

# Mental Health Bill 2014

## Explanatory Notes

### Short title

Mental Health Bill 2014

### Policy objectives and the reasons for them

The primary purpose of the Mental Health Bill 2014 is to improve and maintain the health and wellbeing of persons with a mental illness who do not have the capacity to consent to treatment or care.

The Bill also enables persons to be diverted from the criminal justice system if found to have been of unsound mind at the time of an alleged offence or to be unfit for trial. Where necessary, the Bill aims to protect the community if persons diverted from the criminal justice system may be at risk of harming others.

The objects are to be achieved in a way that:

- safeguards the rights of persons
- adversely affects the rights and liberties of a person with a mental illness only if there is no less restrictive way to protect the person's health and safety or to protect others, and
- promotes the recovery of a person with a mental illness, and their ability to live in the community, without the need for involuntary treatment or care.

The Bill results from a review of the *Mental Health Act 2000*, which was initiated by the Minister for Health to improve the delivery of health services to the people of Queensland.

### Achievement of policy objectives

The key aspects of the Bill are outlined below.

- **Treatment authorities**

Treatment authorities are made under the Bill by authorised doctors and provide a lawful authority to treat a person with a mental illness who lacks the capacity to consent to treatment. A person may be placed on a treatment authority if an authorised doctor believes that the treatment criteria apply to the person and that there is not a less restrictive way to provide treatment and care for the person, for example, under an advance health directive. Key elements of the treatment criteria

are that the person lacks capacity to consent to treatment for a mental illness and there is a risk of serious harm to the person or others.

A person subject to a treatment authority is to be treated in the community, on a community category of the authority, unless an authorised doctor decides that the person's treatment and care needs can only be met by the person being an inpatient.

Authorised doctors are responsible for treatment authorities and may amend a person's treatment authority by changing the category of the authority, the conditions on the authority or the nature and extent of limited community treatment (which enables treatment in the community for up to 7 days).

- **Persons in custody**

A person in custody, for example in a watch-house or in prison, may be transferred to an authorised mental health service for an assessment to decide if a treatment authority should be made for the person, or for the treatment and care for the person's mental illness.

- **Psychiatrist reports**

If a person subject to a treatment authority, forensic order or court treatment order is charged with a serious offence, the person or someone on the person's behalf, may request that a psychiatrist report be prepared on whether the person was of unsound mind at the time of the alleged offence or is unfit for trial. The chief psychiatrist may also direct a psychiatrist report for a person if a person is charged with a serious offence and the chief psychiatrist believes it is in the public interest. A serious offence is an indictable offence other than an offence that must, under the Criminal Code, be heard by a magistrate.

- **Mental Health Court**

The Mental Health Court hears references on whether persons charged with a serious offence were of unsound mind at the time of an alleged offence or unfit for trial. Where the court determines a person was of unsound mind at the time of the alleged offence or unfit for trial, the court may make a forensic order or a court treatment order (see below) for the person. Forensic orders may be a forensic order (mental condition) or a forensic order (disability).

In making an order, the court must also determine the category of the order (inpatient or community) and, if the category is inpatient, any limited community treatment for the patient.

Authorised doctors must not amend a person's forensic order by changing the category of the authority, the conditions on the authority or the nature and extent of

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limited community treatment, unless the amendment is in accordance with decisions of Mental Health Court and the Mental Health Review Tribunal.

If the court determines a person is unfit for trial, but the unfitness is not of a permanent nature, the matter of the person's fitness for trial is referred to the Mental Health Review Tribunal for regular review.

For forensic orders for specified offences, the court may impose a non-revoke period of up to 7 years for the order.

- **Magistrates Courts**

Magistrates courts may discharge persons charged with an alleged offence if the court considers the person appears to have been of unsound mind at the time of the alleged offence or is unfit for trial.

Magistrates courts may also order that a person before the court be examined by an authorised doctor to decide if a treatment authority should be made for the person or to make recommendations about the person's treatment and care.

- **Treatment and care of patients**

Authorised doctors and administrators of authorised mental health services have responsibilities for the treatment and care of patients under the Bill. An authorised doctor must examine patients and record in the patient's health records the treatment and care to be provided to the patient.

To the extent practicable, decisions in relation to the treatment and care of a patient are to be decided in consultation with the patient and the patient's family, carers and other support persons.

Administrators must take reasonable steps to ensure that the patient receives appropriate the planned treatment and care. The administrator must ensure the systems for recording planned and actual treatment can be audited.

The performance of electroconvulsive therapy and non-ablative neurosurgery (such as deep brain stimulation) is regulated under the Bill. Psychosurgery is prohibited under the Bill.

- **Mechanical restraint and seclusion**

The use of mechanical restraint and seclusion on involuntary patients in authorised mental health services is regulated under the Bill. The use of mechanical restraint in an authorised mental health service must be approved by the chief psychiatrist. Mechanical restraint and seclusion may only be used if it is necessary to protect the

patient or others from physical harm and there is no less restrictive way of providing treatment and care to the patient.

Reduction and elimination plans are used to approve the use of mechanical restraint and seclusion by the chief psychiatrist in the context of eliminating its use for the patient.

- **Rights of involuntary patients and others**

The Bill provides for a statement of rights for involuntary patients to be made available to patients. Public sector authorised mental health services must employ or engage a patient rights adviser in the service to advise patients and the patient's family, carers and other support persons of their rights under the Bill.

Subject to a patient's right to privacy, a patient may be visited by family, carers and other support persons. The patient may also be visited by a health practitioner, or a legal or other adviser.

If a patient has a nominated support person or personal guardian or attorney, any notices to be given to a patient must also be given to the nominated support person or guardian.

A patient may request a second opinion about the patient's treatment and care if an authorised mental service has been unable to resolve a complaint about the treatment and care.

- **Chief psychiatrist**

The chief psychiatrist is appointed under the Bill to protect the rights of involuntary patients in authorised mental health services. This is also extended to voluntary patients in authorised mental health services, such as those being treated under advance health directives.

The chief psychiatrist makes policies and practice guidelines, which persons in authorised mental health services must comply with. The Bill states a number of areas for which policies must be made, including the application of the treatment criteria, the use of mechanical restraint and seclusion, and the treatment and care of forensic patients.

The chief psychiatrist must also prepare an annual report on the administration of the Bill.

- **Information notices**

Victims of unlawful acts may apply to receive specific information about the person who committed the unlawful act, including when community treatment is authorised for the person. Schedule 1 of the Bill outlines what information is to be provided.

- **Mental Health Review Tribunal**

The Mental Health Review Tribunal continues under the Bill with responsibility for reviewing:

- treatment authorities
- forensic orders
- court treatment orders
- the fitness for trial of particular persons
- the imposition of monitoring conditions that involve a tracking device, and
- the detention of minors in high security units.

The Mental Health Review Tribunal also hears applications for:

- examination authorities, which authorise the involuntary examination of a person
- the approval of regulated treatments (electroconvulsive therapy and non-ablative neurosurgery), and
- the transfer of forensic patients and patients on court treatment orders into and out of Queensland.

The Bill states when periodic reviews of treatment authorities, forensic orders and court treatment orders must take place. Patients, or someone on behalf of the patient, may apply for a review of an authority or order at any time.

In reviewing treatment authorities, forensic orders and court treatment orders, the Mental Health Review Tribunal has the power to confirm or revoke an authority or order on the basis of the criteria stated in the Bill. In reviewing treatment authorities, forensic orders and court treatment orders, the tribunal may also change the category of the authority or order, or change limited community treatment under the authority or order.

The Bill represents a major improvement to the legislative framework that applies for persons with a mental illness under *Mental Health Act 2000*. These improvements can be grouped in six areas:

- Strengthened support for patients
  - Improved health service delivery
  - Strengthened community protection
  - A more transparent and fairer Act
  - Improved legal processes
  - Greater value in health services.
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- **Strengthened support for patients**

The Bill will strengthen patient rights by improving the criteria by which a person is placed on a treatment authority (to replace an involuntary treatment order under the previous Act), to focus on a person's lack of capacity to consent to treatment and the risk of serious harm to the person or others. The Bill will require an authorised doctor to consider whether a person may be treated in a "less restrictive way" before making a treatment authority. This includes treating the person under an advance health directive, or with the consent of the guardian or attorney.

In conjunction with this, persons will be given the opportunity to nominate a "nominated support person" to support the person's treatment and care at a future time if the person becomes unwell and loses capacity to consent to treatment. A nominated support person has a variety of roles under the Bill, including receiving all notices that must be given to the patient, being able to discuss confidential information about the patient, and supporting the patient or representing the patient at hearings of the Mental Health Review Tribunal.

The Bill will strengthen the rights of the family, carers and other support persons, who can play an important role in the person's care and recovery. The Bill requires authorised doctors to involve family, carers and other support persons in decisions about the patient's treatment and care, subject to the patient's right to privacy. The Bill states that patients have a right to be visited by support persons, health practitioners and legal or other advisers at any reasonable time.

The use of seclusion and mechanical restraint on involuntary patients is an area receiving attention nationally. The Bill supports the move to reduce and eliminate the use of seclusion and mechanical restraint in a number of ways, including the introduction of reduction and elimination plans that provide for the approval of mechanical restraint and seclusion in the context of a strategy of its elimination for the patient.

The Bill requires public sector authorised mental health services to engage a patient rights adviser to support patients and their support persons in understanding how the mental health legislation operates, especially patients rights. This includes advising patients and support persons on how the Mental Health Review Tribunal operates, and the person's rights at tribunal hearings.

The rights of patients at tribunal hearings will be strengthened by stating that a patient may be supported at the tribunal by a nominated support person or another person nominated by the patient. Also, the patient may be represented at the tribunal by a lawyer or another representative. For tribunal specified hearings, the Bill requires the tribunal to provide a lawyer at no cost to the patient. The hearings that this applies to are for any review involving a minor, for reviews where the Attorney-

General is represented, for "fitness for trial" reviews, for applications involving electroconvulsive therapy and for the review of certain monitoring conditions.

The Bill also removes the barriers to interstate transfers of involuntary patients where this may be of benefit to the patient's treatment, care and recovery. Interstate transfers are beneficial where the patient returns to closer proximity to family, carers and other support persons.

- **Improved health service delivery**

The Bill will remove the ambiguity in the current Act about where treatment and care can be provided. The Bill will allow treatment and care to be provided in any place that is clinically appropriate. The restrictions on the use of audio-visual technology in the current Act will be removed.

The Bill strongly supports recovery orientation for patients with a mental illness. This is achieved through matters such as:

- requiring that patients on treatment authorities be treated in the community unless the patient must be admitted to an inpatient unit to meet the patient's treatment and care needs
- enabling the Mental Health Review Tribunal to "step-down" a patient on a forensic order, to a court treatment order or treatment authority, when it is appropriate to do so
- enabling treatment to be provided at any clinically appropriate place in the community
- removing barriers to interstate transfers, which can assist a patient's recovery
- strengthening the use of advance health directives, which gives a person greater control over their future health care
- empowering a person to appoint a nominated support person to support the person during the acute phase of an illness, and
- ensuring equal rights of persons with a mentally illness at law.

The Bill requires authorised doctors to decide and record the treatment and care to be provided to a patient. To better align with clinical practice, this will be recorded in the patient's health records rather than in a separate "treatment plan" as is required and the current Act.

The Bill emphasises the importance of involving family, carers and support persons in decisions about the patient's treatment and care, including when the patient returns to the community. This aligns with good clinical practice and will improve health service delivery and lead to better patient outcomes.

- **Strengthened community protection**

To the extent that the legislation deals with persons who have committed unlawful acts, it is important that the community is adequately protected from any future unlawful behaviour.

The Mental Health Court will be able to set a non-revoke period for forensic orders of up to 7 years for serious violent offences such as murder, rape and grievous bodily harm. This will give victims and the wider community greater certainty in the period after a forensic order is made.

The legislation will strengthen powers to deal with persons who abscond. This will include clearer powers for police to detain and return such persons. Authorised mental health services will be required to provide police with a risk assessment of persons, so that police can give priority to responding based on identified risks to the persons or others.

The Bill includes a statement of principles for supporting victims of unlawful acts to guide persons responsible for administering the legislation.

Confidentiality restrictions on government agencies will no longer restrict the ability to approach a person to offer victim support services.

Victims of unlawful acts who receive information notices about a patient will be given information on the reasons a patient is given community treatment to assist the victim to understand the considerations that have gone into such a decision.

The requirement to obtain a second psychiatric opinion to revoke forensic orders for serious violent offences will be retained and expanded to include offences such as grievous bodily harm.

The Bill will result in a more targeted and appropriate range of forensic orders, enabling those responsible for administering the forensic provisions to focus their resources on individuals of most concern to the community.

- **A more transparent and fairer Act**

The Bill will remove justices examination orders and replace them with a substantially more limited process where a person, in consultation with an authorised mental health service, may make an application to the Mental Health Review Tribunal for an examination authority.

The Bill provides for clear and consistent criteria for statutory decisions. This is of critical importance given the restrictions on a person's liberties that may be exercised under the Bill.



The Bill will also require the publication of chief psychiatrist policies and practice guidelines, and expand the requirements for the annual report.

The Bill clearly states the circumstances in which a person may be involuntarily transported to, from, and within an authorised mental health service, and the safeguards that apply when this occurs. These provisions will be more transparent and fairer for those administering the legislation and for the persons being transported.

The provisions in the Bill clearly outline when and to whom notices are to be provided. Where the Bill requires the patient to be provided with a notice by an administrator, the chief psychiatrist or the tribunal, the notice must also be given to a nominated support person, personal guardian or attorney.

- **Improved legal processes**

The Bill rectifies a major deficiency in the current legal framework in Queensland, by expressly enabling magistrates to discharge persons who appear to have been of unsound mind at the time of an alleged offence or unfit for trial.

Magistrates will also be able to refer matters to the Mental Health Court where it appears there may be grounds for the court to make a forensic order or court treatment order for the person.

The Bill will enable persons charged with serious offences who are currently on an authority or order under the Bill to request that a psychiatric report be prepared on whether the person was of unsound mind at the time of the alleged offence or unfit for trial. This replaces the current model whereby a person must mandatorily have a report prepared and subsequently referred to the Mental Health Court. The current approach is a breach of an individual's right to decide how to pursue a legal defence.

The Bill gives the Mental Health Court an additional option of making a court treatment order for a person. The intention of these provisions is to provide a less intensive form of order to apply, for example, where a person's role in a serious offence is relatively minor. Court treatment orders will 'tie' the person to involuntary treatment without the stringent oversight that applies to persons on forensic orders. Unlike forensic orders, the court and the tribunal does not set limits on the extent of community treatment under court treatment orders. As with treatment authorities, this will be the responsibility of authorised doctors in accordance with the criteria established under the Bill. As with treatment authorities, the default category for these persons will be a community category, unless it is necessary for the person to be an inpatient. However, like forensic orders, only the tribunal may revoke a court treatment order.

The Bill also enables the Mental Health Court to consider and decide disputed matters that affect a psychiatrist's opinion, rather than referring the whole matter to the criminal courts as occurs now.

The Bill will clarify the relationship between the Criminal Code and mental health legislation where a jury finds a person of unsound mind or unfit for trial.

The Bill also adopts the Criminal Code's use of "unsound mind".

- **Greater value in health services**

The Bill will replace the current *Mental Health Act 2000*, which is overly complex and difficult to administer. The Bill will reduce the compliance burden on health services in administering the Bill by reducing the volume of forms and other paperwork required under the legislation.

The Bill also rectifies numerous operational problems with the current Act in areas such as the transport of patients, searches in authorised mental health services and notification requirements. The proposals will also result in greater devolvement to authorised mental health services, such as for the appointment of authorised mental health practitioners.

The removal of mandatory psychiatric reports will also enable clinician's time to be redirected to higher priority clinical areas.

### **Estimated cost for government implementation**

The implementation of the Act will incur one-off implementation costs for education and training, the development of policies, practice guidelines and other supporting material, and the upgrade to the Consumer Integrated Mental Health Application for mental health consumers. These implementation costs are estimated at \$5.2 million.

On-going costs will also be incurred for the revised court liaison service (to support the revised role of Magistrates Courts), the establishment of patient rights advisers and the revised Mental Health Review Tribunal functions. These costs are estimated at \$12.1M.

### **Consistency with fundamental legislative principles**

- **Treatment and detention without consent**

The proposed Bill will impact on the rights and liberties of individuals by enabling examinations, assessments, treatment and, if necessary, detention without consent.

The underpinning principle of the Bill is that a person who does not have capacity to consent to treatment may be at risk of harm or deterioration in his or her health, with no ability to make decisions to avert these adverse consequences. To remedy this, the proposed Bill will establish legislative arrangements for treatment without consent.

The proposed Bill also empowers the Mental Health Court to impose orders (forensic orders and court treatment orders) on persons charged with offences. These orders authorise involuntary treatment and, if necessary, detention in an authorised mental health service or the forensic disability service. The purpose of these provisions is to protect the community where persons diverted from the criminal justice system may be at risk of harming others.

The Bill will include robust safeguards to protect the rights of individuals on orders or authorities. The Bill is to expressly state that the objectives of the Bill are to be achieved in a way that:

- safeguards the rights of persons
- affects a person's rights and liberties in an adverse way only if there is no less restrictive way to protect the health and safety of the person or others; and
- promotes the person's recovery, and ability to live in the community, without the need for involuntary treatment and care.

The exercise of all relevant powers under the proposed Bill – involuntary examination, assessment and treatment – may only be undertaken if the statutory decision-making criteria are met. Examination authorities (which authorise entry to premises and an involuntary examination of a person) may only be made with prior clinical input, with the authority to be made by the independent Mental Health Review Tribunal. An examination of a person (to determine whether a recommendation for assessment should be made), and an assessment (to determine whether a treatment authority should be made), are undertaken by appropriately skilled clinicians, with an authorised psychiatrist confirming the authority in all instances.

A person placed on a treatment authority by a psychiatrist has the authority automatically reviewed by the tribunal in 28 days after it is made, with the person having the right to apply to the tribunal for review at any time.

The Mental Health Review Tribunal also reviews the continuation of forensic orders.

- **Psychiatrist examinations for persons charged with serious offences**

The proposed Bill will provide for the right of a person on a treatment authority or forensic order who is charged with a serious indictable offence to request a psychiatrist report about whether the person was of unsound mind at the time of the alleged offence or is unfit for trial.

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In addition, if the chief psychiatrist (the position which will replace the Director of Mental Health) determines that it is in the public interest, the chief psychiatrist may direct a psychiatrist report for a person charged with a serious indictable offence without the person's consent. This latter authority may be seen as infringing on the rights and liberties of the person who is subject to the psychiatrist examination. The discretion to exercise this power is to be used by the chief psychiatrist only if the chief psychiatrist determines that it is in the public interest to do so. The Bill will provide safeguards for persons undergoing these examinations, including restrictions on the use of the resultant report.

- **Power of entry to authorised mental health services**

The Bill will continue the power under the *Mental Health Act 2000* for authorised officers to visit an authorised mental health service to investigate whether the Bill is being complied with. The exercise of this power does not require a warrant. However, this power of entry is very limited – to authorised mental health services – nearly all of which are within the public sector. The power is considered reasonable given the need for involuntary patients to have their rights protected.

- **Suspension of community treatment**

The Bill will continue the power under the *Mental Health Act 2000* for the chief psychiatrist to suspend community treatment for a class of patients if the chief psychiatrist believes there is a serious risk to the life, health or safety of a person or a serious risk to public safety. This power may be seen as infringing individual liberties in that the power may be exercised in relation to a class of persons, regardless of whether an individual constitutes a risk to the community.

However, this power is consistent with the purpose of the Bill in relation to the protection of the community. This power may be exercised, for example, where there are concerns of systemic management issues within an authorised mental health service that need rectification. It may be necessary to suspend community treatment pending the rectification of these issues. As in the current Act, the proposed Bill will incorporate safeguards, including the requirement to consult with the administrator of the authorised mental health service on the impact of suspending community treatment on patients before taking action under these provisions. The chief psychiatrist's decision is appealable to the tribunal.

- **Monitoring conditions for involuntary patients**

The Bill will continue the powers under the *Mental Health Act 2000* for the chief psychiatrist to place monitoring conditions on forensic patients. Monitoring conditions may include a requirement that a patient wear a GPS tracking device while being

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treated in the community. The requirement to wear such devices may be seen as breaching an individual's rights and liberties.

The purpose of monitoring conditions is to provide an additional level of protection for the health and safety of a patient or others, where warranted. The imposition of monitoring conditions offers a mechanism to quickly locate a patient who has not returned from community treatment where there are concerns about the patient's safety or the safety of others. These conditions may only be placed on an order by the chief psychiatrist, the Mental Health Court or the Mental Health Review Tribunal. As an additional safeguard, the Bill will require that the imposition of monitoring conditions by the chief psychiatrist be reviewed by the tribunal within 21 days of the conditions being imposed.

- **Transitional regulation-making power**

The Bill enables a transitional regulation to be made about a matter to facilitate the transition to the new Bill. The inclusion of this power raises the issue of whether the Bill has sufficient regard to the institution of the Parliament.

Although the Bill provides for a range of transitional issues, it is possible that unanticipated matters may arise given the complexity of transitioning to the new Bill. It should be noted that this provision expires in 12 months.

## **Consultation**

On 28 June 2013, the Minister for Health announced a review of the *Mental Health Act 2000* to deliver the best possible healthcare for Queenslanders. The review commenced by inviting the public to identify key areas for improvement in the current Act.

An initial round of public consultation took place in July-August 2013. During the two-month consultation period, the review held meetings and workshops, including in regional Queensland, with key stakeholders including:

- the Queensland Mental Health Commission
- peak bodies for mental health consumers
- users of mental health services, their families and carers
- legal agencies
- authorised mental health services
- individual victims
- government agencies, including the Public Guardian and the Public Advocate
- the Mental Health Court and other courts
- the Mental Health Review Tribunal.

The first round of public consultation was highly successful with approximately 100 written submissions being received.

As a result of the first round of consultation, research and analysis, a Discussion Paper on the review of the Act was publicly released for a further two-month period of public consultation during May to July 2014. The Discussion Paper was placed on the “Get Involved” website and forwarded to all stakeholders who made a submission to the review in the first round of consultation or otherwise expressed an interest in being involved in the consultation process.

A range of meetings and workshops were convened during the consultation period, including in regional Queensland.

Over 120 submissions were received in response to the Discussion Paper.

An analysis of this feedback formed the basis for the Bill.

## Notes on provisions

### Chapter 1 Preliminary

#### Part 1 Introduction

##### 1 Short title

*Clause 1* provides that, when enacted, the short title of the Act will be the *Mental Health Act 2014*.

##### 2 Commencement

*Clause 2* provides for commencement of the Bill on the day fixed by proclamation.

##### 3 Main objects of Act

*Clause 3* states the main objects of the Bill, namely:

- to improve and maintain the health and wellbeing of persons with a mental illness who do not have the capacity to consent to treatment or care; and
- to enable persons to be diverted from the criminal justice system if found to have been of unsound mind at the time of allegedly committing an unlawful act or to be unfit for trial; and
- to protect the community if persons diverted from the criminal justice system may be at risk of harming others.

The objects are to be achieved in a way that—

- safeguards the rights of persons; and
- adversely affects the rights and liberties of a person with a mental illness only to the extent required to protect the person's health and safety or to protect others; and
- promotes the recovery of a person with a mental illness, and their ability to live in the community, without the need for involuntary treatment or care.

##### 4 Act binds all persons

*Clause 4* states that the Bill binds the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

## **Part 2 Principles for person with mental illness**

### **5 Principles for person with mental illness**

*Clause 5* states the principles that apply for the administration of the Bill.

### **6 Principles for victim of unlawful act**

*Clause 6* states the principles for persons performing functions under this Bill in relation to victims of unlawful acts. This is relevant for persons placed on a forensic order or court treatment order under the Bill.

### **7 Person to have regard to principles**

*Clause 7* states that a person performing a function under this Act must have regard to the principles.

### **8 Application of objects and principles to persons with intellectual disability**

*Clause 8* states how the Act applies to persons with an intellectual disability.

## **Part 3 Interpretation**

### **9 Definitions**

*Clause 9* states that the dictionary is in schedule 3.

### **10 Meaning of *mental illness***

*Clause 10* defines mental illness for the purpose of the Bill, namely, a condition characterised by a clinically significant disturbance of thought, mood, perception or memory. This clause states matters that are not considered to indicate a person has a mental illness.

### **11 Meaning of *involuntary patient***

*Clause 11* defines involuntary patient, namely persons subject to:

- an examination authority (which authorises an involuntary examination under chapter 2)
- a recommendation for assessment (which authorises an involuntary assessment under chapter 2 to decide if a treatment authority should be made for the person)
- a treatment authority (which are made by authorised doctors under chapter 2)



- a forensic order (which are made by the Mental Health Court under chapter 5 for persons who have committed unlawful acts)
- a court treatment order (a less intensive order made by the Mental Health Court or the Mental Health Review Tribunal for persons who have committed unlawful acts)
- a judicial order (the Bill provides for various short-term detention orders; see dictionary to the Bill)
- the detention of a person who has absconded from interstate.

## **12 Meaning of *treatment criteria***

*Clause 12* states the treatment criteria for the Bill.

The treatment criteria for a person are all of the following:

- the person has a mental illness
- the person lacks capacity to consent to be treated for the illness
- because of the person's illness, the absence of involuntary treatment, or the absence of continued involuntary treatment, is likely to result in:
  - i. imminent serious harm to the person or someone else
  - ii. the person suffering serious mental or physical deterioration.

## **13 Meaning of *less restrictive way***

*Clause 13* outlines the meaning of less restrictive way for the purposes of the Bill. This is relevant to when an authorised doctor must decide whether to make treatment authority for a person. If there is a less restrictive way to treat the person, such as under an advance health directive, a treatment authority cannot be made.

## **14 Meaning of capacity to consent to be treated**

*Clause 14* defines the meaning of capacity to consent to be treated. This is relevant to whether a treatment authority may be made for a person.

A person has capacity to consent to treatment if the person—

- recognises the person has a mental illness; and
- is capable of understanding, in general terms—
  - i. the nature and purpose of the treatment for the mental illness; and
  - ii. the benefits and risks of the treatment, and alternatives to the treatment; and
  - iii. the consequences of not receiving the treatment; and is capable of arriving at a decision and communicating the decision in some way.

The clause also recognises the importance of supported decision-making, in that a person may have capacity with the support of another person.

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**15 Responsibility for an involuntary patient**

*Clause 15* outlines who is responsible for the treatment and care of an involuntary patient under the Bill.

**16 Purpose of limited community treatment**

*Clause 16* states the purpose of limited community treatment for the Bill, namely, to support a patient's recovery by transitioning the patient to living in the community with appropriate treatment and care.

**Part 4 Overview of Act**

**17 Purpose of pt 4**

*Clause 17* states that this part gives an overview for the Bill.

**18 Treatment authorities**

*Clause 18* summarises how treatment authorities operate under the Bill.

**19 Persons in custody**

*Clause 19* summarises how persons in custody are dealt with under the Bill.

**20 Psychiatrist reports**

*Clause 20* summarises how psychiatrist reports are prepared under the Bill.

**21 Mental Health Court**

*Clause 21* summarises the role of the Mental Health Court under the Bill.

**22 Magistrates courts**

*Clause 22* summarises the powers that magistrates courts are given under the Bill.

**23 Treatment and care of patients**

*Clause 23* summarises key aspects of the Bill in relation to the treatment and care of patients.

**24 Mechanical restraint and seclusion**

*Clause 24* summarises key aspects of the Bill in relation to the mechanical restraint and seclusion of involuntary patients.

**25 Rights of involuntary patients and others**

*Clause 25* summarises key aspects of the Bill in relation to the rights of involuntary patients under the Bill.

**26 Chief psychiatrist**

*Clause 26* summarise the role of the chief psychiatrist.

**27 Information notices**

*Clause 27* states that victims may receive specific information about a person who has committed an unlawful act.

**28 Mental Health Review Tribunal**

*Clause 28* summarises the role of the Mental Health Review Tribunal.

**29 Appeals**

*Clause 29* summarises appeals that may be made under the Bill.

**Chapter 2 Treatment authorities on examination and assessment**

**Part 1 Preliminary**

**30 Purpose of ch 2**

*Clause 30* provides a purpose of this chapter, namely:

- the involuntary examination and assessment of a person.
- to decide whether the treatment criteria apply to the person; and
- the making of a treatment authority for a person if an authorised doctor is reasonably satisfied the treatment criteria apply to the person.

## **Part 2                      Examinations and recommendations for assessment**

### **Subdivision 1              Examinations generally**

#### **31              Examination**

*Clause 31* states that an examination may be made voluntarily or under various powers under this Bill or another Act.

### **Subdivision 2              Powers under examination authority**

#### **32              Powers under examination authority**

*Clause 32* applies if the Mental Health Review Tribunal makes an examination authority for a person. This clause outlines the powers and safeguards when an examination authority is made. These provisions authorise a doctor or authorised mental health practitioner to examine a person, without the person's consent, to decide whether a recommendation for assessment should be made for the person.

#### **33              Reasonable help and force to exercise powers**

*Clause 33* states that an examination may be done with reasonable help and force.

#### **34              Public officials for examination authority**

*Clause 34* states that a doctor or an authorised mental health practitioner is a public official.

#### **35              Action before exercising powers**

*Clause 35* states the action that must be taken before exercising power under this chapter.

### **Subdivision 3              Recommendations for assessment**

#### **36              Making recommendation for assessment**

*Clause 36* provides for the making of a recommendation for assessment. A recommendation for assessment may be made by an authorised doctor or authorised mental health practitioner who has examined the person in the previous 7 days. A recommendation for assessment can only be made if the doctor or practitioner reasonably believes that, on an assessment of the person, an authorised doctor may form the view that the treatment of criteria apply to the person and that

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there is no less restrictive way of treating the person. If a recommendation for assessment is made for a person, an assessment may then be undertaken.

**37 Notice of making recommendation for assessment**

*Clause 37* states the person must be notified of the making of a recommendation for assessment.

**38 Duration of recommendation for assessment**

*Clause 38* provides that an assessment is in force for 7 days.

**39 Revoking recommendation for assessment**

*Clause 39* enables a recommendation for assessment to be revoked.

**Part 3 Assessments**

**40 Making assessment**

*Clause 40* provides for the assessment of a person by an authorised doctor. The purpose of the assessment is to decide whether the treatment criteria apply for the person and whether the person cannot be treated in a less restrictive way. When these criteria are met, a treatment authority may be made for the person.

**41 Where and how person may be assessed**

*Clause 41* states where and how a person may be assessed.

**42 Detention for assessment**

*Clause 42* provides for detention for assessment.

**43 Start of assessment period to be noted**

*Clause 43* requires the start of the assessment period to be noted.

**44 Notice of particular decision on assessment**

*Clause 44* requires an authorised doctor to explain to the patient if the treatment criteria are not met.

## **Part 4 Treatment authorities**

### **45 Application of pt 4**

*Clause 45* provides that the division applies if the treatment criteria are met and there is no less restrictive way to treat the person.

### **46 Making of treatment authority**

*Clause 46* states that authorised doctor may make a treatment authority for a person.

### **47 Form of treatment authority**

*Clause 47* provides for the form of treatment authority.

### **48 Nature and extent of treatment and care to be provided**

*Clause 48* states who must be consulted in deciding the nature and extent of treatment and care under the authority.

### **49 Category of treatment authority**

*Clause 49* requires a doctor to decide the category of the treatment authority, namely, a community category or an inpatient category.

### **50 Notice about making of treatment authority**

*Clause 50* requires the doctor to explain the making of the authority to the person.

### **51 Review of treatment authority if not made by authorised psychiatrist**

*Clause 51* requires an authorised psychiatrist to review the making of the treatment authority by a doctor who was not a psychiatrist.

### **52 Decision on review of treatment authority**

*Clause 52* outlines the decisions the authorised psychiatrist must make on review.

### **53 Notice about review of treatment authority**

*Clause 53* provides that, on reviewing the authority, the psychiatrist must explain to the person the psychiatrist's decision. The Mental Health Review Tribunal is also to be notified of the confirmation of a treatment authority.

**54 Date for assessment of patient**

*Clause 54* requires a doctor to decide and record when future assessments of the patient are to be made.

**55 Relationship with forensic order (disability)**

*Clause 55* provides that a forensic order (disability) prevails to the extent of any inconsistency with the treatment authority. This may apply to persons with a dual disability, who may be placed on a forensic order (disability) as well as a treatment authority. A dual disability applies where a person has a mental illness and an intellectual disability.

**Chapter 3 Persons in custody****Part 1 Preliminary****56 Purpose of ch 3**

*Clause 56* provides a purpose of the chapter, namely, to provide for the transfer of persons in custody to an authorised mental health service for assessment, treatment or care. The purpose of this part is to enable persons in custody who become acutely unwell with a mental illness to be given appropriate treatment and care in an authorised mental health service. There are three circumstances in which this may occur, as outlined below.

**57 Definitions for ch 3**

*Clause 57* provides the definitions for this chapter. It is important to note that a classified patient may also be an involuntary patient subject to a recommendation for assessment, treatment authority, forensic order (mental condition) or a court treatment order (a classified patient (involuntary)). A voluntary classified patient is a person who consents to being treated in an authorised mental health service as a classified patient.

**58 Meaning of person in custody**

*Clause 58* defines "person in custody".





**65 Notice to chief psychiatrist if person in custody not transported**

*Clause 65* requires a doctor or authorised mental health practitioner to notify the chief psychiatrist if a person subject to a recommendation for assessment or recommendation for transfer has not been admitted to an authorised mental health service within 72 hours of the recommendation being made. The purpose of this notification is for the chief psychiatrist to consider taking action under the following clause.

**66 Consent by chief psychiatrist**

*Clause 66* enables the chief psychiatrist to agree to a person in custody being transferred to an authorised mental health service. The purpose of this provision is to ensure, as far as practicable, that an acutely unwell person in custody receives timely treatment.

**67 Custodian consent**

*Clause 67* outlines the basis on which a custodian is to agree to a transfer.

**Part 4 Classified patients generally****68 Notice to tribunal of minor detained in high security unit**

*Clause 68* requires the Mental Health Review Tribunal to be notified if a minor is detained in a high security unit.

**69 Authorised doctor to explain effect of becoming classified patient**

*Clause 69* requires an authorised doctor to explain to a classified patient the effect of being a classified patient under the Bill.

**70 Classified patient (involuntary) may become classified patient (voluntary)**

*Clause 70* enables a classified patient (involuntary) to become a classified patient (voluntary).

**71 Notice to chief psychiatrist if classified patient (voluntary) withdraws consent**

*Clause 71* deals with circumstances where a voluntary classified patient withdraws consent. In these cases, an authorised doctor must notify the chief psychiatrist.

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## **Part 5**                              **Effect on legal proceedings of person becoming classified patient**

### **72**            **Notice if person becomes classified patient**

*Clause 72* outlines the notification requirements when a person becomes a classified patient.

### **73**            **Suspension of particular proceedings**

*Clause 73* provides that, for persons charged with offences, proceedings for the offences are suspended.

### **74**            **When suspension of proceedings ends**

*Clause 74* outlines when the suspension of proceedings ends.

### **75**            **What happens for proceeding for Commonwealth offences**

*Clause 75* deals with proceedings for Commonwealth offences.

### **76**            **Bail, remand and discontinuance of proceeding etc.**

*Clause 76* provides that a range of legal matters can proceed despite the suspension of charges. This includes granting the person bail or discontinuing proceedings.

## **Part 6**                              **Return of classified patient to custody or release of classified patient**

### **77**            **Notice to chief psychiatrist about notice event**

*Clause 77* applies if an authorised doctor believes it is no longer necessary for a person to stay in an authorised mental health service for treatment and care, for other circumstances the chief psychiatrist is to be notified.

### **78**            **Chief psychiatrist may decide to return classified patient to custody**

*Clause 78* enables the chief psychiatrist to decide to return a classified patient to custody.

### **79**            **Return of classified patient to custody**

*Clause 79* states when a classified patient is to be returned to custody.

**80 Person stops being classified patient if Mental Health Court makes decision on reference**

*Clause 80* states that a person ceases to be a classified patient if the Mental Health Court makes a decision on a reference.

**81 Release of classified patient**

*Clause 81* deals with the circumstances where a classified patient is to be released.

**Chapter 4 Psychiatrist reports for serious offences**

**Part 1 Preliminary**

**82 Purpose of ch 4**

*Clause 82* provides that the purpose of this part is for the preparation of psychiatrist reports for persons charged with serious offences who are subject to a treatment authority, forensic order (mental condition) or court treatment order. A serious offence is defined as any indictable offence, other than an offence that is a relevant offence within the meaning of the Criminal Code, section 552BA(4).

**83 Definitions for ch 4**

*Clause 83* defines a psychiatrist report for the purpose of this part.

**Part 2 Psychiatrist report on request**

**84 Application of pt 2**

*Clause 84* provides that this part applies to a person charged with a serious offence who at the time of the offence is subject to a treatment authority, forensic order (mental condition) or a court treatment order for which an authorised mental health service is responsible.

**85 Administrator to tell person request may be made for psychiatrist report**

*Clause 85* requires the chief psychiatrist to advise a relevant person of the person's right to request a psychiatrist report under this part.

**86 Request for psychiatrist report**

*Clause 86* outlines who may request a psychiatrist report.

**87 Direction to prepare psychiatrist report**

*Clause 87* provides that the chief psychiatrist may direct the preparation of a psychiatrist report on request.

**Part 3 Psychiatrist report on chief psychiatrist's own initiative**

**88 Psychiatrist report on chief psychiatrist's own initiative**

*Clause 88* enables the chief psychiatrist to direct a psychiatrist report in the public interest.

**89 Notice of direction for psychiatrist report**

*Clause 89* requires the chief psychiatrist to notify the person and the administrator of direction.

**Part 4 Psychiatrist reports generally**

**90 Suspension of proceedings**

*Clause 90* provides that the relevant charges are suspended when the chief psychiatrist directs the preparation of a psychiatrist report.

**91 Psychiatrist report**

*Clause 91* provides that an authorised psychiatrist must, within 60 days, prepare a report about the person. The psychiatrist report must include information about the following—

- the person's current mental state and, to the extent practicable, the person's mental state at the time of the alleged commission of the offence;
- an opinion on whether the person was of unsound mind at the time of the alleged commission of the offence;
- an opinion on whether the person is fit for trial;
- if the opinion is the person is unfit for trial—whether the unfitness for trial is likely to be permanent or temporary.

**92 Information from prosecuting authority**

*Clause 92* provides that, for the purpose of preparing a report, an authorised psychiatrist may ask the prosecuting authority for specified documents related to the charge.

**93 Support person for person being examined**

*Clause 93* provides that a person being examined may be accompanied by a support person.

**94 Requirement to participate in examination in good faith**

*Clause 94* applies where a person requests a psychiatrist report. The Bill requires that the person participates in the examination in good faith by, for example, attending appointments for an examination and answering questions during an examination. If this does not occur, the administrator can revoke the direction to prepare the report.

**95 Person must attend examination**

*Clause 95* applies where the chief psychiatrist directs a report on the chief psychiatrist's initiative. The relevant person must attend for an examination.

**Part 5 Action on psychiatrist report prepared on application****96 Application of pt 5**

*Clause 96* states that this division applies to a report prepared as a result of an application.

**97 Definition for pt 5**

*Clause 97* states the definition of "referral period" for this division.

**98 Second psychiatrist report**

*Clause 98* enables the chief psychiatrist to obtain a further psychiatrist report including, for example, due to the complexity of the matters in the initial report.

**99 Who may be given psychiatrist report**

*Clause 99* outlines who a psychiatrist report must be given to. If the applicant is the person the subject of the report and the chief psychiatrist reasonably believes that giving the report to the person may adversely affect the person's health or well-being, the chief psychiatrist may instead give a copy of the report to another person who has a sufficient interest in the person's health and well-being.

**100 When reference may be made by chief psychiatrist**

*Clause 100* deals with referrals to the Mental Health Court related to a psychiatrist report prepared under this part. This clause gives the chief psychiatrist a discretion to refer the matter to the Mental Health Court if the person elects not to refer the matter and, having regard to the protection of the community, the psychiatrist believes there is a compelling reason in the public interest for a reference to be made.

**101 Continuing proceedings**

*Clause 101* outlines when the suspension of proceedings ends.

**Part 6 Action on psychiatrist report prepared on chief psychiatrist's own initiative****102 Application of pt 6**

*Clause 102* states that this division applies to reports prepared on the initiative of the chief psychiatrist.

**103 Second psychiatrist report**

*Clause 103* enables the chief psychiatrist to obtain a further psychiatrist report including, for example, due to the complexity of the matters in the initial report.

**104 Reference to Mental Health Court**

*Clause 104* gives the chief psychiatrist a discretion to refer a matter to the Mental Health Court if, having regard to the protection of the community, the psychiatrist believes there is a compelling reason in the public interest for a reference to be made.

**105 Continuing proceedings**

*Clause 105* provides that proceedings for the person are to continue if the chief psychiatrist reasonably believes the person was not of unsound mind at the time of the alleged offence and is fit for trial.

**106 Administrator may be given psychiatrist report**

*Clause 106* provides that the chief psychiatrist may give a copy of the report to the administrator.

**Part 7 Miscellaneous****107 Bail, remand and discontinuance of proceedings etc.**

*Clause 107* provides that a range of legal matters can proceed despite the suspension of charges. This includes granting the person bail or discontinuing proceedings.

**108 Chapter ceases to apply to person if prosecution for an offence discontinued**

*Clause 108* provides that this part ceases to apply to a person if the proceedings against the person are discontinued.

**109 Application of chapter to forensic disability clients**

*Clause 109* applies this part to forensic disability clients, who are clients of the forensic disability service under the *Forensic Disability Act 2011*. For these persons, the director of forensic disability has the functions that the chief psychiatrist has under this part. For forensic disability clients, reports are prepared after an assessment of the person by a senior practitioner as defined under that Act.

**Chapter 5 Mental Health Court references****Division 1 Preliminary****110 Purpose of ch 5**

*Clause 110* outlines the purpose of this chapter, including:

- the making of references to the Mental Health Court in relation to the mental state of persons charged with serious offences; and
- the hearing of references to the court

- the decisions the court may make on a reference in relation to a person, including whether the person was of unsound mind when the offence was allegedly committed or is unfit for trial; and
- the making of forensic orders and court treatment orders by the court.

### **111 Definitions for ch 5**

*Clause 111* provides the definitions for this chapter.

### **112 Meaning of unsound mind**

*Clause 112* provides a definition of unsound mind by reference to the Criminal Code.

### **113 Meaning of diminished responsibility**

*Clause 113* provides a definition of diminished responsibility by reference to the Criminal Code.

### **114 Meaning of associated offence**

*Clause 114* provides a definition of associated offence, meaning a simple or indictable offence alleged to have been committed at or about the same time as a serious offence for which the matter was referred to the court.

## **Part 2 Making of references by particular persons**

### **115 When reference may be made**

*Clause 115* outlines who may make a reference to the court, namely, the person alleged to have committed the offence or the person's lawyer, or the director of public prosecutions. In addition, the chief psychiatrist may refer a matter under chapter 4, and another court may refer the matter in specific circumstances under chapter

### **116 How reference may be made**

*Clause 116* outlines how references are to be made by filing a notice in the approved form in the registry for the court.



## **Part 3 Proceedings for references**

### **Division 1 Preliminary**

#### **117 Application of pt 3**

*Clause 117* states the application for this part.

#### **118 Effect of reference on proceedings for offence**

*Clause 118* states that proceedings for an offence are suspended when a reference is made to the Mental Health Court.

### **Division 2 Notice requirements etc.**

#### **119 Notice of reference**

*Clause 119* states who must be given a notice of the reference and the suspension of proceedings.

#### **120 Parties to proceeding**

*Clause 120* states the parties to proceedings, namely, the person, the subject of the reference, the director of public prosecutions and the chief psychiatrist. However, if the person the subject of the reference has an intellectual disability the chief psychiatrist may elect not to be a party and the director of forensic disability (under the *Forensic Disability Act 2011*) may elect to be a party.

#### **121 Notice of hearing**

*Clause 121* outlines who is to receive a notice of the hearing.

### **Division 3 Particular decisions**

#### **122 Decision about unsoundness of mind and diminished responsibility**

*Clause 122* provides that the Mental Health Court, on hearing a reference, must decide whether the person was of unsound mind when the alleged offence was committed or whether the person was of diminished responsibility in relation to a charge of murder. However, the court may not make this decision if there is a reasonable doubt the person committed the alleged offence.

**123 Dispute about substantially material fact**

*Clause 123* enables the court to consider and decide matters that affect an expert's opinion.

**124 No decision if reasonable doubt person committed offence**

*Clause 124* provides that the court cannot make a decision in relation to unsoundness of mind and diminished responsibility if there is a reasonable doubt the person committed the alleged offence. In these cases, the court must then proceed to decide if the person is fit for trial under the following clause.

**125 Decisions about fitness for trial**

*Clause 125* provides that the Mental Health Court must decide whether the person is fit for trial if the court decides the person was not of unsound mind, or where there is a reasonable doubt the person committed the alleged offence. If the court decides the person is not fit for trial, the court must also decide whether the unfitness for trial is of a permanent or temporary nature.

**Division 4 Procedural orders****126 Continuation of proceeding**

*Clause 126* provides that proceedings against the person charged with the offence are to proceed according to law if the person was found not of unsound mind when the offence was allegedly committed and is fit for trial.

**127 Related orders if proceedings continued**

*Clause 127* deals with circumstances where proceedings continue under the previous clause. In these cases, the court can direct that the person be remanded in custody, be granted bail or be detained in an authorised mental health service.

**128 Stay of proceeding—temporary unfitness for trial**

*Clause 128* states that, where the court decides a person is temporarily unfit for trial, proceedings are suspended until the matter is reviewed by the Mental Health Review Tribunal.

**129 Discontinuation of proceeding—unsound mind**

*Clause 129* states that proceedings against a person for an offence are discontinued if the court finds the person of unsound mind.

**130 Discontinuation of proceeding—diminished responsibility**

*Clause 130* deals with the finding of diminished responsibility in relation to a charge of murder. In these cases, proceedings for the offence of murder are discontinued, however, proceedings may be continued for another offence constituted by the relevant act or omission.

**131 Discontinuation of proceeding—permanent unfitness for trial**

*Clause 131* provides that proceedings against a person for an offence be discontinued if the court finds the person is permanently unfit for trial.

**Division 5 Right to trial retained****132 Application of div 5**

*Clause 132* states that this subdivision applies where a person is found of unsound mind when an offence was allegedly committed.

**133 Person may elect to be tried**

*Clause 133* states that the person may elect for the matter to be brought to trial by way of written notice to the director of public prosecutions.

**134 Obligation of director of public prosecutions on making of election**

*Clause 134* requires the director of public prosecutions to ensure that proceedings against the person are continued according to law.

**Division 6 Withdrawal of references****135 Withdrawal of reference**

*Clause 135* provides that the person who made the reference to the Mental Health Court may apply to withdraw the reference.

**136 Notices if application to withdraw filed**

*Clause 136* states that the parties are to be notified of the proceeding.

**137 Decision on application**

*Clause 137* states that the court may grant or refuse the application.

**Part 4                      Forensic orders and court treatment orders**

**Division 1                      Preliminary**

**138            Definition for pt 4**

*Clause 138* defines “relevant circumstances” for this division, which are relevant to particular decisions made by the court under this division. The relevant circumstances are:

- the person’s current mental state and psychiatric history and any intellectual disability of the person;
- the nature of the unlawful behaviour that led to the person being charged with the offence and the amount of time that has passed since the behaviour occurred;
- the person’s social circumstances, including family and social support;
- the person’s response to treatment and care and the person’s willingness to continue to receive appropriate treatment and care;
- if relevant, the person’s response to previous treatment in the community.

**139            Explanation about operation of forensic orders and court treatment orders**

Clause 139 explains the difference between a forensic order and a court treatment order.

**Division 2                      Making of forensic orders and court treatment orders**

**140            Orders if unsound mind or permanent unfitness for trial**

*Clause 140* applies where a person is found of unsound mind or permanently unfit for trial. In these cases, the court may make a forensic order, a court treatment order, or make no order.

**141            Orders if temporary unfitness for trial**

*Clause 141* applies where a person is found temporarily unfit for trial. In these cases, the court must make a forensic order or a court treatment order.

**142            Making of forensic order**

*Clause 142* outlines the circumstances where the Mental Health Court must make a forensic order for a person. The court must make a forensic order if it is necessary to protect the safety and welfare of the community, including protecting the community from the risk of serious harm to other persons or property. In making this decision,

the court must have regard to the relevant risks for the person and any victim impact statement produced to the court.

There are two types of forensic orders the court can make. If the court considers the person's unsoundness of mind or unfitness for trial is because of a mental illness or mental condition other than an intellectual disability, the court is to make a forensic order (mental condition). If the court considers the person's unsoundness of mind or unfitness for trial is due to an intellectual disability, the court is to make a forensic order (disability). If the person has a dual disability, and the court considers the person needs treatment and care for both the mental illness and the intellectual disability, the court may make a forensic order (mental condition).

### **143 Making of court treatment order**

*Clause 143* outlines circumstances where the Mental Health Court may make a court treatment order. A court treatment order is a lower-level order where the level of community treatment is determined by an authorised doctor in a similar way to that for treatment authorities. It is also proposed that, under the chief psychiatrist's policies and practice guidelines, the level of oversight and scrutiny for a person on a court treatment order will be less than for a person on a forensic order. This type of order may be appropriate where the person's role in an offence was relatively minor.

The court must make a court treatment order if this type of order, but not a forensic order, is necessary to protect the safety and welfare of the community, including protecting the community from the risk of serious harm to other persons or property. In making this decision, the court must have regard to the relevant risks for the person and any victim impact statement produced to the court.

### **144 Court may impose conditions and make recommendations**

*Clause 144* provides that the court may impose conditions on a forensic order or a court treatment order. A condition may be that the person the subject of the order must not contact another person such as a victim of an unlawful act. For a forensic order, the court may also make recommendations about intervention programs for the person such as drug and alcohol programs.

## **Division 3 Treatment in the community**

### **145 Mental Health Court to decide category of forensic order**

*Clause 145* provides that the court must decide the category of a forensic order, namely, an inpatient category or a community category. For persons on a forensic order (disability), an inpatient category is referred to as a residential category.

**146 Treatment under forensic order—inpatient category**

*Clause 146* deals with circumstances where the court decides the category of an order is to be inpatient. The court must then decide whether the person is to have any treatment in the community. The court has the option of deciding the person is to receive no treatment in the community, or provide that, at a future time an authorised doctor may authorise treatment in the community up to the extent approved by the court. The basis on which an authorised doctor may approve treatment in the community is outlined in chapter 7. The decision made by the court can be varied by the Mental Health Review Tribunal on a review of the forensic order.

**147 Treatment under forensic orders—community category**

*Clause 147* deals with circumstances where the court decides the category of an order is to be in the community. In these cases, the court has the option of ordering a community category in which case the patient must be placed on a community category or enabling an authorised to amend the extent of community treatment at a future time.

**148 Mental Health Court to decide category of court treatment order**

*Clause 148* provides that the court must decide the category of court treatment order, namely an inpatient category or a community category. In this case, the basis of the decision is similar to that for treatment authorities, namely, the person should be treated under a community category unless the safety and welfare of the person and others cannot reasonably be met this way.

**149 Status of forensic order or court treatment order if amended**

*Clause 149* clarifies that an order made by the court continues as an order of the court subject to future amendments under the Act by the Mental Health Review Tribunal, an authorised doctor or the chief psychiatrist.

**150 References to inpatient category in relation to forensic orders (disability)**

*Clause 150* states references in this Bill to an inpatient category are taken to mean residential category for persons on a forensic order (disability).

**Division 4 Special provisions about forensic orders****151 Non-revocation period for particular forensic orders**

*Clause 151* provides for non-revoke periods for certain forensic orders. For this purpose, the Bill specifies a “prescribed offence”, including murder, manslaughter,

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grievous bodily harm and rape. For these offences the court may set a non-revoke period for the order of up to 7 years.

**152 Admission to high security unit—stay of order**

*Clause 152* enables the court to stay in order for up to 7 days to make a physical place available for a person at the high security unit.

**Division 5 Responsibility for treatment and care**

**153 Responsibility for person subject to forensic order (mental condition) or court treatment order**

*Clause 153* provides that, for a forensic order (mental condition), the court must decide the authorised mental health service responsible for the person's treatment and care under the order.

**154 Responsibility for care of person subject to forensic order (disability)**

*Clause 154* provides that, for a forensic order (disability), the court must decide which authorised mental health service or the forensic disability service is responsible for the person's care and the order.

**155 Certificate of forensic disability service availability**

*Clause 155* requires the chief executive (forensic disability) to prepare a certificate on whether or not there is a capacity for a person's care in the forensic disability service.

**Division 6 Transport**

**156 Transport to authorised mental health service**

*Clause 156* provides that an authorised person, as defined in chapter 11, may transport persons to an authorised mental health service when an order is made for the person.

**157 Transport to forensic disability service**

*Clause 157* provides that authorised persons and an authorised practitioner, under the *Forensic Disability Act 2011*, may transport persons to the forensic disability service when an order is made for the person.

## **Division 7                                  Matters authorised by particular orders**

### **158        Forensic orders (mental condition) and court treatment orders**

*Clause 158* states that a forensic order (mental condition) or court treatment order authorises involuntary treatment for a person’s mental illness and, for an inpatient, the detention of the person in an authorised mental health service. For persons with a dual disability, the order also authorises the provision of involuntary care for the person’s intellectual disability.

### **159        Forensic orders (disability)**

*Clause 159* states that a forensic order (disability) authorises involuntary care for the person’s intellectual disability and, for a person on a residential category, the person's detention in the forensic disability service.

## **Part 5    Other provisions**

### **Division 1                                  Notice of decisions and orders**

#### **160        Notice of decisions and orders**

*Clause 160* requires the registrar to notify various persons of the court's decision.

### **Division 2                                  Admissibility and use of evidence**

#### **161        Definition for div 2**

*Clause 161* defines “experts report” for this division

#### **162        Admissibility of expert’s report at trial**

*Clause 162* deals with the admissibility and use of expert’s report at proceedings in the Mental Health Court.

#### **163        Particular statements not admissible**

*Clause 163* deals with the admissibility and use of statements at proceedings in the Mental Health Court.

#### **164        Issue of mental condition may be raised at trial**

*Clause 164* deals with the admissibility of the person’s mental condition at proceedings in the Mental Health Court at a trial.



**165 Other use of expert's report**

*Clause 165* deals with the admissibility and use of other use of expert's report at proceedings in the Mental Health Court.

**Division 3 Victim impact statements****166 Application of div 3**

*Clause 166* provides that this division applies where the court decides a person was of unsound mind at the time of an unlawful act or is unfit for trial.

**167 Preparation of victim impact statement by prosecuting authority**

*Clause 167* enables a victim of an unlawful act or a close relative of the victim to prepare and give to the prosecuting authority a victim impact statement in relation to the unlawful act. This statement may include a request that the court impose a condition that the person, the subject, of the order, does not contact the victim or a close relative of the victim.

**168 Production of victim impact statement by prosecuting authority**

*Clause 168* requires a prosecuting authority to give the victim impact statement to the court.

**169 Use of victim impact statement by Mental Health Court**

*Clause 169* provides that the Mental Health Court may have regard to the victim impact statement in deciding whether to make an order, the type of the order and any conditions on the order.

**Division 4 Persons subject to existing orders or authorities****170 Person subject to existing forensic order**

*Clause 170* deals with circumstances where a person before the court is already on a forensic order. The court may amend the existing forensic order or revoke the existing order and replace it with a new order.

**171 Person subject to existing treatment authority or court treatment order**

*Clause 171* deals with circumstances where a person before the court is already on a court treatment order or a treatment authority. If the court makes a forensic order (mental condition), the court treatment order or treatment authority ends.

**172 Relationship with ch 16, pt 2**

Clause 172 states that this chapter prevails if there is an inconsistency with chapter 16.

**Chapter 6 Powers of courts hearing criminal proceedings and related processes****Part 1 Preliminary****173 Purpose of ch 6**

*Clause 173* outlines the purpose of this chapter, related to powers for Magistrates Courts, the District Court and the Supreme Court to deal with cases where there is a concern about the mental condition of a person.

**174 Childrens Court**

*Clause 174* provides that references in this part to a Magistrates Court is taken to include a reference to the Childrens Court for relevant offences.

**Part 2 Magistrates Courts****Division 1 General****175 Power to discharge person—unsound mind or unfitness for trial**

*Clause 175* applies if, at the trial before a Magistrates Court of a person charged with an offence, it appears the person was of unsound mind when the offence was allegedly committed or is unfit for trial. The court may discharge the person from the charge unconditionally or on the conditions the court considers appropriate.

**176 Power to adjourn proceedings—temporary unfitness for trial**

*Clause 176* enables a Magistrates Court to adjourn proceedings if it appears that the person is unfit for trial but may become fit for trial within 6 months.

**177 Power to make reference to Mental Health Court**

*Clause 177* gives a Magistrates Court the power to refer a matter to the Mental Health Court in specific circumstances. This applies where it appears the person may have been of unsound mind when the offence was allegedly committed or is unfit for trial, and:

- the nature and circumstances of the offence create an exceptional circumstance in relation to the protection of the community; and
- the making of a forensic order or court treatment order for the person may be justified.

This provision is similar to the arrangements for criminal matters under the Criminal Code.

**178 How reference to Mental Health Court is made**

*Clause 178* outlines how a reference is made to the Mental Health Court.

**179 Power to make referral to appropriate department or entity**

*Clause 179* applies where the Magistrates Court discharges a person who does not have a mental illness. The court may refer the person to a relevant government department (Disability Services Department or the Health Department) to consider what treatment and care may be provided to the person. The referral is for the information of the departments only and does not mandate any treatment or care.

**Division 2 Examination orders****180 Power to make examination order**

*Clause 180* gives a Magistrates Court the power to make examination orders for persons with a mental illness where the person has been discharged by the court or the court otherwise considers the person would benefit from an examination by an authorised doctor. In these circumstances, an authorised doctor in an authorised mental health service may examine the person without the person's consent to decide whether a treatment authority should be made or to make a recommendation as to the person's treatment or care.

**181 Examination of person**

*Clause 181* enables a person to be detained for 6 hours for the purpose of an examination. This period may be extended by a further 6 hours.

**182 Examination report**

*Clause 182* requires an authorised doctor to prepare a report as result of the examination. Where relevant, the authorised doctor must explain to the person the benefits of being treated voluntarily in accordance with the authorised doctor's recommendations.

**183 Admissibility of examination report**

*Clause 183* provides that an examination report may be admissible in the current proceedings and any future proceedings for the person if relevant. This will enable the court to consider the result of a previous examination order if the person appears before the court in relation to another offence at a future time.

**Part 3 Supreme Court and District Court****Division 1 Power to make reference to Mental Health Court if person pleads guilty to indictable offence****184 Application of div 1**

*Clause 184* states that this subdivision applies where a person pleads guilty to a charge and it is alleged or appeared the person was, or may have been, of unsound mind when the offence was allegedly committed or is unfit for trial.

**185 Power to order plea of not guilty**

*Clause 185* enables a Supreme Court or District Court to enter a plea of not guilty for the person.

**186 Power to make reference to Mental Health Court and related orders**

*Clause 186* provides that the Supreme Court or District Court may refer the matter to the Mental Health Court. The court may also remand the person in custody, order that the person be detained in an authorised mental health service, or grant the person bail.

**187 How reference to Mental Health Court is made**

*Clause 187* states how a reference is to be made to the Mental Health Court under this subdivision.

**188 Persons who may give agreement for detention**

*Clause 188* states who may give agreement for detention under this part.

**189 Agreement for detention—administrator**

*Clause 189* states that an administrator may give agreement for detention this part.

**190 Agreement for detention—chief psychiatrist**

*Clause 190* states chief psychiatrist may give agreement for detention this part.

**191 Effect of order**

*Clause 191* states the effect of the order for detention this part.

**Division 2 Forensic orders (Criminal Code)**

**192 Application of div 2**

*Clause 192* applies where certain orders are made as a result of findings under the Criminal Code, namely:

- a section 613 finding that the person is not capable of understanding proceedings at a trial
- a section 645 finding that the person is not of sound mind, or
- a section 647 finding that the person is not guilty on account of the person being of unsound mind when the alleged offence occurred.

**193 Registrar of court to give notice of order**

*Clause 193* provides that the registrar of the court must give notice of the making of the order to the Mental Health Review Tribunal. The tribunal is to review the order.

**194 Power to transport person to authorised mental health service**

*Clause 194* provides that an authorised person may transport the person to an authorised mental health service.

**Part 4 Detention in authorised mental health service during trial**

**195 Definitions for pt 4**

*Clause 195* outlines the definitions for this division.

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**196 Power to order person's detention in authorised mental health service**

*Clause 196* applies where a court decides a person should be detained in an authorised mental health service during an adjournment in a trial. In these circumstances, the court may order the person be detained if there is an agreement for the detention of the person by the administrator of an authorised mental health service.

**197 Persons who may give agreement for detention**

*Clause 197* provides that an administrator of an authorised mental health service or the chief psychiatrist may agree to the detention.

**198 Agreement for detention—administrator**

*Clause 198* outlines the criteria for the agreement of the detention by an administrator.

**199 Agreement for detention—chief psychiatrist**

*Clause 199* outlines the criteria for the agreement of the detention by the chief psychiatrist.

**200 Effect of order**

*Clause 200* gives an authorised person the power to transport the person subject to an order under this division.

**Chapter 7 Treatment and care of patients****Part 1 Preliminary****201 Purpose of ch 7**

*Clause 201* outlines the purpose of this chapter, namely:

- the responsibilities of authorised doctors and administrators of authorised mental health services in providing treatment and care to patients under this Bill;
- the assessment of patients subject to a treatment authority to decide whether the continuation of the authority is appropriate;
- the authorisation of community treatment for involuntary patients;
- the imposition of monitoring conditions for forensic patients;
- the approval of temporary absences for particular involuntary patients;
- the placing of restrictions on the use of electroconvulsive therapy and non-ablative neurosurgery for psychiatric conditions;

- the prohibition of psychosurgery and other practices.

## **202 Definition for ch 7**

*Clause 202* states the definitions for this chapter.

## **203 Relationship between this part and custodial status of particular patients**

*Clause 203* clarifies the relationship between powers that may be exercised under this Bill and the custodial status of a person. This applies, for example, where a person on a treatment authority may be serving a period of imprisonment. In these cases, decisions about the person's authority or order are not to take into account the person's custodial status. However, the custodial status of the patient takes precedence.

This means, for example, a person on a treatment authority with a community category may be lawfully held in custody. In these circumstances, the community category remains but is not effective to allow the person to go into the community so long as the person is held in custody. These provisions are subject to the classified patient provisions in chapter 3.

## **Part 2 Responsibility to provide treatment and care**

### **204 Application of pt 2**

*Clause 204* states who this division applies to, namely, patients who may be treated involuntarily under the Bill, a classified patient (voluntary) and a patient receiving treatment and care in an authorised mental health service under an advance health directive or with the consent of a guardian or attorney.

### **205 Examination of patient for the purpose of treatment and care**

*Clause 205* provides that an authorised doctor must examine the patient and decide, and record in the patient's health records, the treatment and care to be provided to the patient. To the extent practicable, the authorised doctor must decide the treatment and care in consultation with the family, a nominated support person, other family and carers in support of persons.

### **206 Recording treatment and care in health records**

*Clause 206* requires an authorised doctor to record the proposed and actual treatment and care.

**207 Administrator's responsibilities for treatment and care**

*Clause 207* outlines the responsibilities of the administrator of an authorised mental health service, namely:

- to take reasonable steps to ensure that the patient receives the treatment and care recorded in the patient's health records by the authorised doctor, and the treatment and care appropriate for any other illness or condition affecting the patient
- to ensure that the systems for recording the patient's treatment and care, both planned and provided, can be audited
- to ensure that regular assessments of the patient under happen as decided by an authorised doctor for the authorised mental health service
- take reasonable steps to ensure that the patient's treatment and care is provided in accordance with the requirements of this Bill.

**Part 3 Patients subject to treatment authorities****Division 1 Preliminary****208 Application of pt 3**

*Clause 208* states that this division applies to patients on a treatment authority.

**Division 2 Assessment of patients****209 Authorised doctor must assess patient**

*Clause 209* requires an authorised doctor to regularly assess the patient to decide whether the treatment criteria continue to apply and whether there is a less restrictive way for the patient to receive treatment and care.

**Division 3 Actions that may be taken after assessment****210 Authorised doctor may revoke treatment authority after assessment**

*Clause 210* deals with an authorised doctor revoking a treatment authority.

**211 Authorised psychiatrist may revoke treatment authority if patient missing**

*Clause 211* enables an authorised doctor to revoke a treatment authority if a person has not been able to be located for a period of 6 months.



**212 Chief psychiatrist may revoke treatment authority**

*Clause 212* gives the chief psychiatrist the ability to revoke a treatment authority at any time.

**213 Amendment of treatment authority to change category, limited community treatment or conditions**

*Clause 213* enables an authorised doctor to amend a treatment authority in a number of ways, namely:

- to change the category of the authority;
- to authorise, revoke, or change the nature or conditions of limited community treatment;
- to change a condition of the authority, relevant to its category, or to limited community treatment.

**Part 4 Patients subject to forensic orders**

**214 Application of pt 4**

*Clause 214* states that this division applies to a patient of an authorised mental health service on a forensic order (mental condition) or a forensic order (disability).

**215 Amendment of forensic order (mental condition) or forensic order (disability) to change category, limited community treatment or conditions**

*Clause 215* enables an authorised doctor to amend a forensic order in a number of ways, namely:

- to change the category of the authority;
- to authorise, revoke, or change the nature or conditions of, limited community treatment;
- to change a condition of the authority relevant to its category, or to limited community treatment.

In making these amendments, the authorised doctor cannot do anything contrary to a decision of the Mental Health Court or the Mental Health Review Tribunal. For example, if the Mental Health Court decided that the patient must be on inpatient category, the authorised doctor cannot change the category of the order.

**216 Limited community treatment for patient subject to forensic order (Criminal Code)**

*Clause 216* provides that persons on a forensic order (Criminal Code) may receive limited community treatment with the approval of the chief psychiatrist. This is only to apply until the Mental Health Review Tribunal considers the making of the order.

**217 Chief psychiatrist may require monitoring condition for patient receiving treatment in the community**

*Clause 217* enables the chief psychiatrist to place a monitoring condition on a forensic patient if the criteria stated in the clause apply. A monitoring condition includes that the person wear a tracking device, be contactable by mobile phone at all times or that the patient provide a detailed plan of where the patient will be in the community. Where a person is required to wear a tracking device, the Mental Health Review Tribunal is immediately notified for the matter to be reviewed by the tribunal under.

**Part 5 Patients subject to court treatment orders****218 Application of pt 5**

*Clause 218* states that this division applies to persons on court treatment orders.

**219 Amendment of court treatment order to change category, limited community treatment or conditions**

*Clause 219* enables an authorised doctor to amend a court treatment order in a number of ways, namely:

- to change the category of the order;
- to authorise, revoke, or change the nature or conditions of, limited community treatment;
- to change a condition of the authority relevant to its category, or to limited community treatment.

**Part 6 Classified patients and patients subject to judicial orders****220 Application of pt 6**

*Clause 220* states that this division applies to classified patients and patients subject to judicial orders. Classified patients are patients transferred from custody to an authorised mental health service under chapter 3 of the Bill. There are various provisions in the Bill where courts may make orders requiring a person to be

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detained in an authorised mental health service for a limited period of time (called judicial orders).

## **221 Change to limited community treatment or its conditions**

*Clause 221* provides for limited community treatment for classified patients and judicial order patients. This limited community treatment must be approved by the chief psychiatrist and is restricted to escorted leave on the grounds of an authorised mental health service.

## **Part 7 Obligations in relation to treatment in the community**

### **222 Patient's obligations for treatment in the community to be recorded and explained**

*Clause 222* requires an authorised doctor to decide, in consultation with the patient, family carers and other support persons, the treatment and care to be provided to the patient while in the community. This includes the obligations the patient will have, for example, to attend for scheduled health appointments. The authorised doctor must record this in the patient's health records and explain to the patient the treatment and care to be provided.

### **223 Chief psychiatrist may approve temporary absence for limited purpose**

*Clause 223* enables the chief psychiatrist to approve temporary absences for particular patients, namely forensic patients, classified patients and judicial order patients. Temporary absences may be approved for matters such as medical treatment, to appear before a court, or on compassionate grounds.

## **Part 8 Regulated treatments**

### **Division 1 Preliminary**

#### **224 Meaning of *regulated treatment***

*Clause 224* defines regulated treatment for this part, namely electroconvulsive therapy and a non-ablative neurosurgical procedure (such as deep brain stimulation).

## **Division 2                      Informed consent**

### **225        Requirements for informed consent**

*Clause 225* outlines how a person may give informed consent under this division for a regulated treatment.

### **226        Explanation to be given**

*Clause 226* requires an explanation to be given of the nature of the treatment before informed consent is given.

## **Division 3                      Electroconvulsive therapy**

### **227        Offence to perform electroconvulsive therapy**

*Clause 227* establishes an offence for performing electroconvulsive therapy on a person other than under this Act.

### **228        Performance of electroconvulsive therapy with consent or tribunal approval**

*Clause 228* provides that a psychiatrist may perform electroconvulsive therapy on a person if:

- the person is an adult and has given informed consent to the therapy; or
- the person is an adult, is unable to give informed consent to the therapy, and the Mental Health Review Tribunal has approved the performance of the therapy on the person; or
- the person is a minor and the tribunal has approved the performance of the therapy on the person.

### **229        Performance of electroconvulsive therapy in emergency**

*Clause 229* outlines how electroconvulsive therapy may be used in an emergency. This can only be undertaken if a psychiatrist and the senior medical administrator of the patient's treating health service certify that the therapy is necessary to save the patient's life or prevent the patient from suffering irreparable harm. When this occurs, an application must be made immediately to the Mental Health Review Tribunal.

## **Division 4                      Non-ablative neurosurgical procedures**

### **230            Offence to perform non-ablative neurosurgical procedures**

*Clause 230* establishes an offence for performing a non-ablative neurosurgical procedure of a person for treating the person's mental illness, other than under this clause. A non-ablative neurosurgical procedure is a procedure on the brain that does not involve the deliberate damage or removal of brain tissue. An example of this procedure is deep brain stimulation.

### **231            Performance of non-ablative neurosurgical procedures with consent and tribunal approval**

*Clause 231* provides that the procedure may only be performed if the person gives informed consent to the procedure and it is approved by the Mental Health Review Tribunal.

## **Part 9                              Prohibited treatments**

### **232            Particular therapies prohibited**

*Clause 232* establishes an offence for certain procedures, namely, insulin induced coma therapy and deep sleep therapy.

### **233            Psychosurgery prohibited**

*Clause 233* establishes an offence for performing psychosurgery. Psychosurgery is a procedure on the brain, the purpose of which is to treat a mental illness by damaging or removing brain tissue.

## **Part 10                            Provisions about advance health directives and nominated support persons**

### **Division 1                      Advance health directives**

#### **234            Advance health directive may include views about treatment or care for mental illness etc.**

*Clause 234* states an advance health directive under the *Powers of Attorney Act 1998* may include the principal's views, wishes and preferences about his or her future treatment or care for a mental illness.

**Division 2                      Nominated support persons**

**235        Who is a nominated support person**

*Clause 235* provides for the appointment of a nominated support person.

**236        Powers of nominated support person**

*Clause 236* provides for the powers of a nominated support person.

**Division 3                      Records system for advance health directives and appointments of nominated support persons**

**237        Chief psychiatrist to maintain records system**

*Clause 237* requires the chief psychiatrist to maintain a record of advance health directives and nominated support persons.

**238        Request to keep record**

*Clause 238* enables a person to request that an advance health directive or nominated support person be kept on the system.

**239        Requirement to give notice—matters relating to advance health directive in records system**

*Clause 239* requires notice be given to the administrator of certain matters, such as the revocation of advance health directives.

**240        Requirement to give notice—revocation of appointment of nominated support person in records system**

*Clause 240* outlines requires notice to be given of the revocation of appointment of nominated support persons.

**241        Copy of advance health directive in records system is proof**

*Clause 241* states that a copy of an advance health directive on the records system is proof of the making of the advance health directive.

## **Chapter 8                      Use of mechanical restraint and seclusion**

### **Part 1                              Preliminary**

#### **242            Purpose of ch 8**

*Clause 242* provides that the purpose of this chapter is to place restrictions on the use of mechanical restraint and seclusion of patients in authorised mental health services.

#### **243            Definitions for ch 8**

*Clause 243* provides the definitions of this chapter.

### **Part 2                              Mechanical restraint**

#### **Division 1                      Preliminary**

#### **244            Meaning of *mechanical restraint***

*Clause 244* states the meaning of *mechanical restraint*.

#### **245            Offence**

*Clause 245* establishes an offence for using mechanical restraint on a person other than under this Act. It should be noted that this offence applies for both involuntary and voluntary inpatients in a service. However, mechanical restraint may only be authorised for an involuntary patient.

#### **Division 2                      Authorised mechanical restraint**

#### **246            Requirements for use of mechanical restraint**

*Clause 246* outlines the requirements for the use of mechanical restraint, namely:

- the authorised mental health service is a high security unit or another authorised mental health service approved by the chief psychiatrist; and
- the device used is an approved device; and
- the chief psychiatrist has given approval for an authorised doctor to authorise the use of mechanical restraint; and
- the restraint is authorised by an authorised doctor; and
- the restraint complies with the restraint and seclusion policy; and

- if a reduction and elimination plan providing for mechanical restraint of the patient is approved—the restraint complies with the reduction and elimination plan; and
- the restraint is done with no more force than is necessary and reasonable in the circumstances; and
- the patient is observed continuously while restrained.

#### **247 Application for chief psychiatrist's approval**

*Clause 247* outlines how an authorised doctor is to apply to the chief psychiatrist for approval to use mechanical restraint. As stated in the previous clause, the chief psychiatrist must approve all uses of mechanical restraint.

#### **248 Chief psychiatrist may require amendment of application to include reduction and elimination plan**

*Clause 248* enables the chief psychiatrist to require an application to include a reduction and elimination plan for the use of the restraint. The purpose of these plans is to enable the chief psychiatrist to approve the use of mechanical restraint in the context of eliminating its use.

#### **249 Chief psychiatrist may require amendment of application to include reduction and elimination plan**

*Clause 249* provides that the chief psychiatrist may approve use of mechanical restraint on the patient if the chief psychiatrist is satisfied:

- the use of mechanical restraint on the patient is necessary to protect the patient or others from physical harm; and
- there is no less restrictive way of providing treatment and care to the patient.

#### **250 Authorisation of use of mechanical restraint by authorised doctor**

*Clause 250* outlines how an authorised doctor may approve the use of mechanical restraint, namely:

- the use of mechanical restraint on the patient is necessary to protect the patient or others from physical harm; and
- there is no less restrictive way of providing treatment and care to the patient; and
- the authorisation complies with an approval given by the chief psychiatrist under clause 40; and
- the authorisation complies with the restraint and seclusion policy; and
- if a reduction and elimination plan providing for the use of mechanical restraint on the patient is approved under - the authorisation complies with the reduction and elimination plan.



**251 Duties of health practitioner in charge of inpatient unit**

*Clause 251* outlines the duties of a person in charge of an inpatient unit for a patient if mechanical restraint is used.

**252 Removal of mechanical restraint before authorisation ends**

*Clause 252* enables a mechanical restraint to be removed before the authorisation ends.

**253 Reuse of mechanical restraint**

*Clause 253* enables mechanical restraint to be re-applied, during the previously approved period.

**Part 3 Seclusion****Division 1 Preliminary****254 Meaning of seclusion**

*Clause 254* defines seclusion as the confinement of a person, at any time of the day or night alone in a room or area from which free exit is prevented.

**255 Offence**

*Clause 255* establishes an offence for keeping a person in seclusion in an authorised mental health service other than under this division. It should be noted that this offence applies for both involuntary patients and voluntary inpatients in a service. However, seclusion may only be authorised for an involuntary patient.

**Division 2 Authorised seclusion****256 Requirements for seclusion**

*Clause 256* outlines the requirements for seclusion, namely:

- the seclusion is authorised by an authorised doctor; and
- if a written direction about seclusion is given under to the authorised mental health service—the seclusion complies with the direction; and
- the seclusion complies with the restraint and seclusion policy; and
- if a reduction and elimination plan providing for seclusion of the patient is approved—the seclusion complies with the reduction and elimination plan; and
- the seclusion is done with no more force than is necessary and reasonable in the circumstances; and

- 
- the patient is observed either at intervals, of not more than 15 minutes, stated in a reduction and elimination plan approved.

### **257 Chief psychiatrist may issue written direction about seclusion**

*Clause 257* enables the chief psychiatrist to issue written directions about seclusion, including that an authorised mental health service may not keep any patient in seclusion or that a reduction and elimination plan must always be used, to reduce and eliminate the use of seclusion.

### **258 Authorisation of seclusion by authorised doctor**

*Clause 258* outlines how an authorised doctor may approve seclusion, namely:

- the seclusion is necessary to protect the patient or others from physical harm; and
- there is no less restrictive way of providing treatment and care to the patient; and
- if a written direction about seclusion is given to the authorised mental health service—the seclusion complies with the direction; and
- the seclusion complies with the restraint and seclusion policy; and
- if a reduction and elimination plan providing for seclusion of the patient is approved—the seclusion complies with the reduction and elimination plan.

### **259 Duties of health practitioner in charge of inpatient unit**

*Clause 259* outlines the duty of a person in charge of an inpatient unit for a patient if seclusion is used.

### **260 Removal from seclusion before authorisation ends**

*Clause 260* outlines circumstances in which seclusion may end before the time stated in the authorised doctor's authorisation.

### **261 Return to seclusion after removal**

*Clause 261* enables a patient to be returned to seclusion when removed under the previous clause.

## **Division 3 Emergency seclusion**

### **262 Requirements for emergency seclusion by health practitioner in charge of inpatient unit**

*Clause 262* enables emergency seclusion if the health practitioner in charge of the inpatient unit is satisfied:

- the seclusion is immediately necessary to protect the patient or others from physical harm
- there is no less restrictive way of providing treatment and care to the patient
- the seclusion is not prevented by, or otherwise inconsistent with, a direction given by the chief psychiatrist
- it is not practicable in the circumstances to seek authorisation from an authorised doctor.

## **Part 4                      Reduction and elimination plans**

### **263        What is a *reduction and elimination plan***

*Clause 263* outlines the purpose of a reduction and elimination plan.

### **264        Content of plan**

*Clause 264* outlines the content of a reduction and elimination plan, which is primarily strategies to reduce and eliminate the use of mechanical restraint and seclusion for a patient.

### **265        Application for chief psychiatrist's approval plan**

*Clause 265* states an authorised doctor may apply to the chief psychiatrist for the approval of the plan.

### **266        Chief psychiatrist may approve plan**

*Clause 266* states how the chief psychiatrist is to approve a plan.

## **Part 5                      General provision**

### **267        Notification of chief psychiatrist**

*Clause 267* requires the administrator of an authorised mental health service to report to the chief psychiatrist on the use of mechanical restraint and seclusion in a way directed by the chief psychiatrist.

## **Chapter 9                      Rights of involuntary patients and others**

### **Part 1                              Preliminary**

#### **268              Purpose of ch 9**

*Clause 268* provides that the purpose of this chapter is to provide for:

- a statement of patient rights;
- the rights of a patient's family, carers and other support persons when supporting the patient's treatment and care;
- the right of a patient to be visited by family, carers, other support persons, a health practitioner and a lawyer or other adviser;
- the right of a patient to request a second opinion about the patient's treatment and care;
- the right of a patient, and a patient's family, carers and other support persons, to be advised by a patient rights adviser;
- the right of a patient to be given written notices about, and oral explanations of the patient's treatment and care.

#### **269              Definition for ch 9**

*Clause 269* outlines the definitions for the chapter.

### **Part 2                              Statement of rights**

#### **270              Preparing statement of rights**

*Clause 270* requires the chief psychiatrist to prepare a written statement about the rights of patients, families, carers and other support persons under this Bill.

#### **271              Giving statement of rights to patients and others**

*Clause 271* requires the administrator of an authorised mental health service to ensure the patient is given an oral explanation of the information contained in the statement of rights and, if requested, provide a copy of the statement to the patient.

#### **272              Display of signs**

*Clause 272* requires the administrator of an authorised mental health service to display signs stating the availability of the statement of rights.

## **Part 3 Rights of patients**

### **273 Definition for pt 3**

*Clause 273* provides the definitions of this part.

### **274 Visits by family, carers and other support persons**

*Clause 274* states that a patient may be visited in an authorised mental health service by family, carers and other support persons during any reasonable hours decided by the administrator.

### **275 Visits by health practitioner**

*Clause 275* states that a patient may be visited in an authorised mental health service by a health practitioner during any reasonable hours decided by the administrator.

### **276 Visits by legal or other advisers**

*Clause 276* states that a patient may be visited in an authorised mental health service by a lawyer or other adviser during any reasonable hours decided by the administrator.

### **277 Communication with others**

*Clause 277* states that a patient may communicate with other persons by post or telephone. However, an administrator for an authorised mental health service may place restrictions or prohibitions on the use of electronic devices if this is necessary to protect the safety and welfare of patients and other persons in the service.

### **278 Information about treatment and care**

*Clause 278* provides that the patient's treating doctor is to provide timely and accurate information to the patient about the patient's treatment and care.

### **279 Understanding of oral information**

*Clause 279* applies if a provision of this Bill requires an authorised mental health practitioner, an authorised doctor or the administrator to tell or explain something to a patient. The person explaining the information must take reasonable steps to ensure the patient understands the information including in a way that has appropriate regard to the patient's age, culture, mental illness, communication ability and any disability.

**280 Written notices to be given to nominated support persons and others**

*Clause 280* applies if a provision of this Bill requires an authorised doctor, the administrator, the chief psychiatrist or the Mental Health Review Tribunal to give a written notice to a patient. The notice must also be given to the nominated support person and, if the person is aware the patient has a guardian or attorney, the guardian or attorney.

**281 Second opinion about treatment and care**

*Clause 281* applies if an authorised mental health service has been unable to resolve a complaint about the provision of treatment and care to a patient. The patient or another person, on the patient's behalf, may request the administrator to obtain a second opinion from another health practitioner.

**Part 4 Rights and responsibilities of family, carers and support persons****282 Patient's right to privacy**

*Clause 282* states the patient's right to privacy under the Bill.

**283 Rights**

*Clause 283* outlines various rights for nominated support persons, family, carers and other support persons namely to:

- contact the patient while the patient is receiving treatment and care; and
- participate in decisions about treatment, including being consulted by health practitioners about treatment options; and
- receive timely, accurate and appropriate information about the patient's treatment, care, support, rehabilitation and recovery; and
- arrange support services for the patient including, for example, counselling, community care facilities and respite care.

**284 Responsibilities**

*Clause 284* outlines the responsibility of the patient's family, carers and other support persons.

**Part 5 Patient rights advisers****285 Appointment**

*Clause 285* provides that an authorised mental health service must have systems in place to ensure that patients are advised of their rights under this Bill. Also, for public sector authorised mental health services, a patient rights adviser must be appointed or engaged in accordance with policies issued by the chief psychiatrist. The patient rights adviser must report directly to the administrator of the service and must not be a member of the treating team for patients in the service.

**286 Functions**

*Clause 286* outlines the functions of patient rights advisers, primarily to ensure that patients, and patients' nominated support persons, family, carers and other support persons, are advised of their rights and responsibilities under this Bill.

**287 Independence**

*Clause 287* provides that a patient rights adviser must be independent and impartial in the performance of a function under the Bill and cannot be subject to the direction of another person.

**Chapter 10 Chief psychiatrist****Part 1 Preliminary****288 Purpose of ch 10**

*Clause 288* provides a purpose for this chapter.

**Part 2 Appointment, functions and powers****289 Appointment**

*Clause 289* states that there must be a chief psychiatrist appointed by the Governor-in-Council under this Bill.

**290 Functions**

*Clause 290* outlines the functions of the chief psychiatrist:

- to the extent it is reasonably practicable, ensuring the protection of the rights of patients under this Bill while balancing the rights of others;

- to the extent it is reasonably practicable, ensuring the involuntary examination, assessment, treatment and care and detention of persons complies with this Bill;
- facilitating the proper and efficient administration of this Bill;
- monitoring and auditing compliance with this Bill;
- advising and reporting to the Minister on any matter relating to this Bill
- other functions prescribed under this Bill.

## **291 Powers**

*Clause 291* enables the chief psychiatrist to do all things necessary and convenient to perform the functions of the role.

## **292 Independence of chief psychiatrist**

*Clause 292* states that despite the chief psychiatrist not being under the control of the Minister or another person.

## **293 Delegation**

*Clause 293* enables the chief psychiatrist to delegate functions to an appropriately qualified public service employee in the department or a health service employee.

## **Part 3 Policies, practice guidelines and annual report**

### **294 Making policies and practice guidelines**

*Clause 294* states that the chief psychiatrist must make policies about the following:

- the application of the treatment criteria and least restrictive treatment options
- record keeping
- managing complaints
- requesting second opinions
- treatment and care of forensic patients
- treatment and care of persons subject to court treatment orders
- use of mechanical restraint, seclusion and other restrictive practices
- minimising the risk or patients being absent without leave and returning those patients who have been absent without leave.

The chief psychiatrist may also make policies and practice guidelines about any other matter related to the administration of the Bill. If any policy or practice guideline is inconsistent with the Bill it is invalid to the extent of its inconsistency. The policy and practice guidelines must be complied with to the extent it is reasonable and practicable.



**295 Publication of policies and practice guidelines**

*Clause 295* states that policy and practice guidelines must be publically available and copies must be given to the administrator of each authorised mental health service. This must occur as soon as practicable after they are made. The administrator must ensure the policy and practice guidelines are given effect and take reasonable steps to ensure the policy and practice guidelines are available to any person who must comply with them.

**296 Annual report**

*Clause 296* provides for the requirements of the annual report. It must be given to the Minister 90 days after the end of each financial year detailing the administration of the Bill. For the financial year the report pertains to it must state a summary of key developments of the Bill, statistical data for each authorised mental health service about various functions performed under the Bill, number of forensic patients absent without leave for each authorised mental health service facility, the appointment of patient rights advisers and recommendations from any investigations and any other information the chief psychiatrist considers necessary. The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives it.

**Part 4 Investigations****297 Chief psychiatrist may investigate**

*Clause 297* enables the chief psychiatrist to investigate a matter or direct an inspector to investigate a matter. For the purpose of investigating a matter, the chief psychiatrist or an inspector may exercise powers under chapter 15.

**298 Investigation report**

*Clause 298* provides that report must be prepared by the investigator containing information, comment or recommendations for improvement. If an inspector prepared the report, the inspector must give the report to the chief psychiatrist. The chief psychiatrist may give the report to the person or entity of the subject of the investigation.

**299 Recommendations for improvement**

*Clause 299* provides that if the investigation report makes recommendations for improvement that the chief psychiatrist may, by written notice, direct the administrator of an authorised mental health service to take action and to report on this action taken to address the recommendations.



## **Division 2                      Notices**

### **307        Application**

*Clause 307* outlines who may apply for an information notice, namely:

- a victim of an unlawful act
- a close relative of the victim, or
- another person affected by the unlawful act.

The application may request that a nominee receive the information from the chief psychiatrist under the notice. The purpose of this is to assist the victim by having the information provided to a person such as a close relative who can talk to the victim about the information.

### **308        Decision on application**

*Clause 308* provides that the chief psychiatrist must decide to approve or refuse the application. For a victim or a close relative of the victim, the chief psychiatrist must approve the application unless the application is considered frivolous or vexatious, or the disclosure of the information is likely to cause serious harm to the patient's health or welfare or put the safety of the person or someone else at serious risk.

### **309        Right to receive information under notice**

*Clause 309* establishes the right for a person who has an information notice for a patient to receive the specific information stated in schedule 1 for the patient. This information is to be provided to the patient by the chief psychiatrist, with the clause stating that the chief psychiatrist may enter into an arrangement with the victim support service to give information to the person.

### **310        Amendment of notice to change applicant's nominee**

*Clause 310* enables an information notice to be amended to change the applicant's nominee.

### **311        Mandatory revocation**

*Clause 311* outline circumstances when an information notice must be revoked, including where the patient's forensic order ends.

### **312        Discretionary revocation**

*Clause 312* outlines circumstances where an information notice may be revoked, including where the chief psychiatrist is unable, after making reasonable efforts, to locate the person entitled to receive information under the notice.

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## **Division 3                      Miscellaneous**

### **313        Tribunal must provide particular information to chief psychiatrist about relevant patient**

*Clause 313* requires the tribunal to give the chief psychiatrist information that the chief psychiatrist must give to the applicant, namely, a brief explanation of the decision that increases the level of treatment in the community.

### **314        Telling relevant patient about information notice**

*Clause 314* outlines the circumstances in which the chief psychiatrist may advise the patient of an information notice being made.

### **315        Misuse of information made available under an information notice**

*Clause 315* makes it an offence for a person that receives information under an information notice to publish the information.

### **316        Application of part to forensic disability clients**

*Clause 316* applies this part to forensic disability clients, who are clients of the forensic disability service. In these instances, the director of forensic disability performs the function that the chief psychiatrist performs in this part.

## **Chapter 11                      Authorised mental health services**

### **Part 1                              Preliminary**

#### **317        Purpose of ch11**

*Clause 317* outlines the purpose of this chapter.

### **Part 2                              Establishment of authorised mental health services**

#### **318        Declaration of authorised mental health services**

*Clause 318* enables the chief psychiatrist, by gazette notice, to declare a health service, or part of a health service to be an authorised mental health service. If the health service is not a public health service this may only be done by written agreement. The declaration may include any conditions the chief psychiatrist considers appropriate.

**319 Declaration of high security units**

*Clause 319* enables the chief psychiatrist, by gazette notice, to declare a public sector mental health service or part of this service a high security unit.

**320 Declaration of authorised mental health service (regional)**

*Clause 320* enables the chief psychiatrist, by gazette notice, to declare an authorised mental health service to be an authorised mental health service (regional) if the chief psychiatrist is satisfied the service is in a regional, rural or remote area.

**Part 3 Administrators of authorised mental health services****321 Appointment of administrators of authorised mental health services**

*Clause 321* enables the chief psychiatrist, by gazette notice, to appoint an administrator of an authorised mental health service. The appointment may state the administrator by name or by reference to a stated office.

**322 Functions**

*Clause 322* provides for the functions of the administrator of an authorised mental health service.

**323 Powers**

*Clause 323* provides that the administrator of the authorised mental health service has the powers given under this Bill and may do all things necessary and convenient to perform their functions.

**324 Register of authorised doctors and authorised mental health practitioners**

*Clause 324* provides that the administrator of an authorised mental health service must keep a register of authorised doctors and authorised mental health practitioners appointed by the administrator.

**325 Record of relevant patients**

*Clause 325* provides that the administrator of an authorised mental health service must keep a record of patients (involuntary or voluntary classified patient) of the service.

**326 Delegation by administrator**

*Clause 326* enables the administrator of an authorised mental health service to delegate their functions under this Act to an appropriately qualified health service employee of the service.

**Part 4 Authorised doctors and authorised mental health practitioners****Division 1 Appointment, functions and powers****327 Appointment of authorised doctors**

*Clause 327* enables the administrator of an authorised mental health service to appoint, in writing, a doctor as an authorised doctor. The administrator must be satisfied the doctor is qualified for the appointment. If the administrator is a psychiatrist, the administrator is also an authorised doctor.

**328 Appointment of authorised mental health practitioners**

*Clause 328* enables the administrator of an authorised mental service to appoint, in writing, a health practitioner as an authorised mental health practitioner. The administrator must be satisfied the health practitioner is qualified for the appointment.

**329 Appointment conditions and limit on powers**

*Clause 329* states that an authorised doctor or authorised mental health practitioner holds office on any conditions stated in the instrument of appointment or a signed notice given to them. This instrument of appointment or signed notice may limit the authorised doctor's or authorised mental health practitioner's powers.

**330 When office ends**

*Clause 330* states that the office of a person as an authorised doctor or authorised mental health practitioner ends if the authorised doctor ceases to be a doctor on the authorised mental health practitioner ceases to be a health practitioner that was the basis for the person's appointment.

**331 Functions and powers of authorised doctors and authorised mental health practitioners**

*Clause 331* provides that an authorised doctor or authorised mental health practitioner has the functions and powers given under the Bill.

**332 Requirement to give notice of particular decisions**

*Clause 332* provides that any decision made under this Bill about an involuntary patient or a voluntary classified patient by an authorised doctor or authorised mental health practitioner must be given in writing to the administrator of the patient's treating health service.

**Division 2 Identity cards****333 Issue of identity card**

*Clause 333* provides that an administrator of an authorised mental health service must issue an identity card to each authorised doctor and authorised mental health practitioner appointed by the administrator.

**334 Production or display of identity card**

*Clause 334* provides that when an authorised doctor or authorised mental health practitioner exercises a power in relation to a person and in their presence the authorised doctor or authorised mental health practitioner must produce their identity card for the person's inspection before exercising the power or display the card so it is clearly visible when exercising the power. If this is not practical then the identity card must be produced for inspection by the person at the first reasonable opportunity.

**335 Return of identity card**

*Clause 335* provides that once the office of a person as an authorised doctor or authorised mental health practitioner ends, the person must return the identity card to the administrator of the authorised mental health service who appointed the person within 21 days after the office ends unless the person has a reasonable excuse.

**Part 5 Transfer of patients****Division 1 Preliminary****336 Purpose of pt 5**

*Clause 336* outlines the purpose of this part, namely, to provide for the transfer of particular patients. For this part, a transfer occurs when the responsibility for a patient changes from one service (such as an authorised mental health service), to another service.

**337 Definition for pt 5**

*Clause 337* provides the definitions for this part.

**Division 2 Authorised mental health service transfers**

**338 Transfer from one service to another service by agreement of administrators**

*Clause 338* enables the chief psychiatrist to direct a transfer between authorised mental health services.

**339 Transfer from one service to another service by requirement of chief psychiatrist**

*Clause 339* enables the chief psychiatrist and the director of forensic disability to agree to the transfer of a patient on a forensic order (disability) between an authorised mental health service and the forensic disability service. This applies to transfers either way.

**Division 3 Forensic disability service transfers**

**340 Transfer to and from an authorised mental health service and the forensic disability service**

*Clause 340* applies to the transfer of persons between an authorised mental health service and the forensic disability service with the agreement of the chief psychiatrist and the director of forensic disability.

**Division 4 Interstate transfers**

**341 Transfer of patient who is subject to a treatment authority to another State**

*Clause 341* provides for the transfer of persons on a treatment authority to an interstate mental health service.

**342 Transfer of patient who is subject to an interstate order from another State**

*Clause 342* provides for the transport of persons on an interstate order into Queensland.



## **Division 5                      General provisions**

### **343      Responsibility for patient**

*Clause 343* states who is responsible for a patient after a transfer.

### **344      Power to transport**

*Clause 344* states the power to transport persons.

### **345      Notification of tribunal**

*Clause 345* requires the Mental Health Review Tribunal to be notified of a transfer.

## **Part 6                              Powers for transporting persons**

### **Division 1                      Preliminary**

#### **346      Who are authorised persons**

*Clause 346* states that authorised persons are administrators, ambulance officers, authorised doctors, authorised mental health practitioners and police officers. In addition, administrators may authorise health service employees to be authorised persons. If a person is to be transported to or from a corrective services facility or youth detention centre, corrective services officers and youth detention employees are also authorised persons.

### **Division 2                      General provisions about transporting a person**

#### **347      Transport within a service**

*Clause 347* this clause enables an administrator or an authorised doctor to transfer a patient within a service.

#### **348      Return after treatment to patient's requested place**

*Clause 348* requires a person to be returned to the community when involuntarily transported from the community in particular circumstances.

**349 General power to transport involuntary patient or classified patient (voluntary)**

*Clause 349* gives a general power for an administrator to transport involuntary patients.

**Division 3 Provisions about persons unlawfully absent**

**350 Application of div 3**

*Clause 350* states the persons who may be transported involuntarily to an authorised mental health service. This includes:

- a person who absconds being lawfully detained under this Bill
- a person subject to a treatment authority, forensic order or court treatment order being treated in the community who does not attend for treatment as required
- a person on approved temporary absence or limited community treatment who does not return to the authorised mental health service at the end of the absence or treatment.

**351 Administrator or person in charge may give direction for person**

*Clause 351* authorises an administrator to direct an authorised person or request a police officer to transport a person to an authorised mental health service.

**352 Authorised person may transport person**

*Clause 352* are authorises an authorised person to transport the person under the directional request.

**353 Effect on period of detention**

*Clause 353* provides that, for a person who absconds, a period of detention under recommendation for assessment or an emergency examination authority recommences when the person returns to the authorised mental health service.

**Division 4 Powers for transporting persons to or from interstate mental health services**

**354 Apprehension of persons absent from interstate mental health service**

*Clause 354* provides that a police officer may apprehend a person who is absent without permission from an interstate mental health service. The person may be transported interstate or taken temporarily to an authorised mental health service.

**355 Transport of person in Queensland to interstate mental health service**

*Clause 355* provides that a person who may be transported to an authorised mental health service or a public sector health service facility for emergency examination or who are subject to a recommendation for assessment, may instead be transported to an interstate mental health service.

**356 Transport of person outside Queensland to authorised mental health service**

*Clause 356* provides that a person who may be transported to an interstate mental health service for emergency examination or assessment may instead be transported to an authorised mental health service.

**357 Making of emergency examination authority**

*Clause 357* provides that, where a person is transported under the previous clause for emergency examination, an emergency examination of authority must be made for the person.

**Division 5 General powers****Subdivision 1 Preliminary****358 Application of div 5**

*Clause 358* states that this division applies if a provision of this Bill authorises or requires an authorised person to transport a person, to or from an authorised mental health service, public sector health service facility, place of custody, or court for a purpose under this Bill.

**Subdivision 2 Power to transport persons****359 Power to transport includes power to detain**

*Clause 359* states that an authorised person may exercise the power to detain and transport the person with the help, and using the force, that is necessary and reasonable in the circumstances.

**360 Administration of medication while being transported**

*Clause 360* enables medication to be administered to a person being transported under the Act. However, the medication:

- may be administered to the person only if the doctor is satisfied it is necessary to ensure the safety of the person or others while being transported, and
- must be administered by a doctor or a registered nurse under the instruction of a doctor.

**361 Use of mechanical restraint on involuntary patient**

*Clause 361* enables mechanical restraints to be used to transport involuntary patients with the approval of the chief psychiatrist if necessary to protect the patient and others from physical harm.

**Subdivision 3 Entry of places by authorised persons****362 General power to enter places**

*Clause 362* states that an authorised person may enter a place if an occupier consents to the entry, it is a public place, or the entry is authorised under a warrant. This clause also states how entry under consent is to occur.

**Subdivision 4 Entry under warrant for apprehension****363 Application for warrant for apprehension of person**

*Clause 363* outlines how an application for a warrant for apprehension of a person is made.

**364 Issue of warrant**

*Clause 364* outlines how a warrant is issued

**365 Electronic application**

*Clause 365* outlines how an electronic application for a warrant is made.

**366 Additional procedure if electronic application**

*Clause 366* outlines additional procedures for an electronic application.

### **367 Defect in relation to a warrant**

*Clause 367* outlines how a defect in a warrant affects its validity.

### **368 Warrants—entry procedure**

*Clause 368* outlines procedures that are to be followed in entering premises under a warrant.

## **Part 6 Security**

### **Division 1 Preliminary**

#### **369 Purpose of pt 6**

*Clause 369* provides a purpose of this part, namely:

- the delivery and sending of postal articles to persons in authorised mental health services, including high security units;
- searches of involuntary patients in authorised mental health services and particular public sector health service facilities; and
- searches of persons on admission to, or entry into, a high security unit; and
- searches of visitors to a high security unit.

#### **370 Definitions for pt 6**

*Clause 370* states the definitions for part 6.

### **Division 2 Postal articles and other things in authorised mental health services**

#### **371 Patient may receive and send postal articles**

*Clause 371* states that a patient at an authorised mental health service may receive and send postal articles, and makes it an offence for a person to prevent or impede the delivery or sending of a postal article addressed to a patient. A person does not commit an offence if the addressee of the postal article:

- is the subject of a non-contact condition of the patient's forensic order; or
- has given written notice to the administrator of the service asking that postal articles addressed by the patient to the addressee be withheld.

**372 Administrator may search things received for patients**

*Clause 372* enables the administrator of an authorised mental health service to open or search anything received at the service for the patient, if the patient is present or has been given the opportunity to be present. The right for a patient to be present or to be given the opportunity to be present does not apply if the patient obstructs the administrator in the exercise of the administrator's powers.

**Division 3 Searches of involuntary patients in authorised mental health services and particular public sector health service facilities****373 Application of div 3**

*Clause 373* states that this division applies to:

- an involuntary patient of an authorised mental health service; or
- an involuntary patient of a public sector health facility who is being detained for assessment or examination under the *Public Health Act 2005*.

**374 Power to search on reasonable belief of possession of harmful things**

*Clause 374* states that this section applies if a doctor or health practitioner reasonably believes the patient may have possession of a harmful thing. The clause enables a doctor or health practitioner to:

- conduct a general search, scanning search or personal search of the person; and
- if the administrator of the service, or the person-in charge of the public sector health facility, gives approval for a search requiring the removal of clothing, conduct a search requiring the removal of clothing; and
- conduct a search of the person's possessions.

**Division 4 Searches of involuntary patients on admission to or entry into a high security unit****375 Application of div 4**

*Clause 375* states that this division applies to a person who is admitted to, or enters as a patient into, a high security unit or another authorised mental health service approved by the chief psychiatrist.

**376 Power to search on admission or entry**

*Clause 376* states that on the person's admission to, or entry into, the high security unit, an authorised security officer may, for detecting harmful things:

- conduct a general search, scanning search or personal search of the person; and
- if the administrator of the high security unit gives approval for a search requiring the removal of clothing, conduct a search requiring the removal of clothing; and
- conduct a search of the person's possessions.

**Division 5 Searches of visitors to high security and other approved services****377 Application of div 5**

*Clause 377* states that this division applies to a visitor to a high security unit.

**378 Definition for div 5**

*Clause 378* defines high security unit for this division.

**379 Power to search visitors**

*Clause 379* states that an authorised security officer for a high security unit may ask the visitor to submit to a general search, scanning search or personal search by the authorised security officer, or to submit the visitor's possessions to a search.

The authorised security officer must tell the visitor in general terms of:

- the officer's powers in relation to the search; and
- how the search is to be carried out; and
- the visitor's rights under this division.

**380 Directions to leave high security unit**

*Clause 380* provides that if a visitor to a high security unit does not agree to a search request, an authorised security officer may refuse the visitor permission to enter the high security unit or, if the person is in the high security unit, direct the person to immediately leave the high security unit. If a visitor is directed to leave, the visitor must comply with the direction.

**381 Visitor may leave things with authorised security officer**

*Clause 381* states that if a visitor does not want the authorised security officer to inspect anything in the visitor's possession, the visitor may leave the thing with the officer until the visitor leaves the high security unit.

**382 Authorised security officer may ask visitor to leave things with officer**

*Clause 381* states that an authorised security officer may ask a visitor to leave a thing the officer reasonably believes is a harmful thing with the officer until the visitor leaves the high security unit. If the visitor refuses to comply with such a request, the officer may refuse the visitor permission to enter the high security unit or, if the person is in the high security unit, direct the person to immediately leave the high security unit.

**383 Visitor may ask for search to stop**

*Clause 383* provides that the authorised security officer must stop the search if the visitor tells the officer the visitor does not want the search to continue and is prepared to leave the high security unit immediately. If the visitor does not leave the high security unit immediately, an offence is committed.

**384 Return of things to visitor**

*Clause 384* states that if the visitor has left a thing with an authorised security officer, the officer must ensure the thing is returned to the visitor:

- if the visitor asks for its return; and
- if the officer is reasonably satisfied the visitor is about to leave the high security unit.

**Division 6 Requirements for searches****385 Requirements for personal search**

*Clause 385* enables a person authorised to carry out a personal search to do any one or more of the following:

- remove and inspect an outer garment or footwear of the person;
- remove and inspect all things from the pockets of the person's clothing;
- touch the clothing worn by the person to the extent reasonably necessary to detect things in the person's possession, but only if the searcher is the same sex as the person and the search is carried out in a part of a building that ensures the person's privacy;
- remove and inspect any detected thing.

This clause provides that the searcher must carry out such searches in a way that respects the person's dignity to the greatest possible extent, and causes as little inconvenience to the person.



**386 Requirements for search requiring the removal of clothing**

*Clause 386* outlines certain requirements a person authorised to carry out a search requiring the removal of clothing must observe.

**387 Requirements for search of possessions**

*Clause 387* provides that a person authorised to carry out a search of a person's possessions can open or inspect a thing in the person's possession and remove and inspect any detected thing, only if the person is present or has been given the opportunity to be present. The requirement that the person is present or has been given the opportunity to be present does not apply if the person obstructs the searcher in the exercise of the searcher's powers.

**Division 7 Records of searches****388 Record of search must be made**

*Clause 388* states that the section applies if a search requiring the removal of clothing is carried out or a searcher seizes anything found during a search under this part. As soon as possible after carrying out the search, the person who conducted the search must make a written record of specified details pertaining to the search.

**Division 8 Seizure****389 Seizure of harmful and other things**

*Clause 389* allows a person authorised to carry out a search under this part to seize anything found during the search that the person reasonably suspects is connected with, or is evidence of, the commission or intended commission of an offence against an Act, or, a harmful thing.

**390 Receipt for seized things**

*Clause 390* provides that a person authorised to carry out a search under this part must give a receipt for the thing to the person from whom the thing was seized.

**391 Access to seized things**

*Clause 391* provides that this section applies to a thing seized on a search under this part. Until the thing is forfeited or returned under this division, the searcher must allow its owner to inspect it and, if it is a document, to copy it, unless it is impracticable or would be unreasonable to allow the inspection or copying.

**Division 9                      Identity cards****392        Approval of identity cards**

*Clause 392* mandates that the administrator of a high security unit must approve identity cards for authorised security officers for the service which contain a recent photograph of the officer and which identifies the person as an authorised security officer.

**Division 10                    Compensation****393        Compensation for damage to possessions**

*Clause 393* enables a patient or visitor to claim from the State the cost of repairing or replacing possessions damaged in the exercise or purported exercise of a power under this part. A court may order an amount be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

**Division 11                    Exclusion of visitors****394        Administrator may refuse to allow a person to visit a patient**

*Clause 394* allows the administrator of an authorised mental health service to refuse to allow a person to visit a patient in the health service if the administrator is satisfied the proposed visit will adversely affect the patient's treatment or care. The administrator must give written notice of the decision.

**Chapter 12                    Proceedings of Mental Health Review Tribunal****Part 1                        Preliminary****395        Purpose of ch 12**

*Clause 395* outlines the purpose of this chapter, which is for the tribunal to review the following:

- treatment authorities;
- forensic orders;
- court treatment orders;
- the fitness for trial of particular persons;
- the imposition of monitoring conditions (tracking devices) on persons subject to forensic orders; and
- the detention of minors in high security units; and



**399 When periodic review deferred**

Clause 399 states that reviews are deferred if an appeal is before the Mental Health Court that is stayed.

**400 When tribunal must not conduct review**

Clause 400 provides that the Mental Health Review Tribunal must not conduct a review if, on appeal to the Mental Health Court, the court has stayed a tribunal decision for the authority.

**Subdivision 3 Applications and notices of hearings**

**401 Application for applicant review to state orders sought**

Clause 401 provides other matters that may be sought in an applicant review.

**402 Notice of hearing**

Clause 402 outlines who must receive a notice of hearing for a review.

**Subdivision 4 Decisions and orders**

**403 Decisions on review**

Clause 403 states the decisions that must be made on a review including, for a periodic review, whether to confirm or revoke the treatment authority.

**404 Administrator to provide report**

Clause 404 provides for a periodic review of the treatment authority, the administrator of the person's treating health service must give the Mental Health Review Tribunal a report about whether the appointment of a guardian for the person may lead to a less restrictive way for the person to receive treatment and care.

**405 Requirement to revoke treatment authority**

Clause 405 states when a treatment authority must be revoked.

**406 Orders if treatment authority confirmed**

*Clause 406* outlines the decisions the Mental Health Review Tribunal may make if it confirms a treatment authority. These decisions relate to the extent of community treatment for the patient (community category or limited community treatment). The tribunal may also order the transfer of a patient to another authorised mental health service.

**Part 3 Review of forensic orders (mental condition) and forensic orders (disability)****Division 1 Preliminary****407 Application of pt 3**

*Clause 407* states that this division applies to the review of persons on forensic orders (mental condition) and forensic order (disability).

**408 Definitions for div 3**

*Clause 408* states definitions for this division.

**Subdivision 2 When particular reviews are conducted****409 When reviews are conducted**

*Clause 409* states when reviews of forensic orders must take place. For periodic reviews these must take place within 6 months after the order is made and intervals of not more than 6 months after previous reviews. The Mental Health Review Tribunal must also review a forensic order on application. The tribunal may also review a forensic order on its own initiative.

**410 When periodic review deferred**

*Clause 410* provides that a periodic review need not be held at the time stated in the previous clause if there has been a preceding applicant review or Mental Health Review Tribunal review.

**411 Requirement to conduct periodic review suspended**

*Clause 411* provides that the Mental Health Review Tribunal must not conduct a review if the patient has been transferred interstate.

**412 When tribunal must not conduct review**

*Clause 412* states that the tribunal must not conduct a review of forensic order if an appeal is pending to the Mental Health Court and the court has stayed the tribunal's decision.

**Subdivision 3 Applications and notices of hearings****413 Application for applicant review to state orders sought**

*Clause 413* provides other matters that may be sought in an applicant review.

**414 Notice of hearing**

*Clause 414* outlines who must receive a notice of a hearing for a review. For reviews of forensic orders, the Attorney-General receives a notice of hearing.

**Subdivision 4 Decisions and orders****415 Application of sdiv 4**

*Clause 415* states that this subdivision is subject to subdivision 5 which places restrictions on revoking or amending forensic orders.

**416 Decisions on review**

*Clause 416* states the decisions that must be made on a review including, for a periodic review, whether to confirm or revoke the forensic order.

**417 Requirement to confirm forensic order**

*Clause 417* states when the Mental Health Review Tribunal must confirm a forensic order. These criteria are equivalent to those that apply to the Mental Health Court on the making of a forensic order. The Mental Health Review Tribunal must confirm the order if the tribunal considers that the order is necessary to protect the safety and welfare of the community, because of the person's mental condition, including from serious harm being caused to other persons or property.

**418 Orders if forensic order confirmed**

*Clause 418* outlines the decisions the Mental Health Review Tribunal may make if it confirms a forensic order. These decisions relate to the level of treatment in the community (community category or limited community treatment).

**419 Orders about treatment in the community if category of order is inpatient**

*Clause 419* outlines the decisions the Mental Health Review Tribunal may make if the category of the order is inpatient.

**420 Change of category—inpatient to community**

*Clause 420* outlines the decisions the Mental Health Review Tribunal may make if the category of the order is inpatient.

**421 Orders if forensic order (mental condition) revoked**

*Clause 421* deals with circumstances where the Mental Health Review Tribunal does not confirm a forensic order. In these cases, the tribunal must revoke the order and either make no further order for the patient, or make a community treatment order or a treatment authority.

**422 Making of treatment authority**

*Clause 422* applies provisions of chapter 5 to making decisions under the previous clause.

**Subdivision 5 Restrictions on revoking or amending forensic orders****423 Orders stating non-revocation period**

*Clause 423* states that the Mental Health Review Tribunal must not revoke a forensic order during a non-revoke period for the order set by the Mental Health Court.

**424 Order for person temporarily unfit for trial**

*Clause 424* states that the Mental Health Review Tribunal must not revoke a forensic order for a patient who remains temporarily unfit for trial.

**425 Order for person charged with prescribed offence**

*Clause 425* relates to persons on forensic orders in relation to a prescribed offence. Prescribed offences, as defined in the dictionary, are the most serious violent offences such as murder, manslaughter, grievous bodily harm and rape. For forensic orders of this type, the Mental Health Review Tribunal must not revoke the order until it has received an independent report on the patient's medical condition from a psychiatrist or from a person with expertise in the care of persons with an intellectual disability.

**426 Tribunal's order takes effect after suspension ends**

*Clause 426* provides that the Mental Health Review Tribunal must not change the category of a classified patient's order or authority to a community category or approve limited community treatment. Treatment in the community for classified patients is restricted and is decided by the chief psychiatrist under chapter 3.

**Subdivision 6 Other provisions****427 Order for transfer of responsibility for forensic patients**

*Clause 427* provides that, on a review of a forensic order, the Mental Health Review Tribunal may order the transfer of the patient to another authorised mental health service or to the forensic disability service.

**428 Order imposing non-contact condition**

*Clause 428* provides that the Mental Health Review Tribunal may impose a condition on a forensic order patient that the person not contact a stated person, such as a victim.

**429 Person with dual disability**

*Clause 429* applies to persons who are subject to a forensic order (mental condition) who have a dual disability. Chapter 5 of the Bill provides that persons in this situation may be placed on a forensic order (mental condition) for treatment and care for a mental illness as well as for care for an intellectual disability. If the tribunal is satisfied the person no longer requires involuntary treatment and care for a mental illness, the tribunal may change the order to a forensic order (intellectual disability).

**Part 4 Review of forensic orders (Criminal Code)****430 Application of pt 4**

*Clause 430* states that this division applies to a person subject to a forensic order (Criminal Code).

**431 Tribunal to make forensic order (mental condition) or forensic order (disability)**

*Clause 431* requires the Mental Health Review Tribunal to decide whether the order should be made a forensic order (mental condition) or a forensic order (disability).



**432 Notice of hearing**

*Clause 432* provides for a notice of hearing.

**433 Making of forensic order**

*Clause 433* provides for the making of a forensic order, including the category of the order.

**434 Application of ch 5 provisions**

*Clause 434* applies provisions in chapter 5 for making decisions in this division.

**Part 5 Review of court treatment orders**

**Division 1 Preliminary**

**435 Definitions for pt 5**

*Clause 435* outlines the definitions for this division.

**Division 2 When particular reviews are conducted**

**436 When reviews are conducted**

*Clause 436* outlines when reviews of court treatment orders must occur. Periodic reviews must take place at 6 monthly intervals. The tribunal must also review a treatment authority on application and the tribunal may review a court treatment order on its own initiative.

**437 When periodic review deferred**

*Clause 437* provides that a periodic review need not be held at the time stated in the previous clause if there has been a preceding applicant review or tribunal review.

**438 When tribunal must not conduct review**

*Clause 438* provides that the tribunal must not conduct a review if, on appeal to the Mental Health Court, the court has stayed a tribunal decision for the authority.

### **Division 3                      Applications and notices of hearings**

#### **439        Application for applicant review to state orders sought**

*Clause 439* provides for matters that may be sought in an applicant review.

#### **440        Notice of hearing**

*Clause 440* outlines who must receive a notice of hearing for a review.

### **Division 4                      Decisions and orders**

#### **441        Decisions on review**

*Clause 441* states the decisions that must be made on a review including, for a periodic review, whether to confirm or revoke the order.

#### **442        Requirement to confirm court treatment order**

*Clause 422* states when the tribunal must confirm a court treatment order.

#### **443        Orders if court treatment order confirmed**

*Clause 443* outlines the decisions the tribunal may make if it confirms a court treatment order. These decisions relate to the extent of community treatment for the patient (community category or limited community treatment). The tribunal may also order the transfer of a patient to another authorised mental health service.

#### **444        Orders if court treatment order revoked**

*Clause 444* states the orders the tribunal may make if the court treatment order is not confirmed.

## **Part 6                              Review of fitness for trial**

### **Division 1                      Review**

#### **445        Application of div 1**

*Clause 445* states that this subdivision applies where the Mental Health Court has found a person unfit for trial of a temporary nature, or where an order has been made based on a jury finding under section 613 or 645 of the Criminal Code that a person is unfit for trial.

**446 When reviews are conducted**

*Clause 446* states when reviews must be conducted, namely:

- for the period of 1 year starting on the day of the court's decision or jury's finding—at intervals of not more than 3 months; and
- at intervals of not more than 6 months after the last review is conducted under paragraph.

The tribunal must also undertake a review on application or on its own initiative.

**447 Notice of hearing**

*Clause 447* outlines who must receive a notice of a review. For reviews of fitness for trial, this includes the Attorney-General.

**448 Decisions on review**

*Clause 448* provides that the tribunal must decide whether the person is fit for trial, and if the tribunal decides the person is unfit for trial, whether the person is likely to be fit for trial within a reasonable time.

**Division 2 Procedures following review if person unfit for trial****449 Application of div 2**

*Clause 449* states that nothing in the subdivision prevents proceedings against the person from being discontinued.

**450 Director of public prosecutions to decide whether proceedings for offence to be discontinued**

*Clause 450* requires the director of public prosecutions to decide, within 28 days of receiving a notice from the tribunal that the person is unfit for trial, whether to discontinue proceedings against the person.

**451 Proceeding discontinued at end of prescribed period**

*Clause 451* provides that proceedings are automatically discontinued at the end of a prescribed period if the proceedings have not been otherwise discontinued or the Mental Health Review Tribunal has not decided the person is fit for trial. The prescribed period is:

- for proceedings for an offence for which an offender is liable to life imprisonment—7 years; or

- for other proceedings—3 years.

**452 Effect of discontinuing proceeding**

*Clause 452* requires the director of public prosecutions to notify specified people if proceedings are discontinued.

**453 Proceedings may be discontinued at other time**

*Clause 453* states that this subdivision does not prevent proceedings against the person being completed discontinued at any time.

**Division 3 Procedures after review if person fit for trial**

**454 Application of div 3**

*Clause 454* states that this subdivision applies if the tribunal decides a person is fit for trial.

**455 Definitions for div 3**

*Clause 455* outlines definitions for this subdivision.

**456 Director of public prosecutions to give notice of fitness for trial**

*Clause 456* requires the director of public prosecutions to notify specified people that proceedings for the person are to continue.

**457 Listing of proceeding for mention**

*Clause 457* requires the registrar of the relevant court to arrange for the proceedings to be continued.

**Part 7 Review of imposition of monitoring conditions requiring wearing of tracking devices**

**458 Application of pt 7**

*Clause 458* states that this division applies where the chief psychiatrist has imposed a monitoring condition under chapter 7 that requires a person to wear a tracking device.

**459 Review of chief psychiatrist's decision to impose condition**

*Clause 459* requires the tribunal to review the chief psychiatrist's decision within 21 days.

**460 Notice of hearing**

*Clause 460* outlines who is to be given a notice of the hearing.

**461 Decisions on review**

*Clause 461* states the decisions the tribunal must make on review, namely, to confirm the monitoring condition, to change the monitoring condition in a way that is beneficial for the patient, or to revoke the monitoring condition.

**Part 8 Review of detention of minors in high security units**

**462 Application of pt 8**

*Clause 462* states that this division applies where the chief psychiatrist has agreed to the admission or transfer of a minor to the high security unit.

**463 When reviews are conducted**

*Clause 463* requires the tribunal to review the minor's detention within 7 days after being notified by the chief psychiatrist, and at 3 monthly intervals thereafter.

**464 Notice of hearing**

*Clause 464* outlines who is to be given a notice of the hearing.

**465 Decision on review**

*Clause 465* states the decisions the tribunal must make on review, namely, to continue the minor's detention in a high security unit or to transfer.

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## **Part 9    Applications for examination authorities**

### **Division 1    Examination authorities**

#### **466                      Application for examination authority**

*Clause 466* states who may apply for an examination authority. An application may be made by:

- the administrator of an authorised mental health service;
- a person authorised, in writing, by the administrator of an authorised mental health service to make an application under this clause;
- a person who has received advice, from a doctor or authorised mental health practitioner, about the clinical matters (as defined) for the person who is the subject of the application.

The clause requires that the approved form for the application must include provision for a statement by a doctor or authorised mental health practitioner about whether the behaviour of the person, or other relevant factors, could reasonably be considered grounds for the involuntary examination of the person under the Bill.

#### **467                      Notice of hearing**

*Clause 467* outlines who is to be given a notice of the hearing.

#### **468                      Decision on application**

*Clause 468* states that the tribunal may decide to issue or refuse to issue an examination authority. In making this decision the tribunal must consider:

- the person has, or may have, a mental illness; and
- the person lacks, or may lack, capacity to consent to treatment for the mental illness; and
- reasonable attempts have been made to encourage the person to be treated voluntarily for the person's mental illness or it is not practicable to attempt to encourage the person to be treated voluntarily for the person's mental illness; and
- there is, or may be, an imminent risk, because of person's mental illness, that the person might—
  - i. cause serious harm to the person or someone else; or
  - ii. suffer serious mental or physical deterioration.

#### **469                      Duration of examination authority**

*Clause 469* states that an examination authority is in force for 7 days.

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**470 Copy of examination authority to be given to administrator of authorised mental health service**

*Clause 470* requires the Mental Health Review Tribunal to give a copy of the examination authority to the relevant administrator of an authorised mental health service.

**Part 2 Approval of regulated treatments****Division 1 Electroconvulsive therapy****471 Application for approval to perform electroconvulsive therapy**

*Clause 471* provides that a psychiatrist may apply to the tribunal for approval to perform electroconvulsive therapy on another person if the psychiatrist is satisfied—

- the person is an adult and is unable to give informed consent to the therapy; or
- the person is a minor.

**472 Notice of hearing**

*Clause 472* outlines who is to be given a notice of the hearing.

**473 Decision on application**

*Clause 473* states that the tribunal must give, or refuse to give, approval for electroconvulsive therapy. The tribunal may approve electroconvulsive therapy for the person only if the tribunal is satisfied—

- the performance of the therapy on the person is in the person's best interests; and
- evidence supports the effectiveness of the therapy for the person's particular mental illness; and
- if the therapy has previously been performed on the person—of the effectiveness of the therapy for the person; and
- if the person is a minor—evidence supports the effectiveness of the therapy for persons of the minor's age.

**Division 2 Non-ablative neurosurgical procedures****474 Application for approval to perform non-ablative neurosurgical procedure**

*Clause 474* provides that a psychiatrist may apply to the tribunal for approval to perform a non-ablative neurosurgical procedure on another person if the psychiatrist is satisfied the person has given informed consent to the treatment.

**475 Notice of hearing**

*Clause 475* outlines who is to be given a notice of the hearing.

**476 Decision on application**

*Clause 476* states that the Mental Health Review Tribunal must give, or refuse to give, approval for the procedure. The tribunal may approve the non-ablative neurosurgical procedure for the person only if the tribunal is satisfied the applicant has given informed consent.

**Part 11 Approval to transfer particular patients into and out of Queensland**

**Division 1 Transfers into Queensland**

**477 Definition for div 1**

*Clause 477* outlines the definition for this subdivision.

**478 Who may apply**

*Clause 478* provides that a patient subject to an interstate forensic order (as defined), or the patient's representative, may apply to the Mental Health Review Tribunal for transfer into Queensland.

**479 Requirements for application**

*Clause 479* states the requirements for an application, namely:

- state the reasons why the transfer would be in the best interests of the person, including, for example, closer proximity to family, carers and other support persons; and
- include a written statement from the chief psychiatrist about whether the interstate transfer requests may be met.

**480 Notice of hearing**

*Clause 480* outlines who is to be given a notice of the hearing.

**481 Decision on application**

*Clause 481* provides that the tribunal may approve or refuse to approve the transfer.



**482 Making of forensic order**

*Clause 482* provides that, on transfer into Queensland, the person is placed on a forensic order (mental condition) or a forensic order (disability).

**483 Satisfaction of interstate transfer requirements**

*Clause 483* states a transfer takes effect when the interstate transfer requirements are met.

**484 Transport of person**

*Clause 484* authorises the transport of a person who has been approved to transfer into Queensland.

**Division 2 Transfers out of Queensland**

**485 Definition for div 2**

*Clause 485* outlines the definition of interstate transfer requirement.

**486 Who may apply**

*Clause 486* provides that a patient subject to a forensic order or a court treatment order may apply to the tribunal for transfer out of Queensland.

**487 Requirements for application**

*Clause 487* states the requirements for an application, namely:

- state the reasons why the transfer would be in the best interests of the patient, including, for example, closer proximity to family, carers and other support persons; and
- the chief psychiatrist about whether the interstate transfer requirements may be met.

**488 Notice of hearing**

*Clause 488* outlines who is to be given a notice of the hearing.

**489 Decision on application**

*Clause 489* provides that the Mental Health Review Tribunal may approve or refuse to approve the transfer.

**490 Satisfaction of interstate transfer requirements**

*Clause 490* states that the transfer is only effective when requirements for the person have been satisfied.

**491 Transport of person**

*Clause 491* authorises the transport of a person who has been approved to transfer out of Queensland.

**492 Effect on order**

*Clause 492* states that the forensic order for the person is only in force if the patient returns to Queensland. If the patient is out of Queensland for a continuous period of 3 years, the forensic order ends.

**Part 12 Miscellaneous****493 Relationship with ch17, pt 1**

*Clause 493* states that this chapter profiles only chapter 17 if there is any inconsistency.

**Chapter 13 Appeals****Part 1 Preliminary****494 Purpose of ch 13**

*Clause 494* outlines the purpose of this part, namely, to provide for appeals to the Mental Health Review Tribunal, the Mental Health Court and the Court of Appeal.

**Part 2 Appeals to the tribunal****495 Definition for pt 2**

*Clause 495* outlines definitions for this division.

**496 Appeal to tribunal**

*Clause 496* specifies the matters that may be appealed to the tribunal, namely:

- decisions of the chief psychiatrist in relation to information notices

- a decision of the chief psychiatrist to suspend limited community treatment or change a community category or forensic order
- a decision of an administrator to refuse a person to visit a patient in an authorised mental health service.

**497 How to start appeal**

*Clause 497* outlines how to start an appeal.

**498 Notice of appeal and hearing**

*Clause 498* outlines who must be given notice of the appeal.

**499 Stay of decision pending appeal**

*Clause 499* enables the tribunal, in hearing an appeal, to stay the decision.

**500 Appeal powers**

*Clause 500* provides that on hearing an appeal, the tribunal may confirm the decision, set aside the decision and substitute another decision, or set aside the decision and return the matter to the decision maker with appropriate directions.

**Part 3 Appeals to Mental Health Court**

**Division 1 Preliminary**

**501 Definition for pt 3**

*Clause 501* outlines the definition for this part.

**Division 2 Making and hearing appeals**

**502 Who may appeal**

*Clause 502* outlines who may appeal to the Mental Health Court against a decision of the Mental Health Review Tribunal by reference to schedule 2.

**503 Parties to appeal**

*Clause 503* outlines the parties to an appeal.

**504 How to start appeal**

*Clause 504* states how to start an appeal.

**505 Notice of appeal and hearing**

*Clause 505* outlines who must be given notice of the appeal.

**506 Stay of decision pending appeal**

*Clause 506* enables the court, in hearing an appeal, to stay the decision.

**507 Notice of stay of decision on review of patient's fitness for trial**

*Clause 507* applies where an appeal is made against a decision of the tribunal about a person's fitness for trial. If the court stays the decision, it must give written notice to the chief executive of justice about the stay.

**508 Appeal powers**

*Clause 508* provides that on hearing an appeal, the court may confirm the decision, set aside the decision and substitute another decision, or set aside the decision and return the matter to the decision maker with appropriate directions.

**509 Mental Health Court may make forensic order or court treatment order on appeal**

*Clause 509* applies to appeals against a decision of the tribunal that a person is fit for trial. If the court determines that the person is unfit for trial, the court may make any decision it could have made on a reference to the court, such as making a forensic order or court treatment order.

**510 Mental Health Court's order final**

*Clause 510* states that the Court's decision on appeal is final.

**Part 4 Appeals to Court of Appeal**

**511 Who may appeal**

*Clause 511* states who may appeal to the Court of Appeal against a decision of the Mental Health Court.

**512 How to start appeal**

*Clause 512* states how to start an appeal.

**513 Appeal powers**

*Clause 513* provides that on hearing an appeal, the court may confirm the decision, set aside the decision and substitute another decision, or set aside the decision and return the matter to the Mental Health Court with appropriate directions.

**514 Notice of decision**

*Clause 514* requires the registrar of the Court of Appeal to give a copy of the court's decision to the registrar of the Mental Health Court

**Chapter 14 Monitoring and enforcement**

**Part 1 Preliminary**

**515 Purpose of ch 14**

*Clause 515* provides that the purpose of the part is to provide for the appointment, functions and powers of inspectors for investigating, monitoring and enforcing compliance with this Bill.

**516 Definitions for ch 14**

*Clause 516* outlines the definitions used in this chapter.

**Part 2 General provisions about inspectors**

**Division 1 Appointment**

**517 Appointment and qualifications**

*Clause 517* provides for the appointment of inspectors.

**518 Functions of inspectors**

*Clause 518* states an inspector's functions under the Bill – namely to carry out investigations under the Bill (as provided for under chapter 10), and to investigate, monitor and enforce compliance with the Act.

**519 Appointment conditions and limit on powers**

*Clause 519* provides that an inspector is to hold office on specified conditions.

**520 When office ends**

*Clause 520* states when the office of an inspector ends.

**521 Resignation**

*Clause 521* provides that an inspector may resign.

**Division 2 Identity cards**

**522 Issue of identity card**

*Clause 522* provides that inspectors are to be provided with identity cards in the form specified in the clause.

**523 Production or display of identity card**

*Clause 523* requires an inspector to produce his or her identity card when exercising a power under this Act.

**524 Return of identity card**

*Clause 524* provides that an identity card must be returned when a person ceases to be an inspector.

**Division 3 Miscellaneous provisions**

**525 References to exercise of powers**

*Clause 525* states that if a provision of this part refers to the exercise of a power and there is no reference to a specific power, then the reference is to the exercise of all or any of the inspector's powers that are relevant.

**526 Reference to document includes reference to reproductions from electronic document**

*Clause 526* states that a reference in this part to a document includes a reference to an electronic document.



**534 Electronic application**

*Clause 534* outlines the procedures that apply for the application of an electronic warrant.

**535 Additional procedure if electronic application**

*Clause 535* outlines additional procedures that apply for electronic warrants.

**536 Defect in relation to a warrant**

*Clause 536* outlines how the defect in a warrant affects its validity.

**537 Entry procedure**

*Clause 537* outlines the entry procedures under a warrant.

**Part 4 General powers of inspectors after entering places**

**538 Application of pt 4**

*Clause 538* states that the powers may be exercised if an inspector enters a place with consent or under a warrant.

**539 General powers**

*Clause 539* states the general powers that an inspector may exercise after entering a place including, for example, searching any part of the place or inspecting, examining or filming any part of the place or anything at the place.

**540 Power to require reasonable help**

*Clause 540* states that an inspector may require a person at a place to give the inspector reasonable help to exercise a general power including, for example, the power to produce a document or to give information.

**541 Offence to contravene help requirement**

*Clause 541* states that a person must comply with a requirement made of an inspector under the previous clause unless the person has a reasonable excuse, including that complying with the requirement might tend to incriminate the individual. An offence applies for contravening this provision.



**542 Evidential immunity for individuals complying with help requirement**

*Clause 542* provides that information compulsorily required is not admissible against the person.

**Part 5 Seizure by inspectors and forfeiture**

**Division 1 Power to seize**

**543 Seizing evidence at a place that may be entered without consent or warrant**

*Clause 543* provides that an inspector who enters a place without consent or a warrant may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Bill.

**544 Seizing evidence at a place that may be entered only with consent or warrant**

*Clause 544* outlines the powers of seizure that an inspector has when entry is authorised with consent or under a warrant.

**545 Seizure of property subject to security**

*Clause 545* states that an inspector may seize a thing despite a lien or other security over the thing claimed by another person.

**Division 2 Powers to support seizure**

**546 Power to secure seized thing**

*Clause 546* specifies the powers an inspector may exercise to support the seizure of a thing. Offences apply for failing to comply with a requirement made under this subdivision or for tampering with a seized thing.

**547 Offence to contravene other seizure requirement**

*Clause 547* specifies the powers an inspector may exercise to support the seizure of a thing. Offences apply for failing to comply with a requirement made under this subdivision or for tampering with a seized thing.

**548 Offence to interfere**

*Clause 548* specifies the powers an inspector may exercise to support the seizure of a thing. Offences apply for failing to comply with a requirement made under this subdivision or for tampering with a seized thing.

**Division 3 Safeguards for seized things****549 Receipt and information notice for seized thing**

*Clause 549* provides a safeguard for things seized under the Bill. This clause deals with providing receipts and information notices in relation to a seized thing, providing access to the seized thing by the owner, and returning of the seized thing. The provision of an information notice under this subdivision triggers a right of review and appeal under this part.

**550 Access to seized thing**

*Clause 550* provides for access to seized things.

**551 Return of seized thing**

*Clause 551* provides for the return of seized things

**Division 4 Forfeiture****552 Forfeiture by chief psychiatrist decision**

*Clause 552* provides for the forfeiture of things under the Bill. Under the provisions, a thing may be forfeited to the State by decision of the chief executive.

**553 Information notice about forfeiture decision**

*Clause 553* requires the chief executive must give the owner an information notice about the decision, which triggers a right of review and appeal.

**554 Forfeiture on conviction**

*Clause 554* provides for the forfeiture of things on conviction.

**555 Procedure and powers for making forfeiture order**

*Clause 555* provides for making a forfeiture order.

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**Division 5                      Dealing with property forfeited or transferred to the State**

**556        When thing becomes property of the State**

*Clause 556* specifies how a thing becomes property of the State.

**557        How property may be dealt with**

*Clause 557* specifies how a thing seized may be dealt with by the chief executive.

**Part 6                              Disposal orders**

**558        Disposal order**

*Clause 558* enables a court to make an order to dispose of a thing where a person is convicted of an offence against this Bill.

**Part 7                              Other information-obtaining powers of inspectors**

**559        Power to require name and address**

*Clause 559* applies where an inspector finds a person committing an offence against this Bill or where an inspector reasonably suspects a person has just committed an offence against this Bill. In these circumstances, the inspector may require the person to state the person's name and residential address.

**560        Offence to contravene personal details requirement**

*Clause 560* states that a person must comply with a requirement to state their name and residential address unless they have a reasonable excuse.

**561        Power to require information**

*Clause 561* applies if an inspector reasonably believes an offence has just been committed against this Bill and a person may be able to give information about the offence. This clause also applies if an inspector reasonably believes a person may be able to give information about a matter being investigated. The inspector may, by written notice, require the person to give the inspector information related to the offence or matter at a stated reasonable time and place.

**562 Offence to contravene information requirement**

*Clause 562* states that a person must comply with a requirement to provide information under the previous clause. It is a reasonable excuse not to give the information if giving the information would tend to incriminate the individual.

**563 Evidential immunity for individuals complying with information requirement**

*Clause 563* provides that information compulsorily required is not admissible against the person.

**Part 8 Miscellaneous provisions relating to inspectors****Division 1 Damage****564 Duty to avoid inconvenience and minimise damage**

*Clause 564* requires an inspector in exercising powers under this part to cause as little inconvenience and damage as possible.

**565 Notice of damage**

*Clause 565* deals with damage that may be caused by an inspector in exercising powers under this part, including provisions related to giving notice of the damage to the person who appears to be the owner or in control of the damaged thing.

**Division 2 Compensation****566 Compensation**

*Clause 566* provides that a person may claim compensation from the State if the person incurs loss because of the exercise of a power by an inspector under this part. However, this does not apply if the loss arose from a lawful seizure or forfeiture.

**Part 9 Reviews and appeals about seizure and forfeiture**

*Clause 567 to 576* provide for an internal review and appeal of a decision under this part to seize or forfeit a thing. The provisions state that, in the first instance, the matter is to be considered by way of an application for an internal review. The provisions state how a person may apply for a review and the decisions that the chief executive may make. If the person who has applied for an internal review is dissatisfied with the review decision, the person may appeal to a court. The

provisions enable a court to grant a stay of the operation of a review decision, and provide for the decisions a court may make on appeal.

## **Chapter 15                      Offences and legal matters**

### **Part 1                              Preliminary**

#### **577            Purpose of ch 15**

*Clause 577* outlines the purpose of this part, including particular offences under the Bill.

### **Part 2                              Offences relating to patients**

#### **578            Offence relating to ill-treatment**

*Clause 578* established an offence for the ill-treatment of a patient.

#### **579            Offences relating to patients in custody absconding**

*Clause 579* establishes an offence for wilfully allowing the patient to abscond while in the persons charge.

#### **580            Other offences relating to absence of patients**

*Clause 580* establishes an offence for a person to induce, or knowingly help, a patient detained in an authorised mental health service or a public sector health service facility to unlawfully absent himself or herself from the service, or knowingly harbour a patient who is unlawfully absent. This clause also establishes an offence for an employee in an authorised mental health service or public sector health service facility to wilfully allow a patient detained in the service or facility to unlawfully absent himself or herself.

### **Part 3                              Offences relating to officials**

#### **581            Definitions for pt 3**

*Clause 581* defines the term 'official' for this division.

#### **582            Obstructing official**

*Clause 582* establishes an offence for obstructing an official.

**583 Impersonating official**

*Clause 583* establishes an offence for impersonating an official.

**584 Giving official false or misleading information**

*Clause 584* establishes an offence for giving false or misleading information to an official.

**Part 4 Custody and use of reasonable force for detention and treatment****585 Custody of particular patients**

*Clause 585* provides that the authorised mental health service has custody of particular patients.

**586 Detaining classified patient (voluntary)**

*Clause 586* provides that an authorised mental health service may detain a classified patient (voluntary).

**587 Use of reasonable force to detain person in authorised mental health service**

*Clause 587* enables an administrator of an authorised mental health service, and anyone lawfully helping the administrator, to exercise the power to detain a person who is authorised or required to be detained in an authorised mental health service, to detain the person in the service with the help, and using the force, that is necessary and reasonable in the circumstances.

**588 Use of reasonable force to detain person in public sector health service facility**

*Clause 588* enables a person in charge of a public sector health service facility, and anyone lawfully helping the person, to exercise the power to detain a person who is authorised or required to be detained in the service, to detain the person in the service with the help, and using the force, that is necessary and reasonable in the circumstances.

**589 Treatment of involuntary patients without consent and with use of reasonable force**

*Clause 589* applies to persons on a treatment authority, forensic order, court treatment order, or a person apprehended from interstate. This clause enables these

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persons to be treated for the person's mental illness without the consent of the person or anyone else. Treatment may be provided using the force that is necessary and reasonable in the circumstances. However, force may not be used to treat a person in a corrective services facility, watch-house or youth detention centre. This clause also clarifies that this does not extend to treatment that is inconsistent with another provision of this Bill, for example, where there is a requirement for a doctor to obtain the consent of the Mental Health Review Tribunal for electroconvulsive therapy.

**590 Examination or assessment of involuntary patients without consent and with use of reasonable force**

*Clause 590* enables an examination or assessment of an involuntary patient under this Bill to be made without the consent of the person or anyone else. An examination or assessment may be made using the force that is necessary and reasonable in the circumstances. However, force may not be used in a corrective services facility, watch-house or youth detention centre.

**Part 5 Evidentiary provisions**

**591 Evidentiary provisions**

*Clause 591* outlines the evidentiary provisions for the Bill.

**592 Proceedings for offences**

*Clause 592* outlines how proceedings for offences are to be taken.

**Chapter 16 Establishment and administration of tribunal and court**

**Part 1 Mental Health Review Tribunal**

**Division 1 Preliminary**

**593 Definitions for pt 1**

*Clause 593* provides the definitions of this part.





**601 Resignation**

*Clause 601* provides that tribunal members may resign by giving signed notice to Minister.

**602 Termination of appointment**

*Clause 602* states when Governor-in-Council must and may terminate a tribunal member's appointment.

**603 Deputy president to act as president**

*Clause 603* states the deputy president is to act in the office of the president when the office is vacant or absent from duty or the State, or other times when the president cannot perform their functions.

**604 Executive officer and other staff**

*Clause 604* enables the president to employ the executive officer and other staff under the *Public Service Act 2008*. The president controls and is responsible for the organisational unit and its staff, having all the functions and powers of a chief executive of a department where applicable.

**605 President's functions generally**

*Clause 605* outlines the president's functions including quick and efficient discharge of the Mental Health Review Tribunal's business, giving directions about tribunal hearings, ensuring members are appropriately trained and develop and possess the necessary competencies, ensuring directions to be consistent with the Act, and to do all things necessary to perform their functions.

**606 President's powers**

*Clause 606* states that the president of the tribunal has the powers given under this Act.

**Division 4 Constitution of tribunal for hearings****607 Members constituting tribunal for particular matters**

*Clause 607* sets out the conditions of the Mental Health Review Tribunal such as number of tribunal members when it is conducting reviews and deciding applications including those conditions pertaining to reviews and applications regarding electroconvulsive therapy.

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**608 Lawyer to constitute tribunal for decision on application for examination authority**

*Clause 608* provides that examination authority applications must be decided by a single tribunal member who is a lawyer or additional persons approved by the president.

**609 Members constituting tribunal for decision on application for approval to perform non-ablative neurosurgical procedure**

*Clause 609* provides the constitution of the Mental Health Review Tribunal for approving applications to perform non-ablative neurosurgical procedures.

**610 Matters president to consider in constituting tribunal**

*Clause 610* provides that for proceedings related to an involuntary patient the Mental Health Review Tribunal must have regard to the patient's current risk, and where applicable and practicable include a tribunal member who is culturally appropriate to the patient or the proceeding and to include a tribunal member with child psychiatry expertise for those proceedings pertaining to minors.

**611 Presiding member**

*Clause 611* provides who should be the presiding member of the Mental Health Review Tribunal for a proceeding.

**Division 5 Examinations confidentiality orders and reports****612 Tribunal may order examination**

*Clause 612* enables the Mental Health Review Tribunal to order an examination by a stated psychiatrist, doctor or other health practitioner for an involuntary patient and to provide a written report to the tribunal. The order must state matters which the examiner must report on.

**613 Confidentiality orders**

*Clause 613* provides that the Mental Health Review Tribunal may prohibit or restrict the disclosure of particular information to a person who is subject to a proceeding. A confidentiality order may only be made if the Mental Health Review Tribunal is satisfied the disclosure would cause serious harm to the person, or put the safety of the person or others at risk. If the tribunal makes a confidentiality order the tribunal must disclose the information, matters or reasons to the person's lawyer or another representative and give written reasons for the order to the person's lawyer or

another representative. The tribunal must ensure the person is represented if an application for a confidentiality order is made.

#### **614 Reports for particular review proceedings**

*Clause 614* provides that for reviews the treating practitioner for a person subject to the must provide a written report to the Mental Health Review Tribunal and the person, at least 7 days before a tribunal hearing in an approved form containing certain information. The treating practitioner does not have to comply if they intend to apply for a confidentiality order for the report.

### **Division 6 Procedural provisions for ch 12 proceedings**

#### **Subdivision 1 Applications**

##### **615 Application of sdiv 1**

*Clause 615* applies to applications made under chapter 12.

##### **616 Approved form**

*Clause 616* states the application must be in the approved form.

##### **617 Frivolous or vexatious application**

*Clause 617* states that the tribunal may dismiss an application if satisfied it is frivolous or vexatious.

##### **618 Hearing of application**

*Clause 618* states applications for examination authorities and electroconvulsive therapy the matter must be heard as soon as practicable but no later than 7 days after the application is lodged. For other applications the matter must be heard within 28 days.

#### **Subdivision 2 Adjournment of hearing of particular periodic reviews**

##### **619 Application of sdiv 2**

*Clause 691* states that the subdivision applies if a patient is absent prior to a periodic review.

**620 Definitions for sdiv 2**

*Clause 620* provides the definitions of this subdivision

**621 Adjournment of hearing of scheduled review**

*Clause 621* requires the administrator to notify the tribunal who then adjourns the hearing.

**622 Hearing of scheduled review to be conducted on person's return**

*Clause 622* states when a periodic review is re-scheduled.

**Division 7 General procedural provisions**

**Subdivision 1 Preliminary**

**623 Application of div 7**

*Clause 623* states that this division applies to any proceeding in the tribunal.

**624 Conducting proceedings generally**

*Clause 624* enables the procedure of a proceeding to be at the tribunal's discretion, subject to this Act and its rules. A party to a proceeding must be given reasonable opportunity to present their case and inspect documents relevant to the proceeding and to make submissions about the documents.

**625 Presentation of party's case and inspection of documents**

*Clause 625* requires parties to be given reasonable opportunity to inspect documents prior to a hearing.

**Subdivision 2 Pre-hearing matters**

**626 Matters to be stated in notice of hearing**

*Clause 626* states what must be included in the notice of hearing.

**627 Right to appear**

*Clause 627* states who has a right to appear at the hearing.

**628 Attorney-General to give notice of intention to appear**

*Clause 622* requires the Attorney-General to give a notice of intention to appear. The purpose of this is for the tribunal to arrange legal representation for the person as required under the Bill.

**629 Disclosure of documents to be relied on in hearing**

*Clause 629* provides that if a party to a proceeding intends to rely on a document in the hearing, they must give a copy to each party at least 3 days in advance of the hearing. However, if the party intends to apply for a confidentiality order in relation to the document the party does not have to give the document to the person subject to the proceeding but must give it to the person's lawyer or another representative. For this clause, the document does not include a victim impact statement.

**Subdivision 3 Hearings****630 Right of representation and support**

*Clause 630* states that a person, the subject, of a proceeding may be represented at the hearing by a nominated support person, a lawyer or another person. The person may also be accompanied by a nominated support person, family member, carer or other support person.

**631 Appointment of representative**

*Clause 631* deals with the appointment of representatives for a person at a tribunal hearing. The tribunal may appoint a lawyer or another person to represent the person if the tribunal considers it would be in the person's best interests.

Also, the tribunal must appoint a lawyer to represent the person at the hearing in the following circumstances at no cost to the patient if:

- the person is a minor; or
- the hearing is for any of the following:
  - a fitness for trial review
  - a review of the imposition of a monitoring condition
  - an application for approval to perform electroconvulsive therapy
- the State is represented at the hearing by the Attorney-General.

An adult person with capacity may, in writing, waive the right to be represented.

**632 Hearing not open to public**

*Clause 632* provides that a hearing of a proceeding must not be open to the public unless the Mental Health Review Tribunal, by order, directs the hearing or part of the

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hearing be open to the public. The tribunal must not order a hearing be open to the public if the person, the subject, of the hearing is a minor.

### **633 Observer may attend hearing**

*Clause 633* provides for the right of an observer to attend a hearing that is not open to the public to observe the hearing, provided the president of the tribunal gives approval for the observer's attendance and the person, the subject, of the hearing has given consent to the observer's attendance. The president may not give approval for an observer's attendance at a hearing if the person, the subject, of the hearing is a minor.

### **634 Victim impact statement**

*Clause 634* provides that at the hearing of the proceeding, a victim of an unlawful act may give the tribunal a victim impact statement which can include a request by the victim that the tribunal impose a condition that the person charged with the offence must not contact the victim or a close relative of the victim. This does require the victim to make another statement if one was already provided to the Mental Health Court.

If the victim makes such a request and the tribunal considers the victim impact statement may adversely affect the health and wellbeing of the person charged with the offence, the tribunal may prohibit the disclosure of the statement to the person.

### **635 Requiring witness to attend or produce document or thing**

*Clause 635* provides that the presiding member of the tribunal can by written notice given to a person, require the person to attend a hearing of a proceeding at a stated time and place to give evidence, or produce a stated document or thing that is relevant to the hearing.

### **636 Tribunal to allow party to call or give evidence**

*Clause 636* provides that in a proceeding, the tribunal must allow a party to the proceeding to call or give any evidence.

### **637 Proceeding by remote conferencing or on the papers**

*Clause 637* provides that the tribunal may conduct a proceeding or part thereof by remote conferencing. For a review of a treatment authority the tribunal may conduct the proceedings on the basis of documents, without the parties, their representatives or witnesses appearing if the relevant person does not wish to attend or be represented.

**638 Proceeding in absence of involuntary patient**

*Clause 638* enables proceedings to proceed in the absence of an involuntary patient if the tribunal considers the patient is absent because of the patient's own free will or is unfit to appear.

**639 Tribunal may conduct hearings of proceedings at same time**

*Clause 639* enables the tribunal to conduct concurrent hearings for different proceedings relating to the same person.

**640 Tribunal may adjourn proceeding**

*Clause 640* states that the Mental Health Review Tribunal may adjourn a proceeding for a period of not more than 28 days.

**641 Appointment of assistants**

*Clause 641* provides that the tribunal may appoint a person with appropriate knowledge or experience to assist it in a proceeding, including, for example, a person with appropriate communication skills or cultural or social knowledge or experience; or a person with expertise in the care of persons with an intellectual disability.

**642 Dealing with documents or other things**

*Clause 642* provides how the tribunal may deal with a document or other thing produced to it in a proceeding.

**643 Way questions decided**

*Clause 643* provides how decisions on a question of law and other matters are decided.

**644 Publication**

*Clause 644* provides that the tribunal may publish its final decision in a proceeding and any reasons for the decision, including, for example, if the tribunal is satisfied the decision or any reasons for the decision may be used as a precedent. The publication must not identify any person.

**645 Costs**

*Clause 645* states that each party to a proceeding is to bear the party's own costs.

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## **Subdivision 4                      Decision of tribunal**

### **646        Notice of decision**

*Clause 646* outlines how the tribunal must give notices of decisions.

### **647        Written reasons for decision**

*Clause 647* outlines how the tribunal must give written reasons for decisions.

### **648        Requirement to give effect to tribunal decisions**

*Clause 648* requires relevant persons to give effect to tribunal decisions, namely the administrator of an authorised mental health service or the forensic disability service.

## **Subdivision 5                      Revocation of particular forensic orders and court treatment orders**

### **649        Order for missing person**

*Clause 649* enables the tribunal to revoke a forensic order or a court treatment order for a person missing for 3 years.

## **Division 8                              Offences and contempt**

### **650        Offences by witnesses**

*Clause 650* makes it an offence if a person who is given an attendance notice fails to attend as required by the notice, or fails to continue to attend as required by the presiding member of the tribunal, or fails to produce a document or other thing the person is required to produce by an attendance notice.

### **651        False or misleading information or document**

*Clause 651* makes it an offence for a person to state to the tribunal or staff of the tribunal, anything the person knows is false or misleading in a material particular. This clause also provides that a person must not give the tribunal or staff of the tribunal a document containing information the person knows is false or misleading in a material particular.

### **652        Fabricating evidence**

*Clause 652* states that the tribunal is a tribunal for the Criminal Code, section 126.



**653 Contempt of tribunal**

*Clause 653* specifies when a person is in contempt of the tribunal. If a person is in contempt of the tribunal, the tribunal may order that person be excluded from the place where the proceeding is being conducted. A staff member of the tribunal or a health practitioner, acting under the tribunal's order can, with the help that is necessary and reasonable in the circumstances, exclude the person from the place.

**654 Punishment of contempt**

*Clause 654* provides that without limiting the tribunal's power, a person's contempt of the tribunal may be punished under this section.

**655 Conduct that is contempt and offence**

*Clause 655* provides that if conduct of a person is both contempt of the tribunal and an offence, the person may be proceeded against for the contempt or for the offence, but the person is not liable to be punished twice for the same conduct.

**Division 1 Protection and immunities****656 Protection and immunities for members**

*Clause 656* provides that a member has, in the exercise of jurisdiction for this Bill, the protection and immunities of a Supreme Court judge exercising the jurisdiction of a judge. A member also has, in a proceeding for defamation for a publication made to or by the member in the member's official capacity, a defence of absolute privilege if the publication was made in good faith. The burden of proving absence of good faith is on a person who alleges the absence.

**657 Other provisions about protection and immunities**

*Clause 657* provides that a lawyer or other person, who represents a party to a proceeding in the tribunal has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court. This clause also provides that a person given an attendance notice or appearing before the tribunal in a proceeding, has the same protection and immunity as a witness in a proceeding in the Supreme Court.

**Division 10 Rules and practice****658 Rule-making power**

*Clause 658* provides that the Governor-in-Council may make rules for the tribunal under this Bill about a prescribed list of matters, which are rules of court.

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**659 Directions about practice**

*Clause 659* states that subject to this Bill and the rules, the practice and procedure of the tribunal are as directed by the president of the tribunal. If this Bill or the rules do not provide or sufficiently provide for a particular matter, an application for directions may be made to the president.

**Division 11 Miscellaneous****660 Authentication of documents**

*Clause 660* specifies that a document requiring authentication by the tribunal is sufficiently authenticated if it is signed by a member.

**661 Judicial notice of particular signatures**

*Clause 661* states that judicial notice must be taken of the signature of a member if it appears on a document issued by the tribunal.

**662 Delegation**

*Clause 662* allows the president of the tribunal to delegate the president's powers under this Bill to the deputy president or another member of the tribunal.

**663 Register**

*Clause 663* mandates that the president of the tribunal must keep a register of applications, reviews heard by the tribunal, and decisions of the tribunal on the reviews and the reasons for the decisions.

**664 Annual report**

*Clause 664* provides that after each financial year, the president of the tribunal must prepare and give to the Minister a report on the tribunal's operations in the year. The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it.

**Part 2    Mental Health Court****Division 1                                      Preliminary****665            Purpose of pt 2**

*Clause 665* outlines the purpose of this part, which is primarily to continue the Mental Health Court and provide for its constitution, jurisdiction, powers and procedural matters.

**Division 2                                      Continuation, constitution, jurisdiction and powers****666            Continuation of Mental Health Court**

*Clause 666* continues in existence the Mental Health Court.

**667            Constitution**

*Clause 667* provides that the constitution of the Mental Health Court is a member of the court sitting alone. The court is to be assisted by 2 assisting clinicians, however, the court has jurisdiction to hear a matter with one assisting clinician. Assisting clinicians must be 2 psychiatrists or, if the hearing relates to a person with an intellectual disability, either 2 psychiatrists or 1 psychiatrist and a person with expertise in the care of persons with an intellectual disability.

**668            Jurisdiction**

*Clause 668* establishes the jurisdiction of the Mental Health Court, namely:

- to hear references to the court under chapter 5
- to hear appeals under this Act
- to review a person's detention in an authorised mental health service or the forensic disability service.

**669            Powers**

*Clause 669* states that the court may do all things necessary or convenient to be done for the exercise of its jurisdiction.

### **Division 3                      Membership**

#### **670        Appointment of members**

*Clause 670* deals with the membership of the court. Members of court are Supreme Court judges appointed by the Governor-in-Council.

#### **671        Appointment does not affect judge's tenure of office**

*Clause 671* states that the appointment does not affect the person's appointment as a judge.

#### **672        Resignation of office**

*Clause 672* enables a member to resign.

#### **673        When member's office ends**

*Clause 673* states when the member's office ends.

### **Division 4                      President**

#### **674        Appointment of president**

*Clause 674* provides that the Governor-in-Council is to appoint a member of the Mental Health Court to be the president.

#### **675        Arrangement of business**

*Clause 675* states that the president is responsible for the administration of the court.

#### **676        President holds office while member of court**

*Clause 676* provides the president holds office while he or she is a member of the court.

#### **677        Resignation of office**

*Clause 677* provides for the resignation of the president.

#### **678        Appointment of acting president**

*Clause 678* provides that the Governor-in-Council may appoint a member to be the president in an acting capacity.

## **Division 5                      Assisting clinicians**

### **679        Functions**

*Clause 679* outlines the functions of assisting clinicians in assisting the court.

### **680        Appointment**

*Clause 680* provides that the Governor-in-Council may appoint a psychiatrist or a person with expertise in the care of persons with an intellectual disability to be an assisting clinician.

### **681        Conditions of appointment**

*Clause 681* provides for the conditions of appointment for an assisting clinician.

### **682        Resignation**

*Clause 682* provides that an assisting clinician may resign.

### **683        Termination of appointment**

*Clause 683* provides that the Governor-in-Council may terminate the appointment of an assisting clinician.

## **Division 6                      Mental Health Court Registry and registrar**

### **684        Mental Health Court Registry**

*Clause 684* provides for the establishment of the Mental Health Court registry, consisting of the registrar and other staff.

### **685        Registry's functions**

*Clause 685* provides that the functions of the registry are to:

- act as the registry for the Mental Health court
- to provide administrative support to the Mental Health Court
- to perform any other functions conferred on the registry under this Bill.

### **686        Registrar's functions**

*Clause 686* states that the registrar administers the registry.

**687 Registrar's powers—general**

*Clause 687* provides for the general powers of the registrar.

**688 Registrar's power to issue subpoena**

*Clause 688* provides that the registrar may issue subpoenas.

**689 Registrar's power to require production of particular documents**

*Clause 689* gives the registrar the power to require the administrator of an authorised mental health service or the forensic disability service to give the registrar a stated document.

**690 Registrar's power to require person to be brought before Mental Health Court**

*Clause 690* gives the registrar the power to require a person to be brought before the Mental Health Court.

**691 Delegation by registrar**

*Clause 691* enables the registrar to delegate functions.

**Division 7 Protection and immunities**

**692 Contempt of court**

*Clause 692* outlines the contempt provisions for the court.

**693 Conduct that is contempt and offence**

*Clause 693* states what constitutes contempt.

**694 Protection and immunities for member of Mental Health Court**

*Clause 694* deals with the protection and immunities for members of the court.

**Division 8 Court examination orders**

**695 Making of court examination orders**

*Clause 695* gives the court the power to make a court examination order requiring the person the subject of the proceeding before a court to submit to an examination by a psychiatrist, doctor or other practitioner.



**704 Appointment of person to inquire into detention**

*Clause 704* enables the court to appoint a person to inquire into the detention.

**705 Administrator to ensure help given to appointed person**

*Clause 705* requires the administrator to give the appointed person reasonable help.

**706 General powers of appointed person**

*Clause 706* outlines the powers of the appointed person in carrying out the inquiry.

**707 Appointed person's power to ask questions**

*Clause 707* enables the appointed person to ask questions which the other person is required to answer.

**708 Mental Health Court may direct person's discharge**

*Clause 708* provides that the court may direct the person be discharged from the relevant service if the court is satisfied that person's detention is unlawful.

**709 Other remedies not affected**

*Clause 709* provides that this division does not limit any other remedy available to the person.

**Division 10 Procedural provisions**

*Clause 710 to 725* deal with procedural matters for the Mental Health Court, including:

- the right of a person to be represented by a lawyer or, with the leave of the court, another person
- that the court is not bound by the rules of evidence
- that no party to the proceeding is the onus of proof
- the power of the court to give directions about the hearing or proceedings
- the way in which the advice of assistant clinicians is to be provided to the court and stated in reasons
- when the court may proceed in the absence of a person
- the ability of the court to appoint persons to assist the court, including persons with appropriate cultural or social knowledge or experience
- the court may sit and adjourn proceedings at any time
- the fact that proceedings on references are generally open to the public unless it involves a minor or is an appeal or a review of detention



- the making of confidentiality orders by the court
- the fact that each party each pays the cost of the proceeding
- the way in which the proceeding may continue if a member of the court dies or becomes incapable of continuing to hear the proceeding.

## **Division 11                      Rules and practices**

### **726        Rule-making power**

*Clause 726* provides that the Governor-in-Council may make rules under this Act in relation to the Mental Health Court with the consent of the president of court.

### **727        Directions about practice**

*Clause 727* provides that, subject to this Act and the court rules, the practices and procedures of the court are as directed by the president.

## **Division 12                      Miscellaneous provisions**

### **728        Annual report**

*Clause 728* requires the court to prepare an annual report.

## **Chapter 17                      Confidentiality**

### **Part 1                              Preliminary**

#### **729        Purpose of ch 17**

*Clause 729* provides the purpose of this chapter.

#### **730        Definitions for ch 17**

*Clause 730* provides for the definitions for this chapter.

#### **731        Relationship of ch 17 with other Acts**

*Clause 731* states that this chapter applies to the use or disclosure of information in this chapter despite any prohibitions or limitations on the use or disclosure under the *Hospital and Health Boards Act 2011*, the *Information Privacy Act 2009* or another Act.



**737 Disclosure for patient rights adviser**

*Clause 737* enables a designated person to disclose personal information to a patient rights adviser if it assists in the adviser performing their functions under this Bill.

**738 Disclosure of information relating to classified patients**

*Clause 738* enables a designated person, if they reasonably believe a person is, or may be, a victim of an unlawful act committed by a person who is a classified patient, to disclose personal information about the classified patient. The person the information is disclosed to must give a written undertaking to preserve the confidentiality of the information.

**739 Disclosure of information relating to persons having contact with forensic disability service**

*Clause 739* enables the chief psychiatrist, or the administrator of the authorised mental health service to disclose personal information about the person to the director of forensic disability or the administrator of the forensic disability service to facilitate the transfer from a forensic disability service to an authorised mental health service and to provide care for the person. The disclosure of information by the director of forensic disability or the administrator of the forensic disability service is also authorised.

**740 Disclosure to lawyers**

*Clause 740* enables a designated person to disclose personal information about a patient, including the patient's health records, to a lawyer if it assists the lawyer to provide legal services to the patient for a Mental Health Court or Mental Health Review Tribunal proceeding.

**741 Disclosure of photographs of patients**

*Clause 741* enables the administrator of an authorised mental health service to disclose a photograph of an involuntary patient or a classified patient (voluntary) who is absent to the commissioner of the police service, or another person, to help locate the person.



**747 Publication of information disclosed at hearing permitted**

*Clause 747* provides that subject to previous sections nothing in this part prevents the disclosure of information disclosed in a hearing of the Mental Health Court.

**Chapter 18 General provisions**

**748 Detention of involuntary patient must be in inpatient unit**

*Clause 748* provides that an involuntary patient detained under this Act must be detained in an inpatient unit of service.

**749 Use of audio-visual link for examination or assessment**

*Clause 749* provides that an examination or assessment under this Act may be done using audio-visual facilities.

**750 Disclosure by QCAT of information about personal guardian**

*Clause 750* enables QCAT to disclose information about personal guardians to the Mental Health Review Tribunal or another person involved in the administration of this Act.

**751 Protection of officials from liability**

*Clause 751* protects officials from liability for an act done, or omission made, honestly and without negligence under this Act. If this prevents a civil liability attaching to an official, the liability attaches instead to the State.

**752 Approved forms**

*Clause 752* provides that the president of the Mental Health Court, the president of the Mental Health Review Tribunal, and the chief psychiatrist may approve forms for use under this Bill.

**753 Regulation-making power**

*Clause 753* enables the Governor-in-Council to make regulations under this Bill.

**Chapter 19 Repeal**

**754 Repeal**

*Clause 754* repeals the *Mental Health Act 2000*.



**763 Agreement for assessment**

*Clause 763* continues in force an agreement for assessment under the repealed Act.

**764 Custodian's assessment authority**

*Clause 764* continues in force a custodian's assessment authority under the repealed Act.

**765 Taking person to authorised mental health service**

*Clause 765* continues the authority to transport person under a recommendation for assessment under the repealed Act

**766 Classified patients**

*Clause 766* transitions classified patients to being classified patients under this Bill.

**767 Report of authorised doctor**

*Clause 767* continues in force a report by an authorised the doctor to the chief psychiatrist in relation to returning a classified patient to custody.

**768 Involuntary treatment orders**

*Clause 768* transitions involuntary treatment orders to treatment authorities under this Bill, with the same categories and conditions that applied under the repealed Act.

**Part 3 Provisions about assessment or detention of persons before a court or in custody under chapter 3 of repealed Act**

**769 Court assessment order**

*Clause 769* continues in force court assessment orders under the repealed Act.

**770 Order of plea of guilty by Supreme or District Court under repealed s 62**

*Clause 770* continues in force an order by the Supreme or District Court under section 62 of the repealed Act.







**784 Discontinuing proceeding for offence following review of fitness for trial**

*Clause 784* outlines the transitional arrangements for decisions related to fitness for trial reviews.

**785 Non-contact order ends**

*Clause 785* states that a non-contact order under the repealed Act ends

**Part 8 Provisions about examinations, references and orders under chapter 7 of repealed Act**

**Division 1 Examinations under ch 7, pt 2 of repealed Act**

**786 Making of reference under repealed Act by director**

*Clause 786* continues the chapter 7 part 2 processes for psychiatrist reports under the repealed Act.

**Division 2 References**

**787 Application of div 2**

*Clause 787* states that this division applies to references made to the Mental Health Court that had not been decided.

**788 Hearing of reference continues under repealed Act**

*Clause 788* provides that hearings of references to the Mental Health Court continue.

**789 Appeal against Mental Health Court's decision**

*Clause 789* provides that appeals may be made against decisions made before the repeal.

**Division 3                      Forensic orders (Mental Health Court) and forensic orders (Mental Health Court—Disability)**

**790        Forensic order (Mental Health Court)**

*Clause 790* transitions a forensic order (Mental Health Court) that was in force immediately before commencement to a forensic order (mental condition).

**791        Forensic order (Mental Health Court—Disability)**

*Clause 791* transitions a forensic order (Mental Health Court—Disability) that was in force immediately before commencement to a forensic order (disability).

**792        Limited community treatment for forensic patient**

*Clause 792* continues limited community treatment under the repealed Act.

**793        Review of forensic order under new Act**

*Clause 793* requires the tribunal, on the first review of a forensic order after the commencement to decide the category of the order. This is required as the Bill establishes a new community category.

**Division 4                      Other provisions**

**794        Order approving interstate transfer under s 288B of repealed Act**

*Clause 794* provides that a person who was moved out of Queensland by decision of the Mental Health Court taken to have been transferred.

**795        Forensic order (Criminal Code)**

*Clause 795* continues in force a forensic order (Criminal Code).

**796        Custody order**

*Clause 796* continues in force a custody order.

**797        Forensic order (Minister)**

*Clause 797* continues in force a forensic order (Minister).

**798 Forensic disability client temporarily detained in authorised mental health service**

*Clause 798* continues in force a detention under section 309B of the repealed Act.

**Part 9 Provisions about information orders under chapter 7A of repealed Act**

**799 Forensic information orders**

*Clause 799* continues the entitlement of a person to receive information under a forensic information order, to be re-named an information notice.

**800 Classified patient information orders**

*Clause 800* enables persons who are receiving information under a classified patient information order to continue to receive information.

**Part 10 Provisions about security of authorised mental health services under chapter 10 of repealed Act**

**801 Exclusion of visitors**

*Clause 801* continues in force a decision by an administrator of an authorised mental health service to exclude visitors.

**Part 11 Provisions about Mental Health Court under chapter 11 of repealed Act**

**802 Mental Health Court registry**

*Clause 802* continues in force the Mental Health Court registry, including the employment of the registrar and staff.

**803 Court examination order**

*Clause 803* continues in force a court examination order.

**804 Inquiry into detention of patient in authorised mental health service**

*Clause 804* enables an inquiry into the detention of a person to continue as if this Bill had not commenced.



**811 Suspended proceedings**

*Clause 811* continues the suspension of proceedings under the repealed Act, which will end in accordance with this Act.

**812 Reviews relating to serious risks**

*Clause 812* continues in force reviews about serious risks.

**813 Appeals**

*Clause 813* enables appeals to continue.

**814 Annual reports**

*Clause 814* deals with annual reports during the transition period.

**815 References to orders and authorities under repealed Act**

*Clause 815* continues an order made by the chief psychiatrist if there was a serious risk under the repeal Act.

**816 Transitional regulation-making power**

*Clause 816* provides for transitional regulations.

**Chapter 21 Amendment of Acts****Part 1 Amendment of this Act**

*Clauses 817 to 819* deal with preliminary matters for this chapter.

**Part 2 Amendment of Criminal Code**

*Clause 820 to 825* provide for amendments to the Criminal Code. The effect of these provisions is to consistently require persons placed on orders under sections 613, 645 and 647 to be transported to an authorised mental health service to be dealt with under this Bill.

**Part 3 Amendment of *Forensic Disability Act 2011***

*Clauses 826 to 865* outline consequential amendments to the *Forensic Disability Act 2011*.



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