



Australian Capital Territory

# **Mental Health (Treatment and Care) Act 1994**

**A1994-44**

**Republication No 22**

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Last amendment made by A2005-7  
(republishing for commenced expiry)

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Mental Health (Treatment and Care) Act 1994* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 25 May 2005. It also includes any amendment, repeal or expiry affecting the republished law to 25 May 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

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### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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25/05/05

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Australian Capital Territory

# **Mental Health (Treatment and Care) Act 1994**

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An Act to provide for the treatment, care, control, rehabilitation and protection of mentally dysfunctional or mentally ill persons, and for related purposes

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Mental Health (Treatment and Care) Act 1994*.

### U 4 Definitions for Act

In this Act:

*Note* A definition applies unless the contrary intention appears (see *Legislation Act 2001*, s 155).

***applicant*** means a person who makes an application, and includes a referring officer who makes a referral under section 15.

***application*** means an application to the tribunal, and includes a referral under section 15.

***approved health facility*** means a health facility approved by the Minister under section 48 (1) (a).

***approved mental health facility*** means a mental health facility approved by the Minister under section 48 (1) (b).

***assessment*** means a psychiatric or psychological assessment.

***C&YP Act*** means the *Children and Young People Act 1999*.

***C&YP chief executive*** means the chief executive responsible for administering the *Children and Young People Act 1999*, chapter 2 (General objects, principles and parental responsibility).

***care coordinator*** means the care coordinator appointed under section 120A.

***chief psychiatrist*** means the Chief Psychiatrist appointed under section 112.

***community care facility*** means—

- (a) a facility, or part of a facility, for the care, protection, rehabilitation or accommodation of mentally dysfunctional persons; or
- (b) a prescribed psychiatric institution or a prescribed part of a psychiatric institution;

but does not include a facility the principal purpose of which is for the detention of persons sentenced to imprisonment.

***community care order*** means an order made under section 36.

***community member*** means a member of the tribunal appointed under section 78 (1) (d).

***convulsive therapy*** means a procedure for the induction of an epileptiform convulsion in a person.

***Crimes Act*** means the *Crimes Act 1900*.

***decision*** includes an order.

***deputy president*** means a deputy president of the tribunal.

***information statement*** means an information statement described in section 50 (1) (b).

***member***, of the tribunal, means the president, a deputy president or a non-presidential member.

***mental dysfunction*** means a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion.

***mental health facility*** means a facility for the treatment, care, rehabilitation or accommodation of mentally dysfunctional or mentally ill persons, and includes a psychiatric institution.

***mental health nurse*** means a person—

- (a) who is registered under the *Nurses Act 1988* as a mental health nurse; or
- (b) who is deemed to be registered under that Act as a mental health nurse under the *Mutual Recognition Act 1992* (Cwlth), section 25.

***mental health officer*** means a person appointed as a mental health officer under section 119.

***mental health order*** means a psychiatric treatment order, a community care order or a restriction order.

***mental health professional*** means a psychiatrist, psychologist, social worker, therapist or other person who provides services for mentally dysfunctional or mentally ill persons.

***mental health services member*** means a member of the tribunal appointed under section 78 (1) (c).

***mental illness*** means a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person and is characterised by the presence in the person of any of the following symptoms:

- (a) delusions;
- (b) hallucinations;
- (c) serious disorder of thought form;
- (d) a severe disturbance of mood;
- (e) sustained or repeated irrational behaviour indicating the presence of the symptoms referred to in paragraph (a), (b), (c) or (d).

***mentally dysfunctional or mentally ill offender*** means a person who has been ordered by a court, under the Crimes Act, part 13 or the C&YP Act, part 6.2 (which is about dealing with young



offenders within the ACT), to submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order in respect of the person.

**neurosurgery** means surgery on the brain of a person for the purpose of treating a pathological condition of the physical structure of the brain.

**non-presidential member** means a member of the tribunal who is not a presidential member.

**official visitor** means an official visitor appointed under section 121.

**order** includes the variation or revocation of an order.

**president** means the president of the tribunal.

**presidential member** means the president or a deputy president.

**private psychiatric institution** means an institution in respect of which a licence is issued under part 12.

**proceeding** means an inquiry, review or any other proceeding of the tribunal.

**psychiatric institution** means a hospital or other institution for the treatment, care, rehabilitation or accommodation of people who have a mental illness, that is—

- (a) an institution conducted by the Territory; or
- (b) a private mental institution.

**psychiatric surgery** means surgery on the brain of a person, other than neurosurgery.

**psychiatric treatment order** means an order made under section 28.

**psychiatrist** means a doctor who holds postgraduate qualifications in psychiatry.

**psychiatrist member** means a member of the tribunal appointed under section 78 (1) (a).

**psychologist member** means a member of the tribunal appointed under section 78 (1) (b).

**referring officer**, in relation to a person, means—

- (a) the police officer—
  - (i) who arrests the person in connection with an offence; or
  - (ii) who is satisfied that there are sufficient grounds on which to charge the person in connection with an offence; or
  - (iii) who charges the person in connection with an offence;
- (b) if the person is a child—the authorising officer who consents to the institution of the prosecution of an offence against the child under the C&YP Act, section 81 (Limitations in respect of criminal proceedings against young people); or
- (c) a member of the staff of the director of public prosecutions who is responsible for the prosecution of an offence against the person; or
- (d) if the person is required to accept supervision by someone else as a condition of bail under the *Bail Act 1992*—that other person.

*Note* Under the *Bail Act 1992*, s 25 (2) and s 26 (2), an adult may be supervised by the director of corrective services and a child may be supervised by the chief executive under the *Children and Young People Act 1999*, ch 6 (Young Offenders).

**registrar** means the registrar of the tribunal.

**relative**, in relation to a person, means a domestic partner, parent, guardian, grandparent, uncle, aunt, brother, sister, half-brother, half-sister, cousin or child (being a child over the age of 18 years) of the person.

*Note* For the meaning of **domestic partner**, see Legislation Act, s 169.

**restriction order** means an order made under section 30 or section 36B.

*tribunal* means the Mental Health Tribunal established by section 10.

#### **4A Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 119B (2) (Identity cards for mental health officers).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

#### **5 Persons not to be regarded as mentally dysfunctional**

For this Act, a person is not to be regarded as mentally dysfunctional merely because of any of the following:

- (a) that the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular political opinion or belief;
- (b) that the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular religious opinion or belief;
- (c) that the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular philosophy;
- (d) that the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular sexual preference or sexual orientation;

- (e) that the person engages in or refuses or fails to engage in, or has engaged in or has refused or failed to engage in, a particular political activity;
- (f) that the person engages in or refuses or fails to engage in, or has engaged in or has refused or failed to engage in, a particular religious activity;
- (g) that the person engages in or has engaged in sexual promiscuity;
- (h) that the person engages in or has engaged in immoral conduct;
- (i) that the person engages in or has engaged in illegal conduct;
- (j) that the person takes or has taken alcohol or any other drug;
- (k) that the person engages in or has engaged in antisocial behaviour.

## **6 Proceeding relating to children**

In determining whether a person who is the subject of a proceeding is a child, regard shall be had to the age of the person at the commencement of the proceeding.

## Part 2 Objectives

### 7 Objectives of Act

This Act has the following objectives:

- (a) to provide treatment, care, rehabilitation and protection for mentally dysfunctional or mentally ill persons in a manner that is least restrictive of their human rights;
- (b) to provide for mentally dysfunctional or mentally ill persons to receive treatment, care, rehabilitation and protection voluntarily and, in certain circumstances, involuntarily;
- (c) to protect the dignity and self-respect of mentally dysfunctional or mentally ill persons;
- (d) to ensure that mentally dysfunctional or mentally ill persons have the right to receive treatment, care, rehabilitation and protection in an environment that is the least restrictive and intrusive, having regard to their needs and the need to protect other persons from physical and emotional harm;
- (e) to facilitate access by mentally dysfunctional or mentally ill persons to services and facilities appropriate for the provision of treatment, care, rehabilitation and protection.

### 8 Objectives of Territory

In providing services and facilities for mentally dysfunctional or mentally ill persons, the Territory shall have regard to the following objectives:

- (a) to establish, develop, promote, assist and encourage services and facilities—

- (i) that provide a strong and viable system of treatment and care, and a full range of services and facilities, for mentally dysfunctional or mentally ill persons; and
  - (ii) that take into account the various religious, cultural and language needs of mentally dysfunctional or mentally ill persons; and
  - (iii) that minimise the adverse effects of mental dysfunction or mental illness in the community; and
  - (iv) that are comprehensive and accessible; and
  - (v) that are designed to reduce the incidence of mental dysfunction or mental illness in the community; and
  - (vi) that provide for intervention at an early stage of mental dysfunction or mental illness; and
  - (vii) that support mentally dysfunctional or mentally ill persons in the community and coordinate with other community services;
- (b) to ensure that mentally dysfunctional or mentally ill persons are informed of their rights and entitlements under this Act and, in doing so, to make all reasonable efforts to ensure that the relevant provisions of this Act are explained to those persons in the language, mode of communication or terms that they are most likely to understand;
  - (c) to assist and encourage voluntary agencies to provide services for mentally dysfunctional or mentally ill persons;
  - (d) to promote a high standard of training for those responsible for the care of mentally dysfunctional or mentally ill persons;
  - (e) to consult with persons who are receiving or have received such services, their carers and the community about—
    - (i) the provision of services and facilities for mentally dysfunctional or mentally ill persons and to establish

formal and informal consultative mechanisms for this purpose; and

- (ii) the development of mental health policy; and
- (iii) planning for mental health services; and
- (iv) the delivery of services and facilities; and
- (v) the evaluation and review of policies and services;
- (f) to promote the welfare of mentally dysfunctional or mentally ill persons and to enhance community awareness of mental health issues.

## **9 Maintenance of freedom, dignity and self-respect**

A person exercising a function or power under this Act, or under an order of the tribunal, in relation to a mentally dysfunctional or mentally ill person shall endeavour to ensure that any restrictions on that person's personal freedom and any derogation of that person's dignity and self-respect are kept to the minimum necessary for the proper care and protection of the person and the protection of the public.

## **Part 3 Mental health tribunal**

### **10 Establishment**

The Mental Health Tribunal is established.

### **11 Functions**

The tribunal has the following functions:

- (a) to hear and determine applications for orders in respect of the treatment, care, control, rehabilitation and protection of mentally dysfunctional or mentally ill persons;
- (b) to order (if necessary) a psychiatric or psychological assessment of a person who is the subject of a proceeding;
- (c) to hear and determine applications for the release of persons involuntarily detained under part 5;
- (d) to hear and determine applications for the administration of convulsive therapy;
- (e) to make orders for the treatment, care, control, rehabilitation and protection of people found unfit to plead, to review their welfare and to make any appropriate order for their release (subject to conditions or unconditionally);
- (f) to review the fitness to plead of certain people under section 68;
- (g) to make orders in respect of the treatment, care, control, rehabilitation and protection of persons found not guilty of criminal offences on the ground of mental illness, to review the welfare of those persons and to order (if appropriate) the release of those persons subject to conditions (if any);



- (h) when requested to do so by a court, to provide advice in relation to the sentencing of a person before the court;
- (i) such other functions as may be conferred on the tribunal by or under another Act.

## **12 Powers**

The tribunal may do all things necessary or convenient to be done in connection with the exercise of its functions.

## Part 4 Mental health orders

### Division 4.1 Applications and referrals

#### 13 Mentally dysfunctional or mentally ill persons entitled to apply

- (1) A person may make an application for a mental health order on his or her own behalf if—
- (a) the person believes himself or herself to be unable, because of mental dysfunction or mental illness—
    - (i) to make reasonable judgments about matters relating to his or her own health or safety; or
    - (ii) to do anything necessary for his or her own health or safety;and, as a result, his or her own health or safety is, or is likely to be, substantially at risk; or
  - (b) the person believes himself or herself to be, because of mental dysfunction or mental illness, likely to do serious harm to others.

*Note* If a form is approved under s 146A (Approved forms) for an application, the form must be used.

- (2) An application under subsection (1) shall be accompanied by a statutory declaration setting out detailed reasons as to why the applicant holds the belief referred to in that subsection.

#### 14 Applications by other persons

- (1) A person may make an application for a mental health order in respect of another person whom the applicant believes on reasonable grounds—

- (a) is unable, because of mental dysfunction or mental illness—
  - (i) to make reasonable judgments about matters relating to his or her health or safety; or
  - (ii) to do anything necessary for his or her health or safety;and, as a result, the person's health or safety is, or is likely to be, substantially at risk; or
- (b) is or is likely, because of mental dysfunction or mental illness, to do serious harm to others.

*Note* If a form is approved under s 146A (Approved forms) for an application, the form must be used.

- (2) An application under subsection (1) shall be accompanied by a statutory declaration setting out detailed reasons as to why the applicant holds the belief referred to in that subsection.
- (3) If an applicant under this section has reasonable grounds for believing that the appearance of the person who is the subject of the application before the tribunal is likely to increase substantially—
  - (a) the risk to the person's health or safety; or
  - (b) the risk of serious harm to others;

the applicant shall set out those grounds in the statutory declaration.

## **15 Referrals**

- (1) A referring officer may refer an alleged offender to the tribunal for a mental health order if the referring officer believes on reasonable grounds—
  - (a) that, because of mental dysfunction or mental illness—
    - (i) the alleged offender's health or safety is, or is likely to be, substantially at risk; or
    - (ii) the alleged offender is or is likely to do serious harm to others; and

- (b) that, having regard to—
- (i) the nature and circumstances of the offence; and
  - (ii) the alleged offender's apparent mental condition;
- it may not be appropriate to prosecute, or to continue to prosecute, the alleged offender.
- (2) A referral shall be accompanied by a statutory declaration setting out detailed reasons as to why the responsible officer holds the belief referred to in subsection (1).
- (3) If a referring officer has reasonable grounds for believing that the appearance of the alleged offender before the tribunal is likely to increase substantially—
- (a) any risk to the alleged offender's health or safety; or
  - (b) the risk of serious harm to others;
- the referring officer shall set out those grounds in the statutory declaration.
- (4) In this section:
- alleged offender* means a person—
- (a) who is arrested in connection with an offence; or
  - (b) in respect of whom a police officer is satisfied that there are sufficient grounds on which to charge the person in connection with an offence; or
  - (c) who is charged in connection with an offence.

## **Division 4.2            Assessments**

### **16            Orders for assessment**

- (1) The tribunal may make an order for an assessment of a person—

- (a) on an application or referral under division 4.1, if the tribunal is *prima facie* satisfied that the person is mentally dysfunctional or mentally ill and that—
    - (i) the person’s health or safety is, or is likely to be, substantially at risk; or
    - (ii) the person is or is likely to do serious harm to others; or
  - (b) for the purpose of reviewing a mental health order in force in respect of the person under section 36L; or
  - (c) required to submit to the jurisdiction of the tribunal by an order under the C&YP Act, part 7.3 (Care and protection orders and emergency action);
  - (d) required to submit to the jurisdiction of the tribunal by an order under the *Crimes Act 1900*, part 13 (Unfitness to plead, mental illness and mental dysfunction) or the C&YP Act, chapter 6 (Young offenders); or
  - (e) for the purpose of reviewing an order for detention in force in respect of the person under section 72.
- (2) Before making an order in respect of a person referred to in subsection (1) (a), (b) or (c), the tribunal shall endeavour to ascertain the views of the person and obtain his or her consent to the order, but nothing in this subsection shall be taken as preventing the tribunal from making an order without that person’s consent or if that person does not appear before the tribunal.
- (3) The tribunal is not required to endeavour to ascertain the views, or obtain the consent, of a person referred to in subsection (1) (d) or (e) before making an order in respect of that person.
- (4) An order shall—
- (a) specify the nature of the assessment to be conducted; and

- (b) specify the premises at which the assessment is to be conducted and, if appropriate, the person who is to conduct the assessment; and
  - (c) direct the person to be assessed to attend at those premises and, if necessary, reside at the premises for the purpose of conducting the assessment; and
  - (d) direct the person in charge of those premises—
    - (i) if appropriate, to admit the person to be assessed to the mental health facility conducted at the premises for the purpose of conducting the assessment; and
    - (ii) if necessary, to detain the person at the premises until the assessment has been conducted; and
    - (iii) to provide such assistance as is necessary and reasonable for the purpose of conducting the assessment.
- (5) An order authorises—
- (a) the conduct of the assessment specified in the order; and
  - (b) anything necessary to be done for the purpose of conducting the assessment.
- (6) Immediately after an order is made under subsection (1), the registrar shall inform the community advocate of the making of the order and its terms.

## **16A            Determination of ability to consent**

An assessment shall include a determination of the ability of the person being assessed to consent to psychiatric or other treatment, care or support, so far as it can be ascertained, or is relevant in the circumstances to be ascertained.

**17 Assessments to be conducted as soon as practicable**

- (1) An assessment of a person ordered under section 16 shall be conducted as soon as practicable, and in any event within 7 days or such further period under subsection (2), after the person attends the premises specified in the order.
- (2) Despite subsection (1), if the tribunal is satisfied, based on clinical evidence provided to it by the person conducting the assessment, that a satisfactory assessment cannot be completed within the period of 7 days referred to in that subsection, the tribunal may, by order made before the expiry of that period, extend the period for conducting the assessment for a further period, not exceeding 7 days, commencing on the expiry of the first period.

**18 Removal to conduct assessments**

- (1) If the tribunal makes an order for an assessment under section 16 in respect of—
  - (a) a person referred to in section 16 (1) (a), (b) or (c), and that person—
    - (i) is not served with a summons under section 90 for a reason specified in section 90 (2); or
    - (ii) does not appear at the proceeding under a summons issued under that section; or
    - (iii) does not comply with the order for an assessment; or
  - (b) a person referred to in section 16 (1) (d) or (e);the tribunal may make an order for the removal of the person to a mental health facility for the purpose of conducting the assessment.
- (2) An order shall specify—
  - (a) the date (being a date not later than 1 month after the date of the making of the order) on which the order ceases to have effect; and

- (b) the facility to which the person is to be removed; and
  - (c) the nature of the assessment to be conducted in respect of the person.
- (3) An order authorises—
- (a) the apprehension of the person named in the order; and
  - (b) the removal of that person to the facility specified in the order for the purpose of conducting the assessment specified in the order.
- (4) An order may be executed by a police officer.
- (5) A police officer executing an order—
- (a) may, with such assistance, and by such force, as is necessary and reasonable, enter any premises for the purpose of apprehending the person; and
  - (b) shall use the minimum amount of force necessary to apprehend the person and remove him or her to the specified facility; and
  - (c) shall, before removing the person, explain to the person the purpose of the order.

## **19 Contact with other persons**

The person in charge of a facility to which a person is admitted under an order under section 18 shall ensure that, while at the facility, the person has access to facilities, and adequate opportunity, to contact—

- (a) a relative or friend; and
- (b) the community advocate; and
- (c) a legal practitioner.



**20 Community advocate and person's legal practitioner to have access**

- (1) Where a person is admitted to a facility under an order under section 16, the community advocate and the person's legal practitioner are entitled to have access, at any time, to the person.
- (2) The person in charge of a facility shall, on request by the community advocate or the person's legal practitioner, provide such assistance as is necessary to enable the community advocate or the legal practitioner (as the case may be) to have access to a person who is so admitted.

**21 Person to be informed**

- (1) Before an assessment is conducted under an order under section 16, the person in charge of the facility shall ensure that the person to be assessed is informed that the tribunal has ordered that an assessment of him or her be conducted.
- (2) Subsection (1) applies notwithstanding that the person to be assessed was present when the tribunal made the order.

**22 Copies of assessments to tribunal**

The person in charge of a facility at which an assessment is conducted under an order under section 16 shall, as soon as practicable after completion of the assessment, forward a copy of it to—

- (a) the person assessed; and
- (b) the president; and
- (c) the community advocate; and
- (d) if the person assessed was referred to the tribunal under section 15—the referring officer.

## Division 4.3 Making of orders—preliminary matters

### 23 Tribunal must consider assessment

Before making a mental health order in relation to a person, the tribunal must consider—

- (a) an assessment of the person conducted under an order under section 16; or
- (b) another assessment of the person that the tribunal considers appropriate.

### 24 Tribunal must hold inquiry

Before making a mental health order in relation to a person, the tribunal must hold an inquiry into the matter.

### 25 Consultation by tribunal etc

- (1) Before making a mental health order in relation to a person, the tribunal must, as far as practicable, consult—
  - (a) if the person is a child—the people with parental responsibility for the child under the C&YP Act; and
  - (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
  - (c) the person most likely to be responsible for providing the treatment, programs and other services proposed to be ordered.
- (2) If the person has an attorney appointed under the *Powers of Attorney Act 1956*, the tribunal must also consider consulting the attorney.
- (3) Before making a mental health order for the provision of a particular treatment, program or other service (including an assessment) at a stated facility or by a stated person, the tribunal must be satisfied

that the treatment, program or service can be provided or performed at that facility or by that person.

## **26 What tribunal must take into account**

In making a mental health order in relation to a person, the tribunal must take into account the following:

- (a) whether the person consents, refuses to consent or has the capacity to consent, to a proposed course of treatment, care or support;
- (b) the views and wishes of the person, so far as they can be found out;
- (c) the views and wishes of the people responsible for the day-to-day care of the person, so far as those views and wishes are made known to the tribunal;
- (d) the views of the people appearing at the proceeding;
- (e) the views of the people consulted under section 25;
- (f) that the person's welfare and interests should be appropriately protected;
- (g) that the person's rights should not be interfered with except to the least extent necessary;
- (h) that the person should be encouraged to look after himself or herself;
- (i) that, as far as possible, the person should live in the general community and join in community activities;
- (j) that any restrictions placed on the person should be the minimum necessary for the safe and effective care of the person;
- (k) the alternative treatments, programs and other services available, including—

- (i) the purposes of those treatments, programs and services;  
and
  - (ii) the benefits likely to be derived by the person from those treatments, programs and services; and
  - (iii) the distress, discomfort, risks, side effects or other disadvantages associated with those treatments, programs and services;
- (l) any relevant medical history of the person;
  - (m) the religious, cultural and language needs of the person;
  - (n) for a person referred to the tribunal under section 15 or a mentally ill or mentally dysfunctional offender—the nature and circumstances of the offence in relation to which the person has been arrested, or may be or has been charged;
  - (o) for a mentally ill or mentally dysfunctional offender—the nature and extent of the person’s mental illness or mental dysfunction, including the effect it is likely to have on the person’s behaviour in the future;
  - (p) for a mentally ill or mentally dysfunctional offender—whether or not, if the person is not detained—
    - (i) the person’s health or safety is, or is likely to be, substantially at risk; or
    - (ii) the person is likely to do serious harm to others;
  - (q) anything else prescribed under the regulations for this section.

## **27 Tribunal may not order particular drugs etc**

The tribunal may not make an order for the administration of a particular drug or about the way a particular clinical procedure is to be carried out.

## **Division 4.4                      Psychiatric treatment orders**

### **28                      Criteria for making psychiatric treatment order**

The tribunal may make a psychiatric treatment order in relation to a person if—

- (a) the person has a mental illness; and
- (b) the tribunal has reasonable grounds for believing that, because of the illness, the person is likely to—
  - (i) do serious harm to himself, herself or someone else; or
  - (ii) suffer serious mental or physical deterioration;unless subject to involuntary psychiatric treatment; and
- (c) the tribunal is satisfied that psychiatric treatment is likely to reduce the harm or deterioration (or the likelihood of harm or deterioration) mentioned in paragraph (b) and result in an improvement in the person's psychiatric condition; and
- (d) the treatment cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.

### **29                      Content of psychiatric treatment order**

- (1) A psychiatric treatment order made in relation to a person may state 1 or more of the following:
  - (a) a health facility to which the person may be taken;
  - (b) that the person must do either or both of the following:
    - (i) undergo psychiatric treatment, other than convulsive therapy or psychiatric surgery;
    - (ii) undertake a counselling, training, therapeutic or rehabilitation program;

- (c) that limits may be imposed on communication between the person and other people.
- (2) A psychiatric treatment order may not include any requirement mentioned in section 31 (Content of restriction order).
- (3) A psychiatric treatment order made in relation to a person must include a statement that the person—
  - (a) has the capacity to consent to the order, and consents; or
  - (b) has the capacity to consent to the order, but refuses to do so; or
  - (c) does not have the capacity to consent to the order.

### **30 Criteria for making restriction order**

In addition to making a psychiatric treatment order in relation to a person, the tribunal may make a restriction order in relation to the person if satisfied that it is in the interests of the person's health or safety or public safety to do so.

### **31 Content of restriction order**

A restriction order made under section 30 in relation to a person may state either or both of the following:

- (a) that the person must—
  - (i) live (but not be detained) at a stated place; or
  - (ii) be detained at a stated place;
- (b) that the person must not approach a stated person or stated place or undertake stated activities.

### **32 Role of chief psychiatrist**

- (1) The chief psychiatrist is responsible for the treatment and care of a person to whom a psychiatric treatment order applies.

- (2) Within 5 working days after the day the order is made, the chief psychiatrist must determine, in writing—
- (a) the times when and the place where the person is required to attend to receive treatment, care or support, or undertake a counselling, training, therapeutic or rehabilitation program, in accordance with the order; and
  - (b) the nature of the psychiatric treatment to be given to the person.
- Note* If a form is approved under s 146A for a determination, the form must be used.
- (3) The chief psychiatrist must also determine, in writing, the place where the person must live if—
- (a) the tribunal has not made a restriction order requiring the person to live at a stated place; and
  - (b) the chief psychiatrist considers that the person should live at a place other than the place where the person usually lives.
- (4) Before making a determination, the chief psychiatrist must, if practicable, consult—
- (a) the person; and
  - (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
  - (c) if the person has an attorney appointed under the *Powers of Attorney Act 1956*—the attorney.
- (5) For subsection (2) (b), the chief psychiatrist must not determine treatment that has, or is likely to have, the effect of subjecting the person to whom it is given to undue stress or deprivation, having regard to the benefit likely to result from the treatment.
- (6) As soon as practicable after making a determination, the chief psychiatrist must give a copy of the determination to the tribunal and the community advocate.

- (7) The chief psychiatrist may also give a copy of the determination to—
- (a) any guardian consulted under subsection (4) (b); and
  - (d) any attorney consulted under subsection (4) (c).

**33 Treatment to be explained**

- (1) Before treatment is given to a person under a psychiatric treatment order, the chief psychiatrist must explain to the person the nature and effects (including any side effects) of the treatment.
- (2) The explanation must be given in the language or way of communicating that the person is most likely to understand.

**34 Action if psychiatric treatment order no longer appropriate**

- (1) This section applies if the chief psychiatrist is satisfied that—
  - (a) a person subject to a psychiatric treatment order is no longer a person in relation to whom the tribunal could make a psychiatric treatment order; or
  - (b) if the person is also subject to a restriction order—it is no longer necessary for the person to be subject to the restriction order.
- (2) The chief psychiatrist must tell the tribunal and the community advocate in writing.

*Note* The tribunal must review the order within 72 hours after being notified under this section (see s 36L (2)).

**35 Powers in relation to detention, restraint etc**

- (1) This section applies if a psychiatric treatment order has been made in relation to a person.



- (2) If the chief psychiatrist considers that it is necessary for the treatment and care of the person to detain the person at certain premises, the chief psychiatrist may—
- (a) take, or authorise someone else to take, the person to the premises and for that purpose—
    - (i) use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the premises stated by the chief psychiatrist; and
    - (ii) if there are reasonable grounds for believing that the person is at particular premises—enter those premises using the force and assistance that is necessary and reasonable; and
  - (b) keep the person at the premises in the custody that the chief psychiatrist considers appropriate; and
  - (c) subject the person to the confinement or restraint that is necessary and reasonable—
    - (i) to prevent the person from causing harm to himself, herself or someone else; or
    - (ii) to ensure that the person remains in custody under the order; and
  - (d) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to himself, herself or someone else.
- (3) In acting under this section, the chief psychiatrist must have regard to the matters stated in section 7 (Objectives of Act) and section 9 (Maintenance of freedom, dignity and self-respect).
- (4) If the chief psychiatrist subjects a person to involuntary restraint or seclusion, the chief psychiatrist must—
- (a) enter in the person's record the fact of and the reasons for the involuntary restraint or seclusion; and

- (b) tell the community advocate in writing within 24 hours after the person is subjected to the involuntary restraint or seclusion; and
- (c) keep a register of the involuntary restraint or seclusion.

## **Division 4.5 Community care orders**

### **36 Criteria for making community care order**

The tribunal may make a community care order in relation to a person if—

- (a) the person is mentally dysfunctional; and
- (b) the tribunal has reasonable grounds for believing that, because of the mental dysfunction, the person is likely to—
  - (i) do serious harm to himself, herself or someone else; or
  - (ii) suffer serious mental or physical deterioration;unless subject to involuntary treatment, care or support; and
- (c) the tribunal is satisfied that treatment, care or support is likely to reduce the harm, or the likelihood of harm, mentioned in paragraph (b); and
- (d) the tribunal is satisfied that, in the circumstances, a psychiatric treatment order should not be made; and
- (e) the treatment, care or support cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.

### **36A Content of community care order**

- (1) A community care order made in relation to a person may state 1 or more of the following:

- (a) that the person is to be given treatment, care or support;
  - (b) that the person may be given medication for the treatment or amelioration of the person's mental dysfunction that is prescribed by a doctor;
  - (c) that the person is to undertake a counselling, training, therapeutic or rehabilitation program;
  - (d) that limits may be imposed on communication between the person and other people.
- (2) A community care order may not include any requirement mentioned in section 36C (Content of restriction order).
- (3) A community care order made in relation to a person must include a statement that the person—
- (a) has the capacity to consent to the order, and consents; or
  - (b) has the capacity to consent to the order, but refuses to do so; or
  - (c) does not have the capacity to consent to the order.

### **36B Criteria for making restriction order**

In addition to making a community care order in relation to a person, the tribunal may make a restriction order in relation to the person if satisfied that it is in the interests of the person's health or safety or public safety to do so.

### **36C Content of restriction order**

A restriction order made under section 36B in relation to a person may state either or both of the following:

- (a) that the person must—
  - (i) live (but not be detained) at a stated community care facility or another stated place; or
  - (ii) be detained at a stated community care facility;

- (b) that the person must not approach a stated person or stated place or undertake stated activities.

### **36D        Role of care coordinator**

- (1) The care coordinator is responsible for coordinating the provision of treatment, care and support for a person to whom a community care order applies.
- (2) Within 5 working days after the day the order is made, the care coordinator must determine, in writing, the times when and the place where the person is required to attend to receive treatment, care or support, or undertake a counselling, training, therapeutic or rehabilitation program, in accordance with the order.

*Note*        If a form is approved under s 146A for a determination, the form must be used.

- (3) Before making a determination, the care coordinator—
  - (a) must consult—
    - (i) the tribunal; and
    - (ii) the community advocate; and
    - (iii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
  - (b) if practicable, must consult—
    - (i) the person; and
    - (ii) if the person has an attorney appointed under the *Powers of Attorney Act 1956*—the attorney; and
  - (c) may consult any other service provider the care coordinator considers relevant.
- (4) After making a determination, the care coordinator must record whether the person was consulted and—
  - (a) if the person was consulted—what the person’s views were; or

- (b) if the person was not consulted—the reasons why.
- (5) As soon as practicable after making a determination, the care coordinator must give a copy of the determination to—
  - (a) the tribunal; and
  - (b) the community advocate; and
  - (c) any guardian consulted under subsection (3) (a) (iii); and
  - (d) any attorney consulted under subsection (3) (b) (ii).
- (6) The care coordinator may also give a copy of the determination to—
  - (a) anyone consulted under subsection (3) (c); and
  - (b) anyone providing treatment to the person.

**36E Treatment to be explained**

- (1) Before treatment is given to a person under a community care order, the care coordinator must ensure that the nature and effects (including any side effects) of the treatment are explained to the person.
- (2) The explanation must be given in the language or way of communicating that the person is most likely to understand.

**36F Action if community care order no longer appropriate**

- (1) This section applies if the care coordinator is satisfied that—
  - (a) a person subject to a community care order is no longer a person in relation to whom the tribunal could make a community care order; or
  - (b) if the person is also subject to a restriction order—it is no longer necessary for the person to be subject to the restriction order.

- (2) The care coordinator must tell the tribunal and the community advocate in writing.

*Note* The tribunal must review the order within 72 hours after being notified under this section (see s 36L (2)).

**36G Powers in relation to detention, restraint etc**

- (1) Subsection (2) applies if a community care order has been made in relation to a person and—
- (a) a restriction order has also been made in relation to the person requiring the person to be detained at a community care facility; or
  - (b) the care coordinator requires the person to be detained at a community care facility under section 36K (Contravention of psychiatric treatment order or community care order).
- (2) The care coordinator may—
- (a) take, or authorise someone else to take, the person to the premises and, for that purpose—
    - (i) use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the premises; and
    - (ii) if there are reasonable grounds for believing that the person is at particular premises—enter those premises using the force and assistance that is necessary and reasonable; and
  - (b) keep the person at the premises in the custody that the tribunal considers appropriate; and
  - (c) subject the person to the confinement or restraint that is necessary and reasonable—
    - (i) to prevent the person from causing harm to himself, herself or someone else; or

- (ii) to ensure that the person remains in custody under the order; and
  - (d) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to himself, herself or someone else; and
- (3) If a community care order made in relation to a person authorises the giving of medication for the treatment or amelioration of the person's mental dysfunction, the care coordinator may—
  - (a) approve the administration by appropriately trained people of medication prescribed by a doctor in accordance with the order; and
  - (b) for that purpose, use (or authorise someone else to use) the force and assistance that is necessary and reasonable.
- (4) In acting under subsection (2) or (3), the care coordinator must have regard to the matters stated in section 7 (Objectives of Act) and section 9 (Maintenance of freedom, dignity and self-respect).
- (5) If the care coordinator subjects a person to involuntary restraint or seclusion, or the involuntary administration of medication prescribed by a doctor, the care coordinator must—
  - (a) enter in the person's record the fact of and the reasons for the involuntary restraint, seclusion or administration of medication; and
  - (b) tell the tribunal and the community advocate in writing within 24 hours after the person is subjected to the involuntary restraint, seclusion or administration of medication; and
  - (c) keep a register of the involuntary restraint, seclusion or administration of medication.

## **Division 4.6 Limits on communication**

### **36H Limits on communication**

- (1) This section applies if—
  - (a) a mental health order is made in relation to a person; and
  - (b) the tribunal orders that limits may be imposed on communication between the person and other people; and
  - (c) the relevant official has reasonable grounds for believing that it is necessary, in the interests of the effective treatment of the person, that communication between the person and other people be limited.
- (2) The relevant official may, subject to the order mentioned in subsection (1) (b), impose limits on communication by the person with other people that are necessary and reasonable to avoid prejudicing the effectiveness of the treatment.
- (3) As soon as practicable after imposing limits on communication by a person, the relevant official must explain to the person—
  - (a) the nature of the limits; and
  - (b) the period for which the limits will be in effect; and
  - (c) the reasons for imposing the limits.
- (4) The explanation must be given in the language or way of communicating that the person is most likely to understand
- (5) Limits must not be imposed for a period longer than 7 days.
- (6) Subsection (5) does not prevent further limits being imposed immediately after the limits previously imposed cease to have effect.
- (7) This section has effect despite part 6 (Rights of mentally dysfunctional or mentally ill persons) but subject to section 36I.



(8) In this section:

*relevant official*, in relation to a person subject to a mental health order, means—

- (a) if the person is subject to a psychiatric treatment order—the chief psychiatrist; and
- (b) if the person is subject to a community care order—the care coordinator.

**36I      Communication with community advocate and person's lawyer**

(1) The relevant official must ensure that, during any period of limited communication imposed on a person under section 36H, the person has—

- (a) access to facilities, and adequate opportunity, to contact the community advocate and the person's lawyer; and
- (b) on request by the community advocate or the person's lawyer—the assistance necessary to enable the community advocate or the lawyer to have access to the person.

(2) In this section:

*relevant official*—see section 36H (8).

**Division 4.7      Duration, contravention and review of orders**

**36J      Duration of orders**

(1) Unless sooner revoked—

- (a) a psychiatric treatment order or community care order has effect for—
  - (i) 6 months; or

- (ii) if a shorter period is stated in the order—the shorter period; and
- (b) a restriction order has effect for—
  - (i) 3 months; or
  - (ii) if a shorter period is stated in the order—the shorter period.
- (2) This section does not apply to an order made in relation to a mentally ill or mentally dysfunctional offender.

**36K Contravention of psychiatric treatment order or community care order**

- (1) This section applies if—
  - (a) a mental health order (but not a restriction order) is in force in relation to a person; and
  - (b) the person contravenes the order.
- (2) This section also applies if—
  - (a) a restriction order is in force in relation to a person; and
  - (b) the relevant official tells the tribunal that the relevant official considers that the person has contravened the order; and

*Note* The tribunal must review the order within 72 hours after being notified under this section (see s 36L (2)).

  - (c) the tribunal authorises the relevant official to act under this section.
- (3) The relevant official may—
  - (a) orally tell the person that failure to comply with the order may result in the person being apprehended and being taken to an approved mental health facility for treatment or care; and

- (b) if the noncompliance continues after the taking of action under paragraph (a)—tell the person in writing that failure to comply with the order will result in the person being apprehended and being taken to an approved mental health facility for treatment or care; and
  - (c) if the noncompliance continues after the taking of action under paragraph (b)—require the person to be detained in an approved mental health facility to ensure compliance with the order.
- (4) If the relevant official requires the detention of a person under subsection (3) (c), he or she must tell the tribunal and the community advocate—
- (a) the name of the person detained; and
  - (b) the reasons for requiring the detention; and
  - (c) the name and address of the approved mental health facility where the person is detained.
- (5) If a person is required to be detained under subsection (3) (c), a police officer, mental health officer or doctor may apprehend the person and take the person to an approved mental health facility.
- (6) For subsection (5), a police officer, mental health officer or doctor—
- (a) may use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the facility; and
  - (b) if there are reasonable grounds for believing that the person is at particular premises—may enter those premises using the force and assistance that is necessary and reasonable.
- (7) If a person is detained under subsection (3) (c), the relevant official must tell the tribunal and the community advocate within 72 hours.

- (8) In this section:  
*relevant official*—see section 36H (8).

**36L Review, variation and revocation of orders**

- (1) The tribunal may, on application or on its own initiative, review a mental health order in force in relation to a person.
- (2) If the tribunal receives notice under section 34, section 36F or section 36K (2) in relation to a person, the tribunal must review the mental health orders in force in relation to the person within 72 hours.
- (3) Subsection (2) has effect despite section 94 (Notice of proceedings).
- (4) If the tribunal is satisfied that a person subject to a psychiatric treatment order or community care order is no longer a person in relation to whom the tribunal could make a psychiatric treatment order or community care order, the tribunal must revoke all the mental health orders in force in relation to the person.
- (5) In any other case, the tribunal may, if appropriate to do so—
  - (a) vary or revoke any of the mental health orders in force in relation to the person; or
  - (b) make additional mental health orders in relation to the person; or
  - (c) make an order for another assessment under section 16 in relation to the person.

## Part 5                      Emergency detention and care

### 37                      Apprehension

- (1) If a police officer has reasonable grounds for believing that a person is mentally dysfunctional or mentally ill and has attempted or is likely to attempt—
  - (a) to commit suicide; or
  - (b) to inflict serious harm on himself or herself or another person;the police officer may apprehend the person and take him or her to an approved health facility.
- (2) Where a doctor or mental health officer believes on reasonable grounds that—
  - (a) a person is mentally dysfunctional or mentally ill and—
    - (i) as a consequence, requires immediate treatment or care; or
    - (ii) in the opinion of the doctor or mental health officer, the person's condition will deteriorate within 3 days to such an extent that the person would require immediate treatment or care;
  - (b) the person has refused to receive that treatment or care; and
  - (c) detention is necessary for the person's own health or safety, social or financial wellbeing, or for the protection of members of the public; and
  - (d) adequate treatment or care cannot be provided in a less restrictive environment;

the doctor or mental health officer may apprehend the person and take him or her to an approved health facility.

- (3) The tribunal shall, on application, review the decision of a doctor or mental health officer under subsection (2) (a) (ii) within 2 working days of the date of receipt of the application.
- (4) For subsections (1) and (2), a police officer, doctor or mental health officer—
  - (a) may use such force and assistance as is necessary and reasonable to apprehend the person and take him or her to the facility; and
  - (b) if there are reasonable grounds for believing that the person is at certain premises—may enter those premises using such force and with such assistance as is necessary and reasonable.

**38                      Detention**

- (1) Where a person is taken to an approved health facility under section 37 or the Crimes Act, section 309 (1) (a), the person in charge of the facility shall detain the person at the facility and while the person is so detained—
  - (a) may keep the person in such custody as the person in charge thinks appropriate; and
  - (b) may subject the person to such confinement as is necessary and reasonable—
    - (i) to prevent the person from causing harm to himself or herself or to another person; or
    - (ii) to ensure that the person remains in custody; and
  - (c) may subject the person to such restraint (other than confinement) as is necessary and reasonable—
    - (i) to prevent the person from causing harm to himself or herself or to another person; or
    - (ii) to ensure that the person remains in custody.

- (2) If a doctor or mental health officer believes on reasonable grounds that a person who has voluntarily attended an approved health facility is a person to whom section 37 (2) (a) to (d) apply, the doctor or mental health officer may detain the person at the facility and, while the person is so detained, the person in charge of the facility may exercise the powers mentioned in subsection (1) (a) to (c) in relation to the person detained.

**38A      Circumstances in which copy of court order to be provided**

A police officer, or an escort under the *Custodial Escorts Act 1998*, who conveys an accused person to an approved health facility for examination by a medical practitioner under the Crimes Act, section 309 (1) (a) shall give a copy of the court order to the person in charge of the facility.

**39      Statement of action taken**

- (1) A police officer, doctor or mental health officer shall, as soon as practicable after taking a person to an approved health facility under section 37, prepare and give to the person in charge of the facility a written statement containing a description of the action taken under that section, including the following details:
- (a) the name and address (if known) of the person taken to the facility;
  - (b) the date and time when the person was taken to the facility;
  - (c) detailed reasons for taking the action;
  - (d) the extent of the force or assistance used to enter any premises, or to apprehend the person and to take him or her to the facility.
- (2) The person in charge of a facility who receives a statement under subsection (1) shall place the statement with the clinical records of the person whom it concerns.

**40 Examination by doctor**

- (1) The person in charge of an approved health facility shall ensure that a person taken to the facility under section 37 or the Crimes Act, section 309 (1) (a) is examined by a doctor employed at the facility within 4 hours of the person arriving at the facility.
- (2) The person in charge of an approved mental health facility must ensure that a person detained at the facility under section 38 (2) is examined by a doctor employed at the facility within 4 hours of being detained.

**41 Authorisation of involuntary detention**

- (1) Where the doctor who examines a person under section 40 has reasonable grounds for believing that—
  - (a) the person is mentally dysfunctional or mentally ill and—
    - (i) as a consequence, requires immediate treatment or care; or
    - (ii) in the opinion of the doctor, the person's condition will deteriorate within 3 days to such an extent that the person would require immediate treatment or care; and
  - (b) the person has refused to receive that treatment or care; and
  - (c) detention is necessary for the person's own health or safety, social or financial wellbeing, or for the protection of members of the public; and
  - (d) adequate treatment or care cannot be provided in a less restrictive environment;

the doctor may authorise the involuntary detention and care of the person at an approved mental health facility for a period not exceeding 3 days.

- (2) Where—



- (a) a person is detained under subsection (1); and
- (b) an application for further detention is made by a psychiatrist before the period of detention expires;

the tribunal may order that, on the expiration of that period, the person be so detained for the further period (not exceeding 7 days) specified in the order.

*Note* If a form is approved under s 146A (Approved forms) for a seclusion register, the form must be used.

- (3) The tribunal shall, on application, review the decision of a doctor or mental health officer under subsection (1) (a) (ii) within 2 working days of the date of receipt of the application.
- (4) On receipt of an application under subsection (2) (b), the tribunal shall review an order under subsection (2) within 2 working days after the date of the application.

#### **41A Notification of Magistrates Court about emergency detention or release from emergency detention**

The person in charge of an approved health facility—

- (a) shall notify the Magistrates Court of the results of an examination conducted by a doctor under an order under the Crimes Act, section 309 (1); and
- (b) if, after examination by the doctor—
  - (i) the person is to be detained for treatment or care—shall ensure that the person is detained for the purposes of receiving that treatment or care; or
  - (ii) the person is not to be detained for treatment or care, or is to be released after being detained—shall release the person into the custody of a police officer.

**42 Notification of certain persons about detention**

- (1) A doctor shall, within 12 hours after authorising the detention of a person under section 41 (1), notify the community advocate and the tribunal of—
  - (a) the name of the person detained; and
  - (b) the reasons for authorising the involuntary detention and care; and
  - (c) the name and address of the approved mental health facility at which the person is being detained.

Maximum penalty: 5 penalty units.

- (2) The person in charge of a facility in which a person is detained under section 41 shall, if the accused person has been taken to the facility in accordance with an order under the Crimes Act, section 309 (1) (a), in addition to complying with subsection (1) of this section, notify the court of the reasons for the involuntary detention and care.
- (3) The person in charge of a facility in which a person is detained under section 41 shall ensure that the person has adequate opportunity to notify a relative or friend of the person's detention.

**43 Medical examination**

The person in charge of an approved mental health facility shall ensure that a proper physical and psychiatric examination of a person detained at the facility under section 41 (1) is undertaken within 24 hours of the person being so detained.

**44 Treatment during detention**

- (1) The person in charge of a mental health facility at which a person is detained under section 41 shall ensure that during the period of detention—

- (a) any custody under which the person detained is kept; and
- (b) any confinement or other restraint to which the person detained is subjected; and
- (c) any treatment administered to the person detained;

is the minimum necessary to prevent any immediate and substantial risk of the person detained causing harm to himself or herself or to another person.

- (2) Subsection (1) does not apply if a person has a mental illness for which, in the opinion of a psychiatrist, the most appropriate treatment is long acting medication.
- (3) In determining whether to administer long acting medication, the psychiatrist shall take into account the likely deterioration in the person's condition within 3 days of his or her examination of the person.

#### **45      Communication during detention**

The person in charge of a mental health facility at which a person is detained under section 41 shall ensure that during the period of detention—

- (a) the person detained has access to facilities, and adequate opportunity, to contact the community advocate and the person's legal practitioner; and
- (b) on request by the community advocate or the person's legal practitioner, such assistance as is necessary to enable the community advocate or the legal practitioner (as the case may be) to have access to the person detained is provided.

Maximum penalty:

- (a) for paragraph (a)—20 penalty units; or
- (b) for paragraph (b)—50 penalty units.

**46 Orders for release**

- (1) If satisfied that the detention of a person under section 41 (1) or (2) is no longer justified then, subject to subsection (2)—
- (a) the doctor who examined the person under section 43; or
  - (b) the chief psychiatrist; or
  - (c) the tribunal;
- may order the release of the person before the period of detention authorised under that subsection expires.
- (2) If the person detained under section 41 (1) or (2) is an accused person to whom an order under the Crimes Act, section 309 (1) applies—
- (a) the doctor who examined the person under section 43; or
  - (b) the chief psychiatrist; or
  - (c) the tribunal;
- shall notify the person in charge of an approved mental health facility if satisfied that the detention of the person is no longer justified.

**47 Duty to release**

- (1) A person in charge of an approved mental health facility shall ensure that a person detained at that facility under section 41 (1) or (2)—
- (a) is released in accordance with an order under section 46; or
  - (b) if no such order is made and subject to any other order of the tribunal—is released at the expiration of the period of detention authorised under section 41 (1) or (2).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) If the person in charge of an approved mental health facility is notified under section 46 (2), he or she shall, as soon as practicable, discharge the person to whom the notification relates into the custody of a police officer.

#### **48 Approved facilities**

- (1) The Minister may, in writing, approve—
- (a) a health facility as a facility to which persons may be taken under a psychiatric treatment order mentioned in section 29 (1) or under section 37; or
  - (b) a mental health facility as a facility at which persons may be detained under section 36K or involuntarily detained and cared for under section 41.

- (2) An approval under subsection (1) (a) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) An approval under subsection (1) (b) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Part 5A Interstate application of mental health laws

### Division 5A.1 Preliminary

#### 48A Object of pt 5A

The object of this part is to provide for—

- (a) the interstate transfer of patients under mental health legislation; and
- (b) the interstate recognition of documents that authorise the detention of persons under mental health legislation; and
- (c) the treatment in the ACT of persons subject to mental health orders or similar orders made in other States; and
- (d) the apprehension of persons subject to certain interstate warrants or orders, or otherwise liable to apprehension, under mental health legislation.

#### 48B Definitions for pt 5A

In this part:

*agreement* means an agreement made under section 48C.

*corresponding law* means a law of another State which is declared to be a corresponding law under section 48D (1).

*custodial order* means a psychiatric treatment order.

*interstate custodial patient* means a person who is declared to be an interstate custodial patient under section 48D (2).

*interstate non-custodial order* means an order which is declared to be an interstate non-custodial order under section 48D (4).

*non-custodial order* means a mental health order other than a custodial order.

*State* includes Territory.

#### **48C Authority to enter into agreements**

- (1) The Minister may enter into an agreement with a Minister of another State for or with respect to the application of mental health laws of the ACT or the other State, the transfer, detention and apprehension of persons in the ACT and the other State under mental health laws and administrative matters and other matters ancillary to, or consequential on, any of those matters or other matters contained in this part.
- (2) Nothing in this section limits the power of the Minister to enter into any agreement relating to mental health laws.

#### **48D Recognition of interstate laws and orders**

- (1) The regulations may declare that a specified law of another State relating to mental health is a corresponding law for this part.
- (2) The regulations may declare that a specified class of persons, being persons who under a corresponding law are required to be detained at a hospital or other facility or in the custody of a person, are interstate custodial patients for this part.
- (3) The regulations may declare that a class of interstate custodial patients corresponds to 1 of the following:
  - (a) persons being detained under section 38, with the detention having commenced at a specified time;
  - (b) persons being detained under section 41, with the detention having commenced at a specified time;
  - (c) persons subject to a specified custody order that was made at a specified time.

- (4) The regulations may declare that a specified class of orders made under a corresponding law, being orders which require the treatment of a person but not the holding of the person in custody, are interstate non-custodial orders for this part.

**48E Territory officers may exercise functions under corresponding laws**

Subject to any agreement under section 48C, a person authorised by the Minister for this section may exercise any function conferred on him or her by or under a corresponding law or an agreement under section 48C.

**Division 5A.2 Transfer of persons from ACT**

**48F Emergency admission of persons to health facilities in other States**

- (1) A person who may be apprehended and detained at an approved health facility under section 37 may be taken to a health facility in another State for detention instead, if this is permitted by or under a corresponding law of the other State.
- (2) A person may be taken to a health facility in another State under this section by—
- (a) a person who is authorised by this Act to apprehend the person and deliver him or her to an approved health facility, if this is permitted by or under the law of the other State; or
  - (b) any other person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (3) The regulations may provide for or with respect to—
- (a) the handing over of custody of a person referred to in subsection (1) by persons in the ACT; and



- (b) the persons (including interstate persons) who may take such a person to a health facility in another State under this section; and
- (c) the health facilities to which a person may be taken under this section.

#### **48G Transfer of custodial patients from ACT**

- (1) A person who—
  - (a) is being detained at an approved health facility or an approved mental health facility under section 38 or 41; or
  - (b) is subject to a custodial order;may be transferred to a health facility in another State, if the transfer is permitted by or under a provision of a corresponding law of the other State and is in accordance with the regulations.
- (2) A person may be taken to a health facility in another State under this section by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (3) The regulations may provide for or with respect to—
  - (a) procedures for authorising the transfer of a person under this section and for notifying any such transfer or proposed transfer; and
  - (b) criteria for authorising the transfer of a person under this section; and
  - (c) the handing over of custody of such a person by persons in the ACT; and
  - (d) the persons (including interstate persons) who may take a person to a health facility in another State under this section; and

- (e) the health facilities to which a patient may be taken under this section.

**48H Application of Act to persons transferred interstate**

- (1) Subject to the regulations, this Act ceases to apply to a person who is accepted into the custody of a responsible person at a health facility in another State under section 48F or 48G.
- (2) Where an agreement under section 48C allows it, the regulations may provide for provisions of this Act to continue to apply in specified circumstances to a person after the person is accepted into the custody referred to in subsection (1).

**Division 5A.3 Transfer of persons to ACT**

**48I Emergency admission of interstate persons to approved health facilities**

- (1) A person who may be taken to and detained in a hospital or other facility in another State under a corresponding law of that State may instead be taken to and detained in an approved health facility in the ACT.
- (2) A person may be taken to an approved health facility in the ACT under this section by—
  - (a) a person who is authorised under section 37 to apprehend a person and take the person to an approved health facility, if this is permitted by or under a law of the other State; or
  - (b) any other person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (3) The regulations may provide for or with respect to—
  - (a) the handing over of custody of a person referred to in subsection (1) to persons in the ACT; and

- (b) the persons (including interstate persons) who may take such a person to an approved health facility in the ACT under this section; and
- (c) the health facilities to which a person may be taken under this section.

**48J Application of Act to persons detained under s 48I**

This Act applies to a person who is taken to and detained in an approved health facility under section 48I as if it had been done under section 37.

**48K Transfer of interstate custodial patients to health facilities in ACT**

- (1) An interstate custodial patient may be transferred to an approved health facility or an approved mental health facility in the ACT, if the transfer is authorised under a provision of a corresponding law of the other State and accepted by the person in charge of the facility.
- (2) An interstate custodial patient may be taken to a facility in the ACT under this section by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (3) The person in charge of an approved health facility or an approved mental health facility shall not accept the transfer of an interstate custodial patient to the facility unless the person in charge is satisfied that the patient could reasonably be detained under this Act.
- (4) The regulations may provide for or with respect to—
  - (a) the procedures for authorising and arranging the receipt of a person under this section; and

- (b) the persons (including interstate persons) who may take a person to a facility in the ACT under this section; and
- (c) the receiving of custody of such a person by persons in the ACT; and
- (d) the period within which such a person must be reviewed by the tribunal after being transferred to a facility in the ACT.

**48L Application of Act to persons transferred to ACT under s 48K**

An interstate custodial patient who is transferred to an approved health facility or an approved mental health facility under section 48K is subject to this Act—

- (a) where no regulation has been made under section 48D (3) that applies to the patient—as if the patient had been first detained at the facility in accordance with section 38 at the time of admission to the facility; or
- (b) where a regulation made under section 48D (3) (a) applies to the patient—as if the patient had been first detained at the facility in accordance with section 38 at the time specified in the regulation; or
- (c) where a regulation made under section 48D (3) (b) applies to the patient—as if the patient had been first detained at the facility in accordance with section 41 at the time specified in the regulation; or
- (d) where a regulation made under section 48D (3) (c) applies to the patient—as if the patient were subject to the custodial order specified in the regulation.

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## Division 5A.4 Non-custodial orders and interstate non-custodial orders

### 48M Non-custodial orders relating to interstate persons

A non-custodial order may be made under division 4.3 even though the affected person does not reside in the ACT, if—

- (a) the agencies responsible for implementing the order are located in the ACT; or
- (b) the order is allowed under an agreement under section 48C with the State where the person resides.

### 48N Orders relating to ACT residents

- (1) Where a person (the *patient*) is subject to an interstate non-custodial order, persons who are authorised under the corresponding law of the State concerned to implement the order may treat the patient in the ACT and exercise other functions in the ACT for the purpose of implementing the order.
- (2) The regulations may provide for or with respect to—
  - (a) limiting the persons who may act under this section; and
  - (b) limiting the treatment that may be given or functions that may be exercised under this section.

## Division 5A.5 Apprehension of persons absent from custody or in breach of orders

### 48P Recognition of apprehension orders

A warrant, order or other document issued under a corresponding law, being a document which authorises the apprehension of a person, is recognised in the ACT if the conditions for recognition set out in the regulations are met.

**48Q Apprehension of interstate persons absent without leave or in breach of orders**

- (1) Where a person—
- (a) is the subject of a warrant, order or other document recognised in the ACT under section 48P; or
  - (b) is otherwise liable to be apprehended, under a provision of a corresponding law under which the person may be apprehended and taken to a health facility;
- the person may be apprehended at any time—
- (c) by a police officer; or
  - (d) by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (2) A person who has been apprehended under this section may be—
- (a) conveyed to and detained in an approved health facility in the ACT; or
  - (b) where it is permitted by a corresponding law of the other State concerned—conveyed to that State and there dealt with in accordance with the corresponding law.
- (3) This Act applies to a person conveyed to and detained in an approved health facility under subsection (2) (a) as if the person were first detained at the facility in accordance with section 41 at the time of admission to the facility.

**48R Regulations relating to apprehension of persons**

The regulations may provide for or with respect to—

- (a) the kinds of warrants, orders or other documents that may be recognised in the ACT for this part; and
- (b) the conditions (if any) to be met before a warrant, order or other document can be recognised in the ACT; and

- (c) the circumstances when a person is taken to be liable to be apprehended under a corresponding law; and
- (d) the persons (including interstate persons) who may apprehend a person under this section; and
- (e) the health facilities and places to which a person can be taken under this part (whether in the ACT or another State); and
- (f) the actions (including transfer to the other State) that may be taken in respect of a person detained under this part.

## Part 6 Rights of mentally dysfunctional or mentally ill persons

### 49 Meaning of *responsible person*

In this part:

*responsible person*—

- (a) in relation to a mental health facility that is not conducted by the Territory—means the owner of the facility; or
- (b) in relation to a psychiatric institution conducted by the Territory—means the chief psychiatrist; or
- (c) in relation to any other mental health institution or community care facility conducted by the Territory—the chief executive of the administrative unit responsible for the conduct of the institution or facility.

### 50 Statement of rights

- (1) The responsible person shall ensure that on admission to, or before receiving treatment at, the mental health facility or community care facility, a person—
  - (a) is orally advised of his or her rights under this Act; and
  - (b) is given a copy of an information statement containing—
    - (i) a prescribed statement setting out the rights and entitlements of persons under this Act, including the right to obtain legal advice and the right to seek a second opinion from an appropriate mental health professional; and
    - (ii) any other information relating to the treatment and care of the person that the Minister considers relevant.



- (2) The responsible person shall ensure that, wherever possible, a person is given an information statement in a language with which the person is familiar.
- (3) The responsible person shall ensure that, if a person appears to be incapable of reading and understanding an information statement, then as far as practicable arrangements are made to convey the information contained in the statement to the person in the language, mode of communication or terms that the person is most likely to understand.
- (4) The responsible person shall ensure that, if a person appears to be unable to understand the information contained in an information statement, the community advocate is informed of that fact.

## **51 Information to be provided**

The responsible person shall ensure that the following items are kept at the mental health facility or community care facility in a place readily accessible to all persons admitted to, or receiving treatment at, the facility:

- (a) copies of this Act, the *Guardianship and Management of Property Act 1991* and any other relevant legislation;
- (b) copies of any publications prepared by the administrative unit to which responsibility for the administration of that legislation is allocated for the purpose of explaining the legislation;
- (c) copies of information statements printed in different languages;
- (d) a list of the addresses and telephone numbers of the offices of, and the relevant functions of, the following:
  - (i) the tribunal;
  - (ii) the Supreme Court;
  - (iii) the Magistrates Court;
  - (iv) the community advocate;

- (v) the chief psychiatrist;
- (vi) the care coordinator;
- (vii) the legal aid commission;
- (viii) the ombudsman.

## **52 Communication**

- (1) The responsible person shall ensure that all persons admitted to, or receiving treatment at, the mental health facility or community care facility are given reasonable opportunities to communicate with persons of their choice by means other than written communication.
- (2) The responsible person shall ensure that a person admitted to, or receiving treatment at, the mental health facility or community care facility is provided, on request, with facilities for preparing written communications and for enclosing those communications in sealed envelopes.
- (3) The responsible officer shall ensure any written communication addressed to or written by a person admitted to, or receiving treatment at, the mental health facility or community care facility (other than a mentally dysfunctional or mentally ill offender) is forwarded without being opened and without delay to the person to whom it is addressed.
- (4) Subject to any security conditions imposed under any Act, the responsible officer shall ensure any written communication addressed to or written by a mentally dysfunctional or mentally ill offender is forwarded without being opened and without delay to the person to whom it is addressed.

**53 Failure by owner to comply**

The owner of a mental health facility that is not conducted by the Territory who, without reasonable excuse, fails to comply with this part commits an offence.

Maximum penalty: 20 penalty units.

## Part 7 Convulsive therapy and psychiatric surgery

### Division 7.1 Consent

#### 54 Informed consent

- (1) For this part, a person gives *informed consent* to a procedure if the consent is given by the person after—
  - (a) the person has been given a clear explanation of the procedure that contains sufficient information to enable the person to make a balanced judgment about whether or not to consent to the procedure; and
  - (b) the person has been given an adequate description (without exaggeration or concealment) of the benefits, discomfort and risks involved in the procedure; and
  - (c) the person has been advised of all alternative treatments reasonably available that may be of benefit to the person; and
  - (d) the person has been given an opportunity to ask any questions about the procedure, those questions have been answered and the person appears to have understood the answers; and
  - (e) a full disclosure has been made to the person of any financial relationship between the person seeking to obtain the consent, the doctor who is proposing to conduct the procedure or both (as the case may be) and the psychiatric institution at which it is proposed to conduct the procedure; and
  - (f) the person has been given, has read and appears to have understood a notice stating that—

- (i) the person has the right to obtain independent legal and medical advice and any other independent advice or assistance before giving informed consent; and
  - (ii) the person is free to refuse or withdraw consent and to have the procedure discontinued at any time; and
  - (g) the person has been given an information statement.
- (2) For this part, informed consent shall be given in writing signed by the person giving the consent and witnessed by a person, other than the person seeking to obtain the consent or the doctor who is proposing to conduct the procedure.
- (3) In this section:
- procedure* means—
- (a) the administration of convulsive therapy; or
  - (b) the performance of psychiatric surgery.

## **Division 7.2                      Convulsive therapy**

### **55                      Restriction on use**

- (1) A person who is not a doctor shall not administer convulsive therapy to another person unless he or she is authorised to do so by a doctor.
- Maximum penalty: 100 penalty units, imprisonment for 1 year or both.
- (2) A doctor shall not administer, or authorise the administration of, convulsive therapy to a person (other than a person in relation to whom a psychiatric treatment order is in force)—
- (a) unless the person has given informed consent to the administration of convulsive therapy; or

- (b) if convulsive therapy has been administered to the person on more than 9 occasions since that consent was given.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) A doctor shall not administer, or authorise the administration of, convulsive therapy to a person in relation to whom a psychiatric treatment order is in force—
  - (a) unless the tribunal has approved the administration of convulsive therapy to the person; or
  - (b) if convulsive therapy has been administered to the person on more than 9 occasions since the tribunal so approved the administration of convulsive therapy to the person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (4) An application for an order for the administration of convulsive therapy—
  - (a) shall be made by the chief psychiatrist or a doctor; and
  - (b) shall be supported by the evidence of a psychiatrist who is not the applicant.
- (5) The tribunal shall not make an order for the administration of convulsive therapy to a person unless—
  - (a) the person has given informed consent to the administration of convulsive therapy and that consent has not been withdrawn; or
  - (b) if the person is, by reason of mental illness, incapable of weighing for himself or herself the considerations involved in making a decision whether or not to consent to the administration of convulsive therapy—the tribunal is satisfied that the administration of the therapy is likely to result in substantial benefit to the person and—

- (i) all other reasonable forms of treatment that may be available have been tried but have not proved successful; or
- (ii) it is the most appropriate form of treatment reasonably available.

**56      Withdrawal of consent**

A doctor shall not administer, or authorise the administration of, convulsive therapy to a person who has given informed consent for section 55 (2) (a) or (5) (a) if, before the therapy is administered, the person withdraws that consent either orally or in writing.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**57      Therapy to be recorded**

A doctor who administers or authorises the administration of convulsive therapy—

- (a) shall make a record of that administration or authorisation; and
- (b) shall deliver that record to the person in charge of the psychiatric institution at which the therapy is, or is to be, administered.

Maximum penalty: 20 penalty units.

**58      Records to be kept for 5 years**

A person in charge of a psychiatric institution shall retain a record delivered under section 57 (b) for at least 5 years after the date of delivery.

Maximum penalty: 20 penalty units.

## **Division 7.3 Psychiatric surgery**

### **59 Performance on persons subject to orders of tribunal**

Psychiatric surgery may be performed on a person under this part despite any order of the tribunal in force in relation to the person.

### **60 Approval and consent required**

A doctor shall not knowingly perform psychiatric surgery on a person—

- (a) except in accordance with the approval of the chief psychiatrist; or
- (b) after he or she is informed under section 66 that the person refuses to have the surgery performed.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

### **61 Application for approval**

An application for the approval of the chief psychiatrist for the performance of psychiatric surgery—

- (a) shall be made in writing by the doctor proposing to perform the surgery; and
- (b) shall be delivered to the chief psychiatrist together with—
  - (i) a copy of the informed consent of the person on whom it is proposed the surgery will be performed; or
  - (ii) a copy of an order of the Supreme Court under section 65.

### **62 Application to be considered by committee**

- (1) The chief psychiatrist shall, as soon as practicable after receiving an application in accordance with section 61, submit the application to



a committee appointed under section 67 by delivering a copy of the application to the chairperson of the committee.

- (2) A committee—
  - (a) shall consider an application submitted to it; and
  - (b) in a report to the chief psychiatrist—
    - (i) shall recommend whether or not the chief psychiatrist should approve the performance of the psychiatric surgery; and
    - (ii) if the committee recommends that the chief psychiatrist should approve the performance of the surgery—shall recommend the conditions (if any) to which the approval should be subject.
- (3) A committee shall not recommend that the chief psychiatrist should approve the performance of psychiatric surgery unless—
  - (a) the committee is satisfied—
    - (i) that there are reasonable grounds for believing that the performance of the surgery will result in substantial benefit to the person on whom it is proposed to be performed; and
    - (ii) that all alternative forms of treatment reasonably available have failed, or are likely to fail, to benefit the person; and
  - (b) the recommendation is supported by the psychiatrist and the neurosurgeon on the committee.

### **63 Chief psychiatrist may require further information**

- (1) The chief psychiatrist shall, at the request of a committee and by notice in writing delivered to the doctor, require the doctor who made the application under section 61 to produce to the chief psychiatrist the documents or other information specified in the notice.

- (2) Where a requirement is imposed under subsection (1), the committee is not required to give further consideration to the application until the documents and other information specified in the notice are produced to the chief psychiatrist.
- (3) The chief psychiatrist shall deliver any documents and other information produced in compliance with a requirement under subsection (1) to the chairperson of the committee.
- (4) Nothing in this section authorises the chief psychiatrist to require the production of documents or other information, other than documents or information relevant to the application being considered by the committee.

**64 Chief psychiatrist to act on committee's recommendation**

The chief psychiatrist shall deal with an application under section 61 in accordance with the committee's recommendations.

**65 Consent of Supreme Court**

Where the Supreme Court is, on application by a doctor, satisfied that—

- (a) the person in relation to whom the application is made has a mental illness; and
- (b) the person has not given informed consent to the performance of psychiatric surgery and has not refused, either orally or in writing, to consent to such surgery; and
- (c) there are grounds for believing that the performance of such surgery is likely to result in substantial benefit to the person; and
- (d) all alternative forms of treatment reasonably available have failed, or are likely to fail, to benefit the person;

the court may, by order, consent to the performance of psychiatric surgery on the person.

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**66 Refusal of surgery**

- (1) A person—
- (a) who has given informed consent to the performance of psychiatric surgery; or
  - (b) in respect of whom the Supreme Court has made an order consenting to the performance of such surgery under section 65;

may, before the psychiatric surgery is performed, inform the chief psychiatrist or any other person, either orally or in writing, that he or she refuses to have the surgery performed.

- (2) A person (other than the chief psychiatrist) who is informed that another person refuses to have psychiatric surgery performed on himself or herself shall inform the chief psychiatrist of the refusal.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Where the chief psychiatrist—
- (a) has approved the performance of psychiatric surgery on a person under section 64; and
  - (b) is informed under subsection (1) or (2), other than by the doctor who is to perform the surgery, that the person refuses to have the surgery performed;

the chief psychiatrist shall inform the doctor of the refusal.

- (4) Where the chief psychiatrist is informed under subsection (1) or (2) that a person refuses to have psychiatric surgery performed—
- (a) any informed consent to the performance of the surgery given by the person, or any order made by the Supreme Court under section 65 in respect of the person, ceases to have effect; and
  - (b) if, immediately before the date of the refusal, an application for the approval of the performance of the surgery has been made

but has not been determined—the application is to be taken to have been withdrawn on that date; and

- (c) any approval given by the chief psychiatrist for the performance of the surgery ceases to have effect.

## **67 Committees**

- (1) For the purposes of section 62, the Minister shall appoint a committee consisting of—
  - (a) a psychiatrist; and
  - (b) a neurosurgeon; and
  - (c) a legal practitioner; and
  - (d) a clinical psychologist; and
  - (e) a social worker.
- (2) The Minister shall appoint a member of a committee to be the chairperson of the committee.
- (3) A member of a committee shall be paid such remuneration and allowances (if any) as are prescribed.
- (4) The chairperson of a committee shall convene meetings of the committee.
- (5) Subject to section 62 (3) (b), a question arising at a meeting of a committee shall be decided in accordance with the opinion of a majority of members of the committee.

## Part 8 Referrals by courts under Crimes Act and C&YP Act

### 68 Review of certain people found unfit to plead

- (1) This section applies if—
  - (a) the Supreme Court or the Magistrates Court makes a decision under the *Crimes Act 1900*, section 315A (2) or section 315D (7) that a person is unfit to plead to a charge; and
  - (b) the charge is for an offence punishable by imprisonment for 5 years or longer; and
  - (c) an order is made in relation to the charge under any of the following provisions of the *Crimes Act 1900*:
    - section 318 (2) (Non-acquittal at special hearing—non-serious offence);
    - section 319 (2) (Non-acquittal at special hearing—serious offence);
    - section 335 (2), (3) or (4) (Fitness to plead—Magistrates Court).
- (2) The tribunal may (on application or on its own initiative) review the person's fitness to plead at any time.
- (3) However, the tribunal must review the person's fitness to plead—
  - (a) as soon as practicable (but within 3 months) after the end of 12 months after the day the order is made; and
  - (b) at least once every 12 months after each review.
- (4) Subsection (3) does not apply if—
  - (a) the person has already been found fit to plead; or

- (b) the director of public prosecutions has told the tribunal, in writing, of the director's intention not to take further proceedings against the person in relation to the offence.
- (5) On a review, the tribunal must decide on the balance of probabilities whether the person is unfit to plead.
- (6) The tribunal must decide that the person is unfit to plead if satisfied that the person's mental processes are disordered or impaired to the extent that the person cannot—
  - (a) understand the nature of the charge; or
  - (b) enter a plea to the charge and exercise the right to challenge jurors or the jury; or
  - (c) understand that the proceeding is an inquiry about whether the person committed the offence; or
  - (d) follow the course of the proceeding; or
  - (e) understand the substantial effect of any evidence that may be given in support of the prosecution; or
  - (f) give instructions to the person's lawyer.
- (7) The person is not unfit to plead only because the person is suffering from memory loss.
- (8) To remove any doubt, this section applies even if the person is no longer in custody or under a mental health order.

*Note* A person the subject of a proceeding may be summoned to appear at the proceeding (see s 90).

## **70 Recommendations about mentally dysfunctional or mentally ill persons**

- (1) In this section:

*order for recommendations* means—

- (a) an order of the Supreme Court under the Crimes Act, division 13.3 requiring a person to submit to the jurisdiction of the tribunal to enable the tribunal to make recommendations to the court as to how the person should be dealt with; or
  - (b) an order of a court under the Crimes Act, division 13.5 or 13.6, or under the C&YP Act, part 6.2 (which is about dealing with young offenders within the ACT), or part 7.3 (Care and protection orders and emergency action), requiring a person to submit to the jurisdiction of the tribunal to enable the tribunal—
    - (i) to determine whether or not the person is mentally dysfunctional or mentally ill; and
    - (ii) if the tribunal determines that the person is mentally dysfunctional or mentally ill—to make recommendations to the court as to how the person should be dealt with.
- (2) Following such inquiry as the tribunal thinks appropriate in respect of a person who is subject to an order for recommendations under the Crimes Act, division 13.3, the tribunal shall make recommendations to the Supreme Court as to how the person should be dealt with.
- (3) Following such inquiry as the tribunal thinks appropriate in respect of a person who is subject to an order for recommendations under the Crimes Act, division 13.5 or 13.6 or under the C&YP Act—
- (a) the tribunal shall determine, on the balance of probabilities, whether or not the person is mentally dysfunctional or mentally ill; and
  - (b) if the tribunal determines that the person is mentally dysfunctional or mentally ill, the tribunal shall make recommendations to the court as to how the person should be dealt with.

**71 Service of decisions etc**

The registrar must serve a copy of a decision, determination or recommendation made under section 68 or section 70 on—

- (a) the person about whom the decision, determination or recommendation is made; and
- (b) the representative of that person (if any); and
- (c) the community advocate; and
- (d) the director of public prosecutions; and
- (e) if the person about whom the decision, determination or recommendation is made is a child—the C&YP chief executive.

**72 Periodic review of orders for detention**

- (1) In this section:

*order for detention* means—

- (b) an order of a court under the Crimes Act, part 13 requiring a person to be detained in custody until the tribunal orders otherwise; or
- (c) an order of the tribunal requiring a person to be detained in custody under section 74.

- (2) Where a person has been in custody under an order for detention—

- (a) for a period of 6 months; or
- (b) for a further period of 6 months following the last review of the order under this section;

the tribunal shall, as soon as practicable, review the order for detention and may order the release of the person.

- (3) In considering whether or not to order the release of a person, the tribunal shall have regard to the following:



- (a) the nature and extent of the person's mental dysfunction or mental illness, including the effect it is likely to have on the person's behaviour in the future;
  - (b) whether or not, if released—
    - (i) the person's health or safety would be, or would be likely to be, substantially impaired; or
    - (ii) the person would be likely to do serious harm to others;
  - (c) the best estimate of the sentence of imprisonment nominated by the relevant court under the Crimes Act, part 13 as the sentence it would have imposed had the person been found guilty of the relevant offence.
- (4) An order for the release of a person may be made subject to such conditions (if any) as the tribunal thinks appropriate, including a requirement to comply with specified mental health orders.
- (5) If, on a review, the tribunal does not order the release of a person, the tribunal may—
- (a) make mental health orders (including additional orders) in respect of the person; or
  - (b) vary or revoke any of the mental health orders in force in respect of the person.

### **73 Review of conditions of release**

The tribunal may, on application or on its own motion, review the conditions in force in respect of a person released from detention under section 72 (4) and may—

- (a) vary or revoke any of those conditions, including any requirement to comply with specified mental health orders; or
- (b) impose such other conditions as the tribunal thinks appropriate, including a requirement to comply with specified mental health orders.

**74 Breach of conditions of release**

If a person released from detention breaches a condition in force in respect of the person under section 72 (4), the tribunal may order the person to be detained in custody until the tribunal orders otherwise.

**75 Limit on detention**

- (1) Nothing in section 72 or 74 permits the tribunal to require a person to remain in custody for a period that is, or for periods that in the aggregate are, greater than the limiting period.

- (2) In subsection (1):

*limiting period*, in relation to a person, means a period that is equivalent to the period—

- (a) commencing on the day on which an order of the relevant court under the Crimes Act, part 13 is made requiring the person to be detained in custody until the tribunal orders otherwise; and
- (b) ending on the day on which, if the person had been sentenced to a term of imprisonment for a period equivalent to the term nominated under that Act, section 428C, 428CA, 428CC or 428CD (as the case may be), that sentence would have expired.

## **Part 9**                      **Tribunal membership and procedure**

### **Division 9.1**              **Tribunal members**

#### **76**              **Membership of tribunal**

- (1) The tribunal consists of—
  - (a) the president; and
  - (b) the deputy presidents; and
  - (c) the non-presidential members.
- (2) The members of the tribunal are to be appointed by the Executive.

#### **77**              **Presidential members**

- (1) A person is eligible to be appointed president only if the person is a magistrate.
- (2) A person is eligible to be appointed deputy president only if the person is a magistrate or a lawyer of at least 5 years standing.
- (3) However, a person is not eligible to be appointed president or deputy president if the person has been the subject of a mental health order or proceeding within the previous 12 months.

#### **78**              **Non-presidential members**

- (1) The Executive must appoint as non-presidential members—
  - (a) persons who are psychiatrists (the *psychiatrist members*); and
  - (b) persons who are psychologists (the *psychologist members*);  
and
  - (c) persons who are not psychiatrists or psychologists, but who, in the Executive's opinion, have skills and experience in

providing mental health clinical services, including mental health nurses, occupational therapists or social workers (the *mental health services members*); and

- (d) persons who are members of the community who are not persons mentioned in paragraphs (a) to (c) but who, in the Executive's opinion, are suitable to deal with the needs of mentally dysfunctional people (the *community members*).
- (2) A person is not eligible to be appointed as a non-presidential member if the person has been the subject of a mental health order or proceeding within the previous 12 months.

## **79 Terms of appointment generally**

- (1) A member may be appointed as a full-time or part-time member.
- (2) A member holds office on the terms not provided by this Act that are decided by the Executive.
- (3) This section does not apply to a member who is a magistrate.

## **80 Matters to be included in instrument of appointment etc**

The instrument appointing, or evidencing the appointment of, a member must state—

- (a) whether the member is the president, a deputy president, a psychiatrist member, a psychologist member, a mental health services member or a community member; and
- (b) the period for which the member is appointed; and
- (c) if the member is not a magistrate—whether the member is appointed as a full-time or part-time member.

## **81 Duration of appointment**

- (1) A member is to be appointed for a term of not longer than 5 years.

- (2) The Executive may end the appointment of a member who is not a magistrate—
- (a) for misbehaviour or physical or mental incapacity; or
  - (b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors.
- (3) The Executive must end the appointment of—
- (a) a presidential member who is a magistrate if the member ceases to be a magistrate; or
  - (b) a deputy president who is not a magistrate if the member ceases to be eligible for appointment; or
  - (c) a psychiatrist member or psychologist member if the member ceases to be eligible for appointment; or
  - (d) a mental health services member or community member if the Executive is satisfied that the person is no longer a suitable person to deal with mentally dysfunctional people; or
  - (e) a member who is not a magistrate if the member is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer; or
  - (f) a member who is the subject of a psychiatric treatment order or a community care order.

## **Division 9.2 Registrar and deputy registrars**

### **82 Registrar and deputy registrars of tribunal**

- (1) The registrar of the Magistrates Court is the registrar of the tribunal.
- (2) Each deputy registrar of the Magistrates Court is a deputy registrar of the tribunal.

- (3) Subject to any direction of the registrar, a deputy registrar of the tribunal may exercise the powers of the registrar of the tribunal.
- (4) The registrar may, in writing, delegate to a public servant all or any of his or her powers under this Act.

## **Division 9.3 Other provisions about the tribunal**

### **83 Constitution for exercise of powers**

- (1) For the purpose of—
  - (a) making an order for an assessment under section 16; or
  - (b) making an order for the removal of a person under section 18; or
  - (c) ordering the detention of a person under section 41 (2); or
  - (d) ordering the release of a person under section 46;the tribunal is to be constituted by a presidential member.
- (2) For the purpose of—
  - (a) making a mental health order; or
  - (b) reviewing a mental health order under section 36L; or
  - (c) making an order for the administration of convulsive therapy under section 55; or
  - (d) reviewing a person's fitness to plead under section 68; or
  - (e) making a recommendation under section 70; or
  - (f) reviewing an order for detention under section 72; or
  - (g) reviewing the conditions in force in relation to a person released from detention under section 73;the tribunal is to be constituted by—
  - (h) a presidential member; and

- (i) a psychiatrist member, a psychologist member or a mental health services member depending on whom the president considers to be most suitable to deal with the matter; and
  - (j) a community member.
- (3) However, a magistrate must not constitute or be a member of the tribunal for a purpose mentioned in subsection (1) or (2) if the proceeding before the tribunal—
- (a) relates to an order made by the magistrate requiring the person the subject of the proceeding to submit to the jurisdiction of the tribunal; or
  - (b) arises from a finding made by the magistrate under the *Magistrates Court Act 1930*, part 3.5 (Proceedings for indictable offences) in relation to the person the subject of the proceeding; or
  - (c) arises from a determination made by the magistrate in relation to bail for the person the subject of the proceeding.
- (4) If—
- (a) the tribunal is constituted for a proceeding by a presidential member and 2 non-presidential members (as mentioned in subsection (2)); and
  - (b) a non-presidential member ceases to be a member, or to be available for the proceeding, before the completion of the proceeding;
- the presidential member and the remaining non-presidential member may finish the proceeding.
- (5) However, if the presidential member believes that it would be prejudicial to the interests of a person who is the subject of the proceeding, the proceeding must be completed by the tribunal constituted by the presidential member, the remaining non-presidential member and—

- (a) if the remaining non-presidential member is a community member—a psychiatrist member, a psychologist member or a mental health services member depending on whom the president considers to be most suitable to deal with the matter; and
  - (b) if the remaining non-presidential member is not a community member—a community member.
- (6) If the tribunal is reconstituted under subsection (5), the reconstituted tribunal may have regard to any evidence or information, or documents produced to the tribunal as previously constituted under subsection (2).

#### **84 Role of president**

- (1) The president is responsible for ensuring the orderly and prompt discharge of the tribunal's business.
- (2) Without limiting subsection (1), the president may give directions about the members who are to constitute the tribunal for a particular proceeding.

#### **85 Deciding questions**

- (1) The presidential member is to decide a question of law arising in a proceeding.
- (2) If there is a division of opinion about another question arising in a proceeding, the question is decided—
  - (a) if the tribunal is constituted under section 83 (2), (3) or (5)—
    - (i) according to the opinion of the majority of members constituting the tribunal; or
    - (ii) if there is no majority on the question—according to the opinion of the presidential member; or



- (b) if the tribunal is constituted under section 83 (4)—according to the opinion of the presidential member.

**86 Protection of members etc**

- (1) This section applies to a person who is or has been—
- (a) a member of the tribunal; or
  - (b) the registrar or a deputy registrar of the tribunal; or
  - (c) a person acting under the tribunal’s direction or authority; or
  - (d) a participant in a proceeding before the tribunal.
- (2) An action or proceeding does not lie against a person to whom this section applies in relation to an act done, or omitted to be done, in good faith in that capacity.

**86A Secrecy**

- (1) In this section:

*court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

*person to whom this section applies* means a person who is or has been—

- (a) a member of the tribunal; or
- (b) the registrar or a deputy registrar of the tribunal; or
- (c) authorised to exercise a function or power under this Act in relation to the tribunal.

*produce* includes permit access to.

*protected information* means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function or power under this Act in relation to the tribunal.

- (2) A person to whom this section applies must not—
- (a) make a record of protected information; or
  - (b) directly or indirectly, divulge or communicate to a person protected information about someone else;

unless the record is made, or the information divulged or communicated, in relation to the exercise of a function or power, as a person to whom this section applies, under this Act or another Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not prevent a person to whom this section applies from divulging or communicating protected information to a person about another person with the consent of the other person.
- (4) A person to whom this section applies is not required—
- (a) to divulge or communicate protected information to a court; or
  - (b) to produce a document containing protected information to a court;

unless it is necessary to do so for this Act or another Act.

## **Division 9.4 Procedural matters**

### **87 Lodgment of applications**

- (1) An application and any accompanying documents shall be lodged with the registrar.
- (2) The registrar shall forward copies of any documents lodged under subsection (1) to—
- (a) the president; and
  - (b) the community advocate; and

- (c) if the person who is the subject of an application is a child—the C&YP chief executive;

as soon as practicable, and in any event within 24 hours, after lodgment.

**88**      **Sittings**

The tribunal is to sit in such places, including places outside the ACT, as the president decides.

**89**      **Appearance, representation and use of interpreters**

- (1) The following persons are entitled to appear and give evidence at a proceeding:
  - (a) the person who is the subject of the proceeding;
  - (b) if that person is a child—the person’s parents;
  - (c) if that person has a guardian—the guardian;
  - (d) the applicant (if any);
  - (e) the community advocate;
  - (f) the chief psychiatrist;
  - (g) the chief executive who has control of the administrative unit to which responsibility for the provision of treatment, care and protection for mentally dysfunctional persons (other than persons who have a mental illness) is allocated;
  - (h) the discrimination commissioner;
  - (i) if the person who is the subject of the proceeding is a child—the C&YP chief executive.
- (2) Other persons may appear and give evidence at a proceeding only by leave of the tribunal.

- (3) A person appearing at a proceeding may be represented by an agent or a legal practitioner.
- (4) Where—
  - (a) the person who is the subject of the proceeding is a child; and
  - (b) the child is not separately represented; and
  - (c) it appears to the tribunal that the child should be so represented;  
the tribunal may, of its own motion or on the application of any person (including the child)—
    - (d) adjourn the proceedings in order that the child may obtain representation; and
    - (e) give such advice and assistance to the child as may be necessary to enable the child to obtain representation.
- (5) The *Evidence Act 1971*, section 63A applies in relation to the provision of an interpreter for a person appearing or giving evidence before the tribunal.
- (6) Nothing in this section shall be taken as preventing a person from making a written submission to the tribunal in respect of a proceeding.

## **90 Summons to appear in person**

- (1) Subject to subsection (2), the registrar shall summon the person who is the subject of a proceeding to appear in person at the proceeding if satisfied that it is necessary for the purposes of the proceeding.
- (2) The registrar shall not summon a person under subsection (1) if satisfied that the appearance of the person before the tribunal is likely to increase substantially—
  - (a) any risk to the person's health or safety; or
  - (b) the risk of serious harm to others.

- (3) If the registrar does not summon a person for a reason specified in subsection (2), the registrar shall make a notation to that effect on any application lodged under section 87.
- (4) Where the registrar has decided not to summon a person, the tribunal may, on its own motion, summon the person to appear in person before it if the tribunal is satisfied that it is necessary for the purposes of the proceeding.
- (5) A summons issued under this section shall—
- (a) specify the time and place at which the person being summoned is to appear before the tribunal; and
  - (b) contain a statement to the effect that the person being summoned is entitled to be represented before the tribunal by an agent or a legal practitioner and that the person may wish to obtain legal advice in relation to the summons; and
  - (c) contain a statement to the effect that the party being summoned may apply to the tribunal for a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 32 (1) (Use of link in proceedings) enabling the party to appear by means of an audiovisual link at a place where such a link is available; and
  - (d) be accompanied by a notice containing information about the functions and powers of the tribunal and of the community advocate; and
  - (e) be accompanied by a copy of any relevant order under the Crimes Act, part 13 or under the C&YP Act, part 6.2 (which is about dealing with young offenders within the ACT) or part 7.3 (Care and protection orders and emergency action).

*Note* If a form is approved under s 146A (Approved forms) for a summons, the form must be used.

## **91 Person summoned in custody**

If a person summoned to appear before the tribunal is in the custody of another person, the tribunal may order that other person to ensure that the person summoned does so appear and attends before the tribunal—

- (a) where section 91A applies—in accordance with that section; or
- (b) in any other case—in person.

## **91A Appearance by audiovisual or audio links**

- (1) This section applies where, in relation to a proceeding or a part of a proceeding (the *relevant proceeding*), the tribunal has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings).
- (2) Where this section applies a person who, in a relevant proceeding—
  - (a) is required or entitled to appear personally; or
  - (b) is entitled to appear for another person;may appear and participate in that proceeding in accordance with the direction.
- (3) A person who appears in a relevant proceeding in accordance with this section shall be taken to be before the tribunal.

## **92 Arrest of persons failing to appear**

- (1) If a person who is summoned to appear before the tribunal does not so appear or does not attend before the tribunal as required, the presidential member may, on proof of the service of the summons, issue a warrant for the apprehension of the person.
- (2) A warrant authorises—
  - (a) the apprehension of the person named in the warrant; and

- (b) the bringing of the person before the tribunal; and
  - (c) the detention of the person at the place specified in the warrant for that purpose until the person is released by order of the tribunal.
- (3) A warrant may be executed by a police officer.
- (4) A police officer executing a warrant—
- (a) may, with such assistance, and by such force, as is necessary and reasonable, enter any premises for the purpose of apprehending the person named in the warrant; and
  - (b) shall use the minimum amount of force necessary to apprehend that person and remove him or her to the place specified in the warrant; and
  - (c) shall, before removing the person, explain to the person the purpose of the warrant.

### **93 Directions to registrar**

- (1) Subject to subsection (2), after considering an assessment of the person who is the subject of a proceeding but before holding an inquiry or a review, the presidential member may give such directions to the registrar as the presidential member considers appropriate for the purposes of—
- (a) defining and limiting the matters relevant in the proceeding, including—
    - (i) the alternative treatments, programs and other services that are available and may be appropriate for the person who is the subject of the proceeding; and
    - (ii) the evidence that appears to be relevant to the proper disposition of the matter; and
    - (iii) any unusual or urgent factors requiring special attention; and

- (b) ensuring all necessary measures are taken to enable the inquiry or review to proceed expeditiously, including—
  - (i) the provision of all relevant particulars; and
  - (ii) the notification of persons who may be entitled to appear and give evidence in the proceeding and the ascertainment of the availability of those persons and of any related factors requiring special attention; and
  - (iii) the notification of persons who may wish to apply for leave to appear and give evidence in the proceeding; and
  - (iv) giving persons not entitled to appear in the proceeding but who may be interested in making written submissions about the matter an opportunity to do so; and
  - (v) the identification of the issues (if any) that may be determined prior to the inquiry or review.
- (2) The presidential member is not entitled to give directions under subsection (1) in relation to a proceeding conducted for the purposes of a function described in section 11 (e), (g) or (h).

#### **94 Notice of proceedings**

At least 3 days before the tribunal holds an inquiry or review in respect of a matter, the registrar shall give written notice of the proceeding to the following persons:

- (a) if the person who is the subject of the proceeding is not summoned under section 90 for a reason other than a reason specified in section 90 (2)—that person;
- (b) the representative of that person (if any);
- (c) if the person who is the subject of the proceeding is a child—the person’s parents;
- (d) if the person who is the subject of the proceeding has a guardian—the guardian;



- (e) the applicant (if any);
- (f) the community advocate;
- (g) the chief psychiatrist;
- (h) the care coordinator;
- (i) the chief executive who has control of the administrative unit to which responsibility for providing treatment, care and protection for mentally dysfunctional persons (other than persons who have a mental illness) is allocated;
- (j) the discrimination commissioner;
- (k) if the person who is the subject of the proceeding is a child—the C&YP chief executive;
- (l) any other person whom the tribunal or the registrar considers appropriate.

**95 Proceedings to be in private**

- (1) A proceeding in respect of a person (other than a child) shall be held in private unless—
  - (a) the person who is the subject of the proceeding requests that the proceeding be held in public; or
  - (b) the tribunal orders otherwise.
- (2) A proceeding in respect of a child shall be held in private.
- (3) A person is not entitled to be present at a proceeding being held in private unless the person is—
  - (a) a member of the tribunal; or
  - (b) a member of the staff of the tribunal; or
  - (c) a person entitled to appear under section 89; or

- (d) a representative of a person entitled to appear under that section; or
  - (e) a member of the staff of the community advocate; or
  - (f) a person nominated by the discrimination commissioner; or
  - (g) giving evidence; or
  - (h) present with the leave of the tribunal.
- (4) Before making a decision for subsection (3) (h), the tribunal shall endeavour to ascertain the wishes of the person who is the subject of the proceeding.

**96 Natural justice**

The tribunal is bound by the rules of natural justice.

**97 Evidence**

- (1) In a proceeding conducted for the purpose of carrying out a function described in section 11 (a) or (b), the tribunal is not bound by the rules of evidence but may inform itself on any matter relevant to a proceeding in such manner as it thinks fit.
- (2) In a proceeding conducted for the purpose of carrying out a function described in section 11 (c), (d), (e), (g), (h) or (i), the tribunal is bound by the rules of evidence.
- (3) Evidence in a proceeding may be given orally or in writing.
- (4) For the purposes of a proceeding, the tribunal may take evidence on oath or affirmation and for that purpose the presidential member may—
  - (a) require a person appearing before the tribunal to take an oath or make an affirmation; and
  - (b) administer an oath or affirmation to such a person.

- (5) For the purposes of a proceeding, the presidential member may require a person appearing before the tribunal—
- (a) to answer a question relevant to the proceeding; or
  - (b) to produce a document relevant to the proceeding.

**98 Admissibility of evidence in other proceedings**

A statement or disclosure made, or a document or other thing produced, by a person in the course of a proceeding, or any information, document or thing obtained as a direct or indirect consequence of the making of the statement or disclosure, or of the production of the firstmentioned document or thing, is not admissible in evidence in any civil or criminal proceeding except—

- (a) a proceeding under this Act; or
- (b) a proceeding under the Crimes Act, part 13; or
- (c) a proceeding in respect of an appeal to the Supreme Court under section 141; or
- (d) a proceeding for an offence against this Act.

**100 Assistance for tribunal**

The tribunal may appoint a legal practitioner, doctor or any other person with appropriate expertise to assist it in relation to a proceeding.

**101 Power to obtain information and documents**

- (1) Where the presidential member is satisfied that a person is capable of providing information or producing a document relevant to a proceeding, the presidential member may, by written notice given to the person, require the person—
- (a) to provide the information to the presidential member in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or

- (b) to produce the document to the presidential member.
- (2) A notice shall state—
  - (a) the place at which the information or document is to be provided or produced to the presidential member; and
  - (b) the time at which, or the period within which, the information or document is to be so provided or produced.
- (3) Where the presidential member is satisfied that a person has information relevant to a proceeding, the presidential member may, by written notice given to the person, require the person to attend before the tribunal at a time and place specified in the notice and to answer questions relevant to the proceeding.
- (4) A person shall not, without reasonable excuse, fail to—
  - (a) provide information or produce a document when required to do so under subsection (1); or
  - (b) answer a question under subsection (3).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **102 Retention of documents**

Where a document is produced to the presidential member in accordance with a requirement under section 97 (5) (b) or 101 (1) (b), the presidential member—

- (a) may take possession of, and may make a copy of, or take extracts from, the document; and
- (b) may retain possession of the document for such period as is necessary for the purposes of the proceeding; and
- (c) during that period shall permit a person who would be entitled to inspect the document, if it were not in the possession of the president, to inspect the document at any reasonable time.

**104 Form of orders**

An order of the tribunal—

- (a) shall be in writing signed by the members constituting the tribunal when the order is made; and
- (b) shall specify the persons on whom a copy of the order is to be served.

**105 Service of orders**

The registrar shall serve a copy of an order of the tribunal on—

- (a) the person in respect of whom the order is made; and
- (b) the representative of that person (if any); and
- (c) the community advocate; and
- (d) if the order is made in respect of a person referred to the tribunal under section 15—the referring officer; and
- (e) if the order is made in respect of a person ordered to submit to the jurisdiction of the tribunal by a court—that court; and
- (f) if the order specifies a facility or an institution to which a person is to be admitted—the person in charge of that facility or institution; and
- (g) if the order is a psychiatric treatment order, or a restriction order in relation to a person subject to a psychiatric treatment order—the chief psychiatrist; and
- (h) if the order is a community care order, or a restriction order in relation to a person subject to a community care order—the care coordinator; and
- (i) any other person who is specified in the order under section 104 (b).

**106 Proof of orders**

A copy of an order signed in accordance with section 104 (a) is admissible as evidence in any proceedings that such an order was made.

**107 Breach of orders**

- (1) Where the tribunal has reasonable grounds for believing that a person is in breach of an order made by the tribunal, the presidential member may—
  - (a) summon the person to appear before the tribunal at the time and place specified in the summons; or
  - (b) if satisfied that the person is unlikely to appear in response to a summons—issue a warrant for the apprehension of the person.
- (2) Section 90 (5) applies in relation to a summons issued under subsection (1) (a) as if it had been issued under section 90 (1).
- (3) Section 92 (2), (3) and (4) apply in relation to a warrant issued under subsection (1) (b) as if it had been issued under section 92 (1).
- (4) In subsection (1):  
*order* includes a condition imposed under section 72 (4).

**108 Obtaining reasons for decisions**

- (1) Where—
  - (a) the tribunal makes a decision; and
  - (b) a person who is entitled to appeal to the Supreme Court against the decision requests the presidential member, in accordance with subsection (3), for a statement of reasons in respect of the decision;

the presidential member shall give a written statement of those reasons to the person as soon as practicable but, in any case, within

28 days after the day on which the request is received by the presidential member.

- (2) A request for a statement of reasons shall be in writing given to the presidential member within 28 days after the day on which the decision was made.
- (3) A statement of reasons shall—
  - (a) set out the tribunal’s findings on material questions of fact; and
  - (b) refer to the evidence or other material on which those findings were made; and
  - (c) give the tribunal’s reasons for the decision.

### **109 Withdrawal of applications**

An applicant is entitled to withdraw the application made by him or her at any time before it is determined.

### **110 Costs**

- (1) Where the tribunal is satisfied that—
  - (a) an application is frivolous, vexatious or has not been made in good faith; and
  - (b) a person other than the applicant has reasonably incurred expenses in relation to the proceeding in respect of the application;

the tribunal may order the applicant to pay a specified amount to that person by way of compensation.

- (2) The amount specified in the order is a debt due to the person by the applicant.

### **111 Contempt of tribunal**

A person shall not—

- (a) obstruct or hinder the tribunal or a member of the tribunal in the exercise of the functions of the tribunal; or
- (b) disrupt a proceeding.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.



## Part 10 Chief psychiatrist and mental health officers

### 112 Chief psychiatrist

- (1) The Minister must appoint a public servant as Chief Psychiatrist.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) A person is not eligible for appointment as the chief psychiatrist unless the person is a psychiatrist.

### 113 Functions

The chief psychiatrist has the following functions:

- (a) to provide treatment, care, rehabilitation and protection for persons who have a mental illness;
- (b) to make reports and recommendations to the Minister with respect to matters affecting the provision of treatment, care, control, accommodation, maintenance and protection for persons who have a mental illness.

### 116 Termination of appointment

- (1) The Minister may terminate the appointment of the chief psychiatrist for misbehaviour or physical or mental incapacity.
- (2) The Minister shall terminate the appointment of the chief psychiatrist if the chief psychiatrist ceases to be eligible to hold the office of chief psychiatrist.

**118 Delegation by chief psychiatrist**

The chief psychiatrist may, with the Minister's approval, delegate the chief psychiatrist's functions under this Act to a psychiatrist who is a public employee or is engaged by the Territory.

*Note* For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

**119 Mental health officers**

- (1) The Minister may appoint a person as a mental health officer.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) A person is not eligible for appointment as a mental health officer unless the person is a mental health nurse, authorised nurse practitioner, psychologist or social worker.

- (3) In this section:

***authorised nurse practitioner*** means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position.

***nurse practitioner position***—see the *Health Act 1993*, section 37B (2).

***scope of practice***—see the *Health Act 1993*, section 37B (2).

**119A Functions of mental health officers**

The functions of a mental health officer for this Act are the functions that the chief psychiatrist directs.

*Note* **Function** includes authority, duty and power (see Legislation Act, dict, pt 1).

**119B Identity cards for mental health officers**

- (1) The chief executive must give a mental health officer an identity card that states the person is a mental health officer for this Act and shows—
  - (a) the name of the person; and
  - (b) a recent photograph of the person.
- (2) A person commits an offence if—
  - (a) the person was appointed as a mental health officer; and
  - (b) the person ceases to be a mental health officer; and
  - (c) the person does not return the person's identity card to the chief executive as soon as practicable (but within 7 days) after the day the person ceases to be a mental health officer.

Maximum penalty: 1 penalty unit.

- (3) An offence against subsection (2) is a strict liability offence.

**120 Chief psychiatrist's annual report**

A report prepared by the chief psychiatrist under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include—

- (a) statistics in relation to people who have a mental illness during the year; and

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- (b) details of any arrangements with New South Wales during the year in relation to people who have a mental illness.

*Note* **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

## Part 10A Care coordinator

### 120A Care coordinator

- (1) The Minister must appoint a public servant as care coordinator.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) The Minister may only appoint a person as care coordinator if satisfied that the person has the training, experience and personal qualities necessary to exercise the care coordinator's functions.
- (3) An appointment is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

### 120B Functions

The care coordinator has the following functions:

- (a) to coordinate the provision of treatment, care and support to mentally dysfunctional people in accordance with community care orders made by the tribunal;
- (b) to coordinate the provision of appropriately trained people for the treatment, care and support of mentally dysfunctional people who are subject to community care orders;
- (c) to coordinate the provision of appropriate residential or detention facilities for mentally dysfunctional people who are subject to community care orders and to restriction orders mentioned in section 36C (a);
- (d) to coordinate the provision of medication and anything else required to be done for mentally dysfunctional people in

accordance with community care orders and restriction orders made by the tribunal;

- (e) to make reports and recommendations to the Minister about matters affecting the provision of treatment, care, control, accommodation, maintenance and protection for mentally dysfunctional people.

### **120C Termination of appointment**

- (1) The Minister may terminate the appointment of the care coordinator for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of the care coordinator if the care coordinator ceases to be eligible to be appointed as the care coordinator.

### **120D Delegation by care coordinator**

- (1) The care coordinator may delegate the care coordinator's functions under this Act to anyone else.

*Note* For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

- (2) However, the care coordinator may only delegate a function to a person if the care coordinator is satisfied that the person has the training, experience and personal qualities necessary to exercise the function.
- (3) A delegation is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**120E Care coordinator's annual report**

A report prepared by the care coordinator under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include statistics in relation to people who have a mental dysfunction during the year.

*Note* **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

## Part 11 Official visitors

### 121 Appointment etc

- (1) For this Act, the Minister may appoint 1 or more official visitors for an approved mental health facility.
- (2) A person is eligible for appointment as an official visitor if the person—
  - (a) is a legal practitioner who has not less than 5 years practising experience; or
  - (b) is a medical practitioner; or
  - (c) has been nominated by a body representing consumers of mental health services; or
  - (d) has experience and skill in the care of persons with a mental dysfunction or mental illness.
- (3) A person shall not be appointed an official visitor if the person—
  - (a) is a public servant; or
  - (b) has a direct interest in a contract with an approved mental health facility or a mental health care provider; or
  - (c) has a financial interest in a private hospital.
- (4) A person shall not be appointed as an official visitor unless the Minister is satisfied that the person has appropriate qualifications and experience to perform the duties of an official visitor.
- (5) The Minister may terminate the appointment of an official visitor—
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity; or



- (c) who is convicted, in Australia or elsewhere, of an offence punishable on conviction by imprisonment for 1 year or longer; or
- (d) if the person ceases to be a person who is eligible for appointment.

## **122 Official visitor—functions and duties**

- (1) An official visitor—
  - (a) shall visit and inspect mental health facilities; and
  - (b) shall inquire into—
    - (i) the adequacy of services for the assessment and treatment of persons with mental dysfunction or a mental illness; and
    - (ii) the appropriateness and standard of facilities for the recreation, occupation, education, training and rehabilitation of persons receiving treatment or care for mental dysfunction or a mental illness; and
    - (iii) the extent to which people receiving treatment or care for mental dysfunction or a mental illness are being provided the best possible treatment or care appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that treatment or care; and
    - (iv) any contravention of this Act; and
    - (v) any other matter that an official visitor considers appropriate having regard to the objectives in sections 7 and 8; and
    - (vi) any complaint made to an official visitor by a person receiving treatment or care for mental dysfunction or a mental illness; and

- (c) has such other functions as are conferred on the official visitor by this or another Act.
- (2) An official visitor—
  - (a) may, with or without prior notice given to a responsible person for a mental health facility (within the meaning of part 6), visit the mental health facility at such times and for such periods as the visitor thinks fit; and
  - (b) shall visit a mental health facility at least once every 3 months.
- (3) The Minister may, in writing, direct an official visitor to visit a mental health facility at such times as the Minister directs.

**122A Official visitor—powers etc**

- (1) An official visitor may, when visiting a mental health facility—
  - (a) inspect any part of the facility; and
  - (b) see any person who is receiving treatment or care for mental dysfunction or a mental illness unless the person has asked not to be seen; and
  - (c) make inquiries relating to the admission, detention, care, treatment and control of persons receiving treatment or care for mental dysfunction or a mental illness; and
  - (d) inspect—
    - (i) any document or medical record relating to any person receiving treatment or care for mental dysfunction or a mental illness if he or she has the consent in writing of the person receiving the treatment or care; and
    - (ii) any records required to be kept under this Act.
- (2) If an official visitor to a mental health facility wishes to exercise, or is exercising, a function or power under this Act, the person in charge of the facility shall provide, or shall ensure that there is

provided, to the official visitor such reasonable assistance as the official visitor requires to exercise the function or power effectively.

- (3) A person in charge of a mental health facility shall not, without reasonable excuse—
- (a) refuse or neglect to render assistance when required under subsection (2); or
  - (b) fail to answer any question when asked by an official visitor in the exercise of his or her powers under this Act.

Maximum penalty: 50 penalty units.

- (4) A person in charge of a mental health facility shall not, without reasonable excuse, obstruct or hinder an official visitor in the exercise of his or her powers under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (5) A person in charge of a mental health facility shall keep a record of each visit by an official visitor to the facility.

Maximum penalty: 5 penalty units.

*Note* If a form is approved under s 146A (Approved forms) for a record, the form must be used.

## **122B Reports by official visitors**

- (1) An official visitor may, of his or her own motion make a report to the Minister relating to the exercise of his or her powers under this Act.
- (2) An official visitor shall, when requested to do so by the Minister, report in writing to the Minister in accordance with that request.
- (3) An official visitor shall, after each visit to a mental health facility, report in writing to the Minister and the community advocate in relation to the exercise of his or her functions or powers under section 122 or 122A.

- (4) If, in a report, an official visitor is critical of the services provided by a mental health facility, the official visitor shall advise the person in charge of the facility in writing, within 7 days of making that report.
- (5) A person in charge of a mental health facility shall, within 21 days after receipt of a report of the kind referred to in subsection (4), give to the official visitor and the community advocate a written response to the report, including any action taken, or to be taken, in response to any criticism contained in the report.
- (6) A person may at any reasonable time inspect a copy of a report under this section.
- (7) A person may, on payment of the reasonable copying costs, obtain a copy of a report under this section.

## **Part 12**                      **Private psychiatric institutions**

### **Division 12.1**              **Interpretation**

#### **123**              **Definitions for pt 12**

In this part:

*licence* means a licence issued under this part.

*licensed premises* means the premises at which a psychiatric institution is, or is proposed to be, conducted and in respect of which a licence is issued.

*licensee* means a person to whom a licence is issued under this part.

*psychiatric institution* means a hospital or other institution providing treatment, care, rehabilitation or accommodation for persons who have a mental illness other than—

- (a) a recognised hospital within the meaning of the *Health Insurance Act 1973* (Cwlth); or
- (b) an institution conducted by the Territory.

### **Division 12.2**              **Licences**

#### **124**              **Owner or manager to be licensed**

A person shall not conduct a psychiatric institution on his or her own behalf, or on behalf of another person, without a licence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

#### **125**              **Issue of licence**

- (1) The Minister may, on application, issue a licence to a person in respect of the premises specified in the licence.

- (2) An application shall be in writing and shall be lodged with the Minister.

*Note* A fee may be determined under s 146 (Determination of fees) for this section.

- (3) The Minister shall not issue a licence unless satisfied that the applicant is a fit and proper person to hold a licence and that—

- (a) the structural and sanitary condition and the location of the premises in respect of which the application is made are satisfactory, having regard to the interests of the persons who will receive treatment or reside at the premises; and
- (b) the facilities in case of fire or flood at those premises are adequate; and
- (c) the cooking and ablution facilities at those premises are adequate; and
- (d) the accommodation provided for patients, residents and members of staff at those premises are adequate.

- (4) A licence shall be issued subject to conditions as to—

- (a) the maximum number of persons for whom treatment, care, rehabilitation or accommodation may be provided at the licensed premises; and
- (b) the classes of persons for whom treatment, care, rehabilitation or accommodation may be provided at the licensed premises.

- (5) A licence may be issued subject to such other conditions (if any) as the Minister thinks necessary, including but not limited to conditions as to any of the following:

- (a) the minimum number of staff to be employed at the licensed premises;
- (b) the qualifications of the staff;
- (c) the treatment that may be provided at the licensed premises;

- (d) the measures to be taken to ensure the health and safety of patients, residents and members of staff on the licensed premises;
- (e) the insurance to be carried by the licensee against any liability arising from the conduct of a psychiatric institution on the licensed premises;
- (f) the recreational and educational facilities to be provided at the licensed premises for patients and residents;
- (g) the management of the licensed premises.

## **126 Term and renewal of licence**

- (1) A licence remains in force for the period of 12 months commencing on the day on which the licence is issued and may be renewed in accordance with this section.
- (2) A licensee may, at any time before the expiration of the period referred to in subsection (1) or the last period of renewal, as the case may be, apply to the Minister for a renewal of the licence.
- (3) An application shall be in writing and shall be lodged with the Minister.

*Note* A fee may be determined under s 146 (Determination of fees) for this section.

- (4) If the Minister is satisfied of the matters referred to in section 125 (3), the Minister shall renew the licence for a further period of 12 months commencing on the expiration of the period referred to in subsection (1) or the last period of renewal, as the case requires.

## **127 Variation and revocation of conditions**

- (1) On application in writing by the licensee and if satisfied that it is in the best interests of the patients and residents at the licensed premises, the Minister may—

- (a) vary a condition imposed under section 125 (4) or (5) in the manner specified in the application; or
  - (b) revoke a condition imposed under section 125 (5); or
  - (c) impose a condition specified in the application.
- (2) If satisfied that it is in the best interests of the patients and residents at the licensed premises—
- (a) to vary a condition imposed under section 125 (4) or (5); or
  - (b) to revoke a condition imposed under section 125 (5); or
  - (c) to impose a condition;
- the Minister may, by notice in writing served on the licensee, require the licensee, within 28 days after the date of the notice, to show cause why that condition should not be varied in the manner specified in the notice or should not be revoked or imposed.
- (3) The Minister may, after the expiration of 28 days after the date of the notice, vary in the manner specified in the notice, or revoke or impose, the condition specified in the notice.
- (4) A decision of the Minister under subsection (1) or (3) takes effect on the day after the day on which the notice under section 137 (1) is given to the licensee or on such later day as may be specified in that notice.

## **128 Surrender of licence**

- (1) A licensee may surrender the licence by notice in writing signed by the licensee and lodged with the Minister together with the licence.
- (2) A surrender takes effect on the date of the notice or on such later day as may be specified in the notice.



**129 Cancellation of licence**

- (1) If satisfied that a licensee has failed to comply with a condition of the licence, the Minister may, by notice in writing served on the licensee, require the licensee, within 28 days after the date of the notice, to show cause why the licence should not be cancelled.
- (2) The Minister may, after the expiration of 28 days after the date of the notice, cancel the licence.
- (3) The cancellation of a licence under this section takes effect on the day after the day on which the notice under section 137 (1) is given to the licensee or on such later day as may be specified in that notice.

**130 Emergency cancellation**

- (1) Despite section 129, if satisfied that circumstances exist in relation to licensed premises that give rise to an immediate risk of harm to the health or safety of patients or residents on the licensed premises, the Minister may, by notice in writing served on the licensee, cancel the licence.
- (2) A notice under subsection (1) shall set out—
  - (a) the terms of the decision; and
  - (b) the findings on material questions of fact, referring to the evidence or other material on which those findings were made; and
  - (c) the reasons for the decision.
- (3) The cancellation of a licence under this section takes effect on the day after the day on which the notice is served on the licensee.
- (4) Where a licence is cancelled under subsection (1), the former licensee may apply for restoration of the licence on the ground that, because of a specified change in the circumstances referred to in

subsection (1) that has occurred since the date of cancellation, the licence should be restored.

- (5) The Minister may restore the licence if satisfied that, because of the change specified in the application, it should be restored.

### **131 Effect of cancellation**

Where a licence is cancelled under section 129 or 130, the former licensee shall not—

- (a) admit any person for treatment, care, rehabilitation or accommodation at the premises to which the licence related on or after the day on which the cancellation takes effect; or
- (b) permit treatment, care, rehabilitation or accommodation to be provided on those premises after the expiration of 1 month after that day.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **Division 12.3 Inspectors**

### **132 Appointment**

- (1) The Minister may, by instrument, appoint persons to be inspectors for this part.
- (2) An inspector shall perform such duties for this part as the chief psychiatrist directs.

### **133 Identity cards**

- (1) The Minister shall issue to each inspector an identity card that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.

- (2) A person appointed to be an inspector shall not, without reasonable excuse, fail to return his or her identity card to the Minister on ceasing to be an inspector.

Maximum penalty (subsection (2)): 1 penalty unit.

### **134 Powers of inspection**

- (1) An inspector may, at any time of the day, enter any licensed premises and—
- (a) inspect the premises and any equipment used at the premises in connection with the treatment, care, rehabilitation or accommodation of patients or residents; and
  - (b) inspect any books, documents or other records that are in the possession of the occupier of the premises, or to which the occupier has access, relating to the conduct of the psychiatric institution at those premises; and
  - (c) require the occupier of the premises to furnish the inspector with any information, books, documents or other records that are in the possession of the occupier, or to which the occupier has access, relating to the conduct of the psychiatric institution at those premises.
- (2) An inspector who enters premises under subsection (1) is not authorised to remain on the premises if, when requested to do so by the occupier of the premises, the inspector does not show his or her identity card to the occupier.
- (3) A person is not required to furnish material to an inspector under subsection (1) (c) if, when requested to do so by the person, the inspector does not show his or her identity card to the person.
- (4) Where an inspector enters premises under subsection (1), a reference in this section to the *occupier* of the premises includes a reference to a person the inspector believes on reasonable grounds to be the occupier, or the person in charge, of those premises.

**135 Failing to comply with requirement of inspector**

A person shall not, without reasonable excuse, fail to comply with a requirement to furnish material under section 134 (1) (c).

Maximum penalty: 50 penalty units.

**Division 12.4 Review of decisions**

**136 Application for review**

Application may be made to the administrative appeals tribunal for review of a decision of the Minister—

- (a) refusing to issue a licence under section 125 (1); or
- (b) refusing to renew a licence under section 126 (4); or
- (c) refusing to vary a condition under section 127 (1) (a); or
- (d) refusing to revoke a condition under section 127 (1) (b); or
- (e) refusing to impose a condition under section 127 (1) (c); or
- (f) varying a condition under section 127 (3); or
- (g) revoking a condition under section 127 (3); or
- (h) imposing a condition under section 127 (3); or
- (j) cancelling a licence under section 129 (2); or
- (k) refusing to restore a licence under section 130 (5).

**137 Notice of decision**

- (1) Where the Minister makes a decision of a kind referred to in section 136, the Minister shall, within 28 days after the date of the decision, give notice in writing of the decision to the licensee or former licensee, as the case may be.
- (2) A notice under subsection (1) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the administrative appeals tribunal for review of the decision to which the notice relates; and
  - (b) except where section 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement under section 26 of that Act.
- (3) The validity of a decision referred to in subsection (1) is not to be taken to be affected by a failure to comply with subsection (2).

## **Division 12.5            Miscellaneous**

### **138            Unauthorised treatment**

A licensee is guilty of an offence if the licensee allows treatment for mental illness to be given to a person at the licensed premises after the licensee receives notice that the person is the subject of an order of the tribunal that does not authorise the giving of that treatment to that person at the psychiatric institution conducted at those premises.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## Part 13 Miscellaneous

### 140 Legal effect of certain sections

Nothing in section 7 or 8 is to be taken to create any legal rights not in existence before the enactment of that section or to affect any legal rights in existence before that enactment or that would, but for that section, have come into existence after that enactment.

### 141 Appeals from decisions of tribunal

- (1) An appeal to the Supreme Court from a decision of the tribunal may be brought by—
  - (a) a person in respect of whom the decision was made; or
  - (b) a person who appeared, or was entitled to appear under section 89 (1), before the tribunal at the proceeding in which the decision was made; or
  - (c) the discrimination commissioner; or
  - (d) any other person with the leave of the court.
- (2) An appeal may be brought as of right.
- (3) An appeal may be begun—
  - (a) within 28 days after the day on which the decision was made; or
  - (b) if the appellant requested a statement of reasons under section 108 in respect of the decision—within 28 days after the day on which the appellant receives the statement; or
  - (c) within such further time as the Supreme Court (whether before or after the expiration of the period referred to in paragraph (a) or (b)) allows.

- (4) The Supreme Court shall hear and determine the appeal and may make such orders as are just, including an order—
  - (a) confirming the decision; or
  - (b) setting the decision aside and remitting the matter to the tribunal with directions; or
  - (c) substituting its own decision.
- (5) The *Magistrates Court Act 1930*, section 214 (3) and (4) applies in relation to an appeal under this section as if it were an appeal referred to in section 214 (1) of that Act.
- (6) If an appeal is brought under this section against a decision of the tribunal, the Supreme Court may order the decision of the tribunal be stayed until the appeal is decided and make any other orders it considers just.
- (7) The Supreme Court's power under subsection (6) is in addition to, and does not limit, any other power of the Supreme Court.

## **142 Relationship with Guardianship and Management of Property Act**

- (1) Despite anything in the *Guardianship and Management of Property Act 1991* or an order appointing a guardian, a guardian appointed for a person under that Act—
  - (a) is not entitled to give consent to treatment for mental illness, convulsive therapy or psychiatric surgery; and
  - (b) if the person is subject to a community care order—is not entitled to decide anything for the person contrary to any determinations or decisions made in relation to the person by the care coordinator under the community care order (or any related restriction order).
- (2) Despite anything in the *Guardianship and Management of Property Act 1991*, section 70, the guardianship tribunal—

- (a) is not entitled to make an order in relation to any consent to treatment for mental illness, convulsive therapy or psychiatric surgery; and
- (b) is not entitled to make an order in relation to a person contrary to any community care order (or restriction order) made in relation to the person.

**143 Relationship with Powers of Attorney Act**

Despite anything in the *Powers of Attorney Act 1956* or an instrument creating a power of attorney, an attorney of a person appointed under a power of attorney under that Act—

- (a) is not entitled to give consent to treatment for mental illness, convulsive therapy or psychiatric surgery; and
- (b) if the person is subject to a community care order—is not entitled to decide anything for the person contrary to any determinations or decisions made in relation to the person by the care coordinator under the community care order (or any related restriction order).

**145 Certain rights unaffected**

Nothing in this Act shall be taken as preventing a person in respect of whom an order of the tribunal is not in force—

- (a) refusing to receive particular treatment or care at a mental health facility; or
- (b) discharging himself or herself from such a facility.

**146 Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).



- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

#### **146A Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

#### **147 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

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### 3 Legislation history

**Mental Health (Treatment and Care) Act 1994 No 44**

notified 7 September 1994 (Gaz 1994 No S177)

s 1, s 2 commenced 7 September 1994

remainder commenced 6 February 1995 (Gaz 1995 No S33)

as amended by

**Annual Reports (Government Agencies) (Consequential Provisions) Act 1995 No 25 sch**

notified 5 September 1995 (Gaz 1995 No S212)

commenced 5 September 1995 (s 2)

**Health and Community Care Services (Consequential Provisions) Act 1996 No 35 sch**

notified 1 July 1996 (Gaz 1996 No S130)

commenced 1 July 1996 (s 2)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)

s 1, s 2 commenced 1 December 1997 (s 2 (1))

sch 1 commenced 1 June 1998 (s 2 (2))

**Mental Health (Treatment and Care) (Amendment) Act 1997 No 104**

notified 24 December 1997 (Gaz 1997 No S420)

commenced 24 December 1997 (s 2)

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)

s 1, s 2 commenced 27 November 1998 (s 2 (1))

sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Mental Health (Treatment and Care) (Amendment) Act 1998 No 70**

notified 23 December 1998 (Gaz 1998 No S212)

commenced 23 December 1998 (s 2)

## Endnotes

3 Legislation history

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**Courts and Tribunals (Audio Visual and Audio Linking) Act  
1999 No 22 pt 11**

notified 14 April 1999 (Gaz 1999 No S16)  
s 1, s 2 commenced 14 April 1999 (s 2 (1))  
pt 11 commenced 1 September 1999 (s 2 and Gaz 1999 No 35)

**Mental Health (Treatment and Care) (Amendment) Act 1999 No 31**

notified 25 June 1999 (Gaz 1999 No S34)  
ss 1-5 commenced 25 June 1999 (s 2 (1))  
remainder commenced 1 October 1999 (s 2 (2))

**Mental Health (Treatment and Care) Amendment Act (No 2)  
1999 No 62**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

**Children and Young People (Consequential Amendments) Act  
1999 No 64 sch 2**

notified 10 November 1999 (Gaz 1999 No 45)  
s 1, s 2 commenced 10 November 1999 (s 2 (1))  
sch 2 commenced 10 May 2000 (s 2 (2))

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
sch 3 commenced 10 November 1999 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000  
(No 2) No 2 sch**

notified 9 March 2000 (Gaz 2000 No 10)  
sch commenced 9 March 2000 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000  
(No 3) No 17 sch 1**

notified 1 June 2000 (Gaz 2000 No 22)  
sch 1 commenced 1 June 2000 (s 2)

**Mental Health (Treatment and Care) Amendment Act 2000 No 52**

notified 5 October 2000 (Gaz 2000 No 40)  
commenced 5 October 2000 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 249  
(as am by Act 2001 No 70 amdt 1.13)**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 249 commenced 12 September 2001 (s 2 and see Gaz 2001  
No S65)

**Statute Law Amendment Act 2001 No 56 pt 1.4**

notified 5 September 2001 (Gaz 2001 No S65)  
s 1, s 2 commenced 5 September 2001 (s IA s 10B)  
amdt 1.40 commenced 12 September 2001 (amdt 1.40)  
pt 1.4 remainder commenced 5 September 2001 (s 2)

**Justice and Community Safety Legislation Amendment Act 2001  
No 70 sch 1**

notified LR 14 September 2001  
amdt commenced 14 September 2001 (s 2 (5))

**Statute Law Amendment Act 2002 No 30 pt 3.49**

notified LR 16 September 2002  
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))  
pt 3.49 commenced 17 September 2002 (s 2 (1))

**Mental Health (Treatment and Care) Amendment Act 2002 No 33**

notified LR 8 October 2002  
s 1, s 2 commenced 8 October 2002 (LA s 75 (1))  
remainder commenced 9 October 2002 (s 2)

**Health and Community Care Services (Repeal and Consequential  
Amendments) Act 2002 No 47 pt 1.3**

notified LR 20 December 2002  
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))  
pt 1.3 commenced 31 December 2002 (s 2)

**Statute Law Amendment Act 2002 (No 2) No 49 pt 3.12**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
pt 3.12 commenced 17 January 2003 (s 2 (1))

## Endnotes

3 Legislation history

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### **Legislation (Gay, Lesbian and Transgender) Amendment Act 2003 A2003-14 sch 1 pt 1.24**

notified LR 27 March 2003  
s 1, s 2 commenced 27 March 2003 (LA s 75 (1))  
pt 1.24 commenced 28 March 2003 (s 2)

### **Evidence (Miscellaneous Provisions) Amendment Act 2003 A2003-48 sch 2 pt 2.10**

notified LR 31 October 2003  
s 1, s 2 commenced 31 October 2003 (LA s 75 (1))  
sch 2 pt 2.10 commenced 30 April 2004 (s 2 and LA s 79)

### **Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.21**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
sch 1 pt 1.21 commenced 13 April 2004 (s 2 and see Annual Reports (Government Agencies) Act 2004 A2004-8, s 2 and CN2004-5)

### **Nurse Practitioners Legislation Amendment Act 2004 A2004-10 pt 4**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
pt 4 commenced 27 May 2004 (s 2 and CN2004-9)

### **Bail Amendment Act 2004 A2004-14 sch 2 pt 2.3**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.3 commenced 26 June 2004 (s 2)

### **Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 2 pt 2.56**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.56 commenced 9 April 2004 (s 2 (1))

### **Crimes Amendment Act 2004 A2004-16 pt 3**

notified LR 16 March 2004  
s 1, s 2 commenced 16 March 2004 (LA s 75 (1))  
pt 3 commenced 17 March 2004 (s 2)

**Health Professionals Legislation Amendment Act 2004 A2004-39  
sch 6 pt 6.7**

notified LR 8 July 2004

s 1, s 2 commenced 8 July 2004 (LA s 75 (1))

sch 6 pt 6.7 awaiting commencement (s 2 and see Health Professionals Act 2004 A2004-38, s 2)*Note* default commencement under s 2 (2): 8 July 2005**Mental Health (Treatment and Care) Amendment Act 2004 A2004-44**

notified LR 11 August 2004

s 1, s 2 commenced 11 August 2004 (LA s 75 (1))

remainder commenced 12 August 2004 (s 2)

**Court Procedures (Consequential Amendments) Act 2004 A2004-60  
sch 1 pt 1.55**

notified LR 2 September 2004

s 1, s 2 commenced 2 September 2004 (LA s 75 (1))

sch 1 pt 1.55 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

**Crimes Amendment Act 2005 A2005-7 pt 5**

notified LR 23 February 2005

s 1, s 2 commenced 23 February 2005 (LA s 75 (1))

pt 5 commenced 24 February 2005 (s 2)

**4 Amendment history****Title**

title am 1999 No 31 s 4

**Commencement**

s 2 om 2001 No 44 amdt 1.2866

**Application**

s 3 sub 1998 No 70 s 4

om 1999 No 31 s 5

**Definitions for Act**

s 4

def **approved health facility** am 2001 No 56 amdt 1.37def **approved mental health facility** am 2001 No 56  
amdt 1.38def **C&YP Act** ins 1999 No 64 sch 2def **C&YP chief executive** ins 1999 No 64 sch 2def **care coordinator** ins 1999 No 31 s 6

sub 1999 No 62 s 4; A2004-44 s 4

## Endnotes

4 Amendment history

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def **chief psychiatrist** ins 1999 No 31 s 6  
def **child** om 2000 No 2 sch  
def **Children's Services Act** om 1999 No 64 sch 2  
def **community advocate** om 2000 No 2 sch  
def **community care facility** ins 1999 No 31 s 6  
def **community care order** ins 1999 No 31 s 6  
sub A2004-44 s 5  
def **community member** ins 2000 No 2 sch  
def **council** om 1999 No 31 s 6  
def **deputy president** ins 2000 No 2 sch  
def **determined fee** om 2001 No 44 amdt 1.2867  
def **director** om 1999 No 31 s 6  
def **discrimination commissioner** om 2000 No 2 sch  
def **doctor** om 2000 No 2 sch  
def **lawyer** om 1997 No 96 sch 1  
def **member** ins 2000 No 2 sch  
def **mental health facility** am 1999 No 31 sch 1  
def **mental health nurse** sub A2004-39 amdt 6.9  
def **mental health order** am 1999 No 31 s 6  
sub A2004-44 s 6  
def **mental health professional** om 1999 No 31 sch 1  
def **mental health services member** ins 2000 No 2 sch  
def **mental illness** ins 1999 No 31 s 6  
def **mentally dysfunctional or mentally ill offender** am 1999  
No 31 sch 1; 1999 No 64 sch 2  
def **non-presidential member** ins 2000 No 2 sch  
def **official visitor** ins 1999 No 31 s 6  
def **presidential member** ins 2000 No 2 sch  
def **psychiatric illness** om 1999 No 31 s 6  
def **psychiatric institution** am 1996 No 35 sch; 1999 No 31  
sch  
sub 2002 No 47 amdt 1.18  
def **psychiatric treatment order** ins 1999 No 31 s 6  
sub A2004-44 s 7  
def **psychiatrist member** ins 2000 No 2 sch  
def **psychologist member** ins 2000 No 2 sch  
def **referring officer** am 1999 No 64 sch 2; A2004-14  
amdt 2.5  
def **registrar** sub 1999 No 66 sch 3  
def **relative** am A2003-14 amdt 1.79, amdt 1.80  
def **restriction order** ins 1999 No 31 s 6  
sub A2004-44 s 8  
def **spouse** om A2003-14 amdt 1.81

**Offences against Act—application of Criminal Code etc**  
s 4A ins A2004-10 s 8



**Persons not to be regarded as mentally dysfunctional**

s 5 pars renum R6 LA

**Objectives of Act**

s 7 am 1999 No 31 sch 1

**Objectives of Territory**

s 8 am 1996 No 35 sch; 1999 No 31 s 7 and sch 1; 2002 No 47  
amdt 1.19

**Maintenance of freedom, dignity and self-respect**

s 9 am 1999 No 31 sch 1; 2000 No 2 sch

**Functions**

s 11 am 1999 No 31 sch 1; A2005-7 s 21; pars renum R21 LA (see  
A2005-7 s 22)

**Powers**

s 12 am 2000 No 2 sch

**Registrar and deputy registrar**

s 12A ins 1999 No 66 sch 3  
om 2000 No 2 sch

**Applications and referrals**

div 4.1 hdg (prev pt 4 div 1 hdg) renum R3 LA

**Mentally dysfunctional or mentally ill persons entitled to apply**

s 13 hdg am 1999 No 31 notes  
s 13 am 1999 No 31 sch 1; 2001 No 44 amdt 1.2868

**Applications by other persons**

s 14 am 1999 No 31 s 8 and sch 1; 2001 No 44 amdt 1.2869,  
amdt 1.2870

**Referrals**

s 15 am 1999 No 31 sch 1; 1999 No 62 s 5

**Assessments**

div 4.2 hdg (prev pt 4 div 2 hdg) renum R3 LA

**Orders for assessment**

s 16 am 1999 No 31 sch 1; 1999 No 64 sch 2; A2004-44 s 9

**Determination of ability to consent**

s 16A ins 1999 No 31 s 9  
am A2004-44 s 10

**Assessments to be conducted as soon as practicable**

s 17 am 1999 No 31 s 10

**Contact with other persons**

s 19 am 1997 No 96 sch 1

## Endnotes

### 4 Amendment history

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**Community advocate and person's legal practitioner to have access**

s 20 hdg am 1997 No 96 note  
s 20 am 1997 No 96 sch 1

**Making of orders—preliminary matters**

div 4.3 hdg (prev pt 4 div 3 hdg) renum R3 LA  
sub A2004-44 s 11

**Tribunal must consider assessment**

s 23 sub A2004-44 s 11

**Tribunal must hold inquiry**

s 24 am 1999 No 31 sch 1  
sub A2004-44 s 11

**Consultation**

s 24A ins 1999 No 31 s 11  
am 1999 No 64 sch 2  
om A2004-44 s 11

**Consultation by tribunal etc**

s 25 am 1999 No 31 s 12 and sch 1; pars renum R6 LA  
sub A2004-44 s 11

**What tribunal must take into account**

s 26 sub 1999 No 31 s 13; A2004-44 s 11

**Tribunal may not order particular drugs etc**

s 27 sub 1999 No 31 s 13; A2004-44 s 11

**Psychiatric treatment orders**

div 4.4 hdg (prev pt 4 div 4 hdg) renum R3 LA  
ins 1999 No 62 s 8  
sub A2004-44 s 11

**Criteria for making psychiatric treatment order**

s 28 sub 1999 No 31 s 13  
am 1999 No 62 s 6  
sub A2004-44 s 11

**Content of psychiatric treatment order**

s 29 sub 1999 No 31 s 13; A2004-44 s 11

**Criteria for making restriction order**

s 30 am 1999 No 31 s 14, sch 1  
sub A2004-44 s 11

**Content of restriction order**

s 31 sub A2004-44 s 11

**Role of chief psychiatrist**

s 32 am 1999 No 31 s 15, sch 1; 1999 No 62 s 7; 2001 No 44 amdt 1.2871, amdt 1.2872  
sub A2004-44 s 11

**Contravention of mental health orders**

s 32A ins 1999 No 31 s 16  
om A2004-44 s 11

**Treatment to be explained**

s 33 am 1999 No 31 sch 1  
sub A2004-44 s 11

**Action if psychiatric treatment order no longer appropriate**

s 34 hdg am 1997 No 96 note  
s 34 am 1997 No 96 sch 1; 1999 No 31 sch 1  
sub A2004-44 s 11

**Powers in relation to detention, restraint etc**

s 35 hdg am 1999 No 31 notes  
s 35 am 1999 No 31 sch 1  
sub A2004-44 s 11

**Community care orders**

div 4.5 hdg ins A2004-44 s 11

**Criteria for making community care order**

s 36 am 1999 No 31 s 17 and sch 1  
sub A2004-44 s 11

**Content of community care order**

s 36A ins 1999 No 62 s 8  
sub A2004-44 s 11

**Criteria for making restriction order**

s 36B ins 1999 No 62 s 8  
sub A2004-44 s 11

**Content of restriction order**

s 36C ins A2004-44 s 11

**Role of care coordinator**

s 36D ins A2004-44 s 11

**Treatment to be explained**

s 36E ins A2004-44 s 11

**Action if community care order no longer appropriate**

s 36F ins A2004-44 s 11

**Powers in relation to detention, restraint etc**

s 36G ins A2004-44 s 11

## Endnotes

### 4 Amendment history

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#### **Limits on communication**

div 4.6 hdg ins A2004-44 s 11

#### **Limits on communication**

s 36H ins A2004-44 s 11

#### **Communication with community advocate and person's lawyer**

s 36I ins A2004-44 s 11

#### **Duration, contravention and review of orders**

div 4.7 hdg ins A2004-44 s 11

#### **Duration of orders**

s 36J ins A2004-44 s 11

#### **Contravention of psychiatric treatment order or community care order**

s 36K ins A2004-44 s 11

#### **Review, variation and revocation of orders**

s 36L ins A2004-44 s 11

#### **Apprehension**

s 37 am 1999 No 31 s 18; 2000 No 52 s 4; ss renum R6 LA

#### **Detention**

s 38 am 1999 No 31 s 19; 2000 No 52 s 5

#### **Circumstances in which copy of court order to be provided**

s 38A ins 1999 No 31 s 20

#### **Examination by doctor**

s 40 am 1999 No 31 s 21; 2000 No 52 s 6

#### **Authorisation of involuntary detention**

s 41 am 1999 No 31 s 22; 1999 No 62 s 9; 2001 No 44 amdots  
1.2873-1.2875

#### **Notification of Magistrates Court about emergency detention or release from emergency detention**

s 41A ins 1999 No 31 s 23

#### **Notification of certain persons about detention**

s 42 am 1998 No 54 sch; 1999 No 31 s 24

#### **Medical examination**

s 43 am 1999 No 31 s 25; 1999 No 62 s 10

#### **Treatment during detention**

s 44 am 1999 No 31 s 26

#### **Communication during detention**

s 45 am 1997 No. 96 sch 1; 1998 No 54 sch

**Orders for release**

s 46 am 1999 No 31 s 27 and sch 1

**Duty to release**

s 47 am 1998 No 54 sch; 1999 No 31 s 28

**Approved facilities**s 48 am 1999 No 31 s 29; 2001 No 44 amdt 1.2876, amdt 1.2877;  
2001 No 56 amdt 1.39; A2004-44 s 12, s 13**Interstate application of mental health laws**

pt 5A hdg ins 1997 No 104 s 4

**Preliminary**div 5A.1 hdg (prev pt 5A div 1 hdg) ins 1997 No 104 s 4  
renum R3 LA**Object of pt 5A**

s 48A ins 1997 No 104 s 4

**Definitions for pt 5A**s 48B ins 1997 No 104 s 4  
def **agreement** ins 1997 No 104 s 4  
def **corresponding law** ins 1997 No 104 s 4  
def **custodial order** ins 1997 No 104 s 4  
am 1999 No 31 sch 1  
sub A2004-44 s 14  
def **interstate custodial patient** ins 1997 No 104 s 4  
def **interstate non-custodial order** ins 1997 No 104 s 4  
def **non-custodial order** ins 1997 No 104 s 4  
def **State** ins 1997 No 104 s 4**Authority to enter into agreements**

s 48C ins 1997 No 104 s 4

**Recognition of interstate laws and orders**

s 48D ins 1997 No 104 s 4

**Territory officers may exercise functions under corresponding laws**

s 48E ins 1997 No 104 s 4

**Transfer of persons from ACT**div 5A.1 hdg (prev pt 5A div 2 hdg) ins 1997 No 104 s 4  
renum R3 LA**Emergency admission of persons to health facilities in other States**

s 48F ins 1997 No 104 s 4

**Transfer of custodial patients from ACT**

s 48G ins 1997 No 104 s 4

**Application of Act to persons transferred interstate**

s 48H ins 1997 No 104 s 4

## Endnotes

### 4 Amendment history

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#### **Transfer of persons to ACT**

div 5A.3 hdg (prev pt 5A div 3 hdg) ins 1997 No 104 s 4  
renum R3 LA

#### **Emergency admission of interstate persons to approved health facilities**

s 48I ins 1997 No 104 s 4

#### **Application of Act to persons detained under s 48I**

s 48J ins 1997 No 104 s 4

#### **Transfer of interstate custodial patients to health facilities in ACT**

s 48K ins 1997 No 104 s 4

#### **Application of Act to persons transferred to ACT under s 48K**

s 48L ins 1997 No 104 s 4

#### **Non-custodial orders and interstate non-custodial orders**

div 5A.4 hdg (prev pt 5A div 4 hdg) ins 1997 No 104 s 4  
renum R3 LA

#### **Non-custodial orders relating to interstate persons**

s 48M ins 1997 No 104 s 4

#### **Orders relating to ACT residents**

s 48N ins 1997 No 104 s 4  
am 2000 No 2 sch

#### **Apprehension of persons absent from custody or in breach of orders**

div 5A.5 hdg (prev pt 5A div 5 hdg) ins 1997 No 104 s 4  
renum R3 LA

#### **Recognition of apprehension orders**

s 48P ins 1997 No 104 s 4

#### **Apprehension of interstate persons absent without leave or in breach of orders**

s 48Q ins 1997 No 104 s 4

#### **Regulations relating to apprehension of persons**

s 48R ins 1997 No 104 s 4

#### **Rights of mentally dysfunctional or mentally ill persons**

pt 6 hdg am 1999 No 31 s 30

#### **Meaning of *responsible person***

s 49 am 2002 No 47 amdt 1.21  
def ***responsible person*** am 1996 No 35 sch; 1999 No 31  
sch 1; 2002 No 47 amdt 1.20; A2004-44 s 15

#### **Statement of rights**

s 50 am A2004-44 s 16

**Information to be provided**

s 51 am 1999 No 31 sch 1; A2004-44 s 17, s 18; pars renum  
R19 LA (see A2004-44 s 19)

**Communication**

s 52 am 1999 No 31 sch 1; A2004-44 s 20

**Failure by owner to comply**

s 53 am 1996 No 35 sch; 1998 No 54 sch; 2002 No 47 amdt 1.22

**Consent**

div 7.1 hdg (prev pt 7 div 1 hdg) renum R3 LA

**Convulsive therapy**

div 7.2 hdg (prev pt 7 div 2 hdg) renum R3 LA

**Restriction on use**

s 55 am 1998 No 54 sch; 1999 No 31 s 31 and sch 1; A2004-44  
s 21

**Withdrawal of consent**

s 56 am 1998 No 54 sch

**Therapy to be recorded**

s 57 am 1998 No 54 sch

**Records to be kept for 5 years**

s 58 am 1998 No 54 sch

**Psychiatric surgery**

div 7.3 hdg (prev pt 7 div 3 hdg) renum R3 LA

**Approval and consent required**

s 60 am 1998 No 54 sch; 1999 No 31 sch 1

**Application for approval**

s 61 am 1999 No 31 sch 1

**Application to be considered by committee**

s 62 am 1999 No 31 sch 1

**Chief psychiatrist may require further information**

s 63 hdg am 1999 No 31 notes

s 63 am 1999 No 31 sch 1

**Chief psychiatrist to act on committee's recommendation**

s 64 hdg am 1999 No 31 notes

s 64 am 1999 No 31 sch 1

**Consent of Supreme Court**

s 65 am 1999 No 31 sch 1

**Refusal of surgery**

s 66 am 1998 No 54 sch; 1999 No 31 sch 1

## Endnotes

### 4 Amendment history

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#### **Committees**

s 67 am 1997 No 96 sch 1

#### **Referrals by courts under Crimes Act and C&YP Act**

pt 8 hdg am 1999 No 64 sch 2

#### **Review of certain people found unfit to plead**

s 68 am 1997 No 96 sch 1; 1999 No 31 s 32; 2000 No 2 sch;  
ss renum R6 LA  
sub A2005-7 s 23  
def **order to determine fitness** am 1999 No 31 s 32  
om A2005-7 s 23  
def **relevant court** ins 2000 No 2 sch  
om A2005-7 s 23

#### **Review of people temporarily unfit to plead**

s 69 sub A2004-16 s 18  
om A2005-7 s 23

#### **Review of certain other people found unfit to plead**

s 69A ins A2004-16 s 18  
(7)-(9) exp 17 June 2004 (s 69A (9))  
om A2005-7 s 23

#### **Recommendations about mentally dysfunctional or mentally ill persons**

s 70 hdg am 1999 No 31 notes  
s 70 am 1999 No 31 sch 1; 1999 No 64 sch 2

#### **Service of decisions etc**

s 71 am 1999 No 64 sch 2; A2004-16 s 19  
sub A2005-7 s 24

#### **Periodic review of orders for detention**

s 72 am 1999 No 31 sch 1  
def **order for detention** am 1999 No 31 s 33

#### **Limit on detention**

s 75 am 1999 No 31 s 34

#### **Tribunal members**

div 9.1 hdg (prev pt 9 div 1 hdg) sub 2000 No 2 sch  
renum R3 LA

#### **Membership of tribunal**

s 76 am 1997 No 96 sch 1; 1999 No 31 s 35 and sch 1  
sub 2000 No 2 s 3 sch

#### **Presidential members**

s 77 am 1999 No 31 s 36  
sub 2000 No 2 sch



**Non-presidential members**

s 78 sub 2000 No 2 sch

**Terms of appointment generally**

s 79 sub 2000 No 2 sch

**Matters to be included in instrument of appointment etc**

s 80 sub 2000 No 2 sch

**Duration of appointment**

s 81 sub 2000 No 2 sch  
am A2004-44 s 22

**Registrar and deputy registrars**

div 9.2 hdg prev pt 9 div 2 hdg renum as pt 9 div 4 hdg  
ins 2000 No 2 sch  
renum R3 LA

**Registrar and deputy registrars of tribunal**

s 82 sub 2000 No 2 sch

**Other provisions about the tribunal**

div 9.3hdg (prev pt 9 div 3 hdg) ins 2000 No 2 sch  
renum R3 LA

**Constitution for exercise of powers**

s 83 sub 2000 No 2 sch  
am A2004-44 s 23; A2004-60 amdt 1.594; A2005-7 s 25; pars  
renum R21 LA (see A2005-7 s 26)

**Role of president**

s 84 sub 2000 No 2 sch

**Deciding questions**

s 85 am 1998 No 54 sch  
sub 2000 No 2 sch

**Protection of members etc**

s 86 om 1995 No 25 sch  
ins 2000 No 2 sch

**Secrecy**

s 86A ins 2000 No 2 sch

**Procedural matters**

div 9.4 hdg (prev pt 9 div 2 hdg) renum 2000 No 2 sch  
renum R3 LA

**Lodgment of applications**

s 87 am 1999 No 64 sch 2

**Sittings**

s 88 sub 2000 No 2 sch

## Endnotes

### 4 Amendment history

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#### **Appearance, representation and use of interpreters**

s 89 am 1996 No 35 sch; 1997 No 96 sch 1; 1999 No 31 sch 1; 1999 No 64 sch 2; pars renum R6 LA; 2002 No 47 amdt 1.23, amdt 1.24; pars renum R9 LA (see 2002 No 47 amdt 1.25)

#### **Summons to appear in person**

s 90 am 1997 No 96 sch 1; 1999 No 22 s 30; 1999 No 31 sch 1; 1999 No 64 sch 2; 2000 No 17 sch 1; 2001 No 44 amdt 1.2878, amdt 1.2879; 2001 No 44 amdt 1.2880 (as am by 2001 No 70 amdt 1.13); A2003-48 amdt 2.13

#### **Person summoned in custody**

s 91 am 1999 No 22 s 31

#### **Appearance by audiovisual or audio links**

s 91A ins 1999 No 22 s 32  
am 2000 No 17 sch 1; A2003-48 amdt 2.14

#### **Arrest of persons failing to appear**

s 92 am 2000 No 2 sch

#### **Directions to registrar**

s 93 am 2000 No 2 sch

#### **Notice of proceedings**

s 94 am 1996 No 35 sch; 1999 No 31 sch 1; 1999 No 64 sch 2; pars renum R6 LA; 2002 No 47 amdt 1.26, amdt 1.27; pars renum R9 LA (see 2002 No 47 amdt 1.28); A2004-44 s 24; pars renum R19 LA (see A2004-44 s 25)

#### **Evidence**

s 97 am 2000 No 2 sch

#### **Determination of questions**

s 99 am 1999 No 31 sch 1  
om 2000 No 2 sch

#### **Assistance for tribunal**

s 100 am 1997 No 96 sch 1

#### **Power to obtain information and documents**

s 101 am 1998 No 54 sch; 2000 No 2 sch

#### **Retention of documents**

s 102 am 2000 No 2 sch

#### **Consultation**

s 103 om 1999 No 31 s 37

#### **Service of orders**

s 105 am A2004-44 s 26; pars renum R19 LA (see A2004-44 s 27)

**Breach of orders**

s 107 am 2000 No 2 sch

**Obtaining reasons for decisions**

s 108 am 2000 No 2 sch

**Contempt of tribunal**

s 111 am 1998 No 54 sch; 2000 No 2 sch

**Chief psychiatrist and mental health officers**

pt 10 hdg am 1999 No 31 s 38

**Chief psychiatrist**

s 112 am 1996 No 35 sch; 1999 No 31 s 39  
sub 2002 No 47 amdt 1.29

**Functions**

s 113 am 1999 No 31 s 40, sch 1; pars renum R6 LA

**Terms of appointment**

s 114 am 1999 No 31 sch 1  
om 2002 No 47 amdt 1.30

**Resignation**

s 115 am 1999 No 31 sch 1  
om 2002 No 47 amdt 1.30

**Termination of appointment**

s 116 am 1999 No 31 sch 1

**Acting appointments**

s 117 am 1999 No 31 sch 1  
om 2002 No 47 amdt 1.30

**Delegation by chief psychiatrist**

s 118 am 1996 No 35 sch; 1999 No 31 sch 1  
sub 2002 No 47 amdt 1.31

**Mental health officers**

s 119 am 1999 No 31 s 41, sch 1  
sub A2004-10 s 9

**Functions of mental health officers**

s 119A ins A2004-10 s 9

**Identity cards for mental health officers**

s 119B ins A2004-10 s 9

**Chief psychiatrist's annual report**

s 120 hdg am 1999 No 31 notes  
s 120 sub 1995 No 25 sch  
am 1999 No 31 sch 1  
sub A2004-9 amdt 1.29

## Endnotes

### 4 Amendment history

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- Care coordinator**  
pt 10A hdg ins A2004-44 s 28
- Care coordinator**  
s 120A ins A2004-44 s 28
- Functions**  
s 120B ins A2004-44 s 28
- Termination of appointment**  
s 120C ins A2004-44 s 28
- Delegation by care coordinator**  
s 120D ins A2004-44 s 28
- Care coordinator's annual report**  
s 120E ins A2004-44 s 28
- Official visitors**  
pt 11 hdg sub 1999 No 31 s 42
- Appointment etc**  
s 121 sub 1999 No 31 s 42  
am 2002 No 30 amdt 3.599
- Official visitor—functions and duties**  
s 122 sub 1999 No 31 s 42
- Official visitor—powers etc**  
s 122A ins 1999 No 31 s 42  
am 2000 No 2 sch; 2001 No 44 amdt 1.2881, amdt 1.2882
- Reports by official visitors**  
s 122B ins 1999 No 31 s 42  
am 2000 No 2 sch
- Interpretation**  
div 12.1 hdg (prev pt 12 div 1 hdg) renum R3 LA
- Definitions for pt 12**  
s 123 def *psychiatric institution* am 1996 No 35 sch; 1999 No 31  
s 43; 2002 No 47 amdt 1.32
- Licences**  
div 12.2 hdg (prev pt 12 div 2 hdg) renum R3 LA
- Owner or manager to be licensed**  
s 124 am 1998 No 54 sch
- Issue of licence**  
s 125 am 2001 No 44 amdt 1.2883, amdt 1.2884
- Term and renewal of licence**  
s 126 am 2001 No 44 amdt 1.2885, amdt 1.2886

**Emergency cancellation**

s 130 am 1999 No 31 sch 1

**Effect of cancellation**

s 131 am 1998 No 54 sch

**Inspectors**

div 12.3hdg (prev pt 12 div 3 hdg) renum R3 LA

**Appointment**

s 132 am 1999 No 31 sch 1

**Identity cards**

s 133 am 1998 No 54 sch

**Failing to comply with requirement of inspector**

s 135 hdg sub A2004-15 amdt 2.122

s 135 am 1998 No 54 sch; A2004-15 amdt 2.123, amdt 2.124

**Review of decisions**

div 12.4 hdg (prev pt 12 div 4 hdg) renum R3 LA

**Miscellaneous**

div 12.5 hdg (prev pt 12 div 5 hdg) renum R3 LA

**Unauthorised treatment**

s 138 am 1998 No 54 sch; 1999 No 31 sch 1

**Service of documents**

s 139 om 2001 No 56 amdt 1.40

**Appeals from decisions of tribunal**

s 141 am 2002 No 33 s 4; A2004-60 amdt 1.595

**Relationship with Guardianship and Management of Property Act**

s 142 am 2001 No 70 amdt 1.68  
sub A2004-44 s 29

**Relationship with Powers of Attorney Act**

s 143 am 2001 No 70 amdt 1.68  
sub A2004-44 s 29

**Relationship with Mental Health Act 1962**

s 144 om 2002 No 49 amdt 3.99

**Determination of fees**

s 146 sub 2001 No 44 amdt 1.2887

**Approved forms**

s 146A ins 1999 No 31 s 44  
sub 2001 No 44 amdt 1.2887

**Regulation-making power**

s 147 sub 2001 No 44 amdt 1.2887

## Endnotes

### 5 Earlier republications

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#### **Transitional**

pt 14 hdg ins 1999 No 31 s 45  
om R5 LA  
ins A2005-7 s 27  
exp 24 May 2005 (s 149)

#### **Application of amendments made by Crimes Amendment Act 2005**

s 148 ins 1999 No 31 s 45  
exp 1 October 2001 (s 148 (4))  
ins A2005-7 s 27  
exp 24 May 2005 (s 149)

#### **Expiry of pt 14**

s 149 ins 2000 No 2 s 3 sch  
exp 9 June 2000 (s 149 (7))  
ins A2005-7 s 27  
exp 24 May 2005 (s 149)

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Act 1997 No 104	1 June 1998
2	Act 1999 No 66	10 November 1999
3	Act 2001 No 56	12 September 2001
4	Act 2001 No 70	19 October 2001
5	Act 2001 No 70	19 October 2001
6	Act 2001 No 70	28 February 2002
7	Act 2002 No 30	8 October 2002
8	Act 2002 No 33	9 October 2002
9	Act 2002 No 47	31 December 2002
10	Act 2002 No 49	17 January 2003

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<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
11*	A2003-14	28 March 2003
12	A2004-16	17 March 2004
13	A2004-16	9 April 2004
14	A2004-16	13 April 2004
15	A2004-16	30 April 2004
16	A2004-16	27 May 2004
17	A2004-16	18 June 2004
18	A2004-16	26 June 2004
19*	A2004-44	12 August 2004
20	A2004-60	10 January 2005
21	A2005-7	24 February 2005

## Endnotes

6 Uncommenced amendments

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### 6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

<p><b>Health Professionals Legislation Amendment Act 2004 A2004-39 sch 6 pt 6.7</b></p>
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## Part 6.7 Mental Health (Treatment and Care) Act 1994

### [6.9] Section 4, definition of *mental health nurse*

*substitute*

***mental health nurse*** means a person registered as a nurse under the *Health Professionals Act 2004* in the specialist area of mental health nurse.

*Note* Under the *Mutual Recognition Act 1992* (Cwlth), s 25 people registered as nurses in a specialty in a State may be deemed to be registered in the specialty in the ACT.

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