Authorised Version No. 022

Mental Health Act 2014

No. 26 of 2014

Authorised Version incorporating amendments as at
1 March 2020

TABLE OF PROVISIONS

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The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

(a) to provide a legislative scheme for the assessment of persons who appear to have mental illness and for the treatment of persons with mental illness; and

(b) to provide for the appointment of the chief psychiatrist; and

(c) to establish the Mental Health Tribunal; and

(d) to establish the Mental Health Complaints Commissioner; and

(e) to continue the Victorian Institute of Forensic Mental Health; and

(f) to provide for the appointment and functions of community visitors; and

(g) to repeal the **Mental Health Act 1986**; and

(h) to amend the **Sentencing Act 1991** and the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; and

(i) to make consequential and statute law amendments to other Acts.

2 Commencement

(1) This Act (other than subsections (2) and (3)) comes into operation on 1 July 2014.

(2) Section 456 comes into operation on the later of—

(a) 1 July 2014; and

(b) the day on which section 278 of the **Victoria Police Act 2013** comes into operation.

(3) Section 457 comes into operation on the later of—

(a) 1 July 2014; and

(b) the day on which section 158 of the **Legal Profession Uniform Law Application Act 2014** comes into operation.

3 Definitions

(1) In this Act—

Aboriginal person means a person who—

(a) is descended from an Aborigine or Torres Strait Islander; and

(b) identifies as an Aborigine or Torres Strait Islander; and

(c) is accepted as an Aborigine or Torres Strait Island community;

accept a complaint means agree to deal with a complaint;

Adult Parole Board means the Adult Parole Board established by section 61 of the **Corrections Act 1986**;

advance statement has the meaning given in section 19;

Assessment Order means an Order within the meaning of section 28;

Australian Health Practitioner Regulation Agency means the Australian Health Practitioner Regulation Agency established by section 23 of the Health Practitioner Regulation National Law;

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S. 3(1) def. of *Australian legal practitioner* repealed by No. 26/2014 s. 457.

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S. 3(1) def. of *Australian lawyer* repealed by No. 26/2014 s. 457.

authorised officer means an authorised officer appointed under section 146;

authorised person means—

(a) a police officer; or

(b) an ambulance paramedic; or

(c) a registered medical practitioner employed or engaged by a designated mental health service; or

(d) a mental health practitioner; or

(e) a member of a class of prescribed persons;

authorised psychiatrist means a person appointed as an authorised psychiatrist for a designated mental health service under section 150;

S. 3(1) def. of *authorised witness* amended by No. 6/2018 s. 68(Sch. 2 item 88.1).

authorised witness means—

(a) a registered medical practitioner; or

(b) a mental health practitioner; or

(c) a statutory declaration witness within the meaning of the **Oaths and Affirmations Act 2018**;

board of directors means the board of directors of the Victorian Institute of Forensic Mental Health;

bodily restraint means a form of physical or mechanical restraint that prevents a person having free movement of his or her limbs, but does not include the use of furniture (including beds with cot sides and chairs with tables fitted on their arms) that restricts the person's ability to get off the furniture;

capacity to give informed consent has the meaning given in section 68;

S. 3(1) def. of *care by Secretary order* inserted by No. 61/2014 s. 169(1)(b).

care by Secretary order has the same meaning as it has in section 3(1) of the **Children, Youth and Families Act 2005**;

care relationship has the meaning given in section 4 of the **Carers Recognition Act 2012**;

carer has the same meaning as in section 3 of the **Carers Recognition Act 2012** but does not include a parent if the person to whom care is provided is under the age of 16 years;

Chief Commissioner of Police means the Chief Commissioner of Police appointed under the **Victoria Police Act 2013**;

S. 3(1) def. of *Chief Commissioner of Police* amended by No. 26/2014 s. 456(a).

chief psychiatrist means the person appointed as chief psychiatrist under section 119;

close a complaint means refuse to deal with a complaint or cease dealing with a complaint;

Commissioner means the person appointed as Mental Health Complaints Commissioner under section 226;

Community Assessment Order means an Order within the meaning of section 28(2);

Community Court Assessment Order means an Order within the meaning of section 90(2) of the **Sentencing Act 1991**;

Community Temporary Treatment Order means an Order within the meaning of section 45(2);

Community Treatment Order means an Order within the meaning of section 52(2);

Community Visitors Mental Health Board means the body referred to in section 221;

compliance notice means a notice served on a mental health service provider under section 260;

compulsory patient means a person who is subject to—

(a) an Assessment Order; or

(b) a Court Assessment Order; or

(c) a Temporary Treatment Order; or

(d) a Treatment Order;

consent, in relation to health information, has the same meaning as it has in section 3(1) of the **Health Records Act 2001**;

consumer means a person who—

(a) has received mental health services from a mental health service provider; or

(b) is receiving mental health services from a mental health service provider; or

(c) was assessed by an authorised psychiatrist and was not provided with treatment; or

(d) sought or is seeking mental health services from a mental health service provider and was or is not provided with mental health services;

Court Assessment Order means an Order within the meaning of section 90 of the **Sentencing Act 1991**;

Court Secure Treatment Order means an Order within the meaning of section 94A of the **Sentencing Act 1991**;

S. 3(1) def. of *custody to Secretary order* repealed by No. 61/2014 s. 169(1)(a).

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designated mental health service means—

(a) a prescribed public hospital within the meaning of section 3(1) of the **Health Services Act 1988**; or

(b) a prescribed public health service within the meaning of section 3(1) of the **Health Services Act 1988**; or

(c) a prescribed denominational hospital within the meaning of section 3(1) of the **Health Services Act 1988**; or

(d) a prescribed privately-operated hospital within the meaning of section 3(1) of the **Health Services Act 1988**; or

(e) a prescribed private hospital within the meaning of section 3(1) of the **Health Services Act 1988** that is registered as a health service establishment under Part 4 of that Act; or

(f) the Victorian Institute of Forensic Mental Health;

designated place has the same meaning as in section 3(1) of the **Victoria Police Act 2013**;

S. 3(1) def. of *designated place* inserted by No. 55/2014 s. 174.

diverse means culturally, religiously, racially and linguistically diverse;

domestic partner of a person means—

(a) a person who is in a registered domestic relationship with the person; or

(b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

electroconvulsive treatment means the application of electric current to specific areas of a person's head to produce a generalised seizure;

entitled patient has the meaning given in section 78;

S. 3(1) def. of *family reunification order* inserted by No. 61/2014 s. 169(1)(b).

family reunification order has the same meaning as it has in section 3(1) of the **Children, Youth and Families Act 2005**;

forensic patient has the meaning given in section 305;

S. 3(1) def. of *guardian* amended by No. 13/2019 s. 221(Sch. 1 item 32.1(a)).

guardian has the same meaning as it has in section 3(1) of the **Guardianship and Administration Act 2019**;

S. 3(1) def. of *guardianship to Secretary order* repealed by No. 61/2014 s. 169(1)(a).

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S. 3(1) def. of *Health Complaints Commissioner* inserted by No. 34/2019 s. 68.

Health Complaints Commissioner means the person appointed under section 111 of the **Health Complaints Act 2016**;

health information has the same meaning as it has in section 3(1) of the **Health Records Act 2001**;

health practitioner means an individual who practises a health profession;

Health Privacy Principles means any of the Health Privacy Principles set out in Schedule 1 to the **Health Records Act 2001**;

health profession has the same meaning as in section 5 of the Health Practitioner Regulation National Law;

informed consent has the meaning given in section 69;

inpatient means a patient who is detained in a designated mental health service;

Inpatient Assessment Order means an Order within the meaning of section 28(3);

Inpatient Court Assessment Order means an Order within the meaning of section 90(3) of the **Sentencing Act 1991**;

Inpatient Temporary Treatment Order means an Order within the meaning of section 45(3);

Inpatient Treatment Order means an Order within the meaning of section 52(3);

Institute means the Victorian Institute of Forensic Mental Health continued under section 328;

instructional directive has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**;

S. 3(1) def. of *instructional directive* inserted by No. 69/2016 s. 116(c).

investigator means a member of staff or a contractor referred to in section 230 to whom the Commissioner has delegated his or her investigative functions;

medical treatment has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**, but does not include treatment;

S. 3(1) def. of *medical treatment* substituted by No. 69/2016 s. 116(a).

S. 3(1) def. of *medical treatment decision maker* inserted by No. 69/2016 s. 116(c).

medical treatment decision maker has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**;

mental health practitioner means a person who is employed or engaged by a designated mental health service and is a—

(a) registered psychologist; or

(b) registered nurse; or

(c) social worker; or

(d) registered occupational therapist;

mental health principles means the principles specified in section 11;

S. 3(1) def. of *mental health service provider* amended by No. 19/2019 s. 248(a).

mental health service provider means—

(a) a designated mental health service; or

(b) a publicly funded mental health community support service—

to the extent it provides services not funded by the National Disability Insurance Scheme within the meaning of the NDIS Act;

mental illness has the meaning given in section 4;

S. 3(1) def. of *National Board* inserted by No. 34/2019 s. 68.

National Board has the same meaning as in the Health Practitioner Regulation National Law;

S. 3(1) def. of *NDIS Act* inserted by No. 19/2019 s. 248(b).

NDIS Act means the National Disability Insurance Scheme Act 2013 of the Commonwealth;

NDIS Commission means the NDIS Quality and Safeguards Commission established under section 181A of the NDIS Act;

S. 3(1) def. of *NDIS Commission* inserted by No. 19/2019 s. 248(b).

neurosurgery for mental illness means—

(a) any surgical technique or procedure by which one or more lesions are created in a person's brain on the same or on separate occasions for the purpose of treatment; or

(b) the use of intracerebral electrodes to create one or more lesions in a person's brain on the same or on separate occasions for the purpose of treatment; or

(c) the use of intracerebral electrodes to cause stimulation through the electrodes on the same or on separate occasions without creating a lesion in the person's brain for the purpose of treatment;

nominated person means a person who is nominated under section 24;

Panel means the Forensic Leave Panel established under section 59 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;

parent, in relation to a person under the age of 18 years, includes the following—

(a) a person who has custody or daily care and control of the person;

(b) a person who has all the duties, powers, responsibilities and authority (whether conferred by a court or

otherwise) which by law parents have in relation to their children;

(c) any other person who has the legal right to make decisions about medical treatment of the person;

party in Part 10 means—

(a) a person who makes a complaint; or

(b) the consumer in relation to a complaint; or

(c) the mental health service provider in relation to which a complaint is made;

patient means—

(a) a compulsory patient; or

(b) a security patient; or

(c) a forensic patient;

S. 3(1) def. of *police officer* amended by No. 26/2014 s. 456(b).

police officer means a ***member of the force*** within the meaning of the **Victoria Police Act 2013**;

S. 3(1) def. of *protective services officer* inserted by No. 55/2014 s. 174.

protective services officer has the same meaning as in section 3(1) of the **Victoria Police Act 2013**;

S. 3(1) def. of *psychiatrist* amended by No. 15/2015 s 4(a).

psychiatrist means a person who is registered under the Health Practitioner Regulation National Law as a medical practitioner in the speciality of psychiatry (other than as a student);

Public Advocate has the same meaning as in the **Guardianship and Administration Act 2019**;

S. 3(1) def. of *Public Advocate* substituted by No. 13/2019 s. 221(Sch. 1 item 32.1(b)).

registered dental practitioner means a person who is registered under the Health Practitioner Regulation National Law to practise in the dental profession (other than as a student);

registered medical practitioner means a person who is registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

registered nurse means a person who is registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student) and is in the registered nurses division of that profession;

registered occupational therapist means a person who is registered under the Health Practitioner Regulation National Law to practise in the occupational therapy profession (other than as a student);

registered psychologist means a person who is registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student);

restrictive intervention means seclusion or bodily restraint;

rules, in Part 8, means rules made by the Rules Committee of the Tribunal;

seclusion means the sole confinement of a person to a room or any other enclosed space from which it is not within the control of the person confined to leave;

S. 3(1) def. of *Secretary* amended by No. 15/2015 s 4(b).

Secretary means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department of Health and Human Services;

S. 3(1) def. of *Secretary to the Department of Human Services* repealed by No. 15/2015 s 4(c).

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S. 3(1) def. of *Secretary to the Department of Justice* substituted as *Secretary to the Department of Justice and Regulation* by No. 15/2015 s 4(d).

Secretary to the Department of Justice and Regulation means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department of Justice and Regulation;

Secure Treatment Order means an Order within the meaning of section 275;

security patient means a person who is not subject to an Order made under Part 4, but is detained in a designated mental health service and is subject to (irrespective of whether the person is absent with or without leave from the designated mental health service)—

(a) a Court Secure Treatment Order; or

(b) a Secure Treatment Order;

senior available next of kin means—

(a) in relation to a deceased child—

(i) if a parent of the child is available, a parent of the child; or

(ii) if a parent of the child is not available, a brother or sister of the child who has attained the age of 18 years and who is available; or

(iii) if no person referred to in subparagraph (i) or (ii) is available, a person who was the guardian of the child immediately before the death of the child and who is available;

(b) in relation to any other deceased person—

(i) if the person, immediately before the person's death, had a spouse or domestic partner and that spouse or domestic partner is available, that spouse or domestic partner; or

(ii) if the person, immediately before the person's death, did not have a spouse or domestic partner or the spouse or domestic partner is not available, a son or daughter of the person who has attained the age of 18 years and who is available; or

(iii) if no person referred to in subparagraph (i) or (ii) is available but a parent of the person is available, that parent; or

(iv) if no person referred to in subparagraph (i), (ii) or (iii) is available, a brother or sister of the

person who has attained the age of 18 years and is available;

statement of rights has the meaning given in section 12;

S. 3(1) def. of *support person* inserted by No. 69/2016 s. 116(c).

support person has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**;

Temporary Treatment Order means an Order within the meaning of section 45;

treatment has the meaning given in section 6;

treatment criteria has the meaning given in section 5;

Treatment Order means an Order within the meaning of section 52;

S. 3(1) def. of *Tribunal* amended by No. 69/2016 s. 116(b).

Tribunal means the Mental Health Tribunal established under section 152;

S. 3(1) def. of *values directive* inserted by No. 69/2016 s. 116(c).

values directive has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**.

(2) For the purposes of the definition of ***domestic partner*** in subsection (1)—

(a) ***registered domestic relationship*** has the same meaning as in the **Relationships Act 2008**; and

(b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in

section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

4 What is *mental illness*?

(1) Subject to subsection (2), ***mental illness*** is a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.

(2) A person is not to be considered to have mental illness by reason only of any one or more of the following—

(a) that the person expresses or refuses or fails to express a particular political opinion or belief;

(b) that the person expresses or refuses or fails to express a particular religious opinion or belief;

(c) that the person expresses or refuses or fails to express a particular philosophy;

(d) that the person expresses or refuses or fails to express a particular sexual preference, gender identity or sexual orientation;

(e) that the person engages in or refuses or fails to engage in a particular political activity;

(f) that the person engages in or refuses or fails to engage in a particular religious activity;

(g) that the person engages in sexual promiscuity;

(h) that the person engages in immoral conduct;

(i) that the person engages in illegal conduct;

(j) that the person engages in antisocial behaviour;

(k) that the person is intellectually disabled;

(l) that the person uses drugs or consumes alcohol;

(m) that the person has a particular economic or social status or is a member of a particular cultural or racial group;

(n) that the person is or has previously been involved in family conflict;

(o) that the person has previously been treated for mental illness.

(3) Subsection (2)(l) does not prevent the serious temporary or permanent physiological, biochemical or psychological effects of using drugs or consuming alcohol from being regarded as an indication that a person has mental illness.

5 What are the *treatment criteria*?

The ***treatment criteria*** for a person to be made subject to a Temporary Treatment Order or Treatment Order are—

(a) the person has mental illness; and

(b) because the person has mental illness, the person needs immediate treatment to prevent—

(i) serious deterioration in the person's mental or physical health; or

(ii) serious harm to the person or to another person; and

(c) the immediate treatment will be provided to the person if the person is subject to a Temporary Treatment Order or Treatment Order; and

(d) there is no less restrictive means reasonably available to enable the person to receive the immediate treatment.

6 What is *treatment*?

For the purposes of this Act—

(a) a person receives ***treatment*** for mental illness if things are done in the course of the exercise of professional skills—

S. 6(a) amended by No. 15/2015 s. 5(a).

(i) to remedy the person's mental illness; or

S. 6(a)(i) amended by No. 15/2015 s. 5(b).

(ii) to alleviate the symptoms and reduce the ill effects of the person's mental illness; and

S. 6(a)(ii) amended by No. 15/2015 s. 5(b).

(b) ***treatment*** includes electroconvulsive treatment and neurosurgery for mental illness.

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S. 7 amended by No. 20/2016 s. 148, repealed by No. 69/2016 s. 117.

8 Provision of advice, notification or information under this Act

(1) The contents of any advice, notice or information given or provided to a patient under this Act must be explained by the person giving the advice, notice or information to the maximum extent possible to the patient in the language, mode of communication and terms which the patient is most likely to understand.

(2) An explanation given under subsection (1) must, whenever reasonable, be given both orally and in writing.

9 Act binds the Crown

(1) This Act binds the Crown in right of Victoria and, to the extent that the legislative power of the Parliament extends, the Crown in all its other capacities.

(2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.

Part 2—Objectives and mental health principles

10 Objectives

This Act has the following objectives—

(a) to provide for the assessment of persons who appear to have mental illness and the treatment of persons who have mental illness;

(b) to provide for persons to receive assessment and treatment in the least restrictive way possible with the least possible restrictions on human rights and human dignity;

(c) to protect the rights of persons receiving assessment and treatment;

(d) to enable and support persons who have mental illness or appear to have mental illness—

(i) to make, or participate in, decisions about their assessment, treatment and recovery; and

(ii) to exercise their rights under this Act;

(e) to provide oversight and safeguards in relation to the assessment of persons who appear to have mental illness and the treatment of persons who have mental illness;

(f) to promote the recovery of persons who have mental illness;

(g) to ensure that persons who are assessed and treated under this Act are informed of their rights under this Act;

S. 10(h) amended by No. 52/2017 s. 80(1).

(h) to recognise the role of carers in the assessment, treatment and recovery of persons who have mental illness;

S. 10(i) inserted by No. 52/2017 s. 80(2).

(i) to promote continuous improvement in the quality and safety of the mental health services provided by mental health service providers.

11 The mental health principles

(1) The following are the mental health principles—

(a) persons receiving mental health services should be provided assessment and treatment in the least restrictive way possible with voluntary assessment and treatment preferred;

(b) persons receiving mental health services should be provided those services with the aim of bringing about the best possible therapeutic outcomes and promoting recovery and full participation in community life;

(c) persons receiving mental health services should be involved in all decisions about their assessment, treatment and recovery and be supported to make, or participate in, those decisions, and their views and preferences should be respected;

(d) persons receiving mental health services should be allowed to make decisions about their assessment, treatment and recovery that involve a degree of risk;

(e) persons receiving mental health services should have their rights, dignity and autonomy respected and promoted;

(f) persons receiving mental health services should have their medical and other health needs, including any alcohol and other drug problems, recognised and responded to;

(g) persons receiving mental health services should have their individual needs (whether as to culture, language, communication, age, disability, religion, gender, sexuality or other matters) recognised and responded to;

(h) Aboriginal persons receiving mental health services should have their distinct culture and identity recognised and responded to;

(i) children and young persons receiving mental health services should have their best interests recognised and promoted as a primary consideration, including receiving services separately from adults, whenever this is possible;

(j) children, young persons and other dependents of persons receiving mental health services should have their needs, wellbeing and safety recognised and protected;

(k) carers (including children) for persons receiving mental health services should be involved in decisions about assessment, treatment and recovery, whenever this is possible;

(l) carers (including children) for persons receiving mental health services should have their role recognised, respected and supported.

(2) A mental health service provider must have regard to the mental health principles in the provision of mental health services.

(3) A person must have regard to the mental health principles in performing any duty or function or exercising any power under or in accordance with this Act.

Part 3—Protection of rights

Division 1—Statement of rights

12 What is a statement of rights?

A statement of rights is a document in a form approved by the Secretary that—

(a) sets out a person's rights under this Act while being assessed or receiving treatment in relation to his or her mental illness; and

(b) contains information as to the process by which the person will be assessed or receive treatment.

13 Statement of rights must be explained

(1) An authorised psychiatrist or psychiatrist (as the case may be) must ensure that when a person is given a statement of rights, the person also receives an oral explanation of the statement of rights.

(2) The person who gives an oral explanation of a statement of rights to another person under subsection (1) must answer any questions asked by that person as clearly and completely as possible.

(3) If the person to whom the statement of rights relates is incapable of understanding the information contained in the statement or the oral explanation at the time when it would otherwise be provided, the person who is to give the statement or oral explanation must ensure that reasonable further attempts are made to provide the information or explanation at a time when the person is able to understand the information or explanation.

Note

See also the requirements of section 8.

Division 2—Right to communicate

14 Definition

In this Division, ***communicate***, in relation to an inpatient, means—

(a) sending from, or receiving at, a designated mental health service uncensored private communication which may include communication by letter, telephone or electronic means; or

(b) receiving visitors at a designated mental health service at reasonable times, including the Australian legal practitioner or nominated person of the inpatient.

15 Right to communicate

(1) Subject to this Division, an inpatient has a right to communicate lawfully with any person.

(2) Without limiting the generality of subsection (1), an inpatient has a right to communicate with any person for the purpose of seeking legal advice or legal representation.

(3) The members of staff of a designated mental health service must ensure that reasonable steps are taken to assist an inpatient to communicate lawfully with any person.

16 Restriction on right to communicate

(1) Subject to subsection (2), an authorised psychiatrist may in writing direct staff at a designated mental health service to restrict an inpatient's right to communicate if the authorised psychiatrist is satisfied that the restriction is reasonably necessary to protect the health, safety and wellbeing of the inpatient or of another person.

(2) A direction cannot be given under subsection (1) which restricts an inpatient's right to communicate with—

(a) a legal representative; or

(b) the chief psychiatrist; or

(c) the Commissioner; or

(d) the Tribunal; or

(e) a community visitor; or

S. 16(2)(e) amended by No. 15/2015 s. 6(1).

(f) a prescribed person or body.

S. 16(2)(f) inserted by No. 15/2015 s. 6(2).

(3) An authorised psychiatrist must ensure that if he or she directs that an inpatient's right to communicate be restricted, those restrictions are the least restrictive possible to protect the health, safety and wellbeing of the inpatient or of another person.

17 Persons to be notified of restriction on inpatient's right to communicate

An authorised psychiatrist who makes a direction under section 16 to restrict an inpatient's right to communicate must ensure that reasonable steps are taken to inform the inpatient and the following persons in relation to the inpatient about the restriction, and the reason for it—

(a) the nominated person;

(b) a guardian;

S. 17(c) amended by No. 15/2015 s. 7.

(c) a carer, if the authorised psychiatrist is satisfied that the restriction will directly affect the carer and the care relationship;

(d) a parent, if the inpatient is under the age of 16 years;

S. 17(e) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(e) the Secretary, if the inpatient is the subject of a family reunification order or a care by Secretary order.

18 Restriction on right to communicate to be monitored regularly

(1) An authorised psychiatrist who makes a direction under section 16 to restrict an inpatient's right to communicate must review his or her decision on a regular basis to determine whether the restriction needs to be continued.

(2) If the authorised psychiatrist is satisfied that it is no longer necessary to restrict the inpatient's right to communicate, the authorised psychiatrist must immediately cease the restriction.

Division 3—Advance statements

19 What is an advance statement?

An advance statement is a document that sets out a person's preferences in relation to treatment in the event that the person becomes a patient.

20 Making an advance statement

(1) An advance statement may be made at any time and must—

(a) be in writing; and

(b) be signed and dated by the person making the advance statement; and

(c) be witnessed by an authorised witness; and

(d) include a statement signed by the authorised witness stating that—

(i) in the opinion of the witness, the person making the advance statement understands what an advance statement is and the consequences of making the statement; and

(ii) the witness observed the person making the advance statement sign the statement; and

(iii) the witness is an authorised witness.

(2) An advance statement is effective from the time it is made until it is revoked.

21 Revoking an advance statement

(1) An advance statement is revoked if the person who made the advance statement—

(a) makes a new advance statement under section 20; or

(b) revokes the advance statement in accordance with subsection (2).

(2) A revocation of an advance statement under this section must—

(a) be in writing and state that the advance statement made under section 20 is revoked; and

(b) be signed and dated by the person who made the revocation; and

(c) be witnessed by an authorised witness; and

(d) include a statement signed by the authorised witness stating that—

(i) in the opinion of the witness, the person revoking the advance statement understands the consequences of revoking the advance statement; and

(ii) the witness observed the person revoking the advance statement sign the revocation; and

(iii) the witness is an authorised witness.

22 Advance statement must not be amended

(1) An advance statement must not be amended.

(2) A person who changes his or her mind about the preferences he or she expressed regarding treatment in an advance statement and who wishes to record new preferences must make a new advance statement under section 20.

Division 4—Nominated persons

23 Role of nominated person

The role of a nominated person in relation to a patient is—

(a) to provide the patient with support and to help represent the interests of the patient; and

(b) to receive information about the patient in accordance with this Act; and

(c) to be one of the persons who must be consulted in accordance with this Act about the patient's treatment; and

(d) to assist the patient to exercise any right that the patient has under this Act.

24 Nomination of nominated person

(1) Subject to this section, a person may nominate another person to be a nominated person for himself or herself.

(2) The nomination of a nominated person must—

(a) be in writing; and

(b) be signed and dated by the person making the nomination; and

(c) specify the name and contact details of the person nominated; and

(d) include a statement signed by the nominated person that he or she agrees to be the nominated person; and

(e) be witnessed by an authorised witness; and

(f) include a statement signed by the authorised witness stating that—

(i) in the opinion of the witness, the person making the nomination understands what a nomination is and the consequences of making a nomination; and

(ii) the witness observed the person sign the nomination; and

(iii) the witness is an authorised witness.

(3) The person nominated to be the nominated person must not be the person who witnesses the nomination.

(4) A nomination made under this section is effective from the time it is made until it is revoked.

25 Revocation of nomination

A nomination is revoked if—

(a) the person who made the nomination—

(i) makes a new nomination under section 24; or

(ii) revokes the nomination under section 26; or

(b) the nominated person declines to act as a nominated person in accordance with section 27.

26 Revocation of nomination by person who made the nomination

(1) Subject to this section, a person who has made a nomination may revoke it at any time.

(2) A revocation must—

(a) be in writing and state that the nomination is revoked; and

(b) be signed and dated by the person who made the revocation; and

(c) be witnessed by an authorised witness; and

(d) include a statement signed by the authorised witness stating that—

(i) in the opinion of the witness, the person making the revocation understands what a revocation is and the consequences of making a revocation; and

(ii) the witness observed the person sign the revocation; and

(iii) the witness is an authorised witness.

(3) A person who revokes a nomination must—

(a) take reasonable steps to inform the nominated person of the revocation; and

(b) if the person is a patient, inform the authorised psychiatrist.

27 Nominated person may decline to act as nominated person at any time

(1) A person nominated to be a nominated person under section 24 may decline at any time to continue being a nominated person.

(2) A nominated person who declines to continue being a nominated person must—

(a) take reasonable steps to inform the person who made the nomination that he or she has declined to continue being a nominated person; and

(b) if the person who made the nomination is a patient, inform the authorised psychiatrist that he or she has declined to continue being a nominated person.

Part 4—Compulsory patients

Division 1—Assessment Orders

28 What is an Assessment Order?

(1) An Assessment Order is an Order made by a registered medical practitioner or mental health practitioner that enables a person who is subject to the Assessment Order to be compulsorily—

(a) examined by an authorised psychiatrist to determine whether the treatment criteria apply to the person; or

(b) taken to, and detained in, a designated mental health service and examined there by an authorised psychiatrist to determine whether the treatment criteria apply to the person.

(2) An Assessment Order referred to in subsection (1)(a) is a ***Community Assessment Order***.

(3) An Assessment Order referred to in subsection (1)(b) is an ***Inpatient Assessment Order***.

29 Criteria for an Assessment Order

The criteria for a person to be made subject to an Assessment Order are—

(a) the person appears to have mental illness; and

(b) because the person appears to have mental illness, the person appears to need immediate treatment to prevent—

(i) serious deterioration in the person's mental or physical health; or

(ii) serious harm to the person or to another person; and

(c) if the person is made subject to an Assessment Order, the person can be assessed; and

(d) there is no less restrictive means reasonably available to enable the person to be assessed.

30 Making an Assessment Order

(1) Before a registered medical practitioner or mental health practitioner makes an Assessment Order in respect of a person, he or she must—

(a) to the extent that is reasonable in the circumstances—

(i) inform the person that he or she will be examined by the practitioner; and

(ii) explain the purpose of this examination to the person; and

(b) examine the person.

(2) A registered medical practitioner or mental health practitioner may make an Assessment Order in respect of a person if—

(a) the registered medical practitioner or mental health practitioner is satisfied that the criteria specified in section 29 apply to the person; and

(b) not more than 24 hours have passed since the registered medical practitioner or mental health practitioner examined the person.

(3) In determining whether the criteria specified in section 29 apply to the person, the registered medical practitioner or mental health practitioner may consider information communicated to the practitioner by a person other than the person being assessed.

(4) A registered medical practitioner or mental health practitioner may only make a person subject to an Inpatient Assessment Order if the practitioner is satisfied that assessment of the person cannot occur in the community.

31 Contents of an Assessment Order

An Assessment Order must—

(a) state whether the Order is a Community Assessment Order or an Inpatient Assessment Order; and

(b) include any information prescribed for the purposes of this section.

32 Information requirements in relation to an Assessment Order

(1) A registered medical practitioner or mental health practitioner who makes an Assessment Order must—

(a) notify the authorised psychiatrist of the relevant designated mental health service that the Assessment Order is made and give the authorised psychiatrist a copy of the Order; and

(b) to the extent that is reasonable in the circumstances—

(i) inform the person who is subject to the Assessment Order that he or she is subject to an Assessment Order; and

(ii) give the person a copy of the Order and a copy of the relevant statement of rights; and

Note

See Division 1 of Part 3 in relation to the statement of rights.

(iii) explain the purpose and effect of the Order to the person.

(2) As soon as practicable after being notified under subsection (1) that the Assessment Order is made, the authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the following persons in relation to the person who is subject to the Order that the Order has been made—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that assessing the person will directly affect the carer and the care relationship;

(iv) a parent, if the person is under the age of 16 years;

(v) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order; and

S. 32(2)(a)(v) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(b) to give the persons referred to in paragraph (a) a copy of the Order and the relevant statement of rights.

33 Person subject to an Inpatient Assessment Order to be taken to a designated mental health service

In the case of an Inpatient Assessment Order, as soon as practicable, but not later than 72 hours after the Order is made, the person who is subject to the Order must be taken to a designated mental health service.

34 Duration of an Assessment Order

(1) An Assessment Order comes into force when the Order is made and remains in force, unless the Assessment Order is extended in accordance with this section or revoked in accordance with section 37—

S. 34(1)(a) amended by No. 15/2015 s. 8(1).

(a) subject to subsection (1A), in the case of a Community Assessment Order, for a period of 24 hours; or

(b) in the case of an Inpatient Assessment Order for a period (whichever is the shorter)—

(i) ending 24 hours after the person who is subject to the Order is received at a designated mental health service in accordance with the Order; or

(ii) of 72 hours, if the person who is subject to the Order is not received at a designated mental health service.

S. 34(1A) inserted by No. 15/2015 s. 8(2).

(1A) A Community Assessment Order (which is varied from an Inpatient Assessment Order to a Community Assessment Order under section 35) remains in force (unless the Community Assessment Order is extended in accordance with this section or revoked in accordance with section 37) for a period of 24 hours starting—

(a) if the person subject to the Order was not received at a designated mental health service before the variation was made under section 35, at the time that the Inpatient Assessment Order was varied to the Community Assessment Order; or

(b) if the person subject to the Order was received at a designated mental health service before the variation was made under section 35, at the time that the person was

received at the designated mental health service.

(2) If, after examining the person who is subject to the Assessment Order, the authorised psychiatrist is not able to determine whether the treatment criteria apply to the person, the authorised psychiatrist may extend the duration of the Order for a period not exceeding 24 hours from the time that the Order is extended.

(3) The duration of an Assessment Order may not be extended more than twice in accordance with subsection (2).

(4) Before extending the duration of an Assessment Order under subsection (2), the authorised psychiatrist must examine the person who is subject to the Assessment Order.

35 Variation of an Assessment Order

(1) Subject to subsection (3), before an authorised psychiatrist completes an assessment of a person who is subject to an Assessment Order, a registered medical practitioner or mental health practitioner may vary the Assessment Order from—

(a) a Community Assessment Order to an Inpatient Assessment Order; or

(b) an Inpatient Assessment Order to a Community Assessment Order.

(2) A registered medical practitioner or mental health practitioner may only vary a Community Assessment Order to an Inpatient Assessment Order if the registered medical practitioner or mental health practitioner is satisfied that assessment of the person subject to the Order cannot occur in the community.

(3) A registered medical practitioner or mental health practitioner who varies an Assessment Order must—

(a) notify the authorised psychiatrist of the relevant designated mental health service that the Assessment Order has been varied; and

(b) give the authorised psychiatrist a copy of the varied Order; and

(c) ensure that reasonable steps are taken—

(i) to inform the person who is subject to the varied Assessment Order that the Order has been varied; and

(ii) to give the person a copy of the varied Order and a copy of the relevant statement of rights; and

(iii) to explain the purpose and effect of the variation to the person.

(4) As soon as practicable after being notified under subsection (3) that the Assessment Order has been varied, the authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the following persons in relation to the person who is subject to a varied Assessment Order that the Order has been varied—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the variation will directly affect the carer and the care relationship;

(iv) a parent, if the person is under the age of 16 years;

(v) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order; and

S. 35(4)(a)(v) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(b) to give the persons referred to in paragraph (a) a copy of the varied Order and the relevant statement of rights.

(5) A person whose Community Assessment Order is varied to an Inpatient Assessment Order and who is not already at a designated mental health service must be taken to the designated mental health service as soon as practicable after the Order is varied.

36 Assessment of person subject to Assessment Order by authorised psychiatrist

(1) An authorised psychiatrist must examine a person who is subject to an Assessment Order as soon as practicable after—

(a) the Order is made, in the case of a Community Assessment Order; or

(b) the person is received at a designated mental health service, in the case of an Inpatient Assessment Order.

(2) The authorised psychiatrist must, to the extent that is reasonable in the circumstances, explain the purpose of the examination to the person being assessed before starting each examination during the course of the assessment.

(3) The authorised psychiatrist must determine whether the treatment criteria apply to the person subject to the Assessment Order before the Assessment Order expires.

37 Revocation or expiry of an Assessment Order

(1) An authorised psychiatrist must immediately revoke an Assessment Order if, after assessing the person subject to the Order, the authorised psychiatrist is satisfied that the treatment criteria do not apply to the person.

(2) An Assessment Order in relation to a person expires at the sooner of the following—

(a) at the end of the relevant period referred to in section 34;

(b) the person is made subject to a Temporary Treatment Order.

(3) As soon as practicable after the Assessment Order is revoked or expires, the authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the person that the person is no longer subject to an Assessment Order; and

(b) to explain the effect of the revocation or expiry of the Assessment Order to the person; and

(c) to inform the following persons in relation to the person subject to the Order that the Order has been revoked or has expired—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the revocation or expiry of the Order will directly affect the carer and the care relationship;

(iv) a parent, if the person is under the age of 16 years;

(v) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

S. 37(3)(c)(v) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

38 Treatment during an Assessment Order

(1) Subject to subsection (2), a person who is subject to an Assessment Order must not be given treatment.

(2) A person who is subject to an Assessment Order may be given treatment if—

(a) the person gives informed consent to the treatment; or

(b) a registered medical practitioner employed or engaged by the designated mental health service is satisfied that urgent treatment is necessary to prevent—

(i) serious deterioration in the mental or physical health of the person; or

(ii) serious harm to the person or to another person.

Division 2—Court Assessment Orders

Note

See Part 5 of the **Sentencing Act 1991** in relation to Court Assessment Orders.

39 Examination by authorised psychiatrist

(1) On each occasion before examining a person who is subject to a Court Assessment Order, the authorised psychiatrist must explain to the person, to the extent that is reasonable in the circumstances, the purpose of the examination.

(2) In the case of a Community Court Assessment Order, an authorised psychiatrist must—

(a) examine a person who is subject to the Order as soon as practicable after the Order is made; and

(b) complete his or her assessment of the person within 7 days after the Order is made.

(3) In the case of an Inpatient Court Assessment Order, an authorised psychiatrist must—

(a) examine the person as soon as practicable after the person is received at the designated mental health service; and

(b) complete his or her assessment of the person within 7 days after the person is received at the designated mental health service.

40 Notification requirements in relation to Court Assessment Orders

(1) As soon as practicable after a person is made subject to a Community Court Assessment Order or a person who is subject to an Inpatient Court Assessment Order is received at a designated mental health service, the authorised psychiatrist must ensure that reasonable steps are taken to inform the following persons in relation to the person subject to the Order that the Order has been made—

(a) the nominated person;

(b) a guardian;

(c) a carer, if the authorised psychiatrist is satisfied that assessing the person will directly affect the carer and the care relationship;

(d) a parent, if the person is under the age of 16 years;

(e) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

S. 40(1)(e) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(2) As soon as practicable after a person is made subject to a Community Court Assessment Order or a person who is subject to an Inpatient Court Assessment Order is received at a designated mental health service, the authorised psychiatrist must ensure that reasonable steps are taken to give a copy of the Order and the relevant statement of rights to—

(a) the person who is subject to the Order; and

(b) the persons referred to in subsection (1).

Note

See Division 1 of Part 3 in relation to statement of rights.

41 Variation of a Court Assessment Order

(1) Subject to subsection (2), before an authorised psychiatrist completes an assessment of a person subject to a Court Assessment Order, the authorised psychiatrist may vary the Order from—

(a) a Community Court Assessment Order to an Inpatient Court Assessment Order; or

(b) an Inpatient Court Assessment Order to a Community Court Assessment Order.

(2) An authorised psychiatrist may only vary a Community Court Assessment Order to an Inpatient Court Assessment Order if the authorised psychiatrist is satisfied that assessment of the person subject to the Order cannot occur in the community.

(3) As soon as practicable after varying a Court Assessment Order, an authorised psychiatrist who varies the Court Assessment Order must ensure that reasonable steps are taken—

(a) to inform the person who is subject to the varied Court Assessment Order that the Order has been varied; and

(b) to give the person a copy of the varied Order and a copy of the relevant statement of rights; and

(c) to explain the purpose and effect of the variation; and

(d) to inform the following persons in relation to the person who is subject to the varied Order that the Order has been varied—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the variation will directly affect the carer and the care relationship;

(iv) a parent, if the person is under the age of 16 years;

S. 41(3)(d)(v) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(v) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order; and

(e) to give the persons referred to in paragraph (d) a copy of the varied Order and the relevant statement of rights; and

(f) to inform the court that made the Court Assessment Order that the Order has been varied.

(4) A person whose Community Court Assessment Order is varied to an Inpatient Court Assessment Order and who is not already at a designated mental health service must be taken to the designated mental health service as soon as practicable after the Order is varied.

42 Treatment during Court Assessment Order

(1) Unless subsection (2) applies, a person who is subject to a Court Assessment Order must not be given treatment.

(2) The person may be given treatment if—

(a) the person gives informed consent to the treatment; or

(b) a registered medical practitioner employed or engaged by the designated mental health service is satisfied that urgent treatment is necessary to prevent—

(i) serious deterioration in the mental or physical health of the person; or

(ii) serious harm to the person or to another person; or

(c) the authorised psychiatrist makes a Temporary Treatment Order in relation to the person in accordance with section 46; or

(d) the person is subject to an existing Temporary Treatment Order or Treatment Order that was made before the Court Assessment Order was made.

43 Authorised psychiatrist to provide report to court

On completing an assessment of a person who is subject to a Court Assessment Order, the authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the person that the assessment is complete; and

(b) to inform the following persons in relation to the person that the assessment is complete—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that assessment of the person will directly affect the carer and the care relationship;

(iv) a parent, if the person is under the age of 16 years;

S. 43(b)(v) amended by No. 61/2014 s. 169(2)(3).

(v) the Secretary to the Department of Human Services, if the person is the subject of a family reunification order or a care by Secretary order; and

(c) to notify the court that made the Court Assessment Order that the assessment is complete; and

(d) to provide a report to the court that—

(i) states if the authorised psychiatrist—

(A) made the person subject to a Temporary Treatment Order; and

(B) is satisfied that the criteria specified in section 94B(1)(c) of the **Sentencing Act 1991** apply to the person; and

(C) recommends making the person subject to a Court Secure Treatment Order; and

(ii) includes information as to the person's current mental condition and any other information that the authorised psychiatrist considers is appropriate.

44 Authorised psychiatrist may make Temporary Treatment Order

Despite anything to the contrary in Division 3, an authorised psychiatrist may make a Temporary Treatment Order in relation to a person who is subject to a Court Assessment Order.

Division 3—Temporary Treatment Orders

45 What is a Temporary Treatment Order?

(1) A Temporary Treatment Order is an Order made by an authorised psychiatrist after assessing a person (in accordance with an Assessment Order or a Court Assessment Order) that enables the person who is subject to the Temporary Treatment Order to be compulsorily—

(a) treated in the community; or

(b) taken to, and detained and treated in, a designated mental health service.

(2) An Order referred to in subsection (1)(a) is a ***Community Temporary Treatment Order***.

(3) An Order referred to in subsection (1)(b) is an ***Inpatient Temporary Treatment Order***.

46 Authorised psychiatrist may make Temporary Treatment Order

(1) Subject to section 47, an authorised psychiatrist may make a Temporary Treatment Order in respect of a person who is subject to an Assessment Order or a Court Assessment Order if the authorised psychiatrist—

S. 46(1)(aa) inserted by No. 15/2015 s. 9.

(aa) before examining the person, to the extent that is reasonable in the circumstances—

(i) has informed the person that the person will be examined by the authorised psychiatrist; and

(ii) has explained the purpose of this examination to the person; and

(a) has examined the person; and

(b) is satisfied that the treatment criteria apply to the person.

(2) In determining whether the treatment criteria apply to the person, the authorised psychiatrist—

(a) must, to the extent that is reasonable in the circumstances, have regard to all of the following—

(i) the person's views and preferences about treatment of his or her mental illness and the reasons for those views and preferences, including any recovery outcomes that the person would like to achieve;

(ii) the views and preferences of the person expressed in his or her advance statement;

(iii) the views of the person's nominated person;

(iv) the views of a guardian of the person;

(v) the views of a carer of the person, if the authorised psychiatrist is satisfied that making a Temporary Treatment Order will directly affect the carer and the care relationship;

(vi) the views of a parent of the person, if the person is under the age of 16 years;

(vii) the views of the Secretary, if the person is the subject of a family reunification order or a care by Secretary order; and

S. 46(2)(a)(vii) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(b) may consider other information communicated to the authorised psychiatrist by persons other than the person who was examined.

47 Restriction on who can make Temporary Treatment Order

The authorised psychiatrist who made an Assessment Order in relation to a person must not make the person subject to a Temporary Treatment Order as a consequence of that Assessment Order.

48 Community or Inpatient Temporary Treatment Order?

(1) An authorised psychiatrist who makes a Temporary Treatment Order in respect of a person must determine whether the Order is—

(a) a Community Temporary Treatment Order; or

(b) an Inpatient Temporary Treatment Order.

(2) For the purposes of making a determination under subsection (1), the authorised psychiatrist must, to the extent that is reasonable in the circumstances, have regard to all of the following—

(a) the person's views and preferences about treatment of his or her mental illness and the reasons for those views and preferences, including any recovery outcomes that the person would like to achieve;

(b) the views and preferences of the person expressed in his or her advance statement;

(c) the views of the person's nominated person;

(d) the views of a guardian of the person;

(e) the views of a carer of the person, if the authorised psychiatrist is satisfied that the determination will directly affect the carer and the care relationship;

(f) the views of a parent of the person, if the person is under the age of 16 years;

S. 48(2)(g) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(g) the views of the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

(3) The authorised psychiatrist may only make a person subject to an Inpatient Temporary Treatment Order if the authorised psychiatrist is satisfied that treatment of the person cannot occur within the community.

49 Contents of a Temporary Treatment Order

A Temporary Treatment Order must—

(a) state whether the Order is a Community Temporary Treatment Order or an Inpatient Temporary Treatment Order; and

(b) include any information prescribed for the purposes of this section.

50 Information and other requirements in relation to Temporary Treatment Orders

(1) As soon as practicable after making a Temporary Treatment Order, the authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the person who is subject to the Temporary Treatment Order that he or she is subject to a Temporary Treatment Order; and

(b) to give the person a copy of the Temporary Treatment Order and a copy of the relevant statement of rights; and

Note

See Division 1 of Part 3 in relation to statement of rights.

(c) to explain to the person the purpose and effect of the Temporary Treatment Order; and

(d) to inform the person that he or she will receive treatment in relation to his or her mental illness.

(2) As soon as practicable after a Temporary Treatment Order is made, the authorised psychiatrist must—

(a) notify the Tribunal that the Order has been made; and

(b) ensure that reasonable steps are taken—

(i) to inform the following persons in relation to the person subject to the Order that the Order has been made—

(A) the nominated person;

(B) a guardian;

(C) a carer, if the authorised psychiatrist is satisfied that treating the person will directly affect the carer and the care relationship;

(D) a parent, if the person is under the age of 16 years;

S. 50 (2)(b)(i)(E) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(E) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order; and

(ii) to give the persons referred to in subparagraph (i) a copy of the Order and the relevant statement of rights.

(3) A person who is subject to an Inpatient Temporary Treatment Order and who is not already at a designated mental health service must be taken to a designated mental health service as soon as practicable after the Order is made.

51 Duration of a Temporary Treatment Order

(1) Unless a Temporary Treatment Order is revoked or expires in accordance with section 55, 61 or 62, it remains in force for a period of 28 days.

(2) The making of a Court Assessment Order in relation to a person has no effect on the duration of a Temporary Treatment Order in relation to the same person.

(3) A variation of a Temporary Treatment Order in accordance with section 58 does not affect the duration of the Order.

Note

See section 192 in relation to the Tribunal extending the duration of a Temporary Treatment Order.

Division 4—Treatment Orders

52 What is a Treatment Order?

(1) A Treatment Order is an Order made by the Tribunal that enables a person who is subject to a Treatment Order to be compulsorily—

(a) treated in the community; or

(b) taken to, and detained and treated in, a designated mental health service.

(2) An Order referred to in subsection (1)(a) is a ***Community Treatment Order***.

(3) An Order referred to in subsection (1)(b) is an ***Inpatient Treatment Order***.

53 Tribunal to determine whether to make person subject to Treatment Order

(1) The Tribunal must conduct a hearing to determine whether to make a Treatment Order under section 55 in relation to a person who is subject to a Temporary Treatment Order.

(2) The hearing under subsection (1) must be conducted before the expiry of the Temporary Treatment Order.

Note

See section 192 in relation to the Tribunal extending the duration of a Temporary Treatment Order.

54 Authorised psychiatrist may make an application for a Treatment Order

(1) An authorised psychiatrist may apply to the Tribunal for a Treatment Order in relation to a person who is currently subject to a Treatment Order if the authorised psychiatrist—

(a) has examined the person; and

(b) is satisfied that the treatment criteria apply to the person.

(2) In determining whether the treatment criteria apply to the person, the authorised psychiatrist may consider information communicated to the authorised psychiatrist by persons other than the person who was examined.

(3) For the purposes of subsection (1), an application to the Tribunal must be made at least 10 business days before the expiry of the Treatment Order to which the person is currently subject.

(4) Despite anything to the contrary in this section or section 187, the principal registrar of the Tribunal may accept an application made under this section if—

(a) the application is made not more than 10 business days before the expiry of the Treatment Order to which the person was last subject; and

(b) accepting the application is reasonable having regard to all the circumstances.

(5) The Tribunal must conduct a hearing to determine whether to make a Treatment Order in relation to a person who is currently subject to a Treatment Order if the application is made in accordance with this section.

55 Making a Treatment Order

(1) After conducting a hearing under section 53, 54, 58 or 60, the Tribunal must—

(a) make a Treatment Order in respect of a person if the Tribunal is satisfied that the treatment criteria apply to the person and determine—

(i) the duration of the Order; and

(ii) whether the Order is—

(A) a Community Treatment Order; or

(B) an Inpatient Treatment Order; or

(b) revoke the Order to which the person is currently subject if the Tribunal is not satisfied that the treatment criteria apply to the person.

(2) For the purposes of making an Order under subsection (1)(a), the Tribunal must, to the extent that is reasonable in the circumstances, have regard to all of the following—

(a) the person's views and preferences about treatment of his or her mental illness and the reasons for those views and preferences, including any recovery outcomes that the person would like to achieve;

(b) the views and preferences of the person expressed in his or her advance statement;

(c) the views of the person's nominated person;

(d) the views of a guardian of the person;

(e) the views of the person's carer, if the Tribunal is satisfied that making the Order will directly affect the carer and the care relationship;

(f) the views of a parent of the person, if the person is under the age of 16 years;

(g) the views of the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

S. 55(2)(g) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(3) The Tribunal may only make a person subject to an Inpatient Treatment Order if the Tribunal is satisfied that treatment of the person cannot occur within the community.

56 Contents of a Treatment Order

A Treatment Order must—

(a) state whether the Order is a Community Treatment Order or an Inpatient Treatment Order; and

(b) state the duration of the Order; and

(c) include any information prescribed for the purposes of this section.

57 Duration of a Treatment Order

(1) Subject to subsection (2), unless a Treatment Order is revoked or expires in accordance with section 55, 61 or 62, it remains in force for the period specified in the Order.

(2) The maximum period that may be specified in a Treatment Order is—

(a) in relation to a person who is of or over the age of 18 years and is subject to—

(i) a Community Treatment Order, 12 months; or

(ii) an Inpatient Treatment Order, 6 months; or

(b) in relation to a person who is under the age of 18 years and is subject to—

(i) a Community Treatment Order, 3 months; or

(ii) an Inpatient Treatment Order, 3 months.

Note

See section 192 in relation to the Tribunal extending the duration of a Treatment Order.

Division 5—Variation of Temporary Treatment Orders and Treatment Orders

58 Variation of Temporary Treatment Orders and Treatment Orders

(1) Subject to subsection (2), having regard, to the extent that is reasonable in the circumstances, to the matters set out in section 55(2), an authorised psychiatrist may vary—

(a) a Community Temporary Treatment Order to an Inpatient Temporary Treatment Order; or

(b) an Inpatient Temporary Treatment Order to a Community Temporary Treatment Order; or

(c) a Community Treatment Order to an Inpatient Treatment Order; or

(d) an Inpatient Treatment Order to a Community Treatment Order.

(2) An authorised psychiatrist may only vary a Community Temporary Treatment Order to an Inpatient Temporary Treatment Order or a Community Treatment Order to an Inpatient Treatment Order if the authorised psychiatrist is satisfied that treatment of the person cannot occur in the community.

(3) Despite anything to the contrary in section 57(2), a variation of a Temporary Treatment Order or Treatment Order does not affect the duration of the Order.

(4) A person must be taken to the designated mental health service as soon as practicable after the Order to which the person is subject is varied if the person is not already at a designated mental health service and the Order is varied from—

(a) a Community Temporary Treatment Order to an Inpatient Temporary Treatment Order; or

(b) a Community Treatment Order to an Inpatient Treatment Order.

(5) Within 28 days after a person is made subject to an Inpatient Treatment Order that was varied to the Inpatient Treatment Order from a Community Treatment Order under subsection (1)(c), the Tribunal must conduct a hearing to determine whether to make a Treatment Order or revoke that Inpatient Treatment Order under section 55 if, at

the end of that 28 day period, the person remains subject to the Inpatient Treatment Order.

59 Requirements in relation to varied Temporary Treatment Orders and Treatment Orders

As soon as practicable after varying an Order under section 58(1), the authorised psychiatrist must notify the Tribunal that the Order has been varied and ensure that reasonable steps are taken—

(a) to inform the person who is subject to the varied Order that the Order has been varied; and

(b) to give the person a copy of the varied Order and a copy of the relevant statement of rights; and

Note

See Division 1 of Part 3 in relation to statement of rights.

(c) to explain the purpose and effect of the varied Order to the person; and

(d) to inform the following persons in relation to the person subject to the varied Order that the Order has been varied—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that varying the Order will directly affect the carer and the care relationship;

(iv) a parent, if the person is under the age of 16 years;

(v) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order; and

S. 59(d)(v) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(e) to give the persons referred to in paragraph (d) a copy of the varied Order and the relevant statement of rights.

Division 6—Revocation and Expiry of Temporary Treatment Orders and Treatment Orders

60 Application to Tribunal to revoke Temporary Treatment Order or Treatment Order

(1) A person who is subject to a Temporary Treatment Order or Treatment Order may apply at any time while the Order is in force to the Tribunal to have the Order revoked.

(2) The following persons may apply to the Tribunal on behalf of a person who is subject to a Temporary Treatment Order or Treatment Order at any time while the Order is in force to have the Order revoked—

(a) any person, at the request of the person subject to the Order;

(b) a guardian of the person;

(c) a parent of the person, if the person is under the age of 16 years.

(d) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

S. 60(2)(d) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(3) The Tribunal must—

(a) conduct a hearing and determine the application as soon as practicable; and

(b) make a Treatment Order in accordance with section 55 or revoke the Order under that section.

61 Revocation of Temporary Treatment Order or Treatment Order if treatment criteria do not apply

An authorised psychiatrist who determines that the treatment criteria for making a Temporary Treatment Order or Treatment Order do not apply in relation to a person who is subject to such an Order must immediately revoke the Order.

62 Expiry of Temporary Treatment Order or Treatment Order if certain other Orders made

A Temporary Treatment Order or Treatment Order to which a person is subject expires at the sooner of the following—

S. 62(a) substituted by No. 15/2015 s. 10.

(a) in the case of a Temporary Treatment Order—

(i) 28 days after it is made; or

(ii) the person is made subject to a Treatment Order;

(b) in the case of a Treatment Order, at the end of the period specified in the Order;

(c) the person—

(i) is made subject to a Secure Treatment Order or Court Secure Treatment Order; or

(ii) is detained in a designated mental health service under section 30(2) or 30A(3) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

63 Notification requirements for expired or revoked Temporary Treatment Orders and Treatment Orders

If a Temporary Treatment Order or Treatment Order expires or is revoked, the authorised psychiatrist must notify the Tribunal (unless the Tribunal revoked the Order) and ensure that reasonable steps are taken as soon as practicable—

(a) to inform the person that the person is no longer subject to the Order and, in the case of a revocation, to give the person a copy of the notice of revocation; and

(b) to inform the following persons in relation to the person who was subject to the expired or revoked Order that the Order has expired or has been revoked—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the expiry or revocation of the Order will directly affect the carer and the care relationship;

(iv) a parent, if the person is under the age of 16 years;

(v) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

S. 63(b)(v) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

Division 7—General provisions

64 Leave of absence with approval

(1) Subject to subsections (2) and (3), an authorised psychiatrist may grant a leave of absence from a designated mental health service to a person who is subject to an Inpatient Assessment Order, Inpatient Court Assessment Order, Inpatient Temporary Treatment Order or Inpatient Treatment Order—

(a) for the purpose of receiving treatment or medical treatment; or

(b) for any other purpose that the authorised psychiatrist is satisfied is appropriate.

(2) The authorised psychiatrist may grant a leave of absence for any period and subject to any conditions that he or she is satisfied are necessary or vary the conditions or duration of the leave of absence—

(a) having regard to the purpose of the leave; and

(b) if satisfied on the evidence available that the health and safety of the person or the safety of any other person will not be seriously endangered as a result.

(3) In determining whether to grant a leave of absence to a person, to grant a leave of absence subject to conditions or to vary its conditions or duration under this section, the authorised psychiatrist must, to the extent that is reasonable in the circumstances, have regard to all of the following—

(a) the person's views and preferences about the leave of absence and the reasons for those views and preferences, including the

recovery outcomes that the person would like to achieve;

(b) the views and preferences of the person expressed in his or her advance statement;

(c) the views of the person's nominated person;

(d) the views of a guardian of the person;

(e) the views of the person's carer, if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship;

(f) the views of a parent of the person if the person is under the age of 16 years;

(g) the views of the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

S. 64(3)(g) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(4) The authorised psychiatrist may revoke the leave of absence by notice in writing and require the person to return to the designated mental health service if the authorised psychiatrist is satisfied that—

(a) revocation of the leave of absence is necessary to prevent—

(i) serious deterioration in the person's mental or physical health; or

(ii) serious harm to the person or to another person; or

(b) the person has failed to comply with a condition to which the leave of absence is subject; or

(c) the purpose for the leave of absence no longer exists.

(5) As soon as practicable after the authorised psychiatrist grants a leave of absence or varies or revokes a leave of absence, the authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the person who is subject to the Order of the decision and to explain its purpose and effect; and

(b) to notify the following persons in relation to the person who is subject to the Order of the decision—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship;

(iv) a parent, if the person is under the age of 16 years;

(v) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

S. 64(5)(b)(v) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

65 Another designated mental health service to provide assessment or treatment—variation by authorised psychiatrist or as directed by chief psychiatrist

(1) This section applies in relation to the following Orders—

(a) an Assessment Order;

(b) a Court Assessment Order;

(c) a Temporary Treatment Order;

(d) a Treatment Order.

(2) An authorised psychiatrist may vary an Order to which this section applies to specify that assessment of, or treatment for, the person subject to the Order will be provided by another designated mental health service if—

(a) the authorised psychiatrist is satisfied that the variation is necessary for the person's assessment or treatment; and

(b) the authorised psychiatrist for the designated mental health service which is to assess the person or treat the person approves of the variation.

(3) The chief psychiatrist may direct an authorised psychiatrist to vary an order to which this section applies to specify that assessment of, or treatment for, the person subject to the Order will be provided by another designated mental health service if the chief psychiatrist is satisfied that the variation is necessary for the person's assessment or treatment.

(4) In determining whether under this section to vary, or direct the variation of, an Order to which this section applies, an authorised psychiatrist or chief psychiatrist (as the case may be) must, to the extent that is reasonable in the circumstances, have regard to all of the following—

(a) the person's views and preferences about the proposed variation and the reasons for those views and preferences, including the recovery outcomes that the person would like to achieve;

(b) the views and preferences of the person expressed in his or her advance statement;

(c) the views of the person's nominated person;

(d) the views of a guardian of the person;

(e) the views of a carer of the person, if the authorised psychiatrist or the chief psychiatrist (as the case may be) is satisfied that the variation will directly affect the carer and the care relationship;

(f) the views of a parent of the person, if the person is under the age of 16 years;

S. 65(4)(g) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(g) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

(5) As soon as practicable after the authorised psychiatrist varies an Order under subsection (2) or in accordance with a direction of the chief psychiatrist under subsection (3), the authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the person who is subject to the varied Order that the Order has been varied and to explain the purpose and effect of the variation; and

(b) to arrange for the person who is subject to the varied Order to be taken to the receiving designated mental health service, if he or she is now subject to an Inpatient Assessment Order, an Inpatient Court Assessment Order, an Inpatient Temporary Treatment Order or an Inpatient Treatment Order; and

(c) to forward to the designated mental health service which is to provide the assessment or treatment any documents relevant to the assessment or treatment of the person subject to the varied Order; and

(d) to notify the following persons in relation to the person subject to the varied Order of the variation—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the variation will directly affect the carer and the care relationship;

(iv) a parent, if the person is under the age of 16 years;

(v) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

S. 65(5)(d)(v) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

66 Application for review of direction to vary Order

(1) Within 20 business days after an Order is varied under section 65, the person who is subject to that Order may apply to the Tribunal for a review of the decision to vary the Order or to direct the variation of the Order.

(2) The following persons may apply to the Tribunal for a review of the decision to vary the Order or direct a variation of the Order on behalf of a person referred to in subsection (1) within 20 business days after the Order is varied—

(a) any person, at the request of the person subject to the Order;

(b) a guardian of the person;

(c) a parent of the person, if the person is under the age of 16 years;

S. 66(2)(d) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(d) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

(3) On hearing an application under subsection (1) or (2), the Tribunal must, to the extent that is reasonable in the circumstances, have regard to the matters referred to in section 65(4).

(4) The Tribunal must—

S. 66(4)(a) amended by No. 15/2015 s. 11.

(a) grant the application and direct that the person subject to the varied Order be assessed or treated by the original designated mental health service and, if the person has been taken to another designated mental health service, direct that the person be returned to the original designated mental health service; or

(b) refuse to grant the application and direct that the person remain subject to the Order as varied.

67 Effect of detention in custody on certain Orders

(1) This section applies in relation to the following Orders—

(a) an Assessment Order;

(b) a Court Assessment Order;

(c) a Temporary Treatment Order;

(d) a Treatment Order.

(2) Subject to subsection (3), an Order to which this section applies has no effect while a person who is subject to the Order is detained in custody.

(3) An Order to which this section applies expires at the time it would otherwise have expired under this Act despite any period during which it has no effect by virtue of subsection (2).

(4) For the purposes of this section, a person is ***detained in custody*** if the person is held in—

(a) a prison; or

(b) a remand centre, youth justice centre or youth residential centre within the meaning of the **Children, Youth and Families Act 2005**; or

(c) a police gaol within the meaning of the **Corrections Act 1986**; or

(d) immigration detention within the meaning of section 5 of the Migration Act 1958 of the Commonwealth, unless the person is assessed or receives treatment as an inpatient.

Part 5—Treatment

Division 1—Capacity and informed consent

68 *Capacity to give informed consent* under this Act

(1) A person has the ***capacity to give informed consent*** under this Act if the person—

(a) understands the information he or she is given that is relevant to the decision; and

(b) is able to remember the information that is relevant to the decision; and

(c) is able to use or weigh information that is relevant to the decision; and

(d) is able to communicate the decision he or she makes by speech, gestures or any other means.

(2) The following principles are intended to provide guidance to any person who is required to determine whether or not a person has the capacity to give informed consent under this Act—

(a) a person's capacity to give informed consent is specific to the decision that the person is to make;

(b) a person's capacity to give informed consent may change over time;

(c) it should not be assumed that a person does not have the capacity to give informed consent based only on his or her age, appearance, condition or an aspect of his or her behaviour;

(d) a determination that a person does not have capacity to give informed consent should not be made only because the person makes a

decision that could be considered to be unwise;

(e) when assessing a person's capacity to give informed consent, reasonable steps should be taken to conduct the assessment at a time at, and in an environment in, which the person's capacity to give informed consent can be assessed most accurately.

69 Meaning of *informed consent*

(1) For the purposes of treatment or medical treatment that is given in accordance with this Act, a person gives ***informed consent*** if the person—

(a) has the capacity to give informed consent to the treatment or medical treatment proposed; and

(b) has been given adequate information to enable the person to make an informed decision; and

(c) has been given a reasonable opportunity to make the decision; and

(d) has given consent freely without undue pressure or coercion by any other person; and

(e) has not withdrawn consent or indicated any intention to withdraw consent.

(2) For the purposes of subsection (1)(b), a person has been given adequate information to make an informed decision if the person has been given—

(a) an explanation of the proposed treatment or medical treatment including—

(i) the purpose of the treatment or medical treatment; and

(ii) the type, method and likely duration of the treatment or medical treatment; and

(b) an explanation of the advantages and disadvantages of the treatment or medical treatment, including information about the associated discomfort, risks and common or expected side effects of the treatment or medical treatment; and

(c) an explanation of any beneficial alternative treatments that are reasonably available, including any information about the advantages and disadvantages of these alternatives; and

(d) answers to any relevant questions that the person has asked; and

(e) any other relevant information that is likely to influence the decision of the person; and

(f) in the case of proposed treatment, a statement of rights relevant to his or her situation.

(3) For the purposes of subsection (1)(c), a person has been given a reasonable opportunity to make a decision if, in the circumstances, the person has been given a reasonable—

(a) period of time in which to consider the matters involved in the decision; and

(b) opportunity to discuss those matters with the registered medical practitioner or other health practitioner who is proposing the treatment or medical treatment; and

(c) amount of support to make the decision; and

(d) opportunity to obtain any other advice or assistance in relation to the decision.

S. 69(4) inserted by No. 69/2016 s. 118.

(4) Without limiting anything in subsections (1), (2) or (3), for the purposes of medical treatment that is given in accordance with this Act, a person may give informed consent by instructional directive.

70 Presumption that person has capacity to give informed consent

(1) Before treatment or medical treatment is administered to a person in accordance with this Act, the informed consent of the person must be sought.

(2) The person seeking the informed consent of another person to a treatment or medical treatment must presume that the other person has the capacity to give informed consent.

(3) Despite subsection (2), a person does not have to seek the informed consent of another person to treatment or medical treatment if the person forms the opinion that the other person does not have the capacity to give informed consent at the time that the informed consent would otherwise be sought.

71 When a patient does not give consent to treatment

(1) This section applies if—

(a) a patient—

(i) does not have the capacity to give informed consent to the treatment proposed by the authorised psychiatrist; or

(ii) has the capacity to give informed consent, but does not give informed consent to treatment proposed by the authorised psychiatrist; and

(b) the treatment proposed by the authorised psychiatrist is not electroconvulsive treatment or neurosurgery for mental illness.

Note

See Divisions 5 and 6 for relevant provisions regarding electroconvulsive treatment and neurosurgery for mental illness.

(2) For the purposes of determining whether this section applies to a person, it is only the patient not giving informed consent that is relevant and not the refusal to give consent of any other person or body authorised by law to make decisions for the patient.

(3) The authorised psychiatrist may make a treatment decision for the patient if the authorised psychiatrist is satisfied that there is no less restrictive way for the patient to be treated other than the treatment proposed by the authorised psychiatrist.

(4) In determining whether there is no less restrictive way for the patient to be treated, the authorised psychiatrist must have regard, to the extent that is reasonable in the circumstances, to all of the following—

(a) the patient's views and preferences about treatment of his or her mental illness and any beneficial alternative treatments that are reasonably available and the reasons for those views and preferences, including any recovery outcomes that the patient would like to achieve;

(b) the views and preferences of the patient expressed in his or her advance statement;

(c) the views of the patient's nominated person;

(d) the views of a guardian of the patient;

(e) the views of a carer, if the authorised psychiatrist is satisfied that the treatment decision will directly affect the carer and the care relationship;

(f) the views of a parent of the patient, if the patient is under the age of 16 years;

(g) the views of the Secretary, if the person is the subject of a family reunification order or a care by Secretary order;

S. 71(4)(g) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(h) the likely consequences for the patient if the proposed treatment is not performed;

(i) any second psychiatric opinion that has been given to the authorised psychiatrist.

Division 2—Treatment

72 Patients to be treated for mental illness

A patient is to be given treatment for his or her mental illness in accordance with this Act.

73 Circumstances in which patient's preferences in advance statement may be overridden

(1) An authorised psychiatrist may make a treatment decision under section 71(3) for a patient that is not in accordance with that patient's advance statement if the authorised psychiatrist is satisfied that the preferred treatment specified by the patient in the advance statement—

(a) is not clinically appropriate; or

(b) is not a treatment ordinarily provided by the designated mental health service.

(2) If an authorised psychiatrist overrides a patient's preferred treatment in accordance with this section, the authorised psychiatrist must—

(a) inform the patient of the decision and include the reasons for the decision; and

(b) advise the patient that he or she has a right to request written reasons for the decision.

(3) An authorised psychiatrist must provide written reasons for his or her decision under this section within 10 business days after receiving a request made under subsection (2)(b).

Division 3—Medical treatment

74 Giving informed consent to medical treatment

(1) If a patient gives informed consent to medical treatment, the medical treatment may be administered to the patient.

(2) The informed consent of a patient to medical treatment must be obtained in accordance with section 70.

75 Who may consent to medical treatment if patient does not have capacity to give informed consent?

(1) If a patient who is of or over the age of 18 years does not have capacity to give informed consent to medical treatment, the medical treatment may be administered to the patient with the consent of the first person of the following listed below who, in the circumstances, is reasonably available, willing and able to make a decision concerning the proposed medical treatment—

S. 75(1)(a) substituted by No. 69/2016 s. 119(1)(a).

(a) the patient's appointed medical treatment decision maker within the meaning of the **Medical Treatment Planning and Decisions Act 2016**;

(b) a person appointed by VCAT to make decisions concerning the proposed medical treatment;

S. 75(1)(c) amended by No. 13/2019 s. 221(Sch. 1 item 32.2).

(c) a person appointed under a guardianship order within the meaning of the **Guardianship and Administration Act 2019** with power to make decisions concerning the proposed medical treatment;

* * * * *

S. 75(1)(d) amended by No. 57/2014 s. 158, repealed by No. 69/2016 s. 119(1)(b).

(e) the authorised psychiatrist, subject to section 76.

(2) If a patient who is under the age of 18 years does not have capacity to give informed consent to medical treatment, the medical treatment may be administered to the patient with the consent of—

(a) a person who, in relation to the patient, has the legal authority to consent to medical treatment and who, in the circumstances, is reasonably available, willing and able to make a decision concerning the proposed treatment; or

(b) the authorised psychiatrist, subject to section 76 and if a person specified under paragraph (a) is not reasonably available or not willing and able to make a decision concerning the proposed medical treatment.

Note

Note to s. 75 inserted by No. 69/2016 s. 119(2).

See section 53 of the **Medical Treatment Planning and Decisions Act 2016** in respect of medical treatment in an emergency.

76 Matters authorised psychiatrist must have regard to if consenting to medical treatment of patient

S. 76 (Heading) amended by No. 15/2015 s. 12(1).

(1) For the purposes of section 75, an authorised psychiatrist may consent to medical treatment being administered to a patient who does not have capacity to give informed consent if the authorised psychiatrist is satisfied that the medical treatment would benefit the patient.

(2) In determining whether a medical treatment would benefit a patient specified in subsection (1), the authorised psychiatrist must, to the extent that is reasonable in the circumstances, have regard to all of the following—

S. 76(2)(a) amended by No. 15/2015 s. 12(2).

(a) the patient's views and preferences regarding medical treatment and any beneficial alternative medical treatments that are reasonably available and the reasons for those views and preferences, including any recovery outcomes the patient would like to achieve;

S. 76(2)(ab) inserted by No. 69/2016 s. 120(a).

(ab) any relevant values directive given by the patient;

(b) the views of the patient's nominated person;

(c) the views of a guardian of the patient;

(d) the views of a carer of the patient, if the authorised psychiatrist is satisfied that the medical treatment decision will directly affect the carer and the care relationship;

(e) the views of a parent of the patient, if the patient is under the age of 16 years;

S. 76(2)(ea) inserted by No. 69/2016 s. 120(b).

(ea) the views of the patient's support person;

S. 76(2)(f) amended by No. 61/2014 s. 169(2)(3).

(f) the views of the Secretary, if the patient is the subject of a family reunification order or a care by Secretary order;

(g) if the medical treatment is likely to remedy the condition or lessen the symptoms of the condition;

(h) the likely consequences for the patient if the medical treatment is not administered;

(i) any second opinion of a registered medical practitioner that has been given to the authorised psychiatrist.

(3) If the authorised psychiatrist is of the opinion that a patient who does not currently have capacity to give informed consent to medical treatment is likely to have capacity to give informed consent within a reasonable period of time, the authorised psychiatrist must not give consent to the medical treatment unless the delay in administering or performing the medical treatment could result in serious harm to, or deterioration in, the mental or physical health of the patient.

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S. 77 repealed by No. 69/2016 s. 121.

Division 4—Second psychiatric opinions

78 Definition

In this Division, ***entitled patient*** means—

(a) a person who is subject to a Temporary Treatment Order or a Treatment Order; or

(b) a security patient; or

(c) a forensic patient.

79 Right to a second psychiatric opinion

(1) An entitled patient may seek a second psychiatric opinion at any time.

(2) The following persons in relation to an entitled patient may seek a second psychiatric opinion—

(a) any person, at the request of the entitled patient;

(b) a guardian of the entitled patient;

(c) a parent of the entitled patient, if the entitled patient is under the age of 16 years;

S. 79(2)(d) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(d) the Secretary, if the entitled patient is the subject of a family reunification order or a care by Secretary order.

(3) If an entitled patient seeks a second psychiatric opinion and requests assistance to obtain that opinion, the authorised psychiatrist must ensure that reasonable steps are taken to assist the entitled patient with that request.

80 Who may give a second psychiatric opinion?

A second psychiatric opinion under this Division may be sought from any psychiatrist.

81 Functions of a psychiatrist giving a second opinion

(1) The functions of a psychiatrist giving a second psychiatric opinion are—

(a) in relation to an entitled patient (other than a forensic patient), to assess the entitled patient and to provide an opinion as to whether the criteria for the relevant Order apply to the entitled patient; and

(b) in relation to an entitled patient, to review the treatment provided to the entitled patient under the relevant Order and to recommend any changes that the second opinion psychiatrist is satisfied are appropriate in the circumstances to the treatment provided under that Order.

(2) A psychiatrist who is asked to give a second psychiatric opinion under this Division cannot override the treatment prescribed by the authorised psychiatrist.

82 Powers of a psychiatrist giving a second psychiatric opinion

For the purposes of exercising his or her functions under this Division, a psychiatrist giving a second psychiatric opinion—

(a) may examine the entitled patient; and

(b) may access any health information that is held by the designated mental health service that is treating the entitled patient and is relevant to the treatment of the entitled patient; and

(c) may consult the authorised psychiatrist and any other staff of the designated mental health service about the treatment of the entitled patient; and

(d) in deciding whether to recommend any changes to the treatment and the nature of those changes—

(i) must have regard to the following—

(A) the entitled patient's views and preferences about treatment and any beneficial alternative treatments that are reasonably available and the reasons for these views and preferences, including any recovery outcomes that the entitled patient would like to achieve;

(B) the views and preferences of the entitled patient expressed in his or her advance statement; and

(ii) must, to the extent that is reasonable in the circumstances, have regard to the following—

(A) the views of the entitled patient's nominated person;

(B) the views of a guardian of the entitled patient;

(C) the views of a carer of the entitled patient, if the psychiatrist is satisfied that the recommended changes will directly affect the carer and the care relationship;

(D) the views of a parent of the entitled patient, if the entitled patient is under the age of 16 years;

S. 82(d)(ii)(E) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(E) the views of the Secretary, if the entitled patient is the subject of a family reunification order or a care by Secretary order.

83 Reasonable assistance must be provided

A member of staff of a designated mental health service must provide a psychiatrist giving a second psychiatric opinion any reasonable assistance that the psychiatrist requires in order to perform or exercise a function or power under this Division.

84 Second psychiatric opinion report

(1) A psychiatrist who gives a second psychiatric opinion must prepare a written report that includes—

(a) in relation to an entitled patient (other than a forensic patient), the opinion of the psychiatrist as to whether the criteria for the relevant Order apply to the entitled patient; and

(b) in relation to an entitled patient, the opinion of the psychiatrist regarding the treatment provided to the entitled patient under the relevant Order and any recommended changes to the treatment that the second opinion psychiatrist is satisfied are appropriate in the circumstances.

(2) The psychiatrist must ensure that reasonable steps are taken to give a copy of the report prepared under subsection (1) to the following persons—

(a) the entitled patient;

(b) the person who requested the second psychiatric opinion on behalf of the entitled patient;

(c) the authorised psychiatrist;

(d) the entitled patient's nominated person;

(e) a guardian of the entitled patient;

(f) a carer of the entitled patient, if the psychiatrist is satisfied that the second opinion will directly affect the carer and the care relationship;

(g) a parent of the entitled patient, if the entitled patient is under the age of 16 years;

(h) the Secretary, if the entitled patient is the subject of a family reunification order or a care by Secretary order.

S. 84(2)(h) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

85 Authorised psychiatrist must assess entitled patient (other than forensic patient) again in specified circumstances

(1) If a report prepared under section 84 in relation to an entitled patient (other than a forensic patient) expresses the opinion that the criteria for the

relevant Order do not apply to the entitled patient, the authorised psychiatrist must—

(a) examine the entitled patient as soon as practicable after receiving a copy of the report; and

(b) determine whether the criteria for the relevant Order apply to the entitled patient.

(2) If the authorised psychiatrist determines under subsection (1)(b) that the criteria for an Order to which the entitled patient (other than a forensic patient) is subject do apply, the authorised psychiatrist must—

(a) give the entitled patient the reasons for the determination; and

(b) advise the entitled patient that he or she has the right to apply to the Tribunal for revocation of the Order.

86 Authorised psychiatrist must review entitled patient's treatment in specified circumstances

(1) If a report prepared under section 84 recommends changes to the entitled patient's current treatment, the authorised psychiatrist must, as soon as practicable—

(a) review the entitled patient's treatment; and

(b) decide whether to adopt any of the recommendations made in the report.

(2) If the authorised psychiatrist decides under subsection (1)(b) to adopt any of the recommendations made in the report prepared under section 84, the authorised psychiatrist must revise the treatment of the entitled patient.

(3) If the authorised psychiatrist decides under subsection (1)(b) to adopt none or to adopt only some of the recommendations made in the report

prepared under section 84, the authorised psychiatrist must—

(a) give his or her reasons to the entitled patient for adopting none or only some of the recommendations and provide an explanation of those reasons; and

(b) advise the entitled patient that he or she has the right to apply to the chief psychiatrist for a review of his or her treatment.

87 Application to chief psychiatrist for review of treatment

(1) An entitled patient or a person specified in section 79(2) may apply to the chief psychiatrist to review the treatment of the entitled patient if the authorised psychiatrist decides to adopt none or only some of the recommended changes made in the report prepared under section 84.

(2) If a review is sought under subsection (1), the chief psychiatrist must be given by the person seeking the review—

(a) a copy of the report prepared under section 84; and

(b) any other information that the chief psychiatrist requests in relation to the treatment of the entitled patient.

(3) A member of staff of the designated mental health service must provide a patient with any reasonable assistance in making an application under subsection (1) if the entitled patient requests such assistance.

(4) The authorised psychiatrist may continue to administer treatment to a entitled patient during the conduct of a treatment review by the chief psychiatrist.

88 Review by chief psychiatrist

(1) The chief psychiatrist must review the treatment of an entitled patient within 10 business days after receiving an application for review under section 87(1).

(2) For the purposes of conducting a review of the treatment of an entitled patient, the chief psychiatrist may—

(a) examine the entitled patient; and

(b) access any health information that is held by the designated mental health service treating the entitled patient and is relevant to the treatment of the entitled patient; and

(c) consult the authorised psychiatrist and any other staff of the designated mental health service about the treatment of the entitled patient.

(3) In deciding whether to recommend any changes to the treatment and the nature of those changes, the chief psychiatrist must, to the extent that is reasonable in the circumstances, have regard to the following—

(a) the entitled patient's views and preferences about treatment of his or her mental illness and any beneficial alternative treatments that are reasonably available and the reasons for those views and preferences, including any recovery outcomes that the entitled patient would like to achieve;

(b) the views and preferences of the entitled patient expressed in his or her advance statement;

(c) the views of the entitled patient's nominated person;

(d) the views of a guardian of the entitled patient;

(e) the views of a carer of the entitled patient, if the chief psychiatrist is satisfied that the recommended changes will directly affect the carer and the care relationship;

(f) the views of a parent of the entitled patient, if the entitled patient is under the age of 16 years;

(g) the views of the Secretary, if the entitled patient is the subject of a family reunification order or a care by Secretary order.

S. 88(3)(g) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(4) The chief psychiatrist may, if appropriate in the circumstances, direct the authorised psychiatrist to change the treatment of the entitled patient.

(5) A direction made by the chief psychiatrist under subsection (4) is not limited to the recommendations made in any report prepared under section 84 in respect of the entitled patient.

(6) The chief psychiatrist must, as soon as practicable, ensure that reasonable steps are taken to notify in writing the following persons of the outcome of a review conducted under this section—

(a) the entitled patient;

(b) any person, other than the entitled patient, who applied for the review under section 87;

(c) the authorised psychiatrist;

(d) the entitled patient's nominated person;

(e) a guardian of the entitled patient;

(f) a carer of the entitled patient, if the chief psychiatrist is satisfied that the recommended changes will directly affect the carer and the care relationship;

(g) a parent of the entitled patient, if the entitled patient is under the age of 16 years;

S. 88(6)(h) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(h) the Secretary, if the entitled patient is the subject of a family reunification order or a care by Secretary order.

89 Application for review may be withdrawn

(1) An entitled patient or a person specified in section 79(2) who applied to the chief psychiatrist to review the treatment of the entitled patient may withdraw the application at any time.

(2) An entitled patient or a person referred to in subsection (1) may—

(a) advise the chief psychiatrist of a withdrawal made under subsection (1); or

(b) request the authorised psychiatrist to advise the chief psychiatrist of the withdrawal made under subsection (1).

Division 5—Electroconvulsive treatment

S. 90 substituted by No. 69/2016 s. 106.

90 Definitions

In this Division—

other applicable person means a person who—

(a) is not a patient; and

(b) is not a young person;

young person means a person who is under the age of 18 years.

91 Meaning of a *course of electroconvulsive treatment*

(1) For the purposes of this Act, a ***course of electroconvulsive treatment*** means a number of electroconvulsive treatments performed on a patient, young person or other applicable person that—

S. 91(1) amended by No. 69/2016 s. 107(1).

(a) does not exceed 12 electroconvulsive treatments; and

(b) must be performed on the patient, young person or other applicable person within a period of time that does not exceed 6 months.

S. 91(1)(b) amended by No. 69/2016 s. 107(1).

(2) The period of time for a course of electroconvulsive treatment commences—

(a) on the date that a patient who is not a young person gives informed consent to the performance of electroconvulsive treatment; or

(b) on the date that the Tribunal approves the performance of electroconvulsive treatment.

(3) The period of time for a course of electroconvulsive treatment ends at the earliest of the following—

(a) all the electroconvulsive treatments specified for the course of the electroconvulsive treatment have been performed;

(b) the date by which the course of electroconvulsive treatment must be completed is reached;

(c) the person undergoing the course of electroconvulsive treatment who has capacity to give informed consent at the time of his or her withdrawal of consent, withdraws his or her consent to continue

S. 91(3)(c) amended by No. 69/2016 s. 107(2)(a).

with the course of electroconvulsive treatment;

S. 91(3)(d) amended by No. 69/2016 s. 107(2)(b).

(d) in the case of a young person who is not a patient, a person referred to in section 94(2)(b)(i) withdraws his or her consent to continue with the course of electroconvulsive treatment;

S. 91(3)(e) inserted by No. 69/2016 s. 107(2)(c).

(e) in the case of an other applicable person, the person's medical treatment decision maker withdraws consent to continue with the course of electroconvulsive treatment.

92 When may electroconvulsive treatment be performed?

(1) Electroconvulsive treatment may be performed on a patient who is not a young person if—

(a) the patient has personally given informed consent in writing to the performance of a course of electroconvulsive treatment on himself or herself; or

(b) the Tribunal has granted an application for the performance of a course of electroconvulsive treatment made under section 93.

(2) Electroconvulsive treatment may be performed on a young person if the Tribunal has granted an application for the performance of a course of electroconvulsive treatment made under section 94.

S. 92(3) inserted by No. 69/2016 s. 108.

(3) Electroconvulsive treatment may be performed on an other applicable person if the Tribunal has granted an application for the performance of a course of electroconvulsive treatment made under section 94A.

93 Application to Tribunal to perform electroconvulsive treatment on a patient who is not a young person

(1) An authorised psychiatrist may make an application to the Tribunal to perform a course of electroconvulsive treatment on a patient who is not a young person if—

(a) the patient does not have the capacity to give informed consent to the performance of a course of electroconvulsive treatment on himself or herself; and

(b) the authorised psychiatrist is satisfied in the circumstances that there is no less restrictive way for the patient to be treated.

(2) In determining under subsection (1)(b) whether there is no less restrictive way for a patient to be treated, the authorised psychiatrist must, to the extent that is reasonable in the circumstances, have regard to all of the following—

(a) the views and preferences of the patient in relation to electroconvulsive treatment and any beneficial alternative treatments that are reasonably available and the reasons for those views or preferences, including any recovery outcomes the patient would like to achieve;

(b) the views and preferences of the patient expressed in his or her advance statement;

(c) the views of the patient's nominated person;

(d) the views of a guardian of the patient;

(e) the views of a carer of the patient, if authorised psychiatrist is satisfied that the decision to perform a course of electroconvulsive treatment will directly affect the carer and the care relationship;

(f) the likely consequences for the patient if the electroconvulsive treatment is not performed;

(g) any second psychiatric opinion that has been obtained by the patient and given to the psychiatrist.

(3) An authorised psychiatrist may make a further application under subsection (1) during or after the performance of a course of electroconvulsive treatment on a patient who is not a young person.

94 Application to perform electroconvulsive treatment on a young person

(1) An authorised psychiatrist may make an application to the Tribunal to perform a course of electroconvulsive treatment on a young person who is a patient if the young person—

S. 94(1)(a) amended by No. 15/2015 s. 13(1).

(a) has personally given informed consent in writing to the performance of a course of electroconvulsive treatment on himself or herself; or

(b) does not have capacity to give informed consent but the authorised psychiatrist is satisfied in the circumstances that there is no less restrictive way for the young person to be treated.

(2) A psychiatrist may make an application to the Tribunal to perform a course of electroconvulsive treatment on a young person who is not a patient if—

S. 94(2)(a) amended by No. 15/2015 s. 13(1).

(a) the young person has personally given informed consent in writing to the performance of a course of electroconvulsive treatment on himself or herself; or

(b) the young person does not have capacity to give informed consent but—

(i) a person who has the legal authority to consent to treatment for the young person has given informed consent in writing to the performance of a course of electroconvulsive treatment on the young person; and

(ii) the psychiatrist is satisfied in the circumstances that there is no less restrictive way for the young person to be treated.

(3) In determining under subsection (1)(b) or (2)(b)(ii) whether there is no less restrictive way for a young person to be treated, the authorised psychiatrist or psychiatrist (as the case may be) must, to the extent that is reasonable in the circumstances, have regard to all of the following—

(a) the views and preferences of the young person in relation to electroconvulsive treatment and any beneficial alternative treatments that are reasonably available and the reasons for those views and preferences, including any recovery outcomes the young person would like to achieve;

(b) the views and preferences of the young person expressed in any advance statement that the young person may have prepared;

(c) the views of the young person's nominated person;

(d) the views of a carer of the young person, if the authorised psychiatrist or psychiatrist is satisfied that the decision to perform a course of electroconvulsive treatment will directly affect the carer and the care relationship;

S. 94(3)(d) amended by No. 69/2016 s. 109.

(e) the views of a parent of the young person, if the young person is under the age of 16 years;

(f) the views of a person who has the legal authority to consent to treatment for the young person under subsection (2)(b)(i);

S. 94(3)(g) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(g) the Secretary, if the young person is the subject of a family reunification order or a care by Secretary order;

(h) the likely consequences for the young person if the electroconvulsive treatment is not performed;

(i) any psychiatric opinion given by another psychiatrist that has been given to the psychiatrist or authorised psychiatrist making the application.

S. 94(4) inserted by No. 15/2015 s. 13(2).

(4) An authorised psychiatrist may make a further application under subsection (1) during or after the performance of a course of electroconvulsive treatment on a young person who is a patient.

S. 94(5) inserted by No. 15/2015 s. 13(2).

(5) A psychiatrist may make a further application under subsection (2) during or after the performance of a course of electroconvulsive treatment on a young person who is not a patient.

S. 94A inserted by No. 69/2016 s. 110.

94A Application to perform electroconvulsive treatment on an other applicable person

(1) A psychiatrist may apply to the Tribunal to perform a course of electroconvulsive treatment on an other applicable person who does not have capacity to give informed consent to that electroconvulsive treatment if the psychiatrist is satisfied in the circumstances that there is no less restrictive way for the person to be treated and—

(a) the person has an instructional directive giving informed consent to electroconvulsive treatment; or

(b) if the person does not have a relevant instructional directive, the person's medical treatment decision maker gives informed consent in writing to the electroconvulsive treatment.

(2) In determining under subsection (1) whether there is no less restrictive way for an other applicable person to be treated, the psychiatrist must, to the extent that is reasonable in the circumstances, have regard to all of the following—

(a) the views and preferences of the person in relation to electroconvulsive treatment and any beneficial alternative treatments that are reasonably available and the reasons for those views and preferences, including any recovery outcomes the person would like to achieve;

(b) any values directive of the person;

(c) the views of the person's medical treatment decision maker or support person (if any);

(d) the views of a carer of the person, if the psychiatrist is satisfied that the decision to perform a course of electroconvulsive treatment will directly affect the carer and the care relationship;

(e) the likely consequences for the person if the electroconvulsive treatment is not performed;

(f) any psychiatric opinion given by another psychiatrist that has been given to the psychiatrist making the application.

(3) A psychiatrist may make a further application under subsection (1) during or after the performance of a course of electroconvulsive treatment on an other applicable person.

95 Listing of electroconvulsive treatment applications by Tribunal

S. 95(1) amended by No. 69/2016 s. 111(1).

(1) The Tribunal must list and complete the hearing of an application for the performance of a course of electroconvulsive treatment made under section 93, 94 or 94A as soon as practicable and within 5 business days after receiving the application.

S. 95(2) amended by No. 69/2016 s. 111(1).

(2) An authorised psychiatrist or a psychiatrist who makes an application under section 93, 94 or 94A may request an urgent hearing of the application if the authorised psychiatrist or psychiatrist is satisfied that the course of electroconvulsive treatment is necessary as a matter of urgency—

S. 95(2)(a) amended by No. 69/2016 s. 111(2).

(a) to save the life of a person; or

S. 95(2)(b) amended by No. 69/2016 s. 111(2).

(b) to prevent serious damage to the health of a person; or

S. 95(2)(c) amended by No. 69/2016 s. 111(2).

(c) to prevent a person from suffering or continuing to suffer significant pain or distress.

S. 95(3) amended by No. 69/2016 s. 111(1).

(3) The Tribunal must list and complete the hearing of an application made under section 93, 94 or 94A as soon as practicable after receiving the application if a request is made under subsection (2).

96 Powers of Tribunal in respect of electroconvulsive treatment application

(1) In relation to an application made under section 93, the Tribunal must—

(a) grant the application if the Tribunal is satisfied that—

(i) the patient does not have the capacity to give informed consent; and

(ii) there is no less restrictive way for the patient to be treated; or

(b) refuse to grant the application if the Tribunal is not satisfied as to the matters referred to in paragraph (a).

(2) In relation to an application made under section 94, the Tribunal must—

(a) grant the application if the Tribunal is satisfied that—

(i) the young person has given his or her informed consent in writing to the performance of electroconvulsive treatment on himself or herself; or

(ii) the young person is a patient and does not have capacity to give informed consent and there is no less restrictive way for the young person to be treated; or

(iii) the young person is not a patient and does not have capacity to give informed consent and a person who has the legal authority to consent to treatment for the young person has given informed consent in writing to the performance of a course of electroconvulsive treatment on the young person and

there is no less restrictive way for the young person to be treated; or

(b) refuse to grant the application if the Tribunal is not satisfied as to any of the matters referred to in paragraph (a).

S. 96(2A) inserted by No. 69/2016 s. 112(1).

(2A) In relation to an application under section 94A, the Tribunal must—

(a) grant the application if the Tribunal is satisfied that the other applicable person does not have capacity to give informed consent to the performance of the course of electroconvulsive treatment and that there is no less restrictive way for the person to be treated and that either—

(i) the person has an instructional directive giving informed consent to electroconvulsive treatment; or

(ii) the person's medical treatment decision maker has given informed consent in writing to the treatment; or

(b) refuse to grant the application if the Tribunal is not satisfied as to any of the matters referred to in paragraph (a).

S. 96(3) amended by No. 69/2016 s. 112(2)(a).

(3) In determining under subsection (1), (2) or (2A) whether there is no less restrictive way for the person to be treated, the Tribunal must, to the extent that is reasonable in the circumstances, have regard to—

(a) in respect of a patient who is not a young person, the matters specified in section 93(2); and

S. 96(3)(b) amended by No. 69/2016 s. 112(2)(b).

(b) in respect of a young person, the matters specified in section 94(3); and

(c) in respect of an other applicable person, the matters specified in section 94A(2).

S. 96(3)(c) inserted by No. 69/2016 s. 112(2)(c).

(4) The Tribunal must notify the person and the following persons of its decision to grant or refuse to grant an application made under section 93, 94 or 94A—

S. 96(4) amended by No. 69/2016 s. 112(3)(a)(b).

(a) the authorised psychiatrist or psychiatrist who made the application;

(b) a parent, if the young person is under the age of 16 years;

(c) if the young person did not have capacity to give informed consent, a person who gave informed consent under section 96(2)(a)(iii);

(ca) any medical treatment decision maker who gave informed consent under section 96(2A)(a)(ii);

S. 96(4)(ca) inserted by No. 69/2016 s. 112(3)(c).

(cb) any support person of the young person or other applicable person on whom the electroconvulsive treatment was proposed to be performed;

S. 96(4)(cb) inserted by No. 69/2016 s. 112(3)(c).

(d) the nominated person of the patient or young person;

(e) a guardian;

(f) a carer, if the Tribunal is satisfied that performing electroconvulsive treatment on the person will directly affect the carer and the care relationship;

S. 96(4)(f) amended by No. 69/2016 s. 112(3)(d).

(g) the Secretary to the Department of Health and Human Services, if the young person is the subject of a family reunification order or a care by Secretary order.

S. 96(4)(g) amended by Nos 15/2015 s. 35(2), 61/2014 s. 169(2)(3).

S. 97 amended by No. 69/2016 s. 113.

97 Order approving electroconvulsive treatment

If the Tribunal grants an application for the performance of electroconvulsive treatment on a person, the Tribunal must make an order specifying—

(a) the number of electroconvulsive treatments to be performed for the course of electroconvulsive treatment; and

(b) the date by which the course of electroconvulsive treatment must be completed, being a date that is within 6 months after the date on which the Tribunal grants the application for performance of the electroconvulsive treatment.

98 Electroconvulsive treatment must not be performed in certain circumstances

(1) Electroconvulsive treatment must not be performed on a patient who is not a young person if, at any time before or during the course of electroconvulsive treatment—

(a) the patient withdraws his or her consent, in the case of a patient who had consented to the electroconvulsive treatment under section 92(1)(a); or

(b) the patient develops the capacity to give informed consent and subsequently does not consent to the treatment, in the case of a patient in respect of whom an application under section 96(1)(a) was granted.

(2) Electroconvulsive treatment must not be performed on a young person if, at any time before or during the course of electroconvulsive treatment—

(a) the young person withdraws his or her consent; or

(b) the young person develops the capacity to give informed consent and does not consent to the treatment; or

(c) in the case of a young person who is not a patient, the person who gave informed consent under section 96(2)(a)(iii) withdraws consent.

S. 98(3) inserted by No. 69/2016 s. 114.

(3) Electroconvulsive treatment must not be performed on an other applicable person if, at any time before or during the course of electroconvulsive treatment—

(a) the person develops the capacity to give informed consent and does not consent to the electroconvulsive treatment; or

(b) the person who gave informed consent under section 96(2A)(a)(ii) withdraws consent.

S. 99 amended by No. 69/2016 s. 115.

99 Use of electroconvulsive treatment to be reported to chief psychiatrist

An authorised psychiatrist treating a person under this Division who has received or is receiving a course of electroconvulsive treatment at a designated mental health service must provide a written report to the chief psychiatrist containing the matters requested by the chief psychiatrist within the time requested by the chief psychiatrist.

Division 6—Neurosurgery for mental illness

100 Psychiatrist may apply to Tribunal for approval to perform neurosurgery for mental illness

(1) Neurosurgery for mental illness must not be performed on a person unless the Tribunal has approved an application made under this section.

(2) A psychiatrist may apply to the Tribunal for approval to arrange for the performance of neurosurgery for mental illness on a person if the person has personally given informed consent in writing to the performance of neurosurgery on himself or herself.

101 Listing of application to perform neurosurgery for mental illness

The Tribunal must hear and determine an application made under section 100 within 30 business days after receipt of the application.

102 Powers of Tribunal in respect of application for neurosurgery for mental illness

(1) After hearing an application made under section 100, the Tribunal may—

(a) grant the application; or

(b) refuse to grant the application.

(2) The Tribunal must not grant an application under subsection (1) unless it is satisfied that—

(a) the person in respect of whom the application was made has given informed consent in writing to the performance of neurosurgery for mental illness on himself or herself; and

(b) the performance of neurosurgery for mental illness will benefit the person.

(3) In determining whether the performance of neurosurgery for mental illness will benefit the person, the Tribunal must have regard to the following—

(a) whether the neurosurgery for mental illness is likely to remedy the mental illness or alleviate the symptoms and reduce the ill effects of the mental illness;

(b) the likely consequences for the person if neurosurgery for mental illness is not performed;

(c) any beneficial alternative treatments that are reasonably available and the person's views and preferences about those treatments;

(d) the nature and degree of any discomfort, risks and common or expected side effects associated with the proposed neurosurgery for mental illness, including the person's views and preferences about any such discomfort, risks or common or expected side effects.

103 Notice of decision

The Tribunal must give written notice of its decision under section 102 to grant or refuse an application made under section 100 to the following persons—

(a) the psychiatrist who made the application;

(b) the person who is the subject of the application;

(c) the chief psychiatrist.

104 Report to chief psychiatrist

(1) If the Tribunal grants an application to perform neurosurgery for mental illness and the neurosurgery for mental illness is performed, the psychiatrist who made the application, or the psychiatrist treating the person following the neurosurgery for mental illness, must provide the chief psychiatrist with a written report on the results of the neurosurgery for mental illness—

(a) within 3 months after the surgery is performed; and

(b) within 9 to 12 months after the surgery is performed.

(2) After receiving a report under subsection (1), the chief psychiatrist may require the psychiatrist who gave the report to provide further information relating to the neurosurgery for mental illness and the results of that surgery.

Part 6—Restrictive interventions

Division 1—General

105 When may a restrictive intervention be used?

A restrictive intervention may only be used on a person receiving mental health services in a designated mental health service after all reasonable and less restrictive options have been tried or considered and have been found to be unsuitable.

106 Facilities and supplies to be provided to person

S. 106 amended by No. 15/2015 s. 14.

A person who under this Part authorises or approves the use of a restrictive intervention on a person receiving mental health services in a designated mental health service must ensure that the person's needs are met and the person's dignity is protected by the provision of appropriate facilities and supplies.

107 Notification of use of restrictive intervention

An authorised psychiatrist must take reasonable steps to ensure that, as soon as practicable after commencement of the use of a restrictive intervention on a person, the following persons in relation to the person are notified of its use, the nature of the restrictive intervention and the reason for using it—

(a) the nominated person;

(b) a guardian;

(c) a carer, if the authorised psychiatrist is satisfied that the use of the restrictive intervention will affect the carer and the care relationship;

(d) a parent, if the person is under the age of 16 years;

S. 107(e) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(e) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

108 Use of restrictive intervention to be reported to chief psychiatrist

(1) An authorised psychiatrist must give a written report to the chief psychiatrist on the use of any restrictive intervention on a person in a designated mental health service.

(2) A report under subsection (1) must contain the details required by the chief psychiatrist and be given to the chief psychiatrist within the time stipulated by the chief psychiatrist.

109 Release from restrictive intervention

A person who—

(a) may authorise the use of a restrictive intervention on another person receiving mental health services in a designated mental health service; and

(b) is satisfied that the continued use of the restrictive intervention on the other person is no longer necessary—

must immediately take steps to release the other person from the restrictive intervention.

Division 2—Seclusion

110 When may seclusion be used?

A person receiving mental health services in a designated mental health service may be kept in seclusion if seclusion is necessary to prevent imminent and serious harm to the person or to another person.

111 Use of seclusion to be authorised

(1) The use of seclusion of a person in a designated mental health service must be authorised by—

(a) an authorised psychiatrist; or

(b) if an authorised psychiatrist is not immediately available, a registered medical practitioner or the senior registered nurse on duty.

(2) If a registered medical practitioner or the senior registered nurse authorises the use of seclusion of a person under subsection (1)(b), the registered medical practitioner or the senior registered nurse must notify an authorised psychiatrist about the use of seclusion as soon as practicable.

(3) Subject to subsection (4), as soon as practicable after the authorised psychiatrist is notified under subsection (2) about the use of seclusion of a person, the authorised psychiatrist must examine the person and determine if the continued use of seclusion of the person is necessary.

(4) If the authorised psychiatrist is not reasonably available to examine a person under subsection (3), the authorised psychiatrist must ensure that a registered medical practitioner examines the person and determines whether the continued use of seclusion of the person is necessary as soon as practicable after the authorised psychiatrist is notified under subsection (2).

(5) The authorised psychiatrist or registered medical practitioner, as the case may be, may authorise the continued use of seclusion if he or she is satisfied that the continued use of seclusion of the person is necessary.

112 Monitoring of person in seclusion

(1) A person receiving mental health services in a designated mental health service who is kept in seclusion must be monitored in accordance with this section.

S. 112(2) amended by No. 15/2015 s. 15.

(2) A registered nurse or registered medical practitioner must clinically review a person in seclusion as often as is appropriate, having regard to the person's condition, but not less frequently than every 15 minutes.

(3) Subject to subsection (4), an authorised psychiatrist must examine a person kept in seclusion as frequently as the authorised psychiatrist is satisfied is appropriate in the circumstances to do so, but not less frequently than every 4 hours.

(4) If it is not practicable for an authorised psychiatrist to conduct an examination at the frequency that the authorised psychiatrist is satisfied is appropriate, the person must be examined by a registered medical practitioner when so directed by the authorised psychiatrist.

Division 3—Bodily restraint

113 When may a bodily restraint be used?

A bodily restraint may be used on a person receiving mental health services in a designated mental health service if the bodily restraint is necessary—

(a) to prevent imminent and serious harm to the person or to another person; or

(b) to administer treatment or medical treatment to the person.

114 Use of bodily restraint to be authorised

(1) The use of a bodily restraint on a person receiving mental health services in a designated mental health service must be authorised by—

(a) an authorised psychiatrist; or

(b) if an authorised psychiatrist is not immediately available, a registered medical practitioner or the senior registered nurse on duty.

(2) If a registered medical practitioner or the senior registered nurse authorises the use of a bodily restraint on a person under subsection (1)(b), the registered medical practitioner or the senior registered nurse must notify an authorised psychiatrist about the use of the bodily restraint as soon as practicable.

(3) Subject to subsection (4), as soon as practicable after the authorised psychiatrist is notified under subsection (2) about the use of a bodily restraint on a person, the authorised psychiatrist must examine the person and determine if the continued use of the bodily restraint on the person is necessary.

(4) If the authorised psychiatrist is not reasonably available to examine a person under subsection (3), the authorised psychiatrist must ensure that a registered medical practitioner examines the person and determines whether continued use of the bodily restraint on the person is necessary as soon as practicable after the authorised psychiatrist is notified under subsection (2).

(5) The authorised psychiatrist or registered medical practitioner, as the case may be, may authorise the continued use of the bodily restraint if he or she is satisfied that the continued use of the bodily restraint on the person is necessary.

115 Urgent use of bodily restraint without authorisation

(1) A registered nurse may approve the use of a bodily restraint (in the form of a physical restraint only) on a person receiving mental health services in a designated mental health service if—

(a) it is necessary as a matter of urgency to prevent imminent and serious harm to the person or another person; and

(b) an authorised psychiatrist, a registered medical practitioner or the senior registered nurse on duty is not immediately available to authorise the use of bodily restraint on the person.

(2) A registered nurse who has approved the use of a bodily restraint on a person under subsection (1) must seek the authorisation of an authorised psychiatrist, a registered medical practitioner or the senior registered nurse under section 114 as soon as practicable.

(3) A registered nurse who has approved the use of a bodily restraint on a person under subsection (1) must immediately stop the use of that bodily restraint on the person if the registered nurse is satisfied that the continued use of the bodily restraint is no longer necessary.

116 Monitoring of person on whom a bodily restraint is used

(1) If a bodily restraint is used on a person who is receiving mental health services in a designated mental health service, the person must be monitored in accordance with this section.

(2) A person on whom a bodily restraint is used must be under continuous observation by a registered nurse or registered medical practitioner.

S. 116(3) amended by No. 15/2015 s. 16.

(3) A registered nurse or registered medical practitioner must clinically review a person on whom a bodily restraint is used as often as is appropriate, having regard to the person's condition, but not less frequently than every 15 minutes.

(4) Subject to subsection (5), an authorised psychiatrist must examine a person on whom a bodily restraint is used as frequently as the authorised psychiatrist is satisfied is appropriate in the circumstances to do so, but not less frequently than every 4 hours.

(5) If it is not practicable for an authorised psychiatrist to conduct an examination at the frequency that the authorised psychiatrist is satisfied is appropriate, the person must be examined by a registered medical practitioner when so directed by the authorised psychiatrist.

Part 7—Administration

Division 1—The Secretary

117 Role of Secretary

For the purposes of this Act, the role of the Secretary is—

(a) to plan, develop, fund, provide and enable the provision of a comprehensive range of mental health services that are consistent with, and promote the objectives of, this Act and the mental health principles; and

(b) to perform the functions and exercise the powers conferred on the Secretary by this Act or any regulations under this Act; and

(c) to administer this Act, subject to the general direction and control of the Minister.

S. 118 amended by No. 15/2015 s. 17(2) (ILA s. 39B(1)).

118 Functions of the Secretary

(1) Without limiting the generality of section 117, the Secretary has the following functions under this Act—

(a) to develop and implement mental health strategies, policies, guidelines and Codes of Practice;

S. 118(1)(b) amended by No. 52/2017 s. 81(1).

(b) to plan, develop and promote a range of mental health services that are person-centred, comprehensive, integrated, accessible, safe, inclusive, equitable and free from stigma;

(c) to promote continuous improvement in the quality and safety of mental health services;

S. 118(1)(d) substituted by No. 52/2017 s. 81(2).

(d) to collect, compile and analyse data about the provision of mental health services for the purposes of—

(i) funding, managing, planning, monitoring, evaluating and improving mental health services provided by mental health service providers; and

(ii) research into mental illness, mental health and related fields;

(e) to monitor and evaluate the performance, standards and outcomes of mental health service providers and the quality and safety of the mental health services they provide;

S. 118(1)(e) amended by No. 52/2017 s. 81(3).

(f) to promote awareness and understanding among health professionals and within the wider community in relation to mental illness and mental health;

(g) to undertake, fund and facilitate research into mental illness, mental health and related fields;

(h) to develop, support and promote the capacity of the mental health service provider workforce to provide mental health services in accordance with the objectives of this Act and the mental health principles;

(i) to promote coordination between mental health service providers and providers of other health, disability and community support services;

(j) to advise the Minister about mental health services and the operation of this Act and the regulations;

S. 118(1)(j) amended by No. 15/2015 s. 17(1)(a).

(k) to prepare and submit to the Minister an annual report in accordance with subsection (2).

S. 118(1)(k) inserted by No. 15/2015 s. 17(1)(b).

S. 118(2) inserted by No. 15/2015 s. 17(2).

(2) As soon as practicable after the end of each financial year but no later than the following 31 October, the Secretary must submit to the Minister an annual report containing—

(a) a review of the services provided by mental health service providers during the financial year; and

(b) any other information requested in writing by the Minister.

S. 118(3) inserted by No. 15/2015 s. 17(2).

(3) The Minister must cause the annual report of the Secretary to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.

Division 2—The chief psychiatrist

119 The chief psychiatrist

(1) The Secretary may, under Part 3 of the **Public Administration Act 2004**, employ a psychiatrist to be the chief psychiatrist if the Secretary is satisfied that the psychiatrist has the appropriate knowledge and experience to perform the functions and exercise the powers conferred on the chief psychiatrist by or under this Act.

(2) Subject to the general direction and control of the Secretary, the chief psychiatrist has the duties, functions and powers that are conferred on the chief psychiatrist by or under this Act or any other Act or by or under any regulations made under this Act or any other Act.

120 The role of the chief psychiatrist

For the purposes of this Act, the role of the chief psychiatrist is—

(a) to provide clinical leadership and expert clinical advice to mental health service providers in Victoria; and

(b) to promote continuous improvement in the quality and safety of mental health services provided by mental health service providers; and

(c) to promote the rights of persons receiving mental health services from mental health service providers; and

(d) to provide advice to the Minister and the Secretary about the provision of mental health services by mental health service providers.

121 Functions of the chief psychiatrist

(1) The chief psychiatrist has the following functions—

(a) to develop standards, guidelines and practice directions for the provision of mental health services and publish or otherwise make available those standards, guidelines and practice directions;

(b) to assist mental health service providers to comply with the standards, guidelines and practice directions developed by the chief psychiatrist;

(c) to develop and provide information, training and education to promote improved quality and safety in the provision of mental health services;

(d) to monitor the provision of mental health services in order to improve the quality and safety of mental health services;

(e) to assist mental health service providers to comply with this Act, regulations made under this Act and any Codes of Practice;

(f) to conduct clinical practice audits and clinical reviews of mental health service providers;

(g) to analyse data, undertake research and publish information about the provision of mental health services and treatment;

(h) to publish an annual report;

(i) to conduct investigations in relation to the provision of mental health services by mental health service providers;

(j) to give directions to mental health service providers in respect of the provision of mental health services;

(k) to promote cooperation and coordination between mental health service providers and providers of other health, disability and community support services.

(2) The chief psychiatrist has all the powers necessary or convenient to perform his or her functions under this Act or the regulations made under this Act.

122 Investigations by chief psychiatrist

(1) The chief psychiatrist, on his or her own initiative or at the request of the Secretary, may conduct an investigation into the provision of mental health services by a mental health service provider if the chief psychiatrist or the Secretary (as the case may be) is of the opinion that the health, safety or

wellbeing of a person is or was endangered as a result of those services.

(2) In conducting an investigation, the chief psychiatrist may—

(a) assess the quality and safety of mental health services provided by the mental health service provider; and

(b) determine whether the mental health services are being provided in accordance with—

(i) the standards, guidelines and practice directions issued by the chief psychiatrist; and

(ii) this Act and the regulations and any Codes of Practice made under this Act.

(3) An investigation conducted under this section may be in relation to—

(a) any aspect of the mental health services provided by the mental health service provider, including any practice, procedure, restrictive intervention or treatment; or

(b) the mental health services that are provided to a specified person.

(4) The chief psychiatrist must give written notice of the investigation to the mental health service provider within a reasonable time before commencing the investigation.

(5) Despite subsection (4), the chief psychiatrist may, if he or she is satisfied that it is necessary in the circumstances, dispense with giving notice of the investigation to the mental health service provider.

(6) Subject to this section, the process for conducting an investigation into a mental health service provider is at the discretion of the chief psychiatrist.

123 Powers of entry

(1) The chief psychiatrist, or an authorised officer at the direction of the chief psychiatrist, may enter the premises of a mental health service provider at any time for the purpose of—

(a) conducting investigations, clinical reviews or clinical practice audits; or

(b) performing any other function of the chief psychiatrist under this Act or the regulations.

(2) If the chief psychiatrist, or an authorised officer at the direction of the chief psychiatrist, enters the premises of a mental health service provider under the powers conferred by this Act, he or she may do any one or more of the following—

(a) inspect, examine or make enquiries at the premises;

(b) examine or inspect any thing (including a document or part of a document) at the premises;

(c) bring any equipment or materials to the premises that may be required;

(d) take any photographs or make any audio or visual recordings at the premises, including of a person at the premises, provided the person has consented to having his or her photograph taken or the recording of him or her made;

(e) use any equipment at the premises;

(f) make copies of, or take extracts from, any document kept at the premises;

(g) speak to any person receiving mental health services at the premises, if the person agrees;

(h) do any other thing that is reasonably necessary for the purpose of performing or exercising the functions or powers of the chief psychiatrist under this Act or the regulations.

124 Power to give written direction to persons to produce documents or answer questions

(1) The chief psychiatrist, or an authorised officer at the direction of the chief psychiatrist, may give a member of staff of a mental health service provider a written direction at any time for the purpose of—

(a) conducting investigations, clinical reviews or clinical practice audits; or

(b) performing any other function of the chief psychiatrist under this Act or the regulations.

(2) A written direction referred to in subsection (1) may direct a member of staff of the mental health service provider—

(a) to produce a document or part of a document that is in the possession or control of the member of staff; or

(b) to answer any questions asked by the chief psychiatrist or authorised officer.

125 Member of staff of mental health service provider to give any reasonable assistance

A member of staff of a mental health service provider must provide the chief psychiatrist, or an authorised officer acting under the direction of the chief psychiatrist, with any reasonable assistance that the chief psychiatrist or authorised officer requires to perform any duties or functions or exercise any powers under this Act or the regulations.

126 Report and recommendations following investigation by chief psychiatrist

(1) The chief psychiatrist must prepare a report as soon as practicable after completing an investigation under section 122 that—

(a) specifies the findings of the chief psychiatrist based on the investigation; and

(b) may include recommendations for, or directions under section 129(1) to, the mental health service provider that was investigated for the purpose of—

(i) improving the quality or safety of the mental health services provided to a specified person or to persons generally; or

(ii) assisting the mental health service provider to comply with—

(A) the standards, guidelines and practice directions issued by the chief psychiatrist; and

(B) this Act and the regulations and Codes of Practice made under this Act.

(2) The chief psychiatrist must, as soon as practicable after preparing the report, give a copy of it to the mental health service provider that is the subject of the report.

(3) After receiving under subsection (2) a report that contains directions under section 129(1) or recommendations, the mental health service provider must—

(a) prepare a written response to those directions or recommendations that specifies the actions that the mental health service

provider has taken, is taking or will take to implement them; and

(b) give the chief psychiatrist the written response within 30 business days after receiving the report under subsection (2).

127 Report and response to be given to the Secretary

The chief psychiatrist must give the Secretary a copy of—

(a) any report prepared by the chief psychiatrist under section 126(1); and

(b) any response prepared by the mental health service provider under section 126(3).

128 Publication and response

(1) If the Secretary is of the opinion that it is in the public interest to do so, and subject to subsection (2), the Secretary may publish—

(a) a copy of a report prepared under section 126(1); and

(b) any response prepared under section 126(3).

(2) The Secretary must not publish a report or any response under subsection (1) if the report or response contains any information that identifies a person, unless the person consents in writing to the publication.

129 Chief psychiatrist may give written directions to mental health service providers

(1) The chief psychiatrist may, after the completion of an investigation under section 122, give a written direction requiring a mental health service provider—

(a) to improve the quality or safety of the mental health services provided to a specified person or to persons generally; or

(b) to ensure that the provision of mental health services by the mental health service provider complies with—

(i) the standards, guidelines and practice directions issued by the chief psychiatrist; and

(ii) this Act and the regulations and Codes of Practice made under this Act.

(2) If the chief psychiatrist makes a direction under this section in respect of a specified person, the chief psychiatrist must ensure that reasonable steps are taken to notify the following—

(a) the specified person;

(b) the specified person's nominated person;

(c) a guardian of the specified person;

(d) a carer of the specified person, if the chief psychiatrist is satisfied that the direction will directly affect the carer and the care relationship;

(e) a parent of the specified person, if the specified person is under the age of 16 years;

S. 129(2)(f) amended by No. 61/2014 s. 169(2)(3).

(f) the Secretary, if the specified person is the subject of a family reunification order or a care by Secretary order.

130 Chief psychiatrist may conduct clinical reviews

(1) The chief psychiatrist may conduct a clinical review in respect of one or more specified mental health service providers to identify processes and practices that need to be changed to improve the quality and safety of the mental health services being provided.

(2) A clinical review may be conducted in respect of any aspect of the mental health services provided by the specified mental health service provider.

(3) The process for conducting a clinical review is at the discretion of the chief psychiatrist.

131 Chief psychiatrist to give notice of intention to conduct clinical review

(1) The chief psychiatrist must give a written notice to the mental health service provider in respect of which a clinical review will be conducted.

(2) A notice under subsection (1) must—

(a) be given at least 20 business days before the clinical review is to commence; and

(b) specify the scope and objectives of the clinical review; and

(c) specify the names of the persons who will carry out the clinical review; and

(d) specify the date of commencement for the clinical review and the expected length of the clinical review.

132 Clinical review reports and recommendations

(1) After completing a clinical review in respect of a mental health service provider, the chief psychiatrist must prepare a written report of his or her findings.

(2) A report prepared under this section may include recommendations that the chief psychiatrist considers appropriate to improve the quality and safety of mental health services.

(3) The chief psychiatrist must provide a copy of a report prepared under this section to the mental health service provider that is the subject of the report as soon as practicable after the clinical review is completed.

(4) If a report prepared under this section contains recommendations, the mental health service provider that is the subject of the report must

provide a written response not later than 30 business days after receipt of the report in accordance with subsection (5).

(5) A written response to the chief psychiatrist by the mental health service provider must specify the action that has been, is, or will be, taken in relation to the recommendations.

(6) The chief psychiatrist may continue to monitor a mental health service provider after receiving a written response to the report prepared under this section.

(7) For the purposes of subsection (6), the chief psychiatrist may—

(a) request further information from the mental health service provider; and

(b) conduct another clinical review of the mental health service provider.

133 Standards, guidelines or practice directions to address systemic issues identified in clinical review

The chief psychiatrist may prepare and issue standards, guidelines or practice directions to address any systemic issues identified during a clinical review and to improve the quality and safety of mental health services provided by mental health service providers.

134 Chief psychiatrist may conduct clinical practice audit

(1) The chief psychiatrist may conduct a clinical practice audit of a specified practice or matter related to the mental health services provided by one or more mental health service providers to identify systemic issues or trends that need to be addressed to improve the quality and safety of the mental health services being provided.

(2) The chief psychiatrist may conduct a clinical practice audit under this section—

(a) on his or her own initiative; or

(b) at the request of the Secretary.

135 Chief psychiatrist must make record

Before commencing a clinical practice audit, the chief psychiatrist must make a record of the scope, objectives and duration of the clinical practice audit.

136 Reports

(1) The chief psychiatrist may prepare an interim report in the course of a clinical practice audit if the chief psychiatrist is satisfied that it is appropriate to do so.

(2) The chief psychiatrist must prepare a report as soon as practicable after completing a clinical practice audit specifying the findings of the chief psychiatrist based on the clinical practice audit.

137 Reports to be given to the Secretary

(1) Subject to subsection (2), the chief psychiatrist must give the Secretary a copy of any report prepared under section 136 to the Secretary.

(2) The copy of a report given to the Secretary must not contain any information that may identify a mental health service provider or any other person.

138 Publication of report

If the Secretary is of the opinion that it is in the public interest to do so, the Secretary may publish a copy of a report received under section 137.

139 Standards, guidelines or practice directions to address systemic issues identified in clinical practice audit

The chief psychiatrist may prepare and issue standards, guidelines or practice directions to address any systemic issues identified during a clinical practice audit and to improve the quality and safety of mental health services provided by mental health service providers.

140 Confidentiality obligations applying in respect of information from clinical practice audit or clinical review

(1) This section applies to the following persons—

(a) a person who is, or has been, the chief psychiatrist;

(b) a person who is, or has been, employed or engaged under section 142 or 143.

(2) Subject to subsection (3), a person to whom this section applies must not—

(a) directly or indirectly make a record of, or divulge or communicate to any person, any information gained by or conveyed to the person by reason of the conducting of a clinical practice audit or clinical review that may identify a mental health service provider or any other person; or

(b) make use of the information for any purpose—

other than in the performance of the functions under this Act relating to a clinical practice audit or clinical review.

Penalty: 10 penalty units.

(3) Nothing in this section prevents the chief psychiatrist from using or disclosing information gained or conveyed by reason of conducting a clinical practice audit or clinical review if the chief psychiatrist is satisfied that the use or disclosure is necessary to prevent serious harm to a person's health or safety.

S. 140(3) amended by Nos 15/2015 s. 18(1), 34/2019 s. 69.

(4) Subsection (2) has effect despite anything to the contrary in section 40 of the **Audit Act 1994**.

S. 140(4) amended by No. 12/2019 s. 22.

(5) A person to whom this section applies must not be required—

(a) to produce before any court or tribunal or any board, agency or other person any document that has come into the person's possession or under the person's control in the performance of the functions under this Act relating to a clinical practice audit or clinical review; or

(b) to divulge or communicate to any court or tribunal or any board, agency or other person any matter or thing that has come under the person's notice in the performance of the functions under this Act relating to a clinical practice audit or clinical review.

(6) The **Freedom of Information Act 1982** does not apply to a document or any information referred to in subsection (5).

(7) Part 5 and HPP 6 of the **Health Records Act 2001** do not apply to a document or any information referred to in subsection (5).

(8) Nothing in this section prevents a person to whom this section applies from including information in any document that does not contain any particulars which would be likely to lead to the identification of a person from whom or in

S. 140(8) amended by No. 15/2015 s. 18(2).

relation to whom the information was obtained or the identification of a mental health service provider from which or in relation to which the information was obtained.

141 Confidentiality of documents

(1) A person must not, and cannot, be required to produce before any court or tribunal or any board, agency or other person any document in the person's possession or under the person's control that is the original or a copy of a document that was—

(a) created for the sole purpose of providing information in the course of conducting a clinical practice audit or clinical review; and

(b) provided in the course of conducting a clinical practice audit or clinical review by or on behalf of that person.

(2) Except in the case of information or reports published by the Secretary, the following is not admissible in any action or proceedings before any court or tribunal or any board, agency or other person—

(a) evidence of any other information or reports obtained by or in the possession of the chief psychiatrist in the course of conducting a clinical practice audit or clinical review;

(b) evidence of or about a document to which subsection (1) applies.

(3) The **Freedom of Information Act 1982** does not apply to a document or any information referred to in subsection (1) or (2).

(4) Part 5 and HPP 6 of the **Health Records Act 2001** do not apply to a document or any information referred to in subsection (1) or (2).

142 Provision of staff

There may be employed under Part 3 of the **Public Administration Act 2004** any employees with the appropriate expertise and experience that are necessary to assist the chief psychiatrist in the performance of his or her powers, duties and functions under this Act.

143 Contractors

The Secretary may enter into agreements or arrangements with a person or body for the purpose of obtaining appropriate expertise to assist the chief psychiatrist in the performance of his or her powers, duties or functions under this Act.

144 Power of chief psychiatrist to delegate

The chief psychiatrist may by instrument delegate any power, duty or function of the chief psychiatrist, other than this power of delegation, to a person who is a psychiatrist and who—

(a) is referred to in section 142; or

(b) has entered into an agreement or arrangement under section 143 with the Secretary.

145 Reports submitted by the chief psychiatrist

(1) As soon as practicable after the end of each financial year but no later than the following 31 October, the chief psychiatrist must submit to the Secretary an annual report containing—

(a) information on the operations and activities undertaken by the chief psychiatrist during the financial year; and

(b) an analysis of the data and information reported to the chief psychiatrist during the financial year; and

(c) a summary of any amendments made during the financial year to the standards, guidelines or practice directions issued by the chief psychiatrist that may impact on the performance of electroconvulsive treatment on young persons; and

S. 145(1)(d) amended by No. 21/2015 s. 3(Sch. 1 item 34.1).

(d) the number of young persons (irrespective of whether the young persons were patients) who received one or more courses of electroconvulsive treatment at a designated mental health service during the financial year.

S. 145(2) amended by No. 15/2015 s. 35(3).

(2) As soon as practicable after receiving an annual report, the Secretary must publish the annual report on the Department of Health and Human Services' Internet website.

(3) The chief psychiatrist must submit a written report to the Minister before 1 November 2019 in relation to the period starting on 1 July 2014 and ending on 30 June 2019 that—

(a) states the number of young persons (irrespective of whether the young persons were patients) who received one or more courses of electroconvulsive treatment at a designated mental health service; and

(b) provides details of the clinical outcomes for those young persons resulting from receiving one or more courses of electroconvulsive treatment.

(4) The report referred to in subsection (3) must not include any information that may identify a person.

(5) Sections 140 and 141 apply to any information or document gained by, provided to, or created by, the chief psychiatrist in the course of preparing

the report referred to in subsection (3) as if that preparation were a clinical practice audit.

(6) Within 14 sitting days after receiving the report referred to in subsection (3), the Minister must cause a copy of that report to be tabled in each House of the Parliament.

S. 145(6) amended by No. 21/2015 s. 3(Sch. 1 item 34.2).

(7) In this section—

young person means a person under the age of 18 years.

Division 3—Authorised officers

146 Chief psychiatrist may appoint authorised officers

(1) The chief psychiatrist may by instrument appoint the following to be an authorised officer for the purposes of this Part—

(a) a person employed under Part 3 of the **Public Administration Act 2004**;

(b) a person with whom the Secretary has entered into an agreement under section 143.

(2) The chief psychiatrist must not appoint a person to be an authorised officer under this section unless the chief psychiatrist is satisfied that the person has the appropriate knowledge and experience to perform the duties and functions of an authorised officer.

(3) The chief psychiatrist may give a direction to an authorised officer in relation to the performance of the authorised officer's functions or duties or the exercise of the authorised officer's powers under this Act or the regulations.

147 Identity cards

(1) The chief psychiatrist must issue an identity card to each authorised officer appointed by the chief psychiatrist.

(2) An identity card issued to an authorised officer under this section must—

(a) contain a photograph of the authorised officer; and

(b) contain the signature of the authorised officer; and

(c) be signed by the chief psychiatrist.

148 Production of identity card

(1) Subject to subsection (3), an authorised officer must produce his or her identity card for inspection before exercising a power under this Act or the regulations.

(2) Subject to subsection (3), an authorised officer must produce his or her identity card for inspection when asked to do so by the occupier of any premises during the exercise of a power under this Act or the regulations.

(3) However, if it is impracticable for an authorised officer to produce his or her identity card for inspection when exercising a power under this Act or the regulations, the authorised officer is not required to do so.

Division 4—Designated mental health services

149 Emergency declaration of designated mental health services

The Secretary, by notice published in the Government Gazette, may declare any public hospital or public health service (within the meaning of the **Health Services Act 1988**) to be a designated mental health service—

(a) for a period not exceeding 28 days if the Secretary is satisfied that an emergency exists; and

(b) for a further period or periods if the Secretary is satisfied that the emergency continues to exist.

150 Appointment of authorised psychiatrist

(1) The governing body of a designated mental health service must appoint a psychiatrist as an authorised psychiatrist for the designated mental health service.

(2) The governing body of a designated mental health service may appoint as many authorised psychiatrists as the designated mental health service requires.

(3) An authorised psychiatrist appointed under this section has the functions, powers and duties conferred on an authorised psychiatrist by or under this Act or any other Act.

(4) The governing body of a designated mental health service must notify the chief psychiatrist and the Tribunal of an appointment made under this section within 5 business days after the appointment is made.

151 Authorised psychiatrist may delegate powers and functions

(1) An authorised psychiatrist may, by written instrument, delegate to any of the following persons any power, duty or function of the authorised psychiatrist, other than this power of delegation—

(a) a psychiatrist;

(b) a person to whom limited registration has been granted under section 66 of the Health Practitioner Regulation National Law to enable the person to undertake a period of postgraduate training or supervised practice in psychiatry or to undertake assessment or

S. 151(1)(b) amended by No. 15/2015 s. 19(a).

sit an examination approved by the Medical Board of Australia in relation to psychiatry;

S. 151(1)(c) amended by No. 15/2015 s. 19(b).

(c) a person to whom limited registration has been granted to enable the person to practise in psychiatry in an area of need under section 67 of the Health Practitioner Regulation National Law.

(2) An authorised psychiatrist may, by written instrument, delegate to a registered medical practitioner the following powers, duties and functions of an authorised psychiatrist relating to Assessment Orders—

(a) the power to examine a person and extend the duration of an Assessment Order;

(b) the power to assess a person subject to an Assessment Order and to make a Temporary Treatment Order in accordance with Division 3 of Part 4;

(c) the power to revoke an Assessment Order in accordance with section 37(1).

(3) A delegation under subsection (2) may only be made for a period of not more than 12 months, but may be renewed.

(4) The exercise or performance of a power, duty or function delegated under subsection (2) must be reviewed by the authorised psychiatrist who made the delegation on a regular basis.

Part 8—Mental Health Tribunal

Division 1—Establishment of the Mental Health Tribunal

152 Establishment of the Mental Health Tribunal

(1) The Mental Health Tribunal is established.

(2) The Tribunal has an official seal that must—

(a) be kept in such custody as the Tribunal directs; and

(b) only be used as authorised by the Tribunal.

153 Functions of the Tribunal

The functions of the Tribunal are—

(a) to hear and determine the following—

(i) a matter in relation to whether a Treatment Order should be made;

(ii) an application to revoke a Temporary Treatment Order or Treatment Order;

(iii) a matter in relation to an application involving the transfer of the treatment of a compulsory patient to another designated mental health service;

(iv) an application to perform electroconvulsive treatment on a patient who does not have capacity to give informed consent;

(v) an application to perform electroconvulsive treatment on a person who is under the age of 18 years;

(vi) an application to perform neurosurgery for mental illness;

(vii) an application by a person subject to a Court Secure Treatment Order to determine whether the criteria specified in section 94B(1)(c) of the **Sentencing Act 1991** apply;

(viii) an application by a security patient subject to a Secure Treatment Order to have the Order revoked;

(ix) an application by a security patient in relation to a grant of leave of absence;

(x) an application by a security patient for a review of a direction to be taken to another designated mental health service;

(xi) an application for an interstate transfer order or an interstate transfer of treatment order for a compulsory patient; and

(b) to perform any other function which is conferred on the Tribunal under this Act, the regulations or the rules.

154 General powers of the Tribunal

The Tribunal has all the powers necessary or convenient to enable it to perform its functions under this Act.

155 Protection of members, persons and witnesses

(1) A member of the Tribunal has in the performance of his or her duties as a member the same protection and immunity as a Judge of the Supreme Court.

(2) An Australian legal practitioner or other person appearing before the Tribunal on behalf of another person has the same protection and immunity as an Australian legal practitioner has in appearing for a party on proceedings in the Supreme Court.

(3) Subject to this Act, a person summoned to attend or appearing before the Tribunal as a witness has the same protection and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

Division 2—Membership of the Tribunal

156 Membership

The members of the Tribunal appointed in accordance with this Act are—

(a) the President; and

(b) the Deputy President; and

(c) the senior members; and

(d) the ordinary members.

Note

Senior members and ordinary members consist of legal, psychiatrist, registered medical practitioner and community members. See section 159(1).

157 President

(1) The Governor in Council may, on the recommendation of the Minister, appoint a person to be President of the Tribunal if the person is eligible for appointment as a legal member of the Tribunal.

(2) The President holds office on a full-time basis for the term, not exceeding 5 years, specified in the instrument of appointment.

(3) The President is eligible for reappointment.

(4) If, immediately before his or her appointment, the President was an officer within the meaning of the **State Superannuation Act 1988**, then while he or she is President he or she continues, subject to that

Act, to be an officer within the meaning of that Act.

(5) The President may engage in the practice of any profession or in any paid employment (whether within or outside Victoria) outside the duties of his or her office if—

(a) the Minister gives his or her consent; and

(b) the President complies with all the conditions attached to that consent.

158 Deputy President

(1) The Governor in Council may, on the recommendation of the Minister, appoint a person to be Deputy President of the Tribunal if the person is eligible for appointment as a legal member of the Tribunal.

(2) The Deputy President holds office—

(a) for the term, not exceeding 5 years, specified in the instrument of appointment; and

(b) on a full-time or part-time basis.

(3) The Deputy President is eligible for reappointment.

(4) If, immediately before his or her appointment, the Deputy President was an officer within the meaning of the **State Superannuation Act 1988**, then, while he or she is Deputy President, he or she continues, subject to that Act, to be an officer within the meaning of that Act.

(5) The Deputy President may engage in the practice of any profession or in any paid employment (whether within or outside Victoria) outside the duties of his or her office if—

(a) the Minister gives his or her consent; and

(b) the Deputy President complies with all the conditions attached to that consent.

159 Senior members and ordinary members

(1) The senior members and ordinary members of the Tribunal are—

(a) the legal members; and

(b) the psychiatrist members; and

(c) the registered medical practitioner members; and

(d) the community members.

(2) Senior members and ordinary members are appointed by the Governor in Council on the recommendation of the Minister.

(3) A senior member holds office—

(a) on a full-time or a part-time basis; and

(b) for the term, not exceeding 5 years, specified in the instrument of appointment.

(4) An ordinary member holds office—

(a) on a full-time, part-time or sessional basis; and

(b) for the term, not exceeding 5 years, specified in the instrument of appointment.

(5) As many senior members and ordinary members as are required for the proper functioning of the Tribunal are to be appointed.

(6) Senior members and ordinary members are eligible for reappointment.

(7) A full-time or part-time member (other than the President or Deputy President) may engage in the practice of any profession or in any paid employment (whether within or outside Victoria) outside the duties of his or her office if—

(a) the President gives his or her consent; and

(b) the full-time or part-time member complies with all the conditions attached to that consent.

160 Legal members

A person is eligible for appointment as a legal member if the person is and has been, for not less than 5 years, an Australian lawyer.

161 Psychiatrist members

A person is eligible for appointment as a psychiatrist member if the person is a psychiatrist.

162 Registered medical practitioner members

A person is eligible for appointment as a registered medical practitioner member if the person—

(a) is a registered medical practitioner; and

(b) has knowledge of, and experience in relation to, the treatment of mental illness.

163 Community members

A person is eligible for appointment as a community member if the person has—

(a) a special interest or experience in mental illness; or

(b) the knowledge and experience relevant to performing the role of a community member of the Tribunal.

164 Appointments to act as President or Deputy President

(1) The Deputy President of the Tribunal may act as President if the President is unable to perform his or her duties or functions.

(2) The President may appoint a senior member of the Tribunal to act as Deputy President if the Deputy President is unable to perform his or her duties or functions.

(3) For the purposes of this section, the person who acts as President or Deputy President—

(a) has all the powers and must perform all the duties of the President or Deputy President, as the case may be; and

(b) is entitled to be paid the remuneration and allowances for the time being payable to the President or Deputy President, as the case may be.

165 Remuneration and allowances

(1) A member (including the President and Deputy President) is entitled to receive the prescribed remuneration and prescribed allowances.

(2) The prescribed remuneration and prescribed allowances may differ for different classes of member.

166 Public Administration Act 2004 does not apply to members

The **Public Administration Act 2004** does not apply to a member (including the President and Deputy President) in respect of the office of member.

167 Resignation

A member (including the President and Deputy President) may resign his or her office as a member in writing signed by that person and delivered to the Governor in Council.

168 Suspension

(1) The Minister, on the recommendation of the President, may suspend a member, including the Deputy President, from office if the Minister is satisfied that there may be grounds for removal of the member from office under section 170(2).

(2) The Governor in Council, on the recommendation of the Minister, may suspend the President from office if the Minister is satisfied that there may be grounds for removal of the President from office under section 170(2).

(3) If the President is suspended from office under subsection (2), the Minister must cause to be tabled in each House of the Parliament within 7 sitting days of that House after the suspension a statement of the grounds of the suspension.

(4) A person who is suspended from office under this section remains entitled to the prescribed remuneration and prescribed allowances during the period of suspension.

169 Investigation

(1) The Minister may appoint a person who is independent of the Tribunal to undertake an investigation into the conduct of a member (including the President or Deputy President) who has been suspended under section 168 if the Minister decides that an investigation is required in the circumstances.

(2) If the Minister decides that an investigation is required under subsection (1), the investigation must be conducted as soon as practicable after the member's suspension.

(3) A person appointed under subsection (1) to conduct an investigation must—

(a) investigate the conduct of the suspended member; and

(b) report to the Minister on the findings of the investigation and provide recommendations as appropriate; and

(c) give a copy of the report to the President; and

(d) give a copy of the report to the person who is the subject of the report.

(4) The report of a person appointed under subclause (1) may include a recommendation that the person investigated be removed from office.

170 Vacation and removal from office

(1) The office of a member (including the President and Deputy President) becomes vacant if—

(a) the member dies; or

(b) the member completes a term of office and is not reappointed; or

(c) the member is removed from office or resigns.

(2) The Governor in Council, on the recommendation of the Minister, may remove a member (including the President and Deputy President) from office if—

(a) the member becomes an insolvent under administration; or

(b) the member ceases to be eligible for appointment; or

(c) the member is convicted of an offence, the commission of which makes the person unsuitable to be a member in the opinion of the Minister; or

(d) the member fails to disclose a conflict of interest; or

(e) in the case of the President or Deputy President, he or she engages in any paid employment outside the duties of office without the consent of the Minister or not in accordance with the Minister's consent; or

(f) in the case of a full-time or part-time member other than the President or Deputy President, the member engages in any paid employment outside the duties of the office without the consent of the President or not in accordance with the President's consent; or

(g) the member is unable to perform his or her duties under this Act; or

(h) following an investigation under section 169, the member has been found to have neglected his or her duties under this Act or to have engaged in misconduct.

Division 3—Administration

171 Employment of staff

There are to be employed under the **Public Administration Act 2004** to assist in the administration of the Tribunal—

(a) an executive officer; and

(b) a principal registrar; and

(c) as many registrars and other staff as are necessary.

172 Functions of principal registrar

(1) The principal registrar has the functions conferred on him or her by or under this Act or the rules.

(2) In performing his or her functions under this Act or the rules, the principal registrar is subject to the direction of the President.

173 Functions of registrars

(1) A registrar may, subject to this Act and the rules, exercise any of the powers and perform any of the functions of the principal registrar.

(2) In performing his or her functions under this Act or the rules, a registrar is subject to the direction of the principal registrar.

174 Delegation

(1) The President may, by instrument, delegate to any legal member any of his or her functions under this Act or the rules, other than this power of delegation.

(2) The President may, by instrument, delegate to the principal registrar any of his or her functions under this Act or the rules other than—

(a) this power of delegation; or

(b) the functions and powers of the President in relation to hearing and determining matters or applications referred to in section 153.

(3) The Deputy President may, by instrument, delegate to any legal member any of his or her functions under this Act or the rules, other than this power of delegation.

(4) The Deputy President may, by instrument, delegate to the principal registrar any of his or her functions under this Act or the rules other than—

(a) this power of delegation; or

(b) the functions and powers of the Deputy President in relation to hearing and determining matters or applications referred to in section 153.

175 Secrecy

A person who is, or has been, a member (including as President or Deputy President) of the Tribunal or an executive officer, principal registrar, registrar or other member of staff of the Tribunal must not, directly or indirectly, make a record of, disclose or communicate to any person, any information relating to the affairs of a natural person acquired in the performance of functions or duties or the exercise of powers under this Act which may identify the person, unless—

(a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or

(b) it is necessary to do so for the purposes of criminal proceedings or to initiate any proceedings under this Act; or

(c) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 60 penalty units.

176 Register of proceedings

(1) The Tribunal must cause to be kept a register of proceedings containing details as required by the rules.

(2) Subject to this section, the Tribunal must ensure that the register is available for inspection at any time that the registry is open for business.

(3) A party to a proceeding of the Tribunal may, without charge, inspect that part of the register that relates to the proceeding in which the party is or was involved and obtain an extract of that part of the register.

(4) A person who is not a party to a proceeding of the Tribunal may, for a prescribed fee, inspect a part of the register or obtain an extract of the register if—

(a) the President determines that the person has a proper purpose for inspecting or obtaining that part of the register; and

(b) subject to subsection (5), any aspect of the extract to be inspected or provided that may identify the person who is the subject of the extract is removed.

(5) For the purposes of subsection (4)(b), an extract that identifies the person who is the subject of the extract may be inspected or provided if the President is satisfied that—

(a) the person has given written consent to the inspection or provision of the extract; or

(b) the proper purpose for inspecting the register involves—

(i) ethics approved research; or

(ii) the management and review of the business of the Tribunal.

177 Annual report of the Tribunal

As soon as practicable after the end of the financial year but not later than the following 31 October, the Tribunal must submit to the Minister an annual report containing—

(a) a review of the operation of the Tribunal during the 12 months ending on the preceding 30 June; and

(b) any other prescribed matters.

(2) The Minister must cause the annual report of the Tribunal to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.

Division 4—Tribunal divisions

178 Divisions of the Tribunal

(1) The following divisions of the Tribunal are established—

(a) the general division;

(b) the special division.

(2) The general division of the Tribunal must hear and determine all matters within the jurisdiction of the Tribunal except those relating to the performance of electroconvulsive treatment or neurosurgery for mental illness.

(3) The special division of the Tribunal must hear and determine applications for the performance of electroconvulsive treatment or neurosurgery for mental illness.

179 Constitution of the Tribunal

(1) The President must, having regard to subsections (2) and (3), select 3 members of the Tribunal who, for the purposes of a proceeding, will constitute the Tribunal.

(2) For the purposes of a proceeding in the general division of the Tribunal, the Tribunal is constituted by—

(a) a legal member; and

(b) a psychiatrist member or a registered medical practitioner member; and

(c) a community member.

(3) For the purposes of a proceeding in the special division of the Tribunal, the Tribunal is constituted by—

(a) a legal member; and

(b) a psychiatrist member; and

(c) a community member.

(4) For the purposes of this section, the President and Deputy President are taken to be legal members.

180 Presiding member

The presiding member in a proceeding of the Tribunal is the legal member.

Division 5—Procedure of the Tribunal

181 General procedure

(1) The Tribunal—

(a) is not bound by the rules of evidence; and

(b) is bound by the rules of procedural fairness; and

(c) may inform itself on any matter as it sees fit; and

(d) must conduct each proceeding as expeditiously and with as little formality and technicality as the requirements of this Act, the regulations and rules and a proper consideration of the matters before it permit.

(2) Subject to this Act and the regulations and rules, the Tribunal may regulate its own procedure.

182 Who are the parties to a proceeding?

The parties to a proceeding of the Tribunal are—

(a) the person who is the subject of the proceeding; and

(b) the psychiatrist treating the person who is the subject of the proceeding; and

(c) any person whose application to be a party to the proceeding has been approved by the Tribunal; and

(d) any other person or body joined as a party to the proceeding under section 183.

183 Joinder of parties

(1) The Tribunal may order that a person be joined as a party to a proceeding if the Tribunal is satisfied that it is desirable that the person be joined as a party.

(2) The Principal Registrar may, on the application of a person to be a party to a proceeding, join the person as a party before the commencement of the hearing.

(3) The President, Deputy President or another member of a class specified in the rules may join a person as a party to the proceedings on the papers.

184 Appearance and representation at hearing

(1) A person who is the subject of a proceeding has the right to appear before the Tribunal at the hearing.

(2) Despite subsection (1), the Tribunal may exclude any person (including a person who is the subject of a proceeding) if that person is behaving in a manner that is disruptive to the hearing of the matter.

(3) A person who is the subject of a proceeding may be represented before the Tribunal by any person authorised to that effect by the person who is the subject of the proceeding.

(4) If the person who is the subject of a proceeding is not represented before the Tribunal, the Tribunal may appoint another person to represent that person.

185 Interpreters

(1) Subject to subsection (3), a party may be assisted at a hearing by an interpreter or another person who is necessary or desirable to make the hearing intelligible to that party.

(2) The Tribunal may appoint or call for the assistance of an interpreter to provide interpreting services for the purposes of any hearing conducted under this Act.

(3) The Tribunal may, if it is satisfied that it is appropriate in the circumstances, direct that a hearing under this Act continue without the assistance of an interpreter.

186 Form and content of applications to the Tribunal

An application to the Tribunal made under this Act must—

(a) be in the form specified in the rules; and

(b) contain or attach any information specified in the rules; and

(c) be lodged in the manner specified by the rules.

187 Principal registrar may reject certain applications

(1) The principal registrar may reject an application made to the Tribunal if the application—

(a) is made by a person who is not entitled to make that application under this Act; or

(b) is lodged after the time for making that application has expired; or

(c) does not comply with requirements under this Act, the regulations or the rules.

(2) The principal registrar must advise any person whose application is rejected under subsection (1) that the person may seek a review by the President of the principal registrar's decision under that subsection.

(3) The President must review on the papers a decision of the principal registrar to reject an application under subsection (1) if the person who made the application seeks a review of that decision.

(4) After conducting a review of a decision by the principal registrar under subsection (3), the President may—

(a) confirm the principal registrar's decision to reject the application; or

(b) direct the principal registrar to accept the application.

(5) The principal registrar may refer an application specified in subsection (1) directly to the President for a determination by the President under subsection (4).

(6) The President may decide to reject an application referred to it by the principal registrar under subsection (5) if the application—

(a) is made by a person who is not entitled to make that application under this Act; or

(b) is lodged after the time for making that application has expired; or

(c) does not comply with requirements under this Act, the regulations or the rules.

188 Withdrawal of proceedings

(1) Before an application has been determined by the Tribunal, the applicant may seek leave from the Tribunal to withdraw the application.

(2) The Tribunal may grant leave to an applicant to withdraw an application under subsection (1).

(3) The Tribunal may make an order summarily striking out a proceeding if the applicant fails to appear.

(4) The Tribunal's power to grant leave under subsection (2) or to strike out a proceeding under subsection (3) is exercisable by—

(a) the Tribunal as constituted for the proceeding; or

(b) the principal registrar.

(5) The principal registrar must notify in writing all parties to a proceeding of a decision by the Tribunal—

(a) to grant leave to an applicant to withdraw an application; or

(b) to strike out a proceeding.

189 Notice of hearing

(1) The Tribunal must list a matter for hearing and give written notice of that hearing as soon as practicable to all of the following—

(a) the person who is the subject of the proceeding;

(b) the psychiatrist treating the person who is the subject of the proceeding;

(c) any person whose application to be a party to the proceeding has been approved by the Tribunal;

(d) if the person who is the subject of the proceedings is a person under the age of 16 years, the person's parent;

(e) the nominated person of the person who is the subject of the proceeding;

(f) a guardian of the person who is the subject of the proceeding;

S. 189(1)(g) amended by No. 15/2015 s. 20.

(g) a carer of the person who is the subject of the proceeding;

(h) if the person who is the subject of the proceedings is a security patient, whoever of the following had custody of the person before he or she became a security patient—

S. 189(1)(h)(i) amended by No. 15/2015 s. 36(1).

(i) the Secretary to the Department of Justice and Regulation;

(ii) the Secretary;

S. 189(1)(h)(ii) amended by No. 15/2015 s. 35(1).

(iii) the Chief Commissioner of Police;

(i) if the person is the subject of a family reunification order or a care by Secretary order, the Secretary;

S. 189(1)(i) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(j) any other person or body joined as a party to the proceeding under section 183.

(2) A written notice under subsection (1) must specify all of the following—

(a) the date and time of the hearing;

(b) the place where the hearing will be held;

(c) the subject matter of the hearing;

(d) that a person who is a party to the proceeding has a right to appear at the hearing;

(e) that a person who is a party to the proceeding has a right to be represented at the hearing.

(3) The Tribunal may dispense with giving notice under subsection (1) if the Tribunal is satisfied that it is appropriate to do so in the circumstances.

(4) A hearing, proceeding or determination of the Tribunal or an order of the Tribunal is not invalid or affected by reason only of a failure to give notice to a person.

190 Multiple matters in respect of one person may be held concurrently

The Tribunal may hear and determine multiple matters in respect of one person concurrently.

191 Access to documents

(1) Subject to subsection (3), a designated mental health service must give a person who is the subject of a proceeding access to any documents in its possession in connection with the proceeding at least 48 hours before the hearing.

(2) An authorised psychiatrist may apply to the Tribunal for access to any documents referred to in subsection (1) to be denied to the person who is the subject of a proceeding if the authorised psychiatrist is of the opinion that the disclosure of information in such a document may cause serious harm to the person or to another person.

(3) If the Tribunal determines that the disclosure of the information referred to in subsection (2) may cause serious harm to the person who is the subject of the proceeding or to another person, the Tribunal may—

(a) deny the disclosure of the relevant document to the person who is the subject of the proceeding; and

(b) proceed with the hearing; and

(c) have regard to that information at the hearing.

(4) If the Tribunal determines that the disclosure of the information referred to in subsection (2) will not cause serious harm to the person who is the subject of the proceeding or to another person, the Tribunal may—

(a) order the designated mental health service to give the person who is the subject of the proceeding access to the relevant document; and

(b) adjourn the hearing for a period not exceeding 5 business days and extend the duration of the relevant Order for the length of that period.

192 Adjournment of certain hearings only in exceptional circumstances

(1) If the person who is the subject of a proceeding is subject to a Temporary Treatment Order or a Treatment Order, the Tribunal must not adjourn the hearing to a date that is after the Order expires unless the Tribunal is satisfied that exceptional circumstances exist.

(2) If a hearing is adjourned under subsection (1), the Tribunal may extend the duration of the Temporary Treatment Order or Treatment Order to which the person is subject for a period not exceeding 10 business days.

(3) The Tribunal must not extend the duration of a Temporary Treatment Order or Treatment Order more than once.

193 Hearings to be closed to the public

(1) Subject to this section, hearings of the Tribunal are closed to members of the public.

(2) The Tribunal may order that a hearing or any part of a hearing be open to members of the public if the Tribunal is satisfied that it is in the public interest.

(3) A person who is the subject of a proceeding under this Act may make a written request to the Tribunal for the hearing, or any part of the hearing, to be heard in public.

(4) In determining a request made under subsection (3), the Tribunal must consider whether holding the hearing, or part of the hearing, in public would—

(a) be a serious threat to the health and safety of any person; or

(b) prejudice the interests of justice.

194 Details of person not to be published without consent of President

The name and other identifying details of a person who is the subject of a proceeding before the Tribunal must not be published unless the written consent of the President has been obtained.

195 Determination of proceedings

(1) Questions (other than questions of law) arising for determination by the Tribunal are to be decided by a majority of the members constituting the Tribunal in that proceeding.

(2) The member of the Tribunal who is nominated by the Tribunal in that proceeding must give oral reasons for making a determination at the conclusion of the hearing for that proceeding that include—

(a) an explanation of the determination; and

(b) an explanation of any order made by the Tribunal under this Act.

(3) An order made under this Part during a proceeding of the Tribunal must—

(a) be in writing; and

(b) state that each party to the proceeding may—

(i) request a statement of reasons for the determination under section 198; and

(ii) apply to VCAT for review of the determination under section 201; and

(c) be signed by the presiding member of the Tribunal for the purposes of that proceeding; and

(d) be sealed with the official seal of the Tribunal.

(4) The Tribunal must, as soon as practicable after it makes an order under this Part, take reasonable steps to give a copy of the order to the persons to whom notice was given under section 189(1).

196 Questions of law

A question of law (including a question of mixed fact and law) arising in a proceeding before the Tribunal must be decided by the presiding member.

197 Referral of question of law to Court

(1) The Tribunal, with the consent of the President, may refer any question of law arising in a proceeding to the Trial Division of the Supreme Court.

(2) A referral may be made under subsection (1) on the application of a party to a proceeding before the Tribunal or on the Tribunal's own initiative.

(3) If a question of law has been referred to the Trial Division of the Supreme Court, the Tribunal must not—

(a) make a determination to which the question of law is relevant while the referral is pending; or

(b) proceed in a manner or make a determination that is inconsistent with the opinion of the Trial Division of the Supreme Court on the question.

(4) Despite anything to the contrary in this Act, if a question of law has been referred to the Trial Division of the Supreme Court, the Tribunal may—

(a) adjourn the hearing; and

(b) extend the duration of any Temporary Treatment Order or Treatment Order to which the person who is the subject of the proceeding to which the question of law relates is subject until the referred question is resolved and the Tribunal has made its determination.

198 Requesting a statement of reasons

(1) A party to a proceeding before the Tribunal may, after the Tribunal has made a determination, request a statement of reasons for that determination.

(2) A request under subsection (1) must be—

(a) in writing; and

(b) received by the Tribunal within 20 business days after the Tribunal has made the relevant determination, subject to subsection (3).

(3) The Tribunal may, in its discretion, accept a request under subsection (1) that is received more than 20 business days after the determination is made in respect of which the statement of reasons is requested.

(4) The Tribunal must, within 20 business days after receiving a request under subsection (1), give a statement of reasons to all parties to the proceeding in respect of which the request was made.

(5) The Tribunal's statement of reasons must be—

(a) signed by the presiding member for the relevant proceeding or, if the presiding member is unavailable, the President or Deputy President; and

(b) sealed with the official seal of the Tribunal.

199 Correction of Order or statement of reasons

(1) The Tribunal may correct an order or statement of reasons made by it if the order or statement of reasons contains—

(a) a clerical mistake; or

(b) an error arising from an accidental slip or omission; or

(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the order or statement of reasons; or

(d) a defect of form.

(2) The correction may be made on—

(a) the Tribunal's own initiative; or

(b) the application of any person in accordance with the rules.

200 Validity of proceedings

(1) A decision of the Tribunal is not invalid only because of a defect or irregularity in, or in connection with, the appointment of the President, Deputy President or another member.

(2) If a person's appointment as a member of the Tribunal expires during the hearing of a matter, the person is, for the purposes of this Act, taken to be a member of the Tribunal until the matter before the Tribunal is finally concluded.

(3) A proceeding of the Tribunal is not invalidated or affected if the proceeding was not heard within the timeframes specified under this Act for a proceeding of that kind as a result of an accidental or unintentional miscalculation of time.

201 Review by VCAT

(1) A person who was a party to a proceeding before the Tribunal may apply to VCAT for review of any determination made by the Tribunal under this Act in that proceeding.

(2) Subject to subsection (3), an application for review under subsection (1) must be made to VCAT within 20 business days after the later of the following—

(a) the Tribunal's determination; or

(b) if the person referred to in subsection (1) requested a statement of reasons, the person's receipt of the statement of reasons.

(3) VCAT may accept an application for review under subsection (1) that is made after the time specified in subsection (2) if VCAT determines that special circumstances exist.

202 Use of experts

(1) The Tribunal may engage a person to provide expert advice in relation to any matter arising in a proceeding.

(2) The Tribunal is responsible for any costs associated with the engagement of a person referred to in subsection (1).

203 Witness summons

(1) The principal registrar may issue a summons to a person to attend the Tribunal to give evidence and produce any document that is referred to in the summons.

(2) A summons under subsection (1) may be issued—

(a) on the Tribunal's own motion; or

(b) at the request of a party to a proceeding before the Tribunal.

204 Failure to comply with summons

A person who has been served with a summons to attend the Tribunal must not, without reasonable excuse—

(a) fail to attend as required by the summons unless the person has been excused or released from attendance by the Tribunal; or

(b) fail to produce any document referred to in the summons that is in the person's possession.

Penalty: 60 penalty units.

205 False or misleading information

A person must not knowingly give false or misleading information to the Tribunal.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

206 Contempt of the Tribunal

A person must not—

(a) insult a member of the Tribunal in relation to the member exercising his or her powers or functions as a member; or

(b) repeatedly interrupt a hearing of the Tribunal; or

(c) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Tribunal is sitting; or

(d) do any other act or thing that would, if the Tribunal were the Supreme Court, constitute contempt of that Court.

Penalty: 120 penalty units.

Division 6—Rules Committee

207 Establishment of Rules Committee

The Rules Committee of the Tribunal is established.

208 Functions of the Rules Committee

The functions of the Rules Committee are—

(a) to develop rules of practice and procedure and practice notes for the Tribunal; and

(b) to inform members of the Tribunal about those rules of practice and procedure and practice notes; and

(c) to perform any other functions conferred on it by the President.

209 Power to make rules and issue practice notes

(1) The Rules Committee may make rules regulating the practice and procedure of the Tribunal.

(2) The Rules Committee may issue practice notes relating to the practice and procedure of the Tribunal.

210 Membership of the Rules Committee

(1) The members of the Rules Committee are—

(a) the President; and

(b) the Deputy President; and

(c) such other members of the Tribunal as are selected by the President.

(2) The President may select members from any of the member classes referred to in section 159(1).

211 Meeting procedure

(1) At a meeting of the Rules Committee—

(a) the President presides if he or she is present; and

(b) if the President is not present, the Deputy President presides.

(2) The quorum of the Rules Committee is half of the number of members who make up the Committee.

(3) In all other respects the Rules Committee may regulate its own proceedings.

212 Validity of decisions

A decision of the Rules Committee is not invalid only because of a vacancy in the office of a member.

Part 9—Community visitors

213 Definition

In this Part—

prescribed premises means the premises of—

(a) a designated mental health service; or

(b) a mental health service provider in which residential services and 24 hour nursing care is provided for persons who have mental illness; or

(c) a prescribed mental health service provider or prescribed class of mental health service providers in which residential care is provided for persons who have mental illness.

214 Appointment of community visitors

(1) The Governor in Council may, on the recommendation of the Public Advocate, appoint as many community visitors as are necessary for the purpose of fulfilling their functions under this Act.

(2) In recommending persons for appointment as community visitors, the Public Advocate must—

(a) recommend, as far as practicable, an equal number of males and females; and

(b) have regard to the desirability of having people of diverse backgrounds as community visitors.

(3) A community visitor—

(a) holds office for a period of 3 years; and

(b) is eligible for reappointment at the end of his or her term of office; and

(c) is entitled to be paid any fees and travelling and other allowances as are fixed by the Governor in Council from time to time; and

(d) is not, in respect of the office of community visitor, subject to the provisions of the **Public Administration Act 2004**.

(4) A person must not during his or her appointment as a community visitor—

(a) be employed by, or hold any appointment with, the Department of Health and Human Services or a mental health service provider, the premises of which is a prescribed premises; or

S. 214(4)(a) amended by No. 15/2015 s. 35(4).

(b) have any direct interest in any contract with the Department of Health and Human Services or a mental health service provider, the premises of which is a prescribed premises.

S. 214(4)(b) amended by No. 15/2015 s. 35(4).

215 General provisions as to community visitors

(1) The Governor in Council may specify terms and conditions of appointment in the instrument of appointment of a person as a community visitor.

(2) The Governor in Council may, on the recommendation of the Public Advocate, remove a community visitor from office.

(3) A person may resign from the office of community visitor in writing signed by that person and delivered to the Governor in Council.

(4) The office of a community visitor becomes vacant if the community visitor—

(a) becomes an insolvent under administration; or

(b) is convicted of an indictable offence or an offence which, if committed in Victoria, would be an indictable offence; or

(c) becomes incapable of performing the duties of the office of community visitor; or

(d) is removed from office or resigns from office.

216 Functions of a community visitor

The functions of a community visitor are—

(a) to visit any prescribed premises and inquire into the following—

(i) the adequacy of services and facilities provided at those premises to persons receiving mental health services, including, but not limited to, the appropriateness and standard of facilities provided at those premises in relation to the accommodation, physical wellbeing and welfare of those persons and the adequacy of opportunities and facilities for their recreation, occupation, education, training and recovery;

(ii) whether the mental health services provided at those premises are provided in accordance with the objectives of this Act and the mental health principles;

(iii) any failure to comply with the provisions of this Act or the regulations;

(iv) any other matter that the community visitor is satisfied is appropriate, having regard to the objectives of this Act and the mental health principles; and

(b) to assist persons receiving mental health services at those prescribed premises—

(i) in the resolution of any issues identified in the course of making an inquiry; and

(ii) to seek support from other relevant bodies or services; and

(iii) to make complaints to the Commissioner; and

(c) to perform any other functions conferred on the community visitor by this Act.

217 Powers of community visitors

(1) When visiting a prescribed premises, a community visitor may—

(a) subject to subsection (2), enter and inspect any part of the premises; and

(b) speak to any person receiving mental health services who wishes to speak to the community visitor; and

(c) inspect any document, other than a clinical record, relating to a person receiving mental health services at the prescribed premises or any other record which is required to be kept under this Act or the regulations; and

(d) with the consent of a person receiving mental health services, inspect any clinical record relating to the person receiving mental health services.

S. 217(1)(d) amended by No. 15/2015 s. 21.

(2) Subsection (1)(a) does not authorise a community visitor to inspect the bedroom of a person receiving mental health services unless the person has given consent.

218 When may community visitors visit prescribed premises?

A community visitor may visit a prescribed premises with or without any notice at the times and for the periods that the community visitor determines or as directed by the Public Advocate or the Community Visitors Mental Health Board.

219 Request to see a community visitor

(1) A person receiving mental health services at a prescribed premises, or any person on behalf of that person, may request the person in charge of the prescribed premises to arrange for the person to be visited by a community visitor.

(2) Within 2 business days after receiving a request under subsection (1), the person in charge of the prescribed premises must advise a community visitor that a request has been made.

S. 220 amended by No. 15/2015 s. 22.

220 Reasonable assistance to be given to community visitors

A member of the staff of a prescribed premises must give a community visitor any reasonable assistance that the community visitor requires to perform or exercise any of the community visitor's powers or functions effectively.

221 Community Visitors Mental Health Board

(1) The Community (Psychiatric Services) Visitors Board established by section 116 of the **Mental Health Act 1986** (as is force immediately before 1 July 2014) is continued under this Act as the Community Visitors Mental Health Board.

(2) The Community Visitors Mental Health Board consists of—

(a) the Public Advocate; and

(b) 2 community visitors elected by community visitors in accordance with the regulations.

(3) The functions of the Community Visitors Mental Health Board are—

(a) to represent community visitors; and

(b) to supervise the training of community visitors; and

(c) to prepare and circulate publications that explain the role of community visitors; and

(d) to report a matter to the Public Advocate or the Minister; and

(e) to refer a matter under section 222; and

(f) to prepare an annual report.

222 Matter may be referred

Without limiting the discretion of the Community Visitors Mental Health Board, the Community Visitors Mental Health Board may refer a matter reported by a community visitor to whichever of the following that the Community Visitors Mental Health Board is satisfied is the appropriate person to deal with that matter—

(a) the Secretary;

(b) the Public Advocate;

(c) the chief psychiatrist;

(d) the Commissioner.

223 Reports by community visitors

(1) A community visitor must submit a report at least twice a year to the Community Visitors Mental Health Board on visits made since the last community visitor's report.

(2) A community visitor may at any time submit a report to the Community Visitors Mental Health Board containing any recommendations that the community visitor is satisfied should be considered by the Community Visitors Mental Health Board.

(3) The Minister may require the Community Visitors Mental Health Board to report to the Minister on any matter specified by the Minister at the time and in the manner directed by the Minister.

(4) The Community Visitors Mental Health Board may at any time submit a report to the Minister.

224 Annual report of Community Visitors Mental Health Board

(1) As soon as practicable after the end of each financial year but not later than the following 30 September, the Community Visitors Mental Health Board must submit to the Minister an annual report on the activities of community visitors during the 12 months ending on the preceding 30 June.

(2) The Minister must cause the annual report of the Community Visitors Mental Health Board to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.

225 Secrecy provision

(1) A person who is, or has been, a community visitor must not, directly or indirectly, make a record of, disclose or communicate to any person, any information acquired in the performance of functions or duties or the exercise of powers under this Act, unless—

(a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or

(b) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 60 penalty units.

(2) Subsection (1) does not prevent a person from producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act or divulging or communicating to a court, in the course of any such proceedings, any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or in the exercise of a power referred to in subsection (1).

Part 10—Complaints

Division 1—The Mental Health Complaints Commissioner

226 Mental Health Complaints Commissioner

(1) There is to be a Mental Health Complaints Commissioner.

(2) The Governor in Council, on the recommendation of the Minister, may appoint a person as Commissioner.

(3) The Commissioner is to hold office for a term, not exceeding 5 years, specified in the instrument of his or her appointment, but is eligible for reappointment.

(4) The Governor in Council may specify other terms and conditions of appointment in the Commissioner's instrument of appointment.

(5) The Commissioner is entitled to receive remuneration and allowances as are fixed by the Governor in Council from time to time.

(6) If, immediately before his or her appointment, the Commissioner was an officer within the meaning of the **State Superannuation Act 1988**, then while he or she is Commissioner, he or she continues, subject to that Act, to be an officer within the meaning of that Act.

227 Vacation of office

(1) The Governor in Council may, on the recommendation of the Minister, remove the Commissioner from office if the Minister is satisfied as to any of the following grounds—

(a) the Commissioner becomes an insolvent under administration;

(b) the Commissioner is charged with an indictable offence;

(c) the Commissioner fails to disclose a conflict of interest;

(d) the Commissioner engages in any paid employment outside the duties of office without the consent of the Minister;

(e) the Commissioner is unable to perform his or her duties under this Act;

(f) the Commissioner has been found to have neglected his or her duties under this Act;

(g) the Commissioner has been found to have engaged in misconduct.

(2) The Commissioner may resign his or her office as Commissioner in writing signed by that person and delivered to the Governor in Council.

228 Functions of the Commissioner

The Commissioner has the following functions—

(a) to accept, assess, manage and investigate complaints relating to mental health service providers;

(b) to endeavour to resolve complaints in a timely manner using formal and informal dispute resolution as appropriate, including conciliation;

(c) to issue compliance notices;

(d) to consult persons or bodies for the purposes of fulfilling his or her functions under this Act;

(e) to provide advice on any matter relating to a complaint;

(f) to make the procedure for making complaints in relation to mental health service providers available and accessible, including publishing material about the complaints procedure;

(g) to provide information, education and advice to mental health service providers about their responsibilities in managing complaints made by consumers;

(h) to assist consumers and other persons referred to in section 232(1) to resolve complaints directly with mental health service providers, both before and after the Commissioner has accepted the complaints;

(i) to assist mental health service providers to develop or improve policies and procedures to resolve complaints;

S. 228(j) amended by No. 19/2019 s. 249(1).

(j) to identify, analyse and review quality, safety and other issues arising out of complaints and to provide information and make recommendations for improving the provision of mental health services to the following, as appropriate—

(i) mental health service providers;

(ii) the chief psychiatrist;

(iii) the Secretary;

(iv) the Minister;

S. 228(j)(v) inserted by No. 19/2019 s. 249(2).

(v) the Agency within the meaning of the NDIS Act;

S. 228(j)(vi) inserted by No. 19/2019 s. 249(2).

(vi) the NDIS Commission;

(vii) the Health Complaints Commissioner;

S. 228(j)(vii) inserted by No. 34/2019 s. 70.

(viii) the Australian Health Practitioner Regulation Agency;

S. 228(j)(viii) inserted by No. 34/2019 s. 70.

(ix) a prescribed person or body;

S. 228(j)(ix) inserted by No. 34/2019 s. 70.

(k) at the request of the Minister, to investigate into, and report on, any matter relating to mental health service providers;

(l) to perform any other functions conferred on the Commissioner by this Act or any other Act or the regulations.

229 Powers of the Commissioner

(1) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions under this Act.

(2) The Commissioner may by instrument delegate to a person or a class of persons employed under Part 3 of the **Public Administration Act 2004** or to any person engaged under section 230(2) any power, duty or function of the Commissioner, other than this power of delegation.

230 Provision of staff and contractors

(1) There may be employed under Part 3 of the **Public Administration Act 2004** any staff that are necessary to assist the Commissioner in the performance of his or her powers, duties or functions under this Act.

(2) The Commissioner may engage persons with suitable qualifications and experience as contractors.

(3) An engagement under subsection (2) may be on any terms and conditions that the Commissioner is satisfied is appropriate to assist the Commissioner in the performance of his or her powers, duties or functions under this Act.

231 Protection from liability

(1) The Commissioner is not personally liable for any thing done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a function under this Act; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under this Act.

(2) Any liability resulting from an act or omission that, but for subsection (1), would attach to the Commissioner attaches instead to the State.

Division 2—Complaints management by the Commissioner

232 Making a complaint to the Commissioner

(1) A person may make a complaint to the Commissioner in relation to a mental health service provider if the person—

(a) is a consumer; or

(b) is acting at the request of a consumer; or

(c) satisfies the Commissioner that he or she has a genuine interest in the wellbeing of a consumer.

(2) Subject to subsection (3), if a complaint has been made to the Commissioner in relation to a mental health service provider by a person referred to

in subsection (1)(b) or (c), the Commissioner must ensure that the consumer consents to the complaint being made before the Commissioner accepts the complaint.

(3) The Commissioner is not required to obtain the consent of the consumer before accepting the complaint if the Commissioner is satisfied that—

(a) there are special circumstances that warrant the Commissioner accepting the complaint without the consumer's consent; and

(b) accepting the complaint will not be detrimental to the wellbeing of the consumer.

233 Referred complaints

(1) The following may refer to the Commissioner a complaint in relation to a consumer—

(a) the Australian Health Practitioner Regulation Agency;

(b) the Community Visitors Mental Health Board;

(c) the chief psychiatrist;

(d) the Public Advocate;

(e) the Health Complaints Commissioner;

S. 233(1)(e) substituted by No. 22/2016 s. 238, amended by No. 34/2019 s. 71.

(f) the Disability Services Commissioner within the meaning of the **Disability Act 2006**;

(g) the Commission for Children and Young People within the meaning of the **Commission for Children and Young People Act 2012**;

(h) the Commissioner of the Victorian Equal Opportunity and Human Rights Commission within the meaning of the **Equal Opportunity Act 2010**;

S. 233(1)(i) substituted by Nos 60/2014 s. 140(Sch. 3 item 30), 20/2017 s. 134(Sch. 1 item 12).

(i) in the case of a complaint made under the **Privacy and Data Protection Act 2014**, the Information Commissioner appointed under the **Freedom of Information Act 1982**;

S. 233(1)(j) amended by No. 19/2019 s. 250(a).

(j) the Ombudsman appointed under the **Ombudsman Act 1973**;

S. 233(1)(k) inserted by No. 19/2019 s. 250(b).

(k) the NDIS Commission.

(2) A complaint referred to the Commissioner under subsection (1) may be treated by the Commissioner as a complaint made under section 232(1).

234 Grounds for making a complaint

A complaint may be made to the Commissioner if the complaint relates to any matter arising out of the provision of mental health services or failure to provide mental health services by a mental health service provider.

235 How to make a complaint

(1) A person may make a complaint orally or in writing to the Commissioner.

Note

A complaint may be made under subsection (1) by an electronic communication within the meaning of section 3(1) of the **Electronic Transactions (Victoria) Act 2000**.

(2) A person who makes an oral complaint must confirm the complaint in writing as soon as practicable.

(3) The Commissioner must take reasonable steps to assist a person who has made an oral complaint to confirm that complaint in writing.

(4) A person who makes a complaint to the Commissioner must give his or her name and any other information relating to his or her identity as the Commissioner requires.

(5) The Commissioner may keep information given to the Commissioner under subsection (4) confidential if the Commissioner is satisfied that—

(a) there are special circumstances; and

(b) it is in the complainant's interest to keep the information confidential.

(6) In making a determination under subsection (5), the Commissioner must consider whether keeping the information confidential would unreasonably limit another person's right to procedural fairness.

236 Time by when complaint to be made

(1) Subject to subsection (2), a complaint made to the Commissioner must be made not more than 12 months after the matter occurred that is the subject of the complaint.

(2) The Commissioner may accept a complaint made more than 12 months after the matter occurred that is the subject of the complaint if the Commissioner is satisfied that there is a good reason for the delay by the person making the complaint.

237 Withdrawal of complaint

(1) A person who has made a complaint to the Commissioner may withdraw the complaint at any time in writing.

(2) The Commissioner must take reasonable steps to assist a person to withdraw a complaint in writing.

(3) The Commissioner may continue to deal with a complaint despite the complaint being withdrawn under subsection (1) if the Commissioner is satisfied that—

(a) the health, safety or wellbeing of a consumer may be adversely affected; or

(b) the complaint was withdrawn due to coercion or duress; or

(c) it is in the public interest to deal with the complaint.

238 Preliminary assessment of complaint

The Commissioner must, as soon as practicable but no later than 20 business days after receiving a complaint in writing or written confirmation of an oral complaint under this Division—

(a) close the complaint under section 240; or

(b) accept the complaint under section 243.

239 Information relating to complaint to be provided

The Commissioner may by notice in writing to the person who made the complaint or any other relevant person or body—

(a) request specified information relating to the complaint; and

(b) specify the time by which such information must be given to the Commissioner.

240 Circumstances in which Commissioner may close a complaint

(1) The Commissioner may close a complaint, or part of a complaint, if—

(a) the complaint, or part of the complaint, has already been determined by a court, board or tribunal and does not raise any matter or issue that was not considered in that determination; or

(b) the complaint, or part of the complaint, is being considered by a court, board or tribunal; or

(c) the Commissioner refers the complaint, or part of the complaint, to another body, organisation, agency or entity; or

(d) the complaint, or part of the complaint, forms the basis of an investigation currently being conducted by another body, organisation, agency or entity; or

(e) the complaint was made outside the time limits specified in this Division for making a complaint; or

(f) the complaint was made orally and the complaint is not confirmed in writing within a reasonable period of time; or

(g) the person who made the complaint did not give the Commissioner information requested under section 239 or failed to give the information within the specified time; or

(h) in the circumstances, the Commissioner is satisfied that it is appropriate to do so.

(2) The Commissioner may close a complaint, or part of a complaint, if, at any point during consideration of the complaint the Commissioner is satisfied that the complaint, or part of the

complaint, is resolved, having considered advice from the consumer.

241 Notice of complaint closure

(1) Subject to section 235(5), if the Commissioner closes a complaint, or part of a complaint, under section 240, the Commissioner must, as soon as practicable after closing the complaint, give written notice of the closure to the consumer and, if the consumer did not make the complaint, to the person who made the complaint.

(2) If the Commissioner has notified the mental health service provider that is the subject of the complaint about the complaint before the complaint was closed under section 240, the Commissioner must, as soon as practicable after closing the complaint, give written notice of the closure to the mental health service provider.

(3) A notice given under this section must specify the reasons for the Commissioner's decision to close the complaint.

242 Referring a complaint with or without consent

(1) The Commissioner may, with the consent of the consumer in relation to a complaint, refer the complaint, a part of the complaint or any matter arising from a complaint, to another body, organisation, agency or entity if the complaint raises issues that the Commissioner is satisfied would be more appropriately dealt with by that other body, organisation, agency or entity.

(2) The Commissioner may refer a complaint, part of a complaint or any matter arising from a complaint, to another body, organisation, agency or entity without the consent of the consumer in relation to the complaint if the Commissioner is satisfied that—

(a) the complaint raises issues that require investigation by that other body, organisation, agency or entity; and

(b) it is in the public interest to refer the complaint to that other body, organisation, agency or entity.

(3) If a complaint, part of a complaint or any matter arising from a complaint is referred to another body, organisation, agency or entity under subsection (1) or (2), the Commissioner may provide any information that the Commissioner has received in respect of the complaint to the body, organisation, agency or entity to which the complaint or matter has been referred.

242A Complaint to which National Law may also apply

S. 242A inserted by No. 34/2019 s. 72.

(1) To avoid doubt, the Commissioner is a health complaints entity within the meaning of the Health Practitioner Regulation National Law.

Note

See Division 5 of Part 8 of the Health Practitioner Regulation National Law, in particular section 150 of that Law, for the Commissioner's duties if a complaint is made that may be the subject of a notification under section 150(2) of that Law.

(2) If it is agreed under section 150 of the Health Practitioner Regulation National Law to deal with the complaint or a part of the complaint under that Law, the Commissioner must refer the complaint to the Australian Health Practitioner Regulation Agency or the relevant National Board.

243 Commissioner may accept complaints and undertakings

(1) If the Commissioner accepts a complaint, the Commissioner must advise by written notice, as soon as practicable, the following persons of the acceptance—

(a) the person who made the complaint;

(b) the consumer, if the person who made the complaint is not the consumer;

(c) the mental health service provider.

(2) A notice to a mental health service provider under subsection (1)(c)—

(a) must include the particulars of the complaint; and

(b) may include a request from the Commissioner for a written response to the complaint, including the time by which the written response must be given to the Commissioner.

(3) The Commissioner may give a copy of any response given to the Commissioner under subsection (2)(b) to a person referred to in subsection (1)(a) or (1)(b).

(4) After accepting a complaint under subsection (1), the Commissioner may do any one or more of the following—

(a) use any appropriate method to resolve the complaint in a timely manner, including, but not limited to, informal dispute resolution;

(b) recommend to the parties that the complaint be conciliated;

(c) conduct an investigation into the complaint and, subject to section 259, publish a report of any findings of the Commissioner, including any recommendations;

(d) serve a compliance notice on a mental health service provider;

S. 243(4)(e) amended by No. 34/2019 s. 73.

(e) accept an undertaking given by a mental health service provider to take remedial action in relation to the complaint, at any

time before the complaint is closed by the Commissioner.

(5) The Commissioner may monitor a mental health service provider that has made an undertaking under subsection (4)(e) to assess the remedial action that the mental health service provider has taken in relation to the undertaking.

(6) The Commissioner may serve a compliance notice under section 260 on a mental health service provider in relation to an undertaking made under subsection (4)(e).

Division 3—Conciliation

244 Conciliation process

(1) The Commissioner may, if he or she is satisfied that it is appropriate in the circumstances, recommend to the parties to a complaint that the complaint be conciliated.

(2) A complaint may only be conciliated if all parties to the complaint agree to the conciliation.

(3) A conciliation conference must be held in private.

(4) Subject to subsection (5), the Commissioner may conduct the conciliation in any manner that the Commissioner considers appropriate in order to resolve the complaint.

S. 244(4) amended by No. 34/2019 s. 74.

(5) The Commissioner must take reasonable steps to ensure that the conciliation is conducted in a manner that promotes the wellbeing of the consumer in relation to the complaint.

S. 244(5) amended by No. 34/2019 s. 74.

245 Parties may be represented at conciliation

(1) A party to the complaint is entitled to legal representation at the conciliation.

(2) A person who represents a mental health service provider (whether or not the person is an Australian legal practitioner) at the conciliation must be authorised to settle the complaint at conciliation on behalf of the mental health service provider.

(3) In addition to any legal representative, a consumer is entitled to be supported by another person at the conciliation.

246 Discontinuation of conciliation

S. 246(1) amended by No. 34/2019 s. 75(1).

(1) A party to a conciliation may, at any time during the conciliation process, elect not to continue with the conciliation process by so notifying the Commissioner in writing.

S. 246(2) amended by No. 34/2019 s. 75(1).

(2) On receipt of a written notice under subsection (1), the Commissioner must notify all other parties to the conciliation of the party's election to discontinue the conciliation.

S. 246(3) amended by No. 34/2019 s. 75(2).

(3) If, at any time during a conciliation process, the Commissioner is satisfied that conciliation is no longer appropriate in the circumstances, the Commissioner must—

(a) discontinue the conciliation process; and

(b) notify the parties to the conciliation in writing that the conciliation is discontinued.

S. 247 repealed by No. 34/2019 s. 76.

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248 Conciliation agreements

S. 248 amended by No. 34/2019 s. 77.

If the parties to a conciliation reach an agreement, the Commissioner must ensure that the agreement is—

(a) in writing; and

(b) signed by all parties to the conciliation; and

(c) given to all parties.

249 Non-disclosure of information given in conciliation

S. 249 substituted by No. 34/2019 s. 78.

(1) A person who is or has been the Commissioner or a person employed or engaged under section 230 must not disclose outside a conciliation process any information gained by the person in the conciliation process, other than information relating to an undertaking given under section 243(4)(e) during the course of a conciliation process.

Penalty: 60 penalty units.

(2) Despite subsection (1), a person referred to in subsection (1) is authorised to disclose information to which subsection (1) applies if—

(a) the disclosure is made with the written consent of the person to whom the information relates; or

(b) the Commissioner reasonably believes that the disclosure is necessary to lessen or prevent a serious risk to—

(i) the life, health, safety or welfare of a person; or

(ii) the health, safety or welfare of the public.

(3) Evidence of anything said or done during a conciliation process is not admissible in any proceeding before a court or tribunal unless the parties to the conciliation process consent to the admission.

(4) Subsection (3) does not apply to an undertaking given under section 243(4)(e) during the course of a conciliation process.

Division 4—Investigations

250 Identity cards for investigators

(1) The Commissioner must issue an identity card to each investigator.

(2) An identity card issued under subsection (1) must—

(a) contain the signature of the investigator; and

(b) be signed by the Commissioner.

251 Identity cards to be produced by investigators

(1) Subject to subsection (2), an investigator must produce his or her identity card for inspection before exercising a power under this Act or the regulations.

(2) If it is impracticable for an investigator to produce his or her identity card for inspection when exercising a power under this Act or the regulations, the investigator is not required to do so.

(3) An investigator who conducts an investigation under this Division or who performs any other function under this Act or the regulations must state his or her name orally or in writing, if asked to do so during the course of conducting an investigation or performing those functions.

252 Investigation of a complaint

(1) In conducting an investigation of a complaint—

(a) the procedure is at the discretion of the Commissioner, subject to this Division; and

(b) the Commissioner must proceed with as little formality and technicality and with as much expedition as the requirements of this Act and proper investigation of the matter permit; and

(c) the Commissioner is not bound by the rules of evidence but may be informed of any matter in any manner that the Commissioner is satisfied is appropriate; and

(d) the Commissioner must have regard to the rules of procedural fairness.

(2) During the course of an investigation, the Commissioner must take reasonable steps to ensure that a person who has made a complaint, the relevant mental health service provider and the consumer in relation to the complaint are informed of the progress of the investigation in a timely and appropriate manner.

253 Notice of investigation

(1) The Commissioner must give written notice to a mental health service provider in accordance with subsection (2) if he or she conducts an investigation into the mental health service provider.

(2) A notice under subsection (1) must—

(a) specify the scope and objectives of the investigation; and

(b) specify the names of the investigators who will carry out the investigation; and

(c) specify the expected date of commencement for the investigation and the expected length of the investigation.

254 Power of entry

(1) The Commissioner, or at the direction of the Commissioner, an investigator, may enter the premises of a mental health service provider for the purposes of investigating a complaint.

(2) The Commissioner or an investigator who enters the premises of a mental health service provider under subsection (1) may do any one or more of the following—

(a) inspect, examine or make enquiries at the premises;

(b) examine or inspect any thing, including a document or part of a document, at the premises;

(c) bring any equipment or materials to the premises that may be required;

(d) take any photographs or make any audio or visual recordings at the premises, including of a person at the premises provided the person has consented to having his or her photograph taken or the recording of him or her being made;

(e) use any equipment at the premises;

(f) make copies of, or take extracts from, any document kept at the premises;

(g) speak to any person receiving mental health services at the premises, if the person agrees;

(h) direct a person employed at the premises to produce a document or part of document located at the premises that is in the possession or control of the person;

(i) direct a person at the premises to answer any questions put by the investigator;

(j) do any other thing that is reasonably necessary for the purpose of performing or exercising his or her functions or powers under this Act or the regulations.

255 Powers to compel attendance and call for evidence and documents

Sections 14, 15 and 16 of the **Evidence (Miscellaneous Provisions) Act 1958** apply to an investigation under this Division as if the Commissioner were a board appointed by the Governor in Council.

256 Restrictions on powers

(1) The Commissioner must not conduct an investigation under this Division in relation to a complaint or exercise the powers under section 255 while the complaint is being conciliated.

(2) Nothing in section 255 or the provisions of the **Evidence (Miscellaneous Provisions) Act 1958** applied by that section or that Act prevents a person from—

(a) refusing to answer a question or produce a document because the answer would relate to, or the document contains, information in respect of which the person claims legal professional privilege or client legal privilege; or

(b) refusing to answer a question or produce a document if the answer, or the information in the document, would tend to incriminate the person.

257 Report of findings following investigation

(1) As soon as practicable after conducting an investigation into a complaint under this Division, the Commissioner must—

(a) make a finding about the substance of the complaint; and

(b) decide on any action to be taken to resolve the complaint; and

(c) prepare a written report specifying—

(i) the findings made under paragraph (a) and the reasons for these findings; and

(ii) any action to be taken or that has already been taken under paragraph (b) to resolve the complaint.

(2) The Commissioner must give a copy of a report prepared under subsection (1)(c) to—

(a) the person who made the complaint; and

(b) if the person who made the complaint is not the consumer in relation to the complaint, the consumer; and

(c) the mental health service provider in respect of which the complaint was made.

(3) Despite subsection (2)(a), the Commissioner must not give a copy of the report to the person who made the complaint if—

(a) that person is not the consumer; and

(b) the provision of the report would unreasonably breach the privacy of the consumer.

(4) The Commissioner may give a copy of a report prepared under subsection (1)(c) to any person, body, organisation, agency or entity the Commissioner is satisfied is appropriate including—

(a) the Minister;

(b) the Secretary;

(c) the chief psychiatrist.

(5) If a copy of a report prepared under subsection (1)(c) is given to a person, body, organisation, agency or entity under subsection (4), the Commissioner must ensure that any

information that may identify a person is omitted unless the person, body or organisation requires this information to comply with a duty or function under an Act.

258 Mental health service provider response to report

A mental health service provider must respond in writing to the Commissioner within 30 business days after receiving a report under section 257(2)(c) and provide details of the actions that the mental health service provider has taken or will take to resolve the complaint.

259 Publication of report

(1) The Commissioner may publish a report on an investigation prepared under section 257(1).

(2) A report published under subsection (1)—

(a) may include—

(i) any response received from the mental health service provider that was the subject of the complaint during the course of the investigation; and

(ii) any response made by the mental health service provider under section 258; and

(b) must not include any information that may identify a consumer or a person who has made a complaint, unless the consumer or that person consents to being identified in the published report.

Division 5—Compliance notices

260 Compliance notice

(1) The Commissioner may serve a compliance notice on a mental health service provider if he or she is satisfied that—

(a) the mental health service provider has not complied with an undertaking given under section 243; or

(b) after conducting an investigation under Division 4, the mental health service provider has acted or engaged in a practice in contravention of this Act or the regulations; or

(c) the mental health service provider has—

(i) acknowledged that the mental health service provider has acted or engaged in a practice in contravention of this Act or the regulations; and

(ii) not given an undertaking under section 243.

(2) A compliance notice may—

(a) specify the action to be taken by a mental health service provider for the purpose of ensuring compliance with an undertaking given under section 243 or compliance with this Act and the regulations; and

(b) specify the time within which the action referred to in paragraph (a) is to be taken; and

(c) require the mental health service provider to report to the Commissioner within a specified time after having taken the action referred to in paragraph (a).

(3) The Commissioner may extend the period specified in a compliance notice for taking specified action by a mental health service provider.

261 Application for review—compliance notice

(1) A person or a mental health service provider whose interests are affected by a decision by the Commissioner under section 260(1) to serve a compliance notice may apply to VCAT for review of the decision.

(2) An application for review must be made within 20 business days after the compliance notice is served.

(3) The Commissioner is a party to a proceeding on a review under this section.

262 Offence not to comply with compliance notice

(1) Subject to subsection (2), a mental health service provider must comply with a compliance notice served on it under section 260(1).

Penalty: In the case of a body corporate, 1200 penalty units;

In any other case, 240 penalty units.

(2) A mental health service provider is not guilty of an offence under subsection (1) if—

(a) the period within which an application for review under section 261(1) may be made has not expired; or

(b) an application for review has been made under section 261(1) and the matter has not been finalised.

Division 6—General

263 Requirement to provide reasonable assistance to Commissioner

The following must provide the Commissioner with any reasonable assistance that the Commissioner requires to perform any duties or functions or exercise any powers under this Act—

(a) the management of a mental health service provider;

(b) a member of staff, or former member of staff, of a mental health service provider;

(c) a volunteer, or former volunteer, at a mental health service provider;

(d) a member of the board, or former member of the board, of a mental health service provider.

264 Person not to be penalised because of complaining to Commissioner

(1) A person must not, by threats, intimidation, undue influence or coercion, persuade or attempt to persuade another person—

(a) not to make a complaint to the Commissioner; or

(b) to withdraw a complaint made to the Commissioner.

Penalty: 240 penalty units.

(2) A person must not dismiss another person, refuse to employ or engage another person or subject another person to any detriment because the other person—

(a) intends to complain, or has complained, to the Commissioner; or

(b) has not withdrawn, or refuses to withdraw, a complaint made to the Commissioner.

Penalty: 240 penalty units.

(3) A mental health service provider must take reasonable steps to ensure that the management of the mental health service provider or any member of staff of the mental health service provider does not take detrimental action against a consumer in

relation to the mental health service provider in reprisal for the consumer making a complaint or for another person making a complaint on his or her behalf.

265 Disclosure of information

S. 265 (Heading) substituted by No. 34/2019 s. 79(1).

(1) A person who is, or has been, the Commissioner or a person employed or engaged under section 230 must not, directly or indirectly, make a record of, disclose or communicate to any person, any information relating to the affairs of a natural person acquired in the performance of functions or duties or the exercise of powers under this Act, unless—

(a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or

(b) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 60 penalty units.

S. 265(1A) inserted by No. 34/2019 s. 79(2).

(1A) Despite subsection (1), a person referred to in subsection (1) is authorised to disclose or communicate information to which that subsection applies—

(a) to the Australian Health Practitioner Regulation Agency or any relevant National Board, if that information is or may be the subject of, or relevant to, a complaint, investigation or inquiry under the Health Practitioner Regulation National Law; or

(b) if the person reasonably believes that the disclosure is necessary to lessen or prevent a serious risk to—

(i) the life, health, safety or welfare of a person; or

(ii) the health, safety or welfare of the public.

(2) Subsection (1) does not prevent a person from producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act or divulging or communicating to a court, in the course of any such proceedings, any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or in the exercise of a power referred to in subsection (1).

266 Local complaint mechanisms to be established by mental health service providers

A mental health service provider is required to establish procedures for receiving, managing and resolving complaints made to the mental health service provider about the provision of mental health services.

S. 267 substituted by No. 34/2019 s. 80.

267 Mental health service providers to provide reports on complaints

(1) A mental health service provider must provide a report to the Commissioner about complaints received by the mental health service provider at the intervals specified by the Commissioner.

(2) A report under subsection (1) must—

(a) be in a form specified by the Commissioner; and

(b) contain the information required by the Commissioner.

268 Annual report of the Commissioner

(1) As soon as practicable after the end of each financial year but not later than 31 October, the Commissioner must submit to the Minister an annual report containing a review of the operation of the Commissioner during the 12 months ending on the preceding 30 June including—

(a) the number of complaints made to the Commissioner; and

(b) the outcomes of those complaints; and

(c) any educational services provided by the Commissioner; and

(d) any information requested in writing by the Minister.

(2) The Minister must cause the annual report of the Commissioner to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.

Part 11—Security patients

Division 1—Preliminary

269 Construction of references

In this Part—

S. 269(a) amended by No. 15/2015 s. 36(2).

(a) a reference to the ***Secretary to the Department of Justice and Regulation*** includes a reference to—

S. 269(a)(i) amended by No. 15/2015 s. 36(2).

(i) the Secretary to the Department of Health and Human Services in relation to a person who is, or who immediately before being detained in a designated mental health service was, detained in a remand centre, youth residential centre or youth justice centre within the meaning of the **Children, Youth and Families Act 2005**; and

(ii) the Chief Commissioner of Police in relation to a person who is, or who immediately before being detained in a designated mental health service was—

(A) serving a sentence of imprisonment in a police gaol within the meaning of the **Corrections Act 1986**; or

(B) being held in police custody on the order of a court;

(b) a reference to ***a prison or other place of confinement*** includes a reference to—

(i) a remand centre, youth residential centre or youth justice centre within the meaning of the **Children, Youth and Families Act 2005**; and

(ii) a police gaol within the meaning of the **Corrections Act 1986**.

Division 2—Court Secure Treatment Orders

Note

See Part 5 of the **Sentencing Act 1991** in relation to Court Secure Treatment Orders.

270 Taking person subject to a Court Secure Treatment Order from prison to designated mental health service

(1) The Secretary to the Department of Justice and Regulation may make a direction that a person who is subject to a Court Secure Treatment Order be taken from a prison or other place of confinement to a designated mental health service.

S. 270(1) amended by No. 15/2015 s. 36(1).

(2) The Secretary to the Department of Justice and Regulation must not make a direction under this section unless—

S. 270(2) amended by No. 15/2015 s. 36(3).

(a) the person has been examined by a psychiatrist and the Secretary to the Department of Justice and Regulation is satisfied by the production of the psychiatrist's report and any other evidence that the criteria for making a Court Secure Treatment Order referred to in section 94B(1)(c) of the **Sentencing Act 1991** apply to the person; and

S. 270(2)(a) amended by No. 15/2015 s. 36(3).

(b) the Secretary to the Department of Justice and Regulation has received a report from the authorised psychiatrist for the designated mental health service to which it is proposed that the person be taken—

S. 270(2)(b) amended by No. 15/2015 s. 36(3).

(i) recommending the making of the direction; and

(ii) stating that there are facilities or services available at the designated mental health service for the detention and treatment of the person.

271 Notification of receipt of security patient subject to a Court Secure Treatment Order

As soon as practicable after a security patient who is subject to a Court Secure Treatment Order has been received at a designated mental health service, the authorised psychiatrist must notify the Tribunal of the security patient's receipt and ensure that reasonable steps are taken to inform the following persons in relation to the security patient of the security patient's receipt—

(a) the nominated person;

(b) a guardian;

(c) a carer, if the authorised psychiatrist is satisfied that the receipt of the security patient will directly affect the carer and the care relationship;

(d) a parent, if the security patient is under the age of 16 years;

S. 271(e) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(e) the Secretary, if the security patient is the subject of a family reunification order or a care by Secretary order.

272 Application to Tribunal in relation to security patient subject to Court Secure Treatment Order

(1) A security patient who is subject to a Court Secure Treatment Order may apply to the Tribunal to conduct a hearing and determine whether the criteria set out in section 94B(1)(c) of the **Sentencing Act 1991** currently apply to the patient.

(2) The following persons may apply to the Tribunal on behalf of a security patient who is subject to a Court Secure Treatment Order to conduct a hearing and determine whether the criteria set out in section 94B(1)(c) of the **Sentencing Act 1991** currently apply to the security patient—

(a) any person, at the request of the security patient;

(b) a guardian of the security patient;

(c) a parent of the security patient, if the security patient is under the age of 16 years;

(d) the Secretary, if the security patient is the subject of a family reunification order or a care by Secretary order.

S. 272(2)(d) amended by No. 61/2014 s. 169(2)(3).

273 Tribunal hearing in relation to Court Secure Treatment Order

(1) The Tribunal must conduct a hearing to determine whether the criteria set out in section 94B(1)(c) of the **Sentencing Act 1991** currently apply to the security patient who is subject to a Court Secure Treatment Order—

(a) within 28 days after the security patient is received at the designated mental health service; and

(b) at least every 6 months following the initial review of the Order under paragraph (a) until the person ceases to be a security patient; and

(c) on an application made under section 272 by the security patient or on his or her behalf.

(2) If the Tribunal is satisfied that the criteria set out in section 94B(1)(c) of the **Sentencing Act 1991** currently apply to the security patient, the Tribunal must order that the person remain a security patient.

(3) If the Tribunal is not satisfied that the criteria set out in section 94B(1)(c) of the **Sentencing Act 1991** currently apply to the security patient, the Tribunal must order that the person be discharged as a security patient.

274 Discharge of person subject to a Court Secure Treatment Order

(1) An authorised psychiatrist must discharge a person as a security patient who is subject to a Court Secure Treatment Order if—

(a) the authorised psychiatrist determines that the criteria for making a Court Secure Treatment Order under section 94B(1)(c) of the **Sentencing Act 1991** in relation to the person no longer apply; or

(b) the Tribunal makes an Order under section 273(3) that the person be discharged as a security patient; or

(c) section 295(1) applies.

S. 274(2) amended by No. 15/2015 s. 23.

(2) A person who is discharged as a security patient under subsection (1)(a) or (b) ceases to be a security patient who is subject to a Court Secure Treatment Order—

S. 274(2)(a) amended by No. 15/2015 s. 36(1).

(a) on entering the legal custody of the Secretary to the Department of Justice and Regulation; or

(b) if an order has been made under section 74(8A) of the **Corrections Act 1986** for the person to be released on parole and the time for release has occurred, on the release of that person.

Note

A person who is discharged as a security patient under this subsection (1)(a) or (1)(b) must serve the unexpired portion of the Court Secure Treatment Order in a prison or other place of confinement—see section 94C(5) of the **Sentencing Act 1991**.

Division 3—Secure Treatment Order

275 What is a Secure Treatment Order?

S. 275 amended by No. 15/2015 ss 24, 36(1).

A Secure Treatment Order is an Order made by the Secretary to the Department of Justice and Regulation that enables a person who is subject to the Order to be compulsorily taken from a prison or other place of confinement to a designated mental health service and detained and treated in the designated mental health service.

276 Making a Secure Treatment Order

(1) The Secretary to the Department of Justice and Regulation may make a Secure Treatment Order in relation to a person if—

S. 276(1) amended by No. 15/2015 s. 36(3).

(a) the person is detained in a prison or other place of confinement; and

(b) the person has been examined by a psychiatrist and the Secretary to the Department of Justice and Regulation is satisfied by the production of the psychiatrist's report and any other evidence that the following criteria apply to the person—

S. 276(1)(b) amended by No. 15/2015 s. 36(3).

(i) the person has mental illness; and

(ii) because the person has mental illness, the person needs immediate treatment to prevent—

(A) serious deterioration in the person's mental or physical health; or

(B) serious harm to the person or to another person; and

S. 276(1)(b)(iii) amended by No. 15/2015 s. 25(1).

(iii) the immediate treatment will be provided to the person if the person is made subject to a Secure Treatment Order; and

(iv) there is no less restrictive means reasonably available to enable the person to receive the immediate treatment; and

S. 276(1)(c) amended by No. 15/2015 s. 36(3).

(c) the Secretary to the Department of Justice and Regulation has received a report from the authorised psychiatrist for the designated mental health service to which it is proposed that the person be taken—

(i) recommending the making of the Secure Treatment Order; and

(ii) stating that there are facilities or services available at the designated mental health service for the detention and treatment of the person.

S. 276(2) amended by No. 55/2014 s. 150(1), substituted by No. 15/2015 s. 25(2).

(2) Subsection (1) does not apply to a person who is subject to a Court Secure Treatment Order and is detained in a prison or other place of confinement.

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S. 276(3) inserted by No. 55/2014 s. 150(2), repealed by No. 15/2015 s. 25(3).

277 Notification of receipt of security patient subject to a Secure Treatment Order

As soon as practicable after a security patient who is subject to a Secure Treatment Order has been received at a designated mental health service, the authorised psychiatrist must notify the Tribunal of the security patient's receipt and ensure that reasonable steps are taken to inform the following persons in relation to the security patient of the security patient's receipt—

(a) the nominated person;

(b) a guardian;

(c) a carer, if the authorised psychiatrist is satisfied that the receipt of the security patient will directly affect the carer and the care relationship;

(d) a parent, if the security patient is under the age of 16 years;

(e) the Secretary, if the security patient is the subject of a family reunification order or a care by Secretary order.

S. 277(e) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

278 Application for revocation of Secure Treatment Order

(1) A security patient who is subject to a Secure Treatment Order may apply to the Tribunal to revoke the Secure Treatment Order.

(2) The following persons may apply to the Tribunal on behalf of a security patient who is subject to a Secure Treatment Order to revoke the Order—

(a) any person, at the request of the security patient;

(b) a guardian of the security patient;

(c) a parent of the security patient, if the person is under the age of 16 years;

S. 278(2)(d) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(d) the Secretary, if the security patient is the subject of a family reunification order or a care by Secretary order.

279 Tribunal hearing in relation to Secure Treatment Order

(1) The Tribunal must conduct a hearing and determine whether the criteria set out in section 276(1)(b) currently apply to the security patient who is subject to a Secure Treatment Order—

(a) within 28 days after the security patient is received at the designated mental health service; and

(b) at least every 6 months following the initial review of the Order under paragraph (a) until the person ceases to be a security patient; and

(c) on an application made under section 278 by the security patient or by a person on his or her behalf.

(2) If the Tribunal is satisfied that the criteria set out in section 276(1)(b) currently apply to the security patient, the Tribunal must order that the person remain a security patient.

(3) If the Tribunal is not satisfied that the criteria set out in section 276(1)(b) currently apply to the security patient, the Tribunal must make an order that the person be discharged as a security patient.

280 Discharge of person subject to a Secure Treatment Order

(1) An authorised psychiatrist must discharge a person as a security patient who is subject to a Secure Treatment Order if—

(a) the authorised psychiatrist determines that the criteria set out in section 276(1)(b) for making a Secure Treatment Order in relation to the person no longer apply; or

(b) the Tribunal makes an Order under section 279(3) that the person be discharged as a security patient; or

(c) section 295(1) applies.

S. 280(2) amended by No. 15/2015 s. 26.

(2) A person who is discharged as a security patient under subsection (1)(a) or (b) ceases to be a security patient—

S. 280(2)(a) amended by No. 15/2015 s. 36(1).

(a) on entering the legal custody of the Secretary to the Department of Justice and Regulation; or

(b) if an order has been made under section 74 of the **Corrections Act 1986** that the person be released on parole and the time for release has occurred, on the release of the person.

(3) A Secure Treatment Order is revoked on the person being discharged as a security patient under this section.

Division 4—Leave of absence

281 Grant of leave of absence

(1) Subject to subsections (2), (3) and (4), an authorised psychiatrist may grant a security patient a leave of absence from a designated mental health service—

(a) for the purpose of receiving treatment or medical treatment; or

(b) for any other purpose that the authorised psychiatrist is satisfied is appropriate.

(2) The authorised psychiatrist may grant a security patient a leave of absence for a period—

(a) not exceeding 7 days, in the case of leave granted for the purpose of receiving treatment or medical treatment; or

(b) not exceeding 24 hours, in any other case.

(3) The authorised psychiatrist may grant a leave of absence for a security patient subject to any conditions that he or she is satisfied is necessary or vary the conditions or duration of the leave of absence—

(a) having regard to the purpose of the leave; and

(b) if satisfied on the evidence available that the health and safety of the security patient or the safety of any other person will not be seriously endangered as a result.

(4) In determining whether to grant a leave of absence to a security patient, to grant a leave of absence subject to conditions or to vary its conditions or duration, the authorised psychiatrist must, to the extent that is reasonable in the circumstances, have regard to all of the following—

(a) the security patient's views and preferences about the leave and the reasons for those views and preferences, including the recovery outcomes that the security patient would like to achieve;

(b) the views and preferences of the security patient expressed in his or her advance statement;

(c) the views of the security patient's nominated person;

(d) the views of a guardian of the security patient;

(e) the views of the security patient's carer, if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship;

(f) the views of a parent of the security patient, if the security patient is under the age of 16 years;

(g) the views of the Secretary, if the security patient is the subject of a family reunification order or a care by Secretary order.

S. 281(4)(g) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

282 Revocation of leave of absence

The authorised psychiatrist may revoke a security patient's leave of absence by notice in writing and require the security patient to return to the designated mental health service if the authorised psychiatrist is satisfied that—

(a) revocation of leave is necessary to prevent—

(i) serious deterioration in the security patient's mental or physical health; or

(ii) serious harm to the security patient or to another person; or

(b) the security patient has failed to comply with a condition to which the leave of absence is subject; or

(c) the purpose for the leave of absence no longer exists.

283 Notification requirements for leave of absence

S. 283(1) amended by No. 15/2015 s. 36(1).

(1) Before granting a security patient a leave of absence, the authorised psychiatrist must advise the Secretary to the Department of Justice and Regulation.

(2) As soon as practicable after the authorised psychiatrist grants, varies or revokes a leave of absence, the authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the security patient of the decision and to explain its purpose and effect; and

(b) to notify the following persons in relation to the security patient of the decision—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship;

(iv) a parent, if the security patient is under the age of 16 years;

S. 283(2)(b)(v) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(v) the Secretary, if the security patient is the subject of a family reunification order or a care by Secretary order;

S. 283(2)(b)(vi) amended by No. 15/2015 s. 36(1).

(vi) the Secretary to the Department of Justice and Regulation.

284 Application to Tribunal

(1) A security patient may make an application to the Tribunal for a review of an authorised psychiatrist's decision to not grant a leave of absence under section 281.

(2) The Tribunal must hear and determine an application under subsection (1) as soon as practicable and have regard, to the extent that is reasonable in the circumstances, to the matters referred to in section 281(4) when determining the application.

(3) If the Tribunal is satisfied on the evidence available that the health and safety of the security patient or the safety of any other person will not be seriously endangered as a result of granting the security patient a leave of absence, the Tribunal must grant the application and direct the authorised psychiatrist to grant a leave of absence subject to specified conditions and for a period—

(a) not exceeding 7 days, in the case of leave granted for the purpose of receiving treatment or medical treatment; or

(b) not exceeding 24 hours, in any other case.

(4) If the Tribunal is not satisfied on the evidence available that the health and safety of the security patient or the safety of any other person will not be seriously endangered as a result of granting the security patient a leave of absence, the Tribunal must refuse to grant the application.

Division 5—Monitored leave

285 Monitored leave application and grant

S. 285(1) amended by No. 15/2015 s. 36(1).

(1) An application for monitored leave for a security patient may be made to the Secretary to the Department of Justice and Regulation by the following persons—

(a) the security patient;

(b) the authorised psychiatrist for the designated mental health service in which the security patient is detained;

(c) any person, at the request of the security patient;

(d) a guardian of the security patient;

(e) a parent of the security patient, if the patient is under the age of 16 years;

S. 285(1)(f) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(f) the Secretary, if the security patient is the subject of a family reunification order or a care by Secretary order.

(2) An application for monitored leave may be made and granted under this section more than once, but only one grant of monitored leave may be in force at any one time in respect of a security patient.

S. 285(3) amended by No. 15/2015 s. 36(1).

(3) The Secretary to the Department of Justice and Regulation may grant monitored leave for a period not exceeding 6 months if, on the evidence available, he or she is satisfied that the health and safety of the security patient or the safety of any other person will not be seriously endangered as a result, having regard to the purpose of the monitored leave.

(4) The purposes for which the Secretary to the Department of Justice and Regulation may grant monitored leave are one or more of the following purposes—

S. 285(4) amended by No. 15/2015 s. 36(1).

(a) to rehabilitate the security patient;

(b) to maintain or re-establish the security patient's family relationships or relationships with others who can assist in supporting the patient;

(c) to re-integrate the security patient with the community;

(d) to prepare the security patient for release.

286 Monitored leave conditions, duration and variation

(1) The Secretary to the Department of Justice and Regulation may grant monitored leave under section 285 subject to any conditions that he or she considers necessary—

S. 286(1) amended by No. 15/2015 s. 36(1).

(a) having regard to the purpose of the monitored leave; and

(b) if satisfied on the evidence available that the health and safety of the security patient and the safety of any other person will not be seriously endangered as a result.

(2) The Secretary to the Department of Justice and Regulation may vary the monitored leave conditions or the duration of the monitored leave if he or she considers this necessary—

S. 286(2) amended by No. 15/2015 s. 36(1).

(a) having regard to the purpose for which the leave is granted; and

(b) if satisfied on the evidence available that the health and safety of the security patient and the safety of any other person will not be seriously endangered as a result.

S. 287 amended by No. 15/2015 s. 36(4).

287 Matters to take into account

In determining whether to grant monitored leave under section 285 or whether to vary its conditions or duration under section 286, the Secretary to the Department of Justice and Regulation must—

(a) to the extent that is reasonable in the circumstances, have regard to all of the following—

(i) the security patient's views and preferences about the leave and the reasons for those views and preferences, including the recovery outcomes that the patient would like to achieve;

(ii) the views and preferences of the security patient expressed in his or her advance statement;

(iii) the views of the security patient's nominated person;

(iv) the views of a guardian of the security patient;

S. 287 amended by No. 15/2015 s. 36(4).

(v) the views of the security patient's carer, if the Secretary to the Department of Justice and Regulation is satisfied that the decision will directly affect the carer and the care relationship;

(vi) the views of a parent of the security patient, if the patient is under the age of 16 years;

(vii) the views of the Secretary, if the security patient is the subject of a family reunification order or a care by Secretary order; and

S. 287(a)(vii) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(b) have regard to the security patient's applicant profile and leave plan.

288 Applicant profiles and leave plans for monitored leave

(1) If an application for monitored leave is made by or on behalf of a security patient, an authorised psychiatrist for the designated mental health service in which the security patient is detained must prepare for the Secretary to the Department of Justice and Regulation the following documents in relation to the security patient—

S. 288(1) amended by No. 15/2015 s. 36(4).

(a) an applicant profile in accordance with subsection (2);

(b) if the authorised psychiatrist is satisfied that monitored leave should be granted, a leave plan in accordance with subsection (3);

(c) if the authorised psychiatrist is satisfied that monitored leave should not be granted—

(i) a written statement containing the reasons why the leave should not be granted; and

(ii) any information that the authorised psychiatrist considers relevant; and

(iii) any other information requested by the Secretary to the Department of Justice and Regulation.

S. 288(1)(c)(iii) amended by No. 15/2015 s. 36(4).

(2) For the purposes of subsection (1)(a), an applicant profile must include information concerning—

(a) the security patient's mental illness; and

(b) the relationship between the security patient's mental illness and his or her offending behaviour; and

(c) the security patient's clinical history and social circumstances; and

(d) the security patient's current mental state.

(3) For the purposes of subsection (1)(b), a leave plan must include information concerning—

(a) the purpose of the proposed monitored leave; and

(b) any proposed monitored leave conditions; and

(c) any other information that the authorised psychiatrist considers relevant; and

S. 288(3)(d) amended by No. 15/2015 s. 36(1).

(d) any other information requested by the Secretary to the Department of Justice and Regulation.

S. 289 amended by No. 15/2015 s. 36(1)(5).

289 Revocation of monitored leave

The Secretary to the Department of Justice and Regulation may revoke a security patient's monitored leave by notice in writing and require the security patient to return to the designated mental health service if the Secretary to the Department of Justice and Regulation is satisfied that—

(a) the revocation is necessary to prevent—

(i) serious deterioration in the security patient's mental or physical health; or

(ii) serious harm to the security patient or to another person; or

(b) the security patient has failed to comply with a condition to which the monitored leave is subject; or

(c) the purpose for the monitored leave no longer exists.

290 Notification requirements for monitored leave

(1) As soon as practicable after granting, varying or revoking monitored leave, the Secretary to the Department of Justice and Regulation must notify the authorised psychiatrist for the designated mental health service in which the security patient is or was detained of his or her decision.

S. 290(1) amended by No. 15/2015 s. 36(1).

(2) The authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the security patient of the decision of the Secretary to the Department of Justice and Regulation and to explain its purpose and effect; and

S. 290(2)(a) amended by No. 15/2015 s. 36(6).

(b) to notify the following persons in relation to the security patient of the decision—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship;

(iv) a parent, if the security patient is under the age of 16 years;

(v) the Secretary, if the security patient is the subject of a family reunification order or a care by Secretary order.

S. 290(2)(b)(v) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

Division 6—Taking security patients to another designated mental health service

291 Authorised psychiatrist may direct security patient to be taken to another designated mental health service

(1) An authorised psychiatrist may make a direction that a security patient is to be taken to another designated mental health service if—

(a) the authorised psychiatrist is satisfied that this is necessary for the security patient's treatment; and

(b) the authorised psychiatrist for the designated mental health service which is to provide the treatment to the security patient approves.

(2) In determining whether the security patient is to be taken to another designated mental health service, the authorised psychiatrist must, to the extent that is reasonable in the circumstances, have regard to all of the following—

(a) the security patient's views and preferences about receiving treatment at another designated mental health service and the reasons for those views and preferences, including the recovery outcomes the security patient would like to achieve;

(b) the views or preferences expressed by the security patient in his or her advance statement;

(c) the views of the security patient's nominated person;

(d) the views of a guardian of the security patient;

(e) the views of the security patient's carer, if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship;

(f) the views of a parent of the security patient, if the security patient is under the age of 16 years;

(g) the views of the Secretary, if the security patient is the subject of a family reunification order or a care by Secretary order;

S. 291(2)(g) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(h) the views of the Secretary to the Department of Justice and Regulation.

S. 291(2)(h) amended by No. 15/2015 s. 36(1).

292 Chief psychiatrist may direct security patient to be taken to another designated mental health service

(1) The chief psychiatrist may direct an authorised psychiatrist to arrange for a security patient to be taken to another designated mental health service if the chief psychiatrist is satisfied that this is necessary for the security patient's treatment.

(2) In determining whether a security patient is to be taken to another designated mental health service, the chief psychiatrist must, to the extent that is reasonable in the circumstances, have regard to the matters referred to in section 291(2).

293 Role of authorised psychiatrist in taking security patient to another designated mental health service

(1) As soon as practicable after making a direction under section 291 or receiving a direction under section 292(1), the authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the security patient of the direction to take the security patient to another designated mental health service and to explain its purpose and effect; and

(b) to notify the following persons in relation to the security patient of the direction—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship;

(iv) a parent, if the person is under the age of 16 years;

S. 293(1)(b)(v) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(v) the Secretary, if the security patient is the subject of a family reunification order or a care by Secretary order; and

(c) to take the security patient to the receiving designated mental health service; and

(d) to forward any documents relevant to the treatment of the security patient to the receiving designated mental health service.

S. 293(3) amended by No. 15/2015 s. 36(1).

(3) As soon as practicable after a security patient is taken to the receiving designated mental health service, the authorised psychiatrist of that designated mental health service must ensure that reasonable steps are taken to notify the Secretary to the Department of Justice and Regulation that the security patient has been received at that designated mental health service.

294 Application to Tribunal for review of direction to take security patient to another designated mental health service

(1) A security patient who is subject to a direction made under section 291 or 292 to be taken to another designated mental health service may apply within 20 business days after the direction is made to the Tribunal for a review of the direction.

(2) The following persons may apply to the Tribunal for a review of the direction made under section 291 or 292 on behalf of a security patient referred to in subsection (1) within 20 days after the direction is made—

(a) any person, at the request of the security patient;

(b) a guardian of the security patient;

(c) a parent of the security patient, if the security patient is under the age of 16 years;

(d) the Secretary, if the security patient is the subject of a family reunification order or a care by Secretary order.

S. 294(2)(d) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(3) As soon as practicable after an application is made, the Tribunal must hear and determine the application.

(4) On hearing an application under this section, the Tribunal must, to the extent that is reasonable in the circumstances, have regard to the matters referred to in section 291(2).

(5) The Tribunal must—

(a) refuse to grant the application if the Tribunal is satisfied that taking the security patient to another designated mental health service is necessary for the patient's treatment; or

(b) grant the application if the Tribunal is not satisfied that taking the security patient to another designated mental health service is necessary for the patient's treatment.

(6) If the Tribunal grants the application and the security patient has been taken to another designated mental health service, the Tribunal must direct that the security patient be returned to the original designated mental health service.

(7) If the Tribunal refuses to grant the application, the security patient must be taken to the receiving designated mental health service as directed by the authorised psychiatrist or the chief psychiatrist.

Division 7—General security patient matters

295 Cessation of security patient status

(1) A person immediately ceases to be a security patient if—

(a) the person's sentence of imprisonment or detention in a prison or other place of confinement expires; or

(b) the Court Secure Treatment Order to which the person was subject expires; or

(c) the person is granted bail; or

(d) a court releases the person from custody; or

(e) an order has been made under section 74 of the **Corrections Act 1986** that the person be released on parole and the time for release has occurred.

S. 295(2) amended by No. 15/2015 s. 36(1).

(2) The Secretary to the Department of Justice and Regulation must notify the authorised psychiatrist as soon as practicable of the date on which a security patient's sentence of imprisonment or detention is to expire.

296 Security conditions

(1) A security patient is subject to such security conditions as the authorised psychiatrist is satisfied are necessary to protect the health and safety of the patient or the safety of any other person.

(2) The security conditions apply while the security patient is—

(a) detained in a designated mental health service; or

(b) absent from a designated mental health service on leave or monitored leave; or

(c) taken to and from such places as may be necessary for the administration of this Act.

297 Notification and directions following discharge of security patient subject to Court Secure Treatment Order or Secure Treatment Order

S. 297(1) amended by No. 15/2015 s. 27.

(1) An authorised psychiatrist must ensure that the Secretary to the Department of Justice and Regulation is notified that the authorised psychiatrist intends to discharge a person as a security patient—

(a) in the case of a person who is subject to a Court Secure Treatment Order, under section 274(1); or

(b) in the case of a person who is subject to a Secure Treatment Order, under section 280(1).

(2) An authorised psychiatrist must notify the Tribunal (unless the Tribunal ordered that the person be discharged as a security patient) as soon as practicable after discharging a person as a security patent.

(3) An authorised psychiatrist who has discharged a person as a security patient must ensure that reasonable steps are taken—

(a) to notify the person that he or she has been discharged as a security patient and to explain to the person the purpose and effect of the discharge; and

(b) to notify the following persons in relation to the person who is discharged that the person has been discharged—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the discharge will directly affect the carer and the care relationship;

(iv) a parent, if the person is under the age of 16 years;

(v) the Secretary, if the security patient is the subject of a family reunification order or a care by Secretary order.

S. 297(3)(b)(v) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

S. 297(3) renumbered as s. 297(4) by No. 15/2015 s. 36(7), amended by No. 15/2015 s. 36(8).

(4) As soon as practicable after the Secretary to the Department of Justice and Regulation is notified under subsection (1), the Secretary to the Department of Justice and Regulation must make the necessary arrangements to take the person to a prison or other place of confinement if the person is discharged under section 274(1)(a) or (b) or 280(1)(a) or (b).

298 Custody of security patients

A security patient is in the custody of the authorised psychiatrist from the time when the security patient is received at the designated mental health service until—

(a) the person ceases to be a security patient under section 295; or

(b) if the authorised psychiatrist discharges the person as a security patient, the person enters the legal custody of the Secretary to the Department of Justice and Regulation.

S. 298(b) amended by No. 15/2015 s. 36(1).

299 Warrant to arrest security patient absent without leave who leaves Victoria

(1) An appropriate person may apply to the Supreme Court, the County Court or the Magistrates' Court for a warrant to arrest a security patient if it appears to the appropriate person that the security patient—

(a) is absent from a designated mental health service without leave of absence; and

(b) is no longer in Victoria.

(2) The court to which the application is made may order that a warrant to arrest be issued against the security patient if the court is satisfied by evidence on oath or by affirmation or by affidavit of the matters specified in subsection (1)(a) and (b).

S. 299(2) amended by No. 6/2018 s. 68(Sch. 2 item 88.2).

Note

Under the Service and Execution of Process Act 1992 of the Commonwealth, a person who is apprehended interstate under a warrant issued in Victoria is to be taken before a magistrate in the place where the person is apprehended. That Act provides for the magistrate to specify the place in Victoria to which the person is then to be taken.

(3) In this section, ***appropriate person*** means—

(a) the authorised psychiatrist; or

(d) the chief psychiatrist; or

(c) the Secretary; or

S. 299(3)(d) amended by No. 15/2015 s. 36(1).

(d) the Secretary to the Department of Justice and Regulation.

Division 8—Interstate security patients

300 Definitions

In this Division—

interstate security patient means a person who—

(a) has been convicted of an offence in another State or Territory that would be an offence if committed in Victoria; and

(b) is serving a sentence of imprisonment in any relevant State (other than Victoria) for that offence (whether in a prison or otherwise); and

(c) is required to receive involuntary treatment for mental illness in the State in which he or she is serving his or her sentence;

mental health facility means a facility for the detention and treatment of persons who have mental illness;

relevant State, in relation to an interstate security patient, means the State or Territory in which the sentence was imposed on the security patient.

301 Warrant to arrest interstate security patient who absconds to Victoria

(1) The Secretary may apply to the Magistrates' Court for a warrant to arrest a person if the Secretary is satisfied that—

(a) the person is an interstate security patient; and

(b) the person is in Victoria; and

(c) the person could be apprehended in the relevant State, if the person were still in that State, because he or she is absent without leave or other lawful authority from a mental health facility in the relevant State; and

(d) one of the following applies—

(i) the person cannot be lawfully apprehended in Victoria because a warrant to apprehend or arrest the person has not been or cannot be issued in the relevant State, or such a warrant cannot be executed in Victoria;

(ii) the person cannot be lawfully apprehended in Victoria under section 326;

(iii) although the person could be lawfully apprehended in Victoria, the person would not be able to be returned to the relevant State following the apprehension.

(2) For the purposes of subsection (1)(c), a person is taken to be absent without lawful authority from a mental health facility in a relevant State if the person did not return to the facility when required to do so under a law of that State.

S. 301(3) amended by No. 6/2018 s. 68(Sch. 2 item 88.2).

(3) If the Magistrates' Court is satisfied by evidence on oath or by affirmation or by affidavit of the matters specified in subsection (1)(a) to (d), the court may order that a warrant to arrest be issued against the person who is the subject of the application.

(4) Despite section 64(2)(a) of the **Magistrates' Court Act 1989**, a person arrested under a warrant issued under this section must be brought before the Magistrates' Court on the day of his or her arrest or on the next sitting day of the court.

302 Orders that Magistrates' Court may make in respect of interstate security patients

(1) If a person arrested under a warrant issued under section 301 is brought before the Magistrates' Court, the court must make—

(a) an order granting the person bail; or

(b) an order remanding the person in custody in a prison or other place of confinement—

unless the court is satisfied that the matters specified in section 301(1)(a) to (d) are not made out.

(2) If the court is satisfied that any one of the matters specified in section 301(1)(a) to (c) is not made out, the court must discharge the person.

(3) If the court is satisfied that the matters specified in section 301(1)(a) to (c) are made out, but that the person can be returned to the relevant State, the court must order the person to be released into the custody of a person who is authorised to escort the person to the relevant State.

303 Translated sentence for interstate security patient

(1) Within 7 days after an interstate security patient is granted bail or remanded in custody in a prison under section 302(1), the Secretary must apply to the Supreme Court for a translated sentence to be imposed on the interstate security patient.

(2) The Supreme Court may deal with the application itself or refer the application to the County Court.

(3) On an application under subsection (1), the court must, by order, impose a translated sentence on the interstate security patient and determine the period of that sentence already served, unless the court is satisfied that the interstate security patient can be returned to the relevant State.

(4) If the court is satisfied that the interstate security patient can be returned to the relevant State, the court must order that the patient be released into the custody of a person who is authorised to escort the interstate security patient to the relevant State.

(5) The translated sentence must be a sentence of the same duration as that imposed on the interstate security patient in the relevant State in respect of the offence that resulted in his or her becoming an interstate security patient.

(6) In determining the period of the translated sentence already served, the court must take into account—

(a) the period of the sentence already served in the relevant State; and

(b) the period since the interstate security patient was first arrested in Victoria under a warrant issued under section 301.

304 Provisions relating to translated sentences

(1) Subject to this section, a translated sentence imposed on an interstate security patient under section 303 has the same effect as if it had been imposed on the interstate security patient under the **Sentencing Act 1991** on conviction for an offence in Victoria.

(2) If, under the law of the relevant State, a court has fixed a non-parole period in respect of a sentence imposed on the interstate security patient, that non-parole period is taken to have been fixed by the court in Victoria in respect of the translated sentence.

(3) If the sentence imposed on an interstate security patient, or any non-parole period in respect of that sentence—

(a) is varied, quashed or set aside on a review by or appeal to a court in the relevant State, the translated sentence or non-parole period is taken to have been varied to the same extent, or to have been set aside, by a corresponding court in Victoria; or

(b) is otherwise varied or ceases to have effect as a result of action taken by any person or authority in the relevant State, the translated sentence is taken to have been varied to the same extent, or to have ceased to have effect, as a result of action taken by an appropriate person or authority in Victoria.

Part 12—Forensic patients

305 Definition

(1) In this Part—

forensic patient means—

S. 305(1) def. of *forensic patient* amended by Nos 55/2014 s. 150(3), 15/2015 s. 28.

(a) a person remanded in custody in a designated mental health service under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** (other than under Part 5A of that Act); or

(b) a person committed to custody in a designated mental health service by a supervision order under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** (other than under Part 5A of that Act); or

(c) a person detained in a designated mental health service under section 30(2) or 30A(3) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or

(d) a person deemed to be a forensic patient by section 73E(4) or 73K(8) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or

(e) a person detained in a designated mental health service under section 20BJ(1) or 20BM of the Crimes Act 1914 of the Commonwealth; or

(f) a person who is an international forensic patient within the meaning of section 73O of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

* * * * *

(2) A person does not cease to be a forensic patient under subsection (1) if he or she—

(a) is on leave of absence from a designated mental health service; or

(b) is absent from a designated mental health service without leave.

S. 306 repealed by No. 15/2015 s. 29.[1]

* * * * *

307 Authorised psychiatrist may direct taking forensic patient to another designated mental health service

(1) Subject to subsection (2), an authorised psychiatrist may make a direction that a forensic patient be taken to another designated mental health service if—

(a) the authorised psychiatrist is satisfied that this is necessary for the forensic patient's treatment; and

(b) the authorised psychiatrist for the designated mental health service which is to provide the treatment to the forensic patient approves.

(2) The authorised psychiatrist must not make a direction under subsection (1) in respect of a forensic patient detained under section 20BJ(1) or 20BM of the Crimes Act 1914 of the Commonwealth but may recommend to the Attorney-General for the Commonwealth the making of an order under section 20BJ(2) or 20BM(7) of that Act varying the designated mental health service in which the forensic patient is detained.

(3) In determining whether taking a forensic patient to another designated mental health service is necessary for the forensic patient's treatment, the authorised psychiatrist must, to the extent that is reasonable in the circumstances, have regard to all of the following—

(a) the forensic patient's views and preferences and the reasons for those views and preferences, including any recovery outcomes the patient would like to achieve;

(b) the views or preferences expressed by the forensic patient in his or her advance statement;

(c) the views of the forensic patient's nominated person;

(d) the views of a guardian of the forensic patient;

(e) the views of a carer of the forensic patient, if the authorised psychiatrist is satisfied that the direction will directly affect the carer and the care relationship;

(f) the views of a parent, if the forensic patient is under the age of 16 years;

(g) the Secretary, if the forensic patient is the subject of a family reunification order or a care by Secretary order.

S. 307(3)(g) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

308 Chief psychiatrist may direct forensic patient to be taken to another designated mental health service

(1) Subject to subsection (2), the chief psychiatrist may direct an authorised psychiatrist to arrange for a forensic patient to be taken to another designated mental health service if the chief psychiatrist is satisfied that this is necessary for the forensic patient's treatment.

(2) The chief psychiatrist must not make a direction under subsection (1) in respect of a forensic patient detained under section 20BJ(1) or 20BM of the Crimes Act 1914 of the Commonwealth but may recommend to the Attorney-General for the Commonwealth the making of an order under section 20BJ(2) or 20BM(7) of that Act varying the designated mental health service in which the forensic patient is detained.

(3) In determining to make a direction under subsection (1), the chief psychiatrist must, to the extent that is reasonable in the circumstances, have regard to the matters referred to in section 307(3).

309 Role of authorised psychiatrist in transferring forensic patient

(1) As soon as practicable after making a direction under section 307 or receiving a direction under section 308, the authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the forensic patient of the direction to take the forensic patient to another designated mental health service and to explain its purpose and effect; and

(b) to notify the following persons in relation to the forensic patient of the direction—

(i) the nominated person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the direction will directly affect the carer and the care relationship;

(iv) a parent, if the forensic patient is under the age of 16 years;

(v) the Secretary, if the forensic patient is the subject of a family reunification order or a care by Secretary order.

S. 309(1)(b)(v) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(c) to take the forensic patient to the receiving designated mental health service; and

(d) to forward any documents relevant to the treatment of the forensic patient to the receiving designated mental health service.

(2) As soon as practicable after a forensic patient is taken to the receiving designated mental health service, the authorised psychiatrist of that designated mental health service must ensure that reasonable steps are taken to notify the Secretary that the forensic patient has been received at that designated mental health service.

310 Application to Forensic Leave Panel for review of decision to take forensic patient to another designated mental health service

(1) A forensic patient who is subject to a direction made under section 307 or 308 to be taken to another designated mental health service may apply to the Panel within 20 business days after the direction is made for a review of the direction.

(2) The following persons may apply to the Panel for a review of a direction made under section 307 or 308 on behalf of a forensic patient referred to in subsection (1) within 20 days after the direction is made—

(a) any person, at the request of the forensic patient;

(b) a guardian of the forensic patient;

(c) a parent of the forensic patient, if the forensic patient is under the age of 16 years;

S. 310(2)(d) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(d) the Secretary, if the forensic patient is the subject of a family reunification order or a care by Secretary order.

(3) As soon as practicable after an application is made, the Panel must hear and determine the application.

(4) On hearing an application under this section, the Panel must have regard to the matters referred to in section 307(3).

(5) The Panel must—

(a) grant the application if the Panel is not satisfied that taking the forensic patient to another designated mental health service is necessary for the forensic patient's treatment; or

(b) refuse to grant the application if the Panel is satisfied that taking the forensic patient to another designated mental health service is necessary for the forensic patient's treatment.

(6) If the Panel grants the application and the forensic patient has been taken to another designated mental health service, the Panel must direct that the forensic patient be returned to the original designated mental health service.

(7) If the Panel refuses to grant the application and the forensic patient has not been taken to another designated mental health service, the forensic patient must be taken to another designated mental health service.

(8) Division 3 of Part 7 of, and Schedule 2 to, the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** apply to an application under this section as if references in that Division and Schedule to the applicant for leave were

references to the forensic patient subject to the direction to be taken to another designated mental health service.

311 Security conditions

(1) A forensic patient is subject to such security conditions as the authorised psychiatrist is satisfied are necessary to protect the health and safety of the forensic patient or the safety of any other person.

(2) The security conditions apply while the person (in accordance with this Act) is—

(a) detained in a designated mental health service; or

(b) absent on leave from a designated mental health service; or

(c) taken to and from such places as may be necessary for the administration of this Act or any other Act.

312 Leave of absence for forensic patient

A forensic patient may apply for and be granted leave of absence in accordance with Part 7 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

Part 13—Interstate application of mental health provisions

Division 1—General

313 Definitions

In this Part—

corresponding law means a law that, under an Order in Council in force under section 314, is designated to be a corresponding law for the purposes of this Part;

corresponding Order means an Order that, under an Order in Council in force under section 314, is designated to be a corresponding Order for the purposes of this Part;

interstate authority, for an interstate mental health facility, means a person performing a similar or corresponding function to an authorised psychiatrist in relation to that facility;

interstate mental health facility means a hospital or other facility to which a person in a participating State may be compulsorily admitted under a corresponding law in that State;

participating State means a State or Territory—

(a) in which a corresponding law is in force; and

(b) a Minister of which has made an agreement with the Minister under section 315.

314 Corresponding laws and Orders

(1) The Governor in Council may, on the recommendation of the Minister, by Order in Council published in the Government Gazette, declare that a law of a State (other than this State) or of a Territory is a corresponding law for the purposes of this Part.

(2) An Order in Council under subsection (1) in respect of a law of another State or Territory may include a declaration that an Order under that law that is substantially similar to an Assessment Order, a Temporary Treatment Order or a Treatment Order is a corresponding Order for the purposes of this Part.

315 Ministerial agreements

The Minister may make an agreement with a Minister responsible for administering a corresponding law about any matter in connection with the administration of this Part or a corresponding law.

316 Victorian officers may exercise powers under corresponding laws

Subject to the provisions of any agreement under section 315, the following persons may exercise any power conferred on them by or under a corresponding law or an agreement under that section—

(a) an authorised psychiatrist;

(b) the chief psychiatrist;

(c) an authorised person.

317 Interstate officers may perform functions or exercise powers in Victoria

A person who is authorised to perform functions or exercise powers under a corresponding Order may perform those functions or exercise those powers in this State.

Division 2—Operation of Victorian Orders interstate and corresponding orders in Victoria

318 Taking person from Victoria to interstate mental health facility for assessment

(1) A person who is subject to an Assessment Order may be taken to an interstate mental health facility for assessment if—

(a) the interstate mental health facility is the most appropriate facility in the circumstances; and

(b) this course of action is permitted by or under a corresponding law.

(2) A person may be taken to an interstate mental health facility under subsection (1) by—

(a) an authorised person; or

(b) a person authorised to do so by or under a corresponding law.

319 Taking person from interstate to Victoria for assessment

A person who may be taken to, and detained in, an interstate mental health facility under a corresponding law in a participating State may instead be taken to a registered medical practitioner or mental health practitioner in this State and examined by the practitioner to determine whether the criteria for an Assessment Order specified in section 29 apply to the person.

320 Transfer of responsibility for treatment of person to interstate mental health facility—with person's consent

(1) An authorised psychiatrist or the chief psychiatrist may direct that responsibility for treatment of a person who is subject to a Community Temporary Treatment Order or a Community Treatment Order be transferred to an interstate mental health facility if—

(a) the authorised psychiatrist or chief psychiatrist is satisfied that this is necessary for the person's treatment; and

(b) the person consents to the transfer of responsibility; and

(c) the transfer of responsibility is permitted by or under a corresponding law; and

(d) the interstate authority for the interstate mental health facility agrees to the transfer of responsibility for treatment.

(2) A person in relation to whom responsibility for treatment is transferred under this section ceases to be subject to a Community Temporary Treatment Order or a Community Treatment Order on becoming subject to a corresponding Order.

(3) The authorised psychiatrist or chief psychiatrist must ensure that any documents relevant to the person in relation to whom responsibility for treatment is transferred under this section are forwarded to the interstate mental health facility.

321 Transfer of responsibility for treatment of person to interstate mental health facility—without person's consent

(1) An authorised psychiatrist or the chief psychiatrist may make an application to the Tribunal for an interstate transfer of treatment order to transfer responsibility for treatment of a person who is subject to a Community Temporary Treatment Order or a Community Treatment Order to an interstate mental health facility if—

(a) the authorised psychiatrist or chief psychiatrist is satisfied that the transfer of the responsibility for treatment is necessary for the person's treatment; and

(b) the person does not have capacity to give informed consent or does not consent to the transfer of responsibility; and

(c) the transfer of responsibility is permitted by or under a corresponding law; and

(d) the interstate authority for the interstate mental health facility agrees to the transfer of responsibility for treatment.

(2) The Tribunal must hear and determine an application made under subsection (1) as soon as practicable.

(3) In determining an application made under subsection (1), the Tribunal must, to the extent that reasonable in the circumstances, have regard to—

(a) the person's views and preferences about the proposed transfer and the reasons for those views and preferences, including the recovery outcomes that the person would like to achieve; and

(b) the person's views and preferences expressed in his or her advance statement; and

(c) the views of the person's nominated person; and

(d) the views of a guardian of the person; and

(e) the views of a carer of the person, if the Tribunal is satisfied that the transfer will directly affect the carer and the care relationship; and

(f) the views of a parent of the person, if the person is under the age of 16 years; and

(g) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

S. 321(3)(g) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(4) The Tribunal must—

(a) grant the application if the Tribunal is satisfied that—

(i) the transfer of responsibility is necessary for the person's treatment; and

(ii) the person does not have capacity to give informed consent or does not consent to the transfer; and

(iii) the transfer is permitted by or under a corresponding law; and

(iv) the interstate authority for the interstate mental health facility agrees to the transfer; or

(b) refuse to grant the application if the Tribunal is not satisfied as to the matters referred to in paragraph (a).

(5) A person in relation to whom responsibility for treatment is transferred under this section ceases to be subject to a Community Temporary Treatment Order or Community Treatment Order on becoming subject to a corresponding Order.

(6) The authorised psychiatrist or the chief psychiatrist must ensure that any documents relevant to the person in relation to whom responsibility for treatment is transferred under this section are forwarded to the interstate mental health facility.

322 Taking person to interstate mental health facility—with person's consent

(1) An authorised psychiatrist or the chief psychiatrist may direct that a person who is subject to an Inpatient Temporary Treatment Order or an Inpatient Treatment Order be taken to an interstate mental health facility if—

(a) the authorised psychiatrist or chief psychiatrist is satisfied that this is necessary for the person's treatment; and

(b) the person consents to being taken to the interstate mental health facility; and

(c) taking the person to the interstate mental health facility is permitted by or under a corresponding law; and

(d) the interstate authority for the interstate mental health facility agrees to receive the person.

(2) A person who is taken to an interstate mental health facility under this section ceases to be subject to an Inpatient Temporary Treatment Order or an Inpatient Treatment Order—

(a) on admission to the interstate mental health facility; or

(b) on becoming subject to a corresponding Order.

(3) A person who is taken to an interstate mental health facility under this section may be taken to the interstate mental health facility by—

(a) an authorised person; or

(b) a person who, under the corresponding law, is authorised to take the person to the interstate mental health facility.

(4) The authorised psychiatrist or the chief psychiatrist must ensure that any documents relevant to the person who is taken to the interstate mental health facility under this section are forwarded to the interstate mental health facility.

323 Taking person to interstate mental health facility—without person's consent

(1) An authorised psychiatrist or the chief psychiatrist may make an application to the Tribunal for an interstate transfer order for a person who is subject to an Inpatient Temporary Treatment Order or an Inpatient Treatment Order to be taken to an interstate mental health facility if—

(a) the authorised psychiatrist or chief psychiatrist is satisfied that taking the person is necessary for the person's treatment; and

(b) the person does not have capacity to give informed consent or does not consent to being taken to the interstate mental health facility; and

(c) taking the person to the interstate mental health facility is permitted by or under a corresponding law; and

(d) the interstate authority for the interstate mental health facility agrees to admit the person.

(2) The Tribunal must hear and determine an application made under subsection (1) as soon as practicable.

(3) In determining an application made under subsection (1), the Tribunal must, to the extent that reasonable in the circumstances, have regard to—

(a) the person's views and preferences about being taken to an interstate mental health facility and the reasons for those views and preferences, including the recovery outcomes that the person would like to achieve; and

(b) the person's views and preferences expressed in his or her advance statement; and

(c) the views of the person's nominated person; and

(d) the views of a guardian of the person; and

(e) the views of a carer of the person, if the authorised psychiatrist or chief psychiatrist (as the case may be) is satisfied that the transfer will directly affect the carer and the care relationship; and

(f) the views of a parent of the person, if the person is under the age of 16 years; and

S. 323(3)(g) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(g) the views of the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

(4) The Tribunal must—

(a) grant the application if the Tribunal is satisfied that—

(i) taking the person to an interstate mental health facility is necessary for the person's treatment; and

(ii) the person does not have capacity to give informed consent or does not consent to being taken; and

(iii) taking the person to the interstate mental health facility is permitted by or under a corresponding law; and

(iv) the interstate authority for the interstate mental health facility agrees to admit the person; or

(b) refuse to grant the application if the Tribunal is not satisfied as to the matters referred to in paragraph (a).

(5) A person who is taken to an interstate mental health facility under this section ceases to be subject to an Inpatient Temporary Treatment Order or an Inpatient Treatment Order—

(a) on admission to the interstate mental health facility; or

(b) on becoming subject to a corresponding Order.

(6) A person may be taken to an interstate mental health facility under this section by—

(a) an authorised person; or

(b) a person who, under the corresponding law, is authorised to take the person to the interstate mental health facility.

(7) The authorised psychiatrist or the chief psychiatrist must ensure that any documents relevant to the person who is taken to the interstate mental health facility under this section are forwarded to the interstate mental health facility.

324 Person subject to interstate compulsory order taken to Victoria to determine suitability for Temporary Treatment Order

(1) A person who is compulsorily detained in an interstate mental health facility under a corresponding law or who is subject to a corresponding Order may, if approved by the authorised psychiatrist of a designated mental health service, be—

(a) taken to this State in accordance with the corresponding law; and

(b) examined by the authorised psychiatrist at a designated mental health service or in the community as soon as practicable after the person enters this State to determine whether the person should be made subject to a Temporary Treatment Order.

(2) A person referred to in subsection (1) may be taken to an authorised psychiatrist by—

(a) an authorised person; or

(b) a person who is authorised under the corresponding law to take the person to an authorised psychiatrist.

(3) A person who is taken to this State under this section ceases to be subject to a corresponding Order when the person is made subject to a Temporary Treatment Order.

325 Interstate application of Victorian Orders

A Community Temporary Treatment Order or a Community Treatment Order—

(a) may be made in respect of a person who lives in a participating State; and

(b) may provide for the person living in a participating State to receive treatment either—

(i) in that State; or

(ii) both in that State and in Victoria; and

(c) may provide for the person to receive treatment in accordance with the Community Temporary Treatment Order or Community Treatment Order from any person who is authorised under this Act to perform functions or exercise powers in relation to a Community Temporary Treatment Order or Community Treatment Order.

Division 3—Persons absent without leave

326 Apprehension of persons absent without leave from interstate facilities

(1) A person who is absent without leave or other lawful authority from an interstate mental health facility in a participating State may be apprehended in this State if—

(a) the person may be apprehended under a corresponding law in the participating State; or

(b) a warrant or other document is issued under the corresponding law in the participating State that authorises the apprehension of the person.

(2) The power to apprehend a person under subsection (1) may only be exercised by—

(a) an authorised person; or

(b) a person who is authorised under the corresponding law to apprehend the person.

(3) A person who is apprehended under subsection (1) must, as soon as it is reasonably practicable to do so—

(a) be informed why he or she has been apprehended; and

(b) be taken to an interstate mental health facility in the participating State.

(4) Pending his or her return to the participating State under subsection (3), a person may be taken to a designated mental health service for examination by the authorised psychiatrist to determine whether the person requires treatment before being returned.

(5) If, under subsection (4), the authorised psychiatrist determines that the person requires treatment before being returned to the participating State, the person may be detained and treated in the designated mental health service as if the person were subject to a Temporary Treatment Order until the person is returned.

(6) For the purposes of this section, a person is taken to be absent without lawful authority from an interstate mental health facility if the person did not return to the facility when required to do so under a corresponding law.

327 Persons absent without leave from designated mental health service

A person who is absent without leave from a designated mental health service and who is apprehended in a participating State may be taken back to the designated mental health service by—

(a) a person who is authorised under a corresponding law in that State to take the person to an interstate mental health facility; or

(b) an authorised person.

Part 14—Victorian Institute of Forensic Mental Health

Division 1—Preliminary

328 Victorian Institute of Forensic Mental Health

(1) The Victorian Institute of Forensic Mental Health established under section 117B of the **Mental Health Act 1986** (as in force immediately before 1 July 2014) is continued under this Act.

(2) The Institute—

(a) is a body corporate with perpetual succession; and

(b) has an official seal; and

(c) may sue and be sued; and

(d) may acquire, hold and dispose of real and personal property; and

(e) may do and suffer all acts and things that a body corporate may by law do and suffer.

(3) The seal of the Institute must be kept in custody as directed by the Institute and must only be used as authorised by the Institute.

(4) All courts must take judicial notice of the seal of the Institute affixed to a document and, until the contrary is proved, must presume that it was duly affixed.

329 Trading name

Despite anything to the contrary in the Business Names Registration Act 2011 of the Commonwealth or any other Act or law, the Institute may carry on business under the name "Forensicare".

330 Functions of the Institute

The Institute has the following functions—

(a) to provide, promote and assist in the provision of forensic mental health and related services in Victoria;

(b) to provide clinical assessment services to courts, the Adult Parole Board and other relevant government agencies;

(c) to provide inpatient and community forensic mental health services and specialist assessment and treatment services;

(d) to provide community education in relation to the services provided by the Institute and forensic mental health generally;

(e) to provide, promote and assist in undergraduate and postgraduate education and training of professionals in the field of forensic mental health;

(f) to provide, promote and assist in the teaching of, and training in, clinical forensic mental health within medical, legal, general health and other education programs;

(g) to conduct research in the fields of forensic mental health, forensic health, forensic behavioural science and associated fields;

(h) to promote continuous improvement in the quality and safety of forensic mental health and related services provided in Victoria;

S. 330(h) substituted by No. 52/2017 s. 82.

(ha) to promote innovations in the provision of forensic mental health and related services in Victoria;

S. 330(ha) inserted by No. 52/2017 s. 82.

(i) to perform any other functions conferred on the Institute under this Act or any other Act.

331 Powers of the Institute

(1) The Institute has power to do all things that are necessary or convenient to be done for, or in connection with, or as incidental to, the performance of its functions.

(2) Without limiting the generality of subsection (1), the Institute may—

(a) enter into arrangements for services provided by the Institute; and

(b) impose fees and charges for the provision of services; and

(c) seek and accept funds from any person for the purposes of performing its functions.

(3) In performing its functions and exercising its powers, the Institute must have regard to—

(a) the needs and views of—

(i) persons receiving mental health services and related services provided by the Institute; and

(ii) the communities served by the Institute; and

(iii) providers of mental health services and related services; and

(iv) other relevant parties; and

S. 331(3)(b) amended by No. 52/2017 s. 83(1).

(b) the need to ensure that the Institute uses its resources in an effective and efficient manner; and

S. 331(3)(c) inserted by No. 52/2017 s. 83(2).

(c) the need to ensure that it continuously strives—

(i) to improve the quality and safety of the services it provides; and

(ii) to promote innovation.

Division 2—Board of directors

332 Board of directors

(1) The Institute must have a board of directors.

(2) The board of directors—

(a) is responsible for setting the strategic direction of the Institute; and

(b) is responsible for establishing a governance framework for the Institute to perform its functions and exercise its powers and for monitoring compliance with the governance framework; and

S. 332(2)(b) amended by No. 52/2017 s. 84.

(c) may exercise the powers of the Institute.

332A Functions of the board

S. 332A inserted by No. 52/2017 s. 85.

The functions of the board of the Institute are—

(a) to develop statements of priorities and strategic plans for the operation of the Institute and to monitor compliance with those statements and plans; and

(b) to develop financial and business plans, strategies and budgets to ensure the accountable and efficient performance of the functions of the Institute and the long term financial viability of the Institute; and

(c) to monitor the performance of the Institute to ensure that—

(i) the Institute operates within its budget; and

(ii) its audit and accounting systems accurately reflect the financial position and viability of the Institute; and

(iii) the Institute adheres to—

(A) its financial and business plans; and

(B) its strategic plans; and

(C) its statements of priorities; and

(iv) effective and accountable risk management systems are in place; and

(v) effective and accountable systems are in place to monitor and improve the quality, safety and effectiveness of mental health services provided by the Institute; and

(vi) any problems identified with the quality, safety or effectiveness of the mental health services provided are addressed in a timely manner; and

(vii) the Institute continuously strives to improve the quality and safety of the mental health services it provides and to promote innovation; and

(viii) committees established or appointed by the Institute operate effectively; and

(d) during each financial year, to monitor the performance of the chief executive officer of the Institute (including at least one formal assessment in relation to that financial year), having regard to the objectives, priorities and key performance outcomes specified in the Institute's statement of priorities under section 344; and

(e) to develop arrangements with other relevant agencies and service providers to enable effective and efficient service delivery and continuity of care; and

(f) to establish a finance committee, an audit committee and a quality and safety committee; and

(g) to provide appropriate training for directors.

333 Constitution of board of directors

The board of directors consists of the following persons—

(a) a nominee of the Attorney-General;

(b) a nominee of the Minister administering the **Corrections Act 1986**;

(c) at least 4 other members, but not more than 7, of whom—

(i) at least one is able to reflect the perspective of persons receiving mental health services; and

(ii) at least one has knowledge of, or experience in, accountancy or financial management.

334 Appointment of directors

(1) The directors are to be appointed by the Governor in Council on the recommendation of the Minister.

(2) The Governor in Council, on the recommendation of the Minister, may appoint one of the directors to be the chairperson of the board.

(3) In making a recommendation to the Governor in Council, the Minister must have regard to any prescribed matters.

S. 334(3) inserted by No. 52/2017 s. 86.

335 Terms and conditions of appointment of directors

(1) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a director in respect of the office of director.

(2) A director—

(a) holds office for the term, not exceeding 3 years, specified in the instrument of appointment and is eligible for reappointment; and

(b) must not serve on the board of directors for more than 3 terms; and

(c) is entitled to be paid such remuneration and allowances as are fixed by the Governor in Council from time to time.

336 Resignation and removal

(1) A director may resign in writing signed by that person and delivered to the Governor in Council.

(2) The Governor in Council, on the recommendation of the Minister, may remove a director from office.

(3) The Minister must recommend the removal of a person from the office of director if the Minister is satisfied that the person—

(a) is unable to fulfil the role of director; or

(b) has been convicted of an offence, the commission of which, in the opinion of the Minister, makes the person unsuitable to be a director; or

(c) has been absent, without leave of the board of directors, from all meetings of the board of directors held during a period of 6 months; or

(d) is an insolvent under administration.

337 Protection from liability

(1) A director of the board is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the discharge of a duty under this Act; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.

(2) Any liability resulting from an act or omission that would but for subsection (1) attach to a director of the board attaches instead to the Institute.

338 Validity of acts or decisions

An act or a decision of the board of directors is not invalid only because of—

(a) a vacancy in the membership of the board of directors, including a vacancy arising from the failure to appoint a director; or

(b) a defect or irregularity in, or in connection with, the appointment of a director.

339 Procedure of board of directors

The procedure of the board of directors is at the discretion of the board.

339A Guidelines of Minister

S. 339A inserted by No. 52/2017 s. 87.

The Minister may publish in the Government Gazette guidelines relating to the role and procedure of the board and how it may carry out its functions.

339B Appointment of delegate to board

S. 339B inserted by No. 52/2017 s. 87.

(1) The Minister may appoint not more than 2 delegates to the board if the Minister considers that such an appointment will assist the board to improve the performance of the Institute.

(2) A delegate is not a director of the board.

(3) In determining if an appointment of a delegate under subsection (1) will assist the board to improve the performance of the Institute, the Minister must have regard to—

(a) the financial performance of the Institute; and

(b) the quality and safety of the mental health services provided by the Institute; and

(c) whether the board has requested such an appointment.

(4) The Minister may appoint a delegate irrespective of whether the board has requested such an appointment.

(5) The instrument of appointment of a delegate—

(a) must be published in the Government Gazette; and

(b) must specify the terms and conditions of appointment; and

(c) may specify any remuneration to which the delegate is entitled.

(6) A delegate—

(a) subject to subsections (7) and (8), holds office for the period specified in the instrument of appointment, being a period of not more than 12 months from the date of appointment; and

(b) is eligible for re-appointment; and

(c) is entitled to be reimbursed reasonable expenses incurred in holding office as delegate; and

(d) is in respect of the office of delegate subject to the **Public Administration Act 2004** (other than Part 3 of that Act).

(7) A delegate may resign by writing signed by that person and delivered to the Minister.

(8) The Minister may revoke the appointment of a delegate.

339C Functions of delegate

S. 339C inserted by No. 52/2017 s. 87.

The functions of a delegate to the board are—

(a) to attend meetings of the board and observe its decision-making processes; and

(b) to provide advice or information to the board to assist it in understanding its obligations under this Act; and

(c) to advise the Minister and the Secretary on any matter relating to the Institute or the board.

339D Obligations of board to delegate

S. 339D inserted by No. 52/2017 s. 87.

The board must—

(a) permit a delegate appointed to the board to attend any meeting of the board or any meeting of its committees; and

(b) provide a delegate appointed to the board with information or a copy of any notice or other document provided to the directors of the board or to the members of any of the board's committees at the same time as the information, notice or other document is provided to the directors or members.

Division 3—General

340 Chief executive officer

S. 340(1) amended by No. 52/2017 s. 88(1)(a).

(1) Subject to the Secretary's approval, the board of directors must—

(a) appoint a chief executive officer of the Institute; and

S. 340(1)(b) amended by No. 52/2017 s. 88(1)(b).

(b) determine the chief executive's remuneration and the terms and conditions of his or her appointment.

(2) The chief executive officer is subject to the direction of the board of directors in controlling and managing the Institute.

(3) The functions of the chief executive officer are—

(a) to prepare material for consideration by the board of directors, including strategic plans and statements of priorities; and

(b) to ensure that the Institute uses its resources effectively and efficiently; and

(c) to implement service development and planning; and

S. 340(3)(ca) inserted by No. 52/2017 s. 88(2).

(ca) to implement effective and accountable systems to monitor and improve the services provided by the Institute to ensure continuous improvement in the quality and safety of the services it provides; and

S. 340(3)(cb) inserted by No. 52/2017 s. 88(2).

(cb) to ensure that any problem in relation to the quality, safety or effectiveness of services provided by the Institute are addressed in a timely manner; and

S. 340(3)(cc) inserted by No. 52/2017 s. 88(2).

(cc) to ensure that the Institute continuously strives—

(i) to improve the quality and safety of the services it provides; and

(ii) to promote innovation; and

(cd) to manage the Institute in accordance with—

S. 340(3)(cd) inserted by No. 52/2017 s. 88(2).

(i) the financial and business plans, strategies and budgets developed by the board; and

(ii) the instructions of the board; and

(ce) to ensure that the board and the committees established or appointed by the board are assisted and provided with relevant information to enable them to perform their functions effectively and efficiently; and

S. 340(3)(ce) inserted by No. 52/2017 s. 88(2).

(cf) to ensure that the board's decisions are implemented effectively and efficiently throughout the Institute; and

S. 340(3)(cf) inserted by No. 52/2017 s. 88(2).

(cg) to inform the board in a timely manner of any issues of public concern or risks that affect or may affect the Institute; and

S. 340(3)(cg) inserted by No. 52/2017 s. 88(2).

(ch) to inform the board, the Secretary and the Minister without delay of any significant issues of public concern or significant risks affecting the Institute.

S. 340(3)(ch) inserted by No. 52/2017 s. 88(2).

(d) any other functions specified by the board of directors.

341 Institute may employ persons

(1) The Institute may employ any other staff necessary for the performance of its functions.

(2) The terms and conditions of employment of staff of the Institute are as determined by the Institute.

(3) An employee of the Institute who, immediately before that employment, was an employee in the public service employed exclusively in connection with the functions of the forensic psychiatry service in the Department of Health and Human services continues to be an employee in the public

S.341(3) amended by No. 15/2015 s.36(4).

service while an employee of the Institute for the purposes of long service leave.

(4) An employee of the Institute who, immediately before employment, was an officer within the meaning of the **State Superannuation Act 1988** continues, subject to that Act, to be such an officer while an employee of the Institute.

342 Minister may issue directions

(1) The Minister may issue a written direction to the Institute on any matter in relation to the Institute that the Minister is satisfied is necessary.

(2) As soon as practicable after giving a direction to the Institute, the Minister must cause the direction to be published in the Government Gazette.

(3) The Institute must comply with a direction given under this section.

(4) Despite subsection (3), an act or a decision of the Institute or the board of directors is not invalid only because of a failure to comply with a direction.

343 Strategic plan

(1) At the direction of the Minister, the board of directors must prepare and submit to the Minister a strategic plan for the operation of the Institute.

(2) A strategic plan must be prepared at the frequency determined by the Minister and in accordance with guidelines determined by the Minister.

(3) The Minister must—

(a) approve the strategic plan as submitted or subject to amendments; or

(b) refuse to approve the strategic plan.

(4) The board of directors must advise the Minister if it intends to exercise its functions in a manner that is inconsistent with the most recent approved strategic plan.

344 Statement of priorities

(1) The board of directors must prepare, in consultation with the Secretary, a statement of priorities for the Institute for each financial year in accordance with subsection (4).

(2) The board of directors must give a copy of the proposed statement of priorities to the Minister on or before 1 October in each year for approval.

(3) If the board of directors and the Minister do not agree on a statement of priorities on or before 1 October, the Minister may make a statement of priorities for the relevant financial year in accordance with subsection (4).

(4) A proposed statement of priorities must specify—

(a) the services to be provided by the Institute and the funds to be provided to the Institute; and

(b) the objectives, priorities and key performance outcomes to be met by the Institute; and

(c) the performance indicators, targets or other measures against which the Institute's performance is to be assessed and monitored; and

(d) how and when the Institute must report to the Minister and the Secretary on its performance in relation to the specified objectives, priorities and key performance outcomes; and

(e) such other matters as, from time to time, are—

(i) agreed by the Minister and the board of directors; or

(ii) determined by the Minister.

(5) A statement of priorities may be varied at any time if the board of directors and the Minister so agree.

(6) If the board of directors and the Minister fail to agree to a proposed variation of a statement of priorities within 28 days after the variation is proposed, the Minister may—

(a) vary the statement of priorities; or

(b) decline to vary the statement of priorities.

S. 344(7) inserted by No. 15/2015 s. 30.

(7) The Minister may publish the statement of priorities on the Department of Health and Human Services' Internet website.

345 Board of directors to give notice of significant events

The board of directors must notify the Minister and the Secretary as soon as practicable about any issues of public concern or risk that may affect the Institute.

Part 15—General

Division 1—Disclosure of health information

346 Disclosure of health information

(1) The following must not disclose health information about a consumer—

(a) the mental health service provider;

(b) any member of staff or former member of staff of the mental health service provider;

(c) any person who is or was a contractor of the mental health service provider;

(d) any volunteer or former volunteer at the mental health service provider;

(e) any member of the board or former member of the board of the mental health service provider.

Penalty: 60 penalty units.

(2) Subsection (1) does not apply in the following circumstances—

(a) the person to whom the health information relates consents to its disclosure;

(b) the person to whom the health information relates is deceased and the senior available next of kin of the person consents to its disclosure;

(c) the disclosure is reasonably necessary for the mental health service provider to perform functions or exercise powers under this or any other Act;

(d) the disclosure is permitted by an Act other than the **Health Records Act 2001**;

(e) the disclosure is permitted by Health Privacy Principle 2.1, 2.2(a), (f), (g), (h) or (k) or 2.5;

(f) the disclosure is required by another mental health service provider or a health service provider (within the meaning of section 3 of the **Health Records Act 2001**) to provide health services (within the meaning of section 3 of the **Health Records Act 2001**) to the person to whom the health information relates;

(g) the disclosure is made in general terms to a friend, family member or carer of the person to whom the health information relates and the disclosure is not contrary to the views and preferences expressed by the person that the health information must not be disclosed to that friend, family member or carer;

(h) the person to whom the health information relates is a patient and—

(i) the disclosure is reasonably required by a carer of the patient to determine the nature and scope of the care to be provided to the patient and to make the necessary arrangements in preparation for that role or to provide care to the patient; and

(ii) regard has been had to the patient's views and preferences, including those expressed in any advance statement that the patient may have prepared;

(i) the disclosure is made to a psychiatrist giving a second psychiatric opinion for the purposes of Division 4 of Part 5 of this Act and the disclosure includes—

(i) providing access to the clinical records of a patient; or

(ii) discussing the treatment of a patient with the psychiatrist giving a second psychiatric opinion;

(j) the disclosure is made to a parent of the person to whom the health information relates and the person is under the age of 16 years;

(k) the disclosure is made to the Secretary and the person to whom the health information relates is the subject of a family reunification order or a care by Secretary order;

S. 346(2)(k) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(l) the disclosure is reasonably required in connection with the performance of a duty or the exercise of a power by the Minister, the Secretary, the Commissioner, the chief psychiatrist or an authorised officer under this Act or the regulations;

(m) the disclosure is required in connection with a proceeding before the Tribunal, VCAT or the Panel;

(n) the disclosure is required by a court in connection with a proceeding under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;

(o) the disclosure is made to a guardian of the person to whom the health information relates and the disclosure is reasonably required in connection with the performance of a duty or the exercise of a power by the guardian;

(p) the disclosure is—

S. 346(2)(p) substituted by No. 69/2016 s. 122.

(i) made to the medical treatment decision maker of the person to whom the health information relates; and

(ii) reasonably required in connection with the performance of a duty or the exercise of a power by the medical treatment decision maker;

S. 346(2)(pa) inserted by No. 69/2016 s. 122.

(pa) the disclosure is—

(i) made to a support person of the person to whom the health information relates; and

(ii) reasonably required in connection with the performance of a duty or the exercise of a power by the support person;

(q) the disclosure is required in connection with a notification, claim or possible claim to a person or body providing insurance or indemnity (including discretionary indemnity) for any possible liability of the mental health service provider arising out of the provision of mental health services.

347 Information from electronic health information system

(1) A person who is employed or engaged by a mental health service provider may enter another person's health information into an electronic health information system.

(2) A person must not collect or use, or attempt to collect or use, health information from an electronic health information system unless the collection or use of the information is reasonably required by—

(a) a mental health service provider for the purposes of providing mental health services to the person to whom that information relates; or

(b) the chief psychiatrist or the Secretary to perform his or her functions or exercise his or her powers under this Act; or

(c) the Tribunal for the purposes of performing its functions or exercising its powers under this Act; or

(d) the Panel for the purposes of performing its functions or exercising its powers under this Act or the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

(3) In this section—

electronic health information system means an electronic data collection system by which health information is shared between mental health service providers for the purpose of enabling continuity in the provision of mental health services to the persons to whom the health information relates.

Division 2—Notification of reportable deaths

348 Chief psychiatrist to be notified of reportable deaths

(1) The person in charge of a mental health service provider must ensure that the chief psychiatrist is notified in writing of the death of any person receiving mental health services from the mental health service provider that is a reportable death within the meaning of section 4 of the **Coroners Act 2008** as soon as practicable after the person in charge becomes aware of the death.

(2) A notice under subsection (1) must specify—

(a) the name of the deceased; and

(b) the date of the death; and

(c) any other information required by the chief psychiatrist.

349 Notification of death of security patient or forensic patient

(1) An authorised psychiatrist must by notice in writing advise whoever of the following is relevant in the circumstances of the death of any security patient who receives treatment from the designated mental health service and specify the name of the security patient and the date of the death—

S. 349(1)(a) amended by No. 15/2015 s. 36(1).

(a) the Secretary to the Department of Justice and Regulation;

S. 349(1)(b) amended by No. 15/2015 s. 35(1).

(b) the Secretary;

(c) the Chief Commissioner of Police;

(2) An authorised psychiatrist must advise the Secretary by notice in writing of the death of any forensic patient who receives treatment from the designated mental health service and specify the name of the forensic patient and the date of the death.

Division 3—Powers of transfer, apprehension, entry, search and seizure

350 Bodily restraint and sedation may be used when taking person

(1) Despite anything to the contrary in Part 6, if a person is required under this Act to be taken to or from a designated mental health service or any other place—

(a) an authorised person may use bodily restraint on the person if—

(i) all reasonable and less restrictive options have been tried or considered and have been found to be unsuitable; and

(ii) the bodily restraint to be used is necessary to prevent serious and imminent harm to the person or to another person; and

(b) a registered medical practitioner may administer sedation to the person or direct a registered nurse or ambulance paramedic to administer sedation to the person if—

(i) all reasonable and less restrictive options have been tried or considered and have been found to be unsuitable; and

(ii) the sedation to be administered is necessary to prevent serious and imminent harm to the person or to another person.

(2) Subsection (1)(b) does not limit the power of a registered nurse or ambulance paramedic to administer sedation within the ordinary scope of his or her practice.

351 Apprehension of person by police officer or protective services officer

S. 351 (Heading) amended by No. 55/2014 s. 175(1).

(1) A police officer, or a protective services officer on duty at a designated place, may apprehend a person if the police officer or the protective services officer is satisfied that—

S. 351(1) amended by No. 55/2014 s. 175(2).

(a) the person appears to have mental illness; and

(b) because of the person's apparent mental illness, the person needs to be apprehended to prevent serious and imminent harm to the person or to another person.

S. 351(2) amended by No. 55/2014 s. 175(3).

(2) A police officer or a protective services officer is not required for the purposes of subsection (1) to exercise any clinical judgement as to whether the person has mental illness.

S. 351(3) amended by No. 55/2014 s. 175(3).

(3) A police officer or a protective services officer exercising the powers conferred by this section may be accompanied by a registered medical practitioner or a mental health practitioner.

S. 351(4) amended by No. 55/2014 s. 175(4).

(4) A person apprehended under this section is subject to the custody of the police officer or the protective services officer, as the case may be, until released from that custody in accordance with this section.

S. 351(4A) inserted by No. 55/2014 s. 175(5).

(4A) As soon as practicable after apprehending a person under this section, a protective services officer must—

(a) hand the person into the custody of a police officer; or

(b) for the purposes of enabling the person to be examined in accordance with section 30, arrange for the person to be taken to—

(i) a registered medical practitioner or mental health practitioner; or

(ii) a public hospital, denominational hospital, privately-operated hospital or public health service within the meaning of the **Health Services Act 1988**.

(4B) A protective services officer may only exercise the power to apprehend under this section in relation to a person who is at, or in the vicinity of, a designated place.

S. 351(4B) inserted by No. 45/2017 s. 56.

(5) As soon as practicable after apprehending a person under this section or being handed a person apprehended by a protective services officer under subsection (4A)(a), a police officer must arrange for the person to be taken to—

S. 351(5) amended by No. 55/2014 s. 175(6).

(a) a registered medical practitioner or mental health practitioner; or

(b) a public hospital, denominational hospital, privately-operated hospital or public health service within the meaning of the **Health Services Act 1988** to enable a registered medical practitioner or mental health practitioner—

to examine the person in accordance with section 30 to determine whether to make an Assessment Order.

(5A) A person apprehended under this section by a protective services officer is released from the custody of the protective services officer when—

S. 351(5A) inserted by No. 55/2014 s. 175(7).

(a) the person enters into the custody of a police officer; or

(b) if subsection (4A)(b)(i) applies, the person is made subject to an Assessment Order; or

(c) if subsection (4A)(b)(ii) applies, the person enters into the care of the public hospital, denominational hospital, privately-operated hospital or public health service within the meaning of the **Health Services Act 1988**.

(6) A person apprehended under this section is released from the custody of the police officer when—

(a) if subsection (5)(a) applies, the person is made subject to an Assessment Order; or

(b) if subsection (5)(b) applies, the person enters into the care of the public hospital, denominational hospital, privately-operated hospital or public health service within the meaning of the **Health Services Act 1988**.

S. 351(7) amended by No. 55/2014 s. 175(8).

(7) For the purposes of apprehending a person under this section, a police officer or a protective services officer has all the powers necessary to do so.

(8) Nothing in this section limits—

(a) any other power of a registered medical practitioner or mental health practitioner in relation to a person apprehended under this section; or

S. 351(8)(b) amended by No. 55/2014 s. 175(8).

(b) any other power of a police officer or a protective services officer in relation to a person apprehended under this section.

352 Apprehension of person absent without leave

(1) This section applies to a person who is absent without leave and is—

(a) subject to—

(i) an Inpatient Assessment Order; or

(ii) an Inpatient Temporary Treatment Order; or

(iii) an Inpatient Treatment Order; or

(iv) an Inpatient Court Assessment Order; or

(b) a security patient; or

(c) a forensic patient.

(2) For the purposes of this section, a person to whom this section applies is absent without leave if the person is absent from a designated mental health service without a grant of leave of absence.

(3) If a person to whom this section applies is absent without leave, the authorised psychiatrist must take reasonable steps to notify the following persons in relation to that person of the person's absence—

(a) the nominated person;

(b) a guardian;

(c) a carer, if the authorised psychiatrist is satisfied that the person's absence will directly affect the carer and the care relationship;

(d) a parent, if the person is under the age of 16 years;

(e) the Secretary, if the person is the subject of a family reunification order or a care by Secretary order.

S. 352(3)(e) amended by Nos 15/2015 s. 35(1), 61/2014 s. 169(2)(3).

(4) The authorised psychiatrist may arrange for a person to whom this section applies to be apprehended and taken to a designated mental health service.

353 Power to enter premises, apprehend and take person to or from a designated mental health service

S. 353 (Heading) amended by No. 15/2015 s. 31(1) (as amended by No. 52/2017 s. 89).

(1) This section applies if a provision of this Act provides for a person to be taken to or from a designated mental health service or any other place.

(2) For the purposes of this section, an authorised person may—

(a) enter any premises at which the authorised person has reasonable grounds for being satisfied that the person may be found; and

S. 353(2)(b) amended by No. 15/2015 s. 31(2).

(b) apprehend the person for the purpose of the person being taken to or from a designated mental health service.

(3) Before an authorised person enters any premises under this section, the authorised person must—

(a) announce to any person at or in the premises that the authorised person is authorised to enter the premises; and

(b) state the basis of the authority to enter; and

(c) give any person at or in the premises an opportunity to permit the authorised person to enter the premises.

(4) An authorised person may use reasonable force to gain entry to the premises if the authorised person is not permitted entry under subsection (3)(c).

(5) On gaining entry into the premises, an authorised person must, to the extent that it is reasonable in the circumstances—

(a) identify himself or herself to the person who is to be apprehended; and

(b) explain to the person why he or she is to be apprehended; and

(c) give the person the details of the place to which he or she will be taken.

354 Search powers

(1) This section applies to a person who is required under this Act to be taken to or from a designated health service or any other place.

(2) An authorised person may search a person to whom this section applies before the person is taken to or from a designated mental health service or any other place if the authorised person reasonably suspects that the person is carrying any thing that—

(a) presents a danger to the health and safety of the person or another person; or

(b) could be used to assist the person to escape.

(3) Before searching a person under subsection (2), the authorised person must, to the extent reasonable in the circumstances, explain to the person the purpose of the search.

(4) In this section—

search means a search of a person or of things in the possession or under the control of a person that may include—

(a) quickly running the hands over the person's outer clothing or passing an electronic metal detection device over or in close proximity to the person's outer clothing; and

(b) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat; and

(c) an examination of those items of clothing; and

(d) requiring the person to empty his or her pockets or allowing his or her pockets to be searched.

355 Preservation of privacy and dignity during search

(1) An authorised person who searches a person under section 354 must, as far as is reasonably practicable in the circumstances, comply with this section.

(2) The authorised person must inform the person to be searched of the following matters—

(a) whether the person will be required to remove clothing during the search;

(b) why it is necessary to remove the person's clothing.

(3) The authorised person must ask for the person's cooperation.

(4) The authorised person must conduct the search—

(a) in a way that provides reasonable privacy for the person searched; and

(b) as quickly as is reasonably practicable; and

(c) if the person being searched is of or under the age of 16 years, in the presence of a parent of the person or, if it is not reasonably practicable for a parent to be present, another adult.

(5) The authorised person must conduct the least invasive kind of search practicable in the circumstances.

(6) A search that involves running the hands over the person's outer clothing must be conducted by—

(a) an authorised person of the same sex as the person searched; or

(b) a person of the same sex as the person searched under the direction of the authorised person.

356 Power to seize and detain things

(1) An authorised person may seize and detain a thing found as a result of a search conducted under section 354 if the authorised person is reasonably satisfied that the thing—

(a) presents a danger to the health and safety of the person or another person; or

(b) could be used to assist the person to escape.

(2) If a thing is seized and detained under subsection (1), the authorised person must make a written record that—

(a) specifies the thing seized and detained; and

(b) specifies the name of the person from whom the thing was seized and detained; and

(c) specifies the date on which the thing was seized and detained; and

(d) includes any other prescribed details.

(3) The authorised person must securely store any thing seized under subsection (1) unless the thing is described in subsection (4).

(4) The authorised person must give a thing seized under subsection (1) to a police officer as soon as practicable after the thing is seized if—

(a) the thing is a prohibited weapon, a controlled weapon or a dangerous article within the meaning of the **Control of Weapons Act 1990**; or

(b) the thing is a drug of dependence or a substance, material, document or equipment used for the purpose of trafficking in a drug of dependence within meaning of the **Drugs, Poisons and Controlled Substances Act 1981**; or

(c) the thing is a firearm within the meaning of the **Firearms Act 1996**; or

(d) the authorised person has reason to believe the thing would present a danger to the health and safety of the person or another person if the thing were returned to the person.

(5) The authorised person must take reasonable steps to return any thing stored under subsection (3) to the person from whom it was seized when the reason for the seizure of the thing no longer applies.

Division 4—General provisions

357 Payment for examination

If a registered medical practitioner has performed an examination for the purposes of this Act and is not otherwise entitled to receive payment for the provision of medical services, the medical practitioner may apply to the Secretary for payment at the prescribed rate.

358 Offence to give false or misleading information

(1) A person must not—

(a) give information, prepare a document or make a statement required to be given or made under this Act that the person believes to be false or misleading in any material particular; or

(b) produce a document under this Act that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that, at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds that the information, document or statement was true or was not misleading.

359 Destroying or damaging records

A person must not, without lawful authority, destroy or damage any record required to be kept in accordance with this Act or the regulations.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

360 Protection against self-incrimination

A natural person may refuse or fail to give information or do any other thing that the person is required to do by or under this Act or the regulations if giving the information or doing the other thing would tend to incriminate the person.

361 Validity of order if there is an error

(1) The validity of an order made under this Act (other than an order made by the Tribunal) or any other document made or prepared under this Act is not affected by an error in it unless—

(a) the error relates to the grounds on which the order or document was made and proper grounds for making the order or document do not exist; or

(b) as a result of the error, the order or document does not comply with a mandatory requirement of this Act relating to the making of the order or document.

(2) If an error in an order or other document does not affect the validity of the order or document, the person who made the order or document may correct the error.

362 Power to bring proceedings

(1) The Secretary may bring proceedings for an offence under this Act (other than under Part 8 or 10) or the regulations.

(2) The Tribunal may bring proceedings for an offence under Part 8.

(3) The Commissioner may bring proceedings for an offence under Part 10.

(4) A police officer may bring proceedings for an offence under this Act or the regulations.

363 Defect in appointment or delegation

(1) An appointment or delegation of power made under this Act (other than an appointment or delegation made under Part 8) is not invalid only because of a defect or irregularity in the form or process of the appointment or delegation.

(2) An act or a decision of a person under this Act is not invalid only because of any defect or irregularity in the form or process of his or her appointment.

364 Conflict of interest

A person must not exercise powers or perform functions or duties under this Act in respect of another person if the person would have a conflict of interest in exercising powers or performing functions or duties in respect of that other person.

365 Service of documents

A notice or other document that is required to be given under this Act is taken to be given to—

(a) a natural person if it is—

(i) given to the person; or

(ii) left at, or sent by post to, the person's last known postal or residential address or place of employment; or

(iii) emailed to the person's email address; and

(b) a body corporate if it is—

(i) left at, or sent by post to, the principal or registered office of the body corporate or its principal place of business; or

(ii) faxed to the fax number of the body corporate; or

(iii) emailed to the email address of the body corporate.

Division 5—Codes of Practice

366 Purpose of Codes of Practice

(1) The purpose of a Code of Practice is to provide practical guidance to any person or body exercising powers or performing functions and duties under this Act to promote best practice.

(2) A Code of Practice cannot—

(a) impose a duty on any person; or

(b) create an enforceable legal right; or

(c) impose any liability or penalty.

367 Making of Codes of Practice

(1) The Secretary may make a Code of Practice.

(2) Before making a Code of Practice the Secretary may consult one or more of the following—

(a) the Commissioner;

(b) the chief psychiatrist;

(c) the President of the Tribunal;

(d) any designated mental health service;

(e) any carer group;

(f) any consumer advocacy group;

(g) any other person that the Secretary considers should be consulted.

368 Commencement and availability of Codes of Practice

(1) As soon as practicable after making a Code of Practice, the Secretary must publish on the Department of Health's Internet site—

(a) a notice that states—

(i) the date of commencement of the Code of Practice; and

(ii) the place where copies of the Code of Practice may be obtained; and

(b) the Code of Practice.

(2) The date of commencement of a Code of Practice must be the date that the notice under subsection (1)(a) is published on the Department of Health's Internet site or a later date specified in the notice.

369 Power to apply, adopt or incorporate

A Code of Practice may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—

(a) wholly or partially or as amended by the Code of Practice; or

(b) as formulated, issued, prescribed or published at the time that the Code of Practice is made or at any time before then; or

(c) as formulated, issued, prescribed or published from time to time.

Division 6—Regulations

370 Regulations

(1) The Governor in Council may make regulations for or with respect to the following matters—

(a) prescribing forms to be used for the purposes of this Act;

(b) prescribing fees for the purposes of this Act;

(c) prescribing the keeping and the form of any records or other documents as may be necessary for the administration of this Act;

(d) the collection, provision, transfer, disclosure or use of information for the purposes of this Act;

(e) prescribing persons or classes of persons necessary to be prescribed for the purposes of this Act;

S. 370(1)(f) amended by No. 15/2015 s. 32.

(f) prescribing the remuneration and allowances of different classes of member of the Tribunal;

(g) generally prescribing any other matter or thing required or permitted by this Act to be prescribed to give effect to this Act.

(2) Regulations made under this Act—

(a) may be of limited or general application; and

(b) may differ according to differences in time, place or circumstance; and

(c) may provide in a specified case or class of case for the exemption of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions, and either wholly or to such extent as is specified; and

(d) in the case of a regulation made under subsection (1)(f), may provide for different classes of member whether or not those classes are the same as the classes referred to in Part 8; and

(e) may confer powers or impose duties in connection with the regulations on any specified person or specified class of persons; and

(f) may apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard, rule,

specification or method formulated, issued, prescribed or published by any person—

(i) wholly or partially or as amended by the regulations; or

(ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time; and

(g) may impose a penalty not exceeding 20 penalty units for any contravention of the regulations.

371 Fees

(1) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—

(a) specific fees;

(b) maximum or minimum fees;

(c) maximum and minimum fees;

(d) a scale of fees;

(e) the payment of fees either generally or under specified conditions or in specified circumstances, including conditions or circumstances relating to the late lodgement of any application, or the late payment of fees, under this Act;

(f) the reduction, waiver or refund, in whole or in part, of the fees.

(2) If, under subsection (1)(f), regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be

expressed to apply either generally or specifically—

(a) in respect of certain matters or transactions or classes of matters or transactions; or

(b) in respect of certain documents or classes of documents; or

(c) when an event happens; or

(d) in respect of certain persons or classes of persons; or

(e) in respect of any combination of matters, transactions, documents, events or persons—

and may be expressed to apply subject to specified conditions or in the discretion of any specified person.

S. 372 expired by force of No. 26/2014 s. 372(4).

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Part 16—Repeal of Mental Health Act 1986, savings and transitional provisions

373 Definitions

(1) In this Part—

1986 Act means the **Mental Health Act 1986**;

2014 Act means the **Mental Health Act 2014**.

(2) A word or expression that is defined in the 1986 Act and is used in this Part in relation to the 1986 Act has the same meaning as is given in the 1986 Act.

374 Mental Health Act 1986 repealed

(1) The **Mental Health Act 1986** is **repealed**.

(2) Except as is expressly or by necessary implication provided in the 2014 Act, all persons, things and circumstances appointed or created by or under the 1986 Act or existing or continuing under the 1986 Act immediately before 1 July 2014 continue under and subject to the 2014 Act to have the same status, operation and effect as they would have had if the 1986 Act had not been repealed.

(3) On and after 1 July 2014, any reference in any Act (other than the 2014 Act or regulation under the 2014 Act), regulation, subordinate instrument or other document whatsoever to the 1986 Act is to be construed as a reference to the 2014 Act, unless the contrary intention appears.

(4) Nothing in this section limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

375 Request and recommendation for involuntary treatment—section 9 of 1986 Act

(1) On and after 1 July 2014, a person is taken to be subject to an Inpatient Assessment Order under the 2014 Act if, not more than 72 hours before that day, a request and recommendation is made under section 9 of the 1986 Act in relation to the person and the person has not been assessed in accordance with the request and recommendation.

(2) An Inpatient Assessment Order referred to in subsection (1) is taken to come into force on 1 July 2014 and to remain in force, unless the Order is extended in accordance with section 34 of the 2014 Act or revoked in accordance with section 37 of the 2014 Act for a period of, whichever is the shorter—

(a) 24 hours, if the person who is subject to the Order is received at a designated mental health service; or

(b) 72 hours, if the person who is subject to the Order is not received at a designated mental health service.

376 Authority to transport—section 9A of the 1986 Act

(1) On and after 1 July 2014, a person is taken to be subject to an Inpatient Assessment Order under the 2014 Act if, not more than 24 hours before that day, the person is or may be taken under section 9A(1) of the 1986 Act to an appropriate approved mental health service despite a recommendation not being made under section 9(1)(b) of the 1986 Act.

(2) An Inpatient Assessment Order referred to in subsection (1) is taken to come into force on 1 July 2014 and to remain in force, unless the Order is extended in accordance with section 34 of the 2014 Act or expires or is revoked in accordance with section 37 of the 2014 Act, for a period (whichever is the shorter)—

(a) ending 24 hours after the person who is subject to the Order is received at a designated mental health service; or

(b) of 72 hours, if the person who is subject to the Order is not received at a designated mental health service.

377 Transfers and apprehensions

(1) On and after 1 July 2014, an authority to take a person referred to in section 9B of the 1986 Act is taken to be an authority to take a person under Division 3 of the Part 15 of the 2014 Act.

(2) On and after 1 July 2014, a person is taken to have been apprehended under section 351 of the 2014 Act if, immediately before 1 July 2014 the person is apprehended under section 10 of the 1986 Act.

378 Involuntary treatment order not confirmed—section 12 of the 1986 Act

(1) On and after 1 July 2014, a person is taken to be subject to an Inpatient Assessment Order under the 2014 Act if, on 30 June 2014—

(a) an involuntary treatment order is made under section 12 of the 1986 Act for the person; and

(b) the person is not examined in accordance with section 12AC(1) of the 1986 Act.

(2) An Inpatient Assessment Order referred to in subsection (1) is taken to come into force on 1 July 2014 and to remain in force, unless the Order is extended in accordance with section 34 of the 2014 Act or expires or is revoked in accordance with section 37 of the 2014 Act, for a period of, whichever is the shorter—

(a) 24 hours, if the person who is subject to the Order is received at an approved mental health service before 1 July 2014 in accordance with the involuntary treatment order made under section 12 of the 1986 Act; or

(b) 72 hours, if the person who is subject to the Order is not received at an approved mental health service before 1 July 2014.

379 Involuntary treatment order not confirmed—section 12AA of the 1986 Act

(1) On and after 1 July 2014, a person is taken to be subject to an Inpatient Assessment Order under the 2014 Act if, on 30 June 2014—

(a) an involuntary treatment order is made for the person under section 12AA of the 1986 Act; and

(b) the person is not examined in accordance with section 12AC(1) of the 1986 Act.

(2) An Inpatient Assessment Order referred to in subsection (1) is taken to come into force on 1 July 2014 and to remain in force for a period of 24 hours, unless the Order is extended in accordance with section 34 of the 2014 Act or expires or is revoked in accordance with section 37 of the 2014 Act.

380 Involuntary treatment order not reviewed—section 12AC of the 1986 Act

(1) On and after 1 July 2014, a person is taken to be subject to an Inpatient Temporary Treatment Order under the 2014 Act if, immediately before that day—

(a) the person is subject to an involuntary treatment order that is confirmed under section 12AC(2)(b) of the 1986 Act; and

(b) an authorised psychiatrist has not made a community treatment order under section 14 of the 1986 Act for the person; and

(c) the Mental Health Review Board has not conducted an initial review of the person's involuntary treatment order under section 30 of the 1986 Act.

(2) An Inpatient Temporary Treatment Order referred to in subsection (1) is taken to come into force on 1 July 2014 and to remain in force for a period of 28 days, unless the Order is revoked or expires in accordance with section 55, 61 or 62 of the 2014 Act.

381 Continued detention and treatment of involuntary patient—sections 12A, 12C and 12D

(1) On and after 1 July 2014, a person is taken to be subject to an Inpatient Assessment Order under the 2014 Act if, immediately before that day—

(a) an application by the authorised psychiatrist under section 12A of the 1986 Act or by the chief psychiatrist under section 12D of the 1986 Act is made in relation to the person and that application is not determined; or

(b) the person is detained and treated in an approved mental health service under section 12C of the 1986 Act.

(2) An Inpatient Assessment Order referred to in subsection (1) is taken to come into force on 1 July 2014 and to remain in force for a period of 24 hours, unless it is extended in accordance with section 34 of the 2014 Act or expires or is revoked in accordance with section 37 of the 2014 Act.

382 Community treatment order—section 14 of the 1986 Act—no review by Board

(1) On and after 1 July 2014, a person is taken to be subject to a Community Temporary Treatment Order under the 2014 Act if, immediately before that day—

(a) the person is subject to a community treatment order under section 14 of the 1986 Act; and

(b) the Mental Health Review Board has not conducted a review of the person's involuntary treatment order under section 30 of the 1986 Act.

(2) A Community Temporary Treatment Order referred to in subsection (1) is taken to come into force on 1 July 2014 and to remain in force for the period of 28 days, unless the Order is revoked or expires in accordance with section 55, 61 or 62 of the 2014 Act.

383 Community treatment order—section 14—review and confirmation by Board

(1) On and after 1 July 2014, a person is taken to be subject to a Community Treatment Order under the 2014 Act if, immediately before that day—

(a) the person is subject to a community treatment order under section 14 of the 1986 Act; and

(b) the Mental Health Review Board has conducted a review of the person's involuntary treatment order under section 30 of the 1986 Act and has confirmed or varied the order under section 36(3) or 36C(3) of the 1986 Act.

(2) A Community Treatment Order referred to in subsection (1) is taken to come into force on 1 July 2014 and to remain in force, unless the Order is revoked or expires in accordance with section 55, 61 or 62 of the 2014 Act, until the date that is 2 weeks after the end of the period specified under section 14(3) or 14B(1) of the 1986 Act (as the case may be) in relation to the community treatment order made under section 14 of the 1986 Act.

384 Restricted community treatment order—section 15A of the 1986 Act

(1) On and after 1 July 2014, a person is taken to be subject to a Community Temporary Treatment Order under the 2014 Act if, immediately before that day—

(a) the person is subject to a restricted community treatment order under section 15A of the 1986 Act; and

(b) the Mental Health Review Board has not conducted a review of the person's restricted community treatment order under section 30(5) of the 1986 Act.

(2) A Community Temporary Treatment Order referred to in subsection (1) is taken to come into force on 1 July 2014 and to remain in force for the period of 28 days, unless the Order is revoked or expires in accordance with section 55, 61 or 62 of the 2014 Act.

(3) On and after 1 July 2014, a person is taken to be subject to a Community Treatment Order under the 2014 Act if, immediately before that day—

(a) the person is subject to a restricted community treatment order under section 15A of the 1986 Act; and

(b) the Mental Health Review Board has conducted a review of the person's restricted community treatment order under section 30(5) of the 1986 Act and has confirmed or varied the order under section 36D(3) of the 1986 Act.

(4) A Community Treatment Order referred to in subsection (3) is taken to come into force on 1 July 2014 and to remain in force, unless the Order is revoked or expires in accordance with section 55, 61 or 62 of the 2014 Act, until, whichever comes first—

(a) the date that is 2 weeks after the end of the period specified under section 93(3) of the **Sentencing Act 1991** (as in force immediately before 1 July 2014) in relation to the restricted community treatment order made under section 15A of the 1986 Act; or

(b) 1 July 2015.

385 Hospital transfer order and restricted hospital transfer order—section 16

(1) On and after 1 July 2014, a person is taken to be subject to a Secure Treatment Order under the 2014 Act if, immediately before that day, the person is subject to—

(a) a hospital transfer order under section 16(3)(a) of the 1986 Act; or

(b) a restricted hospital transfer order under section 16(3)(b) of the 1986 Act.

(2) If the hospital transfer order or restricted hospital transfer order referred to in subsection (1) is not reviewed before 1 July 2014 by the Mental Health Review Board under section 30 of the 1986 Act, the Mental Health Tribunal must conduct a hearing under section 279 of the 2014 Act in relation to the Secure Treatment Order referred to in subsection (1) within 28 days after—

(a) 1 July 2014, if the person subject to the hospital transfer order or restricted hospital transfer order is detained in an approved mental health service immediately before 1 July 2014; or

(b) the person is received at a designated mental health service, if the person subject to the hospital transfer order or restricted hospital transfer order is not detained in an approved mental health service immediately before 1 July 2014.

(3) If the hospital transfer order or restricted hospital transfer order referred to in subsection (1) is reviewed before 1 July 2014 by the Mental Health Review Board under section 30 of the 1986 Act, the Mental Health Tribunal must conduct a hearing under section 279 of the 2014 Act in relation to the Secure Treatment Order referred to in subsection (1) before 1 January 2015.

386 Transfer of person detained in prison under Crimes (Mental Impairment and Unfitness to be Tried) Act 1997

S. 386 amended by No. 15/2015 s. 36(1).

A person who, immediately before 1 July 2014, is the subject of an order made under section 17 of the 1986 Act and is not transferred to an approved mental health service in accordance with that order, is taken, on and after 1 July 2014, to be the subject of a direction made by the Secretary to the

Department of Justice and Regulation under section 306 of the 2014 Act.

387 Appeals, reviews, proceedings and determinations

(1) If, immediately before 1 July 2014, a proceeding in relation to an appeal to, or review by, the Mental Health Review Board in relation to an order or decision made under the 1986 Act is part heard or is adjourned, the appeal or review is to be determined by the Mental Health Tribunal in accordance with the relevant provisions of the 2014 Act in relation to the Order, direction or decision under the 2014 that is taken to be the order made under the 1986 Act by virtue of this Part.

(2) On and after 1 July 2014, a determination or proceeding of the Mental Health Review Board under the 1986 Act is taken to be a determination or proceeding of the Mental Health Tribunal under the 2014 Act.

(3) On and after 1 July 2014, the register of the Mental Health Review Board referred to in section 28 of the 1986 Act is taken to be the register of proceedings kept by the Mental Health Tribunal under section 176 of the 2014 Act.

388 Secrecy provisions

On and after 1 July 2014, section 175 of the 2014 Act is taken to apply to any person to whom section 35 or section 63 of the 1986 Act applies immediately before that day.

389 Transfer of involuntary patient to another approved mental health service

(1) On and after 1 July 2014, a person who, immediately before that day, is subject to a transfer order made under section 39(1) or (2) of the 1986 Act and who is not transferred in accordance with the transfer order, is taken to be

subject to a varied Order under section 65 of the 2014 Act which specifies that assessment of, or treatment for, (as the case may be) the person be provided by another designated mental health service.

(2) On and after 1 July 2014, an appeal that, immediately before that day, is made under section 39(5) of the 1986 Act and is not determined, is taken to be an application for review under section 66 of the 2014 Act.

390 Leave of absence

(1) On and after 1 July 2014, a leave of absence granted immediately before that day to an involuntary patient under section 40 or 41 of the 1986 Act is taken to be a leave of absence granted under section 64 of the 2014 Act.

(2) A leave of absence under section 64 of the 2014 Act that is referred to in subsection (1) is taken—

(a) to have started on the day that the leave of absence granted under the 1986 Act started and to end on the day that the leave of absence granted under the 1986 Act would have ended; and

(b) to be subject to the same conditions to which the leave of absence granted under the 1986 Act is subject.

391 Discharge after absence

On and after 1 July 2014, an involuntary patient who, immediately before that day, is absent without leave from an approved mental health service for a continuous period of less than 12 months is taken to be subject to an Inpatient Treatment Order under the 2014 Act that has a duration of 6 months.

392 Apprehension of involuntary patient absent without leave

On and after 1 July 2014, an involuntary patient who immediately before that day is absent from an approved mental health service without permission or leave is taken to be a person who is absent without leave and to whom section 352 of the 2014 Act applies.

393 Transfer of security patient to another approved mental health service

On and after 1 July 2014, an order made by the chief psychiatrist under section 49 of the 1986 Act to transfer a security patient to another approved mental health service is taken to be a direction made by the chief psychiatrist under section 292 of the 2014 Act to take a security patient to another designated mental health service if, immediately before 1 July 2014, the security patient is not transferred to the other approved mental health service.

394 Involuntary treatment order reviewed and confirmed by Board—section 36 of the 1986 Act

(1) On and after 1 July 2014, a person is taken to be subject to an Inpatient Treatment Order under the 2014 Act if, immediately before that day—

(a) the person is subject to an involuntary treatment order that had been confirmed under section 12AC(2)(b) of the 1986 Act; and

(b) an authorised psychiatrist has not made a community treatment order under section 14 of the 1986 Act for the person; and

(c) the Mental Health Review Board has conducted a review of the person's involuntary treatment order under section 30 of the 1986 Act and has confirmed the order under section 36(3) of the 1986 Act.

(2) In relation to a person who is of or over the age of 18 years, an Inpatient Treatment Order referred to in subsection (1) is taken to come into force on 1 July 2014 and to remain in force, unless the Order is revoked or expires in accordance with section 55, 61 or 62 of the 2014 Act for a period that ends—

(a) if the Mental Health Review Board reviewed the involuntary treatment order before 1 January 2014, 12 months and 2 weeks after the date on which the Board conducted the review; or

(b) if the Mental Health Review Board reviewed the involuntary treatment order during the period starting on 1 January 2014 and ending on 30 June 2014, 6 months and 2 weeks after the date on which the Board conducted the review.

(3) In relation to a person who is under the age of 18 years, an Inpatient Treatment Order referred to in subsection (1) is taken to come into force on 1 July 2014 and to remain in force, unless the Order is revoked or expires in accordance with section 55, 61 or 62, for 28 days.

395 Leave of absence for security patients granted under section 51 of 1986 Act

(1) On and after 1 July 2014, an application for leave of absence for a security patient that, immediately before that day, is made under section 51 of the 1986 Act but not granted or refused to be granted,

is taken to be an application for monitored leave made under section 285 of the 2014 Act.

(2) On and after 1 July 2014, a leave of absence for a security patient that is granted immediately before that day under section 51 of the 1986 Act is taken to be a monitored leave granted under section 285 of the 2014 Act.

(3) A monitored leave under section 285 of the 2014 Act that is referred to in subsection (1) is taken—

(a) to have started on the day that the leave of absence granted under the 1986 Act started and to end on the day that the leave of absence granted under the 1986 Act would have ended; and

(b) to be subject to the same conditions to which the leave of absence granted under the 1986 Act is subject.

396 Special leave of absence for security patients granted under section 52 of 1986 Act

(1) On and after 1 July 2014, an application for special leave of absence for a security patient under section 52 of the 1986 Act that, immediately before that day, is made but not granted or refused to be granted, is taken to be an application for leave of absence made under section 281 of the 2014 Act.

(2) On and after 1 July 2014, a special leave of absence for a security patient that is granted under section 52 of the 1986 Act immediately before that day is taken to be a leave of absence granted under section 281 of the 2014 Act.

(3) A leave of absence under section 281 of the 2014 Act that is referred to in subsection (1) is taken—

(a) to have started on the day that the special leave of absence granted under the 1986 Act started and to end on the day that the special leave of absence granted under the 1986 Act would have ended; and

(b) to be subject to the same conditions to which the special leave of absence granted under the 1986 Act is subject.

397 Apprehension of security patient absent without leave under section 53 of 1986 Act

A security patient who, immediately before 1 July 2014, is absent without leave and is apprehended under section 53 of the 1986 Act is taken, on and after 1 July 2014, to be apprehended under section 352 of the 2014 Act.

398 Transfer of forensic patient to another approved mental health service

On and after 1 July 2014, an order made by the chief psychiatrist under section 53AB(1) of the 1986 Act to transfer a forensic patient to another approved mental health service is taken to be a direction made by the chief psychiatrist under section 308(1) of the 2014 Act to take a forensic patient to another designated mental health service if, immediately before 1 July 2014, the forensic patient is not transferred to the other approved mental health service.

399 Apprehension of forensic patient absent without leave under section 53AD of 1986 Act

A forensic patient who, immediately before 1 July 2014, is absent without leave and is apprehended under section 53AD of the 1986 Act is taken, on and after that day, to be apprehended under section 352 of the 2014 Act.

400 Psychosurgery

(1) On and after 1 July 2014, an application for consent to the performance of psychosurgery made under section 58(1) of the 1986 Act is taken to be an application made under section 100(2) of the 2014 Act if, immediately before that day—

(a) the application is made under the 1986 Act; and

(b) the Psychosurgery Review Board has not started hearing the matter in relation to the application.

(2) An application for consent to the performance of psychosurgery that, immediately before 1 July 2014, is made under section 58(1) of the 1986 Act and is not determined by the Psychosurgery Review Board under section 64 of the 1986 Act, is taken to be, on and after 1 July 2014, an application made under section 100(2) of the 2014 Act.

(3) If, immediately before 1 July 2014, the Psychosurgery Review Board gives its consent under section 64 of the 1986 and the proposed surgery is not performed, on and after that day the consent is taken to be a grant of an application under section 102(1) of the 2014 Act.

(4) A psychiatrist who, immediately before 1 July 2014, arranges for a neurosurgeon to perform psychosurgery on a person and has not made a written report to the Psychosurgery Review Board must comply with the requirements of section 104 of the 2014 Act.

401 Electroconvulsive therapy

(1) Despite the repeal of the 1986 Act, if, immediately before 1 July 2014, a person gives informed consent in accordance with Division 1AA of Part 5 of the 1986 Act to having electroconvulsive therapy (within the meaning of that Act) performed on him or her, sections 72 and 73 of the 1986 Act continue to apply to that person in relation to the course of electroconvulsive therapy for which the person gave informed consent.

(2) Despite the repeal of the 1986 Act, if, immediately before 1 July 2014, an authorised psychiatrist authorises a course of electroconvulsive therapy (within the meaning of that Act) for a patient in accordance with section 73(3) of that Act, sections 72 and 73 of that Act continue to apply to the patient in relation to the course of electroconvulsive therapy that the authorised psychiatrist authorised.

402 Restraint and seclusion

(1) An approval given by an authorised psychiatrist or an authorisation given by the senior registered nurse on duty under section 81(1) of the 1986 Act to the use and form of restraint on a person immediately before 1 July 2014 is taken, on and after that day, to be an authorisation to use a bodily restraint on the person under section 114 of the 2014 Act.

(2) An approval given by an authorised psychiatrist or an authorisation given by the senior registered nurse on duty under section 82(1) of the 1986 Act to the use of seclusion of a person immediately before 1 July 2014, is taken, on and after that day, to be an authorisation to use seclusion of the person under section 111 of the 2014 Act.

403 Urgent non-psychiatric treatment

On and after 1 July 2014, urgent non-psychiatric treatment that immediately before that day is performed under section 84(3) of the 1986 Act is taken to be urgent medical treatment referred to in section 77 of the 2014 Act during the course of that medical treatment.

404 Corresponding laws and orders

On and after 1 July 2014, an Order in Council made under section 93B of the 1986 Act that is in force immediately before that day, is taken to be an Order in Council made under section 314 of the 2014 Act.

405 Ministerial agreements

On and after 1 July 2014, an agreement made by the Minister under section 93C of the 1986 Act that is in force immediately before that day, is taken to be an agreement made by the Minister under section 315 of the 2014 Act.

406 Transfer of persons from this State

On and after 1 July 2014, a person who, immediately before that day, is being taken to an interstate mental health facility under section 93E(1) of the 1986 Act is taken to being taken to the interstate mental health facility under section 318(1) of the 2014 Act.

407 Admission of persons from interstate

On and after 1 July 2014, a person who, immediately before that day, is being taken to an approved mental health service under section 93F(1) of the 1986 Act is taken to being taken to a designated mental health facility under section 319 of the 2014 Act.

408 Transfer of patients from this State

(1) On and after 1 July 2014, a transfer order that, immediately before that day, is made under section 93G(1) of the 1986 Act and is not reviewed by the Mental Health Review Board is taken to be—

(a) a direction to take a person to an interstate mental health facility under section 322 of the 2014 Act, in the case of a person who consents to the transfer; or

(b) an application to the Mental Health Tribunal under section 323 of the 2014 Act to take a person to an interstate mental health facility, in the case of person who does not consent to the transfer.

(2) On and after 1 July 2014, a transfer order that, immediately before that day, is made under section 93G(1) of the 1986 Act and is confirmed by the Mental Health Review Board is taken to be—

(a) a direction to take a person to an interstate mental health facility under section 322 of the 2014 Act, in the case of a person who consents to the transfer and immediately before 1 July 2014 is not received by the interstate mental health facility; or

(b) an interstate transfer order made by the Mental Health Tribunal under section 323 of the 2014 Act to take a person to an interstate mental health facility, in the case of person who does not consent to the transfer and immediately before 1 July 2014 is not received by the interstate mental health facility.

409 Transfer of patients from interstate

On and after 1 July 2014, a person who, immediately before that day, is being transferred to this State under section 93H(1) of the 1986 Act is taken as being taken to a designated mental health facility under section 324 of the 2014 Act.

410 Apprehension of person absent from interstate facilities

On and after 1 July 2014, a person who, immediately before that day, is apprehended under section 93K(1) of the 1986 Act and is not taken to an interstate mental health facility, is taken to be apprehended under section 326(1) of the 2014 Act.

411 Escort of Victorian patients apprehended interstate

On and after 1 July 2014, a person who, immediately before that day, is apprehended under section 93L(1) of the 1986 Act and is not taken to an approved mental health service, is taken to be apprehended under section 327 of the 2014 Act.

412 Warrant to arrest interstate security patient who absconds to Victoria

(1) On and after 1 July 2014, an application to the Magistrates' Court made under section 93N of the 1986 Act, that is not considered by the Magistrates' Court immediately before 1 July 2014, is taken to be an application made under section 301 of the 2014 Act.

(2) On and after 1 July 2014, a warrant issued by the Magistrates' Court under section 93N of the 1986 Act immediately before that day is taken to be issued under section 301 of the 2014 Act.

413 Orders Magistrates' Court may make in respect of interstate security patients

On and after 1 July 2014, an order made by the Magistrates' Court under section 93O(3) of the 1986 Act immediately before that day is taken to be an order made under section 302(3) of the 2014 Act.

414 Translated sentence for interstate security patient

(1) On and after 1 July 2014, an application to the Supreme Court made under section 93P(1) of the 1986 Act that is not considered by the Supreme Court or the County Court immediately before that day is taken to be an application made under section 303(1) of the 2014 Act.

(2) On and after 1 July 2014, a translated sentence imposed under section 93P(3) of the 1986 Act immediately before that day is taken to be imposed under section 303(3) of the 2014 Act.

(3) On and after 1 July 2014, an order made under section 93P(4) of the 1986 Act immediately before that day is taken to be an order made under section 303(4) of the 2014 Act.

415 Emergency declaration of approved mental health services

Despite section 374(1) of the 2014 Act, a declaration made under section 94A of the 1986 Act that has effect immediately before 1 July 2014 continues to have effect for the period stated in the notice of declaration.

416 Authorized psychiatrist

(1) On and after 1 July 2014, a person who, immediately before that day, is an authorised psychiatrist under section 96 of the 1986 Act is taken to be an authorised psychiatrist under section 150 of the 2014 Act.

S. 416(2) amended by No. 21/2015 s. 3(Sch. 1 item 34.3).

(2) On and after 1 July 2014, a delegation made, under section 96(4) of the 1986 Act to a qualified psychiatrist and that is in force immediately before that day, is taken to be a delegation made under section 151(1) of the 2014 Act.

(3) On and after 1 July 2014, a delegation made, under section 96(5) of the 1986 Act to a registered medical practitioner and that is in force immediately before that day, is taken to be a delegation made under section 151(2) of the 2014 Act that expires on the date specified in the relevant instrument of delegation made under section 96(5) of the 1986 Act.

417 Provision of staff services

On and after 1 July 2014, any person or class of person who or that, immediately before 1 July 2014, is providing services under section 97 of the 1986 Act continues to be subject to that section as in force immediately before 1 July 2014, despite section 374(1) of the 2014 Act, until the person or class of person ceases to provide such services.

418 Chief psychiatrist

On and after 1 July 2014, the person who is the chief psychiatrist appointed under section 105 of the 1986 Act immediately before that day, is taken to be the chief psychiatrist appointed under section 119 of the 2014 Act for the remainder of his or her term of appointment.

419 Authorised officers

(1) On and after 1 July 2014, a person who is an authorised officer under the 1986 Act immediately before that day is taken to be an authorised officer appointed under section 146 of the 2014 Act.

(2) On and after 1 July 2014, an identity card, issued under section 106(2) of the 1986 Act to a person who is an authorised officer under that section immediately before that day, is taken to be an identity card referred to in section 147 of the 2014 Act.

420 Reportable deaths

On and after 1 July 2014, a reportable death within the meaning of section 4 of the **Coroners Act 2008** that occurred immediately before that day and is not reported in accordance with section 106A of the 1986 Act must be reported in accordance with section 348 of the 2014 Act.

421 Community visitors

(1) On and after 1 July 2014, a person who is a community visitor under section 108 of the 1986 Act immediately before that day is taken to be a community visitor under section 214 of the 2014 Act.

(2) On and after 1 July 2014, a request to see a community visitor under section 113 of the 1986 Act that, immediately before that day, is not granted is taken to be a request made under section 219 of the 2014 Act.

422 Victorian Institute of Forensic Mental Health

(1) On and after 1 July 2014, a member of the Council of the Victorian Institute of Forensic Mental Health appointed under section 117F of the 1986 Act and holding office immediately before 1 July 2014 is taken to be a member of the

board of directors appointed under section 334 of the 2014 Act for the remainder of his or her term of appointment, subject to Division 2 of Part 14 of the 2014 Act.

(2) On and after 1 July 2014, the chief executive officer of the Victorian Institute of Forensic Mental Health appointed under section 117I of the 1986 Act and holding office immediately before 1 July 2014 is taken to be the chief executive officer of the Victorian Institute of Forensic Mental Health appointed under section 340 of the 2014 Act for the remainder of his or her term of appointment.

(3) On and after 1 July 2014, any person who immediately before that day is employed under section 117J of the 1986 Act is taken to be employed under section 341(1) of the 2014 Act until the person ceases to be so employed.

423 Review of certain decision by VCAT

(1) On and after 1 July 2014, an application made under section 120 of the 1986 Act that, immediately before that day, is not considered by VCAT is taken to be an application made under section 201 of the 2014 Act.

(2) If, immediately before 1 July 2014, a proceeding in relation to an application for review made under section 120 of the 1986 Act is part heard or is adjourned, the application is to be determined by VCAT in accordance with the relevant provisions of the 2014 Act.

424 Payment for recommendation

On and after 1 July 2014, a recommendation referred to in section 127 of the 1986 Act that is made immediately before that day and for which a registered medical practitioner receives no

payment is taken to be an examination for the purposes of section 357 of the 2014 Act.

425 Constitution of the Mental Health Tribunal

Despite anything to the contrary in section 179 of the 2014 Act, for a period starting on 1 July 2014 and ending on 30 June 2015, the President of the Mental Health Tribunal may, in relation to a proceeding in the general division of the Tribunal, determine that the Tribunal is determined by a legal member and a community member if the President is satisfied that a psychiatrist member or a registered medical practitioner member is not available.

426 President and members of the Mental Health Review Board

(1) The person holding office as the President of the Mental Health Review Board under the 1986 Act immediately before 1 July 2014 is taken, on and after that day, to be the President of the Mental Health Tribunal until 1 June 2017, subject to Division 2 of Part 8 of the 2014 Act.

(2) A person (except the President) holding office as a member of the Mental Health Review Board under the 1986 Act immediately before 1 July 2014 is taken to be an ordinary member of the Mental Health Tribunal on and after that day for remainder of his or her term of appointment, subject to Division 2 of Part 8 of the 2014 Act.

(3) Despite subsection (2), a member of the Mental Health Review Board whose term of appointment expires on 25 July 2015 is taken to be an ordinary member of the Mental Health Tribunal until 24 February 2016, subject to Division 2 of Part 8 of the 2014 Act.

427 Psychosurgery Review Board

(1) A person holding office, immediately before 1 July 2014, as a member of the Psychosurgery Review Board under clause 2(1)(c) or (d) of Schedule 3 to the 1986 Act (and any alternate member who is to act during the absence or illness of that member), is taken to be an ordinary member of the Mental Health Tribunal on and after 1 July 2014 for the remainder of his or her term of appointment, subject to Division 2 of Part 8 of the 2014 Act.

(2) Despite subsection (1), a member of the Psychosurgery Review Board who is referred to in clause 2(1)(c) or (d) of Schedule 3 to the 1986 Act (and any alternate member is to act during the absence or illness of that member) whose term of appointment expires on 26 June 2015 or 4 September 2015 is taken to be an ordinary member of the Mental Health Tribunal until 24 February 2016, subject to Division 2 of Part 8 of the 2014 Act.

428 Repeal of spent provisions

Part 17 and the Schedule are **repealed** on 1 July 2015.

Note

The repeal of Part 17 and the Schedule does not affect the continuing operation of the amendments made by that Part or the Schedule (see section 15(1) of the **Interpretation of Legislation Act 1984**.)

Part 16A—General savings and transitionals

Pt 16A (Heading and s. 428A) inserted by No. 15/2015 s. 33.

Division 1—Mental Health Amendment Act 2015

Pt 16A Div. 1 (Heading) inserted by No. 19/2019 s. 251(1).

428A Transitional—Mental Health Amendment Act 2015

(1) In this section—

commencement day means the day on which section 29 of the **Mental Health Amendment Act 2015** comes into operation.

(2) On and from the commencement day, a person, who before the commencement day is taken from a prison to a designated mental health service in accordance with a direction made under section 306 and is still detained at the designated mental health service, is taken—

(a) to be subject to a Secure Treatment Order; and

(b) to have been received at the designated mental health service on the commencement day.

Pt 16A Div. 2 (Heading and new ss 429–432) inserted by No. 19/2019 s. 251(2).

Division 2—Disability (National Disability Insurance Scheme Transition) Amendment Act 2019

New s. 429 inserted by No. 19/2019 s. 251(2).

429 Definitions

In this Division—

Amending Act means the **Disability (National Disability Insurance Scheme Transition) Amendment Act 2019**;

commencement day means the day on which section 248 of the Amending Act comes into operation;

National Disability Insurance Scheme means the National Disability Insurance Scheme within the meaning of the NDIS Act.

New s. 430 inserted by No. 19/2019 s. 251(2).

430 Complaints to the Commissioner

(1) Despite the amendments made by section 248 of the Amending Act, on and after the commencement day, the Commissioner must continue to perform the Commissioner's functions under Part 10 for the purposes of dealing with or resolving a complaint in respect of a mental health service provider providing services funded by the National Disability Insurance Scheme before 1 July 2019 if—

(a) the complaint is made before the commencement day; or

(b) the complaint is made on or after the commencement day and the complaint relates to matters that occurred before 1 July 2019.

(2) Despite the amendments made by section 248 of the Amending Act, on and after the commencement day, the Commissioner must continue to perform the Commissioner's functions under Part 10 for the purposes of dealing with or resolving a complaint in respect of a mental health service provider providing services funded by the National Disability Insurance Scheme on and after 1 July 2019 if—

(a) the complaint is made before the service that is the subject of the complaint provided by the mental health service provider began being funded by the National Disability Insurance Scheme; or

(b) the complaint is made on or after the day the service that is the subject of the complaint provided by the mental health service provider began being funded by the National Disability Insurance Scheme and the complaint relates to matters that occurred before the service began being funded by the National Disability Insurance Scheme.

431 The chief psychiatrist

New s. 431 inserted by No. 19/2019 s. 251(2).

(1) Despite the amendments made by section 248 of the Amending Act, on and after the commencement day, the chief psychiatrist must continue to perform the chief psychiatrist's functions under Division 2 of Part 7 for the purposes of conducting and completing an investigation into the provision of mental health services by a mental health service provider providing services funded by the National Disability Insurance Scheme before 1 July 2019 if—

(a) the investigation begins before the commencement day; or

(b) the investigation begins on or after the commencement day and the investigation relates to the provision of mental health services provided before 1 July 2019.

(2) Despite the amendments made by section 248 of the Amending Act, on and after the commencement day, the chief psychiatrist must continue to perform the chief psychiatrist's functions under Division 2 of Part 7 for the purposes of conducting and completing an investigation into the provision of mental health services by a mental health service provider providing services funded by the National Disability Insurance Scheme on and after 1 July 2019 if—

(a) the investigation begins before the day the service that is the subject of the investigation provided by the mental health service provider began being funded by the National Disability Insurance Scheme; or

(b) the investigation begins on or after the day the service that is the subject of the investigation provided by the mental health service provider began being funded by the National Disability Insurance Scheme and the investigation relates to matters that occurred before the day the service began being funded by the National Disability Insurance Scheme.

New s. 432 inserted by No. 19/2019 s. 251(2).

432 Community visitors

Despite the amendments made by section 248 of the Amending Act, on and after the commencement day, a community visitor may continue to perform functions under section 216(b) and exercise related powers in Part 9 to assist persons receiving mental health services provided by a mental health service provider

funded by the National Disability Insurance Scheme before, on or after 1 July 2019, at prescribed premises, if the assistance provided by the community visitor relates to matters that arose before the commencement day.

Division 3—Health Legislation Amendment and Repeal Act 2019

Pt 16A Div. 3 (Heading and new ss 433, 434) inserted by No. 34/2019 s. 81.

433 Definitions

New s. 433 inserted by No. 34/2019 s. 81.

In this Division—

amending Act means the **Health Legislation Amendment and Repeal Act 2019**;

commencement day means the day on which section 74 of the amending Act comes into operation.

434 Transfer of conciliation process to Commissioner

New s. 434 inserted by No. 34/2019 s. 81.

If, immediately before the commencement day, a conciliation process had commenced under Division 3 of Part 10 but had not been completed or discontinued under that Division—

(a) on and from the commencement day the conciliation process is to be conciliated by the Commissioner as if the conciliation process had commenced under Division 3 of Part 10 as amended by the amending Act; and

(b) despite sections 249(1) (as amended by the amending Act) and 265(1), the person who was the conciliator of the conciliation process may disclose to the Commissioner any information gained by the person that is

necessary to enable the Commissioner to conciliate the matter.

Pt 17 (Heading and ss 429–457) repealed by No. 26/2014 s. 428.

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Sch. repealed by No. 26/2014 s. 428.

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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 20 February 2014

Legislative Council: 13 March 2014

The long title for the Bill for this Act was "A Bill for an Act to provide a legislative scheme for the treatment of persons with mental illness, to repeal the **Mental Health Act 1986**, to make consequential amendments to the **Sentencing Act 1991**, the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** and other Acts and for other purposes."

The **Mental Health Act 2014** was assented to on 8 April 2014 and came into operation as follows:

Section 2(2) and (3) on 30 June 2014: Special Gazette (No. 200) 24 June 2014 page 2; sections 1, 2(1), 3–455 and Schedule on 1 July 2014: section 2(1); section 456 on 1 July 2014: section 2(2); section 457 on 1 July 2015: s. 2(3).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in

a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Mental Health Act 2014** by Acts and subordinate instruments.

Mental Health Act 2014, No. 26/2014

Assent Date:	8.4.14
Commencement Date:	Ss 372(4), 428 on 1.7.14: s. 2(1); s. 456 on 1.7.14: s. 2(2); s. 457 on 1.7.15: s. 2(3)
Note:	S. 428 repealed Pt 17 (ss 429–457), the Schedule on 1.7.15; s. 372(4) provided that s. 372 expired on 1.7.16
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Criminal Organisations Control and Other Acts Amendment Act 2014, No. 55/2014

Assent Date:	26.8.14
Commencement Date:	Ss 174, 175 on 27.8.14: s. 2(1); s. 150 on 31.10.14: Special Gazette (No. 330) 23.9.14 p. 1
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Powers of Attorney Act 2014, No. 57/2014

Assent Date:	26.8.14
Commencement Date:	S. 158 on 1.9.15: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Privacy and Data Protection Act 2014, No. 60/2014

Assent Date:	2.9.14
Commencement Date:	S. 140(Sch. 3 item 30) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014, No. 61/2014

Assent Date:	9.9.14
Commencement Date:	S. 169 on 1.3.16: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Mental Health Amendment Act 2015, No. 15/2015 (as amended by No. 52/2017)

Assent Date:	12.5.15
Commencement Date:	Ss 25(2), 28, 29 on 13.5.15: s. 2(1); ss 4–24, 25(1), 25(3), 26, 27, 30–33, 35, 36 on 25.11.15: Special Gazette (No. 363) 24.11.15
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Statute Law Revision Act 2015, No. 21/2015

Assent Date:	16.6.15
Commencement Date:	S. 3(Sch. 1 item 34) on 1.8.15: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Access to Medicinal Cannabis Act 2016, No. 20/2016

Assent Date:	26.4.16
Commencement Date:	S. 148 on 14.9.16: Special Gazette (No. 284) 13.9.16 p. 1
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Health Complaints Act 2016, No. 22/2016

Assent Date:	3.5.16
Commencement Date:	S. 238 on 1.2.17: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Medical Treatment Planning and Decisions Act 2016, No. 69/2016

Assent Date:	29.11.16
Commencement Date:	Ss 106−122 on 12.3.18: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017, No. 20/2017

Assent Date:	16.5.17
Commencement Date:	S. 134(Sch. 1 item 12) on 1.9.17: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Justice Legislation Amendment (Protective Services Officers and Other Matters) Act 2017, No. 45/2017

Assent Date:	26.9.17
Commencement Date:	S. 56 on 1.4.18: Special Gazette (No. 136) 27.3.18 p. 3
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Health Legislation Amendment (Quality and Safety) Act 2017, No. 52/2017

Assent Date:	24.10.17
Commencement Date:	Ss 80–88 on 1.4.18: Special Gazette (No. 96) 6.3.18 p. 1
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Oaths and Affirmations Act 2018, No. 6/2018

Assent Date:	27.2.18
Commencement Date:	S. 68(Sch. 2 item 88) on 1.3.19: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Audit Amendment Act 2019, No. 12/2019

Assent Date:	4.6.19
Commencement Date:	S. 22 on 1.7.19: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Guardianship and Administration Act 2019, No. 13/2019

Assent Date:	4.6.19
Commencement Date:	S. 221(Sch. 1 item 32) on 1.3.20: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Disability (National Disability Insurance Scheme Transition) Amendment Act 2019, No. 19/2019

Assent Date:	25.6.19
Commencement Date:	Ss 248–251 on 1.7.19: Special Gazette (No. 254) 25.6.19 p. 1
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

Health Legislation Amendment and Repeal Act 2019, No. 34/2019

Assent Date:	22.10.19
Commencement Date:	Ss 68−81 on 23.10.19: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Mental Health Act 2014**

3 Amendments Not in Operation

This version does not contain amendments that are not yet in operation.

4 Explanatory details

[1] S. 306 (*repealed*): The amendments to section 306(3)(e) proposed by section 169(2)(3) of the **Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014**, No. 61/2014 (*repealed*) are not included in this publication due to the earlier repeal of section 306 by section 29 of the **Mental Health Amendment Act 2015**, No. 15/2015 (*repealed*).