

# Mental Health Act 2007 No 8

[2007-8]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
  - [Courts and Crimes Legislation Further Amendment Act 2008 No 107](#) (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#) (not commenced — to commence on 17.7.2009)

### Authorisation

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# Mental Health Act 2007 No 8



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# Mental Health Act 2007 No 8



New South Wales

An Act to make provision with respect to the care, treatment and control of mentally ill and mentally disordered persons and other matters relating to mental health; and for other purposes.

## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Mental Health Act 2007*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are:

- (a) to provide for the care, treatment and control of persons who are mentally ill or mentally disordered, and
- (b) to facilitate the care, treatment and control of those persons through community care facilities, and
- (c) to facilitate the provision of hospital care for those persons on a voluntary basis where appropriate and, in a limited number of situations, on an involuntary basis, and
- (d) while protecting the civil rights of those persons, to give an opportunity for those persons to have access to appropriate care, and
- (e) to facilitate the involvement of those persons, and persons caring for them, in decisions involving appropriate care, treatment and control.

#### Note—

See also section 68 which contains principles for care and treatment and section 105 which sets out objectives for the New South Wales public health system.

#### 4 Definitions

(1) In this Act:

**accredited person** means a person accredited under section 136.

**ambulance officer** means a member of staff of the NSW Health Service who is authorised by the Director-General to exercise functions of an ambulance officer under this Act.

**assessable person**—see section 17.

**authorised medical officer** of a mental health facility means:

- (a) the medical superintendent of the mental health facility, or
- (b) a medical officer, nominated by the medical superintendent for the purposes of this Act, attached to the mental health facility concerned.

**community treatment order** means a community treatment order in force under Part 3 of Chapter 3.

**correctional patient** has the same meaning as it has in the [Mental Health \(Forensic Provisions\) Act 1990](#).

**Court** means the Supreme Court.

**declared mental health facility** means premises subject to an order in force under section 109.

**Deputy President** means a person appointed as a Deputy President of the Tribunal.

**determination of the Tribunal** includes an order, direction or decision of the Tribunal.

**Director-General** means the Director-General of the Department of Health.

**director of community treatment**—see section 50.

**exercise** a function includes perform a duty.

**forensic patient** has the same meaning as it has in the [Mental Health \(Forensic Provisions\) Act 1990](#).

**function** includes a power, authority or duty.

**guardian**, in relation to the exercise of any function under this Act by the guardian of a person under guardianship, means a guardian who is able to exercise that function.

**involuntary patient** means:

- (a) a person who is ordered to be detained as an involuntary patient by a Magistrate after a mental health inquiry or by the Tribunal, or
- (b) a forensic patient who is re-classified as an involuntary patient.

**medical superintendent:**

- (a) of a declared mental health facility, means the medical practitioner appointed, under section 111, as medical superintendent of the facility, or
- (b) of a private mental health facility, means the medical practitioner appointed, under section 124, as medical superintendent of the facility.

**mental health certificate**—see section 17.

**mental health facility** means a declared mental health facility or a private mental health facility.

**mental health inquiry** means an inquiry conducted by a Magistrate under Division 3 of Part 2 of Chapter 3.

**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 one or more 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 any one or more of the symptoms referred to in paragraphs (a)–(d).

**mentally disordered person**—see section 15.

**mentally ill person**—see section 14.

**parent**, of a child, means any person having parental responsibility (within the meaning of the [Children and Young Persons \(Care and Protection\) Act 1998](#)) for the child.

**patient** means a person who is admitted to a mental health facility in accordance with this Act and who is in the facility following the person's admission, and includes a person so admitted while absent from the facility either with or without leave of absence.

**person under guardianship** means a person under guardianship within the meaning of the [Guardianship Act 1987](#).

**premises** includes any land, building and part of any building.

**President** means the President of the Tribunal.

**primary carer**—see section 71.

**private mental health facility** means premises subject to a licence under Division 2 of Part 2 of Chapter 5.

**spouse** means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the [Property \(Relationships\) Act 1984](#),

but where more than one person would qualify as a spouse, means only the last person to so qualify.

**surgical operation**—see section 98.

**Tribunal** means the Mental Health Review Tribunal constituted under Chapter 6.

**voluntary patient** means:

- (a) a person who has been admitted to a mental health facility under Chapter 2, or
- (b) a person who has been re-classified as a voluntary patient under this Act.

(2) Notes included in this Act (other than in Schedule 1) do not form part of this Act.

## Chapter 2 Voluntary admission to facilities

### 5 Admission on own request

- (1) A person may be admitted to a mental health facility as a voluntary patient.
- (2) An authorised medical officer may refuse to admit a person to a mental health facility as a voluntary patient if the officer is not satisfied that the person is likely to benefit from care or treatment as a voluntary patient.
- (3) A person may be admitted to a mental health facility as a voluntary patient whether or not the person is a mentally ill person or a mentally disordered person.

### 6 Voluntary admission of children (cf 1990 Act, ss 13–15)

- (1) An authorised medical officer must, as soon as practicable after admitting a person

under the age of 16 years as a voluntary patient, take all reasonably practicable steps to notify a parent of the person of the admission.

- (2) An authorised medical officer must discharge a person of 14 or 15 years of age who has been admitted as a voluntary patient if a parent of the person objects to the admission to the officer, unless the person elects to continue as a voluntary patient.
- (3) A person under the age of 14 years must not be admitted as a voluntary patient if a parent of the person objects to the admission to an authorised medical officer.
- (4) An authorised medical officer must discharge a person under the age of 14 years who has been admitted as a voluntary patient if a parent of the person requests that the person be discharged.

**7 Voluntary admission of persons under guardianship** (cf 1990 Act, s 16)

- (1) A person under guardianship may be admitted to a mental health facility as a voluntary patient if the guardian of the person makes a request to an authorised medical officer.
- (2) A person under guardianship must not be admitted as a voluntary patient if the person's guardian objects to the admission to the authorised medical officer.
- (3) An authorised medical officer must discharge a person under guardianship who has been admitted as a voluntary patient if the person's guardian requests that the person be discharged.

**8 Discharge of voluntary patients** (cf 1990 Act, s 65)

- (1) An authorised medical officer may discharge a voluntary patient at any time if the officer is of the opinion that the patient is not likely to benefit from further care or treatment as a voluntary patient.
- (2) A voluntary patient may discharge himself or herself from or leave a mental health facility at any time.
- (3) An authorised medical officer must give notice of the discharge of a voluntary patient who is a person under guardianship to the person's guardian.

**Note—**

Section 79 provides for appropriate information relating to follow-up care to be provided to patients being discharged.

**9 Review of voluntary patients** (cf 1990 Act, s 63)

- (1) The Tribunal must review, at least once every 12 months, the case of each voluntary patient who has been receiving care or treatment, or both, as a voluntary patient in a mental health facility for a continuous period of more than 12 months.



- (2) In addition to any other matters it considers on a review, the Tribunal is to consider whether the patient consents to continue as a voluntary patient.
- (3) The Tribunal may on a review order the discharge of the patient from the mental health facility.
- (4) The Tribunal may defer the operation of an order for the discharge of a patient for a period of up to 14 days, if the Tribunal thinks it is in the best interests of the patient to do so.
- (5) The medical superintendent of a mental health facility must notify the Tribunal of the name of any voluntary patient whose case the Tribunal is required to review.

**10 Detention of voluntary patients in mental health facilities** (cf 1990 Act, s 18A)

- (1) An authorised medical officer may cause a voluntary patient to be detained in a mental health facility under Part 2 of Chapter 3 if the officer considers the person to be a mentally ill person or a mentally disordered person.
- (2) Any such patient is taken to have been detained in the facility under section 19 when the authorised medical officer takes action to detain the patient.

**11 Review of decisions made by authorised medical officer to refuse admission or discharge voluntary patient** (cf 1990 Act, s 19)

- (1) This section applies to a decision made under this Chapter by an authorised medical officer (other than a medical superintendent) to refuse a person admission to a mental health facility as a voluntary patient or to discharge a person as a voluntary patient.
- (2) The person affected by a decision may apply to the medical superintendent for a review of the decision.
- (3) The medical superintendent must review a decision as soon as practicable after receiving an application for its review and may confirm the decision, admit or discharge the person as a voluntary patient or take any other action under this Act that the medical superintendent thinks fit.

## **Chapter 3 Involuntary admission and treatment in and outside facilities**

### **Part 1 Requirements for involuntary admission, detention and treatment**

**12 General restrictions on detention of persons**

- (1) A patient or other person must not be involuntarily admitted to, or detained in or continue to be detained in, a mental health facility unless an authorised medical officer is of the opinion that:

- (a) the person is a mentally ill person or a mentally disordered person, and
  - (b) no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person.
- (2) If an authorised medical officer is not of that opinion about a patient or other person at a mental health facility, the officer must refuse to detain, and must not continue to detain, the person.
- (3) An authorised medical officer may, immediately on discharging a patient or person who has been detained in a mental health facility, admit that person as a voluntary patient.

**13 Criteria for involuntary admission etc as mentally ill person or mentally disordered person** (cf 1990 Act, s 8)

A person is a mentally ill person or a mentally disordered person for the purpose of:

- (a) the involuntary admission of the person to a mental health facility or the detention of the person in a facility under this Act, or
- (b) determining whether the person should be subject to a community treatment order or be detained or continue to be detained involuntarily in a mental health facility,

if, and only if, the person satisfies the relevant criteria set out in this Part.

**14 Mentally ill persons** (cf 1990 Act, s 9)

- (1) A person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary:
- (a) for the person's own protection from serious harm, or
  - (b) for the protection of others from serious harm.
- (2) In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration, are to be taken into account.

**15 Mentally disordered persons** (cf 1990 Act, s 10)

A person (whether or not the person is suffering from mental illness) is a mentally disordered person if the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:

- (a) for the person's own protection from serious physical harm, or
- (b) for the protection of others from serious physical harm.

**16 Certain words or conduct may not indicate mental illness or disorder** (cf 1990 Act, s 11)

- (1) A person is not a mentally ill person or a mentally disordered person merely because of any one or more of the following:
  - (a) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular political opinion or belief,
  - (b) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular religious opinion or belief,
  - (c) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular philosophy,
  - (d) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular sexual preference or sexual orientation,
  - (e) the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular political activity,
  - (f) the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular religious activity,
  - (g) the person engages in or has engaged in a particular sexual activity or sexual promiscuity,
  - (h) the person engages in or has engaged in immoral conduct,
  - (i) the person engages in or has engaged in illegal conduct,
  - (j) the person has developmental disability of mind,
  - (k) the person takes or has taken alcohol or any other drug,
  - (l) the person engages in or has engaged in anti-social behaviour,
  - (m) the person has a particular economic or social status or is a member of a particular cultural or racial group.
- (2) Nothing in this Part prevents, in relation to a person who takes or has taken alcohol or any other drug, the serious or permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication that a person is suffering from mental illness or other condition of disability of mind.

## **Part 2 Involuntary detention and treatment in mental health facilities**

### **Division 1 Preliminary**

#### **17 Definitions**

In this Part:

**assessable person** means a person detained in a declared mental health facility for whom a mental health inquiry is required to be held under this Part.

**mental health certificate** means a certificate given under section 19.

### **Division 2 Admission to and initial detention in mental health facilities**

#### **18 When a person may be detained in mental health facility**

- (1) A person may be detained in a declared mental health facility in the following circumstances:
  - (a) on a mental health certificate given by a medical practitioner or accredited person (see section 19),
  - (b) after being brought to the facility by an ambulance officer (see section 20),
  - (c) after being apprehended by a police officer (see section 22),
  - (d) after an order for an examination and an examination or observation by a medical practitioner or accredited person (see section 23),
  - (e) on the order of a Magistrate or bail officer (see section 24),
  - (f) after a transfer from another health facility (see section 25),
  - (g) on a written request made to the authorised medical officer by a primary carer, relative or friend of the person (see section 26).
- (2) A person may be detained, under a provision of this Part, in a health facility that is not a declared mental health facility if it is necessary to do so to provide medical treatment or care to the person for a condition or illness other than a mental illness or other mental condition.
- (3) In this Act, a reference to taking to and detaining in a mental health facility includes, in relation to a person who is at a mental health facility, but not detained in the mental health facility in accordance with this Act, the detaining of the person in the mental health facility.

**Note—**

A person taken to and detained in a mental health facility must be provided with certain information, including a

statement of the person's rights (see section 74).

**19 Detention on certificate of medical practitioner or accredited person** (cf 1990 Act, s 21)

- (1) A person may be taken to and detained in a declared mental health facility on the basis of a certificate about the person's condition issued by a medical practitioner or accredited person. The certificate is to be in the form set out in Part 1 of Schedule 1.
- (2) A mental health certificate may be given about a person only if the medical practitioner or accredited person:
  - (a) has personally examined or observed the person's condition immediately before or shortly before completing the certificate, and
  - (b) is of the opinion that the person is a mentally ill person or a mentally disordered person, and
  - (c) is satisfied that no other appropriate means for dealing with the person is reasonably available, and that involuntary admission and detention are necessary, and
  - (d) is not the primary carer or a near relative of the person.
- (3) A mental health certificate may contain a police assistance endorsement that police assistance is required if the person giving the certificate is of the opinion that there are serious concerns relating to the safety of the person or other persons if the person is taken to a mental health facility without the assistance of a police officer. The endorsement is to be in the form set out in Part 2 of Schedule 1.
- (4) A mental health certificate may not be used to admit or detain a person in a facility:
  - (a) in the case of a person certified to be a mentally ill person, more than 5 days after it is given, or
  - (b) in the case of a person certified to be a mentally disordered person, more than one day after it is given.
- (5) In this section:

**near relative** of a person means a parent, brother, sister, child or spouse of the person and any other person prescribed for the purposes of this definition.

**20 Detention on information of ambulance officer**

- (1) An ambulance officer who provides ambulance services in relation to a person may take the person to a declared mental health facility if the officer believes on reasonable grounds that the person appears to be mentally ill or mentally disturbed and that it would be beneficial to the person's welfare to be dealt with in accordance with this Act.

- (2) An ambulance officer may request police assistance if of the opinion that there are serious concerns relating to the safety of the person or other persons if the person is taken to a mental health facility without the assistance of a police officer.

## **21 Police assistance**

- (1) A police officer to whose notice a police assistance endorsement on a mental health certificate, or a request for assistance by an ambulance officer under this Division, is brought must, if practicable:
  - (a) apprehend and take or assist in taking the person the subject of the certificate or request to a declared mental health facility, or
  - (b) cause or make arrangements for some other police officer to do so.
- (2) A police officer may enter premises to apprehend a person under this section, and may apprehend any such person, without a warrant and may exercise any powers conferred by section 81 on a person who is authorised under that section to take a person to a mental health facility or another health facility.

### **Note—**

Section 81 sets out the persons who may take a person to a mental health facility and their powers when doing so.

## **22 Detention after apprehension by police** (cf 1990 Act, s 24)

- (1) A police officer who, in any place, finds a person who appears to be mentally ill or mentally disturbed may apprehend the person and take the person to a declared mental health facility if the officer believes on reasonable grounds that:
  - (a) the person is committing or has recently committed an offence or that the person has recently attempted to kill himself or herself or that it is probable that the person will attempt to kill himself or herself or any other person or attempt to cause serious physical harm to himself or herself or any other person, and
  - (b) it would be beneficial to the person's welfare to be dealt with in accordance with this Act, rather than otherwise in accordance with law.
- (2) A police officer may apprehend a person under this section without a warrant and may exercise any powers conferred by section 81 on a person who is authorised under that section to take a person to a mental health facility or another health facility.

## **23 Detention after order for medical examination or observation** (cf 1990 Act, s 27)

- (1) A Magistrate or authorised officer may, by order, authorise a medical practitioner or accredited person to visit and to personally examine or personally observe a person to ascertain whether a mental health certificate should be issued for the person.
- (2) An order may be made if the Magistrate or officer is satisfied, by evidence on oath,

that:

- (a) the person may be a mentally ill person or a mentally disordered person, and
  - (b) because of physical inaccessibility, the person could not otherwise be personally examined or personally observed.
- (3) The order may also authorise any other person (including a police officer) who may be required to assist the medical practitioner or accredited person to accompany the medical practitioner or accredited person.
  - (4) A person authorised to visit a person or accompany another person may enter premises, if need be by force, in order to enable the examination or observation to be carried out.
  - (5) A person who is examined or observed under this section may be detained in accordance with section 19.
  - (6) A person who takes action under an order must, as soon as practicable after taking the action, notify the person who made the order in writing of the action.
  - (7) In this section:

**authorised officer** means an authorised officer within the meaning of the *Criminal Procedure Act 1986*.

#### **24 Detention on order of Magistrate or bail officer** (cf 1990 Act, s 25)

A person may be taken to and detained in a declared mental health facility in accordance with an order made under section 33 of the *Mental Health (Forensic Provisions) Act 1990*.

#### **25 Detention after transfer from another health facility**

- (1) A person may be transferred from a health facility to a declared mental health facility and detained in the mental health facility if a medical officer of the health facility, or the authorised medical officer of the mental health facility, considers the person to be a mentally ill person or a mentally disordered person.
- (2) Any such person is taken to have been detained in the declared mental health facility under section 19 when the person is transferred to the facility.

#### **26 Detention on request of primary carer, relative or friend** (cf 1990 Act, s 23)

- (1) A person may be detained in a declared mental health facility on a written request made to the authorised medical officer by the primary carer or a relative or friend of the person.
- (2) An authorised medical officer must not detain any such person unless the officer is satisfied that, because of the distance required in order for the person to be examined

and the urgency of the circumstances, it is not reasonably practicable to have the person detained on the basis of a mental health certificate.

## **27 Steps for medical examination requirements for ongoing detention in mental health facility**

The following steps must be taken in relation to a person who is detained in a mental health facility under this Division:

### **(a) Step 1 Initial examination by authorised medical officer**

An authorised medical officer must examine the person as soon as practicable (but not later than 12 hours) after the person arrives at the facility or after the person is detained after being a voluntary patient.

The person must not be detained after the examination unless the officer certifies that, in the officer's opinion, the person is a mentally ill person or a mentally disordered person.

### **(b) Step 2 Examination by second medical practitioner**

The authorised medical officer must cause the person to be examined by another medical practitioner as soon as possible after giving the certificate in step 1. The second examiner must be a psychiatrist if the authorised medical officer is not a psychiatrist.

The second examiner must notify the authorised medical officer in the form prescribed by the regulations if of the opinion that the person is a mentally ill person or a mentally disordered person or if not able to form such an opinion.

### **(c) Step 3 Examination by third medical practitioner if second examiner does not find person to be mentally ill or mentally disordered**

If the second examiner is not of the opinion that the person is a mentally ill person or a mentally disordered person, the authorised medical officer must cause the person to be examined by a medical practitioner who is a psychiatrist, as soon as practicable after being notified of that opinion.

The third examiner must notify the authorised medical officer in the form prescribed by the regulations if of the opinion that the person is a mentally ill person or a mentally disordered person.

### **(d) Step 4 Mental health inquiry or discharge**

An authorised medical officer must bring the person before a Magistrate for a mental health inquiry if:

- (i) the person is found to be a mentally ill person by an authorised medical officer on initial examination in step 1, and to be a mentally ill person or a mentally



disordered person on examination in step 2 or step 3, or

- (ii) the person is found to be a mentally disordered person by an authorised medical officer on initial examination in step 1, and to be a mentally ill person on examination in step 2 or step 3.

The person must be brought before a Magistrate as soon as practicable after the authorised medical officer is notified of the relevant finding of the second or third examiner.

If the third examiner does not find that the person is a mentally ill person or a mentally disordered person, the person must not be detained after the third examination.

**(e) Step 5 Mentally disordered persons**

If a person is found to be a mentally disordered person by an authorised medical officer on initial examination in step 1, and is found to be a mentally disordered person on examination in step 2 or step 3, the person may be detained in the mental health facility as a mentally disordered person.

**28 Obligations of examining medical practitioners**

- (1) An authorised medical officer or other medical practitioner who examines a person detained in a mental health facility under this Division may take into account his or her own observations and any other available evidence that he or she considers reliable and relevant in forming an opinion as to whether the person is a mentally ill person or a mentally disordered person.
- (2) A medical practitioner on whose certificate or request a person has been admitted to a mental health facility must not examine the person under section 27.

**29 Treatment of persons detained in mental health facilities** (cf 1990 Act, s 31)

A person who authorises the administration of any medication to a person detained in a mental health facility under this Division:

- (a) must have due regard to the possible effects of the administration of the medication, and
- (b) must prescribe the minimum medication, consistent with proper care, to ensure that the person is not prevented from communicating adequately with any other person who may be engaged to represent the person at a mental health inquiry.

**30 Assessable persons may be reclassified as voluntary patients** (cf 1990 Act, s 54)

An authorised medical officer may classify an assessable person as a voluntary patient at any time before a mental health inquiry is held about the person, but only if:

- (a) the authorised medical officer is of the opinion that the person is likely to benefit from care or treatment as a voluntary patient, and
- (b) the patient agrees to be so classified or, if the person is a person under guardianship or is under the age of 14 years, the person is admitted in accordance with the procedures under this Act applicable to admitting any such person as a voluntary patient.

**31 Limited detention of mentally disordered persons** (cf 1990 Act, s 35)

- (1) A person detained as a mentally disordered person under step 5 in section 27 (e) must not be detained in a mental health facility for a continuous period of more than 3 days (not including weekends and public holidays).
- (2) If an authorised medical officer of a mental health facility is of the opinion that an assessable person has ceased to be a mentally ill person but is a mentally disordered person, the person must not be further detained in the facility for a continuous period of more than 3 days (not including weekends and public holidays).
- (3) An authorised medical officer must examine a mentally disordered person detained in a mental health facility at least once every 24 hours.
- (4) The person must not be further detained in the mental health facility if, on any such examination, the authorised medical officer is of the opinion that the person is not a mentally disordered person or a mentally ill person or that other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person.
- (5) A person must not be admitted to and detained in a mental health facility on the grounds that the person is a mentally disordered person on more than 3 occasions in any 1 calendar month.

**32 Detention on order of Magistrate or bail officer** (cf 1990 Act, ss 36, 37, 37A)

- (1) This section applies to a person detained in a mental health facility under this Part who is required not to be detained or further detained in the facility and who was taken to the facility:
  - (a) by a police officer under this Division after being apprehended by a police officer because the officer believed the person to be committing or to have recently committed an offence, or
  - (b) on the order of a Magistrate or an authorised officer under section 33 of the *Mental Health (Forensic Provisions) Act 1990*.
- (2) An authorised medical officer must release the person into the custody of any police officer who is present at the mental health facility to ascertain the results of any examination or examinations of the person.

- (3) If a police officer is not so present when the authorised medical officer becomes aware that the person must not be detained or further detained, the authorised medical officer must, as soon as practicable, notify a police officer at the appropriate police station that the person will not be further detained.
- (4) The authorised medical officer may take any of the following actions in relation to a person (other than a person referred to in subsection (5)), after considering any matter communicated by a police officer as to the intended apprehension of the person by a police officer:
  - (a) detain the person for a period not exceeding one hour pending the person's apprehension by a police officer,
  - (b) admit the person in accordance with this Act as a voluntary patient,
  - (c) discharge the person, in so far as it may be possible to do so, into the care of the person's primary carer,
  - (d) discharge the person.
- (5) If the person is a person ordered to be brought back before a court under section 33 (1) (b) of the *Mental Health (Forensic Provisions) Act 1990*:
  - (a) it is the duty of the police officer notified by the authorised medical officer to ensure that a police officer attends the mental health facility and apprehends the person as soon as practicable after notification, and
  - (b) the authorised medical officer must detain the person pending the person's apprehension by a police officer.
- (6) A police officer may apprehend a person under this section without a warrant.

### **33 Actions may be delayed because of other illnesses or conditions**

Despite any other provision of this Act, an authorised medical officer is not required:

- (a) to take or complete a step referred to in section 27, or
- (b) to bring a person before a Magistrate for a mental health inquiry,

while the person is suffering from a condition or illness other than a mental illness or other mental condition and is not, in the officer's opinion, fit to be the subject of the proposed action due to the seriousness of the person's condition or illness.

## **Division 3 Continuing detention in mental health facilities**

### **34 Mental health inquiries to be held**

- (1) A Magistrate is to hold an inquiry about an assessable person brought before the

Magistrate under step 4 in section 27 (d).

**Note—**

Section 27 sets out the events that result in a mental health inquiry. Notice of the inquiry is to be given to the person concerned and primary carers in accordance with section 76.

- (2) An authorised medical officer of the mental health facility in which an assessable person is detained must:
  - (a) ensure that, as far as practicable, the person is brought before the Magistrate dressed in street clothes, and
  - (b) make all necessary arrangements to ensure that all appropriate medical witnesses appear before the Magistrate and other relevant medical evidence concerning the person is placed before the Magistrate.
- (3) Schedule 2 has effect with respect to mental health inquiries.

**35 Purpose and findings of mental health inquiries** (cf 1990 Act, ss 50-52)

- (1) A Magistrate holding a mental health inquiry is to determine whether or not, on the balance of probabilities, the assessable person is a mentally ill person.
- (2) For that purpose, the Magistrate is to do the following:
  - (a) consider the reports and recommendations of the authorised medical officer and other medical practitioners who examined the person under section 27 after the person's detention,
  - (b) consider any other information before the Magistrate,
  - (c) inquire about the administration of any medication to the person and take account of its effect on the person's ability to communicate,
  - (d) have due regard to any cultural factors relating to the person that may be relevant to the determination,
  - (e) have due regard to any evidence given at the inquiry by an expert witness concerning the person's cultural background and its relevance to any question of mental illness.
- (3) A Magistrate who is not satisfied, on the balance of probabilities, that an assessable person is a mentally ill person must order that the person be discharged from the mental health facility.
- (4) The Magistrate may defer the operation of an order for the discharge of a person for a period of up to 14 days, if the Magistrate thinks it is in the best interests of the person to do so.

- (5) A Magistrate who is satisfied, on the balance of probabilities, that an assessable person is a mentally ill person may make any of the following orders:
- (a) an order that the person be discharged into the care of the person's primary carer,
  - (b) a community treatment order,
  - (c) an order that the person be detained in or admitted to and detained in a specified mental health facility for further observation or treatment, or both, as an involuntary patient, for a specified period of up to 3 months, if the Magistrate is of the opinion that no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available or that for any other reason it is not appropriate to make any other order under this subsection.

**36 Contempt of mental health inquiry** (cf 1990 Act, s 291)

A person must not refuse, neglect or for any reason fail to obey or comply with an order, direction, decision or determination of a Magistrate under this Act.

Maximum penalty: 50 penalty units.

**37 Reviews of involuntary patients by Tribunal**

- (1) The Tribunal must review the case of each involuntary patient as follows:
- (a) at the end of the patient's initial period of detention as a result of a mental health inquiry,
  - (b) at least once every 3 months for the first 12 months the person is an involuntary patient,
  - (c) at least once every 6 months while the person is an involuntary patient after the first 12 months of detention.
- (2) An authorised medical officer must cause an involuntary patient to be brought before the Tribunal as soon as practicable before the end of the initial period of detention, if it appears to the officer that the person should continue to be detained.
- (3) The authorised medical officer must ensure that, as far as practicable, a person brought before the Tribunal is dressed in street clothes.
- (4) Despite subsection (1) (c), the Tribunal may review the case of an involuntary patient at intervals of up to 12 months if it is of the opinion that it is appropriate to do so.

**38 Purpose and findings of reviews of involuntary patients**

- (1) The Tribunal is, on a review of an involuntary patient, to determine whether the patient is a mentally ill person for whom no other care (other than care in a mental health facility) is appropriate and reasonably available.

- (2) For that purpose, the Tribunal is to do the following:
  - (a) consider any information before it,
  - (b) inquire about the administration of any medication to the patient and take account of its effect on the patient's ability to communicate.
- (3) If the Tribunal determines that the patient is not a mentally ill person, the patient must be discharged from the mental health facility in which the patient is detained.
- (4) If the Tribunal determines that the patient is a mentally ill person and that no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the patient, the Tribunal must make an order that the patient continue to be detained as an involuntary patient in a mental health facility for further observation or treatment, or both.
- (5) In any other case that the Tribunal determines that a patient is a mentally ill person, it must make an order that the patient be discharged from the mental health facility in which the patient is detained and may make a community treatment order.
- (6) The Tribunal may defer the operation of an order for the discharge of a patient for a period of up to 14 days, if the Tribunal thinks it is in the best interests of the patient to do so.
- (7) An order made by the Tribunal under this section is to be in the form approved by the President.

**39 Medical examination of involuntary patients** (cf 1990 Act, s 61)

- (1) An authorised medical officer must medically examine each involuntary patient of the mental health facility, or cause each involuntary patient to be medically examined, to determine whether the patient's continued detention in the facility is necessary.
- (2) The medical examinations are to be carried out at intervals of not more than 3 months.

**40 Re-classification of involuntary patients as voluntary patients** (cf 1990 Act, s 64)

- (1) An authorised medical officer may classify an involuntary patient as a voluntary patient of the mental health facility at any time.
- (2) A patient may be so classified only if:
  - (a) the authorised medical officer is of the opinion that the patient is likely to benefit from care or treatment as a voluntary patient, and
  - (b) the patient agrees to be so classified or, if the patient is a person under guardianship, the patient is admitted in accordance with the procedures under this Act applicable to admitting such persons as voluntary patients.

- (3) Without limiting subsection (1), a person who is discharged as an involuntary patient may be admitted as a voluntary patient immediately on discharge.

**Note—**

For additional circumstances when a patient or person must be released from a mental health facility, see section 12.

**41 Discharge on making of community treatment order** (cf 1990 Act, s 132)

- (1) An authorised medical officer must discharge a patient or person who is detained in a mental health facility when a community treatment order is made about the patient or person and any order authorising the patient's or person's detention ceases to have effect.
- (2) This section does not prevent an affected person subject to a community treatment order from being admitted to or detained in a mental health facility.

**42 Discharge of involuntary patients on own application** (cf 1990 Act, s 67)

- (1) An involuntary patient of a mental health facility or another person detained in a mental health facility may make an application to the authorised medical officer to be discharged.
- (2) The authorised medical officer may discharge the patient or person.

**Note—**

The authorised medical officer may also classify a patient as a voluntary patient (see section 40).

**43 Discharge of involuntary patients on application of primary carer** (cf 1990 Act, s 68)

- (1) The primary carer of an involuntary patient or another person detained in a mental health facility may, at any time, apply to an authorised medical officer of the mental health facility for the discharge of the patient or person.
- (2) The authorised medical officer may discharge the patient or person if:
- (a) the applicant gives the authorised medical officer a written undertaking that the patient or person will be properly taken care of, and
  - (b) the authorised medical officer is satisfied that adequate measures will, so far as is reasonably practicable, be taken to prevent the patient or person from causing harm to himself or herself or others.

**44 Appeals against discharge refusals** (cf 1990 Act, ss 69, 70)

- (1) An involuntary patient or person detained at a mental health facility (the **applicant**) who applies to be discharged, or a person who applies for the discharge of the applicant, or a person appointed by the applicant, may appeal to the Tribunal if:

- (a) the authorised medical officer refuses the application, or
  - (b) the authorised medical officer fails to determine the application within 3 working days after it is made.
- (2) An appeal may be made orally or in writing and is to be made in accordance with the regulations.
- (3) The authorised medical officer must provide the Tribunal with a report about the applicant, including the officer's reasons for refusing to discharge the applicant or failing to determine the application.
- (4) For the purpose of determining an appeal, the Tribunal has and may exercise the functions of the authorised medical officer with respect to the discharge application and may make an order accordingly.
- (5) In addition, the Tribunal may determine that no further right of appeal may be exercised under this section before the date on which the person is next reviewed by the Tribunal under this Act, if it thinks it appropriate to do so, having regard to the following:
- (a) the interval between the last determination under this Act that the applicant was a mentally ill person and the date of the appeal,
  - (b) the frequency of appeals under this section made by or on behalf of the applicant,
  - (c) the last report about the applicant by the authorised medical officer under this section,
  - (d) any other matter the Tribunal considers relevant.

**45 Review and discharge of absent patients** (cf 1990 Act, ss 72, 73)

- (1) An authorised medical officer must review the mental health and welfare of a patient or person detained in a mental health facility under this Act who is absent from the mental health facility with permission if the absence is for a continuous period of more than 28 days.
- (2) The authorised medical officer must discharge the patient or person following the review unless the officer is of the opinion that further detention of the patient or person in the facility is necessary.
- (3) An authorised medical officer of a mental health facility must discharge a patient or person detained in the facility under this Act who is absent from the mental health facility for a single period exceeding 12 months.



## **Division 4 Leave of absence from mental health facilities**

### **46 Application of Division**

This Division applies to an involuntary patient or a person who is detained in a mental health facility under this Act.

### **47 Leave of absence on compassionate grounds, medical grounds or other grounds**

- (1) An authorised medical officer may permit a person to be absent from a mental health facility for the period, and on the conditions, that the officer thinks fit.
- (2) Permission may be given on compassionate grounds, on the ground that medical treatment is required or on any other ground the authorised medical officer thinks fit.

**Note—**

A person may also be transferred from a mental health facility to another health facility on medical grounds (see section 80).

- (3) An authorised medical officer may not grant leave of absence unless the officer is satisfied that, as far as is practicable, adequate measures have been taken to prevent the person concerned from causing harm to himself or herself or others.

### **48 Apprehension of persons not permitted to be absent from mental health facility (cf 1990 Act, ss 75, 76)**

- (1) An authorised medical officer of a mental health facility may apprehend a person, or direct a person to be apprehended, if:
  - (a) the person fails to return to the facility on or before the expiry of a permitted period of absence granted under this Part or fails to comply with a condition of the permission, or
  - (b) the person absents himself or herself from the facility otherwise than in accordance with this Act.
- (2) The person may be apprehended by any of the following persons:
  - (a) an authorised medical officer or any other suitably qualified person employed at the mental health facility,
  - (b) a police officer,
  - (c) a person authorised by the Minister or the authorised medical officer,
  - (d) a person assisting a person referred to in paragraph (a), (b) or (c).
- (3) A person who is apprehended is to be conveyed to and detained in the mental health facility from which the person absented himself or herself.

## 49 Police assistance

- (1) An authorised medical officer may request that a police officer apprehend, or assist in apprehending, a person under this Division if the officer is of the opinion that there are serious concerns relating to the safety of the person or other persons if the person is taken to a mental health facility without the assistance of a police officer.
- (2) A police officer to whose notice any such request is brought may:
  - (a) apprehend and take or assist in taking the person to the mental health facility from which the person absented himself or herself, or
  - (b) cause or make arrangements for some other police officer to do so.
- (3) A police officer may enter premises to apprehend a person under this section or section 48, and may apprehend any such person, without a warrant and may exercise any powers conferred under section 81 on a person who is authorised under that section to take a person to a mental health facility or another health facility.

**Note—**

Section 81 sets out the persons who may take a person to a mental health facility and their powers when doing so.

## Part 3 Involuntary treatment in the community

### Division 1 Applications for and making of community treatment orders

#### 50 Definitions

In this Part:

**affected person** means a person for whom a community treatment order has been applied for or made.

**breach notice**—see section 58 (3).

**breach order**—see section 58 (4).

**director of community treatment** of a mental health facility means a person appointed under section 113 as the director of community treatment of the mental health facility.

**psychiatric case manager** means a person employed at a declared mental health facility who is appointed under section 114 as the psychiatric case manager of an affected person.

**treatment plan**—see section 54.

#### 51 Community treatment orders

- (1) A community treatment order authorising the compulsory treatment in the community

of a person may be made by the Tribunal or a Magistrate.

**Note—**

Section 56 sets out the matters to be included in community treatment orders.

- (2) The following persons may apply for a community treatment order for the treatment of a person:
  - (a) the authorised medical officer of a mental health facility in which the affected person is detained or is a patient under this Act,
  - (b) a medical practitioner who is familiar with the clinical history of the affected person,
  - (c) any other person prescribed by the regulations.
- (3) An application may be made about a person who is detained in or a patient in a mental health facility or a person who is not in a mental health facility.
- (4) An application may be made about a person who is subject to a current community treatment order.
- (5) A community treatment order may be made in the following circumstances and may replace an existing order:
  - (a) following a mental health inquiry,
  - (b) on a review of a patient by the Tribunal,
  - (c) on an application otherwise being made to the Tribunal.

**52 Notice of applications**

- (1) The applicant for a community treatment order must notify the affected person in writing of the application.
- (2) The notice of the application is to include a copy of the proposed treatment plan for the affected person.
- (3) If the affected person is not detained in a mental health facility, the application must be heard not earlier than 14 days after the notice is given.
- (4) Subsection (3) does not apply to an application for a further community treatment order in respect of an affected person who is the subject of a current community treatment order.

**53 Determination of applications for community treatment orders**

- (1) A Magistrate or the Tribunal is, on an application for a community treatment order, to determine whether the affected person is a person who should be subject to the order.

- (2) For that purpose, the Magistrate or Tribunal is to consider the following:
- (a) a treatment plan for the affected person proposed by the declared mental health facility that is to implement the proposed order,
  - (b) if the affected person is subject to an existing community treatment order, a report by the psychiatric case manager of the person as to the efficacy of that order,
  - (c) a report as to the efficacy of any previous community treatment order for the affected person,
  - (d) any other information placed before the Magistrate or Tribunal.
- (3) The Magistrate or Tribunal may make a community treatment order for an affected person if the Magistrate or Tribunal determines that:
- (a) no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person and that the affected person would benefit from the order as the least restrictive alternative consistent with safe and effective care, and
  - (b) a declared mental health facility has an appropriate treatment plan for the affected person and is capable of implementing it, and
  - (c) if the affected person has been previously diagnosed as suffering from a mental illness, the affected person has a previous history of refusing to accept appropriate treatment.
- (3A) If the affected person has within the last 12 months been the subject of a community treatment order, the Tribunal is not required to make a determination under subsection (3) (c) but must be satisfied that the person is likely to continue in or to relapse into an active phase of mental illness if the order is not granted.
- (4) A Magistrate may not make a community treatment order unless the Magistrate is of the opinion that the person is a mentally ill person.
- (5) For the purposes of this section, a person has a **previous history of refusing to accept appropriate treatment** if the following are satisfied:
- (a) the affected person has previously refused to accept appropriate treatment,
  - (b) when appropriate treatment has been refused, there has been a relapse into an active phase of mental illness,
  - (c) the relapse has been followed by mental or physical deterioration justifying involuntary admission to a mental health facility (whether or not there has been such an admission),

- (d) care and treatment following involuntary admission resulted, or could have resulted, in an amelioration of, or recovery from, the debilitating symptoms of a mental illness or the short-term prevention of deterioration in the mental or physical condition of the affected person.
- (6) The Tribunal or Magistrate must not specify a period longer than 12 months as the period for which a community treatment order is in force.
- (7) In determining the duration of a community treatment order, the Tribunal or Magistrate must take into account the estimated time required:
  - (a) to stabilise the condition of the affected person, and
  - (b) to establish, or re-establish, a therapeutic relationship between the person and the person's psychiatric case manager.

#### **54 Requirements for treatment plans under community treatment orders**

A treatment plan for an affected person is to consist of the following:

- (a) in general terms, an outline of the proposed treatment, counselling, management, rehabilitation or other services to be provided to implement the community treatment order,
- (b) in specific terms, the method by which, the frequency with which, and the place at which, the services would be provided for that purpose.

#### **55 Community treatment order may be made in absence of affected person**

A Magistrate or the Tribunal may make a community treatment order in the absence of the affected person, if the person has been given notice of the application under this Part.

#### **56 Form and duration of community treatment orders**

- (1) A community treatment order is to:
  - (a) nominate the declared mental health facility that is to implement the treatment plan for the affected person, and
  - (b) require the affected person to be present, at the reasonable times and places specified in the order to receive the medication and therapy, counselling, management, rehabilitation and other services provided in accordance with the treatment plan.
- (2) A community treatment order ceases to have effect at the end of the period specified in the order or, if no period is specified, 12 months after the order is made.

**Note—**

Section 53 (6) specifies that the maximum period for an order is to be 12 months.

- (3) A community treatment order has no effect while an affected person is detained in a mental health facility (otherwise than under this Part), or is a voluntary patient.
- (4) The fact that an affected person is the subject of proceedings before the Tribunal does not, unless the Tribunal otherwise orders, affect the operation or duration of the community treatment order.
- (5) The time for which a community treatment order is in force does not cease to run during any period in which this section provides that it has no effect.

**Note—**

The Tribunal may vary or revoke a community treatment order in accordance with section 65.

## **Division 2 Operation of community treatment orders**

### **57 Duties and functions of affected person and mental health facility** (cf 1990 Act, ss 145, 146)

- (1) The affected person must comply with the community treatment order.
- (2) The director of community treatment of the declared mental health facility implementing a treatment plan under a community treatment order may take all reasonable steps to have medication administered, and services provided, in accordance with the order.
- (3) Medication may be administered to an affected person for the purposes of a community treatment order without the person's consent if it is administered without the use of more force than would be required if the person had consented to its administration.
- (4) The director of community treatment of a declared mental health facility implementing a treatment plan under a community treatment order must provide to the affected person particulars of the kind and dosages of medication that are being administered, or have recently been administered, to the person, if requested to do so by:
  - (a) the affected person, or
  - (b) the primary carer of the affected person, or
  - (c) if the affected person consents, another person who would be entitled to apply for a community treatment order in relation to the person.
- (5) A person implementing a treatment plan under a community treatment order may enter the land (but not the dwelling) on which an affected person's residence is situated without the person's consent for the purpose of implementing the community treatment order.

## 58 Breach of community treatment order

- (1) The director of community treatment of a declared mental health facility implementing a community treatment order must take the steps set out in this section if the affected person in any way refuses or fails to comply with the community treatment order and the director is of the opinion that:
  - (a) the mental health facility has taken all reasonable steps to implement the order, and
  - (b) there is a significant risk of deterioration in the mental or physical condition of the affected person.
- (2) The director must:
  - (a) make a written record of the opinions, the facts on which they are based and the reasons for forming them, and
  - (b) cause the affected person to be informed that any further refusal to comply with the order will result in the person being taken to the declared mental health facility or another appropriate mental health facility and treated there.
- (3) On a further refusal or failure by the affected person to comply with the community treatment order, the director may cause the person to be given a written notice (a **breach notice**):
  - (a) requiring the person to accompany a member of staff of the NSW Health Service employed at the declared mental health facility for treatment in accordance with the order or to a specified mental health facility, and
  - (b) warning the person that the assistance of a police officer may be obtained in order to ensure compliance with the order.
- (4) On the refusal or failure by the affected person to comply with a breach notice, the director may, in writing, make an order (a **breach order**) that the affected person be taken to a specified declared mental health facility.

## 59 Police assistance

- (1) A police officer to whose notice a breach order is brought must, if practicable:
  - (a) apprehend and take or assist in taking the person the subject of the order to the mental health facility, or
  - (b) cause or make arrangements for some other police officer to do so.
- (2) A police officer may enter premises to apprehend a person under this section, and may apprehend any such person, without a warrant and may exercise any powers conferred by section 81 on a person who is authorised under that section to take a

person to a mental health facility or another health facility.

**Note—**

Section 81 sets out the persons who may take a person to a mental health facility and their powers when doing so.

**60 Procedures at facility after breach notice or breach order**

- (1) An affected person who is at a mental health facility as a result of the giving of a breach notice or a breach order:
  - (a) may be given treatment in accordance with the community treatment order, and
  - (b) may be assessed by a medical practitioner for involuntary admission to a mental health facility.
- (2) A person who is at a mental health facility as a result of a breach notice or breach order may be released after treatment if treatment is accepted or may be dealt with at the mental health facility or taken to another declared mental health facility if treatment is refused.

**61 Review of affected person at mental health facility after breach order** (cf 1990 Act, ss 141, 142)

- (1) This section applies to an affected person who is taken to or is at a declared mental health facility after refusing treatment at a mental health facility consequent on a breach order.
- (2) An authorised medical officer must, not later than 12 hours after the person is taken to the declared mental health facility, review the affected person's mental condition and determine whether the person is a mentally ill person or a mentally disordered person.
- (3) The authorised medical officer may cause the person to be given treatment in accordance with the community treatment order.
- (4) If the authorised medical officer determines that the affected person is a mentally ill person or a mentally disordered person for whom no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate or reasonably available, the person is to be detained in the declared mental health facility for further observation or treatment, or both.
- (5) The affected person may be detained until one of the following events occurs:
  - (a) in the case of a mentally ill person, the term of the community treatment order ends or the person is discharged from the declared mental health facility under this Act,
  - (b) in the case of a mentally disordered person, the maximum period for which a



person may be held as such a person under Part 2 ends, the term of the community treatment order ends or the person is discharged from the declared mental health facility under this Act.

#### **61A Medical examination of detained affected persons**

- (1) An authorised medical officer must medically examine each affected person detained in a mental health facility to determine whether the person's continued detention in the facility is necessary.
- (2) The medical examinations are to be carried out at intervals of not more than 3 months.

#### **62 Discharge and detention of affected persons**

- (1) An affected person detained in a declared mental health facility under this Division must be discharged from the facility:
  - (a) if the authorised medical officer determines that the person is not a mentally ill person or a mentally disordered person or is of the opinion that other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person, or
  - (b) if the authorised medical officer decides at any time that it is appropriate to do so.
- (2) An authorised medical officer may do all necessary things to cause a person to be detained in a mental health facility under Part 2 at the end of the term of a community treatment order if the officer considers the person to be a mentally ill person.
- (3) Any such person is taken to be detained in the mental health facility under section 19 when the authorised medical officer takes action to detain the person.

#### **63 Review by Tribunal of detained affected persons** (cf 1990 Act, s 143A)

- (1) An authorised medical officer must cause a person detained in a declared mental health facility under this Division to be brought before the Tribunal not later than 3 months after the person is detained, and at least every 3 months while the person is detained.
- (2) The authorised medical officer must ensure that, as far as practicable, a person brought before the Tribunal is dressed in street clothes.
- (3) This section does not apply if the affected person's community treatment order will end less than 3 months after the person is detained under this Division.

#### **64 Purpose and findings of reviews** (cf 1990 Act, s 143A)

- (1) The Tribunal is, on a review of an affected person, to determine whether the person is a mentally ill person for whom no other care (other than care in a mental health

facility) is appropriate and reasonably available.

- (2) For that purpose, the Tribunal is to do the following:
  - (a) consider any information before it,
  - (b) inquire about the administration of any medication to the person and take account of its effect on the person's ability to communicate.
- (3) If the Tribunal determines that the affected person is a mentally ill person or a mentally disordered person for whom no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate or reasonably available, the Tribunal must determine whether the person should be detained in the declared mental health facility until the end of the community treatment order or should be detained in the facility as an involuntary patient.
- (4) If the Tribunal does not determine that the person is a mentally ill person or is of the opinion that other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate or reasonably available:
  - (a) it must make an order that the person be discharged from the declared mental health facility in which the person is detained, and
  - (b) it may make any community treatment order that it could make on a review of an involuntary patient.
- (5) The Tribunal may defer the operation of an order for the discharge of an affected person for a period of up to 14 days, if the Tribunal thinks it is in the best interests of the affected person to do so.
- (6) An order made by the Tribunal under this section is to be in the form approved by the President.

### **Division 3 Revocation, variation and review of community treatment orders**

#### **65 Variation or revocation of orders by Tribunal** (cf 1990 Act, s 148)

- (1) The Tribunal may vary or revoke a community treatment order, on application being made under this section or at any time on its own motion.
- (2) An application may be made by any of the following:
  - (a) the affected person,
  - (b) the psychiatric case manager of the affected person,
  - (c) any person who could have applied for the order.

- (3) An application may be made only if:
  - (a) there has been a substantial or material change in the circumstances surrounding the making of the order, or
  - (b) relevant information that was not available when the order was made has become available.
- (4) An order may be varied only if the order, as varied, could be made in relation to the affected person.
- (5) The regulations may make provision for or with respect to applications under this section and the orders that may be made by the Tribunal.

**66 Revocation by director of community treatment** (cf 1990 Act, s 149)

The director of community treatment of a declared mental health facility implementing a treatment plan under a community treatment order may revoke a community treatment order if of the opinion that the affected person is not likely to benefit from a continuation of the order.

**67 Appeals** (cf 1990 Act, s 151)

- (1) The affected person under a community treatment order made by the Tribunal may at any time appeal to the Court:
  - (a) if the term of the order exceeds 6 months or no term is specified in the order, against the duration of the order, or
  - (b) on any question of law or fact arising from the order or its making.
- (2) The affected person under a community treatment order made by a Magistrate may at any time appeal to the Tribunal:
  - (a) if the term of the order exceeds 6 months or no term is specified in the order, against the duration of the order, or
  - (b) on any question of law or fact arising from the order or its making.
- (3) The regulations may make provision for or with respect to appeals to the Tribunal under this section and the orders that may be made by the Tribunal in respect of any such appeal.

## **Chapter 4 Care and treatment**

### **Part 1 Rights of patients or detained persons and primary carers**

#### **Division 1 General**

##### **68 Principles for care and treatment**

It is the intention of Parliament that the following principles are, as far as practicable, to be given effect to with respect to the care and treatment of people with a mental illness or mental disorder:

- (a) people with a mental illness or mental disorder should receive the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given,
- (b) people with a mental illness or mental disorder should be provided with timely and high quality treatment and care in accordance with professionally accepted standards,
- (c) the provision of care and treatment should be designed to assist people with a mental illness or mental disorder, wherever possible, to live, work and participate in the community,
- (d) the prescription of medicine to a person with a mental illness or mental disorder should meet the health needs of the person and should be given only for therapeutic or diagnostic needs and not as a punishment or for the convenience of others,
- (e) people with a mental illness or mental disorder should be provided with appropriate information about treatment, treatment alternatives and the effects of treatment,
- (f) any restriction on the liberty of patients and other people with a mental illness or mental disorder and any interference with their rights, dignity and self-respect is to be kept to the minimum necessary in the circumstances,
- (g) the age-related, gender-related, religious, cultural, language and other special needs of people with a mental illness or mental disorder should be recognised,
- (h) every effort that is reasonably practicable should be made to involve persons with a mental illness or mental disorder in the development of treatment plans and plans for ongoing care,
- (i) people with a mental illness or mental disorder should be informed of their legal rights and other entitlements under this Act and all reasonable efforts should be made to ensure the information is given in the language, mode of communication or terms that they are most likely to understand,
- (j) the role of carers for people with a mental illness or mental disorder and their rights to be kept informed should be given effect.

**69 Offence to ill-treat patients** (cf 1990 Act, s 298)

An authorised medical officer, or any other person employed at a mental health facility, must not wilfully strike, wound, ill-treat or neglect a patient or person detained at the facility under this or any other Act.

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

**70 Assistance of interpreters** (cf 1990 Act, s 292)

A medical practitioner must arrange for an interpreter to be present at a medical examination of a person for the purposes of this Act, if the person is unable to communicate adequately in English but can communicate adequately in another language.

**71 Primary carer**

(1) The **primary carer** of a person (the **patient**) for the purposes of this Act is:

- (a) the guardian of the patient, or
- (b) the parent of a patient who is a child (subject to any nomination by a patient referred to in paragraph (c)), or
- (c) if the patient is over the age of 14 years and is not a person under guardianship, the person nominated by the patient as the primary carer under this Part under a nomination that is in force, or
- (d) if the patient is not a patient referred to in paragraph (a) or (b) or there is no nomination in force as referred to in paragraph (c):
  - (i) the spouse of the patient, if any, if the relationship between the patient and the spouse is close and continuing, or
  - (ii) any person who is primarily responsible for providing support or care to the patient (other than wholly or substantially on a commercial basis), or
  - (iii) a close friend or relative of the patient.

(2) In this section:

**close friend or relative** of a patient means a friend or relative of the patient who maintains both a close personal relationship with the patient through frequent personal contact and a personal interest in the patient's welfare and who does not provide support to the patient wholly or substantially on a commercial basis.

**72 Nomination of primary carer**

(1) A person may nominate a person to be the person's primary carer for the purposes of this Act.

- (2) A person may nominate persons who are excluded from being given notice or information about the person under this Act and may revoke or vary any such nomination.
- (3) A person who is over the age of 14 years and under the age of 18 years may not exclude the person's parent by a nomination under subsection (2).
- (4) A nomination, variation or revocation is to be made in writing and may be given to an authorised medical officer at a mental health facility or a director of community treatment.
- (5) A nomination remains in force for the period prescribed by the regulations or until it is revoked in writing.
- (6) An authorised medical officer or a director of community treatment is, in carrying out his or her functions under this Act or the regulations, to give effect to a nomination or a variation or revocation of a nomination, if notified of the nomination, variation or revocation.
- (7) An authorised medical officer or a director of community treatment is not required to give effect to a nomination, or a variation or revocation of a nomination, if the officer or director reasonably believes:
  - (a) that to do so may put the patient or nominated person or any other person at risk of serious harm, or
  - (b) that the person who made the nomination, variation or revocation was incapable of making the nomination, variation or revocation.

## **Division 2 Notification and information sharing**

### **73 Information about medication**

- (1) On a request made under this section, an authorised medical officer of a mental health facility must provide particulars of the types of medication and dosages of each type of medication currently being administered or recently administered to a patient or person detained in the facility.
- (2) A request may be made by:
  - (a) the patient or person detained in the mental health facility, or
  - (b) the primary carer of any such patient or person, or
  - (c) a representative of any such patient or person at a mental health inquiry or before the Tribunal.

#### **74 Information to be given to persons to be detained**

- (1) An authorised medical officer of a mental health facility must give the following persons an oral explanation and a written statement of their legal rights and other entitlements under this Act:
  - (a) a person who is taken to the facility under Part 2 of Chapter 3,
  - (b) a person who is a voluntary patient in the facility, if it is decided to take steps to detain the person under Part 2 of Chapter 3,
  - (c) an affected person who is detained in the facility after a breach notice or breach order relating to a community treatment order, if it is decided to take steps to detain the person under Part 2 of Chapter 3.
- (2) The explanation and statement must be given as soon as practicable after the person is taken to a mental health facility or it is decided to take steps to detain the person.
- (3) The written statement is to be in the form set out in Schedule 3.
- (4) If the authorised medical officer is of the opinion that a person is not capable of understanding the explanation or statement when it is first given, another explanation or statement must be given to the person not later than 24 hours before a mental health inquiry is held about the person.
- (5) The authorised medical officer must, if the person is unable to communicate adequately in English but is able to communicate adequately in another language, arrange for the oral explanation to be given in that other language.

#### **75 Notification to primary carer of initial detention**

- (1) An authorised medical officer must, not later than 24 hours after a person is detained in a mental health facility, take all reasonably practicable steps to notify the primary carer of the person that the person is detained in the facility.
- (2) Notice need not be given if the person is discharged or classified as a voluntary patient within that period.

#### **76 Notification of mental health inquiries**

- (1) An authorised medical officer must notify an assessable person detained in the mental health facility that:
  - (a) a mental health inquiry will be held about the person, and
  - (b) all reasonably practicable steps will be taken to give notice of the inquiry to the person's primary carer.
- (2) The notice is to be given when the authorised medical officer becomes aware that the

person is an assessable person.

- (3) The authorised medical officer must, in accordance with the regulations, take all reasonably practicable steps to give notice to the primary carer of an assessable person of a proposed mental health inquiry.

**77 Notification to involuntary patients of appeal rights** (cf 1990 Act, s 55)

- (1) An authorised medical officer of a mental health facility must give, or cause to be given, to a person ordered by a Magistrate after a mental health inquiry to be detained in the facility as an involuntary patient a statement of the rights of appeal conferred on the person as an involuntary patient under this Act.
- (1A) An authorised medical officer of a mental health facility must give, or cause to be given, to a person detained in the facility on the order of the Tribunal after a breach of a community treatment order a statement of the rights of appeal conferred on the person under this Act or the *Mental Health (Forensic Provisions) Act 1990*.
- (2) The statement must be given as soon as practicable after the order is made.
- (3) The statement is to be in the form approved by the Minister.

**78 Notifications to primary carer of events affecting patients or detained persons**

- (1) An authorised medical officer of a mental health facility must take all reasonably practicable steps to notify the primary carer of a patient or person detained in the facility if any of the following events occurs:
  - (a) the patient or person is absent from the facility without permission or fails to return at the end of a period of leave,
  - (b) it is proposed to transfer the patient or person, or the patient or person is transferred, to another mental health facility or other facility,
  - (c) the patient or person is discharged from the mental health facility,
  - (d) the patient or person is re-classified as a voluntary patient,
  - (e) it is proposed to apply to the Tribunal for an ECT inquiry under Part 2 or to ascertain whether the patient or person is capable of giving informed consent to electro convulsive therapy,
  - (f) a surgical operation is performed on the patient or person under Part 3,
  - (g) it is proposed to apply to the Director-General or the Tribunal for consent to a surgical operation or special medical treatment under Part 3.
- (2) The authorised medical officer must give the notice as soon as practicable after becoming aware that the event has occurred.



- (3) In the case of a proposed transfer, the notice must be given before the relevant order or arrangement is made, except in an emergency.

## **79 Discharge and other planning**

- (1) An authorised medical officer of a mental health facility must take all reasonably practicable steps to ensure that a patient or person detained in the facility, and the primary carer of the patient or person, are consulted in relation to planning the patient's or person's discharge and any subsequent treatment or other action considered in relation to the patient or person.
- (2) In planning the discharge of any such patient or person, and any subsequent treatment or other action considered in relation to the patient or person, the authorised medical officer must take all reasonably practicable steps to consult with agencies involved in providing relevant services to the patient or person, any primary carer of the patient or person and any dependent children or other dependants of the patient or person.
- (3) An authorised medical officer of a mental health facility must take all reasonably practicable steps to provide any such patient or person who is discharged from the facility, and the patient's or person's primary carer, with appropriate information as to follow-up care.

## **Division 3 Transfer of patients**

### **80 Transfer of patients to or from mental health facilities** (cf 1990 Act, s 78)

- (1) An involuntary patient or a person detained in a mental health facility may be transferred from the mental health facility to another mental health facility or another health facility.
- (2) A person who is a patient in a health facility other than a mental health facility may be transferred from the health facility to a declared mental health facility for the purpose of detaining the person under Part 2 of Chapter 3.

**Note—**

Section 25 sets out the procedure for detaining such a person in a declared mental health facility.

- (3) A transfer of a patient or person to a health facility other than a mental health facility may be made on the grounds that the patient or person requires medical treatment for a condition or illness (other than a mental illness or other mental condition).
- (4) A transfer under this section is to be done in accordance with an arrangement between medical officers of each facility or an order in writing by the Director-General.
- (5) An arrangement under this section is sufficient authority for the transfer of a patient or person, and the reception into, the mental health facility or other health facility to which the patient or person is transferred.

## **81 Transport of persons to and from mental health facilities and other health facilities**

- (1) The persons listed below may take to or from a mental health facility or another health facility any person who is authorised by this Act to be taken, or transferred, to or from the facility:
  - (a) a member of staff of the NSW Health Service,
  - (b) an ambulance officer,
  - (c) a police officer,
  - (d) a person prescribed by the regulations.
- (2) A person authorised by this Act to take a person to or from a mental health facility or other health facility may:
  - (a) use reasonable force in exercising functions under this section or any other provision of this Act applying this section, and
  - (b) restrain the person in any way that is reasonably necessary in the circumstances.
- (3) A person may be sedated, by a person authorised by law to administer the sedative, for the purpose of being taken to or from a mental health facility or other health facility under this Act if it is necessary to do so to enable the person to be taken safely to or from the facility.

### **Note—**

The *Poisons and Therapeutic Goods Act 1966*, and the regulations under that Act, regulate the persons who may prescribe and administer drugs (including sedative drugs).

- (4) A person authorised by this Act to take a person to or from a mental health facility or other health facility may carry out a frisk search or an ordinary search of the person, if the person reasonably suspects that the other person is carrying anything:
  - (a) that would present a danger to the person or any other person, or
  - (b) that could be used to assist the other person to escape from the person's custody.
- (5) The person may seize and detain a thing found in a search if it is a thing of a kind referred to in subsection (4) (a) or (b).
- (6) In this section:

### ***frisk search* means:**

- (a) a search of a person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal detection device over or in close proximity to the person's outer clothing, or

- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person, including an examination conducted by passing an electronic metal detection device over or in close proximity to that thing.

**ordinary search** means a search of a person or of articles in the possession of the person that may include:

- (a) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes, socks and hat, and
- (b) an examination of those items.

## Part 2 Mental health treatments

### Division 1 Preliminary

#### 82 Definitions

In this Part:

**administer** a treatment includes cause or knowingly permit treatment to be administered.

**involuntary patient** includes a forensic patient, correctional patient and a person detained in a mental health facility.

### Division 2 General provisions about mental health treatment

#### 83 Prohibited treatments (cf 1990 Act, s 197)

- (1) A person must not administer to or perform on another person any of the following:
  - (a) deep sleep therapy,
  - (b) insulin coma therapy,
  - (c) psychosurgery,
  - (d) any other operation or treatment prescribed by the regulations for the purposes of this section.

Maximum penalty: 50 penalty units.

- (2) In this section:

**psychosurgery** means:

- (a) the creation of 1 or more lesions, whether made on the same or separate occasions, in the brain of a person by any surgical technique or procedure, when it

is done primarily for the purpose of altering the thoughts, emotions or behaviour of the person, or

- (b) the use for such a purpose of intracerebral electrodes to produce such a lesion or lesions, whether on the same or separate occasions, or
- (c) the use on 1 or more occasions of intracerebral electrodes primarily for the purpose of influencing or altering the thoughts, emotions or behaviour of a person by stimulation through the electrodes without the production of a lesion in the brain of the person,

but does not include a technique or procedure carried out for the treatment of a condition or an illness prescribed by the regulations for the purposes of this definition.

#### **84 Treatment may be given to patients**

An authorised medical officer of a mental health facility may, subject to this Act and the *Mental Health (Forensic Provisions) Act 1990*, give, or authorise the giving of, any treatment (including any medication) the officer thinks fit to an involuntary patient or assessable person detained in the facility in accordance with this Act or that Act.

#### **85 Administration of excessive or inappropriate drugs** (cf 1990 Act, s 198)

A medical practitioner must not, in relation to any mental illness or mental condition or suspected mental illness or mental condition, administer, or cause to be administered to a person a drug or drugs in a dosage that, having regard to professional standards, is excessive or inappropriate.

Maximum penalty: 50 penalty units.

#### **86 Review of drug use in mental health facilities** (cf 1990 Act, s 199)

- (1) The medical superintendent of a mental health facility must establish an internal review system to monitor and review the prescription and use of drugs in the facility.
- (2) The director of community treatment of a mental health facility must establish an internal review system to monitor and review the prescription and use of drugs under community treatment orders implemented by the facility.
- (3) The system is to monitor the frequency of administration and dosages of drugs, the intended and unintended effects of any drugs administered and the appropriateness of their use.

### **Division 3 Electro convulsive therapy**

#### **87 Definitions**

In this Division:

**ECT administration inquiry**—see section 96 (2).

**ECT consent inquiry**—see section 96 (1).

**ECT determination**—see section 96 (3).

**ECT inquiry** means an ECT administration inquiry or an ECT consent inquiry.

**88 Offences relating to administration of electro convulsive treatment** (cf 1990 Act, ss 180–182)

- (1) A person who is not a medical practitioner must not administer electro convulsive therapy to another person.
- (2) A medical practitioner must not administer electro convulsive therapy to a person:
  - (a) otherwise than in accordance with this Division, or
  - (b) at a place other than a mental health facility or other place approved by the Director-General.
- (3) A medical practitioner must not administer electro convulsive therapy to a person unless there are present during the administration of the electro convulsive therapy not less than 2 medical practitioners (of whom the medical practitioner administering the electro convulsive therapy may be one):
  - (a) one of whom is experienced in the administration of electro convulsive therapy, and
  - (b) another of whom is experienced in the administration of anaesthesia.

Maximum penalty: 50 penalty units.

**89 When electro convulsive therapy may be administered**

Electro convulsive therapy may be administered only in the following circumstances:

- (a) to a person other than an involuntary patient, if the person meets the requirements for informed consent to the treatment and medical certification set out in this Division,
- (b) to an involuntary patient, after an ECT determination by the Tribunal at an ECT inquiry.

**Note—**

In this Part, **involuntary patient** includes a forensic patient, correctional patient and a person detained in a mental health facility (see section 82).

**90 Refusal of treatment by medical superintendent**

The medical superintendent of a mental health facility may refuse to allow electro convulsive therapy to be administered to a patient or person detained in the facility, even though the Tribunal has made a determination under this Division that enables the

treatment to be given.

**91 Informed consent requirements** (cf 1990 Act, s 183)

- (1) A person is taken to have given informed consent to the administration of electro convulsive therapy if the person gives a free, voluntary and written consent after this section is complied with.
- (2) The following steps must be taken before consent is obtained:
  - (a) a fair explanation must be made to the person of the techniques or procedures to be followed, including an identification and explanation of any technique or procedure about which there is not sufficient data to recommend it as recognised treatment or to reliably predict the outcome of its performance,
  - (b) a full description must be given, without exaggeration or concealment, to the person of any possible discomforts and risks of the treatment (including possible loss of memory),
  - (c) a full description must be given to the person of any expected benefits of the treatment,
  - (d) a full disclosure must be made, without exaggeration or concealment, to the person of any appropriate alternative treatments that would be advantageous to the person,
  - (e) an offer must be made to the person to answer any inquiries concerning the procedures or any part of them,
  - (f) the person must be given notice that the person is free to refuse or to withdraw consent and to discontinue the procedures or any part of them at any time,
  - (g) a full disclosure must be made to the person of any financial relationship between the person proposing the administration of the treatment or the administering medical practitioner, or both, and the facility in which it is proposed to administer the treatment,
  - (h) the person must be given notice of their right to obtain legal and medical advice and to be represented before giving consent,
  - (i) any question relating to the techniques or procedures to be followed that is asked by the person must have been answered and the answers must appear to have been understood by the person,
  - (j) a form setting out the steps in this subsection is to be given to the person and an oral explanation of the matters dealt with in the form is to be given to the person in a language with which the person is familiar.

- (3) The regulations are to prescribe forms setting out the steps to be taken before obtaining informed consent to electro convulsive therapy.

**92 Person impaired by medication incapable of giving informed consent** (cf 1990 Act, s 184)

A person is presumed to be incapable of giving informed consent to the administration of electro convulsive therapy if, when consent is sought, the person is affected by medication that impairs the person's ability to give that consent.

**93 When electro convulsive therapy may be administered to persons other than involuntary patients** (cf 1990 Act, s 185)

- (1) Electro convulsive therapy may be administered to a person (other than an involuntary patient) if:
  - (a) the person is capable of giving informed consent to the treatment and has given informed consent to the treatment, including a written consent in the form prescribed by the regulations, and
  - (b) a certificate is given under this section by at least 2 medical practitioners, at least one of whom is a psychiatrist.
- (2) A certificate under this section is a certificate in writing that, after considering the clinical condition and history of treatment of, and any appropriate alternative treatments for, the person, the medical practitioners are of the opinion that electro convulsive therapy is:
  - (a) a reasonable and proper treatment to be administered to the person, and
  - (b) necessary or desirable for the safety or welfare of the person.
- (3) An authorised medical officer who is unsure whether a person is capable of giving informed consent may apply to the Tribunal for an ECT consent inquiry to determine whether the person is capable of giving informed consent and has given that consent.

**94 When electro convulsive therapy may be administered to involuntary patients**

- (1) Electro convulsive therapy may be administered to an involuntary patient in accordance with an ECT determination made by the Tribunal at an ECT administration inquiry.
- (2) An authorised medical officer may apply to the Tribunal for an ECT administration inquiry about an involuntary patient if a certificate is given under this section by at least 2 medical practitioners, at least one of whom is a psychiatrist.
- (3) A certificate under this section is a certificate in writing that, after considering the clinical condition and history of treatment of, and any appropriate alternative treatments for, the patient, the medical practitioners are of the opinion that electro convulsive therapy is:

- (a) a reasonable and proper treatment to be administered to the patient, and
- (b) necessary or desirable for the safety or welfare of the patient.

#### **95 Tribunal to hold inquiries promptly**

The Tribunal must hold an ECT inquiry about a person as soon as practicable after an application is made to it under this Division.

#### **96 Purpose and findings of ECT inquiries**

- (1) **ECT consent inquiries about voluntary patients** The Tribunal is, on an ECT consent inquiry, to determine whether or not the person is capable of giving informed consent to the administration of electro convulsive therapy and has given that consent.
- (2) **ECT administration inquiries about involuntary patients** The Tribunal is, on an ECT administration inquiry, to determine whether or not an ECT determination should be made in relation to the patient about whom the inquiry is held.
- (3) **ECT determinations that enable treatment of involuntary patients** An ECT determination is a determination:
  - (a) that the patient is capable of giving informed consent to the electro convulsive therapy and has given that consent, or
  - (b) that:
    - (i) the patient is incapable of giving informed consent or is capable of giving informed consent to the electro convulsive therapy but has refused, or has neither consented nor refused, to have the treatment administered, and
    - (ii) after considering the medical opinions and other information placed before it, the Tribunal is satisfied the electro convulsive therapy is a reasonable and proper treatment and is necessary and desirable for the safety or welfare of the patient.
- (4) **Maximum number of treatments for involuntary patients** In any ECT determination, the Tribunal must also specify the number of treatments that are approved (not exceeding 12).
- (5) **Increase in maximum number of treatments for involuntary patients** Despite subsection (4), the Tribunal may specify more than 12 treatments if the Tribunal is satisfied that, having regard to the special circumstances of the case (including the success of any previous electro convulsive therapy), the higher number of treatments is justified.
- (6) **Procedures applying to ECT inquiries** For the purposes of an ECT inquiry, the Tribunal is to do the following:
  - (a) in the case of an ECT administration inquiry, find out from the patient about whom



the inquiry is being held whether or not the patient was aware of the authorised medical officer's obligation to give notice of the inquiry and whether notice of the inquiry was given in accordance with this Act,

- (b) inform the patient or person about whom the inquiry is being held of the nature and possible results of the inquiry, if the patient or person has not or appears not to have been informed of them,
- (c) inquire about the administration of any medication to the patient or person about whom the inquiry is being held and take account of its effect on the patient's or person's ability to communicate,
- (d) consider the views of the patient or person about whom the inquiry is being held about the treatment,
- (e) consider any information before it.

(7) **Duration of ECT determination** An ECT determination has effect for 6 months from the date the determination is made unless a shorter period is specified in the determination.

### **97 Electro convulsive therapy register**

- (1) A register containing information relating to the administration of electro convulsive therapy is to be kept in relation to each mental health facility or other place at which the treatment is administered.
- (2) The medical superintendent of the facility or the person approved by the Director-General for any other place is to keep the register or cause it to be kept.
- (3) The register is to be in the form prescribed by the regulations.
- (4) Particulars of a proposed administration of electro convulsive therapy are to be entered in the register before the therapy is administered, and any differences in the particulars of treatment actually administered are to be subsequently noted and explained in the register.
- (5) The register may be inspected at any time by the Tribunal, the Principal official visitor, an official visitor or the Director-General.

## **Part 3 Other medical treatments**

### **98 Definitions**

In this Part:

***involuntary patient*** includes a forensic patient and a correctional patient.

***special medical treatment*** means:

- (a) any treatment, procedure, operation or examination that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out, or
- (b) any other kind of treatment declared by the regulations to be special medical treatment for the purposes of this Part.

**surgical operation** means a surgical procedure, a series of related surgical operations or surgical procedures, and the administration of an anaesthetic for the purpose of medical investigation.

### **99 Emergency surgery for involuntary patients**

- (1) An authorised medical officer or the Director-General may consent to the performance of a surgical operation on an involuntary patient (other than a forensic patient or correctional patient not suffering from a mental illness) if of the opinion that:
  - (a) the patient is incapable of giving consent to the operation or is capable of giving consent but refuses to give that consent or neither gives nor refuses to give that consent, and
  - (b) it is necessary, as a matter of urgency, to perform a surgical operation on the patient in order to save the patient's life or to prevent serious damage to the patient's health or to prevent the patient from suffering or continuing to suffer significant pain or distress.
- (2) An authorised medical officer or the Director-General may consent to the performance of a surgical operation on a forensic patient or correctional patient not suffering from a mental illness if of the opinion that:
  - (a) the patient is incapable of giving consent to the operation, and
  - (b) it is necessary, as a matter of urgency, to perform a surgical operation on the patient in order to save the patient's life or to prevent serious damage to the patient's health or to prevent the patient from suffering or continuing to suffer significant pain or distress.
- (3) The consent is to be in writing and signed by the person giving the consent.
- (4) The authorised medical officer of the mental health facility in which the involuntary patient is detained must, as soon as practicable after the performance of a surgical operation consented to under this section, notify the Tribunal of the operation.

### **100 Director-General may consent to surgery**

- (1) An authorised medical officer may apply to the Director-General for consent to the performance of a surgical operation on an involuntary patient.

- (2) An application is to be made to the Director-General if the primary carer of the patient agrees, in writing, to the performance of the surgical operation.
- (3) On an application, the Director-General may consent to the performance of a surgical operation on an involuntary patient (other than a forensic patient or correctional patient not suffering from a mental illness) if of the opinion that:
  - (a) the patient is incapable of giving consent to the operation or is capable of giving consent but refuses to give that consent or neither gives nor refuses to give that consent, and
  - (b) it is desirable, having regard to the interests of the patient, to perform the surgical operation on the patient.
- (4) On an application, the Director-General may consent to the performance of a surgical operation on a voluntary patient or a forensic patient or correctional patient not suffering from a mental illness if the Director-General is of the opinion that:
  - (a) the patient is incapable of giving consent to the operation, and
  - (b) it is desirable, having regard to the interests of the patient, to perform the surgical operation on the patient.
- (5) An application must be made not earlier than 14 days after notice of the proposed application is given under section 78, but may be made sooner if:
  - (a) the authorised medical officer is of the opinion that the urgency of the circumstances requires an earlier determination of the matter, or
  - (b) the person notified indicates that the person does not object.
- (6) The consent is to be in writing and signed by the person giving the consent.

#### **101 Tribunal may consent to surgery**

- (1) An authorised medical officer of a mental health facility may apply to the Tribunal for consent to the performance of a surgical operation on an involuntary patient detained in the facility.
- (2) An application is to be made to the Tribunal if the primary carer of the person does not agree, in writing, to the performance of the surgical operation.
- (3) On an application, the Tribunal may consent to the performance of a surgical operation on an involuntary patient (other than a forensic patient or correctional patient not suffering from a mental illness) if the Tribunal is of the opinion that:
  - (a) the patient is incapable of giving consent to the operation or is capable of giving consent but refuses to give that consent or neither gives nor refuses to give that consent, and

- (b) it is desirable, having regard to the interests of the patient, to perform the surgical operation on the patient.
- (4) On an application, the Tribunal may consent to the performance of a surgical operation on a voluntary patient or a forensic patient or correctional patient not suffering from a mental illness if the Tribunal is of the opinion that:
  - (a) the patient is incapable of giving consent to the operation, and
  - (b) it is desirable, having regard to the interests of the patient, to perform the surgical operation on the patient.
- (5) An application for consent must be made not earlier than 14 days after notice of the proposed application is given under section 78, but may be made sooner if:
  - (a) the authorised medical officer is of the opinion that the urgency of the circumstances requires an earlier determination of the matter, or
  - (b) the person notified indicates that the person does not object.

## **102 Special medical treatment**

- (1) A person must not carry out special medical treatment on a patient otherwise than in accordance with this Part, unless the person is a medical practitioner and:
  - (a) is of the opinion that it is necessary, as a matter of urgency, to carry out special medical treatment on the patient in order to save the patient's life or to prevent serious damage to the patient's health, or
  - (b) consent to the treatment being carried out is given by the Tribunal in accordance with this Part.

Maximum penalty on indictment: imprisonment for 7 years.

- (2) This section does not apply to a patient who is a child to whom section 175 of the *Children and Young Persons (Care and Protection) Act 1998* applies.

### **Note—**

This provision provides an offence in relation to carrying out special medical treatment on children.

## **103 Tribunal may consent to special medical treatment**

- (1) An authorised medical officer of a mental health facility may apply to the Tribunal for consent to the carrying out of special medical treatment on an involuntary patient detained in the facility.
- (2) On an application, the Tribunal may consent to the carrying out of special medical treatment on a patient (other than prescribed special medical treatment) if the Tribunal is satisfied that it is necessary to prevent serious damage to the health of the

patient.

- (3) The Tribunal may consent to the carrying out of prescribed special medical treatment if the Tribunal is satisfied that:
  - (a) the treatment is the only or most appropriate way of treating the patient, and is manifestly in the best interests of the patient, and
  - (b) in so far as the National Health and Medical Research Council has prescribed guidelines that are relevant to the carrying out of the treatment—those guidelines have been or will be complied with as regards the patient.
- (4) The Tribunal must not consent to the carrying out of special medical treatment on a patient who is under the age of 16 years.
- (5) An application for consent must be made not earlier than 14 days after notice of the proposed application is given under section 78, but may be made sooner if the authorised medical officer is of the opinion that the urgency of the circumstances requires an earlier determination of the matter or the person notified agrees.
- (6) In this section:

***prescribed special medical treatment*** means special medical treatment referred to in paragraph (b) of the definition of ***special medical treatment*** in section 98.

#### **104 Effect of consents**

A consent given under this Part has the same effect as if it were given by the patient and the patient had the capacity to consent or, in the case of a child under the age of 14 years or a person under guardianship, by the person having capacity to consent on the child's or person's behalf.

## **Chapter 5 Administration**

### **Part 1 Administrative objectives and functions**

#### **105 Objectives of New South Wales public health system** (cf 1990 Act, s 6)

The objectives of the New South Wales public health system under this Act in relation to mental health services are to establish, develop, promote, assist and encourage mental health services that:

- (a) ensure that provision is made for the care, treatment, control and rehabilitation of persons who are mentally ill or mentally disordered, and
- (b) promote the establishment of community mental health services for the purpose of enabling the treatment in the community wherever possible of persons who are mentally ill or suffering from the effects of mental illness or who are mentally

disordered, and

- (c) develop, as far as practicable, standards and conditions of care and treatment for persons who are mentally ill or mentally disordered that are in all possible respects at least as beneficial as those provided for persons suffering from other forms of illness, and
- (d) take into account the various religious, cultural and language needs of those persons, and
- (e) are comprehensive and accessible, and
- (f) permit appropriate intervention at an early stage of mental illness, and
- (g) assist patients to live in the community through the provision of direct support and provide for liaison with carers and providers of community services.

**106 Functions of Director-General** (cf 1990 Act, s 7)

The Director-General has the following functions under this Act:

- (a) to promote research into mental illness,
- (b) to assist in the training and education of persons responsible for the care and treatment of persons who are mentally ill or mentally disordered,
- (c) to make recommendations and reports to the Minister about matters affecting the accommodation, maintenance, care, treatment, control and welfare of persons who are mentally ill or mentally disordered,
- (d) to make recommendations to the Minister about this Act or the regulations,
- (e) to promote informed public opinion on matters relating to public health by publishing reports and information concerning mental health,
- (f) to promote public understanding of involvement in measures for the prevention, treatment and care of mental illness and the care, treatment and control of persons who are mentally ill or mentally disordered,
- (g) to assist in, and promote, co-operation between different agencies involved in the provision of services for people who are mentally ill or mentally disordered and their carers,
- (h) any other functions conferred or imposed on the Director-General by or under this or any other Act.

**107 Delegation**

- (1) The Director-General may delegate the exercise of any function of the Director-

General under this Act or the *Mental Health (Forensic Provisions) Act 1990* (other than this power of delegation) to:

- (a) any member of staff of the Department of Health, or
- (b) any member of staff of the NSW Health Service, or
- (c) any person, or any class of persons, authorised for the purposes of this section by the regulations.

(2) A delegate may sub-delegate to a person referred to in subsection (1) (a) or (b) if the delegate is authorised in writing to do so by the Director-General.

**108 Annual report** (cf 1990 Act, s 301)

- (1) The Director-General must, as soon as practicable after 30 June in each year, cause to be prepared and forwarded to the Minister a report as to the matters relating to mental health services that are prescribed by the regulations for the 12 months preceding that date.
- (2) The Minister is required to lay the report, or cause it to be laid, before each House of Parliament as soon as practicable after the receipt by the Minister of the report.
- (3) A report made under the *Annual Reports (Departments) Act 1985* in respect of the Department of Health may include any report required to be made under this section.

## **Part 2 Mental health facilities**

### **Division 1 Declared mental health facilities**

**109 Establishment of declared mental health facilities** (cf 1990 Act, s 208)

- (1) The Director-General, by order published in the Gazette:
  - (a) may declare any premises to which this section applies and that are specified or described in the order to be a declared mental health facility, and
  - (b) may, in the same or another order so published, name the premises so specified or described, and
  - (c) may, in the same or another order so published, limit the provisions of this Act or the purposes under this Act for which the facility is a declared mental health facility.
- (2) Without limiting subsection (1), an order may do any of the following:
  - (a) designate a declared mental health facility as a facility of a specified class,
  - (b) designate the purposes for which a mental health facility of a specified class may

be used,

- (c) impose restrictions on the use of a mental health facility for specified purposes,
- (d) impose any other conditions in relation to the operation of the facility as a mental health facility.

(3) This section applies to the following premises:

- (a) premises that belong to or are under the control of the Crown or a person acting on behalf of the Crown,
- (b) premises that are under the control of a public health organisation within the meaning of the *Health Services Act 1997*,
- (c) premises that the owner or person who has control of the premises has agreed, by an instrument in writing given to the Director-General, to being premises to which this section applies.

#### **110 Declared mental health facilities that are private mental health facilities**

A declared mental health facility that is also a private mental health facility ceases to be a declared mental health facility if the licence for the facility is cancelled under Division 2.

#### **111 Appointment of medical superintendents** (cf 1990 Act, s 209)

- (1) The Director-General must, by instrument in writing, appoint a medical practitioner as medical superintendent of a declared mental health facility (other than a private mental health facility).
- (2) The Director-General may (by the same or different instruments) appoint a medical practitioner as the medical superintendent of more than one declared mental health facility.

#### **112 Appointment of deputy medical superintendents** (cf 1990 Act, s 210)

- (1) The Director-General may, by instrument in writing, appoint a medical practitioner as deputy medical superintendent of a declared mental health facility.
- (2) The deputy medical superintendent of a declared mental health facility has the functions of the medical superintendent of the facility during the absence, for any reason, of the medical superintendent or during a vacancy in the office of medical superintendent.
- (3) The Director-General may (by the same or different instruments) appoint a medical practitioner as the deputy medical superintendent of more than one declared mental health facility.



**113 Directors and deputy directors of community treatment** (cf 1990 Act, ss 115, 150)

- (1) The Director-General must appoint the holder of a specified office as the director of community treatment of a mental health facility that implements treatment plans under community treatment orders and may appoint the holder of a specified office as the deputy director of community treatment of the facility.
- (2) An office may not be specified unless, in the opinion of the Director-General, it qualifies the holder to exercise the functions conferred or imposed on a director or deputy director by or under this Act.
- (3) A person appointed as a director of community treatment must be a health professional who is appropriately qualified for the position by education, training and experience.
- (4) The director of community treatment of a mental health facility may delegate a function conferred or imposed by this Act on the director (other than this power of delegation) to the deputy director.

**114 Psychiatric case managers** (cf 1990 Act, s 116)

- (1) The director of community treatment of a declared mental health facility may appoint a person employed at the facility as the psychiatric case manager of an affected person under a community treatment order.
- (2) A person may not be appointed as a psychiatric case manager unless, in the opinion of the director, the person is qualified to supervise the treatment, and monitor the progress, of the affected person under a community treatment order.
- (3) The same person may be the director or deputy director of community treatment of a declared mental health facility and the psychiatric case manager of an affected person.

## **Division 2 Private mental health facilities**

**115 Application for licence** (cf 1990 Act, s 211)

- (1) A person may apply to the Director-General for a licence to keep premises as a private mental health facility for the admission, care and treatment of patients.
- (2) An application must be:
  - (a) in a form approved by the Director-General, and
  - (b) accompanied by a plan of the premises in respect of which the licence is sought and the prescribed fee.

**116 Grant or refusal of licence** (cf 1990 Act, s 212)

- (1) The Director-General may grant an application for a licence under this Division or may refuse to grant the application.
- (2) If the Director-General grants the application, the Director-General:
  - (a) must specify the maximum number of patients who may be kept or treated at the private mental health facility, and
  - (b) must specify any other terms and conditions to which the licence is subject, as the Director-General thinks fit, and
  - (c) must issue the applicant with a licence in a form approved by the Director-General.

**117 Duration of licence** (cf 1990 Act, s 213)

A licence remains in force until it is cancelled in accordance with this Division.

**118 Annual statement and licence fee** (cf 1990 Act, s 214)

A licensee must, on or before 31 December in each year:

- (a) forward to the Director-General a statement in a form approved by the Director-General relating to the conduct of the premises to which the licence relates and the admission of patients to those premises and the care and treatment of patients on those premises, and
- (b) pay to the Director-General the prescribed annual licence fee.

**119 Duplicate licence** (cf 1990 Act, s 215)

If the Director-General is satisfied that a licence has been lost, destroyed or damaged, the Director-General may, on payment of the prescribed fee, issue a duplicate licence to the licensee.

**120 Cancellation of licences—generally** (cf 1990 Act, s 216)

The Director-General may cancel a licence:

- (a) if the annual licence fee payable in respect of the licence has not been paid by the due date, or
- (b) if the licensee requests the Director-General, in writing, to cancel the licence, or
- (c) if the premises to which the licence relates have ceased to be kept as a mental health facility for the admission, care and treatment of patients, or
- (d) if the premises to which the licence relates cease to be the subject of a licence under

the *Private Hospitals and Day Procedure Centres Act 1988*.

**121 Cancellation of licences—failure to show cause** (cf 1990 Act, s 217)

- (1) The Director-General may, by notice in writing served on the holder of a licence, require the holder to show cause, by a date and time specified in the notice (being a date not less than 1 month after the date of service of the notice), why the licence should not be cancelled.
- (2) The Director-General may cancel the licence if, by the date and time referred to in the notice, the holder of the licence has not shown sufficient cause why the licence should not be cancelled.

**122 Variation of licence** (cf 1990 Act, s 218)

- (1) The holder of a licence may, at any time, apply to the Director-General for the variation of any term or condition to which the licence is subject.
- (2) The Director-General may, on an application being made:
  - (a) vary any term or condition to which a licence is subject, or
  - (b) refuse to grant the application.

**123 Provision of medical services in private mental health facilities** (cf 1990 Act, s 219)

The holder of a licence must make such arrangements as may be approved by the Director-General for the provision of medical services to patients in the private mental health facility.

**124 Medical superintendents** (cf 1990 Act, ss 220, 221)

- (1) The holder of a licence must appoint a medical practitioner approved by the Director-General as the medical superintendent of the private mental health facility.
- (2) The medical superintendent of a private mental health facility must cause to be kept such records and furnish to the Director-General such particulars as are approved by the Minister in respect of the admission, treatment, discharge, removal, absence with or without leave or death of each patient admitted to the facility.

**125 Deputy medical superintendents** (cf 1990 Act, ss 222, 223)

- (1) The holder of a licence may appoint a medical practitioner as the deputy medical superintendent of the private mental health facility.
- (2) The appointment of the medical practitioner must be approved by the Director-General before it takes effect.
- (3) The deputy medical superintendent of a private mental health facility has the

functions of the medical superintendent of the facility during the absence, for any reason, of the medical superintendent or during a vacancy in the office of medical superintendent.

**126 Unlicensed private mental health facilities** (cf 1990 Act, s 224)

A person keeping premises is guilty of an offence against this Act if:

- (a) the premises were the subject of a licence that has ceased to be in force, and
- (b) at any time after 2 months after the licence ceases to be in force, there is in or on the premises a person who was a patient immediately before the licence ceased to be in force and who has not ceased to be a patient.

Maximum penalty: 50 penalty units.

**127 Certain private hospitals to be licensed** (cf 1990 Act, s 225)

A person must not conduct a private hospital within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988* at which a person is being treated primarily for a mental illness, unless the person who conducts the hospital is the holder of a licence granted under this Division.

Maximum penalty: 50 penalty units.

### **Part 3 Official visitors and accredited persons**

**128 Principal official visitor** (cf 1990 Act, ss 226, 227)

- (1) The Minister may, by instrument in writing, appoint a person to be the Principal official visitor.
- (2) The Principal official visitor has the following functions:
  - (a) to advise and assist official visitors in the exercise of the functions conferred or imposed on them by or under this Act,
  - (b) to oversee the official visitor program conducted under this Act,
  - (c) to report to the Minister, as directed by the Minister, about the exercise of the functions of the Principal official visitor and official visitors,
  - (d) to refer matters raising any significant public mental health issues or patient safety or care or treatment issues to the Minister or any other appropriate person or body,
  - (e) to act as an advocate to the Minister for consumers of mental health care to promote the proper resolution of issues arising in the mental health system,
  - (f) any other function conferred on the Principal official visitor by or under this or any

other Act.

**129 Official visitors** (cf 1990 Act, s 228)

- (1) The Minister must, by instrument in writing, appoint official visitors.
- (2) A person may be appointed as an official visitor if the person has any of the following qualifications:
  - (a) the person is a medical practitioner,
  - (b) the person is a psychologist registered under the *Psychologists Act 2001*,
  - (c) the person has any other qualifications prescribed by the regulations,
  - (d) the person is otherwise a suitably qualified or interested person.
- (3) An official visitor has the following functions:
  - (a) to refer matters raising any significant public mental health issues or patient safety or care or treatment issues to the Principal official visitor or any other appropriate person or body,
  - (b) to act as an advocate for patients to promote the proper resolution of issues arising in the mental health system, including issues raised by the primary carer of a patient or person detained under this Act,
  - (c) to inspect mental health facilities as directed by the Principal official visitor and in accordance with this Part,
  - (d) any other function conferred on official visitors by or under this or any other Act.

**130 General provisions relating to the Principal official visitor and official visitors** (cf 1990 Act, s 229)

Schedule 4 has effect with respect to the Principal official visitor and official visitors.

**131 Inspections of mental health facilities by official visitors** (cf 1990 Act, s 230)

- (1) The Principal official visitor must ensure that 2 or more official visitors visit each mental health facility in accordance with the regulations.
- (2) For the purposes of any such visit, at least one of the official visitors is to be a person referred to in section 129 (2) (a), (b) or (c) and at least one other of the official visitors is to be a person referred to in section 129 (2) (d).
- (3) On a visit to a mental health facility, the official visitors must:
  - (a) so far as practicable, inspect every part of the facility at least once, and
  - (b) so far as practicable, make any necessary inquiries about the care, treatment and

control of voluntary patients and the patients or persons detained in the facility or who are subject to community treatment orders and being treated by the facility, and

- (c) examine and sign the registers, books, records and other documents produced to them in accordance with this Part, and
- (d) enter the fact of their visit in the official visitors book at the facility, together with any observations they think it appropriate to make.

- (4) The official visitors must report to the Principal official visitor about each visit in accordance with any arrangements made by the Principal official visitor.
- (5) A visit may be made with or without previous notice and at any time of the day or night, and be of such length, as the official visitors think appropriate.
- (6) A visit may be made at the request of the primary carer of a patient or person treated at or by the mental health facility.

**132 Obligations to facilitate exercise of functions by official visitors** (cf 1990 Act, s 231)

- (1) The medical superintendent of a declared mental health facility or the administrator of a private mental health facility must do the following for the purposes of any visit by official visitors:
  - (a) allow the official visitors to have access to and to inspect every part of the facility,
  - (b) permit the official visitors to see and to interview each patient or person detained in the facility or each affected person under a community treatment order being treated by the facility,
  - (c) give full and true answers to the best of their knowledge to all questions that the official visitors ask in relation to the facility, the patients and other persons or affected persons,
  - (d) produce to the official visitors any registers, books, records, orders, certificates, returns and other documents relating to the admission, care, treatment and control of the patients and other persons and the discharge of persons required by the official visitors.
- (2) The administrator of a private mental health facility must, at the end of each month, report in writing to the medical superintendent as to the functions exercised under this section by the administrator during that month.

**133 Reports to Minister** (cf 1990 Act, s 233)

Nothing in this Part prevents an official visitor from reporting to the Minister with respect to any matter arising from or relating to the exercise by the official visitor of the official

visitor's functions.

**134 Request by patient or other person to see official visitor** (cf 1990 Act, s 234)

- (1) A patient or person detained in a mental health facility or an affected person under a community treatment order who is being treated by a mental health facility, or the primary carer of any such person, may notify the medical superintendent or director of community treatment of the facility, orally or in writing, that the patient or person or carer desires to see an official visitor.
- (2) The medical superintendent or director must inform an official visitor of the patient's or person's or primary carer's desire to see an official visitor not later than 2 days after receiving the notification.

**135 Official visitors not personally liable** (cf 1990 Act, s 234A)

A matter or thing done or omitted by an official visitor does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or the regulations, subject the official visitor personally to any action, liability, claim or demand.

**136 Accredited persons** (cf 1990 Act, s 287A)

- (1) The Director-General may appoint a person as an accredited person for the purposes of this Act.
- (2) The Director-General may appoint the holder of an office as an accredited person and may impose conditions on the exercise by a person or the holder of an office of the functions of an accredited person.

## **Part 4 Inspection powers**

**137 Inspection of mental health facilities** (cf 1990 Act, s 237)

- (1) The Director-General may inquire into the administration, management and services of a mental health facility and for that purpose may cause any mental health facility to be visited and inspected from time to time by officers authorised by the Director-General.
- (2) A visit or inspection may be carried out by an authorised officer appointed under section 124 of the *Health Services Act 1997*, if the officer's certificate of authority is expressed to extend to such visits or inspections.
- (3) On an inspection, an authorised officer:
  - (a) may, at any time, make any inspections, investigations and inquiries with respect to the care, treatment or control of patients or persons detained in a facility or with respect to the management of a facility the authorised officer considers necessary, and

(b) must make any such inspections, investigations and inquiries that are directed by the Director-General.

(4) An inspection may be made with or without previous notice and at any time of the day or night, and be of such length, as the authorised officer thinks appropriate.

**138 Powers of authorised officer to require information, evidence, production of records** (cf 1990 Act, s 238)

(1) An authorised officer inspecting a mental health facility under this Part may, by notice in writing, require a person to do any one or more of the following:

(a) to furnish to the authorised officer the information required by the authorised officer concerning any of the matters with respect to which an authorised officer is, by or under this Part, authorised to make inspections, investigations and inquiries,

(b) to attend and give evidence before the authorised officer concerning any such matters,

(c) to produce all books, documents or other records in the person's custody or under the person's control concerning any such matters.

(2) An authorised officer may require evidence to be given on oath, and either orally or in writing, and for that purpose the authorised officer may administer an oath.

(3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under this section.

Maximum penalty: 50 penalty units.

**139 Protection from incrimination**

(1) A person is not excused from a requirement under this Part to make a statement, to give or furnish information, to answer a question or to produce a document on the ground that the statement, information, answer or document might incriminate the person or make the person liable to a penalty.

(2) However, any statement made or any information or answer given or furnished by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:

(a) the person objected at the time to doing so on the ground that it might incriminate the person, or

(b) the person was not warned on that occasion that the person may object to making the statement or giving or furnishing the information or answer on the ground that it might incriminate the person.



- (3) Any document produced by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.
- (4) Further information obtained as a result of a document produced, a statement made or information or answer given or furnished in compliance with a requirement under this Part is not inadmissible on the ground:
  - (a) that the document, statement, information or answer had to be produced, made, given or furnished, or
  - (b) that the document, statement, information or answer might incriminate the person.

## **Chapter 6 Mental Health Review Tribunal**

### **Part 1 The Tribunal**

#### **140 Constitution of the Tribunal** (cf 1990 Act, s 252)

- (1) There is constituted by this Act a Mental Health Review Tribunal.
- (2) The Tribunal has the functions conferred or imposed on it by or under this Act or any other law.
- (3) Schedule 5 has effect with respect to the Tribunal.

#### **141 Membership of Tribunal**

- (1) The Tribunal consists of the following members appointed by the Governor:
  - (a) the President of the Tribunal who is to be appointed as a full-time or part-time member,
  - (b) 1 or more Deputy Presidents of the Tribunal who may be appointed as full-time or part-time members,
  - (c) other members (if any) who may be appointed as full-time or part-time members.
- (2) The members (other than the President and any Deputy President) are to be appointed from the following classes of persons:
  - (a) Australian legal practitioners,
  - (b) psychiatrists,
  - (c) persons having, in the opinion of the Governor, other suitable qualifications or experience, including at least 1 person selected from a group of persons who are nominated by consumer organisations.

- (3) The members are to include 1 or more women and 1 or more persons of ethnic background and a different person is to be appointed to satisfy each of those qualifications, even though a person so appointed may possess both of those qualifications.
- (4) If, at the time at which an appointment is required to be made of a person selected from a group of persons who are nominated by consumer organisations no such group has been nominated, the Governor may appoint as a member instead a person who, in the opinion of the Governor, has suitable qualifications or experience.

**142 Registrar and other officers of the Tribunal** (cf 1990 Act, s 256)

- (1) A Registrar and such staff as may be necessary to enable the Tribunal to exercise its functions may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service.
- (2) The Registrar has the functions conferred or imposed on the Registrar by or under this Act or any other law or by the Tribunal in the exercise of its functions.

**143 Authentication of documents** (cf 1990 Act, ss 254, 257)

- (1) The Tribunal is to have a seal of which judicial notice is to be taken.
- (2) Every document requiring authentication by the Tribunal is sufficiently authenticated without the seal of the Tribunal if it is signed by the President or a Deputy President.

**144 Judicial notice of certain signatures** (cf 1990 Act, s 258)

Judicial notice is to be taken of the signature of the President, a Deputy President or the Registrar of the Tribunal when appearing on a document issued by the Tribunal.

**145 Certain proceedings prohibited** (cf 1990 Act, s 259)

No proceedings lie against the Tribunal, a member of the Tribunal or a member of staff of the Tribunal for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Tribunal, member or member of staff, and purporting to be done, ordered, omitted or suffered for the purposes of carrying out the provisions of this or any other Act, if the Tribunal, member or member of staff has acted in good faith.

**146 Application of *Defamation Act 2005* to proceedings of Tribunal** (cf 1990 Act, s 260)

Section 27 of the *Defamation Act 2005* makes provision for a defence of absolute privilege in respect of publications of defamatory matter in the course of proceedings of the Tribunal.

**Note—**

Section 27 (2) (b) of the *Defamation Act 2005* provides that the defence of absolute privilege is available in respect of defamatory matter that is published in the course of proceedings of an Australian court or Australian

tribunal, including (but not limited to) the following:

- (a) the publication of matter in any document filed or lodged with, or otherwise submitted to, the court or tribunal (including any originating process),
- (b) the publication of matter while giving evidence before the court or tribunal,
- (c) the publication of matter in any judgment, order or other determination of the court or tribunal.

The term **Australian tribunal** is defined in section 4 of that Act to mean any tribunal (other than a court) established by or under a law of an Australian jurisdiction that has the power to take evidence from witnesses before it on oath or affirmation (including a Royal Commission or other special commission of inquiry).

The Mental Health Review Tribunal is an Australian tribunal for the purposes of the [Defamation Act 2005](#) because it is a tribunal that has the power under section 151 (5) of this Act to take evidence from witnesses under oath.

**147 Annual report** (cf 1990 Act, s 261)

- (1) As soon as practicable after 1 September, but on or before 1 December, in each year, the President must prepare and forward to the Minister a report as to the exercise by the Tribunal of its functions.
- (2) Without limiting subsection (1), the report is to include the following matters relating to persons taken to mental health facilities under Part 2 of Chapter 3:
  - (a) the number of persons so taken and the provisions of this Act under which they were so taken,
  - (b) the number of persons detained as mentally ill persons or mentally disordered persons,
  - (c) the number of persons in respect of whom a mental health inquiry was held,
  - (d) the number of persons detained as involuntary patients for 3 months or less and the number of persons otherwise detained as involuntary patients.
- (3) The report is also to include any matters the Minister may direct or that are prescribed by the regulations.
- (4) The Minister must lay the report, or cause it to be laid, before each House of Parliament as soon as practicable after receiving the report.
- (5) A report made under the [Annual Reports \(Departments\) Act 1985](#) in respect of the Department of Health may include any report required to be made under this section.

**148 Delegation** (cf 1990 Act, s 263)

- (1) The President may delegate to any of the following persons any of the functions of the President, other than this power of delegation:
  - (a) a member of the Tribunal,

(b) the Registrar of the Tribunal,

(c) a person of a class prescribed by the regulations.

(2) A delegate may sub-delegate to a person referred to in subsection (1) (a), (b) or (c) any function delegated by the President if the delegate is authorised in writing to do so by the President.

## **Part 2 Procedures of the Tribunal**

### **149 Application of Part**

This Part, and any regulations made under this Part, apply to any proceedings of the Tribunal under this or any other Act.

### **150 Composition of Tribunal** (cf 1990 Act, ss 264, 265)

(1) The Tribunal is to be constituted by one or more members nominated by the President for the exercise of its functions.

(2) For the purpose of exercising any of its functions (other than under the *Mental Health (Forensic Provisions) Act 1990*), the Tribunal must consist of at least 1 member who is to be the President, a Deputy President or a member who is an Australian legal practitioner.

(3) The President may nominate other members of the following kinds:

(a) a member who is a psychiatrist,

(b) a member who (not being an Australian legal practitioner) has other suitable qualifications or experience.

(4) (Repealed)

(5) The regulations may make provision for or with respect to the members who are to constitute the Tribunal for the exercise of any of its functions.

### **151 Procedure at meetings of Tribunal to be informal** (cf 1990 Act, s 267)

(1) Meetings of the Tribunal are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act, the *Mental Health (Forensic Provisions) Act 1990*, the regulations and as the proper consideration of the matters before the Tribunal permit.

(2) In determining any matter relating to a forensic patient, correctional patient or other patient or a person detained in a mental health facility, the Tribunal is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate and as the proper consideration of the matter before the Tribunal permits.

- (3) The proceedings of the Tribunal are to be open to the public.
- (4) However, if the Tribunal is satisfied that it is desirable to do so for the welfare of a person who has a matter before the Tribunal or for any other reason, it may (of its own motion or on the application of the person or another person appearing at the proceedings) make any one or more of the following orders:
  - (a) an order that the hearing be conducted wholly or partly in private,
  - (b) an order prohibiting or restricting the publication or broadcasting of any report of proceedings before the Tribunal,
  - (c) an order prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence before the Tribunal,
  - (d) an order prohibiting or restricting the disclosure to some or all of the parties to the proceedings of evidence given before the Tribunal, or of the contents of a document lodged with the Tribunal or received in evidence by the Tribunal, in relation to the proceedings.

**Note—**

Section 162 prohibits the publication or broadcasting of the name of a person involved in Tribunal proceedings or other material that may identify any such person, except with the consent of the Tribunal.

- (5) The President or a Deputy President or the chairperson of a meeting of the Tribunal may administer an oath to any person giving evidence before the Tribunal.
- (6) The President or a Deputy President of the Tribunal has, in the exercise of his or her functions as a member, the same protections and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

**152 Legal representation of mentally ill persons and other persons**

The fact that a person is suffering from mental illness or a developmental disability of mind or is suffering from a mental condition that is not a mental illness or a developmental disability of mind is presumed not to be an impediment to the representation of the person by an Australian legal practitioner before the Tribunal.

**153 Determination whether a person is a mentally ill person or mentally disordered person** (cf 1990 Act, s 268)

- (1) A member of the Tribunal must not determine, for the purposes of this Act or the *Mental Health (Forensic Provisions) Act 1990*, that a person is a mentally ill person or a mentally disordered person unless the member is satisfied, on the balance of probabilities, that the person is a mentally ill person or a mentally disordered person.
- (2) In determining whether a person is a mentally ill person, a member is to give due

regard to the following:

- (a) any cultural factors relating to the person that may be relevant to the determination,
- (b) any evidence given to the Tribunal by an expert witness concerning the person's cultural background and its relevance to any question of mental illness.

**154 Rights of appearance and representation** (cf 1990 Act, s 274)

- (1) A person appointed to assist the Tribunal in a matter may appear before the Tribunal in relation to any matter in respect of which the person is appointed.
- (2) A forensic patient or correctional patient having any matter before the Tribunal must, unless the forensic patient or correctional patient decides that he or she does not want to be represented, be represented by an Australian legal practitioner or, with the approval of the Tribunal, by another person of his or her choice.
- (3) A patient, other than a forensic patient or correctional patient, or a person detained in a mental health facility having any matter before the Tribunal may be represented by an Australian legal practitioner or, with the approval of the Tribunal, by another person of his or her choice.

**155 Adjournments** (cf 1990 Act, s 271)

- (1) The Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.
- (2) If the Tribunal adjourns proceedings, a person having a matter before the Tribunal who is detained in a mental health facility is to continue to be detained in the facility unless the person is discharged or allowed to be absent from the facility under another provision of this Act or the *Mental Health (Forensic Provisions) Act 1990*.

**156 Inspection etc of medical records** (cf 1990 Act, s 276)

- (1) A patient or person having any matter before the Tribunal is, unless the Tribunal otherwise determines, entitled to inspect or otherwise have access to any medical records in the possession of any person relating to the patient or person.
- (2) A representative of a person having any matter before the Tribunal is entitled, at any time before or during the consideration of that matter by the Tribunal, to inspect or otherwise have access to any medical records in the possession of any person relating to the firstmentioned person.
- (3) Subject to any order or direction of the Tribunal, in relation to an inspection under subsection (2) of, or other access under that subsection to, any medical record relating to a person:

- (a) if a medical practitioner warns the representative of the person that it may be harmful to communicate to the person, or any other person, specified information contained in those medical records, the representative is to have full and proper regard to that warning, and
- (b) the representative is not obliged to disclose to the person any information obtained by virtue of the inspection or other access.

**157 Production of evidence** (cf 1990 Act, s 278)

- (1) The Tribunal may of its own motion or on the application of a person having any matter before the Tribunal issue a summons in the prescribed form requiring the person to whom the summons is addressed to do either or both of the following things:
  - (a) to attend as a witness at a meeting of the Tribunal,
  - (b) to attend at a meeting of the Tribunal and to produce any documents in the possession or under the control of the person relating to any matter before the Tribunal and specified in the summons.
- (2) For the purposes of subsection (1), a summons is issued by the Tribunal if it is signed by the President or a Deputy President.
- (3) The regulations may make provision for or with respect to authorising compliance with a summons to produce any documents by the production of the documents at a place specified in the summons at any time before the meeting of the Tribunal at which the documents are required to be produced.
- (4) A person to whom a summons is addressed is entitled to receive:
  - (a) if the summons was issued by the Tribunal of its own motion, from the Tribunal, or
  - (b) if the summons was issued by the Tribunal on the application of a person having any matter before the Tribunal, from the person,

the amounts payable for compliance with a subpoena under the [Uniform Civil Procedure Rules 2005](#).
- (5) A person:
  - (a) who is served with a summons addressed to the person under this section, and
  - (b) to whom, at the time of service, is tendered an amount that is sufficient to cover the person's travelling and other out-of-pocket expenses in attending the meeting of the Tribunal specified in the summons and producing anything required by the summons to be produced,

must not, without cause, fail or refuse to obey the summons.

Maximum penalty: 50 penalty units.

**158 Assistance of interpreters** (cf 1990 Act, s 275)

A person having any matter before the Tribunal who is unable to communicate adequately in English but who is able to communicate adequately in another language is entitled to be assisted, when appearing before the Tribunal in relation to the matter, by a competent interpreter.

**159 Record of proceedings**

- (1) Proceedings before the Tribunal are to be recorded.
- (2) Regulations may be made for or with respect to the manner in which the evidence may be recorded and the authentication of evidence or of transcripts of evidence given in proceedings.
- (3) The regulations may provide for the circumstances in which evidence given in proceedings is to be transcribed.

**160 Tribunal procedure generally**

- (1) Subject to this Part and the regulations, the procedure for the calling of, and for the conduct of business at, any meeting of the Tribunal is to be as determined by the Tribunal.
- (2) The regulations may make provision for or with respect to the following matters:
  - (a) the procedure for the calling of, and for the conduct of business at, any meeting of the Tribunal,
  - (b) the provision of assistance to the Tribunal by relevant qualified persons for the purposes of determining any matter,
  - (c) representations that may be made by victims in relation to proceedings before the Tribunal and victim impact statements,
  - (d) notification of family members and victims of persons of proceedings before the Tribunal,
  - (e) reports and information required to be provided to the Tribunal, including provisions relating to the matters to be dealt with in reports and the making of reports available to the Tribunal,
  - (f) the recording of proceedings and determinations of the Tribunal,
  - (g) the service of documents on the Tribunal,
  - (h) making written reasons for decisions or determinations of the Tribunal available,



- (i) the establishment and use of a victims' register,
  - (j) notification of victims of Tribunal decisions in proceedings relating to forensic patients or correctional patients,
  - (k) notification of victims of termination of status of persons as forensic patients.
- (3) The President may issue practice directions, not inconsistent with this Act or the *Mental Health (Forensic Provisions) Act 1990* or any regulations under this Act or that Act, for or with respect to the practice and procedure of the Tribunal.

**161 Contempt of Tribunal** (cf 1990 Act, s 291)

A person must not refuse, neglect or for any reason fail to obey or comply with an order, direction, decision or determination, under this or any other Act, of the Tribunal.

Maximum penalty: 50 penalty units.

**162 Publication of names**

- (1) A person must not, except with the consent of the Tribunal, publish or broadcast the name of any person:
- (a) to whom a matter before the Tribunal relates, or
  - (b) who appears as a witness before the Tribunal in any proceedings, or
  - (c) who is mentioned or otherwise involved in any proceedings under this Act or the *Mental Health (Forensic Provisions) Act 1990*,  
whether before or after the hearing is completed.

Maximum penalty:

- (a) in the case of an individual—50 penalty units or imprisonment for 12 months, or both, or
  - (b) in the case of a corporation—100 penalty units.
- (2) This section does not prohibit the publication or broadcasting of an official report of the proceedings of the Tribunal that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this section.
- (3) For the purposes of this section, a reference to the name of a person includes a reference to any information, picture or material that identifies the person or is likely to lead to the identification of the person.

**162A Tribunal may request information or services from other agencies**

- (1) The Tribunal may request the Department of Health, an area health service, the

Commissioner of Corrective Services, the Director-General of the Department of Juvenile Justice or any other person or body prescribed by the regulations to provide the Tribunal with information as to whether or not action has been taken, and what actions have been taken, in relation to orders made by the Tribunal under this Act or the *Mental Health (Forensic Provisions) Act 1990*.

- (2) A person or body must comply with any reasonable request made by the Tribunal of the person or body under this section.

## **Chapter 7 Jurisdiction of Supreme Court**

### **163 Appeals to the Court** (cf 1990 Act, s 281)

- (1) A person may appeal to the Court against:
  - (a) a determination of the Tribunal made with respect to the person, or
  - (b) the failure or refusal of the Tribunal to make a determination with respect to the person in accordance with the provisions of this Act.
- (2) An appeal is to be made subject to and in accordance with the rules of the Court.

### **164 Power of the Court on appeals** (cf 1990 Act, ss 283, 284)

- (1) The Court has, for the purposes of hearing and disposing of an appeal, all the functions and discretions of the Tribunal in respect of the subject-matter of the appeal, in addition to any other functions and discretions it has.
- (2) An appeal is to be by way of a new hearing and new evidence or evidence in addition to, or in substitution for, the evidence given in relation to the determination of the Tribunal, or the failure or refusal of the Tribunal to make a determination, in respect of which the appeal is made may be given on the appeal.
- (3) The Court is to have regard to the provisions of this Act and any other matters it considers to be relevant in determining an appeal.
- (4) The decision of the Court on an appeal is, for the purposes of this or any other Act or instrument, taken to be, where appropriate, the final determination of the Tribunal and is to be given effect to accordingly.
- (5) In hearing and deciding an appeal, the Court may be assisted by 2 assessors selected by the Court from the panel nominated for the purposes of this Chapter, if the Court considers it appropriate to do so.
- (6) An assessor is to sit with the Court in the hearing of an appeal and has power to advise, but not to adjudicate, on any matter relating to the appeal.

**165 Panel of assessors** (cf 1990 Act, s 282)

- (1) The Minister must, from time to time, nominate in writing to the Chief Justice a panel of persons who, in the opinion of the Minister, have appropriate qualifications and sufficient experience to act as assessors in the hearing of appeals by the Court under this Chapter or the *Mental Health (Forensic Provisions) Act 1990*.
- (2) A nomination made under this section is to be accompanied by an oath taken by the person nominated, in the form prescribed by the regulations.
- (3) Sections 11, 11A and 12 of the *Oaths Act 1900* apply to and in respect of an oath required to be taken under this section as if the oath were an oath required to be taken under Part 2 of that Act.

**166 Jurisdiction of Court to order discharge or transfer of detained person** (cf 1990 Act, s 285)

- (1) The Court must order the medical superintendent of a mental health facility to bring a person before the Court for examination at a time specified in the order if the Court receives information on oath or has reason or cause to suspect:
  - (a) that the person is not a mentally ill person or a mentally disordered person and is detained in the facility, or
  - (b) that the person is a mentally ill person or a mentally disordered person detained in the facility and that other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person, or
  - (c) that the person is a forensic patient or correctional patient who is wrongly detained in the facility.
- (2) The Court must order that a person (other than a forensic patient or correctional patient) examined under this section be immediately discharged from the mental health facility in which the person is detained if, on examination, the medical superintendent is unable to prove on the balance of probabilities:
  - (a) that the person is a mentally ill person or a mentally disordered person, or
  - (b) if the person is a mentally ill person or a mentally disordered person, that no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person.
- (3) The Court must order that a forensic patient or correctional patient examined under this section be immediately transferred to a correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) if, on examination under this section, the medical superintendent is unable to prove that the patient is not wrongly detained in the mental health facility.

**167 Other jurisdiction of the Court not affected** (cf 1990 Act, s 286)

Nothing in this Chapter derogates from or otherwise affects the jurisdiction of the Court under any Act or other law.

**168 Tribunal members not liable for costs**

The Tribunal or any member of the Tribunal is not liable for any costs relating to a determination of the Tribunal, or the failure or refusal of the Tribunal to make a determination, in respect of which an appeal is made under this Chapter, or of the appeal.

## **Chapter 8 Interstate application of mental health laws**

### **Part 1 Preliminary**

**169 Object of Chapter** (cf 1990 Act, s 286A)

The object of this Chapter is to make provision with respect to the following matters:

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

**170 Definitions** (cf 1990 Act, s 286B)

In this Chapter:

**agreement** means an agreement under section 171.

**civil patient** means a person who is involuntarily detained, or who may be detained, under a corresponding law that corresponds to Chapter 3.

**corresponding law** means a law declared by the regulations to be a law corresponding to this Act or the *Mental Health (Forensic Provisions) Act 1990* for the purposes of this Chapter.

**interstate community treatment order** means an order made under a corresponding law that is of a class declared by the regulations to be an interstate community treatment order for the purposes of this Chapter.

**mental health laws** of this State include this Act, the *Mental Health (Forensic Provisions) Act 1990* and any regulations made under this Act or that Act.

**State** includes an internal or an external Territory of the Commonwealth.

**171 Authority to enter into agreements** (cf 1990 Act, s 286C)

- (1) The Minister may enter into an agreement with a Minister of another State for or with respect to any of the following:
  - (a) the application of mental health laws of this State or the other State,
  - (b) the transfer, detention, care, treatment and apprehension of persons in this State and the other State under mental health laws,
  - (c) the making of community treatment orders in respect of residents of this State and the other State under mental health laws,
  - (d) the recognition, implementation and enforcement of community treatment orders of this State in the other State and the recognition, implementation and enforcement of community treatment orders of the other State in this State,
  - (e) administrative matters and other matters ancillary to, or consequential on, any such matters or any other matters contained in this Chapter.
- (2) Nothing in this section limits the power of the Minister to enter into any agreement relating to mental health laws.

**172 Corresponding laws, documents and interstate community treatment orders** (cf 1990 Act, s 286D)

- (1) The regulations may declare that a specified law of another State relating to mental health is a law corresponding to this Act or the *Mental Health (Forensic Provisions) Act 1990* for the purposes of this Chapter.
- (2) The regulations may declare that a specified class of order relating to the treatment of persons in the community under a corresponding law of another State is an interstate community treatment order for the purposes of this Chapter.

**173 New South Wales officers may exercise functions under corresponding laws** (cf 1990 Act, s 286E)

Subject to the provisions of any agreement under this Part, an authorised medical officer or other person authorised by the Minister for the purposes of this section, may exercise any function conferred on him or her by or under a corresponding law or an agreement under this Part.

## **Part 2 Transfer of patients and persons**

### **Division 1 Transfer of persons from this State**

#### **174 Admission of persons to mental health facilities in other States** (cf 1990 Act, s 286F)

- (1) A person who may be taken to and detained in a mental health facility under Chapter 3 or under the *Mental Health (Forensic Provisions) Act 1990* may be taken to a mental health facility in another State instead of a mental health facility in this State, if this is permitted by or under a corresponding law of the other State.
- (2) A person may be taken to a mental health facility in another State under this section by:
  - (a) a person who is authorised by this Act or the *Mental Health (Forensic Provisions) Act 1990* to take a person to a declared mental health facility, or to apprehend a person and take the person to a declared mental 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 make provision for or with respect to the following matters:
  - (a) the handing over of custody of a person referred to in subsection (1) by persons in this State,
  - (b) the persons (including interstate persons) who may take any such person to a mental health facility in another State under this section,
  - (c) the mental health facilities to which a person may be taken under this section and the places taken to be mental health facilities of another State for the purposes of this section.

#### **175 Effect of certificates** (cf 1990 Act, s 286G)

A mental health certificate ceases to have any effect under this Act if the person concerned is taken to and detained in a mental health facility in another State.

#### **176 Transfer of patients from this State** (cf 1990 Act, s 286H)

- (1) A person who is detained as an involuntary patient or forensic patient in a mental health facility in this State may be transferred to a mental 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 who is transferred to a mental health facility in another State under this section ceases to be an involuntary patient or forensic patient on admission to the

facility.

- (3) A person may be taken to a mental 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.
- (4) The regulations may make provision for or with respect to the following matters:
  - (a) procedures for authorising the transfer of a patient under this section and for notifying any such transfer or proposed transfer,
  - (b) criteria for authorising the transfer of a patient under this section,
  - (c) the handing over of custody of any such patient by persons in this State,
  - (d) the persons (including interstate persons) who may take a patient to a mental health facility in another State under this section,
  - (e) the mental health facilities to which a patient may be taken under this section and the places taken to be mental health facilities for the purposes of this section.
- (5) Section 80 does not apply to a transfer under this section.

## **Division 2 Transfer of persons to this State**

### **177 Admission of interstate persons to mental health facilities in this State** (cf 1990 Act, s 286I)

- (1) A person who may be taken to and detained in a mental health facility in another State under a corresponding law of that State may instead be taken to and detained in a declared mental health facility in this State.
- (2) A person may be taken to a declared mental health facility in this State under this section by:
  - (a) a person who is authorised by this Act or the *Mental Health (Forensic Provisions) Act 1990* to take a person to a declared mental health facility, or to apprehend a person and take the person to a declared mental 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 make provision for or with respect to the following matters:
  - (a) the handing over of custody of a person referred to in subsection (1) to persons in this State,
  - (b) the persons (including interstate persons) who may take any such person to a

declared mental health facility in this State under this section,

- (c) the declared mental health facilities to which a person may be taken under this section.

**178 Application of Acts to persons brought to mental health facility from outside this State** (cf 1990 Act, s 286j)

- (1) This Act applies to a person who is a civil patient who is taken to and detained in a mental health facility under this Division in the same way as it applies to a person taken to and detained in a mental health facility under Part 2 of Chapter 3.
- (2) This Act and the *Mental Health (Forensic Provisions) Act 1990* apply to a person (other than a civil patient) who is taken to and detained in a mental health facility under this Division in the same way as they apply to a person detained in a mental health facility as a forensic patient.

**179 Transfer of interstate persons to mental health facilities in this State** (cf 1990 Act, s 286K)

- (1) A person who is involuntarily detained as a patient in a mental health facility in another State under a corresponding law may be transferred to a declared mental health facility in this State, if the transfer is authorised under a provision of a corresponding law of the other State and accepted by the medical superintendent of the mental health facility in this State.
- (2) A person may be taken to a declared mental health facility in this 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) However, a medical superintendent may not accept the transfer of a person unless the medical superintendent considers that it is likely that the person is a mentally ill person or a mentally disordered person.
- (4) The regulations may make provision for or with respect to the following matters:
  - (a) the procedures for authorising and arranging the receipt of a person under this section,
  - (b) the persons (including interstate persons) who may take a patient to a mental health facility in this State under this section,
  - (c) the receiving of custody of any such person by persons in this State,
  - (d) the period within which any such person must be reviewed by the Tribunal after being transferred to a mental health facility in this State.



**180 Status of transferred persons** (cf 1990 Act, s 286L)

- (1) A person who is a civil patient who is transferred to a mental health facility under this Division is taken to be an involuntary patient and the provisions of this Act apply as if the person first became an involuntary patient on the date of the person's transfer to a mental health facility in this State.
- (2) A person (other than a civil patient) who is transferred to a mental health facility under this Division is taken to be a forensic patient and the provisions of this Act and the *Mental Health (Forensic Provisions) Act 1990* apply as if the person first became a forensic patient on the date of the person's transfer to a mental health facility in this State.

**Part 3 Community treatment orders and other orders**

**181 Community treatment orders relating to interstate persons** (cf 1990 Act, s 286M)

A community treatment order may be made under Part 3 of Chapter 3 or under the *Mental Health (Forensic Provisions) Act 1990* for an affected person who does not reside in this State, if the mental health facility implementing the order is located in this State.

**182 Interstate implementation of New South Wales orders**

- (1) A mental health facility of another State, or any person who provides services on behalf of any such mental health facility, may treat a person subject to a community treatment order in this State, and exercise any other functions of a mental health facility under this Act or the *Mental Health (Forensic Provisions) Act 1990*, for the purposes of implementing and enforcing the community treatment order.
- (2) The regulations may make provision for or with respect to the following matters:
  - (a) the bodies or places that are taken to be mental health facilities of another State for the purposes of this section,
  - (b) when the treatment may be given or functions may be exercised under subsection (1),
  - (c) the effect in this State of a community treatment order being recognised by another State.

**183 Provision of services under interstate community treatment order**

A declared mental health facility, or any person who provides services on behalf of a declared mental health facility, may treat a person subject to an interstate community treatment order, and exercise any other functions for the purposes of implementing and enforcing the interstate community treatment order, if permitted to do so by the law of another State.

#### **184 Recognition of interstate community treatment orders**

- (1) An interstate community treatment order may be recognised in this State as if it were a community treatment order made by the Tribunal under this Act or the *Mental Health (Forensic Provisions) Act 1990*, if the conditions for recognition set out in the regulations are met.
- (2) An interstate community treatment order recognised under this section is taken to be a community treatment order made under this Act or the *Mental Health (Forensic Provisions) Act 1990* and this Act and the *Mental Health (Forensic Provisions) Act 1990* apply accordingly, except as provided by the regulations.
- (3) The regulations may make provision for or with respect to the declared mental health facilities that may give effect to an interstate community treatment order recognised under this section.

### **Part 4 Apprehension of persons absent from mental health facility or in breach of orders**

#### **185 Recognition of warrants and orders** (cf 1990 Act, s 286O)

A warrant or an order, or other document authorising the apprehension of a person, under a corresponding law is recognised in this State if the conditions for recognition set out in the regulations are met.

#### **186 Apprehension of interstate persons absent without leave or in breach of corresponding orders** (cf 1990 Act, s 286P)

- (1) A person who is the subject of a warrant or an order or other document recognised in this State, or who is otherwise liable to be apprehended, under a provision of a corresponding law under which the person may be apprehended and taken to a mental health facility may be apprehended at any time:
  - (a) by a police officer, or
  - (b) 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) On being apprehended the person may be conveyed to and detained in a mental health facility in this State or the other State (if this is permitted by or under a provision of a corresponding law of the other State).
- (3) This Act applies to a person conveyed to and detained in a mental health facility under this section as if the person had been taken to and detained in a mental health facility under Part 2 of Chapter 3.

**187 Regulations relating to apprehension of persons** (cf 1990 Act, s 286Q)

The regulations may make provision for or with respect to the following matters:

- (a) the kinds of warrants, orders or other documents that may be recognised in this State for the purposes of this Part,
- (b) the conditions (if any) to be met before a warrant, order or other document can be recognised in this State,
- (c) the circumstances when a person is taken to be liable to be apprehended under a corresponding law,
- (d) the persons (including interstate persons) who may apprehend a person under this Part,
- (e) the mental health facilities and places to which a person can be taken under this Part (whether in this State or another State),
- (f) the actions (including transfer to the other State) that may be taken in respect of a person detained under this Part.

## **Chapter 9 Miscellaneous**

**188 Restrictions on holding of certain offices** (cf 1990 Act, s 287)

- (1) A person may not hold more than one of the following offices at the same time:
  - (a) medical superintendent,
  - (b) Principal official visitor or official visitor,
  - (c) member of the Tribunal,
  - (d) Magistrate, but only where the holder of the office is holding a mental health inquiry.
- (2) If a person contravenes this section, nothing invalidates any act of the person during the period of the contravention.
- (3) The Minister may remove a person who contravenes this section from any office referred to in subsection (1), other than the office of member of the Tribunal or Magistrate.

**189 Disclosure of information** (cf 1990 Act, s 289)

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act or the *Mental Health (Forensic Provisions) Act 1990* or the regulations unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act or the *Mental Health (Forensic Provisions) Act 1990*, or
- (c) without limiting paragraph (b), to a primary carer of a person in connection with the provision of care or treatment to the person under this Act or the *Mental Health (Forensic Provisions) Act 1990*, or
- (d) for the purposes of any legal proceedings arising out of this Act or the *Mental Health (Forensic Provisions) Act 1990* or the regulations or of any report of any such proceedings, or
- (d1) for a purpose referred to in health privacy principle 10 (1) (f) (research) under the *Health Records and Information Privacy Act 2002*, or
- (e) with other lawful excuse.

Maximum penalty: 50 penalty units.

- (2) A person is not required to comply with subsection (1) if non-compliance is necessarily implied or reasonably contemplated under an Act or law.

#### **190 Act does not limit or affect other powers**

- (1) Nothing in this Act or the *Mental Health (Forensic Provisions) Act 1990* limits or affects any power conferred on a police officer or any other person by or under any other law with respect to stopping, searching or detaining a person (whether or not a patient) or taking any such person to any place.
- (2) Nothing in this Act or the *Mental Health (Forensic Provisions) Act 1990* prevents an authorised medical officer from taking any action that the officer thinks fit to protect a patient or person detained in a mental health facility, or any other person in a mental health facility, from serious physical harm.

#### **191 Liability of police officers and health care professionals exercising functions under this Act or the *Mental Health (Forensic Provisions) Act 1990* (cf 1990 Act, s 294)**

- (1) Any police officer, health care professional or ambulance officer who, in good faith, exercises a function that is conferred or imposed on that person by or under this Act or the *Mental Health (Forensic Provisions) Act 1990* is not personally liable for any injury or damage caused by the exercise of that function.
- (2) Nothing in this section, or any other provision of this Act or the *Mental Health (Forensic Provisions) Act 1990* or the regulations, relieves a medical practitioner or other person from liability in respect of carrying out medical treatment on a patient or other person to which the medical practitioner or person would have been subject had the treatment been carried out with the patient's or other person's consent.

- (3) Nothing in this section affects any exclusion from liability provided by another provision of this Act or the *Mental Health (Forensic Provisions) Act 1990* or any other law.
- (4) In this section, **health care professional** means a person registered under a health registration Act within the meaning of the *Health Care Complaints Act 1993*.

**192 Service of documents** (cf 1990 Act, s 295)

- (1) A document that is authorised or required by this Act or the regulations to be given to or served on any person may be served by:
  - (a) in the case of a natural person:
    - (i) delivering it to the person personally, or
    - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) sending it by facsimile transmission to the facsimile number of the person, or
  - (b) in the case of a body corporate:
    - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
    - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

**193 Amendment of certain documents** (cf 1990 Act, s 296)

- (1) A document by virtue of which a person is admitted to a mental health facility (whether under this or any other Act) and that is incorrect or defective in any particular may be amended by the person who signed the document:
  - (a) within 28 days after the admission of the person, and
  - (b) with the approval of the authorised medical officer.
- (2) A document that is amended in accordance with this section is taken to have had effect in its amended form on and from its original date.
- (3) If an incorrect or defective document is not amended in accordance with this section,

the authorised medical officer:

- (a) may order the discharge of the person admitted to the mental health facility by virtue of the document, or
- (b) may do such things as are necessary to obtain a document in substitution for that document.

(4) A document obtained in substitution for another document is to be taken to have had effect as if it had come into existence on the date on which the document for which it is substituted came into or purported to come into existence.

**194 Approved forms** (cf 1990 Act, s 302A)

The Minister may approve such forms (other than prescribed forms required by this Act) as may be necessary or convenient for the administration of this Act.

**195 Role of objects provisions**

The provisions of sections 3, 68 and 105 are intended to give guidance in the administration of this Act and do not create, or confer on any person, any right or entitlement enforceable at law.

**196 Regulations** (cf 1990 Act, s 302)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the functions, responsibilities, obligations and liabilities of medical superintendents, other authorised medical officers, medical officers and directors of community treatment,
  - (b) the exercise by the Principal official visitor and the official visitors of their functions,
  - (c) matters relating to mental health inquiries,
  - (d) the establishment and functions of a registry or registries to assist in the administration of the Tribunal and in the holding of mental health inquiries under this Act,
  - (e) procedures for approval of operations, treatments or procedures that are permitted to be carried out under this Act,
  - (f) standards of patient care,

- (g) the establishment, in relation to a mental health facility, of a patient care review committee and the functions of such a committee,
  - (h) matters relating to the rights and privileges of patients and persons under detention in mental health facilities,
  - (i) the establishment of, and payments to and from, funds and accounts for the keeping of money received on behalf of individual patients or for the benefit, use or enjoyment of patients generally and the payment of amounts by or on behalf of patients,
  - (j) the use of patients' funds and the investment and management of any such funds and accounts,
  - (k) prescribing the forms required by this Act,
  - (l) prescribing the keeping and form of such books, records, registers or other documents, or the furnishing of such reports or statistics, as may be necessary or convenient for the administration of this Act,
  - (m) the modification of Part 3 of Chapter 3 in its application to the making of a community treatment order under section 67 of the *Mental Health (Forensic Provisions) Act 1990*.
- (3) A regulation may apply, adopt or incorporate, with or without modification, any publication as in force at a particular time or from time to time.
- (4) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

**197 Proceedings for offences** (cf 1990 Act, s 299)

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court.
- (2) Proceedings for an offence under section 102 (Special medical treatment) are to be dealt with on indictment.

**198 Savings, transitional and other provisions**

Schedule 6 has effect.

**199 (Repealed)**

**200 Repeal of *Mental Health Act 1990 No 9***

The *Mental Health Act 1990* is repealed.

**201 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**Schedule 1 Medical certificate as to examination or observation of person**

(Section 19)

*Mental Health Act 2007*

**Part 1**

I, *[name in full—use block letters]* (Medical Practitioner/accredited person) of \_\_\_\_\_ certify that on *[date]* immediately before or shortly before completing this certificate, at *[state place where examination/observation took place]* I personally examined/personally observed *[name of person in full]* for a period of *[state length of examination/observation]*.

I certify the following matters:

- 1. I am of the opinion that the person examined/observed by me is a mentally ill person suffering from mental illness/or a mentally disordered person and that there are reasonable grounds for believing the person’s behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:
  - (a) in the case of a mentally ill person:
    - (i) for the person’s own protection from serious harm, or
    - (ii) for the protection of others from serious harm, or
  - (b) in the case of a mentally disordered person:
    - (i) for the person’s own protection from serious physical harm, or
    - (ii) for the protection of others from serious physical harm.
- 2. I have satisfied myself, by such inquiry as is reasonable having regard to the circumstances of the case, that the person’s involuntary admission to and detention in a mental health facility are necessary and that no other care of a less restrictive kind is appropriate and reasonably available to the person.
- 3. Incidents and/or abnormalities of behaviour and conduct (a) observed by myself and (b) communicated to me by others (state name, relationship and address of each informant) are:
  - (a) .....
  - .....
  - .....
  - .....
  - .....
  - (b) .....



.....  
.....

4. The general medical and/or surgical condition of the person is as follows:

.....  
.....  
.....  
.....

5. The following medication (if any) has been administered for purposes of psychiatric therapy or sedation:

.....  
.....  
.....

6. I am not a near relative or the primary carer of the person.

7. I have/do not have a pecuniary interest, directly or indirectly, in a private mental health facility. I have/do not have a near relative/partner/assistant who has such an interest. Particulars of the interest are as follows:

.....  
.....  
.....

Made and signed this [date]

[Signature]

**Part 2**

The following persons may transport a person to a mental health facility: a member of staff of the NSW Health Service, an ambulance officer, a police officer.

If the assistance of a police officer is required, this Part of the Form must be completed.

YOU SHOULD NOT REQUEST THIS ASSISTANCE UNLESS THERE ARE SERIOUS CONCERNS RELATING TO THE SAFETY OF THE PERSON OR OTHER PERSONS IF THE PERSON IS TAKEN TO A MENTAL HEALTH FACILITY WITHOUT THE ASSISTANCE OF A POLICE OFFICER

I have assessed the risk and I am of the opinion, in relation to [name of person in full] that there are serious concerns relating to the safety of the person or other persons if the person is taken to a mental health facility without the assistance of a police officer. The reason for me being of this opinion is [include any information known about the patient relevant to the risk].

Made and signed this [date]

[Signature]

**Notes**

1 Sections 13-16 of the [Mental Health Act 2007](#) state:

**13 Criteria for involuntary admission etc as mentally ill person or mentally disordered person**

A person is a mentally ill person or a mentally disordered person for the purpose of:

(a) the involuntary admission of the person to a mental health facility or the detention of the person in a facility under this Act,  
or

(b) determining whether the person should be subject to a community treatment order or be detained or continue to be detained involuntarily in a mental health facility,

if, and only if, the person satisfies the relevant criteria set out in this Part.

**14 Mentally ill persons**

(1) A person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary:

- (a) for the person's own protection from serious harm, or
- (b) for the protection of others from serious harm.

(2) In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration, are to be taken into account.

**15 Mentally disordered persons**

A person (whether or not the person is suffering from mental illness) is a mentally disordered person if the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:

- (a) for the person's own protection from serious physical harm, or
- (b) for the protection of others from serious physical harm.

**16 Certain words or conduct may not indicate mental illness or disorder**

- (1) A person is not a mentally ill person or a mentally disordered person merely because of any one or more of the following:
- (a) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular political opinion or belief,
  - (b) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular religious opinion or belief,
  - (c) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular philosophy,
  - (d) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular sexual preference or sexual orientation,
  - (e) the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular political activity,
  - (f) the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular religious activity,
  - (g) the person engages in or has engaged in a particular sexual activity or sexual promiscuity,
  - (h) the person engages in or has engaged in immoral conduct,
  - (i) the person engages in or has engaged in illegal conduct,
  - (j) the person has developmental disability of mind,
  - (k) the person takes or has taken alcohol or any other drug,
  - (l) the person engages in or has engaged in anti-social behaviour,
  - (m) the person has a particular economic or social status or is a member of a particular cultural or racial group.
- (2) Nothing in this Part prevents, in relation to a person who takes or has taken alcohol or any other drug, the serious or permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication that a person is suffering from mental illness or other condition of disability of mind.

**2** In addition to matters ascertained as a consequence of personally examining or observing the person, account may be taken of other matters not so ascertained where those matters:

- (a) arise from a previous personal examination of the person, or
- (b) are communicated by a reasonably credible informant.

**3** In the *Mental Health Act 2007*, **mental illness** is defined as follows:

**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 one or more 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 any one or more of the symptoms referred to in paragraphs (a)–(d).

4 In the *Mental Health Act 2007*, **primary carer** is defined as follows:

**71 Primary carer**

(1) The **primary carer** of a person (the **patient**) for the purposes of this Act is:

- (a) the guardian of the patient, or
- (b) the parent of a patient who is a child (subject to any nomination by a patient referred to in paragraph (c)), or
- (c) if the patient is over the age of 14 years and is not a person under guardianship, the person nominated by the patient as the primary carer under this Part under a nomination that is in force, or
- (d) if the patient is not a patient referred to in paragraph (a) or (b) or there is no nomination in force as referred to in paragraph (c):
  - (i) the spouse of the patient, if any, if the relationship between the patient and the spouse is close and continuing, or
  - (ii) any person who is primarily responsible for providing support or care to the patient (other than wholly or substantially on a commercial basis), or
  - (iii) a close friend or relative of the patient.

(2) In this section:

**close friend or relative** of a patient means a friend or relative of the patient who maintains both a close personal relationship with the patient through frequent personal contact and a personal interest in the patient's welfare and who does not provide support to the patient wholly or substantially on a commercial basis.

5 For admission purposes, this certificate is valid only for a period of 5 days, in the case of a person who is a mentally ill person, or 1 day, in the case of a person who is a mentally disordered person, after the date on which the certificate is given.

## Schedule 2 Mental health inquiries

(Section 34 (3))

### 1 General conduct of inquiries

- (1) The Magistrate may appoint a person to assist the Magistrate in respect of a mental health inquiry and a person so appointed may appear before the Magistrate during the holding of the inquiry.
- (2) An inquiry is to be open to the public.
- (3) However, if the Magistrate is satisfied that it is desirable to do so for the welfare of the person before the inquiry or for any other reason, the Magistrate may (of his or her own motion or on the application of the person or another person appearing at the inquiry) make any one or more of the following orders:
  - (a) an order that the inquiry be conducted wholly or partly in private,

- (b) an order prohibiting or restricting the publication or broadcasting of any report of proceedings before the Magistrate,
- (c) an order prohibiting or restricting the publication of evidence given before the inquiry, whether in public or in private, or of matters contained in documents lodged with the inquiry or received in evidence at the inquiry,
- (d) an order prohibiting or restricting the disclosure to some or all of the parties to the proceedings of evidence given at the inquiry, or of the contents of a document lodged with the inquiry or received in evidence at the inquiry.

**Note—**

Clause 7 prohibits the publication or broadcasting of the name of a person involved in an inquiry or other material that may identify any such person, except with the consent of the Magistrate.

- (4) An assessable person who is unable to communicate adequately in English but who is able to communicate adequately in another language is entitled to be assisted by an interpreter when appearing at the inquiry.
- (5) The Magistrate may administer an oath to any person giving evidence at an inquiry.
- (6) The assessable person is to be represented at an inquiry by an Australian legal practitioner or (with the leave of the Magistrate) another person chosen by the assessable person, unless the assessable person decides that he or she does not wish to be represented.
- (7) Any other person appearing at a mental health inquiry may (with the leave of the Magistrate) be represented by an Australian legal practitioner.
- (8) The primary carer of an assessable person may, with the leave of the Magistrate, appear at an inquiry.

**2 Notification and information given to assessable person to be checked by Magistrate**

- (1) As soon as practicable after the beginning of a mental health inquiry, the Magistrate must ask the assessable person whether the person:
  - (a) has been given a written statement, in the prescribed form, of the person's legal rights and other entitlements, as required by section 74, and
  - (b) whether the person has been informed of the duty imposed under section 76 on the authorised medical officer relating to the giving of the notice specified in that section.
- (2) As soon as practicable after the beginning of a mental health inquiry, the Magistrate must ascertain from the authorised medical officer whether the written statement and notice referred to in subclause (1) have been given or all such things as are reasonably practicable have been done to give that statement or notice, as the case

requires.

### **3 Legal representation of mentally ill persons and other persons**

The fact that a person is suffering from mental illness or a developmental disability of mind or is suffering from a mental condition that is neither a mental illness nor a developmental disability of mind is presumed not to be an impediment to the representation of the person by an Australian legal practitioner at a mental health inquiry.

### **4 Adjournments**

- (1) The Magistrate may, from time to time, adjourn a mental health inquiry for a period not exceeding 14 days.
- (2) Without limiting subclause (1), the Magistrate may adjourn the inquiry if the Magistrate is not satisfied:
  - (a) that the assessable person has been informed of the duty imposed under section 76 on the authorised medical officer relating to the giving of the notice specified in that section, or
  - (b) that the notice specified in the section has been given or all such things as are reasonably practicable have been done to give that notice.
- (3) The Magistrate may adjourn an inquiry under this clause only if:
  - (a) the Magistrate is of the opinion that it is in the best interests of the assessable person to do so, and
  - (b) the Magistrate has considered any certificates given under this Act available to the Magistrate.
- (4) If an inquiry is adjourned, the assessable person is to continue to be detained in the mental health facility unless the person is discharged or allowed to be absent from the facility under another provision of this Act.

### **5 Summons to produce evidence**

- (1) A Magistrate holding a mental health inquiry may on his or her own motion or on the application of an assessable person or a person given leave to appear at an inquiry issue a summons in the form prescribed by the regulations requiring the person to whom the summons is addressed to do either or both of the following things:
  - (a) to attend as a witness at the inquiry,
  - (b) to attend at the inquiry and to produce any documents in the possession or under the control of the person relating to the inquiry and specified in the summons.
- (2) The regulations may make provision for or with respect to authorising compliance with

a summons to produce any documents by the production of the documents at a place specified in the summons at any time before the inquiry at which the documents are required to be produced.

- (3) A person to whom a summons is addressed is entitled to receive:
- (a) if the summons was issued by the Magistrate on his or her own motion, from the principal officer of the mental health facility where the person to whom the inquiry relates is detained, or
  - (b) if the summons was issued on the application of another person, from that other person,

the amounts payable for compliance with a subpoena under the *Uniform Civil Procedure Rules 2005*.

- (4) A person:
- (a) who is served with a summons addressed to the person under this clause, and
  - (b) to whom, at the time of service, is tendered an amount that is sufficient to cover the person's travelling and other out-of-pocket expenses in attending the inquiry specified in the summons and producing anything required by the summons to be produced,

must not, without reasonable excuse, fail or refuse to obey the summons.

Maximum penalty: 50 penalty units.

## **6 Inspection etc of medical records**

- (1) An assessable person is entitled to inspect or otherwise have access to any medical records relating to the person in the possession of any other person, unless the Magistrate otherwise determines.
- (2) A representative of an assessable person at a mental health inquiry is entitled, at any time before or during the inquiry, to inspect or otherwise have access to any relevant medical records relating to the person in the possession of any other person.
- (3) If a medical practitioner warns the representative of the assessable person that it may be harmful to communicate to the person, or any other person, specified information contained in those medical records:
  - (a) the representative is to have full and proper regard to that warning, and
  - (b) the representative is not obliged to disclose to the person any information obtained by virtue of the inspection or other access.
- (4) Subclause (3) is subject to any order or direction of the Magistrate, in relation to an

inspection under subclause (2).

## **7 Publication of names etc**

(1) A person must not, except with the consent of the Magistrate holding a mental health inquiry, publish or broadcast the name of any person:

- (a) to whom the inquiry relates, or
- (b) who appears as a witness at the inquiry, or
- (c) who is mentioned or otherwise involved in the inquiry,

whether before or after the hearing is completed.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) This clause does not prohibit the publication or broadcasting of an official report of any such inquiry that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this clause.

(3) For the purposes of this clause, a reference to the name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

## **8 Records of proceedings**

- (1) Proceedings of the inquiry are to be recorded.
- (2) Regulations may be made for or with respect to the manner in which the evidence may be recorded and the authentication of evidence or of transcripts of evidence given in proceedings.
- (3) The regulations may provide for the circumstances in which evidence given in proceedings is to be transcribed.

## **9 Record of decision**

- (1) An order or direction of a Magistrate pursuant to a mental health inquiry is to be recorded in the form of an instrument in writing and is to include the reasons for the order or direction.
- (2) Nothing in this clause prevents a Magistrate from giving an order or direction orally.
- (3) An order or direction given orally by a Magistrate is to be recorded in accordance with this clause.

## Schedule 3 Statement of rights

(Section 74 (3))

### Statement of rights

#### Your rights

You should read the questions and answers below to find out your rights and what may happen to you after you are brought to a mental health facility.

#### What happens after I arrive at a mental health facility?

You must be seen by a facility doctor not later than 12 hours after you arrive at the mental health facility.

If you are a person who is already in a mental health facility as a voluntary patient, and you have been told you are now to be kept in the facility against your will, you must be seen by a facility doctor not later than 12 hours after it is decided to keep you in the facility.

#### When can I be kept in a mental health facility against my will?

You can be kept in a mental health facility against your will if you are certified by the facility doctor as a mentally ill person or a mentally disordered person. The doctor will decide whether or not you are a mentally ill person or a mentally disordered person.

A mentally ill person is someone who has a mental illness and who needs to be kept in a mental health facility for his or her own protection or to protect other people. A mentally disordered person is someone whose behaviour shows that he or she needs to be kept in a mental health facility for a short time for his or her own protection or to protect other people.

The facility cannot continue to keep you against your will unless at least one other doctor also finds that you are a mentally ill person or a mentally disordered person. At least one of the doctors who sees you must be a psychiatrist.

#### How long can I be kept in a mental health facility against my will?

If you are found to be a mentally disordered person, you can only be kept in a mental health facility for up to 3 DAYS (weekends and public holidays are not counted in this time). During this time you must be seen by a doctor at least once every 24 hours. You cannot be detained as a mentally disordered person more than 3 times in any month.

If you are found to be a mentally ill person, you will be kept in the mental health facility until you see a Magistrate who will hold a mental health inquiry to decide what will happen to you.

#### How can I get out of a mental health facility?

You, or a friend or relative, may at any time ask the medical superintendent or another authorised medical officer to let you out. You must be let out if you are not a mentally ill person or a mentally disordered person or if the medical superintendent or another authorised medical officer thinks that there is other appropriate care reasonably available to you.

#### Can I be treated against my will?

The facility staff may give you appropriate medical treatment, even if you do not want it, for your mental condition or in an emergency to save your life or prevent serious damage to your health. The facility staff must tell you what your medical treatment is if you ask. You must not be given excessive or inappropriate medication.

#### Can I be given electro convulsive therapy (ECT) against my will?

Yes, but only if the Mental Health Review Tribunal determines at a hearing that it is necessary or desirable for your safety or welfare. You have a right to attend that hearing.

#### More information

You should read the questions and answers below to find out about Magistrates' mental health inquiries and when



you may be kept in a mental health facility against your will after an inquiry.

**When is a Magistrate’s mental health inquiry held?**

A Magistrate’s mental health inquiry must be held as soon as possible after it is decided to keep you in a mental health facility against your will because you are a mentally ill person.

**What happens at a Magistrate’s mental health inquiry?**

The Magistrate will decide whether or not you are a mentally ill person.

If the Magistrate decides that you are not a mentally ill person, you must be let out of the mental health facility.

If the Magistrate decides that you are a mentally ill person, the Magistrate will then decide what will happen to you. Consideration must be given to the least restrictive environment in which care and treatment can be effectively given. The Magistrate may order that you be kept in a mental health facility as an INVOLUNTARY PATIENT for a set time (not more than 3 months) or the Magistrate may order that you be let out of the mental health facility. If you are let out, the Magistrate may make a community treatment order requiring you to have certain treatment after you are let out.

The Magistrate may adjourn the inquiry for up to 14 days where he or she considers that it is in your best interests.

If the Magistrate makes an order that you are to remain in a mental health facility as an involuntary patient, the Magistrate must also consider whether you are capable of managing your financial affairs. If the Magistrate is not satisfied that you are capable, an order must be made for the management of your affairs under the [NSW Trustee and Guardian Act 2009](#).

**What rights do I have at a Magistrate’s mental health inquiry?**

You can tell the Magistrate what you want or have your lawyer tell the Magistrate what you want. You can wear street clothes, be helped by an interpreter and have your primary carer, relatives and friends told about the inquiry. You can apply to see your medical records.

**What are my rights of appeal if I have been made an involuntary patient?**

You (or a carer or friend or relative) may at any time ask the medical superintendent or another authorised medical officer to discharge you. If the medical superintendent or authorised medical officer refuses or does not respond to your request within 3 working days you (or a carer or friend or relative) may lodge an appeal with the Mental Health Review Tribunal.

You will be given a notice setting out your appeal rights.

**What happens when the time set by an order making me an involuntary patient has nearly ended?**

The facility medical staff will review your condition before the end of the order and the mental health facility may either discharge you or apply to the Mental Health Review Tribunal for a further order.

The Tribunal must let you out of the mental health facility if it decides that you are not a mentally ill person or if it feels that other care is more appropriate and reasonably available.

**Who can I ask for help?**

You may ask any facility staff member, social worker, doctor, official visitor, chaplain, your own lawyer or the Mental Health Advocacy Service for help. The Mental Health Advocacy Service telephone number is:

.....

**(Note—**

Appropriate telephone numbers should be included.)

**Can I ask a friend or relative to act for me?**

You may nominate a person to be your primary carer while you are in a mental health facility. Your primary carer may ask for information on your behalf and will be informed if you are kept in a mental health facility, subject to a

mental health inquiry, transferred or discharged and of proposed special mental health treatments or surgical operations. You and your primary carer also have the right to be given information about follow-up care if you are discharged.

## **Schedule 4 Provisions relating to Principal official visitor and official visitors**

(Section 130)

### **1 Definition**

In this Schedule:

**official visitor** includes the Principal official visitor.

### **2 Terms of office**

Subject to this Schedule, an official visitor holds office for the period (not exceeding 3 years) that is specified in the official visitor's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **3 Remuneration**

An official visitor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the official visitor.

### **4 Vacancy in office of member**

(1) The office of an official visitor becomes vacant if the official visitor:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause or by the Governor under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (g) being the Principal official visitor or an official visitor appointed for a private

mental health facility, has a pecuniary interest, directly or indirectly, in a private mental health facility, or

(h) signs a certificate or request for the admission of a person to a mental health facility or attends professionally on a patient in a mental health facility.

(2) The Minister may remove an official visitor from office at any time.

## **5 Suspension of office**

(1) An official visitor is suspended from office if the official visitor becomes a mentally incapacitated person.

(2) The suspension from office ceases when the official visitor ceases to be a mentally incapacitated person or the period of the official visitor's appointment expires, whichever is the earlier.

## **6 Effect of certain other Acts**

(1) The *Public Sector Employment and Management Act 2002* does not apply to the appointment of an official visitor and an official visitor is not, as an official visitor, subject to that Act (except Chapter 5).

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an official visitor or from accepting and retaining any remuneration payable to the person under this Act as an official visitor.

(3) The office of an official visitor is not, for the purposes of any Act, an office or place of profit under the Crown.

## **Schedule 5 Provisions relating to members of Tribunal**

(Section 140 (3))

### **1 Qualifications of President or Deputy President**

A person is eligible to be appointed as the President or Deputy President if the person is:

(a) a person who holds or has held office as a judge of the Supreme Court or the District Court, or as a judge of an equivalent court of another State or a Territory, or

(b) a person who holds or has held office as a judge of the Federal Court or the High

Court, or

(c) a person who is qualified to be appointed as a judge referred to in this clause.

## **2 Term of office of members**

(1) A member holds office for the period specified in the member's instrument of appointment.

(2) The term of an appointment must not exceed 7 years.

(3) A member is eligible for re-appointment.

## **3 Duties of full-time members**

A full-time member must devote the whole of his or her time to the duties of the office of member, except as permitted by this Act or except with the consent of the Minister.

## **4 Part-time arrangements**

A Deputy President, although not appointed on a part-time basis, may, by agreement in writing entered into with the President, exercise the functions of Deputy President on a part-time basis.

## **5 Remuneration and allowances for members**

(1) The President and a Deputy President are entitled to be paid:

(a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the President or a Deputy President.

(2) A member, other than the President or a Deputy President, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## **6 Deputy Presidents**

(1) A Deputy President, while holding office as a Deputy President, has, subject to the conditions of appointment specified in the instrument of appointment and to any direction given by the President, the powers, authorities, privileges and immunities of and is to perform the duties of the President.

(2) No person is to be concerned to inquire whether or not any occasion has arisen authorising a Deputy President to exercise the functions of the President and all acts or things done or omitted or suffered to be done by a Deputy President when exercising those functions are as valid and effectual and have the same consequences

as if they had been done or omitted or suffered to be done by the President.

## **7 Deputies**

- (1) The Minister may, from time to time, appoint as the deputy of a member, a person who holds the same qualifications, if any, as are required to be held by the person for whom he or she is the deputy.
- (2) In the absence of a member, the member's deputy:
  - (a) is, if available, to act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is to be taken to be the member.
- (3) Subject to clause 6 (1), the deputy of a member who is the President or a Deputy President has the member's functions as President or Deputy President.
- (4) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

## **8 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause or by the Governor under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (f) becomes a mentally incapacitated person, or
  - (g) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or
  - (h) being a full-time member, engages in any paid employment outside the duties of the office of member, except with the consent of the Minister.
- (2) The Minister may remove a member from office at any time.

## 9 Filling of vacancy in office of member

If the office of a member becomes vacant, a person who holds the same qualification, if any, as the member whose office has become vacant is, subject to this Act, to be appointed to fill the vacancy.

## 10 Effect of certain other Acts

- (1) The *Public Sector Employment and Management Act 2002* does not apply to the appointment of a member and a member is not, as a member, subject to that Act (except Chapter 5).
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, and
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as such a part-time member.

- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

## 11 Preservation of rights of member previously public servant etc

- (1) In this clause:

**statutory body** means any body declared under clause 12 to be a statutory body for the purposes of this Schedule.

**superannuation scheme** means a scheme, fund or arrangement established by or under an Act under which any superannuation or retirement benefits are provided.

- (2) This clause applies to a member who, immediately before being appointed as a member, was:
  - (a) an officer of the Government Service, the Teaching Service or the NSW Health Service, or
  - (b) a contributor to a superannuation scheme, or
  - (c) an officer employed by a statutory body, or
  - (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

- (3) Subject to the terms of the member's appointment, the member:
- (a) is to retain any rights accrued or accruing to him or her as such an officer, contributor or person, and
  - (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a member, and
  - (c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,
- as if the member had continued to be such an officer, contributor or person during his or her service as a member.
- (4) Service as a member is to be regarded as service as an officer or employee for the purpose of any law under which any such rights accrued or were accruing, under which he or she continues to contribute to any such superannuation scheme or by which any such entitlement is conferred.
- (5) For the purposes of the superannuation scheme to which the member is entitled to contribute under this clause, the member is to be regarded as an officer or employee and the Government of New South Wales is to be regarded as the employer.
- (6) If a member would, but for this subclause, be entitled under subclause (3) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme:
- (a) he or she is not so entitled on becoming (whether on appointment as a member or at any later time while holding office as a member) a contributor to any other superannuation scheme, and
  - (b) the provisions of subclause (5) cease to apply to or in respect of him or her in any case where he or she becomes a contributor to any such other superannuation scheme.
- (7) Subclause (6) does not prevent the payment to a member (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.
- (8) A member is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

## **12 Declaration of statutory bodies**

The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

## Schedule 6 Savings, transitional and other provisions

(Section 198)

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Mental Health Legislation Amendment (Forensic Provisions) Act 2008*

*Health Legislation Amendment Act 2009* (but only to the extent that it amends this Act)

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Definitions

In this Part:

**the 1898 Act** means the *Lunacy Act of 1898*.

**the 1958 Act** means the *Mental Health Act 1958*.

**the 1983 Act** means the *Mental Health Act 1983*.

**the 1990 Act** means the *Mental Health Act 1990*.

#### 3 General savings

- (1) Any act, matter or thing done or omitted to be done under a provision of the 1990 Act and having any force or effect immediately before the commencement of a provision



of this Act or the *Mental Health (Criminal Procedure) Act 1990* that replaces that provision is, on that commencement, taken to have been done or omitted under the provision of this Act or the *Mental Health (Criminal Procedure) Act 1990*.

- (2) This clause does not apply:
- (a) to the extent that its application is inconsistent with any other provision of this Schedule or a provision of a regulation under clause 1, or
  - (b) to the extent that its application would be inappropriate in a particular case.

#### **4 Construction of certain references**

- (1) A reference (however expressed) in any other Act, in any instrument made under an Act or in any other instrument of any kind:
- (a) to an admission centre or a mental hospital, or both, within the meaning of the 1958 Act or to a hospital within the meaning of the 1990 Act—is to be read as a reference to a declared mental health facility, or
  - (b) to an authorised hospital within the meaning of the 1958 Act or the 1990 Act—is to be read as a reference to a private mental health facility, or
  - (c) to a hospital for the insane, a hospital for the criminal insane or a reception-house, or any combination of those expressions, within the meaning of the 1898 Act—is to be read as a reference to a mental health facility, or
  - (d) to a licensed house within the meaning of the 1898 Act—is to be read as a reference to a private mental health facility.
- (2) A reference (however expressed) in any other Act, in any instrument made under an Act or in any other instrument of any kind:
- (a) to a mentally ill person within the meaning of the 1958 Act or the 1990 Act—is to be read as a reference to a mentally ill person within the meaning of this Act, or
  - (b) to a voluntary patient within the meaning of the 1958 Act or an informal patient within the meaning of the 1983 or 1990 Act—is to be read as a reference to a voluntary patient within the meaning of this Act, or
  - (c) to a temporary patient within the meaning of the 1958 Act, the 1983 Act or the 1990 Act—is to be read as a reference to an involuntary patient within the meaning of this Act, or
  - (d) to a continued treatment patient within the meaning of the 1958 Act, the 1983 Act or the 1990 Act—is to be read as a reference to an involuntary patient within the meaning of this Act, or
  - (e) to a person under detention under Part 7 of the 1958 Act or a forensic patient

within the meaning of the 1983 Act or the 1990 Act—is to be read as a reference to a forensic patient within the meaning of this Act, or

- (f) to a patient within the meaning of the 1958 Act—is to be read as a reference to a patient (other than a voluntary patient) within the meaning of this Act, or
  - (g) to a person detained in an admission centre under section 12 of the 1958 Act—is to be read as a reference to a person taken to and detained in a mental health facility under Part 2 of Chapter 3 of this Act, or
  - (h) to a patient or an insane patient, or both, within the meaning of the 1898 Act—is to be read as a reference to a patient (other than a voluntary patient) within the meaning of this Act, or
  - (i) to a lunatic within the meaning of the 1898 Act—is to be read as a reference to a mentally ill person.
- (3) A reference (however expressed) in any other Act, in any instrument made under an Act or in any other instrument of any kind:
- (a) to a provision of the 1958 Act or of the 1898 Act—is, except as provided by paragraph (c), to be read as a reference to the corresponding provision, if any, of this Act or of the *Protected Estates Act 1983*, as the case requires, or
  - (b) to the 1958 Act or the 1898 Act—is, except as provided by paragraph (c), to be read as a reference to this Act or the *Protected Estates Act 1983*, as the case requires, or
  - (c) to the keeping in strict custody pursuant to section 23 (3) of the 1958 Act of any person—is to be read as a reference to the detention of that person pursuant to section 25 or 39, as the case requires, of the *Mental Health (Criminal Procedure) Act 1990*.

## **5 Mental health facilities**

- (1) A place that was, immediately before the repeal of section 208 of the 1990 Act, the subject of an order in force under that section is taken to be a declared mental health facility the subject of an order in force under section 109 of this Act and this Act applies accordingly.
- (2) A place that was, immediately before the repeal of section 212 of the 1990 Act, licensed under that section is taken to be the subject of a licence in force under section 116 of this Act and this Act applies accordingly.

## **6 Medical superintendents and deputy medical superintendents**

- (1) A person appointed as a medical superintendent or a deputy medical superintendent of a hospital under the 1990 Act immediately before the repeal of the provision of that

Act under which the person was appointed is taken to be appointed under the corresponding provision of this Act as the medical superintendent or deputy medical superintendent of the mental health facility concerned and this Act applies accordingly.

- (2) The term of appointment of any such person as a medical superintendent or deputy medical superintendent ends on the day on which the term under the 1990 Act would have ended, subject to any re-appointment of the person under this Act.

## **7 Directors and deputy directors of health care agencies**

A person appointed as the director or a deputy director of a health care agency under the 1990 Act immediately before the repeal of the provision of that Act under which the person was appointed is taken to be appointed under this Act as the director of community treatment or deputy director of community treatment of the mental health facility concerned and this Act applies accordingly.

## **8 Official visitors**

- (1) A person appointed as an official visitor under section 226 or 228 of the 1990 Act immediately before the repeal of section 228 of that Act is taken to have been appointed under section 128 or 129, respectively, of this Act and this Act applies accordingly.
- (2) The term of appointment of any such person as an official visitor ends on the day on which the term under the 1990 Act would have ended, subject to any re-appointment of the person under this Act.

## **9 Accredited persons**

- (1) A person appointed as an accredited person under section 287A of the 1990 Act immediately before the repeal of that section is taken to have been appointed under section 136 of this Act and this Act applies accordingly.
- (2) The term of appointment of any such person as an accredited person ends on the day on which the term under the 1990 Act would have ended, subject to any re-appointment of the person under this Act.

## **10 Mental Health Review Tribunal**

- (1) A person appointed as a member of the Tribunal under the 1990 Act immediately before the repeal of section 252 of that Act is taken to have been appointed under this Act and this Act applies accordingly.
- (2) The term of appointment of any such person as a member of the Tribunal ends on the day on which the term under the 1990 Act would have ended, subject to any re-appointment of the person under this Act.

- (3) Any decision, determination, recommendation or finding or order made or other thing done by the Tribunal under the 1990 Act and having any force or effect immediately before the repeal of section 252 of that Act is taken to have been made or done by the Tribunal under the corresponding provision of this Act or the *Mental Health (Criminal Procedure) Act 1990*.

#### **11 Orders by prescribed authority**

An order made by a prescribed authority under the 1990 Act, and in force under that Act immediately before the commencement of this clause, is taken to have been made under the *Mental Health (Criminal Procedure) Act 1990* (as amended by this Act) and that Act applies accordingly.

#### **12 Existing patients and persons detained in mental health facilities**

- (1) A person who was a temporary patient or a continued treatment patient under the 1990 Act immediately before the commencement of this subclause is taken to be an involuntary patient detained under this Act and this Act applies accordingly.
- (2) A person who was detained in a hospital as a mentally ill person or a mentally disordered person under the 1990 Act immediately before the commencement of this subclause is taken to be so detained under this Act and this Act applies accordingly.
- (3) A person who was a forensic patient under the 1990 Act immediately before the commencement of this subclause is taken to be a forensic patient within the meaning of this Act and this Act and the *Mental Health (Criminal Procedure) Act 1990* (as amended by this Act) apply accordingly.
- (4) For the purposes of the application of this Act or the *Mental Health (Criminal Procedure) Act 1990* to a patient or person referred to in this clause, the person is taken to have been detained or classified as a patient under this Act or that Act on the day the person was so detained or classified under the 1990 Act.

#### **13 Absence from hospitals**

- (1) A grant of leave of absence from a hospital (including permission to be absent from hospital) for a patient in force under a provision of the 1990 Act immediately before the commencement of this clause continues in force as if it were granted under the corresponding provision of this Act or, in the case of a forensic patient, the *Mental Health (Criminal Procedure) Act 1990* (as amended by this Act) and this Act and that Act apply accordingly.
- (2) A patient who was absent without leave from a hospital, or in breach of a condition of any such leave, immediately before the commencement of this clause may be apprehended and dealt with under this Act or the *Mental Health (Criminal Procedure) Act 1990* as if the person were absent without leave from a mental health facility or in breach of a condition of leave granted under this Act or that Act.

#### **14 Existing treatment orders**

- (1) A medical practitioner may, for the purposes of administering electro convulsive therapy, rely on a consent or certificate obtained, or a decision made by the Tribunal, in accordance with Part 1 of Chapter 7 of the 1990 Act and any such consent, certificate or decision is taken to have been obtained or made under this Act.
- (2) A consent given under section 201 of the 1990 Act, and in force immediately before the commencement of this clause, continues to have effect for the purposes of carrying out the surgical operation concerned.
- (3) A medical practitioner may, for the purposes of carrying out special medical treatment on a patient, rely on a consent obtained from or a decision made by the Tribunal or an authorised officer, in accordance with Part 2 of Chapter 7 of the 1990 Act and any such consent or decision is taken to have been obtained or made under this Act.
- (4) For the purposes of subclause (3), the consent of an authorised officer is taken to be the consent of the Director-General.

#### **15 Pending proceedings**

Any proceedings pending, immediately before the commencement of this clause, under the 1990 Act before any court, the Tribunal, a Magistrate or any other person:

- (a) are taken to be proceedings pending before the court, the Tribunal, Magistrate or other person before which or whom those proceedings could be brought under this Act or the *Mental Health (Criminal Procedure) Act 1990* if those proceedings had been commenced on or after that commencement, and
- (b) are to be continued before and disposed of by the court, Tribunal, Magistrate or person accordingly.

#### **16 Supreme Court**

- (1) A person ordered to be brought before the Court for examination under section 285 of the 1990 Act, who is not examined before the repeal of that section, is to be examined and dealt with under section 166 of this Act.
- (2) A person appointed as an assessor under section 283 of the 1990 Act immediately before the repeal of that section is taken to have been appointed under section 165 of this Act and this Act applies accordingly.

#### **17 Interstate matters**

Anything done or omitted under Chapter 10A of the 1990 Act, and having effect immediately before the repeal of that Chapter, is taken to have been done or omitted under the corresponding provision of Chapter 8 of this Act and, subject to that Chapter, has effect accordingly.

## 18 Patient accounts and trust funds

The following funds and accounts established under Part 3 of Chapter 8 of the 1990 Act are taken to be established under the corresponding provisions of the regulations and the regulations apply accordingly:

- (a) any Patients Trust Fund,
- (b) any Patients Amenities Account,
- (c) a fund constituted under section 248 of the 1990 Act,
- (d) the Interest Account.

## Part 3 Provisions consequent on enactment of **Mental Health Legislation Amendment (Forensic Provisions) Act 2008**

### 19 Definition

In this Part:

**amending Act** means the *Mental Health Legislation Amendment (Forensic Provisions) Act 2008*.

### 20 Community treatment orders

The amendments made by the amending Act to this Act and the *Mental Health (Forensic Provisions) Act 1990* apply to community treatment orders in force immediately before the commencement of this clause.

## Schedule 7 (Repealed)