

# Mental Health (Forensic Provisions) Act 1990 No 10

[1990-10]



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—

- **Previously named**  
Mental Health (Criminal Procedure) Act 1990
- **Does not include amendments by**  
[Justice Legislation Amendment Act \(No 2\) 2018 No 29](#), Sch 1.18 [1]-[4] (not commenced)
- **See also**  
[Mental Health \(Forensic Provisions\) Amendment \(Victims\) Bill 2018](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Mental Health (Forensic Provisions) Act 1990 No 10



New South Wales

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# Mental Health (Forensic Provisions) Act 1990 No 10



New South Wales

An Act with respect to criminal proceedings involving persons affected by mental illness and other mental conditions and the care, treatment and control of such persons.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Mental Health (Forensic Provisions) Act 1990*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**correctional centre** has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

**correctional patient**—see section 41.

**detention centre** has the same meaning as in the *Children (Detention Centres) Act 1987*.

**extension order** means an order for the extension of a person's status as a forensic patient under clause 1 of Schedule 1.

**forensic patient**—see section 42.

**inquiry** means an inquiry under section 10 conducted in order to determine whether a person is unfit to be tried for an offence.

**interim extension order** means an order for the interim extension of a person's status as a forensic patient under clause 10 of Schedule 1.

**involuntary patient** has the same meaning as it has in the *Mental Health Act 2007*.

**limiting term** means a term nominated in respect of a person under section 23 (1) (b).

**Magistrate** means:

- (a) (Repealed)
- (b) a Magistrate, or
- (c) a Children's Magistrate.

**mental condition** means a condition of disability of mind not including either mental illness or developmental disability of mind.

**mental health facility** has the same meaning as it has in the [Mental Health Act 2007](#).

**mentally ill person** has the same meaning as it has in the [Mental Health Act 2007](#).

**special hearing** means a special hearing under section 19.

**Tribunal** means the Mental Health Review Tribunal constituted under the [Mental Health Act 2007](#).

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) In this Act, a reference to a person having done an act alleged to have been done is a reference to a person having done or having omitted to do an act, matter or thing alleged to have been done or alleged to have been omitted to be done.
- (3) In this Act:
  - (a) a reference to a function includes a reference to a power, authority and duty, and
  - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (4) Notes included in this Act do not form part of this Act.

## **Part 2 Criminal proceedings in the Supreme Court and District Court relating to persons affected by mental disorders**

### **4 Application**

This Part applies to criminal proceedings in the Supreme Court (including criminal proceedings within the summary jurisdiction of the Supreme Court) and criminal proceedings in the District Court.



## **5 Person by whom question of unfitness may be raised**

The question of a person's unfitness to be tried for an offence may be raised by any party to the proceedings in respect of the offence or by the Court.

## **6 Basis of determination of question of unfitness**

The question of a person's unfitness to be tried for an offence is to be determined on the balance of probabilities.

## **7 Time at which question of unfitness may be raised**

- (1) The question of a person's unfitness to be tried for an offence is, so far as practicable, to be raised before the person is arraigned on a charge in respect of the offence but may be raised at any time during the course of the hearing of the proceedings in respect of the offence.
- (2) Nothing in this section prevents the question of a person's unfitness to be tried for an offence from being raised on more than one occasion in respect of the same proceedings.

## **8 Procedure where question of unfitness raised before arraignment**

- (1) If the question of a person's unfitness to be tried for an offence is raised at any time before the person is arraigned on a charge in respect of the offence, the Court must determine whether an inquiry should be conducted before the hearing of the proceedings in respect of the offence.
- (2) The Court may, at any time before the inquiry is commenced, determine that there is no longer any need for such an inquiry to be conducted.

## **9 Procedure where question of unfitness raised after arraignment**

If the question of a person's unfitness to be tried for an offence is raised after the person is arraigned on a charge in respect of the offence, the Court must hear any submissions relating to the conducting of an inquiry in the absence of any jury which has been constituted for the purposes of the proceedings relating to the offence.

## **10 Procedure on raising question of unfitness**

- (1) If, in respect of an offence:
  - (a) the Court determines that an inquiry should be conducted and does not subsequently determine, before the inquiry is commenced, that there is no longer any need for such an inquiry to be conducted, or
  - (b) the question of a person's unfitness to be tried for the offence is raised after the person is arraigned on a charge in respect of the offence,

the Court must (except as provided by this section), as soon as practicable after the determination is made or the question is raised, as the case may be, conduct an inquiry in order to determine whether the person is unfit to be tried for the offence.

- (2) The Court must not conduct an inquiry into the question of a person's unfitness to be tried for an offence unless it appears to the Court that the question has been raised in good faith.
- (3) Before conducting an inquiry, the Court may do any one or more of the following:
  - (a) adjourn the proceedings,
  - (b) grant the accused person bail in accordance with the [Bail Act 2013](#),
  - (c) remand the accused person in custody for a period not exceeding 28 days,
  - (d) request the accused person to undergo a psychiatric examination or other examination,
  - (e) request that a psychiatric report or other report relating to the accused person be obtained,
  - (f) discharge any jury constituted for the purpose of those proceedings,
  - (g) make any other order that the Court considers appropriate.
- (4) If, in respect of a person charged with an offence, the Court is of the opinion that it is inappropriate, having regard to the trivial nature of the charge or offence, the nature of the person's disability or any other matter which the Court thinks proper to consider, to inflict any punishment, the Court may determine not to conduct an inquiry and may dismiss the charge and order that the person be released.

#### **11 Determination of question of unfitness**

- (1) The question of a person's unfitness to be tried for an offence is to be determined by the Judge alone.
- (2) Any determination by the Judge under this section must include the principles of law applied by the Judge and the findings of fact on which the Judge relied.

#### **11A (Repealed)**

#### **12 Conduct of inquiry**

- (1) At an inquiry, the accused person is, unless the Court otherwise allows, to be represented by an Australian legal practitioner.
- (2) An inquiry is not to be conducted in an adversary manner.
- (3) The onus of proof of the question of a person's unfitness to be tried for an offence

does not rest on any particular party to the proceedings in respect of the offence.

(4) (Repealed)

### **13 Person found fit to be tried**

If, following an inquiry, an accused person is found fit to be tried for an offence, the proceedings brought against the person in respect of the offence are to recommence or continue in accordance with the appropriate criminal procedures.

#### **13A Committal proceedings following finding of fit to be tried**

- (1) This section applies to an accused person who was committed for trial for an offence under Division 7 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986*.
- (2) The Court may, on the application of the accused person or on its own motion, make an order remitting the matter to a Magistrate for the holding of a case conference under Division 5 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986*, if the accused person has, following an inquiry, been found fit to be tried for an offence.
- (3) The Court must make the order on the application of the accused person unless it is satisfied that it is not in the interests of justice to do so or that the offence is not an offence in relation to which a case conference is required to be held under that Division.
- (4) The Court may, on its own motion, make an order remitting the matter to a Magistrate for the holding of a case conference under Division 5 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986* at any time, if it is satisfied that the question of the accused person's unfitness to be tried for an offence is not going to be raised in proceedings for the offence.
- (5) If a matter is remitted to a Magistrate, the matter is to be dealt with as if the accused person had not been committed for trial and the proceedings are taken to be a continuation of the original committal proceedings.
- (6) If no application is made or the matter is not remitted to a Magistrate, the matter is to be dealt with in accordance with section 13.

### **14 Person found unfit to be tried**

If, following an inquiry, an accused person is found unfit to be tried for an offence, the proceedings brought against the person in respect of the offence must not, except for the purpose of doing any of the things referred to in paragraph (b), be recommenced or continued and the Court:

- (a) must refer the person to the Tribunal, and
- (b) may discharge any jury constituted for the purpose of those proceedings and may,

pending the determination of the Tribunal under section 16, do any one or more of the following:

- (i) adjourn the proceedings,
- (ii) grant the person bail in accordance with the *Bail Act 2013*,
- (iii) remand the person in custody until the determination of the Tribunal has been given effect to,
- (iv) make any other order that the Court considers appropriate.

### **15 Presumptions as to findings concerning unfitness**

It is to be presumed:

- (a) that a person who has, in accordance with this Part, been found to be unfit to be tried for an offence continues to be unfit to be tried for the offence until the contrary is, on the balance of probabilities, determined to be the case, and
- (b) that a person who has, in accordance with this Part, been found fit to be tried for an offence continues to be fit to be tried for the offence until the contrary is, on the balance of probabilities, determined to be the case.

### **16 Functions of Tribunal on referral after inquiry**

- (1) If a person has been referred to the Tribunal under section 14 after a finding that the person is unfit to be tried for an offence, the Tribunal must, as soon as practicable after the person is so referred, determine whether, on the balance of probabilities, the person will, during the period of 12 months after the finding of unfitness, become fit to be tried for the offence.
- (2) If the Tribunal determines that a person will, during the period of 12 months after the finding of unfitness, become fit to be tried for an offence, the Tribunal must also determine whether or not:
  - (a) the person is suffering from mental illness, or
  - (b) the person is suffering from a mental condition for which treatment is available in a mental health facility and, if the person is not in a mental health facility, whether or not the person objects to being detained in a mental health facility.
- (3) After determining in respect of a person the matters referred to in this section, the Tribunal must notify the Court which referred the person to it of its determination.
- (3A) The Tribunal may also make a recommendation to the Court as to the care or treatment of the person.
- (4) If the Tribunal determines that a person will not, during the period of 12 months after

the finding of unfitness, become fit to be tried for an offence, the Tribunal must notify the Director of Public Prosecutions of the determination.

**17 Orders Court may make following determination of Tribunal that person will be fit to plead within 12 months**

- (1) If the Court is notified by the Tribunal of its determination that a person will, on the balance of probabilities, become fit to be tried during the period of 12 months after the finding of unfitness and of its determination in relation to the matters set out in section 16 (2), the Court may take the action set out in subsection (2) or (3).
- (2) The Court may grant the person bail in accordance with the *Bail Act 2013* for a period not exceeding 12 months.
- (3) If the Tribunal has determined:
  - (a) that the person is suffering from mental illness or that the person is suffering from a mental condition for which treatment is available in a mental health facility and that the person, not being in a mental health facility, does not object to being detained in a mental health facility—the Court may order that the person be taken to and detained in a mental health facility, or
  - (b) that the person is not suffering from mental illness or from a mental condition referred to in paragraph (a) or that the person is suffering from such a mental condition but that the person objects to being detained in a mental health facility—the Court may order that the person be detained in a place other than a mental health facility,for a period not exceeding 12 months.
- (4) As soon as practicable after the grant of bail under subsection (2) or the making of an order under subsection (3), the Registrar of the Court is to notify the Tribunal of the grant of bail or the terms of the order.

**18 (Repealed)**

**19 Court to hold special hearing after advice received from Director of Public Prosecutions**

- (1) If the Court receives a notification of a determination from the Tribunal under section 16 (3), 45 (3) or 47 (5) that a person will not, during the period of 12 months after the finding of unfitness, become fit to be tried for an offence, the Court:
  - (a) is to obtain the advice of the Director of Public Prosecutions as to whether further proceedings will be taken by the Director of Public Prosecutions in respect of the offence, and
  - (b) is to conduct a special hearing as soon as practicable unless the Director of Public Prosecutions advises that no further proceedings will be taken.

- (2) A special hearing is a hearing for the purpose of ensuring, despite the unfitness of the person to be tried in accordance with the normal procedures, that the person is acquitted unless it can be proved to the requisite criminal standard of proof that, on the limited evidence available, the person committed the offence charged or any other offence available as an alternative to the offence charged.
- (3) If the Director of Public Prosecutions advises the Court under subsection (1) (a) that no further proceedings will be taken in respect of the offence, the Director of Public Prosecutions is also to give that advice to the Minister for Police.
- (4) Subsection (1) does not apply if the Court has already held a special hearing in relation to the offence concerned.

## **20 Release of certain persons**

If, under section 19, the Director of Public Prosecutions advises a Court that a person will not be further proceeded against in respect of an offence, the Court must order the release of the person.

## **21 Nature and conduct of special hearing**

- (1) Except as provided by this Act, a special hearing is to be conducted as nearly as possible as if it were a trial of criminal proceedings.
- (2) At a special hearing, the accused person must, unless the Court otherwise allows, be represented by an Australian legal practitioner and the fact that the person has been found unfit to be tried for an offence is to be presumed not to be an impediment to the person's representation.
- (3) At a special hearing:
  - (a) the accused person is to be taken to have pleaded not guilty in respect of the offence charged, and
  - (b) the Australian legal practitioner, if any, who represents the accused person may exercise the rights of the person to challenge jurors or the jury, and
  - (c) without limiting the generality of subsection (1), the accused person may raise any defence that could be properly raised if the special hearing were an ordinary trial of criminal proceedings, and
  - (d) without limiting the generality of subsection (1), the accused person is entitled to give evidence.
- (4) At the commencement of a special hearing for which a jury has been constituted, the Court must explain to the jury the fact that the accused person is unfit to be tried in accordance with the normal procedures, the meaning of unfitness to be tried, the purpose of the special hearing, the verdicts which are available and the legal and

practical consequences of those verdicts.

### **21A Judge to try special hearing unless election for jury made**

- (1) At a special hearing, the question whether an accused person has committed an offence charged or any other offence available as an alternative to an offence charged is to be determined by the Judge alone unless an election to have a special hearing determined by a jury is made by:
  - (a) the accused person and the Court is satisfied that the person sought and received advice in relation to the election from an Australian legal practitioner and understood the advice, or
  - (b) an Australian legal practitioner representing the accused person, or
  - (c) the prosecutor.
- (2) An election to have a special hearing determined by a jury must be made:
  - (a) in the case of an election by the accused person or the Australian legal practitioner representing the accused person—on any day before the day fixed for the special hearing in the Supreme Court or the District Court, or
  - (b) in the case of an election by the prosecutor—at least 7 days before the day fixed for the special hearing in the Supreme Court or the District Court.
- (3) An accused person or an Australian legal practitioner representing an accused person who elects to have a special hearing determined by a jury may, at any time before the day fixed for the special hearing, subsequently elect to have the matter determined by the Judge alone.
- (4) The *Jury Act 1977* applies to and in respect of the constitution of a jury, and a jury constituted, for the purpose of a special hearing in the same way as it applies to and in respect of the constitution of a jury, and a jury constituted, for the trial of any criminal proceedings.
- (5) A member of a jury otherwise constituted for the purpose of any proceedings relating to the same accused person and the same offence is disqualified from being a member of a jury constituted as referred to in subsection (4).
- (6) Rules of court may be made with respect to elections under this section.

### **21B Verdict of Judge**

- (1) The verdicts available to a Judge who determines a special hearing without a jury are the verdicts available to a jury under section 22. Any such verdict has, for all purposes, the same effect as a verdict of a jury.
- (2) A determination by a Judge in any such special hearing must include the principles of

law applied by the Judge and the findings of fact on which the Judge relied.

## **22 Verdicts at special hearing**

- (1) The verdicts available to the jury or the Court at a special hearing include the following:
  - (a) not guilty of the offence charged,
  - (b) not guilty on the ground of mental illness,
  - (c) that on the limited evidence available, the accused person committed the offence charged,
  - (d) that on the limited evidence available, the accused person committed an offence available as an alternative to the offence charged.
- (2) A verdict in accordance with subsection (1) (b) is to be taken to be equivalent for all purposes to a special verdict that an accused person is not guilty by reason of mental illness under section 38.
- (3) A verdict in accordance with subsection (1) (c) or (d):
  - (a) constitutes a qualified finding of guilt and does not constitute a basis in law for any conviction for the offence to which the finding relates, and
  - (b) subject to section 28, constitutes a bar to further prosecution in respect of the same circumstances, and
  - (c) is subject to appeal in the same manner as a verdict in an ordinary trial of criminal proceedings, and
  - (d) is to be taken to be a conviction for the purpose of enabling a victim of the offence in respect of which the verdict is given to make a claim for compensation.

## **22A Amendment of indictment**

- (1) The provisions of the *Criminal Procedure Act 1986* apply to the amendment of an indictment under this section in the same way as they apply to the amendment of an indictment in ordinary criminal proceedings, subject to any modifications that the Court considers appropriate in the circumstances.
- (2) Without limiting subsection (1), the Director of Public Prosecutions may, with the leave of the Court or the consent of an Australian legal practitioner representing the accused person, amend an indictment to which a special hearing relates.

## **23 Procedure after completion of special hearing**

- (1) If, following a special hearing, it is found on the limited evidence available that an



accused person committed the offence charged or some other offence available as an alternative, the Court:

- (a) must indicate whether, if the special hearing had been a normal trial of criminal proceedings against a person who was fit to be tried for the offence which the person is found to have committed, it would have imposed a sentence of imprisonment, and
  - (b) where the Court would have imposed such a sentence, must nominate a term in respect of that offence, being the best estimate of the sentence the Court would have considered appropriate if the special hearing had been a normal trial of criminal proceedings against a person who was fit to be tried for that offence and the person had been found guilty of that offence.
- (2) If a Court indicates that it would not have imposed a sentence of imprisonment in respect of a person, the Court may impose any other penalty or make any other order it might have made on conviction of the person for the relevant offence in a normal trial of criminal proceedings.
- (3) Any such other penalty imposed or order made, under subsection (2), is to be subject to appeal in the same manner as a penalty or order in a normal trial of criminal proceedings.
- (4) In nominating a limiting term in respect of a person or imposing any other penalty or making any other order, the Court may, if it thinks fit, take into account the periods, if any, of the person's custody or detention before, during and after the special hearing (being periods related to the offence).
- (5) A limiting term nominated in respect of a person takes effect from the time when it is nominated unless the Court:
  - (a) after taking into account the periods, if any, of the person's custody or detention before, during and after the special hearing (being periods related to the offence), directs that the term be taken to have commenced at an earlier time, or
  - (b) directs that the term commence at a later time so as to be served consecutively with (or partly concurrently and partly consecutively with) some other limiting term nominated in respect of the person or a sentence of imprisonment imposed on the person.
- (6) When making a direction under subsection (5) (b), the Court is to take into account that:
  - (a) a sentence of imprisonment imposed in a normal trial of criminal proceedings may be subject to a non-parole period whereas a limiting term is not, and
  - (b) in a normal trial of criminal proceedings, consecutive sentences of imprisonment

are to be imposed with regard to non-parole periods (as referred to in section 47 (4) and (5) of the *Crimes (Sentencing Procedure) Act 1999*).

- (7) If the Court indicates that it would not have imposed a sentence of imprisonment in respect of a forensic patient, it must notify the Tribunal that a limiting term is not to be nominated in respect of the person.

#### **24 Consequences of nomination of limiting term**

- (1) If in respect of a person a Court has nominated a limiting term, the Court:
- (a) must refer the person to the Tribunal, and
  - (b) may make such order with respect to the custody of the person as the Court considers appropriate.
- (2) If a Court refers a person to the Tribunal, the Tribunal must determine whether or not:
- (a) the person is suffering from mental illness, or
  - (b) the person is suffering from a mental condition for which treatment is available in a mental health facility and, where the person is not in a mental health facility, whether or not the person objects to being detained in a mental health facility.
- (3) The Tribunal must notify the Court which referred the person to it of its determination with respect to the person.

#### **25 Special verdict of not guilty by reason of mental illness**

If at a special hearing the defence of mental illness is raised and the jury or Judge, as the case may be, returns a special verdict that the accused person is not guilty by reason of mental illness, the person is thereafter to be dealt with and an order may be made under this Act in respect of the person as if the jury or Judge, as the case may be, had returned such a special verdict at a normal trial of criminal proceedings.

#### **26 Verdict of not guilty**

If at a special hearing it is found that an accused person is not guilty of an offence charged, the person is thereafter to be dealt with as if the person had been found not guilty at a normal trial of criminal proceedings.

#### **27 Orders Court may make following determination of Tribunal after limiting term is imposed**

If a Court is notified by the Tribunal of its determination in respect of a person under section 24 (3), the Court may:

- (a) if the Tribunal has determined that the person is suffering from mental illness or that the person is suffering from a mental condition for which treatment is available in a

mental health facility and that the person, not being in a mental health facility, does not object to being detained in a mental health facility—order that the person be taken to and detained in a mental health facility, or

- (b) if the Tribunal has determined that the person is not suffering from mental illness or from a mental condition referred to in paragraph (a) or that the person is suffering from such a mental condition but that the person objects to being detained in a mental health facility—order that the person be detained in a place other than a mental health facility.

## **28 Effect on other proceedings of finding on special hearing**

- (1) If, following a special hearing, an accused person is found on the limited evidence available to have committed the offence charged or some other offence available as an alternative, the finding, except as provided by subsection (2), constitutes a bar to any other criminal proceedings brought against the person for the same offence or substantially the same offence.
- (2) Nothing in subsection (1) prevents other criminal proceedings referred to in that subsection from being commenced at any time before the expiration of any limiting term nominated in respect of a person unless, before the expiration of the limiting term, the person has been released from custody as an inmate (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) or discharged from detention as a forensic patient.
- (3) If, pursuant to other criminal proceedings referred to in subsection (1), an accused person is convicted of the offence or substantially the same offence as that which, at a special hearing, the person was found to have committed, the periods, if any, of the person's custody or detention before, during and after the special hearing (being periods relating to the offence) are to be fully taken into account in determining any period of any sentence or the terms of any disposition consequent on the conviction.

## **29 Action to be taken on notification that person is fit to be tried**

- (1) If the Tribunal has notified the Court that it is of the opinion that a person who has been found to be unfit to be tried for an offence has become fit to be tried for the offence (whether or not a special hearing has been conducted in respect of the offence), the Court:
  - (a) is to obtain the advice of the Director of Public Prosecutions as to whether further proceedings will be taken by the Director of Public Prosecutions in respect of the offence, and
  - (b) is to hold a further inquiry as to the person's fitness as soon as practicable unless the Director of Public Prosecutions advises that the person will not be further proceeded against in respect of the offence.

- (2) The Director of Public Prosecutions must advise the Minister for Health and the Tribunal if the Director has determined that no further proceedings will be taken in respect of the offence.
- (3) If the Director of Public Prosecutions advises the Minister for Health that a person will not be further proceeded against, the Minister for Health must, after having informed the Minister for Police of the date of the person's release, do all such things within the power of the Minister for Health to order the person's release from detention or to otherwise ensure the person's release from detention.
- (4) Sections 11 and 12 apply to and in respect of a further inquiry under this section in the same way as those sections apply to and in respect of an inquiry.

### **30 Procedure after completion of further inquiry**

- (1) If, following a further inquiry under section 29, an accused person is found fit to be tried for an offence, the proceedings brought against the person in respect of the offence are to recommence or continue in accordance with the appropriate criminal procedures.
- (2) If, following a further inquiry under section 29, an accused person is found unfit to be tried for an offence:
  - (a) in the case of an accused person who has been detained in custody as an inmate (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) or in a mental health facility as a forensic patient for a period or continuous periods in the aggregate of not less than 12 months and in respect of whom a special hearing has not been held—the Court must conduct a special hearing, or
  - (b) in the case of any other accused person—the Court may conduct a special hearing (if a special hearing has not been held) or order that the person be returned to the custody or mental health facility from which the person was taken.
- (3) The Court must notify the Tribunal if it determines that a forensic patient detained in a mental health facility is fit to be tried for an offence.

## **Part 3 Summary proceedings before a Magistrate relating to persons affected by mental disorders**

### **31 Application**

- (1) This Part applies to criminal proceedings in respect of summary offences or indictable offences triable summarily, being proceedings before a Magistrate, and includes any related proceedings under the *Bail Act 2013*, but does not apply to committal proceedings.
- (2) (Repealed)

### **32 Persons suffering from mental illness or condition or cognitive impairment**

- (1) If, at the commencement or at any time during the course of the hearing of proceedings before a Magistrate, it appears to the Magistrate:
- (a) that the defendant is (or was at the time of the alleged commission of the offence to which the proceedings relate):
    - (i) cognitively impaired, or
    - (ii) suffering from mental illness, or
    - (iii) suffering from a mental condition for which treatment is available in a mental health facility,but is not a mentally ill person, and
  - (b) that, on an outline of the facts alleged in the proceedings or such other evidence as the Magistrate may consider relevant, it would be more appropriate to deal with the defendant in accordance with the provisions of this Part than otherwise in accordance with law,
- the Magistrate may take the action set out in subsection (2) or (3).
- (2) The Magistrate may do any one or more of the following:
- (a) adjourn the proceedings,
  - (b) grant the defendant bail in accordance with the [Bail Act 2013](#),
  - (c) make any other order that the Magistrate considers appropriate.
- (3) The Magistrate may make an order dismissing the charge and discharge the defendant:
- (a) into the care of a responsible person, unconditionally or subject to conditions, or
  - (b) on the condition that the defendant attend on a person or at a place specified by the Magistrate:
    - (i) for assessment or treatment (or both) of the defendant's mental condition or cognitive impairment, or
    - (ii) to enable the provision of support in relation to the defendant's cognitive impairment, or
  - (c) unconditionally.
- (3A) If a Magistrate suspects that a defendant subject to an order under subsection (3) may have failed to comply with a condition under that subsection, the Magistrate

may, within 6 months of the order being made, call on the defendant to appear before the Magistrate.

(3B) If the defendant fails to appear, the Magistrate may:

- (a) issue a warrant for the defendant's arrest, or
- (b) authorise an authorised officer within the meaning of the *Criminal Procedure Act 1986* to issue a warrant for the defendant's arrest.

(3C) If, however, at the time the Magistrate proposes to call on a defendant referred to in subsection (3A) to appear before the Magistrate, the Magistrate is satisfied that the location of the defendant is unknown, the Magistrate may immediately:

- (a) issue a warrant for the defendant's arrest, or
- (b) authorise an authorised officer within the meaning of the *Criminal Procedure Act 1986* to issue a warrant for the defendant's arrest.

(3D) If a Magistrate discharges a defendant subject to a condition under subsection (3), and the defendant fails to comply with the condition within 6 months of the discharge, the Magistrate may deal with the charge as if the defendant had not been discharged.

(4) A decision under this section to dismiss charges against a defendant does not constitute a finding that the charges against the defendant are proven or otherwise.

(4A) A Magistrate is to state the reasons for making a decision as to whether or not a defendant should be dealt with under subsection (2) or (3).

(4B) A failure to comply with subsection (4A) does not invalidate any decision of a Magistrate under this section.

(5) The regulations may prescribe the form of an order under this section.

(6) In this section:

***cognitive impairment*** means ongoing impairment of a person's comprehension, reasoning, adaptive functioning, judgment, learning or memory that materially affects the person's ability to function in daily life and is the result of damage to, or dysfunction, developmental delay or deterioration of, the person's brain or mind, and includes (without limitation) any of the following:

- (a) intellectual disability,
- (b) borderline intellectual functioning,
- (c) dementia,
- (d) acquired brain injury,

- (e) drug or alcohol related brain damage, including foetal alcohol spectrum disorder,
- (f) autism spectrum disorder.

### **32A Reports from treatment providers**

- (1) Despite any law, a person who is to assess another person's mental condition or provide treatment to another person in accordance with an order under section 32 (3) (a **treatment provider**) may report a failure to comply with a condition of the order by the other person to any of the following:
  - (a) an officer of Community Offender Services, Probation and Parole Service,
  - (b) an officer of the Department of Justice,
  - (c) any other person or body prescribed by the regulations.
- (2) A treatment provider may include in a report under this section any information that the treatment provider considers is relevant to the making of a decision in relation to the failure to comply concerned.
- (3) A report provided under this section is to be in the form approved for the time being by the Director-General of the Attorney General's Department.

### **33 Mentally ill persons**

- (1) If, at the commencement or at any time during the course of the hearing of proceedings before a Magistrate, it appears to the Magistrate that the defendant is a mentally ill person, the Magistrate (without derogating from any other order the Magistrate may make in relation to the defendant, whether by way of adjournment, the granting of bail in accordance with the [Bail Act 2013](#) or otherwise):
  - (a) may order that the defendant be taken to, and detained in, a mental health facility for assessment, or
  - (b) may order that the defendant be taken to, and detained in, a mental health facility for assessment and that, if the defendant is found on assessment at the mental health facility not to be a mentally ill person or mentally disordered person, the defendant be brought back before a Magistrate or an authorised officer unless granted bail by a police officer at that facility, or
  - (c) may discharge the defendant, unconditionally or subject to conditions, into the care of a responsible person.
- (1A) Without limiting subsection (1) (c), at the commencement or at any time during the course of the hearing of proceedings before a Magistrate, the Magistrate may make a community treatment order in accordance with the [Mental Health Act 2007](#) for implementation by a declared mental health facility in relation to the defendant, if the

Magistrate is satisfied that all of the requirements for the making of a community treatment order at a mental health inquiry under that Act (other than the holding of an inquiry) have been met in respect of the defendant.

- (1B) The provisions of the *Mental Health Act 2007* (other than section 51 (1) and (2)) apply to and in respect of the defendant and that order as if the order had been made by the Tribunal under that Act.
- (1C) A Magistrate must, before making an order under subsection (1A), notify the Secretary of the Ministry of Health, or a person authorised by the Secretary of the Ministry of Health for the purposes of this section, of the proposed order.
- (1D) If, at the commencement or at any time during the course of the hearing of proceedings under the *Bail Act 2013* before an authorised officer, it appears to the authorised officer that the defendant is a mentally ill person, the authorised officer (without derogating from any other order under the *Bail Act 2013* that the officer may make in relation to the defendant):
- (a) may order that the defendant be taken to, and detained in, a mental health facility for assessment, or
  - (b) may order that the defendant be taken to, and detained in, a mental health facility for assessment and that, if the defendant is found on assessment at the mental health facility not to be a mentally ill person or mentally disordered person, the defendant be brought back before a Magistrate or an authorised officer unless granted bail by a police officer at that facility.
- (2) If a defendant is dealt with at the commencement or at any time during the course of the hearing of proceedings before a Magistrate or authorised officer in accordance with this section, the charge which gave rise to the proceedings, on the expiration of the period of 6 months after the date on which the defendant is so dealt with, is to be taken to have been dismissed unless, within that period, the defendant is brought before a Magistrate to be further dealt with in relation to the charge.
- (3) If a defendant is brought before a Magistrate to be further dealt with in relation to a charge as referred to in subsection (2), the Magistrate must, in dealing with the charge, take account of any period during which the defendant was in a mental health facility as a consequence of an order made under this section.
- (4) The fact that charges are to be taken to have been dismissed under subsection (2) does not constitute a finding that the charges against the defendant are proven or otherwise.
- (4A) A Magistrate is to state the reasons for making a decision as to whether or not a defendant should be dealt with by an order under subsection (1) or (1A).
- (4B) An authorised officer is to state the reasons for making a decision as to whether or



not a defendant should be dealt with by an order under subsection (1D).

(4C) A failure to comply with subsection (4A) or (4B) does not invalidate any decision of a Magistrate or authorised officer under this section.

(5) The regulations may prescribe the form of an order under this section.

(5A) An order under this section may provide that a defendant:

(a) in the case of a defendant who is a juvenile, be taken to or from a place by a juvenile justice officer employed in the Department of Justice, or

(b) in the case of any defendant, be taken to or from a place by a person of a kind prescribed for the purposes of this section.

(5B) An order by a Magistrate or authorised officer under subsection (1) (a) or (b) or (1D) (a) or (b) in relation to an offence is, for the purposes of the *Bail Act 2013*, taken to be a decision to dispense with bail for the offence.

(6) In this section, a reference to an **authorised officer** is a reference to an authorised officer within the meaning of the *Criminal Procedure Act 1986*.

#### **34 (Repealed)**

#### **35 Transfer from correctional centre or detention centre**

(1) This section applies to a person who is awaiting committal for trial or trial for an offence or summary disposal of the person's case.

(2) If it appears to a Magistrate that it may be appropriate to transfer a person to whom this section applies from a correctional centre or detention centre to a mental health facility under section 55, the Magistrate may make an order directing:

(a) that the defendant be examined by 2 medical practitioners, one of whom is a psychiatrist, and

(b) that, if appropriate, the relevant certificates be furnished to the Secretary of the Ministry of Health under section 55, and

(c) that the Chief Executive Officer, Justice Health or, in the case of a juvenile, the Secretary of the Department of Justice notify the Magistrate of the action, if any, taken under section 55.

#### **36 Means by which Magistrate may be informed**

For the purposes of this Part, a Magistrate may inform himself or herself as the Magistrate thinks fit, but not so as to require a defendant to incriminate himself or herself.

## **Part 4 Defence of mental illness**

### **37 Explanation to jury**

If, on the trial of a person charged with an offence, a question is raised as to whether the person was, at the time of commission of the offence, mentally ill as referred to in section 38, the Court must explain to the jury the findings which may be made on the trial and the legal and practical consequences of those findings and must include in its explanation:

- (a) a reference to the existence and composition of the Tribunal, and
- (b) a reference to the relevant functions of the Tribunal with respect to forensic patients, including a reference to the requirements of this Act that the Tribunal may make an order for the release of a person detained in accordance with section 39 only if the Tribunal is satisfied, on the evidence available to it, that the safety of the person or any member of the public will not be seriously endangered by the person's release.

### **38 Special verdict**

- (1) If, in an indictment or information, an act or omission is charged against a person as an offence and it is given in evidence on the trial of the person for the offence that the person was mentally ill, so as not to be responsible, according to law, for his or her action at the time when the act was done or omission made, then, if it appears to the jury before which the person is tried that the person did the act or made the omission charged, but was mentally ill at the time when the person did or made the same, the jury must return a special verdict that the accused person is not guilty by reason of mental illness.
- (2) If a special verdict of not guilty by reason of mental illness is returned at the trial of a person for an offence, the Court may remand the person in custody until the making of an order under section 39 in respect of the person.

### **39 Effect of finding and declaration of mental illness**

- (1) If, on the trial of a person charged with an offence, the jury returns a special verdict that the accused person is not guilty by reason of mental illness, the Court may order that the person be detained in such place and in such manner as the Court thinks fit until released by due process of law or may make such other order (including an order releasing the person from custody, either unconditionally or subject to conditions) as the Court considers appropriate.
- (2) The Court is not to make an order under this section for the release of a person from custody unless it is satisfied, on the balance of probabilities, that the safety of the person or any member of the public will not be seriously endangered by the person's release.
- (3) As soon as practicable after the making of an order under this section, the Registrar of

the Court is to notify the Tribunal of the terms of the order.

## **Part 5 Forensic patients and correctional patients**

### **Division 1 Preliminary**

#### **40 Objects**

The objects of this Part are as follows:

- (a) to protect the safety of members of the public,
- (b) to provide for the care, treatment and control of persons subject to criminal proceedings who are suffering from a mental illness or mental condition,
- (c) to facilitate the care, treatment and control of any of those persons in correctional centres through community treatment orders,
- (d) to facilitate the provision of hospital care or care in the community through community treatment orders for any of those persons who require involuntary treatment,
- (e) to give an opportunity for those persons to have access to appropriate care.

#### **Note—**

Section 68 of the [Mental Health Act 2007](#) sets out general principles with respect to the treatment of all people with a mental illness or mental disorder.

#### **41 Definitions**

(1) In this Part:

**correctional centre** includes a detention centre.

**correctional patient** means a person (other than a forensic patient) who has been transferred from a correctional centre to a mental health facility while serving a sentence of imprisonment, or while on remand, and who has not ceased to be a correctional patient under section 64 or 65.

**Forensic Division** of the Tribunal means the Division established under section 73.

**Secretary** means the Secretary of the Ministry of Health.

**victim** means a primary victim within the meaning of the [Victims Rights and Support Act 2013](#) and includes a member of the immediate family of a victim within the meaning of section 22 of that Act.

**victim** of a patient means a victim who is a victim of an act of violence (within the meaning of the [Victims Rights and Support Act 2013](#)) committed by a patient.

- (2) Words and expressions used in this Part have the same meaning as they have in the *Mental Health Act 2007*.
- (3) For the purposes of the application of this Act to a person detained in, or transferred to or from, a detention centre:
  - (a) a reference to the Commissioner of Corrective Services is taken to be a reference to the Secretary of the Department of Justice, and
  - (b) a reference to a sentence of imprisonment is taken to include a reference to a term of detention under a detention order within the meaning of the *Children (Detention Centres) Act 1987*.

## 42 Forensic patients

For the purposes of this Act, the following persons are **forensic patients**:

- (a) a person who is detained in a mental health facility, correctional centre or other place, or released from custody subject to conditions, pursuant to an order under:
  - (i) section 14, 17 (3), 24, 25, 27 or 39, or
  - (ii) section 7 (4) of the *Criminal Appeal Act 1912* (including that subsection as applied by section 5AA (5) of that Act),
- (a1) a person in respect of whom an extension order or interim extension order is in force,
- (b) a person who is a member of a class of persons prescribed by the regulations for the purposes of this section.

## Division 2 Forensic patients

### Subdivision 1 Review of forensic patients by Tribunal

#### 43 Criteria for release and matters to be considered by Tribunal

The Tribunal must not make an order for the release of a forensic patient unless it is satisfied, on the evidence available to it, that:

- (a) the safety of the patient or any member of the public will not be seriously endangered by the patient's release, and
- (b) other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the patient or that the patient does not require care.

#### **Note—**

See section 74 for matters that the Tribunal must consider in deciding what orders to make under this Part. Section 75 sets out conditions that may be imposed on release.

#### **44 Persons found not guilty by reason of mental illness—initial review**

- (1) The Tribunal must review a person's case as soon as practicable after the person is found not guilty of an offence by reason of mental illness, after a special hearing, a trial or on an appeal, and ordered to be detained in a mental health facility or other place or to be released from custody subject to conditions.

**Note—**

Relevant orders may be made under this Act (including sections 25 and 39) and under section 7 (4) of the *Criminal Appeal Act 1912* (including that subsection as applied by section 5AA (5) of that Act).

- (2) The Tribunal must, after reviewing a person's case, make an order:
  - (a) as to the person's care, detention or treatment, or
  - (b) as to the person's release (either unconditionally or subject to conditions).
- (3) This section does not apply if a person ceases to be a forensic patient.

**Note—**

See section 43 for matters of which the Tribunal must be satisfied before it makes an order for the release of a forensic patient.

#### **45 Person found unfit to be tried—initial reviews**

- (1) The Tribunal must review a person's case as soon as practicable after:
  - (a) an order is made under section 17 (3) in relation to the person, or
  - (b) an order is made under section 27 in relation to the person.
- (2) On a review, the Tribunal must determine whether, in its opinion, the person has become fit to be tried for an offence.
- (3) The Tribunal must notify the court that made the finding of unfitness and the Director of Public Prosecutions if, on a review, it is of the opinion that the person:
  - (a) has become fit to be tried for an offence, or
  - (b) has not become fit to be tried for an offence and will not, during the period of 12 months after the finding of unfitness by the court, become fit to be tried for the offence.
- (4) This section does not apply if a person ceases to be a forensic patient.

#### **46 Further reviews by Tribunal of forensic patients**

- (1) The Tribunal must review the case of each forensic patient every 6 months but may review the case of any forensic patient at any time.
- (2) The Tribunal must review the case of a forensic patient if requested to do so by the

Minister for Health, the Attorney General, the Minister for Justice, the Minister for Juvenile Justice, the Secretary or the medical superintendent of the mental health facility in which the patient is detained.

- (3) The Tribunal must review the case of each forensic patient who is subject to a community treatment order, and who is detained in a correctional centre, every 3 months.
- (4) The period within which a particular review under this section (other than a review of the case of a forensic patient who is subject to an extension order) must be held may, on the motion of the Tribunal or on the application of the patient or a designated carer or the principal care provider of the patient, be extended by the Tribunal to a maximum of 12 months.
- (5) The Tribunal may grant an application to extend the review period if it is satisfied that:
  - (a) there are reasonable grounds to grant the application, or
  - (b) an earlier review is not required because:
    - (i) there has been no change since the last review in the patient's condition, and
    - (ii) there is no apparent need for any change in existing orders relating to the patient, and
    - (iii) an earlier review may be detrimental to the condition of the patient.

#### **47 Orders and recommendations on further Tribunal reviews**

- (1) The Tribunal may, after reviewing the case of a forensic patient under section 46, make an order as to:
  - (a) the patient's continued detention, care or treatment in a mental health facility, correctional centre or other place, or
  - (b) the patient's release (either unconditionally or subject to conditions).
- (2) The Tribunal must not make an order as to the release of a forensic patient if the patient is a person who has been remanded in custody pending the person's return to court but may make a recommendation to the court as to the person's release.
- (2A) The Tribunal must not make an order as to the release, unconditionally, of a forensic patient who is subject to an extension order but may make a recommendation to the Supreme Court as to the variation or revocation of the extension order.
- (3) An order for release under this section may be made despite any other provision of this Act or any order of a court under this Act.
- (4) On reviewing under section 46 the case of a forensic patient who is subject to a

finding that the person is unfit to be tried for an offence, the Tribunal must make a recommendation as to the fitness of the patient to be tried for an offence.

- (5) The Tribunal must notify the court that made the finding of unfitness and the Director of Public Prosecutions if, on a review, the Tribunal is of the opinion that the person:
- (a) has become fit to be tried for an offence, or
  - (b) has not become fit to be tried for an offence and will not, during the period of 12 months after the finding of unfitness by the court, become fit to be tried for the offence.

**Note—**

See section 43 for matters of which the Tribunal must be satisfied before it makes an order for the release of a forensic patient.

#### **48 Transfer of patients**

On a review under this Part, the Tribunal may make an order for the transfer of a forensic patient to a mental health facility, correctional centre or other place.

### **Subdivision 2 Leave of absence**

#### **49 Tribunal may grant leave**

- (1) The Tribunal may make an order allowing a forensic patient to be absent from a mental health facility, correctional centre or other place for such period and subject to such terms and conditions, if any, as the Tribunal thinks fit.
- (2) An order may be made on the application of the patient or on the motion of the Tribunal.
- (3) The Tribunal must not make an order allowing a forensic patient to be absent from a mental health facility, correctional centre or other place unless it is satisfied, on the evidence available to it, that the safety of the patient or any member of the public will not be seriously endangered if the leave of absence is granted.
- (4) This section does not prevent leave of absence being granted to a forensic patient detained in a correctional centre under any other Act or law.
- (5) The section has effect despite the [Crimes \(Administration of Sentences\) Act 1999](#).

#### **50 Other leave of absence**

- (1) The Secretary may allow a forensic patient to be absent from a mental health facility for the period, and subject to the conditions (if any) that the Secretary thinks fit, in circumstances constituting an emergency or in other special circumstances as the Secretary thinks fit.

- (2) The Secretary must not allow a forensic patient to be absent from a mental health facility (otherwise than in a medical emergency) under this section unless the Secretary is satisfied, on the evidence available to the Secretary, that the safety of the patient or any member of the public will not be seriously endangered if the leave of absence is granted.
- (3) The Secretary must not allow a forensic patient to be absent from a mental health facility if the Tribunal has previously, in the same or similar circumstances, refused to make an order allowing the patient to be absent from a mental health facility.

### **Subdivision 3 Termination of status as forensic patient**

#### **51 Termination of classification as forensic patient on unconditional release**

- (1) A forensic patient ceases to be a forensic patient if any of the following events occurs:
  - (a) the person is released unconditionally in accordance with an order by the Tribunal under this Part or by order of a court,
  - (b) if the person has been released in accordance with such an order subject to conditions—the time specified in the conditions as being a time during which those conditions, or any of them, are to be complied with expires.
- (2) This section applies in addition to any other provision of this Subdivision.

#### **52 Additional circumstances for termination of classification as forensic patient**

- (1) **Verdict of not guilty or no limiting term after special hearing** A person who has been found to be unfit to be tried for an offence ceases to be a forensic patient if following a special hearing:
  - (a) the person is found not guilty of the offence concerned, or
  - (b) the person is found on the limited evidence available to have committed the offence but a limiting term is not imposed on the person.
- (2) **Detention after special hearing** A person who has been detained in a mental health facility, correctional centre or other place following a special hearing ceases to be a forensic patient if any of the following events occurs:
  - (a) the limiting term (where that term is less than life) imposed in respect of the person under section 23 expires and an extension order or interim extension order has not been made against the person,
    - (a1) any extension order or interim extension order made against the person expires or is revoked and a subsequent extension order has not been made against the person,
  - (b) the person is classified as an involuntary patient under section 53.



- (3) **Person found unfit to be tried by court** A person who has been found by a court to be unfit to be tried for an offence ceases to be a forensic patient if the Tribunal notifies the court and the Director of Public Prosecutions that it is of the opinion that the person has become fit to be tried for an offence (whether or not a special hearing has been conducted in respect of the offence) and a finding is made, at a further inquiry by the court as to the person's unfitness, that the person is fit to be tried for an offence.

**Note—**

A person subject to a finding that the person is unfit to be tried for an offence, and who is released from detention under section 20 or 29, ceases to be a forensic patient by operation of section 51 (1).

- (4) **Dismissal of charges or no further proceedings** A person ceases to be a forensic patient if:
- (a) the relevant charges against the person are dismissed, or
  - (b) the Director of Public Prosecutions notifies the court that the person will not be further proceeded against in respect of the relevant charges.
- (5) **Other circumstances** The regulations may make provision with respect to other circumstances in which the Tribunal may make an order terminating a person's status as a forensic patient.

### **53 Classification as involuntary patient**

- (1) The Tribunal may, on a review of the case of a forensic patient detained in a mental health facility, correctional centre or other place following a special hearing, classify the patient as an involuntary patient if the patient would, by virtue of the operation of this Act or any other law, cease to be a forensic patient within 6 months after the date of the review.
- (1A) The Tribunal is not to classify the patient as an involuntary patient unless:
- (a) each Minister entitled to apply for an extension of the patient's forensic status under Schedule 1 has notified the Tribunal that an application for an extension is not proposed to be made, or
  - (b) the Supreme Court has dismissed an application for extension of the patient's forensic status under Schedule 1.
- (1B) A Minister entitled to apply for an extension of a patient's forensic status under Schedule 1 is to notify the Tribunal as soon as practicable of a decision to apply for, or not to apply for, the extension.
- (1C) The Tribunal may ask a Minister to provide advice about whether the Minister proposes to make an application under Schedule 1.

- (2) The Tribunal may order that a patient classified as an involuntary patient under this section be transferred from a correctional centre to a mental health facility.

**Note—**

A person classified as an involuntary patient ceases to be a forensic patient, see section 52 (2).

**54 Release from mental health facility on ceasing to be a forensic patient**

A person who ceases to be a forensic patient (other than a person classified as an involuntary patient under section 53) must be discharged from the mental health facility in which the person is detained.

**Subdivision 4 Extension of status as forensic patient**

**54A Extension of status as forensic patient**

A person's status as a forensic patient may be extended in accordance with Schedule 1.

**Division 3 Transfers from correctional centres and correctional patients**

**55 Transfer from correctional centre by Secretary**

- (1) The Secretary may, by order in writing, direct that a person imprisoned in a correctional centre be transferred to a mental health facility.
- (2) The Secretary may make a transfer order on the basis of 2 certificates about the person's condition issued by 2 medical practitioners, one of whom is a psychiatrist. The certificates are to be in the form set out in Schedule 2.
- (3) A transfer order may be made without the person's consent if it appears to the Secretary, on the basis of the certificates, that the person is a mentally ill person.
- (4) A transfer order may be made with the person's consent if it appears to the Secretary, on the basis of the certificates, that the person is suffering from a mental condition for which treatment is available in a mental health facility.
- (5) The Secretary may revoke a transfer order.
- (6) The Secretary must notify the Tribunal in writing if the Secretary makes or revokes a transfer order.

**56 Transfer back to correctional centre**

- (1) This section applies to a person transferred from a correctional centre to a mental health facility under any provision of this Division.
- (2) The person must be transferred back to the correctional centre within 7 days unless

the Secretary is of the opinion that:

- (a) the person is a mentally ill person or is suffering from a mental condition for which treatment is available in a mental health facility, and
  - (b) other care of an appropriate kind would not be reasonably available to the person in the correctional centre.
- (3) The person may be transferred back to the correctional centre at any time if the Secretary is of the opinion that:
- (a) the person has ceased to be a mentally ill person or to be suffering from a mental condition for which treatment is available in a mental health facility, or
  - (b) other care of an appropriate kind would be reasonably available to the person in a correctional centre.
- (4) Nothing in this section affects the powers of the Tribunal in respect of a person transferred to a mental health facility from a correctional centre.

#### **57 Requests for transfer to correctional centre**

- (1) A correctional patient who is detained in a mental health facility may, at any time, request the Tribunal to make an order that the patient be transferred to a correctional centre.
- (2) The Tribunal, after considering any such request, may make the order requested by the patient or may refuse to make that order.
- (3) The Tribunal must make the order if it is satisfied that the person is not a mentally ill person.

#### **58 Review by Tribunal of persons awaiting transfer to mental health facility**

- (1) The Tribunal must conduct a limited review of the case of a person who is subject to an order for transfer to a mental health facility under this Division but who is not transferred within the period prescribed by the regulations.
- (2) The Tribunal must carry out such a review each month until the person is transferred to a mental health facility or the Tribunal or the Secretary revokes the order.
- (3) On a limited review, the Tribunal may make an order as to the person's detention, care or treatment in a mental health facility or other place.
- (4) For the purposes of a limited review, a report as to the person's condition and the reason for the delay in transfer is to be provided to the Tribunal by the Secretary and the Commissioner of Corrective Services.

**Note—**

In the case of a juvenile, the report is to be provided by the Secretary of the Department of Justice (see section 41 (3)).

### **59 Review of persons transferred from correctional centres**

- (1) The Tribunal must review the case of a person transferred under this Division to a mental health facility from a correctional centre as soon as practicable after the person is so transferred and may make an order as to the person's continued detention, care or treatment in a mental health facility or correctional centre.
- (2) On a review, the Tribunal is to determine whether the person is a mentally ill person who should continue to be detained in a mental health facility.
- (3) If a person is transferred under this Division from a correctional centre to a mental health facility, the Tribunal may, at any time, make an order that the person be transferred to a correctional centre.

### **60 Effect of detention in mental health facility on sentence and parole**

- (1) Any period of detention of a person in a mental health facility or other place, following a transfer under this Part from a correctional centre, is to be treated as if it were a period of imprisonment in a correctional centre for the purposes of the person's sentence and parole.
- (2) For the purposes of Part 6 of the *Crimes (Administration of Sentences) Act 1999*, a forensic patient who is currently serving a sentence of imprisonment, or a correctional patient, who is detained in a mental health facility, is taken to be serving a full-time sentence of detention in a correctional centre.

**Note—**

Part 6 of that Act contains provisions permitting the granting of parole to certain persons serving full-time sentences of detention.

- (3) The detention of a person in a mental health facility or other place under this Part does not prevent the granting of parole to the person under the *Crimes (Administration of Sentences) Act 1999*.

## **Division 4 Correctional patients**

### **Subdivision 1 Review of correctional patients**

#### **61 Reviews by Tribunal of correctional patients**

- (1) The Tribunal must review the case of each correctional patient every 6 months but may review the case of any correctional patient at any time.
- (2) The Tribunal must review the case of a correctional patient if requested to do so by the Minister for Health, the Attorney General, the Minister for Justice, the Minister for Juvenile Justice, the Secretary or the medical superintendent of the mental health

facility in which the patient is detained.

- (3) The Tribunal must review the case of each person (not being a forensic patient) who is subject to a community treatment order and who is detained in a correctional centre no later than 3 months after the community treatment order is made and at least once every 6 months during the term of the order.
- (4) The period within which a particular review under this section must be held may, on the motion of the Tribunal or on the application of the patient or a designated carer or the principal care provider of the patient, be extended by the Tribunal to a maximum of 12 months.
- (5) The Tribunal may grant an application to extend the review period if it is satisfied that:
  - (a) there are reasonable grounds to grant the application, or
  - (b) an earlier review is not required because:
    - (i) there has been no change since the last review in the patient's condition, and
    - (ii) there is no apparent need for any change in existing orders relating to the patient, and
    - (iii) an earlier review may be detrimental to the condition of the patient.
- (6) The Tribunal may, after reviewing the case of a correctional patient, make an order as to the patient's continued detention, care or treatment in, or transfer to, a mental health facility, correctional centre or other place.

**Note—**

See Division 3 for provisions relating to limited reviews of persons awaiting transfer from a correctional centre or on transfer taking place.

## **Subdivision 2 Leave of absence**

### **62 Commissioner of Corrective Services to grant leave**

- (1) The Commissioner of Corrective Services may allow a correctional patient to be absent from a mental health facility for such period and subject to such terms and conditions (if any) as the Commissioner of Corrective Services thinks fit.
- (2) The Tribunal may, on a review of a correctional patient, make recommendations to the Commissioner of Corrective Services as to the granting of leave to the patient.
- (3) In determining whether to grant leave to a correctional patient to be absent from a mental health facility, the Commissioner of Corrective Services must have regard to any recommendations as to the granting of leave made by the Tribunal on a review of the patient.

### **63 Other leave of absence**

- (1) The Secretary may allow a correctional patient to be absent from a mental health facility for the period, and subject to the conditions (if any) that the Secretary thinks fit, in circumstances constituting an emergency or in other special circumstances as the Secretary thinks fit.
- (2) The Secretary must not allow a correctional patient to be absent from a mental health facility (other than in a medical emergency) under this section unless the Secretary is satisfied, on the evidence available to the Secretary, that the safety of the patient or any member of the public will not be seriously endangered if the leave of absence is granted.
- (3) The Secretary must not allow a correctional patient to be absent from a mental health facility if the Commissioner of Corrective Services has previously, in the same or similar circumstances, refused to allow the patient to be absent from a mental health facility.
- (4) This section has effect despite the *Crimes (Administration of Sentences) Act 1999*.

**Note—**

See section 76D for security conditions relating to correctional patients who are absent on leave from mental health facilities.

## **Subdivision 3 Termination of status as correctional patient**

### **64 Termination of classification as correctional patient**

A correctional patient ceases to be a correctional patient if any of the following events occurs:

- (a) the person is transferred to a correctional centre or other place (other than another mental health facility) from the mental health facility,
- (b) the person's sentence of imprisonment expires,
- (c) the person is ordered to be released on parole,
- (d) the person is otherwise released on the order of a court,
- (e) the relevant charges against the person are dismissed,
- (f) the Director of Public Prosecutions notifies the court or the Tribunal that the person will not be further proceeded against in respect of the relevant charges.

### **65 Classification as involuntary patient**

- (1) The Tribunal may, on a review of the case of a correctional patient under this Act, classify the patient as an involuntary patient if the patient would, by virtue of the

operation of this Act or any other law, cease to be a correctional patient within 6 months after the date of the review.

- (2) On classification as an involuntary patient under this section, the person ceases to be a correctional patient.

#### **66 Release from mental health facility on ceasing to be correctional patient**

A person who ceases to be a correctional patient (other than a person who ceases to be a correctional patient because the person is classified as an involuntary patient under section 65) must be discharged from the mental health facility in which the person is detained.

### **Division 5 Community treatment orders relating to forensic patients and correctional patients**

#### **67 Community treatment orders**

- (1) On a review under this Part or at any other time, the Tribunal may make a community treatment order in relation to:
  - (a) a forensic patient, or
  - (b) a correctional patient ordered to be transferred to a correctional centre, or
  - (c) a person who is subject to an order for transfer to a mental health facility from a correctional centre but who has not been transferred, or
  - (d) an inmate in a correctional centre.
- (2) Part 3 of Chapter 3 of the *Mental Health Act 2007* applies to the making of a community treatment order referred to in this section, subject to any modifications prescribed by the regulations under that Act or under this Act.
- (3) Without limiting subsection (2), the regulations may modify that Part for the purpose of consistency with the operation of the *Crimes (Administration of Sentences) Act 1999* and regulations under that Act with respect to correctional patients, inmates of correctional centres and persons subject to parole.
- (4) A community treatment order made in respect of a person detained in a correctional centre or other place continues in force if the person is released from the centre or place, subject to the terms of the order or any variation or revocation of the order.
- (5) A community treatment order may be made in respect of a forensic patient who is to be released unconditionally in accordance with an order of the Tribunal. On and from the release of the person, the community treatment order is taken to have been made under the *Mental Health Act 2007*.

## Division 6 Enforcement

### 68 Breach of orders for release

- (1) The President of the Tribunal may make an order for the apprehension of a person if it appears to the President that:
  - (a) the person has breached a condition of an order for the person's conditional release under this Part, or
  - (b) the person has committed a breach of an order releasing the person from custody under section 39, or
  - (c) the person has breached a condition of leave of absence granted under this Part, or
  - (d) the person has been granted conditional release or leave of absence under this Part and has suffered a deterioration of mental condition and is at risk of causing serious harm to himself or herself or to any member of the public because of his or her mental condition.
- (2) The Tribunal must review the case of a person apprehended under this section and may:
  - (a) confirm the person's release or leave, either conditionally or subject to conditions, or
  - (b) order the person's apprehension and detention, care or treatment in a mental health facility, correctional centre or other place, and in the manner, specified in the order.

**Note—**

The Tribunal may also make a community treatment order under Division 5.

- (3) A police officer to whose notice an apprehension order is brought must:
  - (a) apprehend and take or assist in taking the person to the mental health facility, correctional centre or other place specified in the order, or
  - (b) cause or make arrangements for some other police officer to do so.
- (4) 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 of the powers conferred on a person who is authorised under section 81 of the *Mental Health Act 2007* to take a person to a mental health facility.
- (5) An apprehension order under this section authorises the detention of the person at the mental health facility, correctional centre or other place specified in the order.



**68A Apprehension of persons not permitted to be absent from mental health facility**

- (1) Without limiting section 68, the authorised medical officer of a mental health facility may apprehend a person, or direct a person to be apprehended, if the person fails to return to the facility at the end of a period of leave of absence granted under this Part or fails to comply with a condition to which that grant of leave was subject.
- (2) The person may be apprehended by any of the following persons:
  - (a) the 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 Secretary or the authorised medical officer,
  - (d) a person assisting a person referred to in paragraph (a), (b) or (c).
- (3) The authorised medical officer may request that a police officer apprehend, or assist in apprehending, a person under this section if the authorised medical 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 the mental health facility without the assistance of a police officer.
- (4) 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, or
  - (b) cause or make arrangements for some other police officer to do so.
- (5) 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 of the powers conferred on a person who is authorised under section 81 of the *Mental Health Act 2007* to take a person to a mental health facility.
- (6) A person who is apprehended is to be conveyed to and detained at the mental health facility at which the person was detained immediately before the period of leave commenced.
- (7) The authorised medical officer must notify the Tribunal of the following occurrences as soon as practicable after the occurrence:
  - (a) the authorised medical officer, directing under subsection (1), a person to be apprehended,
  - (b) a person being apprehended under this section.

### **69 Apprehended person may seek reconsideration by Tribunal**

- (1) A person who is apprehended under section 68 may request the Tribunal to investigate the evidence on which the order for the person's apprehension was made and may adduce other evidence for the consideration of the Tribunal.
- (2) On a reconsideration under this section, the Tribunal may make such orders as it thinks fit concerning the detention or release of the person.

### **70 Retaking of escapees**

- (1) A forensic patient or correctional patient who escapes from a mental health facility or other place may be apprehended at any time by any of the following persons:
  - (a) the medical superintendent of the mental health facility or any other suitably qualified person employed in the mental health facility who is authorised to do so by the medical superintendent,
  - (b) a police officer,
  - (c) a person authorised by the Secretary or the medical superintendent,
  - (d) a person assisting a person referred to in paragraph (a), (b) or (c).
- (2) On being apprehended, the patient is to be conveyed to and detained in the mental health facility or other place from which the patient escaped.
- (3) This section does not affect any power of any other person to apprehend a person under the *Crimes (Administration of Sentences) Act 1999*.

### **71 Aiding or permitting escape**

- (1) A person must not release or attempt to release a person who is being conveyed to or detained in a mental health facility or other place under this Act.
- (2) A medical superintendent or any other person employed in a mental health facility must not:
  - (a) through wilful neglect or connivance, permit any person detained in the facility under this Act to escape from the facility, or
  - (b) abet or connive at the escape of any such person from a mental health facility.

Maximum penalty:

- (a) on conviction on indictment—imprisonment for 3 years, or
- (b) on summary conviction—imprisonment for 1 year or 10 penalty units, or both.

## **72 Issue of warrants for apprehension of persons outside State**

A Magistrate or an authorised officer within the meaning of the *Criminal Procedure Act 1986* may issue a warrant for the apprehension of a person if a credible person, on oath before the Magistrate or officer, shows reasonable cause to suspect that the person is a forensic patient or a correctional patient:

- (a) who has escaped from a mental health facility and is outside the State, or
- (b) is the subject of an order under section 68.

## **Division 7 Tribunal functions**

### **73 Forensic Division to exercise functions**

- (1) The functions of the Tribunal under this Act are to be exercised by the Forensic Division of the Tribunal.
- (2) The Forensic Division of the Tribunal is to consist of the following members:
  - (a) the President or a Deputy President,
  - (b) a member who is a psychiatrist, a registered psychologist or other suitable expert in relation to a mental condition,
  - (c) a member who has other suitable qualifications or experience.

#### **Note—**

Under section 150 (1) of the *Mental Health Act 2007*, the Tribunal is to be constituted by members nominated by the President. See Chapter 6 of the *Mental Health Act 2007* for other provisions applying generally to the Tribunal.

- (3) The Tribunal must not order the release of a forensic patient under this Act unless it is constituted by at least one member, including the President or a Deputy President, who is the holder or former holder of a judicial office.
- (4) The regulations may provide that for specified functions of the Tribunal under this Act or the regulations the Forensic Division is to be constituted by the President or a Deputy President.
- (5) The regulations may make provision for or with respect to the constitution of the Tribunal, and procedure, for a limited review under this Part.

#### **Note—**

Regulations may also be made under section 160 of the *Mental Health Act 2007* with respect to procedure of the Tribunal for the purposes of this Act.

### **74 Matters for consideration**

Without limiting any other matters the Tribunal may consider, the Tribunal must have

regard to the following matters when determining what order to make about a person under this Part:

- (a) whether the person is suffering from a mental illness or other mental condition,
- (b) whether there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person's own protection from serious harm or the protection of others from serious harm,
- (c) the continuing condition of the person, including any likely deterioration in the person's condition, and the likely effects of any such deterioration,
- (d) in the case of a proposed release, a report by a forensic psychiatrist or other person of a class prescribed by the regulations, who is not currently involved in treating the person, as to the condition of the person and whether the safety of the person or any member of the public will be seriously endangered by the person's release,
- (e) in the case of the proposed release of a forensic patient subject to a limiting term, whether or not the patient has spent sufficient time in custody.

**75 Conditions that may be imposed by Tribunal on release or leave of absence**

- (1) The Tribunal may impose conditions relating to the following matters on orders for release or granting leave of absence made by it in relation to a forensic patient under this Part:
  - (a) the appointment of a case manager, psychiatrist or other health care professional to assist in the care and treatment of the patient,
  - (b) the care, treatment and review of the patient by persons referred to in paragraph (a), including home visits to the patient,
  - (c) medication,
  - (d) accommodation and living conditions,
  - (e) enrolment and participation in educational, training, rehabilitation, recreational, therapeutic or other programs,
  - (f) the use or non-use of alcohol and other drugs,
  - (g) drug testing and other medical tests,
  - (h) agreements as to conduct,
  - (i) association or non association with victims or members of victims' families,
  - (j) prohibitions or restrictions on frequenting or visiting places,
  - (k) overseas or interstate travel.

- (2) This section does not limit the matters in relation to which a condition may be imposed.

**76 Tribunal may amend or impose conditions on release or leave orders on application of victims**

- (1) This section applies to an order of the Tribunal for the release of, or granting leave of absence to, a forensic patient.
- (2) A victim of the patient may apply to the Tribunal for an order:
- (a) varying a non association condition of an order to which this section applies or imposing a non association condition on an order to which this section applies, or
  - (b) varying a place restriction condition of an order to which this section applies or imposing a place restriction condition on an order to which this section applies.
- (3) The Tribunal may, on an application being made, vary the order to which this section applies or impose any condition on the order or make any other order it may make under this Part.

- (4) In this section:

***non association condition*** means a condition of a kind referred to in section 75 (1) (i).

***place restriction condition*** means a condition of a kind referred to in section 75 (1) (j).

**76A Other matters relating to Tribunal functions**

- (1) For the purposes of a review, the Tribunal may communicate with any persons, take any action and make any recommendations it thinks fit.
- (2) The Minister for Health and the Attorney General may appear before the Tribunal, or make submissions to the Tribunal, in relation to any of the following:
- (a) the possible release or grant of leave of absence to a forensic patient,
  - (b) the recommendation to revoke an extension order in respect of a forensic patient,
  - (c) the review of a patient under section 68 (2).
- (3) A review of the case of a forensic patient or a correctional patient under this Act may be conducted at the same time as any other review of the patient under this Act.
- (4) An order by the Tribunal under this Act must be in writing.
- (5) An order by the Tribunal under this Act has effect according to its tenor.

- (6) The Tribunal must inform the Minister for Police, the Minister for Health and the Attorney General of any order it makes for the release of a person and of the date of the person's release.

#### **76AA Notification of expiry of limiting term or extension order**

At least 6 months before the expiry of a limiting term or extension order to which a forensic patient is subject, the Tribunal must inform each Minister administering this Act of the date on which the limiting term or extension order is due to expire.

### **Division 8 General**

#### **76B Treatment, care and detention of patients**

- (1) To avoid doubt, the principles set out in section 68 (Principles for care and treatment) of the *Mental Health Act 2007* apply, subject to this Act or any other Act or law, to the administration of this Part with respect to forensic patients and correctional patients.
- (2) Section 70 (Assistance of interpreters) of the *Mental Health Act 2007* applies to a medical examination of a person for the purposes this Part.

**Note—**

Under section 84 of the *Mental Health Act 2007*, treatment may be given to a forensic patient or a correctional patient who is detained in a mental health facility.

- (3) Section 73 (Information about medication) of the *Mental Health Act 2007* applies to a forensic patient or a correctional patient detained in a mental health facility.
- (4) Sections 71 and 72 of the *Mental Health Act 2007* apply to a forensic patient or a correctional patient for the purposes of this Act.
- (5) Section 195 of the *Mental Health Act 2007* applies to the provisions of section 40 of this Act and section 68 of that Act (as applied by subsection (1)).

#### **76C Functions of Commissioner of Corrective Services and Secretary of Department of Justice**

- (1) Nothing in this Act or any order made under this Act prevents the Commissioner of Corrective Services or the Secretary of the Department of Justice from exercising (or limits the exercise of) a function of the Commissioner or Secretary in relation to a forensic patient or correctional patient who is detained in a correctional centre or detention centre if the function is exercised for the purpose of maintaining the security, good order or safety, in any way, of the correctional centre or detention centre or its inmates.
- (2) The Secretary of the Department of Justice may delegate any of the Secretary's functions under this Division (other than this power of delegation) to the Chief Executive of Juvenile Justice, Department of Justice.

### **76D Security conditions for patients**

- (1) A forensic patient who is detained in a mental health facility or other place (other than a correctional centre) or absent in accordance with this Part is to be subject to any security conditions that the Secretary considers necessary.
- (2) A forensic patient who is detained in a correctional centre or in any part of a correctional centre that is a mental health facility, or a correctional patient who is detained in a mental health facility or other place or absent in accordance with this Part, is to be subject to security conditions in accordance with relevant legislation and with a protocol agreed between the Secretary and the Commissioner of Corrective Services or the Secretary of the Department of Justice (as the case requires).
- (3) To avoid doubt, for the purposes of subsection (2):
  - (a) any part of a correctional centre that is a mental health facility is taken to be a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*, and
  - (b) a forensic patient or correctional patient who is detained in that facility is taken to be an inmate within the meaning of that Act and that Act and the regulations made under that Act, apply to any such patient, subject to any modifications and to the extent specified by the regulations.

### **76E Transfer and transport of patients**

- (1) The Secretary may, by order in writing, order the transfer of a forensic patient or correctional patient detained in a mental health facility to another mental health facility. The order is sufficient authority for the transfer.
- (2) A person may be transferred to and detained in a mental health facility, correctional centre or other place in accordance with an order under this Part.
- (3) A forensic patient or correctional patient may be transported to or from a mental health facility, correctional centre or other place if it is necessary or convenient to do so for the administration of this Act or the *Mental Health Act 2007*. Any such transport is to be subject to any security conditions that the Secretary considers necessary.
- (4) A forensic patient, a correctional patient or a person the subject of a transfer order under section 55 who has not yet been transferred may be taken to or from a mental health facility by a person referred to in section 81 (1) of the *Mental Health Act 2007*, a person employed in the Department of Corrective Services or the Department of Justice or any other person prescribed by the regulations.
- (5) Section 81 of that Act, and any regulations made under that section, apply to or in respect of the transport of a forensic patient, a correctional patient or a person the subject of a transfer order under section 55 who has not yet been transferred, to or

from a mental health facility, correctional centre or other place under this Act in the same way as they apply to or in respect of the transport of a person under that Act.

#### **76F Appeals against decisions of Secretary**

- (1) A forensic patient or a correctional patient may appeal to the Tribunal against a failure or refusal by the Secretary to grant the patient leave of absence under this Part.
- (2) An appeal may be made orally or in writing and is to be made in accordance with the regulations. An oral appeal is to be recorded in accordance with the regulations.
- (3) The Secretary must provide the Tribunal with a report about the patient, including the Secretary's reasons for refusing or failing to grant leave of absence.
- (4) The Tribunal, for the purpose of determining an appeal, has and may exercise the functions of the Secretary with respect to the granting of leave 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.

#### **76G Planning for release and leave**

- (1) The authorised medical officer of a mental health facility in which a forensic patient is detained must, if the person is to be released or granted leave under this Part, take all reasonably practicable steps to ensure that the person and any designated carer or the principal care provider of the person are consulted in relation to planning the person's release and leave and any subsequent treatment or other action considered in relation to the person.
- (2) In planning the release of any such person and any subsequent treatment or other action considered in relation to any such person, the authorised medical officer must take all reasonably practicable steps to consult with agencies involved in providing relevant services to the person, any designated carer or the principal care provider of the person and any dependent children or other dependants of the person.
- (3) The authorised medical officer must take all reasonably practicable steps to provide a person who is released or given leave of absence from the mental health facility with appropriate information as to follow-up care.

#### **76H Person who ceases to be forensic patient or correctional patient may become voluntary patient**

Nothing in this Part prevents the application of Chapter 3 of the *Mental Health Act 2007* to a person who ceases to be a forensic patient or a correctional patient or any such person from remaining in a mental health facility as a voluntary patient.



**76HA Forensic patients and correctional patients in the community may be detained and treated under [Mental Health Act 2007](#)**

Nothing in this Part limits the application of the [Mental Health Act 2007](#) to a person who has been granted conditional release or leave of absence under this Part.

**76I Grants of leave do not affect sentences or limiting terms**

The grant of leave of absence to a forensic patient or a correctional patient under this Part does not affect the operation of any limiting term or sentence of imprisonment imposed in respect of the patient concerned.

**76J Exchange of information**

- (1) The Secretary, the Commissioner of Corrective Services and the Secretary of the Department of Justice may enter into arrangements (an **information sharing protocol**) with each other to enable information held by their Departments and (in the case of the Secretary of the Ministry of Health) associated agencies to be shared or exchanged between those Departments and agencies.
- (2) The information to which an information sharing protocol may relate is limited to the following:
  - (a) information concerning forensic patients and correctional patients,
  - (b) any other information that may be prescribed by the regulations.
- (3) Under an information sharing protocol, each Department and associated agency the subject of the arrangement is authorised:
  - (a) to request and receive information held by any other Department or associated agency the subject of the arrangement, and
  - (b) to disclose information to any of those Departments or associated agencies, and without the consent of any person concerned, but only to the extent that the information is reasonably necessary to assist in the exercise of functions under this Act or the functions of the relevant Departments or associated agencies concerned.
- (4) This section does not limit the operation of any Act under which the Department or associated agency concerned is authorised or required to disclose information to another person or body.
- (5) This section has effect despite the [Crimes \(Administration of Sentences\) Act 1999](#) or the [Children \(Detention Centres\) Act 1987](#).
- (6) In this section:

**associated agency** means any of the following:

- (a) a local health district (within the meaning of the *Health Services Act 1997*),
- (b) a statutory health corporation (within the meaning of the *Health Services Act 1997*).

#### **76K Duties of certain agencies**

- (1) The Secretary of the Ministry of Health, the Commissioner of Corrective Services, the Secretary of the Department of Justice and any other government Department or agency responsible for the detention, care or treatment of a forensic patient or correctional patient, must use their best endeavours to comply with a request made to them under this Act by the Tribunal if the request is consistent with the discharge of their responsibilities and does not unduly prejudice the discharge of their functions.
- (2) A court or the Director of Public Prosecutions must notify the Tribunal if relevant charges against a forensic patient or correctional patient are dismissed or the person is not to be further proceeded against in respect of the relevant charges.

### **Part 6 Miscellaneous**

#### **77 Regulations**

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.

#### **77A Appeals against Tribunal decisions**

- (1) A forensic patient or correctional patient who is a party to a proceeding before the Tribunal under this Act may appeal to the Supreme Court from any determination of the Tribunal in that proceeding, by leave of the Supreme Court:
  - (a) on a question of law, or
  - (b) on any other question,other than a determination referred to in subsection (4).
- (2) The Minister for Health may appeal to the Supreme Court from any determination of the Tribunal in a proceeding before the Tribunal under this Act, as of right:
  - (a) on a question of law, or
  - (b) on any other question,other than a determination referred to in subsection (5).
- (3) A victim of a forensic patient who is a party to proceedings under section 76 may appeal to the Supreme Court from any determination of the Tribunal under that

section in that proceeding, by leave of the Supreme Court:

- (a) on a question of law, or
- (b) on any other question.

(4) A person may appeal to the Court of Appeal from a determination of the Tribunal under this Act as to the release of the person, by leave of the Court of Appeal:

- (a) on a question of law, or
- (b) on any other question.

(5) The Minister for Health may appeal to the Court of Appeal from a determination of the Tribunal under this Act as to the release of a person, as of right:

- (a) on a question of law, or
- (b) on any other question.

(6) The Attorney General may appeal to the Court of Appeal from a determination of the Tribunal under this Act as to the release of a person, as of right, on a question of law.

(7) An appeal under this section must be made not later than 28 days:

- (a) after the determination of proceedings by the Tribunal, or
- (b) in the case of an appeal by the Minister for Health or the Attorney General, of written notification to the Minister or Attorney General by the Tribunal of the reasons for an order determining proceedings,

unless the Court extends the period within which the appeal may be made.

(8) An appeal under this section is to be made subject to and in accordance with the rules of the Court.

(9) After deciding the question the subject of an appeal under this section, the Court may, unless it affirms the determination of the Tribunal on the question:

- (a) make such order in relation to the proceedings in which the question arose as, in its opinion, should have been made by the Tribunal, or
- (b) remit its decision on the question to the Tribunal and order a rehearing of the proceedings by the Tribunal.

(10) If such a rehearing is held, the Tribunal is not to proceed in a manner, or make an order or a decision, that is inconsistent with the decision of the Court remitted to the Tribunal.

(11) If a party has appealed under this section to the Court against a determination of the

Tribunal, either the Tribunal or the Court may suspend, until the appeal is determined, the operation of any order or determination made in respect of the proceedings.

- (12) If the Tribunal suspends the operation of an order or a determination, the Tribunal or the Court may terminate the suspension or, where the Court has suspended the operation of an order or a determination, the Court may terminate the suspension.
- (13) If a rehearing is held, fresh evidence, or evidence in addition to or in substitution for the evidence on which the original determination was made, may be given on the rehearing.
- (14) A reference in this section to a matter of law includes a reference to a matter relating to the jurisdiction of the Tribunal.
- (15) 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 Act, or of the appeal.

#### **77B Proceedings for offences**

- (1) Proceedings for an offence against this Act are to be dealt with summarily before the Local Court.
- (2) Proceedings for an offence under section 71 may be dealt with on indictment.

#### **77C Orders for transfer of forensic patients**

If an order is made by a court, the Tribunal or the Secretary of the Ministry of Health specifying that a forensic patient is to be detained in or transferred to a specified correctional centre or detention centre, the Commissioner of Corrective Services or the Secretary of the Department of Justice may cause that patient to be detained in any correctional centre or detention centre.

#### **77D Delegation**

- (1) A Minister administering this Act may, by instrument in writing, delegate the exercise of any function of the Minister under this Act (other than this power of delegation):
  - (a) to any person employed in a Department responsible to the Minister, or
  - (b) to any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (2) The Secretary of the Department of Justice may delegate the exercise of any function of the Secretary under this Act (other than this power of delegation):
  - (a) to any person employed in the Department of Justice, or
  - (b) to any person, or any class of persons, authorised for the purposes of this section

by the regulations.

- (3) Nothing in this section limits the operation of section 21 of the *Health Administration Act 1982*.

## **78 Savings and transitional provisions**

Schedule 3 has effect.

## **Schedule 1 Extension of status as forensic patient**

(Section 54A)

### **Part 1 Extension of status as forensic patient**

#### **1 Extension orders for forensic patients**

- (1) The Supreme Court may, on application under Part 2 of this Schedule, make an order for the extension of a person's status as a forensic patient.
- (2) An order made under this clause is an ***extension order***.

#### **2 Forensic patients in respect of whom extension orders may be made**

- (1) A forensic patient can be made the subject of an extension order as provided for by this Schedule if and only if the Supreme Court is satisfied to a high degree of probability that:
- (a) the forensic patient poses an unacceptable risk of causing serious harm to others if he or she ceases being a forensic patient, and
  - (b) the risk cannot be adequately managed by other less restrictive means.
- (2) The Supreme Court is not required to determine that the risk of a person causing serious harm to others is more likely than not in order to determine that the person poses an unacceptable risk of causing serious harm to others.

#### **Note—**

Less restrictive means of managing a risk includes, but is not limited to, a patient being involuntarily detained or treated under the *Mental Health Act 2007*.

### **Part 2 Extension orders**

#### **Division 1 Application for extension order**

##### **3 Minister may apply for extension order**

A Minister administering this Act may apply to the Supreme Court for an extension order against a forensic patient.

#### **4 Application for extension order**

- (1) An application for an extension order may be made in respect of a forensic patient only if the forensic patient is subject to:
  - (a) a limiting term, or
  - (b) an existing extension order.
- (2) An application in respect of a forensic patient may not be made more than 6 months before:
  - (a) the end of the forensic patient's limiting term, or
  - (b) the expiry of the existing extension order,as appropriate.

#### **5 Requirements with respect to application**

An application for an extension order must be supported by documentation:

- (a) that addresses each of the matters referred to in clause 7 (2) (to the extent relevant to the application), and
- (b) that includes a report (prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner):
  - (i) that assesses the risk of the forensic patient causing serious harm to others, and
  - (ii) that addresses the need for ongoing management of the patient as a forensic patient and the reasons why the risk of the forensic patient causing serious harm to others cannot be adequately managed by other less restrictive means.

#### **6 Pre-hearing procedures**

- (1) An application under this Part for an extension order must be served on the forensic patient concerned within 2 business days after the application is filed in the Supreme Court or within such further time as the Supreme Court may allow.
- (2) The Minister applying for the extension order must notify the Tribunal as soon as practicable after making the application.
- (3) Subject to subclauses (7)–(9), the Minister applying for the extension order must disclose to the forensic patient such documents, reports and other information as are relevant to the proceedings on the application (whether or not intended to be tendered in evidence):
  - (a) in the case of anything that is available when the application is made, as soon as practicable after the application is made, and

- (b) in the case of anything that subsequently becomes available, as soon as practicable after it becomes available.
- (4) A preliminary hearing into the application is to be conducted by the Supreme Court within 28 days after the application is filed in the Supreme Court or within such further time as the Supreme Court may allow.
- (5) If, following the preliminary hearing, it is satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of an extension order, the Supreme Court must make orders:
- (a) appointing:
- (i) 2 qualified psychiatrists, or
  - (ii) 2 registered psychologists, or
  - (iii) 2 registered medical practitioners, or
  - (iv) any combination of 2 persons referred to in subparagraphs (i)–(iii),
- to conduct separate examinations of the forensic patient and to furnish reports to the Supreme Court on the results of those examinations, and
- (b) directing the forensic patient to attend those examinations.
- (6) If, following the preliminary hearing, it is not satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of an extension order, the Supreme Court must dismiss the application.
- (7) A forensic patient in respect of whom an application for an extension order has been made is, unless the Supreme Court otherwise determines, entitled to inspect or otherwise have access to any medical records in the possession of any person relating to the forensic patient.
- (8) A representative of the forensic patient is entitled, at any time before or during the proceedings on the application, to inspect or otherwise have access to any medical records in the possession of any person relating to the forensic patient.
- (9) Subject to any order or direction of the Supreme Court, in relation to an inspection under subclause (8) of, or other access under that subclause to, any medical record relating to a forensic patient:
- (a) if a medical practitioner warns the representative of the forensic patient that it may be harmful to communicate to the forensic patient, 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 forensic patient any

information obtained by virtue of the inspection or other access.

## **Division 2 Determination of application**

### **7 Determination of application for extension order**

- (1) The Supreme Court may determine an application under this Part for an extension order:
  - (a) by making the order, or
  - (b) by dismissing the application.
- (2) In determining whether or not to make an extension order, the Supreme Court must have regard to the following matters in addition to any other matter it considers relevant:
  - (a) the safety of the community,
  - (b) the reports received from the persons appointed under clause 6 (5) to conduct examinations of the forensic patient,
  - (c) the report of the qualified psychiatrist, registered psychologist or registered medical practitioner provided under clause 5 (b),
  - (d) any other report of a qualified psychiatrist, registered psychologist or registered medical practitioner provided in support of the application or by the forensic patient,
  - (e) any order or decision made by the Tribunal with respect to the forensic patient that is relevant to the application,
  - (f) any report of the Secretary of the Ministry of Health, the Commissioner of Corrective Services, the Secretary of the Department of Family and Community Services or any other government Department or agency responsible for the detention, care or treatment of the forensic patient,
  - (g) the level of the forensic patient's compliance with any obligations to which he or she is or has been subject while a forensic patient (including while released from custody subject to conditions and while on a leave of absence in accordance with section 49 or 50),
  - (h) the views of the court that imposed the limiting term or existing extension order on the forensic patient at the time the limiting term or extension order was imposed,
  - (i) any other information that is available as to the risk that the forensic patient will in future cause serious harm to others.



- (3) If the Supreme Court makes an extension order in respect of a forensic patient, the Court is to notify the Tribunal of the making of the order.

### **8 Term of extension order**

- (1) An extension order:
- (a) commences when it is made, or when the limiting term or existing extension order to which the forensic patient is subject expires, whichever is the later, and
  - (b) expires at the end of the period (not exceeding 5 years from the day on which it commences) that is specified in the order.
- (2) Nothing in this clause prevents the Supreme Court from making a second or subsequent extension order against the same forensic patient.

### **9 Continuation of order relating to forensic patient**

The making of an extension order or interim extension order in respect of a forensic patient does not affect the operation of any order as to the forensic patient's care, detention, treatment or release from custody to which the forensic patient was subject immediately before the making of the extension order.

## **Division 3 Interim extension orders**

### **10 Interim extension order**

The Supreme Court may make an order for the interim extension of a person's status as a forensic patient if, in proceedings on an application for an extension order, it appears to the Court:

- (a) that the limiting term or existing extension order to which the forensic patient is subject will expire before the proceedings are determined, and
- (b) that the matters alleged in the supporting documentation would, if proved, justify the making of an extension order.

### **11 Term of interim extension order**

- (1) An interim extension order commences on the day fixed in the order for its commencement (or, if no such day is fixed, as soon as it is made) and expires at the end of such period (not exceeding 28 days from the day on which it commences) as is specified in the order.
- (2) An interim extension order may be renewed from time to time, but not so as to provide for the extension of the person's status as a forensic patient under such an order for periods totalling more than 3 months.

### **11A Interim extension order to continue in force for 24 hours in certain circumstances**

- (1) If the Supreme Court dismisses an application for an extension order in respect of a forensic patient who is detained only as a result of an interim extension order, the Court may (on its own motion or on application) order that the patient be detained for a further period of up to 24 hours to enable a medical practitioner or accredited person to assess whether a mental health certificate should be given in respect of the patient under section 19 of the [Mental Health Act 2007](#).
- (2) The order ceases to authorise the detention of the person if the medical practitioner or accredited person making the assessment decides not to give that mental health certificate about the person.

## **Division 4 General**

### **12 Extension order or interim extension order may be varied or revoked**

- (1) The Supreme Court may at any time vary or revoke an extension order or interim extension order:
  - (a) on the application of a Minister administering this Act or the forensic patient, or
  - (b) on the recommendation of the Tribunal under section 47 (2A).
- (2) The period of an order must not be varied so that the total period as varied is greater than that otherwise permitted under this Part.
- (3) Without limiting the grounds for revoking an extension order or interim extension order, the Supreme Court may revoke an extension order or interim extension order if satisfied that circumstances have changed sufficiently to render the order unnecessary.

## **Part 3 Supreme Court proceedings**

### **13 Nature of proceedings**

Proceedings under this Schedule (including proceedings on an appeal under this Schedule) are civil proceedings and, to the extent to which this Schedule does not provide for their conduct, are to be conducted in accordance with the law (including the rules of evidence) relating to civil proceedings.

### **14 Right of appeal**

- (1) An appeal to the Court of Appeal lies from any determination of the Supreme Court to make, or to refuse to make, or to vary or revoke an extension order.
- (2) An appeal may be on a question of law, a question of fact or a question of mixed law and fact.

- (3) An appeal against the decision of the Supreme Court may be made, as of right, within 28 days after the date on which the decision was made or, by leave, within such further time as the Court of Appeal may allow.
- (4) The making of an appeal does not stay the operation of an extension order.
- (5) If the Court of Appeal remits a matter to the Supreme Court for decision after an appeal is made, the extension order the subject of the appeal continues in force, subject to any order made by the Court of Appeal.
- (6) Without limiting any other jurisdiction it may have, if the Court of Appeal remits a matter to the Supreme Court for decision after an appeal is made, the Court of Appeal may make an interim order revoking or varying an extension order the subject of the appeal.
- (7) This clause does not limit any right of appeal that may exist apart from this Schedule.

#### **15 Costs not to be awarded against forensic patient**

An order for costs may not be made against a forensic patient in relation to any proceedings under this Schedule (including proceedings on an appeal under this Schedule).

#### **16 Preservation of Supreme Court jurisdiction**

Nothing in this Schedule limits the jurisdiction of the Supreme Court apart from this Act.

### **Part 4 Miscellaneous**

#### **17 Minister may require provision of certain information**

- (1) A Minister administering this Act may, by order in writing served on any person, require that person to provide to the Minister any document, report or other information in that person's possession, or under that person's control, that relates to the behaviour, or physical or mental condition, of any forensic patient who is subject to a limiting term.
- (2) A person who fails to comply with the requirements of an order under this clause is guilty of an offence.  
  
Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.
- (3) A Minister administering this Act may request a court or the Tribunal to provide to the Minister any document, report or other information held by the court or Tribunal that relates to the behaviour, or physical or mental condition, of any forensic patient who is subject to a limiting term.
- (4) Despite any Act or law to the contrary, any document or report of a kind referred to in

subclause (1) or (3), or any copy of any such document or report, is admissible in proceedings under this Act (whether admission is sought by the Minister to whom the document or report was provided or by another Minister administering this Act).

### **17A Information sharing**

- (1) A Minister administering this Act may disclose forensic patient information obtained under this Act to any other Minister administering this Act:
  - (a) for the purpose of enabling or assisting either Minister to exercise functions under this Act, or
  - (b) for the purpose of the administration or execution of this Act.

- (2) In this clause:

**forensic patient information** means any document, report or other information that relates to a forensic patient, including any such information that is:

- (a) personal information within the meaning of the *Privacy and Personal Information Protection Act 1998* or *Health Records and Information Privacy Act 2002*, or
- (b) health information within the meaning of the *Health Records and Information Privacy Act 2002*.

### **18 Protection of certain persons from liability**

No action lies against any person (including the State) for or in respect of any act or omission done or omitted by the person if it was done or omitted in good faith for the purposes of, or in connection with the administration or execution of, this Schedule.

### **19 Hearings**

This Schedule does not affect the right of any party to proceedings under this Schedule:

- (a) to appear, either personally or by the party's legal representative, or
- (b) to call witnesses and give evidence, or
- (c) to cross-examine witnesses, or
- (d) to make submissions to the Supreme Court on any matter connected with the proceedings.

### **20 Bail Act 2013 not to apply**

The *Bail Act 2013* does not apply to or in respect of a person who is the subject of proceedings under this Schedule.

**21 Rules of court**

- (1) Rules of court may be made under the *Supreme Court Act 1970* for regulating the practice and procedure of the Supreme Court in respect of proceedings under this Schedule.
- (2) This clause does not limit the rule-making powers conferred by the *Supreme Court Act 1970*.

**22 Qualification of psychiatrists**

For the purposes of this Schedule, a psychiatrist is not a qualified psychiatrist unless he or she is a registered medical practitioner who is a fellow of the Royal Australian and New Zealand College of Psychiatrists.

**Schedule 2 Medical certificate as to examination of inmate**

(Section 55 (2))

*Mental Health (Forensic Provisions) Act 1990*

I, [name in full—use block letters] (\*Medical Practitioner/Psychiatrist) of \_\_\_\_\_ do hereby certify that on the [date] at [state name of correctional centre where examination took place] separately from any other medical practitioner, I personally examined [name of inmate in full] and I am of the opinion that \*he/she is \*a mentally ill person/suffering from a mental condition for which treatment is available in a mental health facility.

I have formed this opinion on the following grounds:

- (1) Facts indicating \*mental illness/mental condition observed by myself.

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

- (2) Other relevant information (if any) communicated to me by others (state name and address of each informant).

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

Made and signed this [date]

[Signature]

\*Delete whichever does not apply.

## Schedule 3 Savings and transitional provisions

(Section 78)

### Part 1 Preliminary

#### 1A Savings and transitional regulations

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

*Crimes Legislation Amendment Act 2002* (but only to the extent that it amends this Act)

*Mental Health (Criminal Procedure) Amendment Act 2005*

*Mental Health Act 2007*

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

*Health Legislation Further Amendment Act 2010*

any other Act that 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 Miscellaneous amending Acts

#### 1 Application of abolition of accused person's right to make unsworn statement

The amendment to section 21 made by the *Crimes Legislation (Unsworn Evidence) Amendment Act 1994* applies to a special hearing conducted in respect of an offence with which a person is charged on or after the commencement of the amendment.

#### 2 Amendments made by *Crimes Legislation Amendment Act 2002*

An amendment made to section 32 or 33 by the *Crimes Legislation Amendment Act 2002*:

- (a) applies to proceedings for offences whether committed before, on or after the commencement of the amendment, and
- (b) does not apply to proceedings commenced before the commencement of the amendment.

### **3 Amendments made by [Mental Health \(Criminal Procedure\) Amendment Act 2005](#)**

- (1) Except as provided by subclause (2), an amendment made to this Act by Schedule 1 to the [Mental Health \(Criminal Procedure\) Amendment Act 2005](#) applies to proceedings whether commenced before, on or after the commencement of the amendment.
- (2) An amendment made to this Act by Schedule 1 [4] or [12] to the [Mental Health \(Criminal Procedure\) Amendment Act 2005](#) applies to proceedings for offences, whether or not the offences were committed before, on or after the commencement of the amendment, but does not apply to proceedings commenced before the commencement of the amendment.

## **Part 3 Mental Health Legislation Amendment (Forensic Provisions) Act 2008**

### **4 Definitions**

In this Part:

**amending Act** means the [Mental Health Legislation Amendment \(Forensic Provisions\) Act 2008](#).

**operative day** means the day on which Part 5 of the Act was substituted by the amending Act.

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

- (1) A person who was detained in a mental health facility immediately before the operative day is taken to be a correctional patient if the person would have been a correctional patient if detained after that day.
- (2) However, any such person who was released on conditions that were in effect immediately before that day is subject to review by the Tribunal as if the person were a forensic patient and the Tribunal may exercise functions in relation to that person as if the person were a forensic patient.
- (3) A grant of leave of absence from a mental health facility granted to a forensic patient and in force immediately before the operative day is taken to have been granted by the Tribunal under this Act and may be revoked and varied accordingly.
- (4) Except as provided by this Part or the regulations, the provisions of Part 5, as

substituted by the amending Act, apply to or in respect of persons who were forensic patients immediately before the operative day.

## 6 Existing recommendations as to release, care and treatment

- (1) If the Tribunal has made a recommendation for the release of a forensic patient and the prescribed authority has not determined, immediately before the operative day, whether or not to make an order for the release of the patient, the provisions of Part 5, as in force immediately before that day, continue to apply in respect of the release of the person and that recommendation.
- (2) If the Tribunal has made a recommendation in respect of a forensic patient (other than a recommendation for release) in respect of which the prescribed authority had not determined, immediately before the operative day, whether or not to make an order, the recommendation is taken to be an order of the Tribunal and has effect accordingly.
- (3) This clause does not prevent the Tribunal from making an order as to the release of a person referred to in this clause, or any other order in relation to such a person, on a review under this Act. If an order for release is made by the Tribunal, subclause (1) ceases to have effect in relation to the person.

## 7 References

A reference to a forensic patient in any Act, other law or any other instrument, as in force before the operative day, includes a reference to a correctional patient.

## Part 4 Provisions consequent on enactment of [Justice Legislation Amendment \(Committals and Guilty Pleas\) Act 2017](#)

### 8 Definition

In this Part:

**amending Act** means the [Justice Legislation Amendment \(Committals and Guilty Pleas\) Act 2017](#).

### 9 Existing proceedings

Section 13A, as inserted by the amending Act, does not apply to proceedings for an indictable offence commenced before the insertion of section 13A by the amending Act.

### 10 Previous offences

This Act, as amended by the amending Act, extends to proceedings for an offence committed before the insertion of section 13A by the amending Act, if proceedings for the offence commenced on or after the commencement of that section.



## **Part 5 Health Legislation Amendment Act 2018**

### **11 Apprehension of persons not permitted to be absent from mental health facility**

Section 68A extends to permit the apprehension of a person who has failed to return to a mental health facility or who has failed to comply with a condition even if the relevant failure occurred before the day on which Schedule 5 [5] to the *Health Legislation Amendment Act 2018* commenced.