlawful acts.

warrant for apprehension means a warrant for apprehension issued under section 378.