

# Drug and Alcohol Treatment Act 2007 No 7

[2007-7]



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**  
[Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#) (not commenced — to commence on 17.7.2009)

### Authorisation

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# Drug and Alcohol Treatment Act 2007 No 7



New South Wales

An Act to provide for the health and safety of persons with a severe substance dependence through involuntary detention, care, treatment and stabilisation; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Drug and Alcohol Treatment Act 2007*.

### 2 Commencement

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

### 3 Objects of Act

(1) The objects of this Act are:

- (a) to provide for the involuntary treatment of persons with a severe substance dependence with the aim of protecting their health and safety, and
- (b) to facilitate a comprehensive assessment of those persons in relation to their dependency, and
- (c) to facilitate the stabilisation of those persons through medical treatment, including, for example, medically assisted withdrawal, and
- (d) to give those persons the opportunity to engage in voluntary treatment and restore their capacity to make decisions about their substance use and personal welfare.

(2) This Act must be interpreted, and every function conferred or imposed by this Act must be performed or exercised, so that, as far as practicable:

- (a) involuntary detention and treatment of those persons is a consideration of last resort, and
- (b) the interests of those persons is paramount in decisions made under this Act, and
- (c) those persons will receive the best possible treatment in the least restrictive

environment that will enable treatment to be effectively given, and

- (d) any interference with the rights, dignity and self-respect of those persons will be kept to the minimum necessary.

#### 4 Application of Act

- (1) This Act applies in an area prescribed by the regulations.

**Note—**

See section 55A which provides that the *Inebriates Act 1912* continues to apply in relation to a person detained under an order made under that Act immediately before the commencement of a regulation made under subsection (1).

- (2) The *Inebriates Act 1912* does not apply in that area.
- (3) However, despite subsections (1) and (2), this Act does not apply, and the *Inebriates Act 1912* does apply, to minors.
- (4) Nothing in this Act affects the operation of the following:
- (a) the *Mental Health Act 1990*,
  - (b) the *Mental Health (Forensic Provisions) Act 1990*,
  - (c) the *Public Health Act 1991*,
  - (d) the *Guardianship Act 1987*,
  - (e) the *Law Enforcement (Powers and Responsibilities) Act 2002*.

#### 5 Definitions

- (1) In this Act:

**accredited medical practitioner** means a medical practitioner appointed under section 7.

**close friend or relative**, of a dependent person, means a friend or relative of the person who:

- (a) maintains both a close personal relationship with the person through frequent personal contact and a personal interest in the person's welfare, and
- (b) does not provide support to the person wholly or substantially on a commercial basis.

**dependency certificate** means a certificate issued under section 9.

**dependent person** means a person in relation to whom a dependency certificate has been issued.

**director**, of a treatment centre, means the person appointed as the director of the centre by the Director-General.

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

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

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

**primary carer**, of a dependent person, means:

- (a) the guardian of the dependent person, or
- (b) if the dependent person is not under guardianship, the person nominated by the dependent person as the primary carer under a nomination under section 13 that is in force, or
- (c) if paragraphs (a) and (b) do not apply:
  - (i) the spouse of the dependent person, if any, if the relationship between the person and the spouse is close and continuing, or
  - (ia) the other party to any de facto relationship (within the meaning of the [Property \(Relationships\) Act 1984](#)) with the dependent person if the relationship between that party and the dependent person is close and continuing, or
  - (ii) any person who is primarily responsible for providing support or care to the dependent person (other than wholly or substantially on a commercial basis), or
  - (iii) a close friend or relative of the dependent person.

**severe substance dependence**, in relation to a person, means the person:

- (a) has a tolerance to a substance, and
- (b) shows withdrawal symptoms when the person stops using, or reduces the level of use of, the substance, and
- (c) has lost the capacity to make decisions about his or her substance use and personal welfare due primarily to his or her dependence on the substance.

**substance** means a substance, or a combination of substances, listed in Schedule 1.

**treatment centre** means a facility declared under section 8 to be a treatment centre.

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

## Part 2 Involuntary detention and treatment

### 6 General restriction on involuntary detention

A person must not be detained in a treatment centre under this Act unless an accredited medical practitioner has issued a dependency certificate in relation to the person.

### 7 Accredited medical practitioners

- (1) The Director-General may appoint a medical practitioner as an accredited medical practitioner.
- (2) The Director-General may appoint the holder of an office (who is a medical practitioner) as an accredited medical practitioner.
- (3) The Director-General may impose conditions for exercising the functions of an accredited medical practitioner.

### 8 Declaration of treatment centres

- (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 treatment centre under this Act, and
  - (b) may, in the same or another order so published, name the premises so specified or described.
- (2) Without limiting subsection (1), an order may change the name assigned to any premises specified or described in the order.
- (3) This section applies to the following premises:
  - (a) premises that belong to or are under the control of the State or an authority of the State or a person acting on behalf of the State or an authority of the State,
  - (b) a facility 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.

### 9 Assessing persons for detention and treatment

- (1) A medical practitioner may request an accredited medical practitioner to assess a person for detention and treatment under this Act.
- (2) After assessing the person, the accredited medical practitioner may issue a certificate (a **dependency certificate**), in the form shown in Schedule 2, stating the person



may be detained for treatment under this Act for the period stated in the certificate.

- (3) A dependency certificate may be issued in relation to the person only if the accredited medical practitioner is satisfied:
  - (a) the person has a severe substance dependence, and
  - (b) care, treatment or control of the person is necessary to protect the person from serious harm, and
  - (c) the person is likely to benefit from treatment for his or her substance dependence but has refused treatment, and
  - (d) no other appropriate and less restrictive means for dealing with the person are reasonably available.
- (4) The accredited medical practitioner may have regard to any serious harm that may occur to:
  - (a) children in the care of the person, or
  - (b) dependants of the person.
- (5) If a dependency certificate is issued in relation to the person assessed under this section, the person may be detained in accordance with the certificate for treatment under this Act.

## **10 Order for assessment**

- (1) This section applies if the accredited medical practitioner is unable to access the person to conduct the assessment requested under section 9.
- (2) A Magistrate or authorised officer may, by order, authorise the accredited medical practitioner to visit and assess the person to ascertain whether a dependency certificate should be issued in relation to the person.
- (3) However, the order may be made only if the Magistrate or officer is satisfied, by evidence on oath, that:
  - (a) the person is likely to have a severe substance dependence, and
  - (b) the person is likely to be in need of protection from serious harm or others are likely to be in need of protection from serious physical harm, and
  - (c) because of physical inaccessibility, the person could not, but for the making of an order under this section, be assessed, and
  - (d) the person is likely to benefit from the treatment.
- (4) The order may also authorise another person (including a police officer) who may be

required to assist the accredited medical practitioner in conducting the assessment to accompany the accredited medical practitioner.

- (5) The accredited medical practitioner and any other person authorised under this section may enter premises, if need be by force, to carry out the assessment.
- (6) If a dependency certificate is issued in relation to the person assessed under this section, the person may be detained in accordance with the certificate for treatment under this Act.
- (7) A person who takes action under the order must, as soon as practicable after taking the action, give written notice of the action taken to the person who made the order.
- (8) In this section:

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

#### **11 Assistance of interpreters**

The accredited medical practitioner must arrange for an interpreter to be present at the assessment of a person under this Part if the person is unable to communicate adequately in English but can communicate adequately in another language.

#### **12 If certificate not issued, advice must be given**

- (1) Subsection (2) applies if the accredited medical practitioner is not satisfied a dependency certificate should be issued in relation to the person being assessed under this Part.
- (2) The practitioner must, if the practitioner considers it appropriate, give advice on alternative options available for treating the person:
  - (a) to the person, and
  - (b) to the primary carer, if any, of the person.

#### **13 Nomination of primary carer**

- (1) A dependent person may nominate a person to be the dependent person's primary carer under this Act.
- (2) A dependent person may nominate a person who is to be excluded from being given a notice or information about the person under this Act.
- (3) A dependent person may revoke or vary any such nomination at any time.
- (4) A nomination, variation or revocation must be made in writing and may be given to an accredited medical practitioner at the treatment centre concerned or the Director-

General.

- (5) A nomination remains in force for the period stated in the nomination unless it is revoked earlier in writing.
- (6) An accredited medical practitioner must, in carrying out his or her functions under this Act or the regulations, give effect to a nomination, or a variation or revocation of a nomination, if the practitioner is given notice of it.
- (7) An accredited medical practitioner is not required to give effect to a nomination, or a variation or revocation of a nomination, if the practitioner reasonably believes:
  - (a) that to do so may put the dependent person, the nominated person or any other person at risk of serious harm, or
  - (b) that the dependent person was incapable of making the nomination, variation or revocation.

**14 Length of initial detention and review of dependency certificate**

If an accredited medical practitioner issues a dependency certificate in relation to a person being assessed:

- (a) the person must not be detained for treatment for more than 28 days after the day the certificate is issued, and
- (b) an accredited medical practitioner must, as soon as practicable after the certificate is issued, bring the person before a Magistrate for a review of the issuing of the certificate.

**Note—**

Under Part 4, the period of detention may be reduced or it may be extended for up to a total period of not more than 3 months from the day the certificate is issued.

**15 Treatment of dependent persons**

- (1) A person who authorises the administration of any medication to a dependent person detained in a treatment centre under this Act:
  - (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 dependent person is not prevented from communicating adequately with any other person who may be engaged to represent the dependent person at a review under Part 4.
- (2) An accredited medical practitioner may, subject to this Act, give, or authorise the giving of, such treatment (including any medication) as the practitioner thinks fit for

the treatment of the dependent person's substance dependence.

#### **16 Information to be given to dependent person**

- (1) An accredited medical practitioner must give the dependent person an oral explanation and a written statement of the person's legal rights and other entitlements under this Act.
- (2) The explanation and statement must be given as soon as practicable after the dependency certificate is issued.
- (3) The written statement must be in the form approved by the Director-General.
- (4) If the accredited medical practitioner is of the opinion that the dependent person is not capable of understanding the explanation or statement when it would normally be given, the explanation and statement must be given to the person not later than 24 hours before the review under section 34 is held about the person.
- (5) The accredited medical practitioner must, if the dependent 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 the other language.

#### **17 Notice to primary carer about detention**

- (1) An accredited medical practitioner must, not later than 24 hours after the dependency certificate has been issued, take all reasonably practicable steps to notify the primary carer of the dependent person that the person has been detained.
- (2) The notice need not be given if the dependent person is discharged during that period.

#### **18 Notice to dependent person of appeal rights**

- (1) An accredited medical practitioner must give, or cause to be given, to the dependent person a statement of the rights of appeal conferred on the person under this Act.
- (2) The statement must be given as soon as practicable after the dependency certificate in relation to the person is issued.
- (3) The statement must be in the form approved by the Director-General.

#### **19 Notice to primary carer of events affecting dependent person**

- (1) An accredited medical practitioner must take all reasonably practicable steps to notify the primary carer of a dependent person if any of the following events occurs:
  - (a) the person is absent from a treatment centre without permission or fails to return at the end of a period of leave,

- (b) the person is discharged from a treatment centre,
  - (c) an application is made under Part 4 to extend the effective period of the dependency certificate relating to the person.
- (2) The accredited medical practitioner must give the notice as soon as practicable after becoming aware the event has occurred.
- (3) If the person is referred to or discharged to another centre the accredited medical practitioner must also state in the notice the name of that centre.

## **20 Transporting dependent person to treatment centre**

- (1) A transport officer may take a dependent person to or from a treatment centre.
- (2) A transport officer 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 dependent person in any way that is reasonably necessary in the circumstances.
- (3) A transport officer may carry out a frisk search or an ordinary search of the dependent person, if the officer reasonably suspects the person is carrying anything:
- (a) that would present a danger to the officer, the person or any other person, or
  - (b) that could be used to assist the person to escape from the officer's custody.
- (4) The transport officer may seize and detain a thing found in a search if it is a thing of a kind mentioned in subsection (3) (a) or (b).
- (5) In this section:

***frisk search*** means:

- (a) a search of a dependent 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 any thing 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 dependent 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 and hat, and

(b) an examination of those items.

**transport officer** means:

(a) a member of staff of the NSW Health Service,

(b) a police officer,

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

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

- (1) An accredited medical practitioner may permit a dependent person to be absent from a treatment centre for the period, and on the conditions, the practitioner thinks fit.
- (2) Permission may be given on any grounds the practitioner thinks fit, including, for example, compassionate grounds or that the dependent person requires medical treatment.
- (3) The practitioner may not grant leave of absence unless the practitioner is satisfied that, as far as is practicable, adequate measures have been taken to prevent the person from causing harm to himself or herself or others.

## **22 Apprehension of persons not permitted to be absent from treatment centre**

- (1) An accredited medical practitioner may apprehend a dependent person, or direct that the person be apprehended, if:
  - (a) the person fails to return to a treatment centre on or before the expiry of a permitted period of absence granted under section 21 or fails to comply with a condition of the permission, or
  - (b) the person absents himself or herself from the centre otherwise than in accordance with this Act.
- (2) The person may be apprehended by any of the following persons:
  - (a) an accredited medical practitioner,
  - (b) any suitably qualified person authorised by the Director-General or the director of the centre,
  - (c) a police officer,
  - (d) a person assisting a person mentioned in paragraph (a), (b) or (c).
- (3) A person who is apprehended must be taken to and detained in a treatment centre.

### **23 Police assistance**

- (1) An accredited medical practitioner may request that a police officer apprehend, or assist in apprehending, a dependent person if the practitioner is of the opinion there are serious concerns relating to the safety of the person or other persons if the person is taken to a treatment centre 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 apprehending and taking the person to a treatment centre, or
  - (b) cause or make arrangements for some other police officer to take the person to a treatment centre.
- (3) The police officer may enter premises to apprehend the dependent person under this section or section 22, and may apprehend the person, without a warrant and may exercise any powers conferred under section 20 on a transport officer under that section.

**Note—**

Section 20 sets out the persons who may take a person to the treatment centre and their powers when doing so.

### **24 Discharge from treatment centre**

- (1) An accredited medical practitioner may discharge a dependent person from a treatment centre at any time if the practitioner is satisfied the person's continued presence at the treatment centre will not achieve the purpose for which the person was detained.
- (2) An accredited medical practitioner must discharge a dependent person from a treatment centre:
  - (a) if the practitioner is satisfied the person no longer meets the criteria for detention and treatment under section 9 (3), or
  - (b) when the dependency certificate in relation to the person ceases to have effect.

### **25 Discharge and other planning**

- (1) An accredited medical practitioner must take all reasonably practicable steps to ensure that the dependent person, and the primary carer of the person, are consulted in relation to planning the person's discharge and any later treatment or other action considered in relation to the person.
- (2) In planning the discharge of the person, and any later treatment or other action considered in relation to the person, the accredited medical practitioner must take all reasonably practicable steps to consult with agencies involved in providing relevant

services to the person, any primary carer of the person and any dependant of the person.

- (3) The accredited medical practitioner must take all reasonably practicable steps to provide the person, and the person's primary carer, with appropriate information about follow-up care.

## **Part 3 Official visitors**

### **26 Principal official visitor**

- (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 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 relating to any significant alcohol or drug dependency issues or dependent person safety or treatment issues to the Minister or any other appropriate person or body,
  - (e) to act as an advocate to the Minister for persons receiving alcohol or drug dependency treatment,
  - (f) any other function conferred on the principal official visitor under this or any other Act.

### **27 Official visitors**

- (1) The Minister must, by instrument in writing, appoint official visitors under both subsections (2) and (3).
- (2) A person may be appointed as an official visitor if the person is a medical practitioner.
- (3) A person may also be appointed as an official visitor if the Minister is satisfied the person is otherwise suitably qualified.
- (4) An official visitor has the following functions:
  - (a) to refer matters relating to any significant alcohol or drug dependency issues or patient safety or treatment issues to the principal official visitor or any other appropriate person or body,



- (b) to act as an advocate for patients about issues arising in the alcohol or drug dependency treatment system, including issues raised by the primary carer of a dependent person,
- (c) to inspect treatment centres as directed by the principal official visitor and in accordance with this Part,
- (d) any other function conferred on official visitors under this or any other Act.

## **28 Provisions relating to the principal official visitor and official visitors**

Schedule 3 has effect in relation to the principal official visitor and official visitors.

## **29 Inspections of alcohol or drug dependency treatment centre by official visitors**

- (1) The principal official visitor must ensure that 2 or more official visitors visit each treatment centre.
- (2) For the purposes of the visit, one of the official visitors must be a person referred to in section 27 (2) and one of the official visitors must be a person referred to in section 27 (3).
- (3) On a visit to a treatment centre, the official visitors must:
  - (a) so far as practicable, inspect every part of the centre at least once, and
  - (b) so far as practicable, make any necessary inquiries about the treatment and detention of dependent persons in the centre, 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 centre, together with any observations they think 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 dependent person being treated at the centre.
- (7) The regulations may provide for other matters in relation to visits to a treatment centre.

## **30 Obligations to facilitate exercise of functions by official visitors**

The director of each treatment centre 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 centre,
- (b) permit the official visitors to see and to interview each dependent person in the centre,
- (c) give full and true answers to the best of his or her knowledge to all questions the official visitors ask in relation to the centre and the dependent persons,
- (d) produce to the official visitors any registers, books, records, orders, certificates, returns and other documents relating to the admission and treatment of the dependent persons and the discharge of persons required by the official visitors.

### **31 Reports to Minister**

Nothing in this Part prevents an official visitor from reporting to the Minister about any matter arising from or relating to the exercise by the official visitor of the official visitor's functions.

### **32 Request by patient or other person to see official visitor**

- (1) A dependent person who is being treated in a treatment centre, or the primary carer of the person, may notify an accredited medical practitioner, orally or in writing, that the person or carer wants to see an official visitor.
- (2) The practitioner must inform an official visitor of the person's or primary carer's desire to see an official visitor not later than 2 days after receiving the notice.

### **33 Official visitors not personally liable**

A matter or thing done or omitted to be done by an official visitor does not, if the matter or thing was done or omitted to be done 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.

## **Part 4 Review and extension of dependency certificates**

### **34 Reviewing issue of dependency certificates**

- (1) A Magistrate must hold an inquiry in relation to a person brought before the Magistrate in accordance with section 14.
- (2) An accredited medical practitioner must make all necessary arrangements to ensure that:
  - (a) all appropriate medical witnesses appear before the Magistrate, and
  - (b) other relevant medical evidence concerning the person is placed before the

Magistrate.

- (3) The Magistrate must determine whether or not, on the balance of probabilities, the person meets the criteria for detention under section 9.
- (4) For that purpose, the Magistrate must consider the following:
  - (a) the reports and recommendations of any accredited medical practitioner who has examined the person,
  - (b) any proposed further treatment for the person and the likelihood the treatment will be of benefit to the person,
  - (c) the views of the person (if any),
  - (d) any cultural factors relating to the person that may be relevant to the determination,
  - (e) any other relevant information given to the Magistrate.
- (5) If the Magistrate is satisfied, on the balance of probabilities, that the person meets the criteria for detention under section 9, the Magistrate may, having regard to the matters considered under subsection (4):
  - (a) confirm the issuing of the dependency certificate, or
  - (b) confirm the issuing of the dependency certificate, but for a shorter period.
- (6) If the Magistrate acts under subsection (5) (b), the certificate has effect only for the shorter period.
- (7) If the Magistrate is not satisfied, on the balance of probabilities, that the person meets the criteria for detention under section 9, the Magistrate must order that the person be discharged from the treatment centre and the dependency certificate is of no further effect.

### **35 Applying for extension of dependency certificates**

An accredited medical practitioner may apply to a Magistrate to extend the effective period of a dependency certificate if:

- (a) the practitioner is satisfied:
  - (i) the dependent person is suffering from drug or alcohol related brain injury, and
  - (ii) additional time is needed to carry out treatment and to plan the person's discharge, and
- (b) the practitioner presents, with the application, a proposed treatment plan to be followed during the additional time granted.

### **36 Consideration of applications to extend detention and treatment under dependency certificates**

- (1) The Magistrate must consider the application made under section 35 within 7 days of receiving it.
- (2) After considering the application, the Magistrate must determine:
  - (a) whether or not the detention and treatment period for the dependent person should be extended, and
  - (b) if so, for how long, but for not more than 3 months from the day the dependency certificate was issued.
- (3) In making the determination, the Magistrate must consider the following:
  - (a) the treatment proposed in the treatment plan accompanying the application,
  - (b) the length of the extension sought,
  - (c) whether or not it is likely the additional treatment will benefit the dependent person,
  - (d) the views of the person (if any),
  - (e) any cultural factors relating to the person that may be relevant in making the decision,
  - (f) any other relevant information given to the Magistrate.
- (4) If the Magistrate determines that the extension sought should not be granted, the certificate continues to have effect as if the application had not been made.
- (5) If the Magistrate grants an extension, the certificate has effect for the period determined by the Magistrate.

### **37 Proceedings to be informal**

- (1) The review under section 34 or the consideration of an application under section 35 (both, the **proceedings**) must be conducted quickly and with as little formality and technicality as the requirements of this Act, the regulations and as the proper consideration of the matters before the Magistrate permit.
- (2) In the proceedings, the Magistrate is not bound by the rules of evidence but may inform himself or herself of any matter in the way the Magistrate thinks appropriate and as the proper consideration of the matter before the Magistrate permits.
- (3) The proceedings are open to the public.
- (4) However, if the Magistrate is satisfied that it is desirable to do so for the welfare of the

dependent person or for any other reason, the Magistrate may (of the Magistrate's 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 proceedings be conducted wholly or partly in private,
- (b) an order prohibiting or restricting the publication or broadcasting of any report of the proceedings,
- (c) an order prohibiting or restricting the publication of evidence given in the proceedings, whether in public or in private, or of matters contained in documents lodged with the Magistrate or received in evidence before the Magistrate,
- (d) an order prohibiting or restricting the disclosure to some or all of the parties to the proceedings of evidence given before the Magistrate, or of the contents of a document lodged with the Magistrate or received in evidence by the Magistrate, in relation to the proceedings.

**Note—**

Section 41 prohibits the publication or broadcasting of the name of a person involved in the proceedings or other material that may identify any such person, except with the consent of the Magistrate.

- (5) If the dependent person is unable to communicate adequately in English but is able to communicate adequately in another language the dependent person may be assisted in the proceedings by a competent interpreter.
- (6) The Magistrate may administer an oath to any person giving evidence in the proceedings.
- (7) The dependent person must be represented in the proceedings by an Australian legal practitioner or, with the leave of the Magistrate, another person chosen by the dependent person, unless the dependent person states that he or she does not wish to be represented.
- (8) Any other person appearing in the proceedings may, with the leave of the Magistrate, be represented by an Australian legal practitioner.
- (9) The primary carer of the dependent person may, with the leave of the Magistrate, appear in the proceedings.

### **38 Adjournments**

- (1) The Magistrate may, from time to time and if it is in the best interests of the dependent person to do so, adjourn the proceedings for up to 7 days.
- (2) If the proceedings are adjourned, the dependency certificate continues to have effect unless another provision of this Act states otherwise.

### **39 Production of evidence**

- (1) The Magistrate may of his or her own motion, or on the application of another person involved in the proceeding, issue a summons requiring the person to whom the summons is addressed to do either or both of the following things:
  - (a) to attend as a witness in the proceedings,
  - (b) to attend the proceedings and to produce any documents in the possession or under the control of the person relating to the proceedings 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 proceedings at which the documents are required to be produced.
- (3) A person to whom a summons is addressed is entitled to receive the amounts payable for compliance with a subpoena under the [Uniform Civil Procedure Rules 2005](#):
  - (a) if the summons was issued by the Magistrate on his or her own motion, from the Magistrate, or
  - (b) if the summons was issued on the application of another person, from the other person.
- (4) If a person:
  - (a) is served with a summons under this section, and
  - (b) at the time of service, is given an amount that is sufficient to cover the person's travelling and other out-of-pocket expenses in attending the proceedings and producing any thing required by the summons to be produced,

the person must comply with the summons, unless the person has a reasonable excuse.

Maximum penalty: 50 penalty units.

### **40 Inspection etc of medical records**

- (1) Unless the Magistrate otherwise determines, the dependent person is entitled to inspect, or otherwise have access to, any medical records relating to the person in the possession of another person.
- (2) A representative of the dependent person is entitled, at any time before or during the proceedings, to inspect or otherwise have access to any medical records relating to the person in the possession of another person.

- (3) If an accredited medical practitioner warns the representative of the dependent person that it may be harmful to communicate to the person, or any other person, specified information in those medical records:
  - (a) the representative must have full and proper regard to that warning, and
  - (b) the representative is not obliged to disclose to the person, or any other person, any information obtained by virtue of the inspection or other access.
- (4) Subsection (3) is subject to any order or direction of the Magistrate, in relation to an inspection under subsection (2).

#### **41 Publication of names**

- (1) A person must not, whether before or after the proceedings are completed and without the consent of the Magistrate, publish or broadcast the name of any person:
  - (a) to whom the proceedings relate, or
  - (b) who appears as a witness in the proceedings, or
  - (c) who is mentioned or otherwise involved in the proceedings.

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

- (2) This section does not prohibit the publication or broadcasting of an official report of the proceedings 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.

#### **42 Record of proceedings**

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

#### **43 Procedure generally**

- (1) Subject to this Part and the regulations, the procedure for the proceedings, and for the conduct of the proceedings, must be determined by the Magistrate.
- (2) The regulations may provide for the following matters:

- (a) the procedure for the calling of, and for the conduct of business at, any proceedings,
- (b) giving assistance to the Magistrate by relevant qualified persons for the purposes of determining any matter,
- (c) reports and information required to be given to the Magistrate, including provisions relating to the matters to be dealt with in reports and the making of reports available to the Magistrate,
- (d) the recording of proceedings and determinations of the Magistrate,
- (e) the service of documents.

#### **44 Contempt**

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

Maximum penalty: 50 penalty units.

#### **45 Appeal to Administrative Decisions Tribunal**

- (1) A person aggrieved by an order or determination of the Magistrate under this Part may appeal against the order or determination to the Administrative Decisions Tribunal.

**Note—**

Section 118A of the [Administrative Decisions Tribunal Act 1997](#) sets out a summary of the appeal process for an appealable decision.

- (2) An appeal under this section is an external appeal within the meaning of the [Administrative Decisions Tribunal Act 1997](#).

### **Part 5 Miscellaneous**

#### **46 Restrictions on holding joint offices**

- (1) An accredited medical practitioner must not be appointed as an official visitor.
- (2) An official visitor must not be appointed as an accredited medical practitioner.
- (3) If a person is appointed contrary to subsection (1) or (2), any act of the person performed during the purported appointment and under this Act is taken to be validly performed.
- (4) Subsection (3) applies only if the act would have been valid but for the appointment contrary to this section.



#### **47 Disclosure of information**

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act or the regulations unless the disclosure is:
  - (a) made with the consent of the person from whom the information was obtained, or
  - (b) made in connection with the administration or execution of this Act, or
  - (c) made for the purposes of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings, or
  - (d) made with other lawful excuse, or
  - (e) necessary to assist or support the review of the Act under section 57.

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.

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

- (1) Nothing in this Act 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 dependent person) or taking any such person to any place.
- (2) Nothing in this Act prevents an accredited medical practitioner from taking any action that the practitioner thinks fit to protect a dependent person detained in a treatment centre, or any other person in the treatment centre, from serious physical harm.

#### **49 Liability of police officers and health care professionals exercising functions under this Act**

- (1) Any member of staff of the NSW Health Service, health care professional or police officer who, in good faith, exercises a function that is conferred or imposed on that person by or under this Act 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 regulations, relieves a medical practitioner or other person from liability in respect of carrying out medical treatment on a person to which the medical practitioner or other person would have been subject had the treatment been carried out with the person's consent.
- (3) Nothing in this section affects any exclusion from liability provided by another provision of this Act 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*.

## **50 Service of documents**

- (1) A document authorised by or required by this Act or the regulations to be given to or served on a person may be served by:
  - (a) in the case of a natural person:
    - (i) giving 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 way.

## **51 Approved forms**

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

## **52 Role of objects provisions**

Section 3 is intended to give guidance in the administration of this Act and does not create, or confer on any person, any right or entitlement enforceable at law.

## **53 Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

## **54 Amendment of Schedule 1 (Substances)**

The Governor may, by order published in the Gazette, amend Schedule 1 by inserting, altering or omitting the name of a substance.

## 55 Regulations

- (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) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

## 55A Transitional provision for declaration of areas

- (1) This section applies if:
  - (a) an area is prescribed under section 4 (1), and
  - (b) immediately before the area is prescribed, a person is detained in an institution in that area under an order made under the *Inebriates Act 1912*.
- (2) Despite section 4, while the order remains in force:
  - (a) the *Inebriates Act 1912* continues to apply to the person, and
  - (b) this Act does not apply in relation to the person.

## 56 Amendment of *Inebriates Act 1912 No 24*

The *Inebriates Act 1912* is amended as set out in Schedule 4.

## 57 Review of Act

- (1) The Minister must 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 must be started as soon as possible after the commencement of this section.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 2 years of the commencement.

## Schedule 1 Substances

(Section 5 (1), definition of “substance”)

### Column 1

ANALGESICS—Organic opiate analgesics

### Column 2

Codeine (including Codral Forte, Disprin Forte, Mersyndol, Panadeine)

Morphine (including MS Contin, Opium)

Organic opiate analgesics, NEC

	Buprenorphine (including Subutex)
	Heroin
	Oxycodone (including Endone)
	Buprenorphine/Naloxone (including Suboxone)
	Semisynthetic Opioid Analgesics, NEC (including Rikodeine)
ANALGESICS—Semisynthetic & Synthetic opioid analgesics	Fentanyl
	Fentanyl analogues
	Levomethadyl acetate hydrochloride (including LAAM)
	Meperidine analogues
	Methadone (including Biodone)
	Pethidine
	Synthetic Opioid Analgesics, NEC (including Physeptone, Fortral, Palfium)
	Ethanol (including alcohol)
SEDATIVES & HYPNOTICS—Alcohols	Methanol (including methylated spirits, metho)
	Alcohols, NEC (including rubbing alcohol, antifreeze)
	Gamma-hydroxybutyrate (including Liquid Ecstasy, GHB, GBH)
	Ketamine (including Special K)
SEDATIVES & HYPNOTICS—Anaesthetics	Nitrous oxide (including laughing gas)
	Phencyclidine (including Angel dust, PCP)
	Anaesthetics, NEC
	Amylobarbitone
	Methylphenobarbitone
SEDATIVES & HYPNOTICS—Barbiturates	Phenobarbitone
	Barbiturates, NEC
	Chlormethiazole
	Kava lactones
SEDATIVES & HYPNOTICS—Other sedatives & hypnotics	Zopiclone
	Other Sedatives & Hypnotics, NEC (including Dozile, Unisom)

	Amphetamine (including Benzedrine)
	Dexamphetamine
STIMULANTS & HALLUCINOGENS—Amphetamines	Methamphetamine (including Speed, Ice, Crystal Meth)
	Amphetamines, NEC
STIMULANTS & HALLUCINOGENS—Cannabinoids	Cannabinoids (including Cannabis, hash, pot)
	Ephedrine (including Shabu)
	Norephedrine
STIMULANTS & HALLUCINOGENS—Ephedra alkaloids	Pseudoephedrine (including Benadryl, Panadol Sinus, Sinutab, Sudafed, Nurofen Cold & Flu)
	Ephedra Alkaloids, NEC
	DOB (including Bromo-DNA)
	DOM (including STP)
	MDA (including Love Drug)
	MDEA (including Eve)
	MDMA (including Ecstasy)
	Mescaline (including Peyote)
	PMA
STIMULANTS & HALLUCINOGENS—Phenethylamines & Tryptamines	TMA
	Phenethylamines, NEC
	Atropinic alkaloids (including Atrobel Forte, Donnatab)
	Diethyltryptamine
	Dimethyltryptamine (including DMT, Fantasia)
	Lysergic acid diethylamide (including Acid, LSD)
	Psilocybin (including Magic Mushrooms)
	Tryptamines, NEC
	Caffeine
	Cathinone
STIMULANTS & HALLUCINOGENS—Other stimulants & hallucinogens	Cocaine (including Coke)
	Methcathinone
	Methylphenidate (including Ritalin)

	Nicotine (including chewing tobacco, snuff)
	Other stimulants and hallucinogens, NEC
	Butane (including air freshener, antiperspirant, aerosol, lighter fluid)
	Petroleum
	Propane
	Aliphatic Hydrocarbons, NEC
	Toluene (including glue, paint, lacquer and paint thinners)
	Xylene
VOLATILE SOLVENTS—Hydrocarbons: Aliphatic, Aromatic & Halogenated	Aromatic hydrocarbons, NEC
	Bromochlorodifluoromethane
	Chloroform
	Tetrachloroethylene (including dry cleaning agents)
	Trichloroethane (including correction fluid and thinner)
	Trichloroethylene (including PVC cement, degreasing agents)
	Halogenated Hydrocarbons, NEC
	Acetone (including nail polish remover)
VOLATILE SOLVENTS—Other volatile solvents	Ethyl acetate (including balsa wood cement)
	Other Volatile Solvents, NEC

## Schedule 2 Dependency certificate

(Section 9 (2))

### *Drug and Alcohol Treatment Act 2007*

#### Part 1

I, [*name in full—use block letters*] (accredited medical practitioner) of [*address*] certify that on [*date*] immediately before, or shortly before, completing this certificate, I personally assessed [*name of person in full*] under section 9 of the *Drug and Alcohol Treatment Act 2007* at [*state place where assessment took place*] for a period of [*state length of assessment*].

I certify the following matters:

1. I am of the opinion that:
  - (a) the person I assessed (the dependent person) has a severe substance dependence, and
  - (b) care, treatment or control of the person is necessary to protect the person from serious harm, and

(c) the person is likely to benefit from treatment for his or her substance dependence but the person has refused treatment, and

(d) no other appropriate and less restrictive means for dealing with the person are reasonably available.

2. The following incidents and/or abnormalities of behaviour have been observed by me and/or communicated to me by others (state name, relationship and address of each informant):

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

4. The following medication (if any) has been administered for the purposes of treating the dependent person:

5. I am of the opinion the dependent person should be detained for 28\* days for treatment under the [Drug and Alcohol Treatment Act 2007](#).

(\* lesser days may be inserted in item 5 by the accredited medical practitioner)

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

Signed this            day of            20

Signature

**Part 2**

A member of staff of the NSW Health Service or a police officer may transport the dependent person to a treatment centre under the [Drug and Alcohol Treatment Act 2007](#).

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 DEPENDENT PERSON OR OTHER PERSONS IF THE PERSON IS TAKEN TO A TREATMENT CENTRE WITHOUT THE ASSISTANCE OF A POLICE OFFICER.

I have assessed the risk and I am of the opinion that there are serious concerns relating to the safety of the dependent person or other persons if the dependent person is taken to a treatment centre without the assistance of a police officer. The reason for me being of this opinion is (include any information known about the dependent person relevant to the risk):

Signed this            day of            20

Signature

**Notes**

1 Section 9 of the [Drug and Alcohol Treatment Act 2007](#) states:

**9 Assessing persons for detention and treatment**

(1) A medical practitioner may request an accredited medical practitioner to assess a person for detention and treatment under this Act.

(2) After assessing the person, the accredited medical practitioner may issue a certificate (a **dependency certificate**), in the form shown in Schedule 2, stating the person may be detained for treatment under this Act for the period stated in the certificate.

(3) A dependency certificate may be issued in relation to the person only if the accredited medical practitioner is satisfied:

(a) the person has a severe substance dependence, and

(b) care, treatment or control of the person is necessary to protect the person from serious harm, and

(c) the person is likely to benefit from treatment for his or her substance dependence but has refused treatment, and

(d) no other appropriate and less restrictive means for dealing with the person are reasonably available.

(4) The accredited medical practitioner may have regard to any serious harm that may occur to:

- (a) children in the care of the person, or
- (b) dependants of the person.

(5) If a dependency certificate is issued in relation to the person assessed under this section, the person may be detained in accordance with the certificate for treatment under this Act.

2 In the *Drug and Alcohol Treatment Act 2007* **close friend or relative** is defined as follows:

**close friend or relative**, of a dependent person, means a friend or relative of the person who:

- (a) maintains both a close personal relationship with the person through frequent personal contact and a personal interest in the person's welfare, and
- (b) does not provide support to the person wholly or substantially on a commercial basis.

3 In the *Drug and Alcohol Treatment Act 2007* **primary carer** is defined as follows:

**primary carer**, of a dependent person, means:

- (a) the guardian of the dependent person, or
- (b) if the dependent person is not under guardianship, the person nominated by the dependent person as the primary carer under a nomination under section 13 that is in force, or
- (c) if paragraphs (a) and (b) do not apply:
  - (i) the spouse of the dependent person, if any, if the relationship between the person and the spouse is close and continuing, or
  - (ia) the other party to any de facto relationship (within the meaning of the *Property (Relationships) Act 1984*) with the dependent person if the relationship between that party and the dependent person is close and continuing, or
  - (ii) any person who is primarily responsible for providing support or care to the dependent person (other than wholly or substantially on a commercial basis), or
  - (iii) a close friend or relative of the dependent person.

4 In the *Drug and Alcohol Treatment Act 2007* **severe substance dependence** is defined as follows:

**severe substance dependence**, in relation to a person, means the person:

- (a) has a tolerance to a substance, and
- (b) shows withdrawal symptoms when the person stops using, or reduces the level of use of, the substance, and
- (c) has lost the capacity to make decisions about his or her substance use and personal welfare due primarily to his or her dependence on the substance.

5 Under a dependency certificate the dependent person must not be detained for treatment for more than 28 days from the day the certificate was issued and as soon as practicable after the certificate is issued the person must be brought before a Magistrate for a review of the issuing of the certificate.

## Schedule 3 Provisions relating to principal official visitor and official visitors

(Section 28)

### 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) 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 official visitor**

(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 an official visitor appointed for a treatment centre, has a pecuniary interest, directly or indirectly, in the treatment centre, or
- (h) signs a certificate or request for the admission of a person to a treatment centre or attends professionally on a patient in a treatment centre.

(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.

## **Schedule 4 Amendment of Inebriates Act 1912 No 24**

(Section 56)

### **[1] Section 3 Order for control of inebriates**

Omit “inebriate, to order:” from section 3 (1).

Insert instead “inebriate and would benefit from the making of an order, to order:”.

### **[2] Section 3 (1), proviso**

Omit “Provided that no such order shall be made except:”.

Insert instead “Provided that no such order shall be made:”.

### **[3] Section 3 (1), proviso**

Insert “except” before “on production” in paragraph (i).

### **[4] Section 3 (1), proviso**

Insert “except” before “on personal inspection” in paragraph (ii).

### **[5] Section 3 (1), proviso**

Insert at the end of paragraph (ii):

, and

(iii) unless the inebriate would benefit from the making of the order.