



Queensland

Mental Health (Recovery Model) Bill 2015



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2015

A Bill

for

An Act to provide for the treatment and care of people who have mental illnesses and for other purposes, and further to repeal the *Mental Health Act 2000*, and to amend this Act, the Criminal Code, the *Forensic Disability Act 2011*, the *Powers of Attorney Act 1998* and the *Public Health Act 2005*, and to make minor and consequential amendments of other Acts as stated in schedule 4

[s 1]

The Parliament of Queensland enacts— 1

Chapter 1 Preliminary 2

Part 1 Introduction 3

1 Short title 4

This Act may be cited as the *Mental Health (Recovery Model) Act 2015*. 5
6

2 Commencement 7

This Act commences on 1 January 2016. 8

3 Main objects of Act 9

(1) The main objects of this Act are— 10

(a) to improve and maintain the health and wellbeing of 11
persons who have a mental illness who do not have the 12
capacity to consent to be treated; and 13

(b) to enable persons to be diverted from the criminal 14
justice system if found to have been of unsound mind at 15
the time of committing an unlawful act or to be unfit for 16
trial; and 17

(c) to protect the community if persons diverted from the 18
criminal justice system may be at risk of harming others. 19

(2) The main objects are to be achieved in a way that— 20

(a) safeguards the rights of persons; and 21

(b) ensures the rights and liberties of a person who has a 22
mental illness are adversely affected only to the extent 23

	required to protect the person's health and safety or to protect others; and	1 2
	(c) promotes the recovery of a person who has a mental illness, and the person's ability to live in the community, without the need for involuntary treatment and care.	3 4 5
4	Act binds all persons	6
	(1) This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.	7 8 9
	(2) Nothing in this Act makes the State liable to be prosecuted for an offence.	10 11
Part 2	Principles for administration of Act	12 13
5	Principles for person with mental illness	14
	The following principles apply to the administration of this Act in relation to a person with, or who may have, a mental illness—	15 16 17
	(a) Same human rights	18
	• the right of all persons to the same basic human rights must be recognised and taken into account	19 20
	• a person's right to respect for his or her human worth and dignity as an individual must be recognised and taken into account	21 22 23
	(b) Matters to be considered in making decisions	24
	• to the greatest extent practicable, a person is to be encouraged to take part in making decisions	25 26

[s 5]

affecting the person's life, especially decisions about treatment and care	1 2
• to the greatest extent practicable, in making a decision about a person, the person's views, wishes and preferences are to be taken into account	3 4 5
• a person is presumed to have capacity to make decisions about the person's treatment and care and other matters under this Act	6 7 8
(c) Support persons	9
• to the greatest extent practicable, family, carers and other support persons of a person who has a mental illness are to be involved in decisions about the person's treatment and care, subject to the person's right to privacy	10 11 12 13 14
(d) Provision of support and information	15
• to the greatest extent practicable, a person is to be provided with necessary support and information to enable the person to exercise rights under this Act, including, for example, providing access to other persons to help the person express the person's views, wishes and preferences	16 17 18 19 20 21
(e) Achievement of maximum potential and self-reliance	22
• to the greatest extent practicable, a person is to be helped to achieve maximum physical, social, psychological and emotional potential, quality of life and self-reliance	23 24 25 26
(f) Acknowledgement of needs	27
• a person's age-related, gender-related, religious, communication and other special needs must be recognised and taken into account	28 29 30
(g) Aboriginal people and Torres Strait Islanders	31
• the unique cultural, communication and other needs of Aboriginal people and Torres Strait	32 33

Islanders must be recognised and taken into account	1 2
• to the extent that is practicable and appropriate in the circumstances, services provided to Aboriginal people and Torres Strait Islanders must have regard to the person’s cultural and spiritual beliefs and practices, and the views of the person’s family and significant members of the person’s community	3 4 5 6 7 8
• to the extent that is practicable and appropriate in the circumstances, communication with Aboriginal people or Torres Strait Islanders is to be assisted by an interpreter	9 10 11 12
(h) Persons from culturally and linguistically diverse backgrounds	13 14
• the unique cultural, communication and other needs of persons from culturally and linguistically diverse backgrounds must be recognised and taken into account	15 16 17 18
• to the extent that is practicable and appropriate in the circumstances, services provided to persons from culturally and linguistically diverse backgrounds must have regard to the person’s cultural, religious and spiritual beliefs and practices and the views of the person’s family and significant members of the person’s community	19 20 21 22 23 24 25
• to the extent that is practicable and appropriate in the circumstances, communication with persons from culturally and linguistically diverse backgrounds is to be assisted by an interpreter	26 27 28 29
(i) Minors	30
• to the greatest extent practicable, a minor receiving treatment and care must have their best interests recognised and promoted, including, for example, by receiving treatment and care separately from adults if practicable and by having their specific	31 32 33 34 35

[s 6]

needs, wellbeing and safety recognised and protected	1 2
(j) Maintenance of supportive relationships and community participation	3 4
• to the greatest extent practicable, the importance of a person's continued participation in community life and maintaining existing supportive relationships are to be taken into account, including, for example, by providing treatment in the community in which the person lives	5 6 7 8 9 10
(k) Importance of recovery-oriented services and reduction of stigma	11 12
• the importance of recovery-oriented services and the reduction of stigma associated with mental illness must be recognised	13 14 15
(l) Provision of treatment and care	16
• treatment and care provided under this Act must be provided to a person who has a mental illness only if it is appropriate to promote and maintain the person's mental health and wellbeing	17 18 19 20
• care provided to a person with an intellectual disability under this Act must be provided only if it is appropriate to promote and maintain the person's health and wellbeing	21 22 23 24
(m) Confidentiality	25
• a person's right to confidentiality of information about the person must be recognised and taken into account.	26 27 28
6 Principles for victim of unlawful act	29
The following principles apply to the administration of this Act in relation to a victim of an unlawful act—	30 31

	(a) the physical, psychological and emotional harm caused to the victim by the unlawful act must be recognised with compassion;	1 2 3
	(b) the benefits to the victim of the timely completion of proceedings against a person for the unlawful act must be recognised;	4 5 6
	(c) the benefits to the victim of being advised in a timely way of decisions to allow the person alleged to have committed the unlawful act to be treated in the community must be recognised;	7 8 9 10
	(d) the benefits of counselling, advice on the nature of proceedings under this Act and other support services to the recovery of the victim from the harm caused by the unlawful act must be recognised;	11 12 13 14
	(e) the benefits to the victim of being advised in a timely way of proceedings under this Act against a person for the unlawful act must be recognised;	15 16 17
	(f) the benefits to the victim of being given the opportunity to express his or her views on the impact of the unlawful act to decision-making entities under this Act must be recognised.	18 19 20 21
7	Person to have regard to principles	22
	In performing a function or exercising a power under this Act, a person is to have regard to the principles stated in sections 5 and 6.	23 24 25
8	Application of provisions to person with intellectual disability	26 27
	To the extent this Act applies to a person with an intellectual disability—	28 29
	(a) sections 3 and 5 apply in relation to the person as if a reference in the sections to a person who has a mental	30 31

[s 9]

illness were a reference to a person with an intellectual disability; and	1 2
(b) a reference in the Act to treatment and care of a person means a reference to care of the person.	3 4

Part 3 Interpretation 5

9 Definitions	6
The dictionary in schedule 3 defines particular words used in this Act.	7 8

10 Meaning of *mental illness* 9

(1) <i>Mental illness</i> is a condition characterised by a clinically significant disturbance of thought, mood, perception or memory.	10 11 12
(2) However, a person must not be considered to have a mental illness merely because—	13 14
(a) the person holds or refuses to hold a particular religious, cultural, philosophical or political belief or opinion; or	15 16
(b) the person is a member of a particular racial group; or	17
(c) the person has a particular economic or social status; or	18
(d) the person has a particular sexual preference or sexual orientation; or	19 20
(e) the person engages in sexual promiscuity; or	21
(f) the person engages in immoral or indecent conduct; or	22
(g) the person takes drugs or alcohol; or	23
(h) the person has an intellectual disability; or	24

-
- (i) the person engages in antisocial behaviour or illegal behaviour; or 1
2
 - (j) the person is or has been involved in family conflict; or 3
 - (k) the person has previously been treated for mental illness or been subject to involuntary assessment or treatment. 4
5
 - (3) Subsection (2) does not prevent a person mentioned in the subsection having a mental illness. 6
7
 - Examples for subsection (3)—* 8
 - 1 A person may have a mental illness caused by taking drugs or alcohol. 9
10
 - 2 A person may have a mental illness as well as an intellectual disability. 11
12
 - (4) A decision that a person has a mental illness must be made in accordance with internationally accepted medical standards. 13
14

11 **Meaning of *involuntary patient*** 15

An *involuntary patient* means— 16

- (a) a person subject to any of the following— 17
 - (i) an examination authority; 18
 - (ii) a recommendation for assessment; 19
 - (iii) a treatment authority; 20
 - (iv) a forensic order; 21
 - (v) a court treatment order; 22
 - (vi) a judicial order; or 23
- (b) a person from another State detained in an authorised mental health service under section 354(4). 24
25

12 **Meaning of *treatment criteria*** 26

- (1) The *treatment criteria* for a person are all of the following— 27
 - (a) the person has a mental illness; 28

[s 13]

- (b) the person does not have capacity to consent to be treated for the illness; 1
2
- (c) because of the person's illness, the absence of involuntary treatment, or the absence of continued involuntary treatment, is likely to result in— 3
4
5
 - (i) imminent serious harm to the person or others; or 6
 - (ii) the person suffering serious mental or physical deterioration. 7
8
- (2) For subsection (1)(b), the person's own consent only is relevant. 9
10
- (3) Subsection (2) applies despite the *Guardianship and Administration Act 2000*, the *Powers of Attorney Act 1998* or any other law. 11
12
13

13 Meaning of *less restrictive way* 14

- (1) For this Act, there is a ***less restrictive way*** for a person to receive treatment and care for the person's mental illness if, instead of receiving involuntary treatment and care, the person is able to receive treatment and care in 1 of the following ways— 15
16
17
18
19
 - (a) if the person is a minor—with the consent of the minor's parent; 20
21
 - (b) if the person has made an advance health directive—under the advance health directive; 22
23
 - (c) if a personal guardian has been appointed for the person—with the consent of the personal guardian; 24
25
 - (d) if an attorney has been appointed for the person—with the consent of the attorney; 26
27
 - (e) if the person has a statutory health attorney—with the consent of the statutory health attorney. 28
29
- (2) In deciding whether there is a less restrictive way for a person to receive treatment and care for the person's mental illness, a person performing a function or exercising a power under this 30
31
32

	Act must consider the ways mentioned in subsection (1) in the listed order set out in the subsection.	1 2
(3)	In this section—	3
	<i>statutory health attorney</i> , of a person, means a statutory health attorney under the <i>Powers of Attorney Act 1998</i> , section 63(1).	4 5 6
14	Meaning of <i>capacity</i> to consent to be treated	7
(1)	A person has <i>capacity</i> to consent to be treated if the person—	8
(a)	recognises the person has a mental illness; and	9
(b)	is capable of understanding, in general terms—	10
(i)	the nature and purpose of the treatment for the mental illness; and	11 12
(ii)	the benefits and risks of the treatment, and alternatives to the treatment; and	13 14
(iii)	the consequences of not receiving the treatment; and	15 16
(c)	is capable of making a decision about the treatment and communicating the decision in some way.	17 18
(2)	A person may have <i>capacity</i> to consent to be treated even though the person decides not to receive treatment.	19 20
(3)	A person may be supported by another person in understanding the matters mentioned in subsection (1) and making a decision about the treatment.	21 22 23
(4)	This section does not affect the common law in relation to the capacity of a minor to consent to be treated or a parent of a minor to consent to treatment on the minor's behalf.	24 25 26
15	Responsibility for an involuntary patient	27
(1)	This section applies if a provision of this Act states that—	28

[s 16]

(a)	an authorised mental health service is responsible for an involuntary patient; or	1 2
(b)	the forensic disability service is responsible for a person subject to a forensic order (disability).	3 4
(2)	If subsection (1)(a) applies, the administrator of the authorised mental health service is responsible for the treatment and care of the involuntary patient under an order or authority to which the person is subject.	5 6 7 8
	<i>Note—</i>	9
	See also section 585 in relation to custody of a classified patient.	10
(3)	If subsection (1)(b) applies, the administrator of the forensic disability service is responsible for the care of the person under the forensic order (disability) for the person.	11 12 13
16	Purpose of limited community treatment	14
	The purpose of limited community treatment is to support a patient’s recovery by transitioning the patient to living in the community with appropriate treatment and care.	15 16 17
Part 4	Overview of Act	18
17	Purpose of pt 4	19
	This part gives an overview of this Act.	20
18	Treatment authorities	21
(1)	A treatment authority is a lawful authority to provide treatment and care to a person who has a mental illness who does not have capacity to consent to be treated.	22 23 24
(2)	A treatment authority may be made for a person if an authorised doctor considers the treatment criteria apply to the	25 26

person and there is no less restrictive way for the person to
receive treatment and care for the person's mental illness,
including, for example, under an advance health directive.

- (3) Key elements of the treatment criteria are that the person does
not have capacity to consent to be treated and there is a risk of
serious harm to the person or others.
- (4) The category of a treatment authority is—
 - (a) community, if the person's treatment and care needs can
be met in the community; or
 - (b) inpatient, if the person's treatment and care needs can be
met only by being an inpatient.
- (5) A person subject to a treatment authority of the inpatient
category may receive limited community treatment, for
periods of not more than 7 days, if authorised under this Act.

19 Persons in custody 15

A person in custody, including, for example, in a watch house
or 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 treatment and care for
the person's mental illness.

20 Psychiatrist reports 21

- (1) 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 prepare a report stating the psychiatrist's opinion
about whether the person—
 - (a) may have been of unsound mind at the time of the
alleged commission of the serious offence; or
 - (b) may be unfit for trial.
- (2) Also, if a person is charged with a serious offence, whether or
not the person is subject to an authority or order, the chief

[s 21]

psychiatrist may direct that a psychiatrist prepare a report
about the matters mentioned in subsection (1) if the chief
psychiatrist believes it is in the public interest.

- (3) A serious offence is an indictable offence, other than an
offence that must otherwise be heard by a magistrate.

21 Mental Health Court

- (1) The Mental Health Court decides whether a person charged
with a serious offence was of unsound mind at the time of the
alleged offence or is unfit for trial.
- (2) If the court decides a person was of unsound mind at the time
of the alleged offence, or is unfit for trial, the court may make
a forensic order or a court treatment order for the person.
- (3) The forensic order may be a forensic order (mental condition)
or a forensic order (disability).
- (4) The court must also decide the category of the order and, if
the category is inpatient, any limited community treatment for
the patient.
- (5) If the court decides 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.

22 Magistrates courts

- (1) A magistrates court may discharge a person charged with an
offence if the court is reasonably satisfied, on the balance of
probabilities, that the person was of unsound mind when the
offence was allegedly committed or appears to be unfit for
trial.
- (2) A magistrates court 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.

23	Treatment and care of patients	1
(1)	The treatment and care of a patient is the responsibility of authorised doctors and an administrator of an authorised mental health service.	2 3 4
(2)	A patient subject to a treatment authority must be regularly assessed to decide if the treatment authority should continue.	5 6
(3)	An authorised doctor may amend a person's treatment authority, forensic order or court treatment order by changing the category of the authority or order, its conditions, or the nature and extent of limited community treatment.	7 8 9 10
(4)	An amendment of a forensic order must be in accordance with decisions of the Mental Health Court and the Mental Health Review Tribunal.	11 12 13
(5)	To the extent practicable, decisions in relation to treatment and care for a patient must be decided in consultation with the patient and the patient's family, carers and other support persons.	14 15 16 17
(6)	The performance of electroconvulsive therapy and non-ablative neurosurgical procedures is regulated under this Act.	18 19 20
(7)	Psychosurgery is prohibited under this Act.	21
24	Mechanical restraint and seclusion	22
(1)	The use of mechanical restraint on, and the seclusion of, an involuntary patient of an authorised mental health service is regulated under this Act.	23 24 25
(2)	The use of mechanical restraint on an involuntary patient of an authorised mental health service must be approved by the chief psychiatrist.	26 27 28
(3)	Mechanical restraint and seclusion may only be used if necessary to protect the patient or others from physical harm and there is no other reasonably practicable way to protect the patient or others from physical harm.	29 30 31 32

[s 25]

25	Rights of involuntary patients and others	1
(1)	This Act provides for a statement of rights for involuntary patients.	2 3
(2)	A patient may appoint a nominated support person, who is enabled, under the Act, to support the patient.	4 5
(3)	Public sector mental health services must employ, or otherwise engage, a patient rights adviser to advise a patient and the patient's family, carers and other support persons of their rights under the Act.	6 7 8 9
26	Chief psychiatrist	10
(1)	The chief psychiatrist protects the rights of involuntary patients in authorised mental health services.	11 12
(2)	The chief psychiatrist makes policies and practice guidelines that persons in authorised mental health services must comply with.	13 14 15
(3)	The chief psychiatrist has powers to investigate matters under this Act.	16 17
27	Information notices	18
	Victims of unlawful acts may apply to the chief psychiatrist to receive specific information about the person who committed the unlawful act, including when community treatment is authorised for the person.	19 20 21 22
28	Mental Health Review Tribunal	23
(1)	The Mental Health Review Tribunal reviews the following—	24
(a)	treatment authorities;	25
(b)	forensic orders;	26
(c)	court treatment orders;	27
(d)	the fitness for trial of particular persons;	28

[s 29]

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- (e) the imposition of monitoring conditions that include a tracking device; 1
2
 - (f) the detention of minors in high security units. 3
 - (2) The Mental Health Review Tribunal also hears applications 4
for the following— 5
 - (a) examination authorities; 6
 - (b) the approval of regulated treatment; 7
 - (c) the transfer of forensic patients into and out of 8
Queensland. 9
 - (3) This Act states when periodic reviews of treatment 10
authorities, forensic orders and court treatment orders must 11
take place. 12
 - (4) A patient, or someone on behalf of the patient, may apply for 13
a review at any time. 14

29 Appeals 15

This Act provides for— 16

- (a) an appeal to the tribunal from particular decisions of the 17
chief psychiatrist or the administrator of an authorised 18
mental health service; and 19
- (b) an appeal to the Mental Health Court from particular 20
decisions of the tribunal; and 21
- (c) an appeal to the Court of Appeal from a decision of the 22
Mental Health Court on a reference in relation to a 23
person. 24

[s 30]

Chapter 2	Treatment authorities on	1
	examination and	2
	assessment	3

Part 1	Preliminary	4
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30	Purpose of ch 2	5
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The purpose of this chapter is to provide for— 6

(a) matters relating to the examination and assessment of 7
persons who may have a mental illness; and 8

(b) the making of treatment authorities for persons who 9
have a mental illness if the treatment criteria apply to the 10
person and there is no less restrictive way for the person 11
to receive treatment and care for the person’s mental 12
illness. 13

Note— 14

See also chapter 3 for other matters in relation to persons in custody 15
who have or may have a mental illness. 16

Part 2	Examinations and recommendations for assessment	1 2 3
Division 1	Examinations generally	4
31	Examination	5
(1)	A doctor or authorised mental health practitioner may examine a person to decide whether to make a recommendation for assessment for the person.	6 7 8
(2)	Without limiting subsection (1), the examination may be carried out—	9 10
(a)	if the person asks for, or consents to, the examination; or	11
(b)	under this Act or another Act providing for the examination, including, for example, under an examination authority or emergency examination authority.	12 13 14 15
(3)	However, a doctor or authorised mental health practitioner must not examine a person subject to a forensic order (mental condition), forensic order (Criminal Code) or court treatment order for the purpose of deciding whether to make a recommendation for assessment for the person.	16 17 18 19 20
Division 2	Powers under examination authorities	21 22
32	Powers under examination authority	23
(1)	This section applies if a person is subject to an examination authority.	24 25
(2)	A doctor or authorised mental health practitioner may—	26

[s 33]

- (a) enter a place stated in the authority or another place the doctor or authorised mental health practitioner considers the person may be found, and any other place necessary for entry to the place, to find the person; and
 - (b) examine the person, without the person’s consent, at—
 - (i) the place mentioned in paragraph (a); or
 - (ii) if the doctor or authorised mental health practitioner considers it clinically appropriate—an authorised mental health service or public sector health service facility; and
 - (c) detain the person at the place mentioned in paragraph (b) for the period that is reasonably necessary for the person to be examined.
- (3) If subsection (2)(b)(ii) applies to the person, an authorised person may transport the person to the authorised mental health service or public sector health service facility for examination.

33 Reasonable help and force to exercise powers

A doctor or authorised mental health practitioner may exercise a power under section 32 with the help, and using the force, that is necessary and reasonable in the circumstances.

34 Public officials for examination authority

For performing a function or exercising a power under section 32 in relation to a person, a doctor or authorised mental health practitioner is a public official for the *Police Powers and Responsibilities Act 2000*.

Note—

For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16.

35	Action before exercising powers	1
(1)	Before exercising a power under section 32 in relation to a person, a doctor or authorised mental health practitioner must do or make a reasonable attempt to do the following—	2
(a)	identify himself or herself to the person;	3
(b)	tell the person an examination authority has been made;	4
(c)	if asked by the person—give the person a copy of the authority;	5
(d)	explain to the person, in general terms, the nature and effect of the authority;	6
(e)	if the doctor or authorised mental health practitioner is entering a place—give the person an opportunity to allow the doctor or health practitioner immediate entry to the place without using force.	7
(2)	However, the doctor or authorised mental health practitioner need not comply with subsection (1) if the doctor or health practitioner believes on reasonable grounds that exercising the power without compliance is required to ensure the execution of the authority is not frustrated.	8
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Division 3	Recommendations for assessment	20
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36	Making recommendation for assessment	21
(1)	A doctor or authorised mental health practitioner may, after examining a person, make a recommendation for assessment for the person if satisfied that on an assessment of the person an authorised doctor may form the view that—	22
(a)	the treatment criteria apply to the person; and	23
(b)	there is no less restrictive way for the person to receive treatment and care for the person's mental illness.	24
(2)	The recommendation for assessment must be made within 7 days after the examination.	25
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		27
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		29
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[s 37]

(3)	The recommendation for assessment must be in the approved form.	1 2
37	Notice of making recommendation for assessment	3
(1)	As soon as practicable after deciding to make the recommendation for assessment, the doctor or authorised mental health practitioner must—	4 5 6
(a)	tell the person of the decision; and	7
(b)	explain to the person the effect of the recommendation; and	8 9
(c)	if asked by the person—give a copy of the recommendation to the person.	10 11
(2)	However, subsection (1)(c) does not apply if the doctor or authorised mental health practitioner is satisfied giving a copy of the recommendation for assessment to the person is not in the person’s best interests.	12 13 14 15
38	Duration of recommendation for assessment	16
	A recommendation for assessment is in force for 7 days after it is made.	17 18
39	Revoking recommendation for assessment	19
(1)	The doctor or authorised mental health practitioner who made a recommendation for assessment may revoke the recommendation at any time before the start of the assessment period for the person subject to the recommendation.	20 21 22 23
(2)	The doctor or authorised mental health practitioner may act under subsection (1) only if the health practitioner or doctor is no longer satisfied that on an assessment of the person an authorised doctor may form the view that—	24 25 26 27
(a)	the treatment criteria apply to the person; or	28

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|--|--|--------|
| | (b) there is no less restrictive way for the person to receive treatment and care for the person's mental illness. | 1
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Part 3	Assessments	3
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40	Making assessment	4
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|--|---|----------------------------------|
| | (1) An authorised doctor may make an assessment of a person subject to a recommendation for assessment to decide— | 5
6 |
| | (a) whether the treatment criteria apply to the person; and | 7 |
| | (b) whether there is a less restrictive way for the person to receive treatment and care for the person's mental illness. | 8
9
10 |
| | (2) The authorised doctor who makes the assessment under subsection (1) must not be the authorised doctor who made the recommendation for assessment for the person. | 11
12
13 |
| | (3) Subsection (2) does not apply if the authorised doctor is an authorised doctor in an authorised mental health service (regional). | 14
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16 |
| | (4) The authorised doctor must take reasonable steps to find out whether there is a less restrictive way for the person to receive treatment and care for the person's mental illness, including, for example, by searching the person's health records to find out whether the person has made an advance health directive or has a personal guardian. | 17
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41	Where and how person may be assessed	23
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| | (1) A person subject to a recommendation for assessment may be assessed in an authorised mental health service, public sector health service facility, or another place the authorised doctor making the assessment considers to be clinically appropriate. | 24
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27 |
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[s 42]

- (2) An authorised person may transport the person to an authorised mental health service or public sector health service facility for assessment.
Notes—
1 For a person in custody subject to a recommendation for assessment, see section 59.
2 For the powers of an authorised person for detaining and transporting a person, see chapter 11, part 6.
(3) An authorised doctor making an assessment of a person must discuss the assessment with the person and, to the extent practicable—
(a) the person’s nominated support person, if any; and
(b) the person’s family, carers and other support persons; and
(c) the person’s personal guardian, if any; and
(d) the person’s attorney, if any.

42 Detention for assessment

- (1) If a person subject to a recommendation for assessment is to be assessed in an authorised mental health service or public sector health service facility, the person may be detained for assessment in the service or facility for a period of 24 hours starting—
(a) if the person is at an authorised mental health service or public sector health service facility when the recommendation for assessment is made—when it is made; or
(b) otherwise—when the person is first transported and admitted under the recommendation to the authorised mental health service or public sector health service facility.
(2) However, the authorised doctor making an assessment of the person may extend or further extend the period under

subsection (1) before it ends to not more than 72 hours after it starts if the authorised doctor considers the extension is necessary to carry out or finish the assessment.

- (3) If, at any time during the period mentioned in subsection (1) or extended under subsection (2), the authorised doctor making an assessment of the person makes a decision on the assessment, the period for which the person may be detained for assessment ends.

Note—

For a classified patient, see also sections 71, 77 and 79.

- (4) The period under this section for which the person may be detained for assessment is the ***assessment period*** for the person.

43 Start of assessment period to be noted

- (1) If the assessment period for a person starts as mentioned under section 42(1)(a), the doctor or authorised mental health practitioner who made the recommendation for assessment for the person must make a note on the recommendation of the time when the assessment period starts.
- (2) If the assessment period for a person starts as mentioned under section 42(1)(b), a health service employee must make a note on the recommendation for assessment of the time when the assessment period starts as soon as practicable after it starts.

44 Notice of particular decision on assessment

If the authorised doctor decides the treatment criteria do not apply to the person or there is a less restrictive way for the person to receive treatment and care for the person's mental illness, the authorised doctor must—

- (a) tell the person of the decision; and
- (b) explain its effect to the person.

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Part 4	Treatment authorities	1
45	Application of pt 4	2
	This part applies if, on an assessment of a person under part 3, the authorised doctor making the assessment is satisfied—	3 4
	(a) the treatment criteria apply to the person; and	5
	(b) there is no less restrictive way for the person to receive treatment and care for the person’s mental illness.	6 7
46	Making of treatment authority	8
	The authorised doctor may decide to make an authority (a <i>treatment authority</i>) for the person.	9 10
47	Form of treatment authority	11
	(1) A treatment authority for a person must—	12
	(a) be in the approved form; and	13
	(b) state the following—	14
	(i) the grounds on which the authorised doctor is satisfied the treatment criteria apply to the person;	15 16
	(ii) its category;	17
	(iii) the authorised mental health service responsible for the person’s treatment and care under the authority;	18 19 20
	(iv) the nature and extent of the treatment and care to be provided to the person;	21 22
	(v) any conditions the authorised doctor considers necessary for the person’s treatment and care.	23 24
	(2) For subsection (1)(b)(ii), if the category of a treatment authority for a person other than a classified patient is inpatient, the authorised mental health service stated in the	25 26 27

	authority must not be a high security unit without the prior written approval of the chief psychiatrist.	1 2
48	Nature and extent of treatment and care to be provided	3
	In deciding the nature and extent of the treatment and care to be provided to the person under the treatment authority, the authorised doctor must—	4 5 6
	(a) discuss the treatment and care to be provided with the person and the person's nominated support person, if any, and to the extent practicable—	7 8 9
	(i) the person's family, carers and other support persons; and	10 11
	(ii) the person's personal guardian, if any; and	12
	(iii) the person's attorney, if any; and	13
	(b) have regard to the views, wishes and preferences of the person, to the extent they can be expressed, including, for example, in an advance health directive.	14 15 16
49	Category of treatment authority	17
	(1) If the authorised doctor decides to make a treatment authority for the person, the authorised doctor must decide the category of the authority.	18 19 20
	(2) The authorised doctor may decide the category is inpatient only if satisfied, having regard to the following matters, that the person's treatment and care needs and the safety and welfare of the person and others can not reasonably be met if the category is community—	21 22 23 24 25
	(a) the person's mental state and psychiatric history;	26
	(b) the person's social circumstances, including, for example, family and social support;	27 28

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	(c) the person's response to treatment and care and the person's willingness to receive appropriate treatment and care;	1 2 3
	(d) the person's response to any previous treatment in the community.	4 5
	(3) However, the authorised doctor must decide the category of a treatment authority for a classified patient is inpatient.	6 7
50	Notice about making treatment authority	8
	(1) As soon as practicable after deciding to make a treatment authority for a person, the authorised doctor must—	9 10
	(a) tell the person of the decision; and	11
	(b) explain its effect to the person.	12
	(2) If the authorised doctor is a psychiatrist, the administrator of the person's treating health service must, within 7 days after the treatment authority is made—	13 14 15
	(a) give a copy of the authority to the person; and	16
	(b) give written notice of its making to the tribunal.	17
	(3) Also, if the authorised doctor is not a psychiatrist, the administrator of the person's treating health service must, if asked by the person, give a copy of the treatment authority to the person.	18 19 20 21
51	Review of treatment authority not made by authorised psychiatrist	22 23
	(1) If the authorised doctor who made a treatment authority is not a psychiatrist, an authorised psychiatrist must review the treatment authority and decide—	24 25 26
	(a) to confirm the treatment authority, with or without amendment; or	27 28
	(b) to revoke the treatment authority.	29

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- (2) The authorised psychiatrist must make a decision on the review within 3 days (the *review period*) after the treatment authority is made. 1 2 3
- (3) If the treatment authority was made while the person subject to it was a patient of an authorised mental health service (regional), the authorised psychiatrist may extend or further extend the review period for the authority to a total period of not more than 7 days if satisfied the extension is necessary to carry out or finish the review. 4 5 6 7 8 9
- (4) In reviewing the treatment authority, the authorised psychiatrist must— 10 11
- (a) consider whether— 12
- (i) the treatment criteria apply to the person; and 13
- (ii) there is a less restrictive way for the person to receive treatment and care for the person’s mental illness; and 14 15 16
- (b) if satisfied the treatment criteria apply to the person and there is no less restrictive way for the person to receive treatment and care for the person’s mental illness— 17 18 19
- (i) review the grounds on which the authorised doctor is satisfied the treatment criteria apply to the person; and 20 21 22
- (ii) review the nature and extent of the treatment and care to be provided to the person; and 23 24
- (iii) review any conditions the authorised doctor considered necessary for the person’s treatment and care; and 25 26 27
- (iv) discuss the treatment and care to be provided with the person the subject of the treatment authority. 28 29
- (5) Also, in reviewing the treatment authority, sections 48(b) and 49 apply to the authorised psychiatrist as if a reference in the sections to an authorised doctor were a reference to the authorised psychiatrist reviewing the treatment authority. 30 31 32 33
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- (6) A review of a treatment authority does not affect the operation of the treatment authority before it is confirmed or revoked under section 52. 1
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- 52 Decision on review of treatment authority 4**
 - (1) If, after reviewing the treatment authority, the authorised psychiatrist is satisfied it should be confirmed, the authorised psychiatrist must decide to confirm the treatment authority with or without amendment, including, for example, an amendment to authorise limited community treatment or to change the category of the authority. 5
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 - (2) If, after reviewing the treatment authority, the authorised psychiatrist is not satisfied it should be confirmed, the authorised psychiatrist must decide to revoke it. 11
12
13
 - (3) The authorised psychiatrist must make a note of the decision on the treatment authority. 14
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 - (4) If the treatment authority is not confirmed or revoked within the review period under section 51(2), or the review period as extended under section 51(3), for the treatment authority, the treatment authority is revoked. 16
17
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- 53 Notice about review of treatment authority 20**
 - (1) On making a decision under section 52 on the review of a treatment authority for a person, the authorised psychiatrist must— 21
22
23
 - (a) tell the person of the decision; and 24
 - (b) explain its effect to the person. 25
 - (2) Within 7 days after a decision is made to confirm a treatment authority, the administrator of the person’s treating health service must— 26
27
28
 - (a) give a copy of the treatment authority to the person; and 29
 - (b) give written notice of the treatment authority and the decision to the tribunal. 30
31

54	Date for assessment of patient	1
(1)	An authorised doctor must decide and record in the person's health records a date for the first assessment of the patient under section 209.	2 3 4
(2)	The date for the assessment must be no later than 3 months after the day the treatment authority is made.	5 6
55	Relationship with forensic order (disability)	7
	If a treatment authority for a person is inconsistent with a forensic order (disability) for the person, the forensic order (disability) prevails to the extent of the inconsistency.	8 9 10
Chapter 3	Persons in custody	11
Part 1	Preliminary	12
56	Purpose of ch 3	13
	The purpose of this chapter is to provide for—	14
(a)	the transport of persons in custody to an authorised mental health service for assessment under chapter 2 or for treatment and care for their mental illness; and	15 16 17
(b)	matters in relation to persons in custody who become classified patients, including, for example, treatment and care for their mental illness.	18 19 20
57	Definitions for ch 3	21
	In this chapter—	22
	<i>administrator consent</i> , for a person in custody, means—	23

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- (a) consent given by the administrator of an authorised mental health service under section 63(1) for the person; or 1
2
3
 - (b) consent given by the chief psychiatrist under section 66 for the person. 4
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- custodian consent*, for a person in custody, means consent given under section 67(1) for the person. 6
7
- person in custody* see section 58. 8
- transfer recommendation* see section 62(1). 9

58 Meaning of *person in custody* 10

- (1) A *person in custody* is a person who is— 11
 - (a) detained in lawful custody on a charge of an offence or awaiting sentence on conviction of an offence; or 12
13
 - (b) held in lawful custody, or lawfully detained, without charge under an Act of the State or the Commonwealth, other than this Act; or 14
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 - (c) serving a sentence of imprisonment or period of detention under a court order and is not released on parole. 17
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 - (2) To remove any doubt, it is declared that an offence mentioned in subsection (1) includes an offence against a Commonwealth law. 20
21
22
- Note—* 23
- See the *Judiciary Act 1903* (Cwlth), section 68 (Jurisdiction of State and Territory courts in criminal cases). 24
25

Part 2	Transport of persons in custody to authorised mental health services	1 2 3
59	Transport of person in custody for assessment	4
(1)	A person in custody subject to a recommendation for assessment may be transported to an authorised mental health service under section 41 only if both of the following are in force for the person—	5 6 7 8
(a)	an administrator consent;	9
(b)	a custodian consent.	10
(2)	Despite section 41(2), an authorised person may transport the person only to an inpatient unit of an authorised mental health service.	11 12 13
60	Person in custody subject to treatment authority, forensic order (mental condition) or court treatment order	14 15
(1)	An authorised person may transport a person in custody who is subject to a treatment authority, forensic order (mental condition) or court treatment order from the person's place of custody to an inpatient unit of an authorised mental health service for treatment and care for the person's mental illness.	16 17 18 19 20
(2)	The authorised person may act under subsection (1) only if all of the following are in force for the person in custody—	21 22
(a)	a transfer recommendation;	23
(b)	an administrator consent;	24
(c)	a custodian consent.	25
(3)	When the person is admitted to the authorised mental health service—	26 27
(a)	if the category of the treatment authority, forensic order (mental condition) or court treatment order to which the	28 29

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	person is subject is community—the category is	1
	changed to inpatient; and	2
	(b) if limited community treatment is authorised for the	3
	person under the treatment authority, forensic order	4
	(mental condition) or court treatment order—the	5
	authorisation is revoked.	6
61	Person in custody consenting to treatment and care	7
(1)	This section applies if a person in custody consents to	8
	receiving treatment and care for the person’s mental illness in	9
	an authorised mental health service.	10
(2)	An authorised person may transport the person in custody to	11
	an inpatient unit of an authorised mental health service if all	12
	of the following are in force for the person—	13
(a)	a transfer recommendation;	14
(b)	an administrator consent;	15
(c)	a custodian consent.	16
(3)	The person may withdraw consent to receiving treatment and	17
	care for the person’s mental illness in an authorised mental	18
	health service at any time.	19
	<i>Note—</i>	20
	If the person withdraws consent, see sections 72 and 79.	21
Part 3	Recommendations and	22
	consents relating to transport	23
62	Recommendation for transport	24
(1)	A doctor or authorised mental health practitioner may make a	25
	recommendation in the approved form (a <i>transfer</i>	26
	<i>recommendation</i>) to transport a person in custody from the	27

	person's place of custody to an inpatient unit of an authorised mental health service for treatment and care for the person's mental illness.	1 2 3
(2)	The doctor or authorised mental health practitioner may make the recommendation if satisfied—	4 5
	(a) if the person is not subject to a treatment authority, forensic order (mental condition) or court treatment order—the person may have a mental illness; and	6 7 8
	(b) it is clinically appropriate for the person to receive treatment and care for the person's mental illness in an authorised mental health service.	9 10 11
(3)	As soon as practicable after making the transfer recommendation, the doctor or authorised mental health practitioner must—	12 13 14
	(a) tell the person of the making of the transfer recommendation; and	15 16
	(b) explain its effect to the person; and	17
	(c) if asked by the person—give a copy of it to the person.	18
63	Consent by administrator to transport	19
(1)	The administrator of an authorised mental health service may, in the approved form, consent to a person in custody being transported from the person's place of custody to an inpatient unit of the authorised mental health service for assessment or for treatment and care for the person's mental illness.	20 21 22 23 24
(2)	The administrator may only consent if satisfied—	25
	(a) the authorised mental health service has the capacity—	26
	(i) if the person is to be transported for an assessment—to carry out the assessment; or	27 28
	(ii) otherwise—to provide treatment and care for the person's mental illness; and	29 30

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	(b)	for an authorised mental health service that is not a high security unit—that carrying out the assessment, or providing the treatment and care, would not pose an unreasonable risk to the safety of the person or others having regard to—	1 2 3 4 5
	(i)	the person’s mental state and psychiatric history; and	6 7
	(ii)	the person’s treatment and care needs; and	8
	(iii)	the security requirements for the person.	9
64		Chief psychiatrist approval for consent relating to minor	10
	(1)	If a person in custody is a minor, the administrator of a high security unit must not give consent under section 63 for the transport of the minor to a high security unit unless the chief psychiatrist has approved the giving of the consent.	11 12 13 14
	(2)	In deciding whether to give the approval, the chief psychiatrist must have regard to the following—	15 16
	(a)	the minor’s mental state and psychiatric history;	17
	(b)	the minor’s treatment and care needs;	18
	(c)	the security requirements for the minor.	19
	(3)	As soon as practicable after deciding whether to approve the giving of consent under section 63 for the transport of the minor, the chief psychiatrist must give written notice of the decision to the administrator.	20 21 22 23
65		Notice to chief psychiatrist if person in custody not transported	24 25
	(1)	This section applies to a person in custody subject to a recommendation for assessment or transfer recommendation if the person is not transported to an authorised mental health service under the recommendation within 72 hours after the recommendation is made.	26 27 28 29 30

- (2) A doctor or authorised mental health practitioner must give written notice to the chief psychiatrist that the person has not been transported to an authorised mental health service under the recommendation. 1
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- (3) However, this section does not apply to a person in custody who is a minor if the administrator of a high security unit has sought the chief psychiatrist's approval under section 64 for the minor to be transported to the high security unit. 5
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66 Consent by chief psychiatrist 9

- (1) This section applies if the chief psychiatrist receives a notice under section 65 about a person in custody. 10
11
- (2) The chief psychiatrist may decide to consent to the person being transported to an authorised mental health service for assessment or for treatment and care for the person's mental illness. 12
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- (3) In deciding whether to give consent, the chief psychiatrist must have regard to the matters an administrator of an authorised mental health service must have regard to under section 63(2) in giving consent under that section. 16
17
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19
- (4) As soon as practicable after the chief psychiatrist decides to give consent, the chief psychiatrist must give written notice of the decision to the administrator of the authorised mental health service. 20
21
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- (5) As soon as practicable after receiving the notice, the administrator must arrange for the person to be transported by an authorised person to an inpatient unit of the authorised mental health service. 24
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67 Custodian consent 28

- (1) The custodian of a person in custody may, in the approved form, consent to the person being transported from the person's place of custody to an inpatient unit of an authorised 29
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[s 68]

- mental health service for assessment or for treatment and care for the person's mental illness. 1
2
- (2) The custodian must give consent unless satisfied the assessment or treatment and care of the person at the authorised mental health service presents an unreasonable risk to the safety of the person or others having regard to the security requirements for the person. 3
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- (3) The custodian consent must state the authorised mental health service where the person is to be detained for assessment or for treatment and care for the person's mental illness. 8
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Part 4 Classified patients generally 11

- 68 Notice to tribunal of minor detained in high security unit 12**
 - (1) As soon as practicable after a person in custody who is a minor is transported to a high security unit, the administrator of the high security unit must give written notice to the tribunal that the minor has been admitted to the high security unit. 13
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 - (2) If the minor stops being detained in the high security unit, other than under section 338, the administrator must, as soon as practicable, give written notice of that fact to the tribunal. 18
19
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- 69 Notice and explanation if person becomes classified patient 21
22**
 - (1) If a person in custody becomes a classified patient (involuntary) or classified patient (voluntary), an authorised doctor must explain how this Act applies to the person. 23
24
25
 - (2) As soon as practicable after a person in custody becomes a classified patient, the administrator of the person's treating health service must give written notice to the chief psychiatrist that the person is a classified patient. 26
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70	Examining classified patient under s 205	1
	In examining a classified patient under section 205, the	2
	authorised doctor examining the patient must consider	3
	whether it is clinically appropriate for the patient to receive	4
	treatment and care for the patient's mental illness in an	5
	authorised mental health service.	6
71	Classified patient (involuntary) may become classified patient (voluntary)	7
		8
	(1) This section applies to—	9
	(a) a classified patient (involuntary) who is subject to a	10
	recommendation for assessment if the assessment	11
	period for the patient ends and a treatment authority is	12
	not made for the patient; or	13
	(b) a classified patient (involuntary) who is subject to a	14
	treatment authority, forensic order (mental condition) or	15
	court treatment order, if the authority or order is	16
	revoked.	17
	(2) The patient may be detained in an inpatient unit of an	18
	authorised mental health service as a classified patient	19
	(voluntary) if—	20
	(a) an authorised mental health practitioner or authorised	21
	doctor is satisfied—	22
	(i) the patient may have a mental illness; and	23
	(ii) it is clinically appropriate for the patient to receive	24
	treatment and care for the mental illness in an	25
	inpatient unit of an authorised mental health	26
	service; and	27
	(b) the patient consents to receiving treatment and care for	28
	the mental illness in an authorised mental health service.	29
	(3) The patient may withdraw consent under subsection (2)(b) at	30
	any time.	31

[s 72]

	<i>Note—</i>	1
	If the person withdraws consent, see sections 72 and 79.	2
72	Notice to chief psychiatrist if classified patient (voluntary) withdraws consent	3 4
(1)	This section applies if a classified patient (voluntary) withdraws consent to receiving treatment and care for the patient’s mental illness in an authorised mental health service.	5 6 7
(2)	As soon as practicable after the patient withdraws consent, an authorised doctor must give written notice to the chief psychiatrist of the patient’s withdrawal of consent.	8 9 10
	<i>Note—</i>	11
	See also section 79.	12
Part 5	Effect on legal proceedings of person becoming classified patient	13 14 15
73	Suspension of particular proceedings	16
(1)	If a person in custody becomes a classified patient, proceedings for any offence, other than an offence against a Commonwealth law, against the person are suspended.	17 18 19
(2)	As soon as practicable after proceedings are suspended, the chief psychiatrist must give written notice to the chief executive (justice) of the suspension.	20 21 22
(3)	As soon as practicable after receiving a notice under subsection (2), the chief executive (justice) must give a copy of the notice to—	23 24 25
(a)	the registrar of the court in which the proceeding for the offence has been brought; and	26 27

- (b) the prosecuting authority for the offence; and
1
- (c) if the person is a child within the meaning of the *Youth Justice Act 1992*—the chief executive (youth justice).
2
3

74 When suspension of proceedings ends 4

- (1) If a proceeding for an offence against a classified patient is suspended under section 73, the suspension ends—
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6
- (a) if a psychiatrist report has not been prepared about the patient in relation to the offence and the matter of the patient’s mental state in relation to the offence is not referred to the Mental Health Court—when the person stops being a classified patient; or
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- (b) if a psychiatrist report has not been prepared about the patient in relation to the offence and the matter of the patient’s mental state in relation to the offence is referred to the Mental Health Court—under section 118; or
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13
14
15
16
- (c) if a psychiatrist report is prepared about the patient in relation to the offence and the matter of the patient’s mental state in relation to the offence is referred to the Mental Health Court—under section 118; or
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18
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20
- (d) if a psychiatrist report is prepared about the patient on a request made under section 86—under section 101; or
21
22
- (e) if a psychiatrist report is prepared about the patient on the chief psychiatrist’s own initiative under section 88—under section 105.
23
24
25
- (2) As soon as practicable after the suspension of the proceeding ends under subsection (1)(a), the chief psychiatrist must give written notice to the chief executive (justice) about the ending of the suspension.
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27
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- (3) As soon as practicable after receiving a notice under subsection (2), the chief executive (justice) must give a copy of the notice to—
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31
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	(a) the registrar of the court in which the proceeding for the offence has been brought; and	1 2
	(b) the prosecuting authority for the offence; and	3
	(c) if the patient is a child within the meaning of the <i>Youth Justice Act 1992</i> —the chief executive (youth justice).	4 5
	(4) The registrar of the relevant court must arrange for the charge for the offence to be mentioned within 7 days of receiving a copy of the notice under subsection (3) or, if the court can not be constituted in that time, at the earliest opportunity after that time.	6 7 8 9 10
	<i>Note—</i>	11
	See sections 79, 80 and 81 for when a person stops being a classified patient.	12 13
75	What happens for proceeding for Commonwealth offences	14 15
	If, in a proceeding against a classified patient for an offence against a Commonwealth law, the court hearing the proceeding remands the patient in custody for the offence, the place of custody is the authorised mental health service decided by the court.	16 17 18 19 20
76	Bail, remand and discontinuance of proceeding etc.	21
	The suspension of a proceeding under this part does not prevent—	22 23
	(a) a court making an order granting a classified patient bail, or enlarging, varying or revoking bail granted to a classified patient, under the <i>Bail Act 1980</i> ; or	24 25 26
	(b) a court remanding a classified patient in custody in relation to a proceeding for an offence; or	27 28
	(c) a court adjourning a proceeding against a classified patient for an offence until a stated date; or	29 30

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|-----|---|-------------|
| (d) | the prosecution of a classified patient for an offence being discontinued at any time by the complainant or the prosecuting authority; or | 1
2
3 |
| (e) | the presentation of an indictment under the Criminal Code, section 590 for a classified patient. | 4
5 |

Part 6	Return of classified patient to custody or release of classified patient	6 7 8
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|-----------|---|----------------------|
| 77 | Notice to chief psychiatrist about notice event | 9 |
| | (1) This section applies if an authorised doctor is satisfied it is not, or is no longer, clinically appropriate for a classified patient to receive treatment and care for the patient’s mental illness in an authorised mental health service (a <i>notice event</i>). | 10
11
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13 |
| | (2) Also, this section applies if— | 14 |
| | (a) either of the following happens (also a <i>notice event</i>)— | 15 |
| | (i) for a classified patient (involuntary) subject to a recommendation for assessment—the assessment period ends and a treatment authority is not made for the person; | 16
17
18
19 |
| | (ii) for a classified patient (involuntary) subject to a treatment authority, forensic order (mental condition) or court treatment order—the authority or order is revoked; and | 20
21
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23 |
| | (b) the person does not become a classified patient (voluntary) under section 71. | 24
25 |
| | (3) The authorised doctor must give written notice of the notice event to the chief psychiatrist. | 26
27 |
| | (4) The notice must— | 28 |
| | (a) be in the approved form; and | 29 |

[s 78]

- (b) if the notice is about a notice event mentioned in subsection (1)—state the reasons the authorised doctor is satisfied under that subsection. 1
 - (5) The authorised doctor must— 2
 - (a) tell the classified patient of the notice; and 3
 - (b) explain its effect to the patient. 4
- 78 Chief psychiatrist may decide to return classified patient to custody 5**
- (1) If the chief psychiatrist receives notice of a notice event mentioned in section 77(1), the chief psychiatrist must decide— 6
 - (a) whether it is clinically appropriate for the classified patient to receive treatment and care for the patient’s mental illness in an authorised mental health service; and 7
 - (b) if it is not clinically appropriate—to return the patient to a place of custody. 8
 - (2) Also, the chief psychiatrist may, on the chief psychiatrist’s own initiative, decide it is no longer clinically appropriate for a classified patient to receive treatment and care for the patient’s mental illness in an authorised mental health service. 9
 - (3) As soon as practicable after the chief psychiatrist makes a decision under subsection (1) or (2), the chief psychiatrist must give written notice of the decision to the administrator of the classified patient’s treating health service. 10
 - (4) As soon as practicable after receiving a notice under subsection (3), the administrator must— 11
 - (a) tell the classified patient of the decision; and 12
 - (b) explain its effect to the classified patient. 13
- Note—* 14
- See section 79. 15

79	Return of classified patient to custody	1
(1)	This section applies if any of the following happens (a <i>return event</i>)—	2 3
(a)	the chief psychiatrist receives notice under section 72 that a classified patient (voluntary) has withdrawn consent to receiving treatment and care for the patient’s mental illness in an authorised mental health service;	4 5 6 7
(b)	the chief psychiatrist receives notice of a notice event mentioned in section 77(2) about a classified patient;	8 9
(c)	the chief psychiatrist decides to return a classified patient to a place of custody under section 78.	10 11
(2)	As soon as practicable after the return event happens, the chief psychiatrist must give written notice of it happening to the following—	12 13 14
(a)	the custodian who made the custodian consent for the person (the <i>first custodian</i>);	15 16
(b)	if the person is charged with an offence or awaiting sentence on conviction of an offence—the chief executive (justice).	17 18 19
(3)	As soon as practicable after the chief executive (justice) receives a notice under subsection (2) about a person, the chief executive (justice) must give a copy of the notice to—	20 21 22
(a)	the registrar of the court in which the proceeding for the offence has been brought; and	23 24
(b)	the prosecuting authority for the offence; and	25
(c)	if the person is a child within the meaning of the <i>Youth Justice Act 1992</i> —the chief executive (youth justice).	26 27
(4)	Within 1 day after receiving the notice, the first custodian must make arrangements for an authorised person to transport the person from the authorised mental health service—	28 29 30
(a)	to a place in which the person will be in the custody of the first custodian; or	31 32

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	(b) if the first custodian and another person who is able to become the custodian of the person (the <i>second custodian</i>) agree the person should be transported to a place in which the person will be in the second custodian's custody—to the place in which the person will be in the custody of the second custodian.	1 2 3 4 5 6
	(5) An authorised person may transport the person from the authorised mental health service to the place in which the person will be in the custody of the first custodian or second custodian.	7 8 9 10
	(6) The person stops being a classified patient when the person is discharged from the authorised mental health service into the custody of the first custodian or second custodian.	11 12 13
80	Person stops being classified patient if Mental Health Court makes decision on reference	14 15
	If a reference in relation to a classified patient is made to the Mental Health Court, when the Mental Health Court makes a decision on the reference or the reference is withdrawn, the patient stops being a classified patient in relation to the reference.	16 17 18 19 20
81	Release of classified patient	21
	(1) This section applies if a classified patient would no longer be a person in custody if he or she stopped being a classified patient (a <i>release event</i>).	22 23 24
	<i>Examples of how a classified patient stops being a person in custody—</i>	25
	<ul style="list-style-type: none">• if the person is detained in custody on a charge of an offence, the person is granted bail or the prosecution of the charge is discontinued• if the person is detained in custody awaiting sentence on conviction of an offence, the person is sentenced to a term of imprisonment which is suspended or an order of imprisonment is not made• if the person is serving a term of imprisonment, the person is released on parole or the term of imprisonment ends	26 27 28 29 30 31 32 33

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|---|------------------|
| (2) Within 1 day after the release event happens, the prosecuting authority or the classified patient's custodian must give written notice of the release event happening to the following— | 1
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| (a) the administrator of the classified patient's treating health service; | 5
6 |
| (b) the chief psychiatrist. | 7 |
| (3) Immediately after the administrator receives the notice, the administrator may not detain the person in the authorised mental health service. | 8
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10 |
| (4) However, subsection (3) does not apply if the person is a patient of the authorised mental health service other than as a classified patient. | 11
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Chapter 4	Psychiatrist reports for serious offences	14 15
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Part 1	Preliminary	16
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82	Purpose of ch 4	17
	The purpose of this chapter is to provide for the preparation of a psychiatrist report about a person charged with a serious offence.	18 19 20

83	Definition for ch 4	21
	In this chapter—	22
	<i>psychiatrist report</i> , about a person in relation to a charge of a serious offence, means a report prepared by an authorised psychiatrist stating whether the psychiatrist considers the	23 24 25

[s 87]

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| (a) the person or the person's lawyer; | 1 |
| (b) the person's nominated support person, if any; | 2 |
| (c) a personal guardian authorised to make decisions for legal matters for the person under the <i>Guardianship and Administration Act 2000</i> , if any; | 3
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| (d) an attorney authorised to make decisions for legal matters for the person under the <i>Powers of Attorney Act 1998</i> , if any. | 6
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| 87 | Direction to prepare psychiatrist report | 9 |
| (1) | Within 7 days after receiving the request, the chief psychiatrist must direct the administrator of the authorised mental health service to arrange for an authorised psychiatrist to prepare a psychiatrist report about the person in relation to the charge of the serious offence. | 10
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| (2) | However, the chief psychiatrist must not give the direction if an administrator of an authorised mental health service has revoked a direction under section 94 about the person in relation to the serious offence. | 15
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18 |
| (3) | The direction may also include a direction for the report to be prepared about the person in relation to an associated offence. | 19
20 |
| (4) | If the chief psychiatrist does not give a direction under subsection (1), the chief psychiatrist must give the person making the request a written statement explaining the reasons for not giving the direction. | 21
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[s 88]

Part 3	Psychiatrist report on chief psychiatrist's own initiative	1 2
88	Psychiatrist report on chief psychiatrist's own initiative	3
(1)	The chief psychiatrist may, on the chief psychiatrist's own initiative, direct an authorised psychiatrist to prepare a psychiatrist report about a person in relation to a charge of a serious offence.	4 5 6 7
(2)	The chief psychiatrist may act under subsection (1) only if satisfied the preparation of the psychiatrist report is in the public interest and—	8 9 10
(a)	both of the following apply—	11
(i)	the person may have a mental condition other than an intellectual disability;	12 13
(ii)	the person may have been of unsound mind at the time of the alleged commission of the serious offence or associated offence; or	14 15 16
(b)	the person may be unfit for trial.	17
(3)	The direction may also include a direction for the report to be prepared about the person in relation to an associated offence.	18 19
89	Notice of direction for psychiatrist report	20
(1)	As soon as practicable after giving the direction, the chief psychiatrist must give written notice of the direction to—	21 22
(a)	the person; and	23
(b)	if an authorised mental health service is responsible for the person—the administrator of the service.	24 25
(2)	A notice given to a person under subsection (1)(a) must include information about the person being accompanied by a support person under section 93 for examination.	26 27 28

Part 4	Psychiatrist reports generally	1
90	Suspension of proceedings	2
(1)	If the chief psychiatrist gives a direction under section 87(1) or 88(1) about a person in relation to a charge of a serious offence or an associated offence, a proceeding for the alleged serious offence or associated offence is suspended when the direction is given.	3 4 5 6 7
(2)	As soon as practicable after giving the direction, the chief psychiatrist must give written notice to the chief executive (justice) of the suspension.	8 9 10
(3)	As soon as practicable after receiving a notice under subsection (2), the chief executive (justice) must give a copy of the notice to—	11 12 13
(a)	the registrar of the court in which the proceeding for the serious offence has been brought; and	14 15
(b)	the prosecuting authority for the offence; and	16
(c)	if the person is a child within the meaning of the <i>Youth Justice Act 1992</i> —the chief executive (youth justice).	17 18
(4)	However, this section does not apply if a proceeding for the alleged serious offence or associated offence is already suspended under section 73.	19 20 21
	<i>Note—</i>	22
	See sections 101 and 105 for when the suspension ends.	23
91	Psychiatrist report	24
(1)	An authorised psychiatrist who is given a direction under section 87(1) or 88(1) to prepare a psychiatrist report about a person in relation to a charge of a serious offence must prepare the report—	25 26 27 28
(a)	within 60 days after being given the direction; or	29

[s 92]

- (b) if the chief psychiatrist extends the period under paragraph (a) to not more than 90 days after the direction is given—within the extended period.
- (2) In preparing the psychiatrist report, the authorised psychiatrist must—
 - (a) examine the person; and
 - (b) obtain and examine health records for the person relevant to the examination of the person; and
 - (c) examine information relevant to the examination of the person given to the psychiatrist by the administrator of an authorised mental health service.
- (3) Also, the authorised psychiatrist may obtain and examine any other information the authorised psychiatrist considers relevant to preparing the psychiatrist report.
- (4) The psychiatrist report must include information about the following—
 - (a) the person’s mental state and, to the extent practicable, the person’s mental state at the time of the alleged commission of the serious offence;
 - (b) whether the authorised psychiatrist considers the person was of unsound mind at the time of the alleged commission of the serious offence;
 - (c) whether the authorised psychiatrist considers the person is fit for trial;
 - (d) if the authorised psychiatrist considers the person is unfit for trial—whether the unfitness for trial is permanent.
- (5) Also, the psychiatrist report may include information about an associated offence.

92 Information from prosecuting authority

- (1) The administrator of the authorised mental health service who appointed the authorised psychiatrist may ask the prosecuting

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- authority for the serious offence or associated offence to which the report relates to give the administrator copies of the documents mentioned in schedule 3, definition *brief of evidence*, paragraph (a) relating to the serious offence or associated offence.
- (2) The prosecuting authority must comply with the request as soon as practicable.
- (3) Subsection (2) does not apply to information contained in a document if the prosecuting authority considers—
- (a) giving the information could reasonably be expected to—
 - (i) prejudice the investigation of a contravention or possible contravention of a law in a particular case; or
 - (ii) prejudice an investigation under the *Coroners Act 2003*; or
 - (iii) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of a law, to be ascertained; or
 - (iv) endanger a person's life or safety; or
 - (v) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law; and
 - (b) it would not be in the public interest to give the information.
- (4) Also, subsection (2) does not apply to—
- (a) information, contained in a document, that is sensitive evidence under the Criminal Code, section 590AF; or
 - (b) information, contained in a document, that another Act or law would prevent the prosecution from giving during

[s 93]

	a proceeding for an offence to an accused person or a lawyer acting for an accused person; or	1 2
(c)	information, contained in a document—	3
	(i) identifying witnesses to the alleged commission of the offence; or	4 5
	(ii) consisting of contact details for the witnesses.	6
(5)	The duty imposed on the prosecuting authority to comply with the request applies only to documents in the possession of the prosecuting authority or to which the prosecuting authority has access.	7 8 9 10
(6)	In complying with the request, the prosecuting authority may delete from a copy of a document given to the administrator any information mentioned in subsection (3) or (4).	11 12 13
	<i>Example—</i>	14
	If a document includes the name of a witness to the alleged commission of the offence, or information from which the witness could be identified, the prosecuting authority may delete the name or information from a copy of the document given to the authorised psychiatrist.	15 16 17 18
93	Support person for person being examined	19
(1)	A person being examined for a psychiatrist report may be accompanied by a support person, including, for example, a nominated support person, lawyer or personal guardian.	20 21 22
(2)	A support person must not interfere with the examination.	23
94	Requirement to participate in examination in good faith	24
(1)	If a psychiatrist report about a person is being prepared on a request under section 86, the person and any support person must participate in an examination for the psychiatrist report in good faith.	25 26 27 28
	<i>Examples of participating in an examination in good faith—</i>	29
	• attending appointments in relation to the examination	30
	• answering questions during the examination	31

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- allowing access to the health records of the person the subject of the examination 1
2
 - (2) If the authorised psychiatrist preparing the psychiatrist report 3
is satisfied the person or support person is not participating in 4
the examination in good faith, the authorised psychiatrist must 5
give written notice to the administrator of the authorised 6
mental health service who appointed the psychiatrist. 7
 - (3) If the administrator receives a notice under subsection (2), the 8
administrator may decide to revoke the direction to prepare 9
the psychiatrist report. 10
 - (4) However, before revoking the direction, the administrator 11
must— 12
 - (a) give the person a notice (a *show cause notice*) for the 13
decision stating the following— 14
 - (i) that the administrator proposes to revoke the 15
direction to prepare the psychiatrist report (the 16
proposed action); 17
 - (ii) the grounds for the proposed action; 18
 - (iii) the facts and circumstances forming the basis for 19
the grounds; 20
 - (iv) that the person may make submissions about the 21
show cause notice to the administrator; 22
 - (v) a day and time within which submissions must be 23
made; and 24
 - (b) consider any submissions given in response to the show 25
cause notice. 26
 - (5) If the administrator revokes the direction, the administrator 27
must give written notice of the revocation to— 28
 - (a) the person; and 29
 - (b) the chief psychiatrist. 30
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95	Person must attend examination	1
(1)	If a psychiatrist report about a person is being prepared on the chief psychiatrist's own initiative under section 88, the person must attend for an examination.	2 3 4
(2)	If the person is not an inpatient of an authorised mental health service, the chief psychiatrist must give the person a written notice directing the person to attend at a stated authorised mental health service within a stated period, of not more than 28 days, after the notice is given.	5 6 7 8 9
	<i>Note—</i>	10
	See chapter 11, part 6, division 3 for the powers that may be used in relation to a person who does not comply with a direction under subsection (2).	11 12 13
Part 5	Action on psychiatrist reports prepared on request	14 15
96	Application of pt 5	16
	This part applies to a psychiatrist report about a person in relation to a charge of a serious offence prepared on a request made under section 86.	17 18 19
97	Definitions for pt 5	20
	In this part—	21
	<i>referral period</i> , for a psychiatrist report, means the period starting on the day the person requesting the report is given a copy of it under section 99 and ending 28 days after that day.	22 23 24
	<i>relevant period</i> , for a psychiatrist report, means the period starting at the end of the referral period for the psychiatrist report and ending 14 days after it starts.	25 26 27

98 **Second psychiatrist report**

- (1) This section applies if, within 7 days after receiving the psychiatrist report (the *first report*), the chief psychiatrist considers the matters in the report about the person require further examination, including, for example, because of the complexity of the matters in the report.
- (2) The chief psychiatrist may direct another authorised psychiatrist to prepare another psychiatrist report (the *second psychiatrist report*) about the person in relation to the serious offence.
- (3) The direction may also include a direction for the second report to include matters relating to an associated offence.
- (4) Sections 91, 92, 93 and 94 apply to the second psychiatrist report as if a reference in the sections to a psychiatrist report prepared, or being prepared, on a request under section 86 or a direction given under section 87(1) were a reference to the second psychiatrist report.
- (5) This part, other than this section, applies to the second psychiatrist report as if a reference to a psychiatrist report prepared, or being prepared, on a request under section 86 included a reference to the second report.

99 **Who may be given psychiatrist report**

- (1) The chief psychiatrist must give a copy of a psychiatrist report prepared on a request under section 86 to the person who requested it—
 - (a) if a second report is prepared under section 98—within 7 days after receiving the second report; or
 - (b) otherwise—within 7 days after receiving the first report mentioned in section 98.
- (2) However, if the person who requested the report is the person the subject of the report and the chief psychiatrist is satisfied giving the report to the person may adversely affect the person's health or wellbeing, the chief psychiatrist may

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instead give a copy of the report to another person who the
chief psychiatrist considers has a sufficient interest in the
person's health and wellbeing.

*Examples of a person who may have a sufficient interest in the person's
health and wellbeing—*

the person's nominated support person, a lawyer acting for the person,
the person's personal guardian

(3) The chief psychiatrist must not give a copy of the psychiatrist
report to anyone else without the consent of the person who
requested the report.

(4) However, if the matter of the person's mental state relating to
the serious offence is referred to the Mental Health Court, the
chief psychiatrist must give a copy of the psychiatrist report to
the Mental Health Court.

100 When reference may be made by chief psychiatrist

(1) This section applies if a relevant person under section 115 has
not referred the matter of the person's mental state in relation
to the serious offence to the Mental Health Court during the
referral period for the psychiatrist report.

(2) The chief psychiatrist may, within the relevant period for the
psychiatrist report and in the way set out in section 116, refer
the matter of the person's mental state in relation to the
serious offence to the Mental Health Court if satisfied—

(a) the person may have been of unsound mind when the
serious offence was allegedly committed or may be unfit
for trial; and

(b) having regard to the psychiatrist report and the
protection of the community, there is a compelling
reason in the public interest for the reference to be
made.

(3) The reference may also include a reference of the person's
mental state relating to an associated offence.

- (4) The chief psychiatrist may, before the end of the relevant period for the psychiatrist report, extend or further extend the relevant period to not more than 4 months after the relevant period would otherwise end if satisfied the person is likely to be fit for trial within the relevant period as extended or further extended.

101 Continuing proceedings

- (1) If a proceeding for an offence against the person is suspended under section 73 or 90, the suspension ends—
 - (a) if a reference is made under section 115 during the referral period or the chief psychiatrist makes a reference under section 100—under section 118; or
 - (b) otherwise—the day after the relevant period, or the relevant period as extended or further extended under section 100(4), ends.
- (2) As soon as practicable after the suspension of the proceeding ends under subsection (1)(b), the chief psychiatrist must give written notice to the chief executive (justice) of the ending of the suspension.
- (3) As soon as practicable after receiving a notice under subsection (2), the chief executive (justice) must give a copy of the notice to—
 - (a) the registrar of the court in which the proceeding for the offence has been brought; and
 - (b) the prosecuting authority for the offence; and
 - (c) if the person is a child within the meaning of the *Youth Justice Act 1992*—the chief executive (youth justice).
- (4) The registrar of the court in which the proceeding for the offence has been brought must arrange for the charge for the offence to be mentioned within 7 days after receiving a copy of the notice under subsection (3) or, if the court can not be constituted in that period, at the earliest opportunity after the end of the period.

[s 102]

Part 6	Action on psychiatrist report prepared on chief psychiatrist's own initiative	1 2 3
102	Application of pt 6	4
	This part applies to a psychiatrist report about a person in relation to a charge of a serious offence prepared on the chief psychiatrist's own initiative under section 88.	5 6 7
103	Second psychiatrist report	8
(1)	This section applies if, after considering the psychiatrist report (the <i>first report</i>), the chief psychiatrist considers the matters in the report about the person require further examination, including, for example, because of the complexity of the matters in the report.	9 10 11 12 13
(2)	The chief psychiatrist may direct another authorised psychiatrist to prepare another psychiatrist report (the <i>second report</i>) about the person in relation to the charge.	14 15 16
(3)	The direction may also include a direction for the second report to include matters relating to an associated offence.	17 18
(4)	Sections 91, 92, 93 and 95 apply to the second report as if a reference in the sections to a psychiatrist report prepared, or being prepared, on the chief psychiatrist's own initiative under section 88 were a reference to the second report.	19 20 21 22
(5)	This part, other than this section, applies to the second report as if a reference to a psychiatrist report prepared, or being prepared, on the chief psychiatrist's own initiative under section 88 included a reference to the second report.	23 24 25 26
104	Reference to Mental Health Court	27
(1)	After considering the psychiatrist report, the chief psychiatrist may, in the way set out in section 116, refer the matter of the	28 29

person's mental state in relation to the serious offence to the Mental Health Court if satisfied—	1 2
(a) the person may have been of unsound mind at the time of the alleged commission of the serious offence or may be unfit for trial; and	3 4 5
(b) having regard to the report and the protection of the community, that there is a compelling reason in the public interest for the reference to be made.	6 7 8
(2) The chief psychiatrist may only act under subsection (1) within the relevant period for the psychiatrist report.	9 10
(3) The reference may also include a reference of the person's mental state relating to an associated offence.	11 12
(4) The chief psychiatrist may, before the end of the relevant period for the psychiatrist report, extend or further extend the relevant period to not more than 4 months after the relevant period would otherwise end if satisfied the person is likely to be fit for trial within the relevant period as extended or further extended.	13 14 15 16 17 18
(5) In this section—	19
<i>relevant period</i> , for a psychiatrist report, means the period within 28 days after—	20 21
(a) if a second report is prepared under section 103—the chief psychiatrist receives the second report; or	22 23
(b) otherwise—the chief psychiatrist receives the first report mentioned in section 103.	24 25
105 Continuing proceedings	26
(1) If a proceeding for an offence against the person is suspended under section 73 or 90, the suspension ends—	27 28
(a) if a reference in relation to the person is made during the relevant period under section 104 or that period as extended under section 104(4)—under section 118; or	29 30 31

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- (b) otherwise—the day after the relevant period under section 104, or that period as extended under section 104(4), ends. 1
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- (2) As soon as practicable after the suspension of the proceeding ends under subsection (1)(b), the chief psychiatrist must give written notice of the ending of the suspension to— 4
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6
 - (a) the person or the person's lawyer; and 7
 - (b) the chief executive (justice); and 8
 - (c) if an authorised mental health service is responsible for the person—the administrator of the service. 9
10
- (3) As soon as practicable after receiving a notice under subsection (2), the chief executive (justice) must give a copy of the notice to— 11
12
13
 - (a) the registrar of the court in which the proceeding for the offence has been brought; and 14
15
 - (b) the prosecuting authority for the offence; and 16
 - (c) if the person is a child within the meaning of the *Youth Justice Act 1992*—the chief executive (youth justice). 17
18
- (4) The registrar of the court in which the proceeding for the offence has been brought must arrange for the charge for the offence to be mentioned within 7 days after receiving a copy of the notice under subsection (3) or, if the court can not be constituted in that period, at the earliest opportunity after the end of the period. 19
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106 Administrator may be given psychiatrist report 25

The chief psychiatrist may give a copy of the psychiatrist report to the administrator of the treating health service providing treatment and care to the person. 26
27
28

Part 7	Miscellaneous	1
107	Bail, remand and discontinuance of proceedings etc.	2
	The suspension of a proceeding under this chapter does not prevent—	3 4
	(a) a court making an order granting a person bail, or enlarging, varying or revoking bail granted to a person, under the <i>Bail Act 1980</i> ; or	5 6 7
	(b) a court remanding a person in custody in relation to a proceeding for an offence; or	8 9
	(c) a court adjourning the proceeding for an offence until a stated date; or	10 11
	(d) the prosecution of a person for an offence being discontinued at any time by the complainant or director of public prosecutions; or	12 13 14
	(e) the presentation of an indictment under the Criminal Code, section 590 for a person.	15 16
108	Chapter ceases to apply to person if prosecution for an offence discontinued	17 18
	If action is taken under this chapter in relation to a person charged with a serious offence and the prosecution of the person for the offence is discontinued, this chapter ceases to apply to the person in relation to the offence.	19 20 21 22
109	Application of chapter to forensic disability clients	23
	This chapter applies to a person subject to a forensic order of the residential category as if—	24 25
	(a) a reference to a forensic order under which an authorised mental health service is responsible for the person were a reference to a forensic order under which	26 27 28

[s 109]

	the forensic disability service is responsible for the person; and	1 2
(b)	a reference to the chief psychiatrist were a reference to the director of forensic disability; and	3 4
(c)	a reference to a psychiatrist report were a reference to a report prepared after an assessment of the person by a senior practitioner under the Forensic Disability Act; and	5 6 7 8
(d)	a reference to whether an authorised mental health service is responsible for the person were a reference to the person being a forensic disability client under the Forensic Disability Act; and	9 10 11 12
(e)	a reference to the administrator of a person’s treating health service were a reference to the administrator of the forensic disability service under the Forensic Disability Act; and	13 14 15 16
(f)	a reference to an authorised psychiatrist were a reference to a senior practitioner under the Forensic Disability Act; and	17 18 19
(g)	a reference in section 88(2)(a) to the chief psychiatrist being satisfied that a person may have a mental condition other than an intellectual disability were a reference to the chief psychiatrist being satisfied that a person may have an intellectual disability.	20 21 22 23 24

Chapter 5	Mental Health Court	25
	references	26
<i>Note—</i>		27
	See chapter 16, part 2 in relation to the procedure for proceedings in the Mental Health Court.	28 29

Part 1	Preliminary	1
110	Purpose of ch 5	2
	The purpose of this chapter is to provide for—	3
	(a) the making of references to the Mental Health Court in relation to the mental state of persons charged with serious offences; and	4 5 6
	(b) the hearing of references made—	7
	(i) under chapter 4, or this chapter, in relation to persons charged with serious offences; or	8 9
	(ii) under chapter 6 in relation to persons charged with indictable offences; and	10 11
	(c) the decisions the court may make on a reference mentioned in paragraph (b), including whether the person the subject of the reference—	12 13 14
	(i) was of unsound mind when the offence was allegedly committed; or	15 16
	(ii) if the person is alleged to have committed the offence of murder—was of diminished responsibility when the offence was allegedly committed; or	17 18 19 20
	(iii) is unfit for trial; and	21
	(d) the making of forensic orders and court treatment orders by the court; and	22 23
	(e) the admissibility and use of evidence, victim impact statements and other matters.	24 25
111	Definitions for ch 5	26
	In this chapter—	27
	<i>associated offence</i> see section 114.	28
	<i>diminished responsibility</i> see section 113.	29

[s 112]

	<i>offence</i> , in relation to a reference, means each alleged offence mentioned in the notice of the reference filed under section 116, 178 or 187.	1 2 3
	<i>reference</i> , in relation to a person, means a reference to the Mental Health Court, made under section 100, 104, 115, 177 or 186, of the person’s mental state relating to an offence the person is alleged to have committed.	4 5 6 7
	<i>unsound mind</i> see section 112.	8
112	Meaning of <i>unsound mind</i>	9
	<i>Unsound mind</i> , of a person, is a state of mind of the person for which the Criminal Code, section 27(1) applies to the person, including the section taking into account the effect of the Criminal Code, section 28(1) and (2).	10 11 12 13
113	Meaning of <i>diminished responsibility</i>	14
	A person is of <i>diminished responsibility</i> if the person has a state of abnormality of mind described in the Criminal Code, section 304A(1).	15 16 17
114	Meaning of <i>associated offence</i>	18
(1)	An <i>associated offence</i> , in relation to an indictable offence with which a person is charged, means an offence the person is alleged to have committed at or about the same time as the indictable offence.	19 20 21 22
(2)	An associated offence may be an indictable offence, a simple offence or a regulatory offence.	23 24

Part 2	Making of references by particular persons	1 2
115	When reference may be made	3
(1)	This section applies if a relevant person has reasonable cause to believe that a person alleged to have committed a serious offence—	4 5 6
(a)	was of unsound mind when the offence was allegedly committed; or	7 8
(b)	is unfit for trial.	9
(2)	This section also applies if a relevant person has reasonable cause to believe that a person alleged to have committed the offence of murder was of diminished responsibility when the offence was allegedly committed.	10 11 12 13
(3)	The relevant person may, in the way set out in section 116, refer the matter of the person’s mental state in relation to the serious offence to the Mental Health Court.	14 15 16
(4)	A reference of a person’s mental state in relation to a serious offence made under this section may also include a reference of the person’s mental state relating to an associated offence.	17 18 19
(5)	In this section—	20
	relevant person , in relation to a person alleged to have committed an offence, means any of the following—	21 22
(a)	the person;	23
(b)	the person’s lawyer;	24
(c)	the director of public prosecutions.	25
	<i>Note—</i>	26
	A reference in relation to a person may also be made by the following—	27 28
•	the chief psychiatrist or director of forensic disability under section 100 or 104	29 30
•	a Magistrates Court under section 177	31

[s 116]

•	the Supreme Court or District Court under section 186.	1
116	How reference may be made	2
(1)	A reference under section 115 in relation to a person is made by filing a notice in the approved form in the registry.	3 4
(2)	The notice must state each offence in relation to which the person's mental state is referred.	5 6
(3)	The notice must be accompanied by a copy of any psychiatrist or other clinical report in relation to the person that is relevant to the reference.	7 8 9
	<i>Example—</i>	10
	a psychiatrist report prepared under chapter 4	11
(4)	Subsection (3) applies even if giving the copy of the report would disclose information adverse to the case of the person.	12 13
(5)	The person who made the reference may amend it with the leave of the Mental Health Court.	14 15
	<i>Example—</i>	16
	Another offence may be included.	17
Part 3	Proceedings for references	18
Division 1	Preliminary	19
117	Application of pt 3	20
	This part applies to a reference in relation to a person made under section 100, 104, 115, 177 or 186.	21 22

118	Effect of reference on proceeding for offence	1
(1)	On the making of the reference, the proceeding for the offence is suspended.	2 3
(2)	However, subsection (1) does not apply if the proceeding has already been suspended under section 73 or 90.	4 5
(3)	If a proceeding is suspended under section 73 or 90 or subsection (1), the suspension ends when the Mental Health Court makes a decision on the reference or the reference is withdrawn.	6 7 8 9
	<i>Note—</i>	10
	For proceedings suspended under section 73 or 90, the suspension may end at an earlier time under section 74, 101 or 105.	11 12
(4)	The suspension of a proceeding under subsection (1) does not prevent—	13 14
(a)	a court making an order granting a person bail, or enlarging, varying or revoking bail granted to a person, under the <i>Bail Act 1980</i> ; or	15 16 17
(b)	a court remanding a person in custody in relation to a proceeding for an offence; or	18 19
(c)	a court adjourning a proceeding for an offence until a stated date; or	20 21
(d)	the prosecution of a person for an offence being discontinued at any time by the complainant or director of public prosecutions; or	22 23 24
(e)	the presentation of an indictment under the Criminal Code, section 590 for a person.	25 26

Division 2	Notice requirements etc.	27
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119	Notice of reference	28
(1)	The registrar must, as soon as practicable after the reference is made, give the following persons written notice of the	29 30

[s 120]

- reference and of the suspension of the proceeding for the offence— 1
2
- (a) the person the subject of the reference or, if known, the person’s lawyer; 3
4
- (b) the director of public prosecutions; 5
- (c) the chief psychiatrist; 6
- (d) the chief executive (justice); 7
- (e) the director of forensic disability. 8
- (2) The chief executive (justice) must, as soon as practicable after receiving the notice mentioned in subsection (1), give the following persons written notice of the reference and of the suspension of the proceeding for the offence— 9
10
11
12
- (a) the registrar of the relevant court; 13
- (b) if the prosecuting authority for the offence is not the director of public prosecutions—the prosecuting authority for the offence. 14
15
16
- (3) In this section— 17
- relevant court* means the court in which the proceeding for the offence has been brought. 18
19

120 Parties to proceeding 20

- (1) The parties to the proceeding for the reference are— 21
- (a) the person the subject of the reference; and 22
- (b) the director of public prosecutions; and 23
- (c) the chief psychiatrist. 24
- (2) However, if the person has an intellectual disability— 25
- (a) the chief psychiatrist may elect not to be a party to the proceeding; and 26
27
- (b) the director of forensic disability may elect to be a party to the proceeding. 28
29

[s 121]

- (3) An election under subsection (2) must be made by filing a notice in the registry. 1
2

121 Notice of hearing 3

- (1) The registrar must give written notice of the hearing of the proceeding for the reference to the following— 4
5
- (a) each party to the proceeding; 6
 - (b) if the person the subject of the reference is an involuntary patient for whom an authorised mental health service is responsible—the administrator of the service; 7
8
9
10
 - (c) if the forensic disability service is responsible for the person the subject of the reference—the administrator of the forensic disability service; 11
12
13
 - (d) if the person the subject of the reference is in lawful custody—the person’s custodian. 14
15
- (2) The registrar must give the notice at least 7 days before the hearing. 16
17
- (3) The notice must state the following— 18
- (a) the time and place of the hearing; 19
 - (b) the nature of the hearing; 20
 - (c) the rights at the hearing of the person the subject of the reference. 21
22

Division 3 Particular decisions 23

122 Decision about unsoundness of mind and diminished responsibility 24 25

- (1) On hearing the proceeding for the reference, the Mental Health Court must decide— 26
27

[s 123]

- (a) whether the person was of unsound mind when the offence was allegedly committed; and
 - (b) if the person is alleged to have committed the offence of murder and the court decides the person was not of unsound mind when the offence was allegedly committed—whether the person was of diminished responsibility when the offence was allegedly committed.
- (2) This section applies subject to section 124.

123 Dispute about substantially material fact

- (1) This section applies if a fact that is substantially material to the opinion of an expert witness is in dispute.
- Example of expert witness—*
- a psychiatrist
- (2) To remove any doubt, it is declared that the court may—
- (a) decide the fact in dispute; and
 - (b) make a decision under section 122(1)(a) or (b).
- (3) Without limiting subsection (1), a substantially material fact may be—
- (a) something that happened before, at the same time as, or after, the offence was allegedly committed; or
 - (b) something about the person’s past or current medical or psychiatric treatment.

124 No decision if reasonable doubt person committed offence

- (1) The Mental Health Court may not make a decision under section 122(1)(a) or (b) if the court is satisfied there is reasonable doubt the person committed the offence (the *disputed offence*).

- (2) However, the court may make a decision under section 122(1)(a) or (b) if the doubt the person committed the disputed offence exists only because of 1 or more of the following—
 - (a) the person’s mental condition;
 - (b) the operation of the Criminal Code, section 304, 304A or 304B.
- (3) If elements of the disputed offence are elements of another offence (the *alternative offence*), subsection (1) does not prevent the court from making a decision under section 122(1)(a) for the alternative offence.

Example for application of subsection (3)—

If the disputed offence is attempted murder, the court may make a decision in relation to the alternative offence of grievous bodily harm if the alternative offence is not disputed.
- (4) If the court decides the person was of unsound mind when the alternative offence was committed, the proceeding against the person for the disputed offence is discontinued.

125 Decision about fitness for trial

- (1) This section applies if—
 - (a) the Mental Health Court decides the person was not of unsound mind when the offence was allegedly committed; or
 - (b) because of section 124, the court may not decide whether the person was of unsound mind when the offence was allegedly committed.
- (2) The court must decide whether the person is fit for trial.
- (3) If the court decides the person is unfit for trial, the court must also decide whether the unfitness for trial is permanent.
- (4) This section does not apply if, under section 124(4), the proceeding against the person for the offence is discontinued.

[s 126]

Division 4	Procedural orders	1
126	Continuation of proceeding	2
	If the Mental Health Court decides the person is fit for trial,	3
	the court must order that the proceeding against the person for	4
	the offence be continued according to law.	5
127	Related orders if proceeding continued	6
(1)	If the Mental Health Court orders that the proceeding against	7
	the person for the offence be continued, the court may order	8
	that—	9
(a)	the person be remanded in custody or bail be granted or	10
	enlarged under the <i>Bail Act 1980</i> for the person; or	11
(b)	the person be detained in a stated authorised mental	12
	health service until—	13
(i)	the person is granted bail under the <i>Bail Act 1980</i> ;	14
	or	15
(ii)	the person is brought before a court for continuing	16
	the proceeding.	17
(2)	For subsection (1)(b), an authorised person may transport the	18
	person to—	19
(a)	the authorised mental health service stated in the order;	20
	or	21
(b)	for the continuation of the proceeding against the person	22
	for the offence—the court in which the proceeding is	23
	being heard.	24
(3)	The administrator of the authorised mental health service	25
	stated in the order may detain the person in the service under	26
	the order.	27

128	Stay of proceeding—temporary unfitness for trial	1
(1)	This section applies if the Mental Health Court decides the person is unfit for trial but the unfitness for trial is not permanent.	2 3 4
(2)	The proceeding for the offence is stayed until, on a review under chapter 12, part 6, the tribunal decides the person is fit for trial.	5 6 7
129	Discontinuation of proceeding—unsound mind	8
(1)	If the Mental Health Court decides the person was of unsound mind when the offence was allegedly committed—	9 10
(a)	the proceeding against the person for the offence is discontinued; and	11 12
(b)	further proceedings may not be taken against the person for the act or omission constituting the offence.	13 14
(2)	However, subsection (1) does not affect the person’s right under section 133 to elect to be brought to trial for the offence.	15 16 17
130	Discontinuation of proceeding—diminished responsibility	18 19
(1)	If the person was charged with the offence of murder and the Mental Health Court decides the person was of diminished responsibility when the offence was allegedly committed, the proceeding against the person for the offence of murder is discontinued.	20 21 22 23 24
(2)	However, the proceeding may be continued against the person for another offence constituted by the act or omission to which the proceeding for the offence of murder relates.	25 26 27

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131	Discontinuation of proceeding—permanent unfitness for trial	1 2
	If the Mental Health Court decides the person is unfit for trial and the unfitness for trial is permanent—	3 4
	(a) the proceeding against the person for the offence is discontinued; and	5 6
	(b) further proceedings may not be taken against the person for the act or omission constituting the offence.	7 8
Division 5	Right to trial retained	9
132	Application of div 5	10
	This division applies if the Mental Health Court decides the person was of unsound mind when the offence was allegedly committed.	11 12 13
133	Person may elect to be tried	14
	(1) Despite the Mental Health Court’s decision, the person may elect to be tried for the offence.	15 16
	(2) The election must be made by giving the director of public prosecutions written notice of the election within 28 days after the person receives written notice of the court’s decision.	17 18 19
	(3) The director of public prosecutions must, within 7 days after receiving the notice of the person’s election, give written notice of the person’s election to the chief psychiatrist.	20 21 22
	(4) If a forensic order or court treatment order is made for the person under part 4, the order continues in force until a decision is made on the proceeding against the person for the offence.	23 24 25 26

134	Obligation of director of public prosecutions on making of election	1 2
	The director of public prosecutions must ensure that the proceeding against the person for the offence is continued according to law within 28 days after receiving the person's election to be brought to trial.	3 4 5 6
Division 6	Withdrawal of references	7
135	Withdrawal of reference	8
(1)	This section applies to a reference in relation to a person made under section 100, 104 or 115.	9 10
(2)	At any time before the Mental Health Court decides the reference, the person who made the reference may apply to the court to withdraw the reference.	11 12 13
(3)	The application must be made by—	14
(a)	filing a notice in the approved form with the registrar; or	15
(b)	making an oral submission at the hearing of the proceeding for the reference.	16 17
136	Notices if application to withdraw filed	18
(1)	The registrar must—	19
(a)	within 7 days after the notice is filed, give written notice of the application to the other parties to the proceeding; and	20 21 22
(b)	at least 7 days before the hearing of the application, give the parties written notice of the hearing of the application.	23 24 25
(2)	The notice must state the following—	26
(a)	the time and place of the hearing;	27
(b)	the nature of the hearing;	28

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	(c) the parties' rights to be represented at the hearing.	1
137	Decision on application	2
	(1) The Mental Health Court may grant the application or refuse to grant it.	3 4
	(2) However, the court may not refuse to grant the application unless it considers the withdrawal of the reference would be contrary to the interests of justice.	5 6 7
Part 4	Forensic orders and court treatment orders	8 9
Division 1	Preliminary	10
138	Definition for pt 4	11
	In this part—	12
	<i>relevant circumstances</i> , of a person the subject of a reference, means each of the following—	13 14
	(a) the person's mental state and psychiatric history;	15
	(b) any intellectual disability of the person;	16
	(c) the nature of the offence to which the reference relates and the period of time that has passed since the offence was allegedly committed;	17 18 19
	(d) the person's social circumstances, including, for example, family and social support;	20 21
	(e) the person's response to treatment and care and the person's willingness to continue to receive appropriate treatment and care;	22 23 24

	(f) if relevant, the person's response to previous treatment in the community.	1 2
139	Explanation about operation of forensic orders and court treatment orders	3 4
	(1) Under this part, the Mental Health Court may, on a reference in relation to a person, make the following types of orders—	5 6
	(a) a forensic order (mental condition);	7
	(b) forensic order (disability);	8
	(c) a court treatment order.	9
	(2) A forensic order (mental condition) or court treatment order may be made for a person who has a mental illness and authorises the things mentioned in section 158, including, for example—	10 11 12 13
	(a) the provision of involuntary treatment and care for the person's mental illness; and	14 15
	(b) if the person has a dual disability—the provision of involuntary care for the person's intellectual disability; and	16 17 18
	(c) if the category of the order is inpatient—the detention of the person in an authorised mental health service.	19 20
	(3) A forensic order (disability) may be made for a person with an intellectual disability and authorises the things mentioned in section 159, including, for example—	21 22 23
	(a) the provision of involuntary care for the person's intellectual disability; and	24 25
	(b) if the category of the order is residential—the detention of the person in an authorised mental health service or the forensic disability service.	26 27 28
	(4) A forensic order (mental condition) operates in a way that is more restrictive of a person's rights and liberties than a court treatment order.	29 30 31

[s 140]

Examples—

- The Mental Health Court may decide the category of a forensic order (mental condition) is community only if there is not an unacceptable risk to the safety of the community.
 - The court may decide the category of a court treatment order, is inpatient only if the court considers the safety and welfare of the person and others can not reasonably be met if the category of the order is community.
 - Requirements imposed under a policy that must be made by the chief psychiatrist under this Act may be more onerous for a person subject to a forensic order (mental condition) than a person subject to a court treatment order.
- (5) This section does not limit any other provision of this part.

Division 2 Making of forensic orders and court treatment orders

140 Orders if unsound mind or permanent unfitness for trial

- (1) This section applies if, on a reference in relation to a person, the Mental Health Court decides the person—
- (a) was of unsound mind when the offence was allegedly committed; or
 - (b) is unfit for trial and the unfitness for trial is permanent.
- (2) The court may make an order for the person under this division.
- (3) Also, the court may make no order for the person.

141 Orders if temporary unfitness for trial

- (1) This section applies if, on a reference in relation to a person, the Mental Health Court decides the person is unfit for trial but the unfitness for trial is not permanent.
- (2) The court must make an order for the person under this division.

- (3) An order made under this division ends if the proceeding against the person for the offence is discontinued other than under chapter 12, part 6, division 2.

Note—

An order made under this division also ends under section 457(2).

142 Making of forensic order

- (1) The Mental Health Court must make an order (a *forensic order (mental condition)* or *forensic order (disability)*) for the person if the court considers, after having regard to the matters mentioned in subsection (2), that a forensic order is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.

Note—

The tribunal must conduct periodic reviews of the forensic order (mental condition) or forensic order (disability). See chapter 12, part 3.

- (2) The court must have regard to the following—

- (a) the relevant circumstances of the person;
- (b) any victim impact statement produced by the prosecuting authority for the offence;

Note—

See part 5, division 3 in relation to victim impact statements.

- (c) any policies or practice guidelines made by the chief psychiatrist under section 294 that relate to persons subject to forensic orders.
- (3) If the court makes a forensic order for the person, the order must be—
- (a) a forensic order (mental condition) if the court considers—
 - (i) the person's unsoundness of mind was, or unfitness for trial is, because of a mental condition other than an intellectual disability; or

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- (ii) the person has a dual disability and needs involuntary treatment and care for the person's mental illness, as well as care for the person's intellectual disability; or
- (b) a forensic order (disability) if the court considers the person's unsoundness of mind was, or unfitness for trial is, because of an intellectual disability, and the person needs care for the person's intellectual disability but not treatment and care for any mental illness.
- (4) Subsection (3)(a)(ii) applies regardless of the basis on which the court decides the person was of unsound mind when the offence was allegedly committed, or is unfit for trial.

143 Making of court treatment order

- (1) The Mental Health Court must make an order (a *court treatment order*) for the person if the court considers, after having regard to the matters mentioned in subsection (2), that a court treatment order, but not a forensic order, is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.

Note—

The tribunal must conduct periodic reviews of the court treatment order.
See chapter 12, part 5.

- (2) The court must have regard to the following—
 - (a) the relevant circumstances of the person;
 - (b) any victim impact statement produced by the prosecuting authority for the offence;

Note—

See part 5, division 3 in relation to victim impact statements.

- (c) any policies or practice guidelines made by the chief psychiatrist under section 294 that relate to persons subject to court treatment orders.

(3)	This section does not apply if the person has a sole diagnosis of an intellectual disability.	1 2
(4)	In this section— <i>mental condition</i> does not include an intellectual disability.	3 4
144	Court may impose conditions and make recommendations	5 6
(1)	The Mental Health Court may—	7
(a)	in a forensic order for a person, impose the conditions it considers appropriate, including a monitoring condition; or	8 9 10
	<i>Examples of a monitoring condition—</i>	11
	• a condition that the person must wear a tracking device	12
	• a condition that the person must be contactable by mobile phone at all times	13 14
(b)	in a court treatment order for a person, impose the conditions it considers appropriate, other than a monitoring condition.	15 16 17
(2)	Without limiting subsection (1), the court may impose a condition that the person must not contact a stated person, including, for example, a victim of the relevant unlawful act.	18 19 20
(3)	Also, the court may, in a forensic order for a person, make the recommendations it considers appropriate about particular intervention programs that the authorised mental health service or the forensic disability service should provide for the person.	21 22 23 24 25
	<i>Examples of intervention programs—</i>	26
	drug and alcohol programs, anger management counselling programs, sexual offender programs	27 28
(4)	In this section— <i>relevant unlawful act</i> means the unlawful act that constitutes the offence to which the reference relates.	29 30 31

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Division 3	Treatment in the community	1
145	Mental Health Court to decide category of forensic order	2
(1)	If the Mental Health Court decides to make a forensic order for a person, the court must also decide the category of the order.	3
(2)	However, the court may decide that the category of a forensic order for a person is community only if the court considers, after having regard to the matters mentioned in subsection (3), that there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.	6
(3)	The court must have regard to the following matters—	12
(a)	the relevant circumstances of the person;	13
(b)	any victim impact statement produced by the prosecuting authority for the offence.	14
	<i>Note—</i>	16
	See part 5, division 3 in relation to victim impact statements.	17
(4)	The forensic order must state the category of the order.	18
146	Treatment in the community under forensic order—inpatient category	19
(1)	If the Mental Health Court decides the category of a forensic order for a person is inpatient, the court must—	21
(a)	order that the person have no treatment in the community; or	23
	<i>Note—</i>	25
	An order made under paragraph (a) may be amended by the tribunal, but may not be amended by an authorised doctor.	26
(b)	by order, approve that an authorised doctor or a senior practitioner under the Forensic Disability Act may, at a future time, authorise some or all of the person's	28

treatment to be treatment in the community, to the extent	1
and subject to the conditions decided by the court.	2
<i>Examples for paragraph (b)—</i>	3
• authorising limited community treatment for the person to	4
enable some of the person's treatment to be treatment in the	5
community	6
• changing the category of the forensic order from inpatient to	7
community to enable all of the person's treatment to be	8
treatment in the community	9
<i>Note—</i>	10
See chapter 7, part 4 for the powers of an authorised doctor and	11
the chief psychiatrist in relation to a forensic order.	12
(2) The court may make an order under subsection (1)(b) only if	13
the court considers, after having regard to the matters	14
mentioned in subsection (3), that there is not an unacceptable	15
risk to the safety of the community, because of the person's	16
mental condition, including the risk of serious harm to other	17
persons or property.	18
(3) The court must have regard to the following matters—	19
(a) the relevant circumstances of the person;	20
(b) the fact that—	21
(i) an authorised doctor may authorise treatment in the	22
community for the person only if the authorised	23
doctor is satisfied of the matters mentioned in	24
section 215(3) and (4); or	25
(ii) a senior practitioner under the Forensic Disability	26
Act may authorise community treatment for the	27
person only if the senior practitioner is satisfied of	28
the matters mentioned in the Forensic Disability	29
Act, section 20(2) and (3);	30
(c) any victim impact statement produced to the court by	31
the prosecuting authority for the offence.	32

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147	Treatment in the community under forensic orders—community category	1 2
	If the Mental Health Court decides the category of a forensic order for a person is community, the court must—	3 4
	(a) order that the person receive treatment in the community under the order; or	5 6
	<i>Note—</i>	7
	An order made under paragraph (a) may be amended by the tribunal, but may not be amended by an authorised doctor.	8 9
	(b) by order, approve that an authorised doctor or a senior practitioner under the Forensic Disability Act may, at a future time, change the level of treatment in the community received by the person, subject to the conditions decided by the court.	10 11 12 13 14
	<i>Example of a change of level of treatment in the community—</i>	15
	a change of the category of the forensic order from community to inpatient, with or without limited community treatment	16 17
	<i>Note—</i>	18
	See chapter 7, part 4 for the powers of an authorised doctor in relation to a forensic order.	19 20
148	Mental Health Court to decide category of court treatment order	21 22
	(1) If the Mental Health Court decides to make a court treatment order for a person, the court must also decide the category of the order.	23 24 25
	(2) However, the court may decide that the category of a court treatment order for a person is inpatient only if the court considers, after having regard to the relevant circumstances of the person, that the person’s treatment and care needs, and the safety and welfare of the person and others, can not reasonably be met if the category of the order is community.	26 27 28 29 30 31
	(3) The court treatment order must state the category of the order.	32

(4)	If the category of the court treatment order is inpatient, the court may, by order, approve limited community treatment for the person.	1 2 3
	<i>Note—</i>	4
	See chapter 7, part 5 for the powers of an authorised doctor to amend a court treatment order for a person in particular ways.	5 6
149	Status of forensic order or court treatment order if amended	7 8
(1)	A forensic order or court treatment order has effect subject to any amendment of the order made by—	9 10
(a)	the tribunal under chapter 12; or	11
(b)	an authorised doctor under section 215, 216 or 219; or	12
(c)	the chief psychiatrist under section 217.	13
(2)	The order, as amended, continues as an order of the court.	14
150	References to inpatient category in relation to forensic orders (disability)	15 16
	A reference in this Act to a forensic order with the category of inpatient is taken to include a reference to a forensic order (disability) with the category of residential.	17 18 19
Division 4	Special provisions about forensic orders	20 21
151	Non-revocation period for particular forensic orders	22
(1)	This section applies if—	23
(a)	on a reference, the Mental Health Court makes a forensic order for a person; and	24 25
(b)	the offence in relation to the reference was a prescribed offence.	26 27

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- (2) The court may state in the order a period of not more than 7 years (the ***non-revocation period***) during which the tribunal may not revoke the order. 1
2
3
- (3) In deciding the non-revocation period, the court must consider— 4
5
 - (a) the nature of the offence; and 6
 - (b) the object of this Act in relation to protecting the community. 7
8

152 Admission to high security unit—stay of order 9

- (1) This section applies if— 10
 - (a) the Mental Health Court makes a forensic order for a person; and 11
12
 - (b) under the order, the person is to be detained in a high security unit; and 13
14
 - (c) the chief psychiatrist asks the court to stay the order for a period of not more than 7 days to enable the high security unit to make a physical place available for the person. 15
16
17
18
- (2) The court may stay the order for the period requested by the chief psychiatrist. 19
20
- (3) However, the court may refuse to stay the order, or may stay the order for a shorter period than requested by the chief psychiatrist, if the court is satisfied the person needs urgent treatment and care in the high security unit. 21
22
23
24
- (4) If the court stays the order and the person is being held in custody, the person must remain in custody until he or she is admitted to the high security unit. 25
26
27

Division 5	Responsibility for treatment and care	1 2
153	Responsibility for person subject to forensic order (mental condition) or court treatment order	3 4
(1)	If the Mental Health Court makes a forensic order (mental condition) or court treatment order for a person, the order must state the authorised mental health service responsible for the person.	5 6 7 8
(2)	The administrator of the stated authorised mental health service is responsible for the person.	9 10
(3)	Subsection (2) does not prevent treatment and care being provided to the person by another authorised mental health service if the person seeks treatment and care by the service.	11 12 13
(4)	This section is subject to section 343.	14
154	Responsibility for care of person subject to forensic order (disability)	15 16
(1)	If the Mental Health Court makes a forensic order (disability) for a person, the order must state—	17 18
(a)	the authorised mental health service responsible for the person; or	19 20
(b)	that the forensic disability service is responsible for the person.	21 22
(2)	However, the court may decide that the forensic disability service is responsible for the person only if the chief executive (forensic disability) certifies, in writing, that the forensic disability service has—	23 24 25 26
(a)	the physical capacity to accommodate the person; and	27
(b)	the capacity to provide care for the person under the order.	28 29
(3)	The person responsible for the person subject to the order is—	30

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- (a) if the court makes an order under subsection (1)(a)—the authorised mental health service stated in the order; or 1
- (b) if the court makes an order under subsection (1)(b)—the forensic disability service. 2
- (4) Subsection (3)(b) does not prevent treatment and care being provided to the person by another authorised mental health service if the person seeks treatment and care by the service. 3
- (5) This section is subject to section 343. 4

155 Certificate of forensic disability service availability 9

- (1) This section applies for the purpose of the Mental Health Court deciding under section 154(1) whether a forensic order (disability) is to state that the forensic disability service is responsible for a person. 10
- (2) If asked by the director of forensic disability, the chief executive (forensic disability) must give the director a certificate stating whether or not the forensic disability service has the capacity for the person’s detention and care. 11
- (3) The director of forensic disability may give the certificate to the court. 12
- (4) The court may ask the director of forensic disability to give the court a certificate of the chief executive (forensic disability) stating whether or not the forensic disability service has the capacity for the person’s detention and care. 13
- (5) If the court makes a request under subsection (4), the director of forensic disability must give the court the certificate within— 14
- (a) 7 days after receiving the request; or 15
- (b) any longer period allowed by the court. 16

Division 6	Transport	1
156	Transport to authorised mental health service	2
(1)	This section applies if—	3
(a)	the Mental Health Court makes a forensic order or court treatment order for a person and the category of the order is inpatient; and	4 5 6
(b)	an authorised mental health service is responsible for the person under the order.	7 8
(2)	An authorised person may transport the person to the authorised mental health service stated in the order.	9 10
157	Transport to forensic disability service	11
(1)	This section applies if—	12
(a)	the Mental Health Court makes a forensic order (disability) for a person and the category of the order is residential; and	13 14 15
(b)	the forensic disability service is responsible for the person under the order.	16 17
(2)	An authorised person, or authorised practitioner under the Forensic Disability Act, may transport the person to the forensic disability service.	18 19 20
Division 7	Matters authorised by particular orders	21 22
	<i>Note—</i>	23
	Chapter 7 provides for the treatment and care of involuntary patients.	24

[s 158]

158	Forensic orders (mental condition) and court treatment orders	1 2
(1)	A forensic order (mental condition), or court treatment order, for a person authorises each of the following in accordance with the order—	3 4 5
(a)	the provision of involuntary treatment and care for the person’s mental illness by an authorised mental health service;	6 7 8
(b)	if the person has a dual disability—the provision of involuntary care for the person’s intellectual disability;	9 10
(c)	if the category of the order is inpatient—the detention of the person in the authorised mental health service that is responsible for the person.	11 12 13
(2)	The person responsible for the treatment and care must ensure the order is given effect.	14 15
159	Forensic orders (disability)	16
(1)	A forensic order (disability) for a person authorises each of the following in accordance with the order—	17 18
(a)	the provision of involuntary care for the person’s intellectual disability;	19 20
(b)	if the category of the order is residential—	21
(i)	if an authorised mental health service is responsible for the person—the detention of the person in the authorised mental health service; or	22 23 24
(ii)	if the forensic disability service is responsible for the person—the detention of the person in the forensic disability service.	25 26 27
(2)	The person responsible for the care must ensure the order is given effect.	28 29

Part 5	Other provisions	1
Division 1	Notice of decisions and orders	2
160	Notice of decisions and orders	3
(1)	The registrar must, within 7 days after the Mental Health Court makes its decision on a reference, give written notice of the court's decision, and any orders made by the court, to—	4 5 6
(a)	each person who was entitled to be given notice of the reference under section 119(1); and	7 8
(b)	the tribunal.	9
(2)	Also, if a victim impact statement was given to the court on the hearing of the reference, the registrar must give the tribunal a copy of the statement.	10 11 12
(3)	The chief executive (justice) must, as soon as practicable after receiving the notice mentioned in subsection (1), give written notice of the court's decision and any reasons to—	13 14 15
(a)	the registrar of the relevant court; and	16
(b)	if the prosecuting authority for the offence is not the director of public prosecutions—the prosecuting authority for the offence.	17 18 19
(4)	In this section—	20
	<i>relevant court</i> means the court in which the proceeding for the offence has been brought.	21 22
Division 2	Admissibility and use of evidence	23
161	Definition for div 2	24
	In this division—	25

[s 162]

expert's report includes a clinical record relevant to a person's mental condition. 1
2

162 Admissibility of expert's report at trial 3

An expert's report received in evidence by the Mental Health Court on a reference is admissible at the trial of the person for the offence in relation to the reference only for the following purposes— 4
5
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7

(a) deciding whether— 8

(i) for the application of the Criminal Code, section 613, the person is not capable of understanding the proceedings; or 9
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11

(ii) for the application of the Criminal Code, section 645, the person is not of sound mind; or 12
13

(iii) the person was of unsound mind or diminished responsibility when the offence was allegedly committed; or 14
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16

(iv) the person should be admitted to an authorised mental health service under a forensic order (Criminal Code); 17
18
19

(b) sentencing the person. 20

163 Particular statements not admissible 21

(1) A statement made by the person the subject of a reference at the hearing of the reference is not admissible in evidence in any civil or criminal proceeding against the person. 22
23
24

(2) Subsection (1) applies to statements made orally or in writing and whether under oath or otherwise. 25
26

(3) However, subsection (1) does not apply to a proceeding for— 27

(a) contempt of the Mental Health Court; or 28

(b) an offence against the Criminal Code, chapter 16. 29

164	Issue of mental condition may be raised at trial	1
(1)	A decision by the Mental Health Court on a reference in relation to a person does not prevent the person from raising the person's mental condition at the person's trial for the offence.	2 3 4 5
(2)	If the issue of the person's mental condition is raised at the person's trial, the Mental Health Court's decision is admissible for the sentencing of the person, but is not otherwise admissible at the trial.	6 7 8 9
165	Other use of expert's report	10
(1)	An expert's report received in evidence by the Mental Health Court on a reference may be given to—	11 12
(a)	the administrator of an authorised mental health service responsible for the person; or	13 14
(b)	the administrator of the forensic disability service; or	15
(c)	the tribunal for conducting a review.	16
(2)	The report may be given to, and used by, another person only with the leave of the court.	17 18
(3)	The court may grant the leave subject to the conditions it considers appropriate.	19 20
Division 3	Victim impact statements	21
166	Application of div 3	22
(1)	This division applies if, on a reference in relation to a person, the Mental Health Court decides the person—	23 24
(a)	was of unsound mind when the offence was allegedly committed; or	25 26
(b)	is unfit for trial.	27

[s 167]

(2)	For this division, the unlawful act that constitutes the offence is the <i>relevant unlawful act</i> .	1 2
167	Preparation of victim impact statement	3
(1)	The victim of the relevant unlawful act, or a close relative of the victim, may prepare, and give the prosecuting authority for the relevant unlawful act, a victim impact statement in relation to the relevant unlawful act, for the purpose of the prosecuting authority producing the statement to the Mental Health Court.	4 5 6 7 8 9
(2)	The victim impact statement may include—	10
(a)	the views of the victim, or close relative of the victim, about the risk the person the subject of the reference represents to the victim, the close relative of the victim or another person; and	11 12 13 14
(b)	a request by the victim, or close relative of the victim, that the Mental Health Court impose, in any forensic order or court treatment order made for the person the subject of the reference, a condition that the person must not contact—	15 16 17 18 19
(i)	the victim; or	20
(ii)	the close relative of the victim; or	21
(iii)	another close relative of the victim.	22
168	Production of victim impact statement by prosecuting authority	23 24
	If the victim gives the prosecuting authority a victim impact statement, the prosecuting authority must give the statement to the Mental Health Court.	25 26 27
169	Use of victim impact statement by Mental Health Court	28
(1)	The Mental Health Court may have regard to the victim impact statement in deciding—	29 30

- (a) whether to make an order for the person the subject of the reference; and 1
2
 - (b) if so— 3
 - (i) the type of order; and 4
Example of type of order— 5
forensic order or court treatment order 6
 - (ii) whether to impose any conditions on the order, including, but not limited to, a condition that the person must not contact the victim of the relevant unlawful act or a close relative of the victim; and 7
8
9
10
 - (iii) whether the person is to have treatment in the community and, if so, the nature of the treatment. 11
12
- (2) The court may place the weight on the victim impact statement that it considers appropriate. 13
14

Division 4 Persons subject to existing orders or authorities 15 16

170 Person subject to existing forensic order 17

- (1) This section applies if the Mental Health Court decides under this chapter to make a forensic order (a *new forensic order*) for a person who is already subject to a forensic order (the *existing forensic order*). 18
19
20
21
- (2) The court may— 22
 - (a) amend the existing forensic order for the person; or 23
 - (b) revoke the existing forensic order for the person and make a new forensic order for the person. 24
25
- (3) Despite section 311(1)(b), if the existing forensic order is revoked under subsection (2)(b), the chief psychiatrist must not revoke an information notice given in relation to the person subject to the existing forensic order. 26
27
28
29

[s 171]

(4)	However, the chief psychiatrist must revoke the information notice if the new forensic order is revoked other than under subsection (2)(b).	1 2 3
171	Person subject to existing treatment authority or court treatment order	4 5
(1)	This section applies if the Mental Health Court makes a forensic order (mental condition) for a person who is subject to a treatment authority or court treatment order.	6 7 8
(2)	On the making of the forensic order (mental condition), the treatment authority or court treatment order ends.	9 10
(3)	Nothing in this section prevents the court making a forensic order (disability) for a person who is subject to a treatment authority.	11 12 13
Division 5	Miscellaneous	14
172	Relationship with ch 16, pt 2	15
	To the extent of any inconsistency with chapter 16, part 2, this chapter prevails.	16 17

Chapter 6	Powers of courts hearing criminal proceedings and related processes	1
		2
		3
Part 1	Preliminary	4
173	Purpose of ch 6	5
	The purpose of this chapter is to provide for appropriate powers and processes for courts hearing criminal proceedings and for related matters, including—	6
		7
		8
	(a) powers for Magistrates Courts, the District Court and the Supreme Court to deal with cases where there is a concern about the mental state of a person charged with an offence, including by making a reference to the Mental Health Court; and	9
		10
		11
		12
		13
	(b) the admission of persons subject to forensic orders (Criminal Code) to authorised mental health services; and	14
		15
		16
	(c) the detention of persons in authorised mental health services during trial.	17
		18
174	Childrens Court	19
	In this chapter, a reference to a Magistrates Court, in relation to a person charged with an offence, is taken to include a reference to the Childrens Court if the person charged with the offence is being dealt with under the <i>Youth Justice Act 1992</i> .	20
		21
		22
		23
	<i>Note—</i>	24
	See the <i>Youth Justice Act 1992</i> , section 63 in relation to the powers and jurisdiction of the District Court in its criminal jurisdiction that are conferred on a Childrens Court judge.	25
		26
		27

[s 175]

Part 2	Magistrates Courts	1
Division 1	General	2
175	Power to discharge person—unsound mind or unfitness for trial	3 4
(1)	This section applies if, at the trial before a Magistrates Court of a person charged with an offence, the court is reasonably satisfied, on the balance of probabilities, that the person—	5 6 7
(a)	was, or appears to have been, of unsound mind when the offence was allegedly committed; or	8 9
(b)	is unfit for trial.	10
(2)	The court may discharge the person from the charge—	11
(a)	unconditionally; or	12
(b)	on the conditions the court considers appropriate.	13
176	Power to adjourn proceeding—temporary unfitness for trial	14 15
(1)	This section applies if, at the trial before a Magistrates Court of a person charged with an offence, the court is reasonably satisfied, on the balance of probabilities, that the person—	16 17 18
(a)	is unfit for trial; but	19
(b)	is likely to become fit for trial within 6 months.	20
(2)	The court may adjourn the proceeding for the offence.	21
(3)	However, if the court is reasonably satisfied, on the balance of probabilities, that the person is still unfit for trial 6 months after the proceeding for the offence is adjourned, the court may discharge the person from the charge under section 175(2).	22 23 24 25 26
(4)	This section does not limit the court’s power under section 175.	27 28

177	Power to make reference to Mental Health Court	1
(1)	This section applies if, in a proceeding before a Magistrates Court against a person charged with an indictable offence, the court is reasonably satisfied, on the balance of probabilities, that—	2 3 4 5
(a)	the person—	6
(i)	was, or appears to have been, of unsound mind when the offence was allegedly committed; or	7 8
(ii)	is unfit for trial; and	9
(b)	both of the following apply—	10
(i)	the nature and circumstances of the offence create an exceptional circumstance in relation to the protection of the community;	11 12 13
(ii)	the making of a forensic order or court treatment order for the person may be justified.	14 15
(2)	The court may refer to the Mental Health Court the matter of the person's mental state relating to—	16 17
(a)	the indictable offence; and	18
(b)	an associated offence.	19
 178	 How reference to Mental Health Court is made	 20
(1)	The registrar of a Magistrates Court that makes a reference under section 177(2) in relation to a person must file a notice of the reference in the approved form in the Mental Health Court Registry.	21 22 23 24
(2)	The notice must state each offence in relation to which the person's mental state is referred.	25 26
(3)	The notice must be accompanied by a copy of any report produced to the court relating to the person's mental state.	27 28

[s 179]

179	Power to make referral to appropriate department or entity	1
		2
(1)	This section applies if a Magistrates Court—	3
(a)	has discharged a person from a charge under section 175 or adjourned a proceeding against a person under section 176; and	4
		5
		6
(b)	is reasonably satisfied, on the balance of probabilities, that the person does not appear to have a mental illness.	7
		8
(2)	The court may refer the person to—	9
(a)	the disability services department for appropriate care; or	10
		11
(b)	the health department or another entity the court considers appropriate for treatment and care.	12
		13
(3)	In this section—	14
	<i>disability services department</i> means the department in which the <i>Disability Services Act 2006</i> is administered.	15
		16
	<i>health department</i> means the department in which the <i>Hospital and Health Boards Act 2011</i> is administered.	17
		18
Division 2	Examination orders	19
180	Power to make examination order	20
(1)	This section applies if—	21
(a)	a Magistrates Court—	22
(i)	has discharged a person from a charge under section 175 or adjourned a proceeding against a person under section 176; or	23
		24
		25
(ii)	is reasonably satisfied, on the balance of probabilities, that a person charged with an offence would benefit from an examination by an authorised doctor; and	26
		27
		28
		29

-
- (b) the court—1

 - (i) is reasonably satisfied, on the balance of probabilities, that the person has a mental illness or a dual disability; or2
3
4
 - (ii) is unable to decide whether the person has a mental illness or another mental condition.5
6
 - (2) The court may make an order (an *examination order*) in relation to the person.7
8
 - (3) Also, if the charge has not been discharged under section 175 or the proceeding has not been adjourned under section 176, the court may adjourn the proceeding against the person for the offence.9
10
11
12
 - (4) An examination order authorises an authorised doctor at the authorised mental health service stated in the order (the *stated service*) to examine the person, without the person’s consent, to decide whether to make—13
14
15
16

 - (a) a treatment authority for the person under section 46; or17
 - (b) a recommendation for the person’s treatment and care.18
 - (5) Also, an examination order may—19

 - (a) direct an authorised person to transport the person immediately to the stated service; or20
21
 - (b) direct the person to attend at the stated service within a stated time, of not more than 28 days, after the order is made.22
23
24
 - Note—*25

See chapter 11, part 6, division 3 for the powers that may be used in relation to a person who does not comply with a direction mentioned in paragraph (b).26
27
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181 Examination of person

- (1) For the purpose of examining the person, the person may be detained for not more than 6 hours at the stated service.30
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[s 182]

- (2) However, an authorised mental health practitioner or authorised doctor may extend the examination period for a further period of 6 hours if the authorised mental health practitioner or authorised doctor reasonably believes the further period is necessary to carry out or finish the examination of the person.
- (3) The authorised doctor who examines the person may—
- (a) make a treatment authority for the person under section 46; or
 - (b) make a recommendation for the person’s treatment and care; or
 - (c) decide the person does not require treatment and care.
- (4) For subsection (3)(a), section 45 applies as if a reference to the assessment of a person under chapter 2, part 3 were a reference to the examination of the person under an examination order.
- (5) If the authorised doctor makes a recommendation under subsection (3)(b) for the person’s treatment and care, the authorised doctor must explain to the person the benefits of being treated voluntarily in accordance with the recommendation.
- Note—*
- See section 50 for the matters the authorised doctor must tell, and explain to, the person if the authorised doctor makes a treatment authority for the person as mentioned in subsection (3)(a).

182 Examination report

- The authorised doctor must prepare a report (an *examination report*) that records the following—
- (a) details of the examination carried out under the examination order;
 - (b) the recommendation or decision made under section 181(3);

[s 183]

- (c) if the authorised doctor makes a recommendation under section 181(3)(b) for the person’s treatment and care—details of the explanation given to the person of the benefits of being treated voluntarily in accordance with the recommendation.
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183 Admissibility of examination report 6

The examination report is admissible in the following proceedings— 7
8

- (a) the proceeding against the person in which the examination order was made;
9
10
- (b) any future proceeding against the person for an offence to which the examination report is relevant.
11
12

Part 3 Supreme Court and District Court 13 14

Division 1 Power to make reference to Mental Health Court if person pleads guilty to indictable offence 15 16 17

184 Application of div 1 18

- (1) This division applies if—
19
- (a) a person appears before the Supreme Court or District Court in a relevant proceeding for a charge of an indictable offence, other than an offence against a Commonwealth law; and
20
21
22
23
- (b) the court is reasonably satisfied, on the balance of probabilities, that the person—
24
25

[s 185]

	(i) was, or appears to have been, of unsound mind when the offence was allegedly committed; or	1 2
	(ii) for the offence of murder—was, of may have been, of diminished responsibility; or	3 4
	(iii) is unfit for trial.	5
(2)	In this section—	6
	<i>relevant proceeding</i> , for a person charged with an indictable offence, means—	7 8
(a)	if the person pleads guilty to the charge at the person’s trial—the person’s trial; or	9 10
(b)	if the person has pleaded guilty to the charge before a court and has been committed by the court for sentence—the person’s appearance for sentence.	11 12 13
185	Power to order plea of not guilty	14
	The court may order that a plea of not guilty be entered for the person for—	15 16
(a)	the indictable offence with which the person is charged; and	17 18
(b)	if, under the Criminal Code, section 651, a charge of a summary offence laid against the person is to be heard and decided by the court—the summary offence.	19 20 21
186	Power to make reference to Mental Health Court and related orders	22 23
(1)	On the making of the order under section 185, the court must—	24 25
(a)	adjourn the trial; and	26
(b)	refer to the Mental Health Court the matter of the person’s mental state relating to—	27 28
(i)	the indictable offence with which the person is charged; and	29 30

	(ii) any summary offence mentioned in section 185(b) that is an associated offence; and	1 2
	(c) do 1 of the following—	3
	(i) remand the person in custody;	4
	(ii) if a written agreement has been given under this division for the person’s detention in a stated authorised mental health service, order that the person be detained in the stated authorised mental health service;	5 6 7 8 9
	(iii) grant the person bail under the <i>Bail Act 1980</i> .	10
(2)	For subsection (1)(c)(ii), an authorised person may transport the person to the stated authorised mental health service.	11 12
187	How reference to Mental Health Court is made	13
(1)	The registrar of the court that made the reference under section 186(1)(b) must file a notice of the reference in the approved form in the Mental Health Court Registry.	14 15 16
(2)	The notice must state each offence in relation to which the person’s mental state is referred.	17 18
(3)	The notice must be accompanied by a copy of any report produced to the court relating to the person’s mental state.	19 20
188	Persons who may give agreement for detention	21
(1)	An agreement for the person’s detention in an authorised mental health service may be given by—	22 23
	(a) the administrator of the service; or	24
	(b) the chief psychiatrist.	25
(2)	However, if the person is a minor, an agreement may not be given for the person’s detention in a high security unit.	26 27

[s 189]

189	Agreement for detention—administrator	1
(1)	The administrator of an authorised mental health service may give an agreement for a person’s detention in the service only if the administrator is satisfied the service has the capacity to detain the person for treatment and care.	2 3 4 5
(2)	Without limiting subsection (1), if the authorised mental health service is not a high security unit, the administrator must be satisfied the person’s detention in the service does not present an unreasonable risk to the safety of the person or others having regard to the following—	6 7 8 9 10
(a)	the person’s mental state and psychiatric history;	11
(b)	the person’s treatment and care needs;	12
(c)	the security requirements for the person.	13
190	Agreement for detention—chief psychiatrist	14
(1)	The chief psychiatrist may give an agreement for a person’s detention in an authorised mental health service only if the administrator of the service has refused to give an agreement under section 189.	15 16 17 18
(2)	In deciding whether to give the agreement, the chief psychiatrist must have regard to the matters to which the administrator must have regard under section 189.	19 20 21
191	Effect of order	22
(1)	This section applies if a court makes an order under section 186(1)(c)(ii) in relation to a person.	23 24
(2)	An authorised person may—	25
(a)	transport the person to the stated service; and	26
(b)	at the end of the adjournment, transport the person from the stated service to appear before the court.	27 28
(3)	The person may be detained under the court’s order in the stated service.	29 30

Division 2	Forensic orders (Criminal Code)	1
192	Application of div 2	2
(1)	This division applies if, on the trial of a person charged with an indictable offence—	3 4
(a)	the jury makes a relevant finding; and	5
(b)	the Supreme Court or District Court makes a forensic order (Criminal Code).	6 7
(2)	In this section—	8
	<i>relevant finding</i> means—	9
(a)	a finding under the Criminal Code, section 613 (a <i>section 613 finding</i>) that the person is not capable of understanding the proceedings at the trial for the reason that the person is of unsound mind or for another reason stated by the jury; or	10 11 12 13 14
(b)	a finding under the Criminal Code, section 645 (a <i>section 645 finding</i>) that the person is not of sound mind; or	15 16 17
(c)	a finding under the Criminal Code, section 647 that the person is not guilty of the offence on account of the person being of unsound mind when the act or omission alleged to constitute the offence occurred.	18 19 20 21
193	Registrar of court to give notice of order	22
	The registrar of the court that made the forensic order (Criminal Code) must, within 7 days after the order is made, give notice of the order in the approved form to—	23 24 25
(a)	the chief psychiatrist; and	26
(b)	the tribunal.	27
	<i>Notes—</i>	28
1	See chapter 7, part 2 in relation to the examination of a person subject to a forensic order (Criminal Code).	29 30

[s 194]

2	If a jury makes a section 613 finding or section 645 finding in relation to a person and the person is subject to a forensic order (Criminal Code), the person’s fitness for trial must be reviewed by the tribunal. See chapter 12, part 6.	1 2 3 4
3	See chapter 12, part 4 for the review of forensic orders (Criminal Code) by the tribunal.	5 6
194	Power to transport person to authorised mental health service	7 8
	For the purpose of giving effect to the forensic order (Criminal Code), an authorised person may transport the person to the authorised mental health service stated in the order.	9 10 11 12
Part 4	Detention in authorised mental health service during trial	13 14
195	Definitions for pt 4	15
	In this part—	16
	<i>court</i> means—	17
	(a) the Supreme Court; or	18
	(b) the District Court; or	19
	(c) a Magistrates Court.	20
	<i>stated service</i> see section 196(2).	21
196	Power to order person’s detention in authorised mental health service	22 23
	(1) This section applies if, after the start of the trial of a person charged with an indictable offence, the court hearing the trial—	24 25 26

[s 197]

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- | | |
|--|---|
| <p>(a) decides the person should be remanded in custody during an adjournment of the trial; and</p> <p>(b) is satisfied that, because of the person's mental condition, the person should be detained in an authorised mental health service for treatment and care during the adjournment.</p> <p>(2) The court may order that the person be detained, during the adjournment, in a stated authorised mental health service (the <i>stated service</i>) if a written agreement has been given under this part for the person's detention in the stated service.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> |
| <p>197 Persons who may give agreement for detention</p> <p>(1) An agreement for the person's detention in an authorised mental health service may be given by—</p> <p style="padding-left: 20px;">(a) the administrator of the service; or</p> <p style="padding-left: 20px;">(b) the chief psychiatrist.</p> <p>(2) However, if the person is a minor, an agreement may not be given for the person's detention in a high security unit.</p> | <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> |
| <p>198 Agreement for detention—administrator</p> <p>(1) The administrator of an authorised mental health service may give an agreement for a person's detention in the service only if the administrator is satisfied the service has the capacity to detain the person for treatment and care.</p> <p>(2) Without limiting subsection (1), if the authorised mental health service is not a high security unit, the administrator must be satisfied the person's detention in the service does not present an unreasonable risk to the safety of the person or others having regard to the following—</p> <p style="padding-left: 20px;">(a) the person's mental state and psychiatric history;</p> <p style="padding-left: 20px;">(b) the person's treatment and care needs;</p> <p style="padding-left: 20px;">(c) the security requirements for the person.</p> | <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> |

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199	Agreement for detention—chief psychiatrist	1
(1)	The chief psychiatrist may give an agreement for a person’s detention in a public sector mental health service only if the administrator of the service has refused to give an agreement under section 198.	2 3 4 5
(2)	In deciding whether to give the agreement, the chief psychiatrist must have regard to the matters to which the administrator must have regard under section 198.	6 7 8
200	Effect of order	9
(1)	This section applies if a court makes an order under section 196(2) in relation to a person.	10 11
(2)	An authorised person may—	12
(a)	transport the person to an inpatient facility of the stated service; and	13 14
(b)	at the end of the adjournment, transport the person from the stated service to appear before the court.	15 16
	<i>Notes—</i>	17
1	The power to transport the person includes the power to detain the person for the purpose of transporting the person. See section 359(1).	18 19 20
2	The authorised person may exercise the power to detain and take the person with the help, and using the force, that is necessary and reasonable in the circumstances. See section 359(2).	21 22 23
(3)	The person may be detained under the court’s order in the stated service.	24 25

Chapter 7	Treatment and care of patients	1
		2
Part 1	Preliminary	3
201	Purpose of ch 7	4
	The purpose of this chapter is to provide for the following—	5
	(a) the responsibilities of authorised doctors and administrators of authorised mental health services in providing treatment and care to patients under this Act;	6 7 8
	(b) the assessment of patients subject to a treatment authority to decide whether the continuation of the authority is appropriate;	9 10 11
	(c) the authorisation of community treatment for involuntary patients;	12 13
	(d) the imposition of monitoring conditions for forensic patients;	14 15
	(e) the approval of temporary absences for particular involuntary patients;	16 17
	(f) the placing of restrictions on the use of electroconvulsive therapy and non-ablative neurosurgical procedures for psychiatric conditions;	18 19 20
	(g) the prohibition of psychosurgery and other practices.	21
202	Definition for ch 7	22
	In this chapter—	23
	<i>relevant circumstances</i> , of a patient, means each of the following—	24 25
	(a) the patient’s mental state and psychiatric history;	26
	(b) any intellectual disability of the patient;	27

[s 203]

	(c) the patient's social circumstances including, for example, family and social support;	1 2
	(d) the patient's response to treatment and care and the patient's willingness to continue to receive appropriate treatment and care;	3 4 5
	(e) if relevant, the patient's response to previous treatment in the community.	6 7
203	Relationship between this chapter and custodial status of particular patients	8 9
(1)	This section applies to a patient of an authorised mental health service who is subject to any of the following—	10 11
	(a) a treatment authority;	12
	(b) a forensic order;	13
	(c) a court treatment order.	14
(2)	A person making a decision about the patient's authority or order, including limited community treatment under the authority or order, must make the decision without regard to whether the patient is held in custody under another Act.	15 16 17 18
(3)	However, a decision made under this chapter about the patient's authority or order, including limited community treatment under the authority or order, is subject to any custodial requirement under the other Act.	19 20 21 22
(4)	Also, a decision made under this chapter about the patient's authority or order is subject to part 3.	23 24

Part 2	Responsibility to provide treatment and care	1 2
204	Application of pt 2	3
	This part applies to each of the following patients of an authorised mental health service—	4 5
	(a) an involuntary patient subject to—	6
	(i) a treatment authority; or	7
	(ii) a forensic order; or	8
	(iii) a court treatment order;	9
	(b) a person from another State detained in an authorised mental health service under section 354(4);	10 11
	(c) a classified patient (voluntary);	12
	(d) a patient receiving treatment and care under an advance health directive, or with the consent of a personal guardian or attorney.	13 14 15
205	Examination of patient for purpose of providing treatment and care	16 17
	(1) This section does not apply to a patient subject to a treatment authority.	18 19
	<i>Note—</i>	20
	See section 209 for the assessment of patients subject to a treatment authority	21 22
	(2) An authorised doctor for the authorised mental health service must examine the patient and decide the treatment and care to be provided to the patient.	23 24 25
	(3) The examination must be made—	26
	(a) as soon as practicable after the person becomes a patient to whom this division applies; and	27 28

[s 206]

(b)	if a patient subject to a treatment authority, court treatment order or forensic order becomes a classified patient—as soon as practicable after the patient becomes a classified patient.	1 2 3 4
(4)	In deciding the treatment and care to be provided to the patient, the authorised doctor must have regard to—	5 6
(a)	the views, wishes and preferences of the patient, to the extent they can be expressed, including, for example, in an advance health directive; and	7 8 9
(b)	to the extent practicable, the views of the following persons—	10 11
(i)	the patient’s nominated support person, if any;	12
(ii)	the patient’s family, carers and other support persons;	13 14
(iii)	the patient’s personal guardian, if any;	15
(iv)	the patient’s attorney, if any.	16
206	Recording treatment and care in health records	17
(1)	The authorised doctor must ensure that the treatment and care to be provided to the patient is, and continues to be, appropriate for the patient’s treatment and care needs and in compliance with the requirements of this Act.	18 19 20 21
(2)	The authorised doctor must record in the patient’s health records the treatment and care to be provided, and that is provided, to the patient.	22 23 24
207	Administrator’s responsibilities for treatment and care	25
(1)	The administrator of the authorised mental health service has the following responsibilities for the patient—	26 27
(a)	to take reasonable steps to ensure that the patient receives—	28 29

[s 208]

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|------|--|----------------|
| (i) | the treatment and care recorded in the patient's health records under section 206; and | 1
2 |
| (ii) | to the extent practicable, the treatment and care appropriate for any other illness or condition affecting the patient; | 3
4
5 |
| (b) | to ensure that the systems for recording the patient's treatment and care, both planned and provided, can be audited; | 6
7
8 |
| (c) | to ensure that regular assessments of the patient under section 209 happen as decided by an authorised doctor for the authorised mental health service. | 9
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11 |
| (2) | The administrator must also take reasonable steps to ensure that the patient's treatment and care is provided in compliance with the requirements of this Act. | 12
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14 |

Part 3	Patients subject to treatment authorities	15 16
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Division 1	Preliminary	17
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208	Application of pt 3	18
	This part applies to a patient of an authorised mental health service who is subject to a treatment authority.	19 20

Division 2	Assessment of patients	21
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209	Authorised doctor must assess patient	22
(1)	An authorised doctor for the authorised mental health service must make a first assessment of the patient under this section	23 24

[s 209]

- on the date recorded in the patient's health records under section 54, or on an earlier date. 1 2
- (2) Subsequent assessments of the patient under this section must be completed within 3 months after the date of the patient's last assessment. 3 4 5
- (3) Also, an authorised doctor must make an assessment of the patient under this section if the authorised doctor considers at any time that— 6 7 8
- (a) the treatment criteria may no longer apply to the patient; or 9 10
- (b) there may be a less restrictive way for the patient to receive treatment and care for the patient's mental illness. 11 12 13
- (4) On an assessment under this section, the authorised doctor must— 14 15
- (a) assess the patient; and 16
- (b) discuss the assessment with the patient and, to the extent practicable— 17 18
- (i) the person's nominated support person, if any; and 19
- (ii) the person's family, carers and other support persons; and 20 21
- (iii) the person's personal guardian, if any; and 22
- (iv) the person's attorney, if any; and 23
- (c) decide, and record in the patient's health records— 24
- (i) whether the treatment criteria continue to apply to the patient; and 25 26
- (ii) whether there is a less restrictive way for the patient to receive treatment and care for the patient's mental illness; and 27 28 29
- (iii) if the application of subparagraphs (i) and (ii) mean that the patient's treatment authority continues— 30 31 32

[s 210]

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|------|---|------------------|
| (A) | whether the category of the patient's treatment authority continues to be appropriate; and | 1
2
3 |
| (B) | if the category is inpatient—whether the extent of any limited community treatment under the authority continues to be appropriate; and | 4
5
6
7 |
| (iv) | the date of the patient's next assessment under this section. | 8
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Division 3	Actions that may be taken after assessment	10 11
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210	Authorised doctor may revoke treatment authority after assessment	12 13
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| (1) | This section applies if, after making an assessment of the patient, an authorised doctor for an authorised mental health service considers— | 14
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16 |
| (a) | the treatment criteria may no longer apply to the patient; or | 17
18 |
| (b) | there may be a less restrictive way for the patient to receive treatment and care for the patient's mental illness. | 19
20
21 |
| (2) | The authorised doctor must revoke the patient's treatment authority. | 22
23 |
| (3) | However, the authorised doctor is not required to revoke the treatment authority if the authorised doctor considers that the patient's capacity to consent to be treated for the patient's mental illness is not stable. | 24
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<i>Examples of when a patient's capacity to consent to be treated is not stable—</i>	28 29
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|---|--|----------|
| • | the patient gains and loses capacity to consent to be treated during a short time period | 30
31 |
|---|--|----------|

[s 211]

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- the patient makes different decisions based on the same facts during a short time period 1
2
 - (4) Also, if the authorised doctor is not an authorised psychiatrist, the revocation takes effect only if the authorised doctor has consulted with an authorised psychiatrist about the revocation. 3
4
5
 - (5) An authorised doctor must tell a patient of a revocation of the patient's treatment authority under this section as soon as practicable after the revocation. 6
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8
 - (6) The administrator of the authorised mental health service must give written notice of the revocation to the patient, and the tribunal, within 7 days after the revocation. 9
10
11
- 211 Authorised psychiatrist may revoke treatment authority if patient missing** 12
13
- (1) An authorised psychiatrist for the authorised mental health service may revoke the patient's treatment authority if the authorised psychiatrist is satisfied the authorised mental health service has not been able to locate the patient for a period of 6 months. 14
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16
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18
 - (2) The administrator of the authorised mental health service must give written notice of the revocation to the tribunal within 7 days after the revocation. 19
20
21
- 212 Chief psychiatrist may revoke treatment authority** 22
- (1) This section applies if the chief psychiatrist considers— 23
 - (a) the treatment criteria no longer apply to the patient; or 24
 - (b) there may be a less restrictive way for the patient to receive treatment and care for the patient's mental illness. 25
26
27
 - (2) The chief psychiatrist may revoke the patient's treatment authority. 28
29

[s 213]

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| (3) The chief psychiatrist must give written notice of the revocation to the administrator of the patient's treating health service as soon as practicable after the revocation. | 1
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3 |
| (4) An authorised doctor must tell the patient of the revocation as soon as practicable after the revocation. | 4
5 |
| (5) The administrator of the patient's treating health service must give written notice of the revocation to the tribunal within 7 days after the revocation. | 6
7
8 |
| 213 Amendment of treatment authority to change category, limited community treatment or conditions | 9
10 |
| (1) An authorised doctor for an authorised mental health service may amend the patient's treatment authority under this section in any of the following ways— | 11
12
13 |
| (a) to change the category of the authority; | 14 |
| (b) to authorise, revoke, or change the extent of, limited community treatment; | 15
16 |
| (c) to change a condition of the authority. | 17 |
| (2) The authorised doctor may make the amendment only if satisfied the amendment is appropriate having regard to— | 18
19 |
| (a) the relevant circumstances of the patient; and | 20 |
| (b) for an amendment mentioned in subsection (1)(b)—the purpose of limited community treatment. | 21
22 |
| (3) The amendment must not be contrary to an order of the Mental Health Court or the tribunal. | 23
24 |
| (4) If limited community treatment is authorised under this section, the patient's treatment authority must state— | 25
26 |
| (a) the nature and conditions of the limited community treatment; and | 27
28 |
| (b) the period, of not more than 7 days, for which limited community treatment is authorised. | 29
30 |
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[s 214]

- (5) The authorised doctor must tell the patient of any proposed amendment of the patient’s treatment authority and explain the effect of the amendment to the patient. 1
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- (6) This section does not apply if the patient is a classified patient. 4
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- Note—* 6
- See part 6 for provisions applying to classified patients. 7

Part 4

Patients subject to forensic orders

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214

Application of pt 4

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- (1) This part applies to a patient of an authorised mental health service who is subject to a forensic order. 11
12
- (2) However, this part does not apply if the patient is a classified patient. 13
14
- Note—* 15
- See part 6 for provisions applying to classified patients. 16
- (3) Also, section 217 does not apply if the patient is a minor. 17

215

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

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- (1) If the patient’s forensic order is a forensic order (mental condition) or a forensic order (disability), an authorised doctor for an authorised mental health service may amend the patient’s forensic order under this section in any of the following ways— 21
22
23
24
25
 - (a) to change the category of the order; 26

[s 216]

(b)	to authorise, revoke, or change the extent of, limited community treatment;	1 2
(c)	to change a condition of the order.	3
(2)	The amendment must not be contrary to an order of the Mental Health Court or the tribunal.	4 5
(3)	The authorised doctor may make the amendment only if satisfied, after having regard to the matters mentioned in subsection (4), that there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.	6 7 8 9 10 11
(4)	The matters to which the authorised doctor must have regard are as follows—	12 13
(a)	the patient's relevant circumstances;	14
(b)	for an amendment mentioned in subsection (1)(b)—the purpose of limited community treatment;	15 16
(c)	the nature of the unlawful act that led to the making of the order and the period of time that has passed since the act happened.	17 18 19
(5)	The amendment must not impose a condition that requires the patient to wear a tracking device.	20 21
(6)	The authorised doctor must tell the patient of any proposed amendment of the patient's forensic order and explain the effect of the amendment to the patient.	22 23 24
216	Limited community treatment for patient subject to forensic order (Criminal Code)	25 26
(1)	An authorised doctor for an authorised mental health service may authorise, revoke, or change the extent of, limited community treatment for the patient if—	27 28 29
(a)	the patient's forensic order is a forensic order (Criminal Code); and	30 31

[s 217]

	(b) the chief psychiatrist has given written approval for the limited community treatment.	1 2
(2)	The authorised doctor may authorise, revoke, or change the extent of, limited community treatment only if satisfied, after having regard to the matters mentioned in subsection (4), that there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.	3 4 5 6 7 8
(3)	The chief psychiatrist may give written approval for the limited community treatment only if satisfied, after having regard to the matters mentioned in subsection (4), that there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.	9 10 11 12 13 14
(4)	The matters to which the authorised doctor or chief psychiatrist must have regard are as follows—	15 16
	(a) the patient's relevant circumstances;	17
	(b) the purpose of limited community treatment;	18
	(c) the nature of the unlawful act that led to the making of the order and the period of time that has passed since the act happened.	19 20 21
(5)	The limited community treatment ends on the day the tribunal makes a decision under section 433 in relation to the patient's forensic order (Criminal Code).	22 23 24
217	Chief psychiatrist may require monitoring condition for patient receiving treatment in the community	25 26
(1)	This section applies if the patient is receiving treatment in the community and the chief psychiatrist considers that—	27 28
	(a) there has been a material change in the patient's circumstances; and	29 30
	<i>Examples of material changes in circumstances—</i>	31
	• a deterioration in the patient's mental state	32

-
- limited community treatment is being received for the first time
 - (b) there is a significant risk that the patient would not return as required to the authorised mental health service, including, for example, because the patient has failed previously to comply with conditions of treatment in the community; and
 - (c) there is a significant risk that the patient or someone else is likely to suffer serious harm; and
 - (d) a condition that would allow the patient's treating health service to monitor the patient's location while receiving community treatment (a **monitoring condition**) would significantly reduce the risk of serious harm to the patient or someone else.
- (2) The chief psychiatrist may amend the patient's forensic order to impose a monitoring condition, including, for example, a monitoring condition requiring the patient to wear a tracking device.
- Note—*
- A decision by the chief psychiatrist to impose a monitoring condition requiring the patient to wear a tracking device is subject to review by the tribunal under section 459.
- Examples of monitoring conditions other than requiring the patient to wear a tracking device—*
- 1 A condition that the patient telephone a stated person at the patient's treating health service before moving from 1 location to another.
 - 2 A condition that the patient be contactable by mobile phone at all times.
 - 3 A condition that the patient provide a detailed plan of where, and with whom, the patient will be while receiving limited community treatment.
- (3) The chief psychiatrist must, as soon as practicable—
- (a) give written notice of the amendment to the administrator of the patient's treating health service; and

[s 218]

- (b) for a monitoring condition that the patient wear a tracking device—give written notice of the amendment to the tribunal. 1
2
3
- (4) An authorised doctor must, as soon as practicable, tell the patient about the imposition of the condition and explain to the patient the effect of the condition. 4
5
6
- (5) A monitoring condition requiring a patient to wear a tracking device ends on the day the tribunal makes a decision under 461 on the review of the chief psychiatrist’s decision to impose the condition. 7
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Part 5 Patients subject to court treatment orders 11
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218 Application of pt 5 13

 This part applies to a patient of an authorised mental health service who is subject to a court treatment order. 14
15

219 Amendment of court treatment order to change category, limited community treatment or conditions 16
17

(1) An authorised doctor for an authorised mental health service may amend the patient’s court treatment order under this section in any of the following ways— 18
19
20

- (a) to change the category of the order; 21
- (b) to authorise, revoke, or change the extent of, limited community treatment; 22
23
- (c) to change a condition of the order. 24

(2) The authorised doctor may make the amendment only if satisfied the amendment is appropriate having regard to— 25
26

- (a) the patient’s relevant circumstances; and 27

- (b) the purpose of limited community treatment; and
1
- (c) the nature of the unlawful act that led to the making of
the order and the amount of time that has passed since
the act happened.
2
3
4
- (3) The amendment must not be contrary to an order of the
Mental Health Court or the tribunal.
5
6
- (4) The authorised doctor must tell the patient of any proposed
amendment of the patient’s court treatment order and explain
the effect of the amendment to the patient.
7
8
9

Part 6

Classified patients and patients subject to judicial orders

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11

220 Application of pt 6

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This part applies to each of the following patients of an
authorised mental health service if the patient is detained at
the service—

- (a) a classified patient;
16
- (b) a patient subject to a judicial order.
17

221 Change to limited community treatment or its conditions

18

- (1) An authorised doctor may authorise limited community
treatment for the patient if—
19
20
- (a) the chief psychiatrist has given written approval for the
limited community treatment; and
21
22
- (b) the authorised doctor is satisfied the patient is unlikely
to abscond from the authorised mental health service
while receiving limited community treatment.
23
24
25

[s 222]

	(2) The chief psychiatrist may give written approval under subsection (1)(a) if the chief psychiatrist is satisfied the patient is unlikely to abscond from the authorised mental health service while receiving limited community treatment.	1 2 3 4
	(3) For this section, the patient’s limited community treatment must be confined to the grounds and buildings of the authorised mental health service where the patient is detained.	5 6 7
	(4) The patient must remain in the physical presence of a health service employee while the patient is receiving the limited community treatment.	8 9 10
Part 7	Obligations in relation to treatment in the community	11 12
222	Patient’s obligations for treatment in the community to be recorded and explained	13 14
	(1) This section applies if a patient who is subject to a treatment authority, forensic order or court treatment order is authorised under this Act to receive treatment in the community.	15 16 17
	(2) An authorised doctor for the authorised mental health service must, before the patient physically leaves the authorised mental health service—	18 19 20
	(a) decide, in consultation with the patient and, to the extent practicable, the patient’s family, carers and other support persons—	21 22 23
	(i) the treatment and care to be provided to the patient while receiving treatment in the community; and	24 25
	(ii) the patient’s obligations while receiving treatment in the community, including, for example, obligations to report for scheduled health appointments with the patient’s treating health service; and	26 27 28 29 30

	(b) explain to the patient, and the family, carers and other support persons consulted under paragraph (a), the matters mentioned in paragraph (a)(i) and (ii); and	1 2 3
	(c) record in the patient's health records the matters mentioned in paragraph (a)(i) and (ii); and	4 5
	(d) give the patient a written summary of the matters mentioned in paragraph (a)(i) and (ii).	6 7
(3)	An authorised doctor for the service is required to comply with subsection (2) only once for each type of treatment in the community authorised for the patient under this Act.	8 9 10
	<i>Example—</i>	11
	If a patient is authorised to receive treatment in the community in the form of escorted day leave for each day of 1 week, an authorised doctor for the authorised mental health service is required to comply with subsection (2) only once, and not for each day of the week.	12 13 14 15
(4)	This section does not apply if the treatment in the community authorised for the patient under this Act is escorted day leave.	16 17
(5)	In this section—	18
	<i>escorted day leave</i> , for a patient in an authorised mental health service, means the patient, for a period of no more than 1 day and not overnight—	19 20 21
	(a) is authorised to be physically away from the service; and	22
	(b) is required to remain in the physical presence of a health service employee while physically away from the service.	23 24 25
223	Chief psychiatrist may approve temporary absence for limited purpose	26 27
(1)	This section applies to each of the following patients—	28
	(a) a patient subject to a forensic order if the category is inpatient;	29 30
	(b) a classified patient;	31
	(c) a patient subject to a judicial order.	32

[s 225]

regulated treatment means—

- (a) electroconvulsive therapy; or
- (b) a non-ablative neurosurgical procedure.

Division 2 Informed consent

225 Requirements for informed consent

- (1) A person gives *informed consent* to the person's treatment by regulated treatment only if—
 - (a) the person has capacity to give consent to the treatment; and
 - (b) the consent is in writing signed by the person; and
 - (c) the consent is given freely and voluntarily.
- (2) For subsection (1)(a), the person has capacity to give consent to the regulated treatment if the person has the ability to understand the nature and effect of a decision relating to the regulated treatment, and the ability to make and communicate the decision.
- (3) A person can give informed consent in an advance health directive.

226 Explanation to be given

- Before a person gives informed consent to the person's treatment by regulated treatment, the psychiatrist proposing to provide the treatment must give the person a full explanation, in a form and language able to be understood by the person, about—
- (a) the purpose, method, likely duration and expected benefit of the treatment; and

[s 227]

- | | | |
|-----|--|--------|
| (b) | possible pain, discomfort, risks and side effects associated with the treatment; and | 1
2 |
| (c) | alternative methods of treatment available to the person; and | 3
4 |
| (d) | the consequences of not receiving treatment. | 5 |

Division 3 Electroconvulsive therapy 6

227 Offence to perform electroconvulsive therapy 7

A person must not perform electroconvulsive therapy on another person other than under this Act. 8
9

Maximum penalty—100 penalty units or 1 year's imprisonment. 10
11

228 Performance of electroconvulsive therapy with consent or tribunal approval 12 13

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|-----|---|----------------------|
| (1) | A psychiatrist may perform electroconvulsive therapy on a patient of an authorised mental health service if— | 14
15 |
| (a) | the patient is an adult and has given informed consent to the treatment; or | 16
17 |
| (b) | the patient is an adult, is unable to give informed consent to the treatment, and the tribunal has approved under section 473 the performance of the treatment on the adult; or | 18
19
20
21 |
| (c) | the patient is a minor and the tribunal has approved under section 473 the performance of the treatment on the minor. | 22
23
24 |
| (2) | If a psychiatrist makes an application under section 471 to the tribunal for approval to perform the treatment on the patient, the psychiatrist must, as soon as practicable after the application is made and to the extent practicable— | 25
26
27
28 |
| (a) | tell the patient the application has been made; and | 29 |

- (b) explain the application to the patient. 1

229 Performance of electroconvulsive therapy in emergency 2

- (1) A psychiatrist may perform electroconvulsive therapy on an 3
involuntary patient of an authorised mental health service if— 4
- (a) a certificate under subsection (2) is in force for the 5
patient; and 6
- (b) an application under section 471 has been made to the 7
tribunal to perform electroconvulsive therapy on the 8
patient and is not decided. 9
- (2) For subsection (1)(a), the psychiatrist and the senior medical 10
administrator of the patient’s treating health service must 11
certify in writing that performing electroconvulsive therapy 12
on the patient is necessary— 13
- (a) to save the patient’s life; or 14
- (b) to prevent the patient from suffering irreparable harm. 15
- (3) The certificate is in force for the period that— 16
- (a) starts on the day the application under section 471 is 17
made; and 18
- (b) ends on the day the application under section 471 is 19
decided. 20

Note— 21

Section 618(1)(a) provides that an application under section 471 must 22
be heard as soon as practicable, but not later than 7 days, after the 23
application is made. 24

[s 230]

Division 4	Non-ablative neurosurgical procedures	1 2
230	Offence to perform non-ablative neurosurgical procedure	3
	A person must not perform a non-ablative neurosurgical procedure on another person for the purpose of treating the other person’s mental illness other than under this Act.	4 5 6
	Maximum penalty—100 penalty units or 1 year’s imprisonment.	7 8
231	Performance of non-ablative neurosurgical procedure with consent and tribunal approval	9 10
(1)	A psychiatrist may perform a non-ablative neurosurgical procedure on a person if—	11 12
(a)	the person has given informed consent to the treatment; and	13 14
(b)	the tribunal has approved the performance of the treatment on the person.	15 16
	<i>Example of a non-ablative neurosurgical procedure—</i>	17
	deep brain stimulation	18
(2)	To remove any doubt, it is declared that, for subsection (1), none of the following is a mental illness—	19 20
(a)	chronic tic disorder, dystonia, epilepsy, Gilles de la Tourette syndrome, Parkinson’s disease or tremor;	21 22
(b)	another neurological disorder prescribed under a regulation.	23 24

[s 232]

Part 9	Prohibited treatments	1
232	Particular therapies prohibited	2
	A person must not administer to another person—	3
	(a) insulin induced coma therapy; or	4
	(b) deep sleep therapy.	5
	Maximum penalty—200 penalty units or 2 years imprisonment.	6 7
233	Psychosurgery prohibited	8
	A person must not perform psychosurgery on another person.	9
	Maximum penalty—200 penalty units or 2 years imprisonment.	10 11
Part 10	Provisions about advance health directives and nominated support persons	12 13 14
Division 1	Advance health directives	15
234	Advance health directive may include views about treatment or care for mental illness etc.	16 17
	(1) This section applies if, by an advance health directive, a principal gives a direction about health matters or special health matters, or appoints an attorney to exercise power for health matters, relating to the person's future treatment and care for a mental illness.	18 19 20 21 22

[s 235]

Note—

An advance health directive may only be made under the *Powers of Attorney Act 1998* by an adult.

- (2) Without limiting the *Powers of Attorney Act 1998*, section 35(1)(b), the advance health directive may include the principal’s views, wishes and preferences about his or her future treatment and care for a mental illness.

Note—

Views, wishes and preferences about treatment or care that are expressed in an advance health directive must be taken into account under section 48 in deciding the nature and extent of treatment or care to be provided under a treatment authority.

- (3) In this section—

health matter see the *Powers of Attorney Act 1998*, schedule 2, section 4.

principal see the *Powers of Attorney Act 1998*, section 5.

special health matter see the *Powers of Attorney Act 1998*, schedule 2, section 6.

Division 2 Nominated support persons

235 Who is a *nominated support person*

- (1) A person is a ***nominated support person*** of another person (the ***appointing person***) if—
- (a) the person has been appointed, by written notice, as a nominated support person by the appointing person; and
- (b) a record for the appointment is kept in the records system.
- (2) The appointing person may revoke the appointment by written notice.

236	Powers of nominated support person	1
	A nominated support person may, if the appointing person is or becomes an involuntary patient, do any of the following—	2
	(a) receive notices for the appointing person under this Act;	3
	(b) receive confidential information, under the <i>Hospital and Health Boards Act 2011</i> , relating to the appointing person;	4
	(c) to the extent permitted under chapter 12 or 16—	5
	(i) act as the appointing person’s support person in the tribunal; or	6
	(ii) represent the appointing person in the tribunal.	7
Division 3	Records system for advance health directives and appointments of nominated support persons	8
		9
		10
237	Chief psychiatrist to maintain records system	11
	(1) The chief psychiatrist must establish and maintain a system (the <i>records system</i>) for keeping electronic records of—	12
	(a) advance health directives; and	13
	(b) appointments of nominated support persons.	14
	(2) The records system must be capable of keeping an electronic record for an advance health directive, or an appointment of a nominated support person, consisting of—	15
	(a) a record stating that an advance health directive, or an appointment of a nominated support person, has been made by a stated person on a stated date; and	16
	(b) an electronic copy of the directive or notice of the appointment.	17

[s 238]

238	Request to keep record	1
(1)	A person who makes an advance health directive, or appoints a nominated support person, may—	2
		3
(a)	give the administrator of an authorised mental health service a copy of the directive or notice of the appointment; and	4
		5
		6
(b)	ask the administrator to keep a record for the directive or appointment in the records system.	7
		8
(2)	The administrator must—	9
(a)	comply with the request; and	10
(b)	on complying with the request, give the person written notice confirming the request has been complied with.	11
		12
(3)	Also, the administrator must remove from the records system any record for another advance health directive, or appointment of a nominated support person, if the administrator is aware the directive or appointment has been revoked by the person.	13
		14
		15
		16
		17
(4)	A request may be made under this section by an interested person for the person who made the directive or appointment.	18
		19
239	Requirement to give notice—matters relating to advance health directive in records system	20
		21
(1)	This section applies if—	22
(a)	a record for an advance health directive is kept in the records system; and	23
		24
(b)	under the <i>Powers of Attorney Act 1998</i> —	25
(i)	the directive is revoked by the person who made it, including, to the extent of an inconsistency, by the making of a later advance health directive; or	26
		27
		28
(ii)	to the extent the directive gives power to an attorney for a matter—the directive is revoked by the attorney or the attorney resigns.	29
		30
		31

[s 240]

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|------------|---|------------------|
| (2) | The person must give the administrator of an authorised mental health service written notice of the revocation. | 1
2 |
| (3) | If subsection (1)(b)(ii) applies, the person is taken to have complied with subsection (2) if the attorney gives the administrator of an authorised mental health service written notice of the revocation. | 3
4
5
6 |
| (4) | On receiving a notice under subsection (2) or (3), the administrator must remove the record for the advance health directive from the records system. | 7
8
9 |
| 240 | Requirement to give notice—revocation of appointment of nominated support person in records system | 10
11 |
| (1) | This section applies if— | 12 |
| (a) | a record for an appointment of a nominated support person is kept in the records system; and | 13
14 |
| (b) | the appointment is revoked by the person who made it. | 15 |
| (2) | The person must give the administrator of an authorised mental health service written notice of the revocation. | 16
17 |
| (3) | On receiving the notice, the administrator must remove the record for the appointment from the records system. | 18
19 |
| 241 | Copy of advance health directive in records system is proof | 20
21 |
| (1) | This section applies if a record for an advance health directive is kept in the records system. | 22
23 |
| (2) | The advance health directive may be proved by a copy of the directive produced from the records system. | 24
25 |
| | <i>Note—</i> | 26 |
| | See also the <i>Powers of Attorney Act 1998</i> , section 45 for other ways the advance health directive may be proved. | 27
28 |
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[s 242]

Chapter 8	Use of mechanical restraint and seclusion	1
		2
Part 1	Preliminary	3
242	Purpose of ch 8	4
	The purpose of this chapter is to provide for restrictions on the use of mechanical restraint on, and the seclusion of, patients in authorised mental health services.	5 6 7
	<i>Note—</i>	8
	See section 361 for the use of mechanical restraint on an involuntary patient while transporting the patient.	9 10
243	Definitions for ch 8	11
	In this chapter—	12
	<i>approved device</i> means a device approved by the chief psychiatrist, including, for example, in the restraint and seclusion policy.	13 14 15
	<i>mechanical restraint</i> see section 244.	16
	<i>reduction and elimination plan</i> see section 263.	17
	<i>required information</i> means information required by the chief psychiatrist in the restraint and seclusion policy.	18 19
	<i>required time and way</i> means the time and way required by the chief psychiatrist in the restraint and seclusion policy.	20 21
	<i>restraint and seclusion policy</i> means a policy made by the chief psychiatrist under section 294.	22 23
	<i>seclusion</i> see section 254.	24

Part 2	Mechanical restraint	1
Division 1	Preliminary	2
244	Meaning of <i>mechanical restraint</i>	3
(1)	<i>Mechanical restraint</i> is the restraint of a person by the application of a device to the person's body, or a limb of the person, to restrict the person's movement.	4 5 6
(2)	However, mechanical restraint does not include—	7
(a)	the appropriate use of a medical or surgical appliance in the treatment of physical illness or injury; or	8 9
(b)	restraint of a person that is authorised under a law other than this part.	10 11
	<i>Example for paragraph (b)—</i>	12
	The restraint of a person by a police officer may be authorised under the <i>Police Powers and Responsibilities Act 2000</i> , section 615.	13 14
245	Offence	15
(1)	A person must not use mechanical restraint on a relevant person in an authorised mental health service other than under this Act.	16 17 18
	Maximum penalty—200 penalty units.	19
(2)	In this section—	20
	<i>relevant person</i> means—	21
(a)	an involuntary patient; or	22
(b)	a person receiving voluntary treatment and care for a mental illness in an inpatient unit of an authorised mental health service.	23 24 25

[s 246]

Division 2	Authorised mechanical restraint	1
246	Requirements for use of mechanical restraint	2
	An authorised doctor, or a health practitioner authorised by the authorised doctor, may use mechanical restraint on an involuntary patient if—	3 4 5
	(a) the authorised mental health service is—	6
	(i) a high security unit; or	7
	(ii) another authorised mental health service approved by the chief psychiatrist; and	8 9
	(b) the device used is an approved device; and	10
	(c) the chief psychiatrist has given approval under section 249 for an authorised doctor to authorise the use of mechanical restraint; and	11 12 13
	(d) the use of mechanical restraint is authorised by an authorised doctor under section 250; and	14 15
	(e) the restraint complies with the restraint and seclusion policy; and	16 17
	(f) if a reduction and elimination plan for the patient is approved under part 4—the restraint complies with the plan; and	18 19 20
	(g) the restraint is done with no more force than is necessary and reasonable in the circumstances; and	21 22
	(h) the patient is observed continuously while restrained.	23
247	Application for chief psychiatrist's approval	24
	(1) An authorised doctor may apply to the chief psychiatrist for an approval enabling the authorised doctor to authorise, under section 250, the use of mechanical restraint on the patient.	25 26 27
	(2) The application must be in the approved form and state the following—	28 29

[s 248]

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- | | |
|---|----------------|
| (a) the name of the patient and the patient’s treating health service; | 1
2 |
| (b) information about the patient’s mental illness and, if the patient has an intellectual disability, the patient’s intellectual disability; | 3
4
5 |
| (c) the reasons why the authorised doctor considers— | 6 |
| (i) the use of mechanical restraint on the patient may be necessary to protect the patient or others from physical harm; and | 7
8
9 |
| (ii) there is no other reasonably practicable way to protect the patient or others from physical harm; | 10
11 |
| (d) the period, of not more than 7 days, for which the approval is sought; | 12
13 |
| (e) the device for which the authorisation is sought; | 14 |
| (f) any proposed limitations on the use of mechanical restraint on the patient; | 15
16 |
| (g) the way in which the patient is to be continuously observed while restrained; | 17
18 |
| (h) the proposed strategies for reducing and eliminating the use of mechanical restraint on the patient. | 19
20 |
| (3) The application may include an application under section 265 for approval of a reduction and elimination plan for the patient. | 21
22
23 |

248	Chief psychiatrist may require amendment of application to include reduction and elimination plan	24 25
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| (1) This section applies if an application made by an authorised doctor under section 247 does not include an application for approval of a reduction and elimination plan for the patient under part 4. | 26
27
28
29 |
| (2) The chief psychiatrist may, by written notice given to the applicant, require the applicant to amend the application to | 30
31 |

[s 249]

include an application for approval of a reduction and
elimination plan for the patient under part 4. 1
2

**249 Chief psychiatrist may approve authorisation of use of
mechanical restraint 3
4**

- (1) The chief psychiatrist may give approval enabling an
authorised doctor to authorise, under section 250, the use of
mechanical restraint on the patient if the chief psychiatrist is
satisfied— 5
6
7
8
 - (a) the use of mechanical restraint on the patient is
necessary to protect the patient or others from physical
harm; and 9
10
11
 - (b) there is no other reasonably practicable way to protect
the patient or others from physical harm. 12
13
- (2) The approval must state— 14
 - (a) the period, of not more than 7 days, during which an
authorised doctor may authorise the use of mechanical
restraint on the patient; and 15
16
17
 - (b) the approved device that must be used; and 18
 - (c) any limitations to be included in the authorisation
relating to the use of mechanical restraint on the patient;
and 19
20
21
 - (d) the way in which the patient must be continuously
observed while restrained; and 22
23
 - (e) any other conditions the chief psychiatrist considers
appropriate. 24
25
- (3) The approval may include approval of a reduction and
elimination plan for the patient under part 4. 26
27

**250 Authorisation of use of mechanical restraint by
authorised doctor 28
29**

- (1) An authorised doctor may authorise the use of mechanical
restraint on the patient if the authorised doctor is satisfied— 30
31

[s 250]

-
- (a) the use of mechanical restraint on the patient is necessary to protect the patient or others from physical harm; and
1
2
3
 - (b) there is no other reasonably practicable way to protect the patient or others from physical harm; and
4
5
 - (c) the authorisation complies with an approval given by the chief psychiatrist under section 249; and
6
7
 - (d) the authorisation complies with the restraint and seclusion policy; and
8
9
 - (e) if a reduction and elimination plan for the patient is approved under part 4—the authorisation complies with the plan.
10
11
12
 - (2) The authorisation must be in writing and state the following—
13

 - (a) the period, of not more than 3 hours, during which mechanical restraint may be used on the patient;
14
15
 - (b) the approved device that must be used;
16
 - (c) the time at which the use of mechanical restraint on the patient is to start (the *start time*);
17
18
 - (d) the time at which the use of mechanical restraint on the patient is to end (the *end time*);
19
20
 - (e) the measures to be taken to ensure the health, safety and comfort of the patient;
21
22
 - (f) the way in which the patient must be continuously observed while restrained;
23
24
 - (g) whether a health practitioner may end the use of mechanical restraint before the end time.
25
26
 - (3) The authorisation may state a start time that is immediately after the end time of a previous authorisation.
27
28
 - (4) However, the authorisation may not be given if the total period for which mechanical restraint has been or may have been used on the patient, under the authorisation and any previous authorisation, is more than 9 hours in a 24-hour period.
29
30
31
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[s 251]

- (5) Subsection (4) does not apply if a reduction and elimination plan approved under part 4 provides for the use of mechanical restraint of the patient for more than 9 hours in a 24-hour period.

251 Duties of health practitioner in charge of inpatient unit

The health practitioner in charge of an inpatient unit must, if mechanical restraint is used on the patient while the health practitioner is in charge of the inpatient unit—

- (a) ensure the use complies with the authorised doctor's authorisation under section 250; and
- (b) ensure the patient's reasonable needs are met, including, for example, being given—
 - (i) sufficient bedding and clothing; and
 - (ii) sufficient food and drink; and
 - (iii) access to toilet facilities; and
- (c) record the required information about the use of the mechanical restraint in the required time and way.

252 Removal of mechanical restraint before authorisation ends

- (1) This section applies if the chief psychiatrist is satisfied, before the end time stated in the authorised doctor's authorisation, that the use of mechanical restraint is no longer necessary to protect the patient or others from physical harm.
- (2) The chief psychiatrist must direct an authorised doctor, or the health practitioner in charge of the inpatient unit, to end the use of mechanical restraint on the patient.
- (3) Also, the health practitioner in charge of the inpatient unit must end the use of mechanical restraint on the patient, before the end time stated in the authorised doctor's authorisation, if—

[s 253]

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|--|--|---|
| | (a) the authorisation states a health practitioner may end the | 1 |
| | use of mechanical restraint before the end time; and | 2 |
| | (b) the health practitioner is satisfied the use of mechanical | 3 |
| | restraint is no longer necessary to protect the patient or | 4 |
| | others from physical harm. | 5 |

253	Reuse of mechanical restraint	6
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| | (1) This section applies if the health practitioner in charge of the | 7 |
| | inpatient unit ends the use of mechanical restraint under | 8 |
| | section 252. | 9 |
| | (2) The health practitioner may, at any time before the end time | 10 |
| | stated in the authorised doctor's authorisation, reuse | 11 |
| | mechanical restraint on the patient if satisfied the reuse is | 12 |
| | necessary to protect the patient or others from physical harm. | 13 |
| | (3) The reuse must comply with the authorised doctor's | 14 |
| | authorisation, including the end time stated in the | 15 |
| | authorisation. | 16 |
| | (4) The health practitioner must tell the authorised doctor of the | 17 |
| | reuse as soon as practicable after the return. | 18 |

Part 3	Seclusion	19
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Division 1	Preliminary	20
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254	Meaning of <i>seclusion</i>	21
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|--|--|----|
| | (1) <i>Seclusion</i> is the confinement of a person, at any time of the | 22 |
| | day or night, alone in a room or area from which free exit is | 23 |
| | prevented. | 24 |
| | (2) However, seclusion does not include— | 25 |

[s 255]

	(a)	confinement of a person in a high security unit or in another authorised mental health service approved by the chief psychiatrist if the confinement is—	1 2 3
	(i)	for a period, approved by the administrator of the service, of not more than 10 hours between 8p.m. and 8a.m.; and	4 5 6
	(ii)	for security purposes; or	7
	(b)	confinement that is authorised under a law other than this part.	8 9
255	Offence		10
	(1)	A person must not keep a relevant person in seclusion in an authorised mental health service other than under this Act.	11 12
		Maximum penalty—200 penalty units.	13
	(2)	In this section—	14
		<i>relevant person</i> means—	15
	(a)	an involuntary patient; or	16
	(b)	a person receiving voluntary treatment and care for a mental illness in an inpatient unit of an authorised mental health service.	17 18 19
Division 2	Authorised seclusion		20
256	Requirements for seclusion		21
		An authorised doctor, or a health practitioner authorised by the authorised doctor, may keep an involuntary patient in seclusion in the authorised mental health service if—	22 23 24
	(a)	the seclusion is authorised by an authorised doctor under section 258; and	25 26

[s 257]

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- (b) if a written direction about seclusion is given under section 257 to the authorised mental health service—the seclusion complies with the direction; and
1
2
3
 - (c) the seclusion complies with the restraint and seclusion policy; and
4
5
 - (d) if a reduction and elimination plan for the patient is approved under part 4—the seclusion complies with the plan; and
6
7
8
 - (e) the seclusion is done with no more force than is necessary and reasonable in the circumstances; and
9
10
 - (f) the patient is observed either—
11
 - (i) continuously; or
12
 - (ii) at intervals of not more than 15 minutes.
13

257 Chief psychiatrist may issue written direction about seclusion 14
15

The chief psychiatrist may give an authorised mental health service a written direction stating any of the following— 16
17

- (a) that no involuntary patient may be kept in seclusion;
18
- (b) that a stated involuntary patient must not be kept in seclusion;
19
20
- (c) requirements about the way in which involuntary patients are to be kept in seclusion;
21
22
- (d) that any involuntary patient, or a stated involuntary patient, may be kept in seclusion only if the seclusion is provided for under a reduction and elimination plan approved under part 4.
23
24
25
26

258 Authorisation of seclusion by authorised doctor 27

- (1) An authorised doctor may authorise the seclusion of an involuntary patient in an authorised mental health service if the authorised doctor is satisfied—
28
29
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[s 258]

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- (a) the seclusion is necessary to protect the patient or others from physical harm; and
 - (b) there is no other reasonably practicable way to protect the patient or others from physical harm; and
 - (c) if a written direction about seclusion is given under section 257 to the authorised mental health service—the seclusion complies with the direction; and
 - (d) the seclusion complies with the restraint and seclusion policy; and
 - (e) if a reduction and elimination plan for the patient is approved under part 4—the seclusion complies with the plan.
 - (2) The authorisation must be in writing and state the following—
 - (a) the period, of not more than 3 hours, during which the patient may be kept in seclusion;
 - (b) the time at which the seclusion of the patient is to start (the *start time*);
 - (c) the time at which the seclusion of the patient is to end (the *end time*);
 - (d) the measures that must be taken to ensure the health, safety and comfort of the patient;
 - (e) the way in which the patient must be observed while kept in seclusion, including whether the patient must be observed continuously or at stated intervals of not more than 15 minutes;
 - (f) whether a health practitioner may remove the patient from seclusion before the end time.
 - (3) The authorisation may state a start time that is immediately after the end time of a previous authorisation.
 - (4) However, the authorisation may not be given if the total period for which the patient has been or may be kept in seclusion, under the authorisation and any previous authorisation, including an emergency authorisation under section 262, is

[s 259]

	more than 9 hours in a 24-hour period.	2
(5)	Subsection (4) does not apply if a reduction and elimination plan approved under part 4 provides for the seclusion of the patient, including under an emergency authorisation under section 262, for more than 9 hours in a 24-hour period.	3 4 5 6
259	Duties of health practitioner in charge of inpatient unit	7
	The health practitioner in charge of the inpatient unit must, if the patient is kept in seclusion while the health practitioner is in charge of the inpatient unit—	8 9 10
	(a) ensure the seclusion complies with the authorised doctor's authorisation; and	11 12
	(b) ensure the patient's reasonable needs are met, including, for example, being given—	13 14
	(i) sufficient bedding and clothing; and	15
	(ii) sufficient food and drink; and	16
	(iii) access to toilet facilities; and	17
	(c) record the required information about the seclusion in the required time and way.	18 19
260	Removal from seclusion before authorisation ends	20
(1)	Subsection (2) applies if the chief psychiatrist is satisfied, before the end time stated in the authorised doctor's authorisation, that seclusion is no longer necessary to protect the patient or others from physical harm.	21 22 23 24
(2)	The chief psychiatrist must direct an authorised doctor, or the health practitioner in charge of the inpatient unit, to remove the patient from seclusion.	25 26 27
(3)	Also, the health practitioner in charge of the inpatient unit must remove the patient from seclusion, before the end time stated in the authorised doctor's authorisation, if—	28 29 30

[s 261]

- (a) the authorisation states a health practitioner may remove the patient from seclusion before the end time; and
- (b) the health practitioner is satisfied seclusion is no longer necessary to protect the patient or others from physical harm.

261 Return to seclusion after removal

- (1) This section applies if the health practitioner in charge of the inpatient unit removes the patient from seclusion under section 260(2).
- (2) The health practitioner may, at any time before the end time stated in the authorised doctor’s authorisation, return the patient to seclusion if satisfied the return to seclusion is necessary to protect the patient or others from physical harm.
- (3) The return to seclusion must comply with the authorised doctor’s authorisation, including the end time stated in the authorisation.
- (4) The health practitioner must tell the authorised doctor of the return to seclusion as soon as practicable after the return.

Division 3 Emergency seclusion

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

- (1) The health practitioner in charge of an inpatient unit of an authorised mental health service, or an appropriately qualified person authorised by the health practitioner, may keep the patient in seclusion in the authorised mental health service if—
 - (a) the health practitioner is satisfied—
 - (i) the seclusion is immediately necessary to protect the patient or others from physical harm; and

[s 262]

-
- (ii) there is no other reasonably practicable way to protect the patient or others from physical harm; and
 - (iii) the seclusion is not prevented by, or otherwise inconsistent with, a direction given by the chief psychiatrist under section 257; and
 - (iv) it is not practicable in the circumstances to seek authorisation of the seclusion under section 258; and
 - (b) the patient is observed continuously during the seclusion; and
 - (c) the seclusion is for a period of not more than 1 hour; and
 - (d) as soon as practicable after the start of the seclusion, the health practitioner tells an authorised doctor of the seclusion.
 - (2) The authorised doctor notified under subsection (1)(d) must—
 - (a) examine the patient; or
 - (b) ensure the patient is examined by another authorised doctor.
 - (3) The authorised doctor who examines the patient must decide whether to authorise the seclusion of the patient under section 258.
 - (4) Subject to subsection (1)(c), seclusion of the patient under this section ends when the authorised doctor makes the decision mentioned in subsection (3).
 - (5) This section does not prevent the health practitioner in charge of the inpatient unit removing the patient from seclusion before the end of the period mentioned in subsection (1)(c), if satisfied seclusion is no longer necessary to protect the patient or others from physical harm.
 - (6) Removal of the patient from seclusion under subsection (5) does not affect the authorised doctor's obligation under subsection (2).
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[s 263]

- (7) The patient may be kept in seclusion under this section for not more than 3 hours in a 24-hour period. 1
2

Part 4 **Reduction and elimination plans** 3
4

263 **What is a *reduction and elimination plan*** 5

A *reduction and elimination plan* is a written plan, for an involuntary patient, developed by an authorised doctor that provides for the reduction and elimination of either or both of the following— 6
7
8
9

- (a) the use of mechanical restraint on the patient; 10
(b) the seclusion of the patient. 11

264 **Content of plan** 12

A reduction and elimination plan must include— 13

- (a) the name of the patient; and 14
(b) information, if any, about— 15
(i) the previous use of mechanical restraint on, or seclusion of, the patient; and 16
17
(ii) strategies previously used to reduce the use of mechanical restraint on, or seclusion of, the patient; and 18
19
20
(iii) the effectiveness of the strategies mentioned in subparagraph (ii); and 21
22
(c) information about the strategies proposed to reduce, and eliminate, the use of mechanical restraint on, or seclusion of, the patient in the future. 23
24
25

265	Application for chief psychiatrist's approval of plan	1
	An authorised doctor may apply to the chief psychiatrist for approval of a reduction and elimination plan for an involuntary patient.	2 3 4
266	Chief psychiatrist may approve plan	5
	(1) The chief psychiatrist may approve the reduction and elimination plan for the involuntary patient if the chief psychiatrist is satisfied the strategies mentioned in section 264(c) are appropriate for the patient.	6 7 8 9
	(2) The approval must be in writing and may include any conditions the chief psychiatrist considers appropriate.	10 11
Part 5	General provision	12
267	Notification of chief psychiatrist	13
	(1) The administrator of an authorised mental health service must give the chief psychiatrist written notice of the use of mechanical restraint on, or seclusion of, a patient in the authorised mental health service.	14 15 16 17
	(2) The notice must include the required information and be given in the required time and way.	18 19

[s 268]

Chapter 9	Rights of patients and others	1
		2
Part 1	Preliminary	3
268	Purpose of ch 9	4
	The purpose of this chapter is to provide for—	5
	(a) a statement of patient rights; and	6
	(b) the rights of a patient’s nominated support person, family, carers and other support persons when supporting the patient’s treatment and care; and	7 8 9
	(c) the right of a patient to be visited by a nominated support person, family, carers and other support persons; and	10 11 12
	(d) the right of a patient to be visited by a health practitioner, lawyer or other adviser; and	13 14
	(e) the right of a patient to request a second opinion about the patient’s treatment and care; and	15 16
	(f) the right of a patient, and the patient’s nominated support person, family, carers and other support persons, to be advised by a patient rights adviser; and	17 18 19
	(g) the right of a patient to be given written notices about, and oral explanations of, the patient’s treatment and care.	20 21 22
269	Definition for ch 9	23
	In this chapter—	24
	<i>patient</i> means—	25
	(a) an involuntary patient; or	26

[s 270]

- (b) a patient receiving treatment and care under an advance health directive; or 1
2
- (c) a patient receiving treatment and care with the consent of a personal guardian or attorney. 3
4

Part 2 Statement of rights 5

270 Preparing statement of rights 6

- (1) The chief psychiatrist must prepare a written statement (the *statement of rights*) containing information about— 7
8
 - (a) the rights of patients, and of nominated support persons, family, carers and other support persons, under this Act; 9
10
and 11
 - (b) the rights of patients to make complaints about the treatment and care provided at an authorised mental health service and how the complaints are made. 12
13
14
- (2) The statement of rights may also contain anything else the chief psychiatrist considers appropriate. 15
16

271 Giving statement of rights to patients and others 17

- (1) After admission of a patient to an authorised mental health service, the administrator of the authorised mental health service must— 18
19
20
 - (a) ensure the patient is given an oral explanation of the information in the statement of rights; and 21
22
 - (b) give a copy of the statement of rights to the patient, if requested. 23
24

Example— 25

The administrator may request a patient rights adviser to give a patient an oral explanation and copy of the statement. 26
27

[s 272]

	<i>Note—</i>	1
	See section 279 about ensuring a patient understands oral information.	2
(2)	The administrator must also—	3
(a)	to the extent practicable, ensure the patient’s nominated support person, family, carers and other support persons are given an oral explanation of the information in the statement; and	4 5 6 7
(b)	give a copy of the statement to the patient’s nominated support person, family, carers and other support persons, if requested.	8 9 10
272	Display of signs	11
(1)	The administrator of an authorised mental health service must display signs in prominent positions in the service stating that a copy of the statement of rights is available on request.	12 13 14
(2)	The signs must be easily visible to patients and nominated support persons, family, carers and other support persons.	15 16
Part 3	Rights of patients	17
273	Definition for pt 3	18
	In this part—	19
	<i>reasonable time of the day or night</i> , in an authorised mental health service, means a time decided by the administrator of the service having regard to the practices of the service and the comfort of patients.	20 21 22 23
274	Visits by family, carers and other support persons	24
(1)	A patient in an authorised mental health service may be visited by the patient’s nominated support person, family,	25 26

[s 275]

carers and other support persons at any reasonable time of the day or night.	1 2
(2) Subsection (1) does not apply if—	3
(a) the person is excluded from visiting the patient under another provision of this Act; or	4 5
(b) the patient does not wish to be visited by the person.	6
275 Visits by health practitioner	7
(1) A patient in an authorised mental health service may, at any reasonable time of the day or night, be visited and examined by a health practitioner.	8 9 10
(2) The health practitioner may also consult with an authorised doctor for the authorised mental health service about the patient's treatment and care.	11 12 13
(3) The health practitioner may exercise a power under subsection (1) or (2) only—	14 15
(a) if asked by the patient or an interested person for the patient; and	16 17
(b) under arrangements made with the administrator of the authorised mental health service.	18 19
276 Visits by legal or other advisers	20
(1) A patient in an authorised mental health service may be visited by a legal or other adviser at any reasonable time of the day or night.	21 22 23
(2) The adviser may exercise a power under subsection (1) only—	24 25
(a) if asked by the patient or an interested person for the patient; and	26 27
(b) under arrangements made with the administrator of the authorised mental health service.	28 29

[s 277]

277	Communication with others	1
(1)	A patient of an authorised mental health service may communicate, in a reasonable way, with another person by—	2
		3
(a)	post; or	4
(b)	a fixed line telephone in the authorised mental health service.	5
		6
(2)	Subsection (1) does not apply if—	7
(a)	the other person has asked the administrator of the authorised mental health service to ensure that the patient not communicate with the person; or	8
		9
		10
(b)	the communication is prohibited under another provision of this Act.	11
		12
(3)	The administrator of an authorised mental health service may prohibit or restrict the use of an electronic device in the service.	13
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(4)	In exercising a power under subsection (3), the administrator must have regard to the health and wellbeing, and privacy, of patients and others in the service.	16
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278	Information about treatment and care	19
	An authorised doctor providing treatment and care to a patient must, to the extent practicable, provide timely, accurate and appropriate information to the patient about the patient's treatment and care.	20
		21
		22
		23
279	Understanding of oral information	24
(1)	This section applies if a provision of this Act requires any 1 of the following to tell or explain something to a patient—	25
		26
(a)	an authorised mental health practitioner;	27
(b)	an authorised doctor;	28
(c)	an administrator of an authorised mental health service;	29

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|---|----------------------|
| (d) a doctor. | 1 |
| (2) The person must— | 2 |
| (a) take reasonable steps to ensure the patient understands the information given; and | 3
4 |
| (b) tell or explain the thing to the patient— | 5 |
| (i) in an appropriate way having regard to the patient's age, culture, mental illness, communication ability and any disability; and | 6
7
8 |
| <i>Examples for subparagraph (i)—</i> | 9 |
| 1 If a patient is acutely unwell and does not appear to understand the information given, an authorised doctor may explain the information again when the patient's condition improves. | 10
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| 2 After providing information to a patient, an authorised doctor may ask the patient to restate the information to ensure it has been understood. | 14
15
16 |
| 3 An authorised doctor may explain information to a patient in the presence of a family member who can assist the patient to understand it. | 17
18
19 |
| (ii) in a way the patient is most likely to understand, including, for example, in the patient's language; and | 20
21
22 |
| (c) if the patient has a nominated support person—tell or explain the thing to the patient's nominated support person; and | 23
24
25 |
| (d) if the patient does not have a nominated support person—tell or explain the thing to at least 1 of the patient's family, carers or other support persons. | 26
27
28 |
| (3) For subsection (2)(b), the person may tell or explain the thing to a patient at a time later than the time provided for under this Act if the person considers the patient would better understand the thing at the later time. | 29
30
31
32 |
| (4) Subsection (2)(d) does not apply if— | 33 |
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[s 280]

- (a) telling or explaining the thing to at least 1 of the patient's family, carers or other support persons is not reasonably practicable or does not appear to be in the patient's best interests; or
- (b) the patient has asked that the thing not be told or explained to a person mentioned in subsection (2)(d).

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

- (1) This section applies if—
 - (a) a provision of this Act requires any 1 of the following to give a written notice to a patient—
 - (i) an authorised doctor;
 - (ii) an administrator of an authorised mental health service;
 - (iii) the chief psychiatrist;
 - (iv) the tribunal; or
 - (b) any of the following events (each a *significant event*) happens to a patient—
 - (i) admission as a classified patient;
 - (ii) transfer to another entity.
- (2) If the patient has a nominated support person—
 - (a) the person must give a copy of the required written notice to the nominated support person; and
 - (b) the person is not required to give the notice to the patient if the patient may not understand or benefit from receiving the notice.
- (3) If the person is aware the patient has a personal guardian or attorney—
 - (a) the person must give a copy of the required written notice to the personal guardian or attorney; and

-
- (b) the person is not required to give the notice to the patient if the patient may not understand or benefit from receiving the notice. 1 2 3
- (4) If the patient does not have a nominated support person, or a personal guardian or attorney, the person may give the required written notice to 1 or more of the patient's family, carers or other support persons (the *other person*) instead of to the patient, if— 4 5 6 7 8
- (a) the patient may not understand or benefit from receiving the notice; and 9 10
- (b) giving the notice to the other person appears to be in the patient's best interests; and 11 12
- (c) the patient has not asked for communication with the other person not to happen. 13 14
- (5) If the patient is a minor, the person may give the required written notice to the minor's parent instead of to the minor if— 15 16 17
- (a) the minor may not understand or benefit from receiving the notice; and 18 19
- (b) giving the notice to the parent appears to be in the minor's best interests; and 20 21
- (c) the minor has not asked for communication with the parent not to happen. 22 23
- (6) In this section— 24
- required written notice* means— 25
- (a) a written notice mentioned in subsection (1)(a); or 26
- (b) a written notice explaining the significant event mentioned in subsection (1)(b). 27 28

[s 281]

281	Second opinion about treatment and care	1
(1)	This section applies if an authorised mental health service has been unable to resolve a complaint about the provision of treatment and care to a patient.	2 3 4
(2)	The patient, or an interested person for the patient, may request the administrator of the service to obtain a second opinion from another health practitioner, including another psychiatrist, about the patient’s treatment and care.	5 6 7 8
(3)	The administrator must make arrangements to obtain the second opinion in compliance with a policy or practice guideline.	9 10 11

Part 4	Rights and responsibilities of family, carers and support persons	12 13 14
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<i>Note—</i>	15
The <i>Hospital and Health Boards Act 2011</i> , sections 145 and 146 provide for a patient’s family, carers and other support persons to receive information about the patient in particular circumstances.	16 17 18

282	Patient’s right to privacy	19
	An obligation under this Act to communicate with a patient’s family member, carer or support person does not apply if the patient requests the communication does not take place.	20 21 22

283	Rights	23
	A patient’s nominated support person, family, carers and other support persons may, to the extent practicable—	24 25
(a)	contact the patient while the patient is receiving treatment and care; and	26 27

[s 284]

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

284 Responsibilities

- A patient's family, carers and other support persons have a responsibility to—
- (a) respect the patient's dignity and humanity; and
 - (b) consider the opinions and skills of health practitioners who provide treatment and care, and other services, to the patient; and
 - (c) cooperate, to the extent practicable, with reasonable programs of assessment, care, treatment, support, recovery and rehabilitation of the patient.

Part 5 Patient rights advisers

285 Appointment

- (1) An authorised mental health service must have systems in place to ensure that patients are advised of their rights under this Act.
- (2) Without limiting subsection (1), the health service chief executive responsible for a public sector mental health service must appoint a patient rights adviser or advisers in compliance with a policy or practice guideline.

[s 286]

(3) The patient rights adviser—	1
(a) must be an employee of the public sector mental health service, or of another entity that the service has engaged to provide services; and	2 3 4
(b) must report directly to the administrator of the service; and	5 6
(c) must not be a member of the treating team of patients of the service.	7 8
286 Functions	9
The functions of a patient rights adviser are to—	10
(a) ensure that a patient, and the patient’s nominated support persons, family, carers and other support persons, are advised of their rights and responsibilities under this Act; and	11 12 13 14
(b) help the patient, and the patient’s nominated support person, family, carers and other support persons, to communicate to health practitioners the patient’s views, wishes and preferences about the patient’s treatment and care; and	15 16 17 18 19
(c) in relation to tribunal hearings—	20
(i) advise the patient, and the patient’s nominated support person, family, carers and other support persons of the dates and times of the hearings and the patient’s rights at the hearings; and	21 22 23 24
(ii) if requested, help the patient engage a representative for the hearing; and	25 26
(d) identify whether the patient has a personal guardian or attorney, and if the patient has a personal guardian or attorney, work cooperatively with the personal guardian or attorney to further the patient’s interests; and	27 28 29 30
(e) if appropriate, advise the patient of the benefits of an advance health directive or enduring power of attorney.	31 32

[s 287]

287	Independence	1
	A patient rights adviser, in performing the adviser's functions—	2
		3
	(a) must act independently and impartially; and	4
	(b) is not subject to direction or control by any person in relation to advice given, or help provided, to a patient, or a patient's nominated support person, family, carers or other support persons.	5
		6
		7
		8
Chapter 10	Chief psychiatrist	9
Part 1	Preliminary	10
288	Purpose of ch 10	11
	The purpose of this chapter is to provide for the appointment, functions and powers of the chief psychiatrist.	12
		13
Part 2	Appointment, functions and powers	14
		15
289	Appointment	16
	(1) There is to be a Chief Psychiatrist.	17
	(2) The chief psychiatrist is appointed by the Governor in Council under this Act and not the <i>Public Service Act 2008</i> .	18
		19
	(3) The chief psychiatrist must be a psychiatrist.	20

[s 290]

290	Functions	1
(1)	The chief psychiatrist has the following functions—	2
(a)	to the extent it is reasonably practicable, ensuring the protection of the rights of patients under this Act while balancing their rights with the rights of others;	3 4 5
(b)	to the extent it is reasonably practicable, ensuring the involuntary examination, assessment, treatment and care and detention of persons under this Act complies with the Act;	6 7 8 9
(c)	facilitating the proper and efficient administration of this Act;	10 11
(d)	monitoring and auditing compliance with this Act;	12
(e)	promoting community awareness and understanding of this Act;	13 14
(f)	advising and reporting to the Minister on any matter relating to the administration of this Act—	15 16
(i)	on the chief psychiatrist’s own initiative; or	17
(ii)	on the written request of the Minister;	18
(g)	preparing and giving to the Minister a report on the competencies the chief psychiatrist considers are necessary for a health practitioner to perform a function or exercise a power of an authorised doctor.	19 20 21 22
(2)	Also, the chief psychiatrist has the other functions given under this Act or another Act.	23 24
291	Powers	25
(1)	The chief psychiatrist has the powers given under this Act or another Act.	26 27
(2)	Also, the chief psychiatrist may do all things necessary or convenient to be done to perform the chief psychiatrist’s functions.	28 29 30

292	Independence of chief psychiatrist	1
(1)	In performing a function or exercising a power, the chief psychiatrist is not under the control of the Minister or another person.	2 3 4
(2)	Despite subsection (1), the Minister may give the chief psychiatrist a direction under section 301.	5 6
293	Delegation	7
(1)	The chief psychiatrist may delegate a function of the chief psychiatrist to an appropriately qualified—	8 9
(a)	public service employee in the department; or	10
(b)	health service employee.	11
(2)	Despite subsection (1), the chief psychiatrist may delegate a function under part 3, section 302(2)(a) or (b), chapter 11, part 1 or section 321 only to a psychiatrist who is—	12 13 14
(a)	a senior executive employed in the department; or	15
(b)	a health executive in a Hospital and Health Service.	16
(3)	In this section—	17
	<i>function</i> includes a power.	18
Part 3	Policies, practice guidelines and annual report	19 20
294	Making policy or practice guideline	21
(1)	The chief psychiatrist must make a policy about each of the following matters relating to authorised mental health services and patients of the services—	22 23 24
(a)	matters relating to the application of the treatment criteria to patients and less restrictive ways for patients	25 26

[s 294]

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| to receive treatment and care for their mental illness,
including ways of assessing the capacity of patients to
consent to being treated; | 1
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| (b) the way in which records for patients are to be kept; | 4 |
| (c) managing complaints by patients and family, carers and
other support persons of patients in relation to treatment
and care of patients; | 5
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| (d) how patients or family, carers and other support persons
of patients may request an independent second opinion
from a psychiatrist or another health practitioner; | 8
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| (e) the treatment and care of forensic patients and the
assessment of risks for forensic patients being treated in
the community; | 11
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13 |
| (f) the treatment and care of persons subject to court
treatment orders; | 14
15 |
| (g) the use of mechanical restraint and seclusion, including
minimising the use and impact of mechanical restraint
and seclusion on patients; | 16
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18 |
| (h) minimising the risk of patients absconding and
processes to be followed in returning patients who have
absconded; | 19
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21 |
| (i) competencies necessary for a person to be an authorised
doctor and authorised mental health practitioner. | 22
23 |
| (2) Also, the chief psychiatrist may make a policy or practice
guideline relating to the administration of this Act, including,
for example, about the following— | 24
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26 |
| (a) the examination and assessment of persons under this
Act; | 27
28 |
| (b) the treatment and care of patients in authorised mental
health services, other than forensic patients or patients
subject to court treatment orders; | 29
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[s 294]

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| (c) the performance of functions by administrators of authorised mental health services, authorised doctors and authorised mental health practitioners; | 1
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| (d) the administration of authorised mental health services, including safety and security; | 4
5 |
| (e) the preparation of psychiatrist reports; | 6 |
| (f) the way in which the tribunal is to be supported in performing its functions, including, for example, providing facilities for proceedings; | 7
8
9 |
| (g) authorising treatment in the community; | 10 |
| (h) supporting the rights of patients and nominated support persons, family, carers and other support persons of patients, including the ways in which information is to be communicated to the patients and nominated support persons, family, carers and other support persons; | 11
12
13
14
15 |
| (i) matters related to the appointment and functions of patient rights advisers; | 16
17 |
| (j) supporting victims of unlawful acts; | 18 |
| (k) the use of physical restraint and other restrictive practices on patients; | 19
20 |
| (l) the way in which the chief psychiatrist is to be notified of matters under this Act; | 21
22 |
| (m) information to be provided to the chief psychiatrist on— | 23 |
| (i) the treatment and care of involuntary patients under this Act, including the use of mechanical restraint, seclusion, physical restraint and other practices; and | 24
25
26
27 |
| (ii) deaths of patients. | 28 |
| (3) In performing a function under this Act in relation to an authorised mental health service, a person must comply with a policy or practice guideline relevant to the performance of the function to the extent that is reasonable and practicable in the circumstances. | 29
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[s 295]

- (4) If a policy or practice guideline is inconsistent with this Act, the policy or practice guideline is invalid to the extent of the inconsistency. 1
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- (5) In this section— 4
patient means— 5
 - (a) an involuntary patient; or 6
 - (b) a patient receiving voluntary treatment and care for a mental illness, including, for example, under an advance health directive. 7
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295 Publication of policies and practice guidelines 10

- (1) As soon as practicable after making a policy or practice guideline, the chief psychiatrist must— 11
12
 - (a) make the policy or practice guideline publicly available; 13
and 14
Example of making a policy or practice guideline publicly available— 15
publication on a website 16
17
 - (b) give a copy of the policy or practice guideline to the administrator of each authorised mental health service. 18
19
- (2) If a person in an authorised mental health service is required to comply with a policy or practice guideline, the administrator of the authorised mental health service must take reasonable steps to ensure the policy or practice guideline is available to the person. 20
21
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23
24
- (3) Also, the administrator of an authorised mental health service must ensure any policy or practice guideline relevant to the service is given effect. 25
26
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296	Annual report	1
(1)	Within 90 days after the end of each financial year, the chief psychiatrist must give to the Minister a report on the administration of this Act during the year.	2 3 4
(2)	The report must include the following for the financial year to which the report relates—	5 6
(a)	a summary of key developments in the administration of this Act;	7 8
(b)	statistical data, generally and for each authorised mental health service, about the following—	9 10
(i)	the making of examination authorities;	11
(ii)	the making of recommendations for assessment and transfer recommendations;	12 13
(iii)	the making and revocation of treatment authorities;	14
(iv)	the preparation of psychiatrist reports;	15
(v)	the making and revocation of forensic orders and court treatment orders;	16 17
(vi)	the use of mechanical restraint and seclusion;	18
(vii)	the application of monitoring conditions;	19
(viii)	taking action under part 5 if there is a serious risk to persons or public safety;	20 21
(ix)	the giving of information notices under part 6;	22
(c)	the number of forensic patients who absconded from each authorised mental health service;	23 24
(d)	details of the appointment of patient rights advisers;	25
(e)	details of any directions or reports given under section 299(1) in relation to recommendations for improvement contained in an investigation report.	26 27 28
(3)	The report may state any other information the chief psychiatrist considers appropriate.	29 30

[s 297]

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| (4) | The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it. | 1
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Part 4	Investigations	3
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297	Chief psychiatrist may investigate	4
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| (1) | The chief psychiatrist may, for the purpose of performing the chief psychiatrist's functions— | 5
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| (a) | investigate a matter; or | 7 |
| (b) | direct an inspector to investigate a matter. | 8 |
| (2) | An investigation must be completed as quickly as is reasonable in all the circumstances. | 9
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| (3) | The chief psychiatrist or an inspector may exercise the powers under chapter 14 for the purpose of the investigation. | 11
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298	Investigation report	13
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| (1) | After completing an investigation, the chief psychiatrist, or the inspector investigating the matter, must prepare a report on the investigation (an <i>investigation report</i>). | 14
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16 |
| (2) | The investigation report may include recommendations relating to the improvement of the operation of an authorised mental health service. | 17
18
19 |
| (3) | If an inspector prepares an investigation report, the inspector must give the report to the chief psychiatrist. | 20
21 |
| (4) | The chief psychiatrist may give a copy of an investigation report to a person or entity the subject of the investigation. | 22
23 |

299	Recommendations for improvement	1
(1)	If an investigation report contains recommendations relating to the improvement of the operation of an authorised mental health service, the chief psychiatrist may, by written notice, direct the administrator of the service to—	2 3 4 5
(a)	take action, or particular action, to address the recommendations; and	6 7
(b)	report to the chief psychiatrist about the action taken to address the recommendations.	8 9
(2)	However, before giving the notice, the chief psychiatrist must—	10 11
(a)	give the administrator a notice (a <i>show cause notice</i>) for the decision stating the following—	12 13
(i)	that the chief psychiatrist proposes to give the administrator a direction to take action, or particular action, to address recommendations included in an investigation report (the <i>proposed action</i>);	14 15 16 17 18
(ii)	the grounds for the proposed action;	19
(iii)	the facts and circumstances forming the basis for the grounds;	20 21
(iv)	that the administrator may make submissions about the show cause notice to the chief psychiatrist;	22 23
(v)	a day and period within which the submission must be made; and	24 25
(b)	consider any submissions given in response to the show cause notice.	26 27
(3)	The administrator must comply with a notice under subsection (1) unless the administrator has a reasonable excuse.	28 29

[s 300]

Part 5 **Serious risks to persons or public safety** 1
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300 Purpose of pt 5 3

This purpose of this part is to provide for the actions the chief 4
psychiatrist may take in relation to a forensic patient who is 5
the responsibility of an authorised mental health service (a 6
relevant forensic patient) if there is a serious risk to the life, 7
health or safety of persons or to public safety because of a 8
matter relating to a relevant forensic patient. 9

**301 Minister may direct chief psychiatrist to investigate 10
matter and consider taking appropriate action** 11

- (1) This section applies if the Minister considers— 12
- (a) a matter has arisen in relation to 1 or more relevant 13
forensic patients; and 14
 - (b) there is a serious risk to the life, health or safety of a 15
person or to public safety because of the matter. 16
- (2) The Minister may direct the chief psychiatrist to— 17
- (a) immediately undertake a review of the matter and risk to 18
decide— 19
 - (i) whether action is necessary to remove, or to 20
control or manage, the risk; and 21
 - (ii) whether there are systemic issues that need to be 22
addressed to avoid the risk; and 23
 - (b) consider taking any of the actions mentioned in section 24
302(2) to address the matter and stop it recurring; and 25
 - (c) report to the Minister— 26
 - (i) on the outcome of the review; and 27
 - (ii) if action is taken as a result of the review—on the 28
action taken. 29

[s 302]

(3)	To remove any doubt, it is declared that the Minister's power under this section—	1 2
(a)	is limited to requesting the chief psychiatrist to review and report on the matter and risk; and	3 4
(b)	does not allow the Minister to direct the chief psychiatrist to take action, or any particular action, in relation to the matter or risk.	5 6 7
302	Action chief psychiatrist may take	8
(1)	This section applies—	9
(a)	if the chief psychiatrist considers—	10
(i)	a matter has arisen in relation to 1 or more relevant forensic patients; and	11 12
(ii)	there is a serious risk to the life, health or safety of a person or to public safety because of the matter; and	13 14 15
(b)	whether or not a direction has first been given to the chief psychiatrist about the matter or risk under section 301.	16 17 18
(2)	The chief psychiatrist may do any of the following—	19
(a)	order the suspension of limited community treatment for a relevant forensic patient or class of relevant forensic patient for a period of not more than 7 days;	20 21 22
(b)	change, by order, the category of a relevant forensic patient's or class of relevant forensic patient's forensic order to the inpatient category for a period of not more than 7 days;	23 24 25 26
(c)	order an administrator of an authorised mental health service to provide a report on the circumstances that led to the matter and risk;	27 28 29
(d)	review, or order an administrator of an authorised mental health service to review and report back on, any treatment and care provided to a relevant forensic	30 31 32

[s 303]

	patient or class of relevant forensic patient in relation to the matter or risk or a possible similar matter or risk that might arise in the future;	1 2 3
(e)	review any policies or practice guidelines about the use of limited community treatment;	4 5
(f)	take any other action necessary to prevent a similar matter and risk from arising.	6 7
(3)	Before making an order under subsection (2)(a) or (b), the chief psychiatrist must consult with the administrator of each authorised mental health service likely to be affected by the order about—	8 9 10 11
(a)	the likely effect of the order on the authorised mental health service’s operations; and	12 13
(b)	the likely effect of the order on relevant forensic patients the subject of the order.	14 15
303	What chief psychiatrist’s order must contain	16
(1)	This section applies if the chief psychiatrist makes an order under section 302(2)(a) or (b) in relation to a relevant forensic patient or class of relevant forensic patient.	17 18 19
(2)	The chief psychiatrist’s order must include the following—	20
(a)	if the order relates to a particular relevant forensic patient—the name of the patient;	21 22
(b)	if the order relates to a class of relevant forensic patient—sufficient detail to identify the class to which the order applies;	23 24 25
	<i>Example of a class of relevant forensic patient for paragraph (b)—</i>	26
	all relevant forensic patients in an inpatient unit of a particular authorised mental health service who are receiving limited community treatment	27 28 29
(c)	the period of the suspension of limited community treatment, or for which the category of the relevant forensic patient’s forensic order is changed;	30 31 32

[s 304]

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- (d) if the order will require a relevant forensic patient or class of relevant forensic patient to return to an authorised mental health service—the name of the service and the time or date by which the patient must return to the service.
 - (3) For subsection (2)(d), the order may state an authorised mental health service other than the relevant forensic patient’s treating health service.
 - (4) The chief psychiatrist must give a relevant forensic patient subject to the order a copy of the order and a notice stating—
 - (a) that the relevant forensic patient may appeal to the tribunal against the chief psychiatrist’s decision to make the order; and
 - (b) the period within which the person may appeal to the tribunal; and
 - (c) how the appeal is made.

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304 Chief psychiatrist may vary period of order or end order 17

- (1) The chief psychiatrist may, for an order under section 302(2)(a) or (b), at any time before the period of the order ends—
 - (a) extend the period of the order for a further period or periods of not more than 7 days if the chief psychiatrist is satisfied the matter or risk for which the order was made still exists; or
 - (b) end the order.
 - (2) The chief psychiatrist must give notice of an extension of the period of the order or the ending of the order to a relevant forensic patient subject to the order.
 - (3) If the chief psychiatrist decides to extend the period of the order, the notice must state—

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[s 307]

- (b) a court treatment order. 1

Division 2 Notices 2

307 Application 3

- (1) An application for an information notice relating to a relevant patient may be made to the chief psychiatrist by—
 - (a) a victim of the unlawful act that led to the making of the relevant patient's forensic order or court treatment order; or 6
 - (b) a close relative of a victim mentioned in paragraph (a); or 9
 - (c) another individual who— 11
 - (i) has suffered harm because of the unlawful act that led to the making of the relevant patient's order; and 12
 - (ii) has a sufficient personal interest in receiving information under the notice about the relevant patient. 15
- (2) The application must— 18
 - (a) be in the approved form; and 19
 - (b) state whether the applicant, or another person (the *applicant's nominee*), will be entitled to receive information from the chief psychiatrist under the notice; and 20
 - (c) be accompanied by a statutory declaration by the applicant and the applicant's nominee, if any, that the applicant or applicant's nominee will not publish information provided under the notice in a way contrary to section 315. 24
- (3) An interested person may make an application for an applicant. 29

[s 308]

308 Decision on application

- | | |
|---|----|
| | 1 |
| (1) The chief psychiatrist must decide to approve or refuse to | 2 |
| approve the application— | 3 |
| (a) if the application is made by a person mentioned in | 4 |
| section 307(1)(a) or (b)—within 14 days after receiving | 5 |
| the application; or | 6 |
| (b) otherwise—within 28 days after receiving the | 7 |
| application. | 8 |
| (2) The chief psychiatrist may refuse to approve the application if | 9 |
| the chief psychiatrist is satisfied— | 10 |
| (a) the application is frivolous or vexatious; or | 11 |
| (b) for an application made by a person mentioned in | 12 |
| section 307(1)(c)—the person does not have a sufficient | 13 |
| personal interest in receiving information under the | 14 |
| notice; or | 15 |
| (c) disclosure of information under the notice is likely to— | 16 |
| (i) result in serious harm to the relevant patient's | 17 |
| health or welfare; or | 18 |
| (ii) put the safety of the relevant patient or someone | 19 |
| else at serious risk; or | 20 |
| (d) a previous information notice obtained by the applicant | 21 |
| was revoked under section 312(1)(b). | 22 |
| (3) In deciding whether a person mentioned in section 307(1)(c) | 23 |
| has a sufficient personal interest in receiving information | 24 |
| under the notice, the chief psychiatrist must have regard to the | 25 |
| following matters— | 26 |
| (a) whether the relevant patient is a risk to the safety and | 27 |
| welfare of the person; | 28 |
| (b) whether it is likely the relevant patient will come into | 29 |
| contact with the person; | 30 |

[s 309]

- (c) the nature and seriousness of the unlawful act that led to the making of the relevant patient's forensic order or court treatment order.
- (4) Also, for an application that states that the applicant's nominee will be entitled to receive information under the notice, the chief psychiatrist must not approve the application unless the chief psychiatrist is satisfied the nominee is suitable to obtain the information.
- (5) The chief psychiatrist must give notice of the decision to the applicant within 7 days after making it.
- (6) If the decision is to approve the application, the chief psychiatrist must give the applicant a notice stating—
 - (a) the name of the person entitled to receive information under the notice; and
 - (b) if the person entitled to receive information under the notice is the applicant's nominee—that the nominee is entitled to receive the information only for the purpose of providing the information to the applicant.
- (7) If the decision is to refuse to approve the application, the notice must state—
 - (a) the reasons for the decision; and
 - (b) that the person may appeal to the tribunal against the decision within 28 days after the person receives the notice; and
 - (c) how the appeal is made.

309 Right to receive information under notice

- (1) This section applies if a person is entitled to receive from the chief psychiatrist information about a relevant patient under an information notice.
- (2) The chief psychiatrist must ensure that the person receives the information mentioned in schedule 1 relating to the relevant patient.

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- (3) The information must be given to the person— 1
 - (a) for information mentioned in schedule 1, section 5—as 2
soon as practicable after the chief psychiatrist becomes 3
aware of the information; or 4
 - (b) otherwise—within 14 days after the chief psychiatrist 5
becomes aware of the information. 6
- (4) However, the chief psychiatrist must not disclose under 7
subsection (2)— 8
 - (a) details about the specific treatment and care provided to 9
the relevant patient, including, for example, the type of 10
medication being provided to the relevant patient; or 11
 - (b) the address of a place in the community at which the 12
relevant patient is living. 13
- (5) The chief psychiatrist may enter into arrangements with a 14
victim support service to enable the service, on behalf of the 15
chief psychiatrist, to give the information to the person. 16

310 Amendment of notice to change applicant's nominee 17

- (1) A person who is entitled to receive information about a 18
relevant patient under an information notice may apply to the 19
chief psychiatrist to amend the notice by adding, or changing, 20
the applicant's nominee. 21
- (2) The application must be in the approved form and be 22
accompanied by— 23
 - (a) the name of the applicant's nominee; and 24
 - (b) a statutory declaration by the nominee stating that the 25
nominee will not publish information provided under 26
the notice in a way contrary to section 315. 27
- (3) The chief psychiatrist must decide to approve or refuse to 28
approve the application within 14 days after receiving the 29
application. 30

[s 311]

- (4) The chief psychiatrist must approve the application if the chief psychiatrist is satisfied the nominee is suitable to obtain information under the notice. 1
2
3
- (5) The chief psychiatrist must give notice of the decision to the applicant within 7 days after making it. 4
5
- (6) If the decision is to approve the application, the chief psychiatrist must give the applicant an amended information notice. 6
7
8
- (7) If the decision is to refuse to approve the application, the notice must state— 9
10
 - (a) the reasons for the decision; and 11
 - (b) that the person may appeal to the tribunal against the decision within 28 days after the person receives the notice; and 12
13
14
 - (c) how the appeal is made. 15

311 Mandatory revocation 16

- (1) The chief psychiatrist must revoke an information notice relating to a relevant patient if— 17
18
 - (a) subject to subsection (4), the tribunal revokes the relevant patient's forensic order or court treatment order; or 19
20
21
 - (b) the relevant patient's order ends in a way other than by revocation by the tribunal; or 22
23
 - (c) the person entitled to receive information under the notice asks the chief psychiatrist to revoke the notice; or 24
25
 - (d) the chief psychiatrist is satisfied disclosure of information under the notice is likely to— 26
27
 - (i) cause serious harm to the relevant patient's health or welfare; or 28
29
 - (ii) put the safety of the relevant patient or someone else at serious risk; or 30
31

[s 311]

- (e) subject to subsection (5), the relevant patient has been transferred to an interstate mental health service. 1
2
- (2) The chief psychiatrist must give notice of the decision to 3
revoke the information notice to the person entitled to receive 4
information under the notice within 7 days after the decision 5
is made. 6
- (3) The notice must state— 7
 - (a) the reasons for the decision; and 8
 - (b) that the person may appeal to the tribunal against the 9
decision within 28 days after the person receives the 10
notice; and 11
 - (c) how the appeal is made. 12
- (4) For subsection (1)(a), if an appeal reinstates a relevant 13
patient's order that has been revoked by the tribunal— 14
 - (a) the information notice is reinstated on the day the 15
relevant patient's order is reinstated; and 16
 - (b) the chief psychiatrist must give notice of the 17
reinstatement of the information notice to the person 18
entitled to receive information under the notice within 7 19
days after the reinstatement. 20
- (5) For subsection (1)(e), if the relevant patient returns to 21
Queensland within 3 years after the transfer out of 22
Queensland and, on the patient's return, the patient's order is 23
reinstated— 24
 - (a) the information notice is reinstated on the day the 25
relevant patient's order is reinstated; and 26
 - (b) the chief psychiatrist must give notice of the 27
reinstatement of the information notice to the person 28
entitled to receive information under the notice within 7 29
days after the reinstatement. 30

[s 312]

312	Discretionary revocation	1
(1)	The chief psychiatrist may revoke an information notice relating to a relevant patient if—	2
(a)	the chief psychiatrist is unable, after making reasonable efforts, to locate the person entitled to receive information under the notice; or	3
(b)	the person entitled to receive information under the notice has published information contrary to section 315.	4
(2)	However, before revoking an information notice on a ground mentioned in subsection (1)(b), the chief psychiatrist must give the applicant for the notice, and the applicant's nominee, if any, a reasonable opportunity to make a submission to the chief psychiatrist about why the notice should not be revoked.	5
(3)	The chief psychiatrist must give notice of the decision to the person entitled to receive information under the notice within 7 days after making it.	6
(4)	The notice must state—	7
(a)	the reasons for the decision; and	8
(b)	that the person may appeal to the tribunal against the decision within 28 days after the person receives the notice; and	9
(c)	how the appeal is made.	10
Division 3	Miscellaneous	11
313	Tribunal must provide particular information to chief psychiatrist about relevant patient	12
(1)	This section applies if the tribunal makes a decision that increases the level of treatment in the community received by a relevant patient.	13

[s 314]

- (2) The tribunal must, for the purpose of enabling the chief psychiatrist to comply with 309(2), give a written notice containing a brief explanation of the decision to the chief psychiatrist. 1 2 3 4
- (3) The chief psychiatrist may use the written notice only for the purpose for which it is given. 5 6
- (4) To remove any doubt, it is declared that the written notice is not a statement of reasons for the tribunal's decision. 7 8

314 Telling relevant patient about information notice 9

- (1) This section applies if an information notice relating to a relevant patient is made. 10 11
- (2) Subject to subsection (3), the chief psychiatrist, or another person performing a function under this Act in relation to the relevant patient, must not tell the relevant patient about the making of the notice, or any other matter that may identify the person entitled to receive information under the notice. 12 13 14 15 16
- (3) The chief psychiatrist or other person may tell the patient the prescribed information about the notice if— 17 18
 - (a) the person entitled to receive information under the notice requests that the prescribed information be given to the relevant patient; and 19 20 21
 - (b) the chief psychiatrist, or an authorised doctor, believes telling the patient the prescribed information is in the patient's best interests. 22 23 24
- (4) In this section— 25
 - prescribed information***, about a notice, means— 26
 - (a) the fact of the making of the notice; or 27
 - (b) the fact of the making of the notice and the name of the person entitled to receive information under the notice. 28 29

315	Misuse of information made available under an information notice	1 2
(1)	This section applies in relation to information a person has because it has been made available to a person under an information notice.	3 4 5
(2)	The person must not publish the information unless the publication is required or permitted under the information notice, or an Act or law.	6 7 8
	Maximum penalty—100 penalty units.	9
316	Application of part to forensic disability clients	10
	This part applies in relation to a forensic disability client as if—	11 12
(a)	a reference in the part to a relevant patient were a reference to a forensic disability client; and	13 14
(b)	a reference in the part to the chief psychiatrist were a reference to the director of forensic disability; and	15 16
(c)	a reference in the part to an authorised mental health service were a reference to the forensic disability service.	17 18 19
Chapter 11	Authorised mental health services	20 21
Part 1	Preliminary	22
317	Purpose of ch 11	23
	The purpose of this chapter is to provide for the following—	24
(a)	the declaration of authorised mental health services;	25

[s 318]

- | | | |
|-----|--|----------------------|
| (b) | the appointment, functions and powers of administrators of authorised mental health services, authorised doctors and authorised mental health practitioners; | 1
2
3 |
| (c) | the transfer of the responsibility of particular patients— | 4 |
| | (i) between authorised mental health services; and | 5 |
| | (ii) between an authorised mental health service and the forensic disability service; and | 6
7 |
| | (iii) between an authorised mental health service and an interstate mental health service; | 8
9 |
| | <i>Note—</i> | 10 |
| | See chapter 12, part 11 for approvals of the transfer of forensic patients into and out of Queensland. | 11
12 |
| (d) | powers of authorised persons in relation to transporting persons under the Act; | 13
14 |
| (e) | matters relating to the security of authorised mental health services including the delivery to, and sending of, postal articles for patients in authorised mental health services and searches of involuntary patients. | 15
16
17
18 |

Part 2	Establishment of authorised mental health services	19 20
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318	Declaration of authorised mental health services	21
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|-----|---|----------------------|
| (1) | The chief psychiatrist may, by gazette notice, declare a health service, or part of a health service, providing treatment and care for persons who have a mental illness to be an authorised mental health service. | 22
23
24
25 |
| (2) | However, if the health service is not a public sector health service, the declaration may only be made with the written agreement of the health service. | 26
27
28 |
| (3) | The declaration may include conditions the chief psychiatrist considers appropriate, including, for example, a condition to | 29
30 |

	facilitate the provision of treatment and care for persons who have a mental illness in regional, remote or rural areas.	1 2
319	Declaration of high security units	3
	The chief psychiatrist may, by gazette notice, declare a public sector mental health service, or part of a public sector mental health service, to be a high security unit.	4 5 6
320	Declaration of authorised mental health service (regional)	7
(1)	The chief psychiatrist may, by gazette notice, declare an authorised mental health service, or part of an authorised mental health service, to be an authorised mental health service (regional).	8 9 10 11
(2)	The chief psychiatrist may act under subsection (1) only if satisfied the authorised mental health service is in a regional, remote or rural area.	12 13 14
Part 3	Administrators of authorised mental health services	15 16
321	Appointment of administrators of authorised mental health services	17 18
(1)	The chief psychiatrist may, by gazette notice, appoint a person to be the administrator of an authorised mental health service.	19 20
(2)	The appointment may state the administrator by name or by reference to the holder of a stated office.	21 22
322	Functions	23
(1)	The administrator of an authorised mental health service has the following functions—	24 25

[s 323]

	(a)	to the extent that it is reasonably practicable, ensuring the operations of the authorised mental health service are carried out in compliance with this Act;	1 2 3
	(b)	taking reasonable steps to ensure patients of the authorised mental health service receive appropriate treatment and care;	4 5 6
	(c)	notifying patients of the authorised mental health service, the chief psychiatrist, the tribunal and others of decisions and other matters as required under this Act;	7 8 9
	(d)	appointing authorised doctors and authorised mental health practitioners.	10 11
(2)		Also, the administrator has the other functions given under this Act.	12 13
(3)		In this section—	14
		<i>patient</i> means—	15
	(a)	an involuntary patient; or	16
	(b)	a patient receiving voluntary treatment and care for a mental illness, including, for example, under an advance health directive.	17 18 19
323	Powers		20
(1)		The administrator of an authorised mental health service has the powers given under this Act.	21 22
(2)		Also, the administrator may do all things necessary or convenient to be done to perform the administrator's functions.	23 24 25
324	Register of authorised doctors and authorised mental health practitioners		26 27
		The administrator of an authorised mental health service must keep a register of persons holding office as authorised doctors	28 29

[s 325]

or authorised mental health practitioners appointed by the administrator. 1
2

325 Record of relevant patients 3

- (1) The administrator of an authorised mental health service must 4
keep a record of relevant patients of the service. 5
- (2) Without limiting subsection (1), the record must contain the 6
following information— 7
 - (a) the day a person becomes a relevant patient of the 8
authorised mental health service; 9
 - (b) the day a person ceases to be a relevant patient; 10
 - (c) details of the basis on which a person is a relevant 11
patient; 12
 - (d) details of any changes to the basis on which a person is a 13
relevant patient and the day the changes happen; 14
 - (e) the category of a treatment authority, forensic order or 15
court treatment order for a relevant patient and details of 16
any limited community treatment under the authority or 17
order; 18
 - (f) the conditions of a relevant patient's treatment authority, 19
forensic order or court treatment order; 20
 - (g) details of temporary absences approved for a relevant 21
patient under section 223 and the reason for the 22
absences. 23
- (3) In this section— 24
relevant patient means an involuntary patient or classified 25
patient (voluntary). 26

326 Delegation by administrator 27

- (1) The administrator of an authorised mental health service may 28
delegate the administrator's functions under this Act to an 29
appropriately qualified health service employee of the service. 30

[s 327]

(2)	In this section—	1
	<i>function</i> includes a power.	2
Part 4	Authorised doctors and authorised mental health practitioners	3 4 5
Division 1	Appointment, functions and powers	6
327	Appointment of authorised doctors	7
(1)	The administrator of an authorised mental health service may, by instrument in writing, appoint a doctor as an authorised doctor.	8 9 10
(2)	However, the administrator may appoint a person mentioned in subsection (1) only if satisfied the person has the competencies, stated in a policy, necessary to be an authorised doctor.	11 12 13 14
(3)	The administrator of an authorised mental health service may appoint a health practitioner of a class prescribed under a regulation to perform the functions or exercise the powers of an authorised doctor prescribed under a regulation for the class of health practitioner.	15 16 17 18 19
(4)	However, the administrator may appoint a person mentioned in subsection (3) only if satisfied the person is qualified for appointment because the person has the necessary expertise or experience.	20 21 22 23
(5)	Before recommending to the Governor in Council the making of a regulation under subsection (3), the Minister must be of the opinion that the class of health practitioner has the competencies the chief psychiatrist considers necessary to	24 25 26 27

	perform the functions or exercise the powers of an authorised doctor to be prescribed for the class.	1 2
(6)	If the administrator of an authorised mental health service is a psychiatrist, the administrator is also an authorised doctor.	3 4
328	Appointment of authorised mental health practitioners	5
(1)	The administrator of an authorised mental health service may, by instrument in writing, appoint a health practitioner as an authorised mental health practitioner.	6 7 8
(2)	However, the administrator may appoint a health practitioner as an authorised mental health practitioner only if satisfied the person has the competencies, stated in a policy, necessary to be an authorised mental health practitioner.	9 10 11 12
329	Appointment conditions and limit on powers	13
(1)	It is a condition of office as an authorised doctor or authorised mental health practitioner that the person holding office must have the competencies, stated in a policy or a report mentioned in section 290(1)(g), necessary to be an authorised doctor or authorised mental health practitioner.	14 15 16 17 18
(2)	An authorised doctor or authorised mental health practitioner also holds office on any conditions stated in—	19 20
(a)	the authorised doctor's or authorised mental health practitioner's instrument of appointment; or	21 22
(b)	a signed notice given to the authorised doctor or authorised mental health practitioner.	23 24
(3)	The instrument of appointment or signed notice given to the authorised doctor or authorised mental health practitioner may limit the doctor's or health practitioner's powers.	25 26 27
(4)	In this section—	28
	<i>signed notice</i> means a notice signed by the administrator of the authorised mental health service who appointed the authorised doctor or authorised mental health practitioner.	29 30 31

[s 330]

330 When office ends

- (1) The office of a person as an authorised doctor or authorised mental health practitioner ends if any of the following happens—

 - (a) for an authorised doctor appointed under section 327(1)—the authorised doctor ceases to be a doctor;
 - (b) for a health practitioner appointed to perform the functions of an authorised doctor under section 327(3)—the health practitioner ceases to be a health practitioner of a class prescribed under a regulation for section 327;
 - (c) for an authorised mental health practitioner—the authorised mental health practitioner ceases to be a health practitioner of a type that was the basis for the person’s appointment;
 - (d) under a condition of office, the office ends;
 - (e) the chief psychiatrist is satisfied the person is unable to perform the functions of an authorised doctor or authorised mental health practitioner, including, for example, because the person does not have the competencies, stated in a policy or a report mentioned in section 290(1)(g), necessary to be an authorised doctor or authorised mental health practitioner;
 - (f) the authorised doctor or authorised mental health practitioner resigns by written notice given to the administrator of the authorised mental health service who appointed the authorised doctor or authorised mental health practitioner.
- (2) Subsection (1) does not limit the ways the office of a person as an authorised doctor or authorised mental health practitioner ends.
- (3) If the office of a person as an authorised doctor or authorised mental health practitioner ends under subsection (1)(e), the chief psychiatrist must immediately give written notice to the person that the office has ended.

(4)	In this section—	1
	<i>condition of office</i> means a condition under which the	2
	authorised doctor or authorised mental health practitioner	3
	holds office.	4
331	Functions and powers of authorised doctors and authorised mental health practitioners	5
	Subject to section 329, an authorised doctor or authorised	7
	mental health practitioner has the functions and powers given	8
	under this Act.	9
332	Requirement to give notice of particular decisions	10
	If an authorised doctor or authorised mental health	11
	practitioner makes a decision under this Act in relation to an	12
	involuntary patient or classified patient (voluntary), the	13
	authorised doctor or authorised mental health practitioner	14
	must given written notice of the decision to the administrator	15
	of the patient’s treating health service.	16
Division 2	Identity cards	17
333	Issue of identity card	18
(1)	The administrator of an authorised mental health service must	19
	issue an identity card to each authorised doctor and authorised	20
	mental health practitioner appointed by the administrator.	21
(2)	The identity card must—	22
(a)	contain a recent photo of the authorised doctor or	23
	authorised mental health practitioner; and	24
(b)	identify the person as an authorised doctor or authorised	25
	mental health practitioner under this Act; and	26
(c)	state an expiry date for the card.	27

[s 334]

(3)	This section does not prevent the issue of a single identity card to a person for this Act and other purposes.	1 2
334	Production or display of identity card	3
(1)	In exercising a power in relation to a person in the person's presence, an authorised doctor or authorised mental health practitioner must—	4 5 6
(a)	produce the authorised doctor's or authorised mental health practitioner's identity card for the person's inspection before exercising the power; or	7 8 9
(b)	have the identity card displayed so it is clearly visible to the person when exercising the power.	10 11
(2)	However, if it is not practicable to comply with subsection (1), the authorised doctor or authorised mental health practitioner must produce the identity card for the person's inspection at the first reasonable opportunity.	12 13 14 15
335	Return of identity card	16
	If the office of a person as an authorised doctor or authorised mental health practitioner ends, the person must return the person's 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.	17 18 19 20 21 22
	Maximum penalty—20 penalty units.	23

Part 5	Transfer of patients	1
Division 1	Preliminary	2
336	Purpose of pt 5	3
	The purpose of this part is to provide for the transfer of the responsibility for particular patients—	4 5
	(a) between authorised mental health services; and	6
	(b) between an authorised mental health service and the forensic disability service; and	7 8
	(c) between an authorised mental health service and an interstate mental health service.	9 10
	<i>Note—</i>	11
	See chapter 12, part 11 for applications for approval to transfer forensic and other patients into and out of Queensland.	12 13
337	Definition for pt 5	14
	In this part—	15
	<i>transfer criteria</i> , for a patient, means—	16
	(a) the patient’s mental state and psychiatric history; and	17
	(b) the patient’s treatment and care needs; and	18
	(c) whether the transfer is in the best interests of the patient, including, for example, enabling the patient to be closer to the patient’s family, carers or other support persons; and	19 20 21 22
	(d) if relevant, security requirements for the patient.	23

[s 338]

Division 2	Authorised mental health service transfers	1 2
338	Transfer from one service to another service by agreement of administrators	3 4
(1)	This section applies to an involuntary patient, or a classified patient (voluntary), of an authorised mental health service.	5 6
(2)	The administrator of the authorised mental health service (the <i>first AMHS</i>) may agree with the administrator of another authorised mental health service (the <i>second AMHS</i>) to transfer the responsibility for the patient from the first AMHS to the second AMHS.	7 8 9 10 11
(3)	In deciding whether to agree to a transfer under subsection (2), the administrator of the first AMHS and the second AMHS must have regard to the transfer criteria for the patient.	12 13 14
(4)	If any of the following circumstances apply, the transfer must not happen unless the chief psychiatrist has approved the transfer in writing—	15 16 17
(a)	the patient is subject to a forensic order;	18
(b)	the patient is subject to a judicial order;	19
(c)	the patient is subject to a treatment authority, and is not a classified patient, and the transfer is to a high security unit;	20 21 22
(d)	the patient is a minor, and the transfer is to a high security unit.	23 24
(5)	In deciding whether to approve a transfer under subsection (4), the chief psychiatrist must have regard to the transfer criteria for the patient.	25 26 27
(6)	If a patient transferred under this section is a classified patient, and the chief psychiatrist has not approved the transfer under this section, the administrator of the first AMHS must give written notice of the transfer to the chief psychiatrist within 7 days after the transfer.	28 29 30 31 32

339	Transfer from one service to another service by requirement of chief psychiatrist	1 2
(1)	This section applies to an involuntary patient, or a classified patient (voluntary), of an authorised mental health service.	3 4
(2)	The chief psychiatrist may, by written notice, require the administrator of the authorised mental health service to transfer the responsibility for the patient from the authorised mental health service to another authorised mental health service.	5 6 7 8 9
(3)	In deciding whether to require a transfer mentioned in subsection (1), the chief psychiatrist must have regard to the transfer criteria for the patient.	10 11 12

Division 3 Forensic disability service transfers 13

340	Transfer to and from an authorised mental health service and the forensic disability service	14 15
(1)	This section applies to a person subject to a forensic order (disability).	16 17
(2)	The chief psychiatrist and the director of forensic disability may agree to transfer the responsibility for the person from an authorised mental health service to the forensic disability service, or vice versa.	18 19 20 21
(3)	In deciding whether to agree to a transfer under subsection (2), the chief psychiatrist and the director of forensic disability must have regard to—	22 23 24
(a)	the transfer criteria for the patient; and	25
(b)	the person's intellectual disability.	26

[s 341]

Division 4	Interstate transfers	1
341	Transfer of patient who is subject to a treatment authority to another State	2 3
(1)	This section applies to a patient of an authorised mental health service who is subject to a treatment authority.	4 5
(2)	The administrator of the service may agree with the responsible officer of an interstate mental health service to transfer the responsibility for the patient to the interstate mental health service if the administrator of the service is satisfied—	6 7 8 9 10
(a)	the transfer is in the best interests of the patient, including, for example, enabling the patient to be closer to the patient’s family, carers or other support persons; and	11 12 13 14
(b)	appropriate treatment and care is available for the patient at the interstate mental health service.	15 16
(3)	The patient’s treatment authority ends when the patient is admitted to the interstate mental health service.	17 18
342	Transfer of patient who is subject to an interstate order from another State	19 20
(1)	The administrator of an authorised mental health service (the <i>AMHS</i>) may agree with the responsible officer of an interstate mental health service to transfer the responsibility for a patient subject to an interstate order to the AMHS if the administrator of the AMHS is satisfied—	21 22 23 24 25
(a)	the transfer is in the best interests of the patient, including, for example, enabling the patient to be closer to the patient’s family, carers or other support persons; and	26 27 28 29
(b)	appropriate treatment and care is available for the patient at the AMHS; and	30 31

[s 343]

-
- (c) an authorised doctor is likely to consider, on the patient's admission to the AMHS, that—
1
2

 - (i) the treatment criteria apply to the patient; and
3
 - (ii) there is no less restrictive way for the patient to receive treatment and care for the patient's mental illness.
4
5
6
 - (2) The patient is subject to a treatment authority when the patient is admitted to the AMHS.
7
8
 - (3) The administrator of the AMHS must give written notice of the transfer to the tribunal within 7 days after the transfer.
9
10

Division 5 General provisions 11

343 Responsibility for patient 12

- (1) If the responsibility for a patient is transferred, under this part, from an entity to another entity, the responsibility for the patient's treatment and care under the patient's order or authority, is transferred from the administrator of the first entity to the administrator of the second entity.
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- (2) An order or authority to which the patient is subject, under this Act or the Forensic Disability Act, is otherwise affected by the transfer only to the extent this Act or the Forensic Disability Act expressly provides.
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- (3) In this section—
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entity means an authorised mental health service or the forensic disability service.

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344 Power to transport 25

- (1) This section applies if the responsibility for a patient is transferred, under this part, from an entity to another entity.
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27
- (2) An authorised person may transport the patient from the first entity to the second entity.
28
29

[s 345]

(3)	If one of the entities is the forensic disability service, a person who is authorised under the Forensic Disability Act to transport a forensic disability client under that Act, may transport the patient to or from the entity.	1 2 3 4
(4)	If 1 of the entities is an interstate mental health service, a person who is authorised under a corresponding law to transport a patient under the corresponding law, may transport the patient to or from the entity.	5 6 7 8
345	Notification of tribunal	9
(1)	This section applies if the responsibility for a patient is transferred from an authorised mental health service, or the forensic disability service, to another entity.	10 11 12
(2)	The administrator of the authorised mental health service, or the director of forensic disability, must give written notice of the transfer to the tribunal within 7 days after the day of the transfer.	13 14 15 16
Part 6	Powers for transporting persons	17 18
Division 1	Preliminary	19
346	Who is an <i>authorised person</i>	20
(1)	Each of the following is an <i>authorised person</i> —	21
(a)	an administrator of an authorised mental health service;	22
(b)	an ambulance officer;	23
(c)	an authorised doctor;	24
(d)	an authorised mental health practitioner;	25

-
- (e) a police officer.
1
 - (2) Also, if a person is to be transported to or from a corrective services facility or youth detention centre, each of the following is an ***authorised person***—
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 - (a) a corrective services officer for the purpose of taking the person to or from the facility;
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6
 - (b) a youth detention employee for the purpose of taking the person to or from the centre.
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8
 - (2) Also, the administrator of an authorised mental health service may in writing appoint a health service employee of the authorised mental health service as an ***authorised person***.
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 - (3) An authorised person, other than a police officer, is a public official for the *Police Powers and Responsibilities Act 2000*.
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13
 - (4) In this section—
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youth detention employee means a detention centre employee under the *Youth Justice Act 1992*.

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Division 2

General provisions about transporting particular patients

17
18

347

Transport within an authorised mental health service

19

The administrator of an authorised mental health service, an authorised doctor, or another person approved by the administrator, may transport an involuntary patient or classified patient (voluntary) from 1 place in the authorised mental health service to another place in the authorised mental health service.

Examples for subsection (1)—

- a patient may be transported to a different inpatient unit within the service
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28
- a patient may be transported to another place in the service for an examination or diagnostic test
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[s 348]

348	Transport to or from an authorised mental health service	1
(1)	An authorised person may transport an involuntary patient or classified patient (voluntary) to or from an authorised mental health service, public sector health service facility, place of custody or court, or a place in the community, if authorised or required under a provision of this Act.	2 3 4 5 6
(2)	However, the patient may be transported under subsection (1) only if the administrator of the patient’s treating health service has given written consent for the patient to be transported.	7 8 9
349	Taking person after treatment to person’s requested place	10 11
(1)	This section applies if—	12
(a)	a person is taken from a place in the community to an authorised mental health service under an examination authority; or	13 14 15
(b)	a person is taken from a place in the community to an authorised mental health service under an emergency examination authority and a recommendation for assessment is made for the person.	16 17 18 19
(2)	At the end of the person’s detention in an authorised mental health service, the administrator of the service must take reasonable steps to ensure the person is returned to a place reasonably requested by the person.	20 21 22 23
Division 3	Provisions about absent persons	24
350	Application of div 3	25
	This division applies if—	26
(a)	a person absconds while being lawfully detained under this Act or the <i>Public Health Act 2005</i> , chapter 4A, or while in a person’s charge under section 579; or	27 28 29

[s 350]

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|---|----------------------------|
| (b) a person subject to a treatment authority, forensic order or court treatment order is being treated in the community and the person does not attend at an authorised mental health service or public sector health service facility as required under the authority or order; or | 1
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| (c) a treatment authority, forensic order, court treatment order or judicial order is made for a person requiring the person to be detained in an authorised mental health service and the person is not in an authorised mental health service when the authority or order is made; or | 7
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11 |
| (d) the category of a patient’s treatment authority, forensic order or court treatment order is changed to the inpatient category; or | 12
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14 |
| (e) a forensic patient is being treated in the community and the chief psychiatrist makes an order for the forensic patient under section 302(2)(a) or (b); or | 15
16
17 |
| (f) a patient is absent from an authorised mental health service under section 223, or receiving limited community treatment, and either of the following applies— | 18
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21 |
| (i) the patient does not return to the authorised mental health service at the end of the absence or treatment; | 22
23
24 |
| (ii) the temporary absence or limited community treatment is revoked; or | 25
26 |
| (g) a person does not attend at an authorised mental health service as directed under section 95; or | 27
28 |
| (h) a person subject to an examination order does not attend at an authorised mental health service as directed under the order; or | 29
30
31 |
| (i) a person does not attend at an examining practitioner as directed under section 612(4)(b). | 32
33 |
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[s 351]

351	Administrator or person in charge may require return of absent person	1 2
(1)	Subject to subsection (2), a relevant administrator of an authorised mental health service or public sector health service facility may, in the approved form—	3 4 5
(a)	direct an authorised person, other than a police officer, to transport a person mentioned in section 350 to an authorised mental health service or public sector health service facility; or	6 7 8 9
(b)	ask a police officer to transport a person mentioned in section 350 to an authorised mental health service or public sector health service facility.	10 11 12
(2)	Before giving a direction or making a request under subsection (1), the relevant administrator must make reasonable efforts to contact the person and encourage the person to come or return to the authorised mental health service or public sector health service facility.	13 14 15 16 17
(3)	However, subsection (2) does not apply if the relevant administrator considers there is a risk that the person may harm himself or herself or others if the relevant administrator acts under the subsection.	18 19 20 21
	<i>Note—</i>	22
	See also section 363.	23
(4)	If an authorised person is given a direction under subsection (1) and intends to ask a police officer, under the <i>Police Powers and Responsibilities Act 2000</i> , section 16, to help the authorised person transport the person, the authorised person must ask the police officer in the approved form.	24 25 26 27 28
	<i>Note—</i>	29
	Under the <i>Police Powers and Responsibilities Act 2000</i> , section 16 a public official may ask a police officer to help the public official perform the public official's functions. An authorised person other than a police officer is a public official. See section 346.	30 31 32 33
(5)	The approved form for a direction or request must make provision for—	34 35

[s 352]

(a)	the relevant administrator or authorised person to include information about—	1 2
(i)	the application of this section to the person to be transported; and	3 4
(ii)	the risk the person presents to himself or herself, the authorised person, police officer or others; and	5 6
(b)	in relation to a request under subsection (1)—the inclusion of information about why the relevant administrator is asking the police officer to transport the person; and	7 8 9 10
(c)	in relation to a request under subsection (4)—the inclusion of information about why the authorised person is asking the police officer to help transport the person and a copy of the direction given to the authorised person.	11 12 13 14 15
(6)	In this section—	16
	<i>relevant administrator</i> , of an authorised mental health service or public sector health service facility means—	17 18
(a)	if an authorised mental health service is responsible for the treatment and care, or an examination or assessment, of the person—the administrator of the service; and	19 20 21
(b)	if a public sector health service facility is responsible for the treatment and care, or an examination or assessment of the person—the person in charge of the facility.	22 23 24
352	Authorised person may transport patient required to return	25 26
(1)	An authorised person or police officer may transport a patient required to return to the authorised mental health service or public sector health service facility stated in the direction or request under section 351(1).	27 28 29 30
(2)	As soon as practicable after detaining the person, the authorised person or police officer must explain the operation of this section to the person.	31 32 33

[s 353]

353	Effect on period of detention	1
(1)	If the person was subject to an examination authority when the person absconded, the authority is in force for 7 days after the person is transported and admitted to the service or facility under section 352.	2 3 4 5
(2)	Subsection (1) applies despite section 469.	6
(3)	If the person was subject to a recommendation for assessment when the person absconded—	7 8
(a)	the recommendation for assessment is in force for 7 days after the person is transported and admitted to the service or facility under section 352; and	9 10 11
(b)	the assessment period for the recommendation for assessment starts when the person is transported and admitted to the service or facility under that section.	12 13 14
(4)	Subsection (3) applies despite sections 38 and 42.	15
(5)	A health service employee must note on the recommendation for assessment when the assessment period starts under this section.	16 17 18
(6)	If the person was subject to an emergency examination authority when the person absconded, the examination period for the authority under the <i>Public Health Act 2005</i> , section 157E starts when the person is transported and admitted to the service or facility under section 352.	19 20 21 22 23
(7)	A health service employee must note on the emergency examination authority when the examination period starts under this section.	24 25 26

[s 354]

Division 4	Powers for transporting persons to or from interstate mental health services	1 2 3
354	Apprehension of persons absent from interstate mental health service	4 5
(1)	An authorised person who is a police officer may apprehend, in this State, a person—	6 7
(a)	who is absent without permission from an interstate mental health service; and	8 9
(b)	for whom a warrant for the person’s apprehension has been issued under a corresponding law of the State in which the service is located (the <i>other State</i>).	10 11 12
(2)	For subsection (1), a warrant issued under a corresponding law authorising a person’s apprehension is taken to be a warrant for apprehension of the person under this Act by a police officer.	13 14 15 16
(3)	If the person is apprehended under this section, a police officer may transport the person to an interstate mental health service in the other State or an authorised mental health service.	17 18 19 20
(4)	The person may be detained in an authorised mental health service for the period reasonably necessary to enable the administrator of the service to make arrangements for the person’s return to an interstate mental health service.	21 22 23 24
355	Transport of person in Queensland to interstate mental health service	25 26
(1)	This section applies to a person in Queensland who—	27
(a)	appears to have a mental illness and may be detained and transported to an authorised mental health service or public sector health service facility under the <i>Public Health Act 2005</i> , section 157B; or	28 29 30 31

[s 356]

	(b) is subject to a recommendation for assessment.	1
(2)	If permitted under a corresponding law, the person may be transported to an interstate mental health service by—	2 3
	(a) an authorised person; or	4
	(b) a person who, under the corresponding law, is authorised to transport the person to an interstate mental health service.	5 6 7
356	Transport of person outside Queensland to authorised mental health service	8 9
(1)	This section applies to a person outside Queensland who, under a corresponding law, may be transported to an interstate mental health service for—	10 11 12
	(a) emergency involuntary examination or treatment and care relating to a mental illness; or	13 14
	(b) an involuntary assessment of whether the person should be involuntarily treated for a mental illness.	15 16
(2)	The person mentioned in subsection (1)(a) may be transported to either of the following places for emergency treatment and care—	17 18 19
	(a) an authorised mental health service;	20
	(b) a public sector health service facility that is not an inpatient hospital, but only with the approval of the person in charge of the public sector health service facility.	21 22 23 24
(3)	The person mentioned in subsection (1)(b) may be transported to an authorised mental health service for an assessment of whether the person should be involuntarily treated for a mental illness.	25 26 27 28
(4)	The person may be transported to a place mentioned in subsection (2) or (3) by—	29 30
	(a) an authorised person; or	31

[s 357]

(b)	a person who, under a corresponding law, is authorised to transport the person to an interstate mental health service.	1 2 3
(5)	A document under a corresponding law that recommends assessment of a person to decide whether the person should be involuntarily treated for a mental illness is taken to be a recommendation for assessment under this Act.	4 5 6 7
(6)	In this section— <i>inpatient hospital</i> means a hospital where a person may be discharged on a day other than the day on which the person was admitted to the hospital.	8 9 10 11
357	Making of emergency examination authority	12
(1)	This section applies if a person mentioned in section 356(4)(b) (an <i>interstate officer</i>) transports a person, under section 356, to an authorised mental health service or public sector health service facility.	13 14 15 16
(2)	The interstate officer must immediately give an emergency examination authority for the person.	17 18
Division 5	General powers	19
Subdivision 1	Preliminary	20
358	Application of div 5	21
	This division applies if an authorised person is authorised or required under this Act to transport a person.	22 23

[s 359]

Subdivision 2	Power to transport persons	1
359	Power to transport includes power to detain	2
(1)	The power to transport the person includes the power to detain the person for that purpose.	3 4
(2)	The 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.	5 6 7
360	Administration of medication while being transported	8
(1)	Despite the absence or refusal of the person's consent, medication may be administered to the person while being detained and transported.	9 10 11
(2)	However, the medication—	12
(a)	may be administered to the person only if an authorised doctor is satisfied it is necessary to ensure the safety of the person or others while being detained and transported; and	13 14 15 16
(b)	must be administered by a doctor or by a registered nurse under the instruction of a doctor.	17 18
(3)	The doctor or nurse may administer the medication with the help, and using the force, that is necessary and reasonable in the circumstances.	19 20 21
(4)	For subsection (2)(b), the doctor's instruction must include the medication's name, the dose and route and frequency of administration.	22 23 24
(5)	A doctor or nurse who administers medication under this section must keep a written record of the matters mentioned in subsection (4).	25 26 27
(6)	This section applies despite the <i>Guardianship and Administration Act 2000</i> , chapter 5, part 2, division 1.	28 29
(7)	This section does not apply to a classified patient (voluntary).	30

361	Use of mechanical restraint on involuntary patients	1
(1)	An authorised person may use mechanical restraint on an involuntary patient while transporting the patient only if—	2 3
(a)	the chief psychiatrist has given approval, under subsection (2), for the authorised person to use mechanical restraint on the patient; and	4 5 6
(b)	the use of mechanical restraint on the patient is necessary to protect the patient or others from physical harm; and	7 8 9
(c)	there is no other reasonably practicable way to protect the patient or others from physical harm; and	10 11
(d)	the device used is an approved device; and	12
(e)	the restraint is done with no more force than is necessary and reasonable in the circumstances; and	13 14
(f)	the patient is observed continuously while restrained.	15
(2)	The chief psychiatrist may give approval for an authorised person to use, under subsection (1), mechanical restraint on the patient if satisfied—	16 17 18
(a)	the use of mechanical restraint on the patient is necessary to protect the patient or others from physical harm; and	19 20 21
(b)	there is no other reasonably practicable way to protect the patient or others from physical harm.	22 23
(3)	The chief psychiatrist's approval must state—	24
(a)	the purpose for which mechanical restraint may be used on the patient; and	25 26
(b)	the period during which the authorised person may use mechanical restraint on the patient; and	27 28
(c)	the approved device that must be used; and	29
(d)	any other conditions the chief psychiatrist considers appropriate.	30 31

[s 362]

Subdivision 3	Entry of places by authorised persons	1 2
362	General power to enter places	3
(1)	For transporting a person to an authorised mental health service or public sector health service facility, the authorised person may enter a place if—	4 5 6
(a)	an occupier at the place consents to the entry; or	7
(b)	it is a public place and the entry is made when the place is open to the public; or	8 9
(c)	the entry is authorised by a warrant for apprehension of the person.	10 11
(2)	For asking an occupier at a place to consent to the entry, chapter 14, parts 3 and 4 apply to the authorised person as if—	12 13
(a)	a reference in the parts to an inspector were a reference to the authorised person; and	14 15
(b)	a reference in the parts to an inspector asking an occupier of a place to consent to the inspector or another inspector entering the place were a reference to the authorised person asking the occupier of the place to consent to the authorised person or another authorised person entering the place under this section.	16 17 18 19 20 21
	<i>Note—</i>	22
	See also the <i>Police Powers and Responsibilities Act 2000</i> , section 21 for other powers of a police officer.	23 24
(3)	If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.	25 26 27 28
(4)	If the power to enter is under a warrant, the power is subject to the terms of the warrant.	29 30

Subdivision 4	Entry under warrant for apprehension	1 2
363	Application for warrant for apprehension of person	3
(1)	An authorised person may apply to a magistrate for a warrant for apprehension of the person.	4 5
(2)	The authorised person must prepare a written application that states the grounds on which the warrant is sought.	6 7
(3)	The written application must be sworn.	8
(4)	The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.	9 10 11 12
	<i>Example—</i>	13
	The magistrate may require additional information supporting the application to be given by statutory declaration.	14 15
364	Issue of warrant	16
(1)	The magistrate may issue the warrant for apprehension of the person only if the magistrate is satisfied—	17 18
(a)	there are reasonable grounds for suspecting the person may be found at the place; and	19 20
(b)	the warrant is necessary to enable the person to be transported to an authorised mental health service for examination, assessment, treatment or care.	21 22 23
(2)	The warrant for apprehension authorises a police officer to detain the person and transport the person to the authorised mental health service.	24 25 26
	<i>Note—</i>	27
	For a police officer's entry and search powers, see the <i>Police Powers and Responsibilities Act 2000</i> , section 21. Also, for the use of force by a police officer, see the <i>Police Powers and Responsibilities Act 2000</i> , section 615.	28 29 30 31

[s 365]

- (3) The warrant for apprehension must state— 1
 - (a) the name of the person who may be apprehended under 2the warrant; and 3
 - (b) the place to which the warrant applies; and 4
 - (c) that a stated police officer or any police officer may with 5necessary and reasonable help and force— 6
 - (i) enter the place and any other place necessary for 7entry to the place; and 8
 - (ii) exercise the police officer's powers; and 9
 - (d) the hours of the day or night when the place may be 10entered; and 11
 - (e) the magistrate's name; and 12
 - (f) the day and time of the warrant's issue; and 13
 - (g) the day, within 7 days after the warrant's issue, the 14warrant ends. 15

365 Electronic application 16

- (1) An application under section 363 may be made by phone, fax, 17email, radio, videoconferencing or another form of electronic 18communication if the authorised person reasonably considers 19it necessary because of— 20
 - (a) urgent circumstances; or 21
 - (b) other special circumstances, including, for example, the 22authorised person's remote location. 23
- (2) The application— 24
 - (a) may not be made before the authorised person prepares 25the written application under section 363(2); but 26
 - (b) may be made before the written application is sworn. 27

366	Additional procedure if electronic application	1
(1)	For an application made under section 365, the magistrate may issue the warrant for apprehension of the person (the <i>original warrant</i>) only if the magistrate is satisfied—	2 3 4
(a)	it was necessary to make the application under section 365; and	5 6
(b)	the way the application was made under section 365 was appropriate.	7 8
(2)	After the magistrate issues the original warrant—	9
(a)	if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or	10 11 12 13 14
(b)	otherwise—	15
(i)	the magistrate must tell the authorised person the information mentioned in section 364(3); and	16 17
(ii)	the authorised person must complete a form of warrant, including by writing on it the information mentioned in section 364(3) provided by the magistrate.	18 19 20 21
(3)	The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the <i>duplicate warrant</i>), is a duplicate of, and as effectual as, the original warrant.	22 23 24 25
(4)	The authorised person must, at the first reasonable opportunity, send to the magistrate—	26 27
(a)	the written application complying with section 363(2) and (3); and	28 29
(b)	if the authorised person completed a form of warrant under subsection (2)(b), the completed form of warrant.	30 31
(5)	The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—	32 33

[s 367]

(a)	attach the documents to the original warrant; and	1
(b)	give the original warrant and documents to the clerk of the court of the relevant magistrates court.	2 3
(6)	Despite subsection (3), if—	4
(a)	an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and	5 6 7
(b)	the original warrant is not produced in evidence;	8
	the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.	9 10 11
(7)	This section does not limit section 363.	12
(8)	In this section—	13
	<i>relevant magistrates court</i> , in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the <i>Magistrates Act 1991</i> .	14 15 16
367	Defect in relation to a warrant	17
(1)	A warrant for apprehension of a person is not invalidated by a defect in—	18 19
(a)	the warrant; or	20
(b)	compliance with this subdivision;	21
	unless the defect affects the substance of the warrant in a material particular.	22 23
(2)	In this section—	24
	<i>warrant for apprehension</i> includes a duplicate warrant mentioned in section 366(3).	25 26

368	Warrants—entry procedure	1
(1)	This section applies if a police officer is intending to enter a place under a warrant for apprehension of a person issued under this subdivision.	2 3 4
(2)	Before entering the place, the police officer must do or make a reasonable attempt to do the following things—	5 6
(a)	identify himself or herself to a person present at the place who is an occupier of the place;	7 8
	<i>Note—</i>	9
	See the <i>Police Powers and Responsibilities Act 2000</i> , section 637.	10 11
(b)	give the person a copy of the warrant for apprehension;	12
(c)	tell the person the police officer is permitted by the warrant to enter and search the place to find the person named in the warrant;	13 14 15
(d)	give the person an opportunity to allow the police officer immediate entry to the place without using force.	16 17
(3)	However, the police officer need not comply with subsection (2) if the police officer believes on reasonable grounds that entry to the place without compliance is required to ensure the execution of the warrant for apprehension is not frustrated.	18 19 20 21
(4)	In this section—	22
	warrant for apprehension includes a duplicate warrant mentioned in section 366(3).	23 24

[s 369]

Part 7	Security	1
Division 1	Preliminary	2
369	Purpose of pt 7	3
	The purpose of this part is to provide for—	4
	(a) the delivery to, and sending of postal articles for, patients in authorised mental health services, including high security units; and	5 6 7
	(b) searches of involuntary patients in authorised mental health services and particular public sector health service facilities; and	8 9 10
	(c) searches of persons on admission to, or entry into, high security units; and	11 12
	(d) searches of visitors to high security units.	13
370	Definitions for pt 7	14
	In this part—	15
	<i>authorised security officer</i> means—	16
	(a) a security officer; or	17
	(b) an appropriately qualified health service employee of an authorised mental health service.	18 19
	<i>general search</i> , of a person, means a search—	20
	(a) to reveal the contents of the person’s outer garments, general clothes or hand luggage without touching the person or the luggage; or	21 22 23
	(b) in which the person may be required to—	24
	(i) open his or her hands or mouth for visual inspection; or	25 26
	(ii) shake his or her hair vigorously.	27

[s 371]

personal search, of a person, means a search in which light pressure is momentarily applied to the person over his or her general clothes without direct contact being made with—

- (a) the person’s genital or anal areas; or
- (b) for a female—the person’s breasts.

postal article includes a postal article carried by a courier service.

scanning search, of a person, means a search of the person by electronic or other means that does not require the person to remove his or her general clothes or to be touched by another person.

Examples of a scanning search—

- using a portable electronic apparatus or another portable apparatus that can be passed over the person
- using an electronic apparatus through which the person is required to pass

search requiring the removal of clothing, of a person, means a search in which the person removes all garments during the course of the search, but in which direct contact is not made with the person.

security officer means a person employed by an authorised mental health service to provide security services, regardless of how the person’s employment is described.

seizure provisions, of an Act, means the provisions of the Act relating to the access to, and retention, disposal and forfeiture of, a thing after its seizure under the Act.

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

371 Patient may receive and send postal article

- (1) A person must not prevent or impede in any way—

[s 372]

- (a) the delivery, to a patient of an authorised mental health service, of a postal article addressed to the patient; or
 - (b) the sending of a postal article for a patient of an authorised mental health service.
- Maximum penalty—20 penalty units.
- (2) Subsection (1)(a) has effect subject to section 4.
 - (3) A person does not commit an offence against subsection (1)(b) if the addressee of the postal article—
 - (a) is the subject of a non-contact condition of a forensic order or court treatment order to which the patient is subject; or
 - (b) has given written notice to the administrator of the service asking that postal articles addressed by the patient to the addressee be withheld.
 - (4) In this section—
non-contact condition, of a forensic order or court treatment order to which a patient is subject, means a condition of the order that requires the patient not to communicate with a particular person.

- 372 Administrator may search thing received for patient**
- (1) The administrator of an authorised mental health service may open or search anything received at the service for the patient.
 - (2) However, the administrator may exercise a power under subsection (1) only if the patient is present or has been given the opportunity to be present.
 - (3) Subsection (2) does not apply if the patient obstructs the administrator in the exercise of the administrator’s powers under subsection (1).
 - (4) In this section—
search includes search by—
 - (a) an electronic scanning device; and

	(b) a physical examination.	1
Division 3	Searches of involuntary patients in authorised mental health services and particular public sector health service facilities	2 3 4 5
373	Application of div 3	6
	This division applies to—	7
	(a) an involuntary patient of an authorised mental health service; or	8 9
	(b) a classified patient (voluntary) of an authorised mental health service; or	10 11
	(c) an involuntary patient of a public sector health service facility who is being detained for assessment or examination under the <i>Public Health Act 2005</i> .	12 13 14
374	Power to search on belief of possession of harmful thing	15
	(1) This section applies if a doctor or health practitioner believes the patient may have possession of a harmful thing.	16 17
	(2) The doctor or health practitioner may—	18
	(a) carry out a general search, scanning search or personal search of the person; and	19 20
	(b) if the administrator of the authorised mental health service, or the person in charge of the public sector health service facility, gives approval for a search requiring the removal of clothing—carry out a search requiring the removal of clothing; and	21 22 23 24 25
	(c) carry out a search of the person’s possessions.	26
	(3) The administrator of the service, or the person in charge of the public sector health service facility, may give approval under	27 28

[s 375]

	subsection (2)(b) if the administrator or person in charge believes that a search requiring the removal of clothing is necessary in the circumstances.	1 2 3
(4)	A search under this section may be carried out without the patient's consent.	4 5
(5)	However, before carrying out a search under this section, the doctor or health practitioner must tell the patient the reasons for the search and how it is to be carried out.	6 7 8
(6)	A doctor or health practitioner may carry out a search under this section with the help, and using the force, that is necessary and reasonable in the circumstances.	9 10 11
Division 4	Searches of involuntary patients on admission to or entry into high security units and other approved services	12 13 14 15
375	Application of div 4	16
	This division applies to a person who is admitted to, or enters as a patient into—	17 18
	(a) a high security unit; or	19
	(b) another authorised mental health service, or part of an authorised mental health service, approved by the chief psychiatrist for the purpose of this division.	20 21 22
376	Power to search on admission or entry	23
(1)	On the person's admission to, or entry into, the unit, an authorised security officer may, for detecting harmful things—	24 25 26
	(a) carry out a general search, scanning search or personal search of the person; and	27 28

[s 377]

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- (b) if the administrator of the unit gives approval for a search requiring the removal of clothing—carry out a search requiring the removal of clothing; and

(c) carry out a search of the person’s possessions.

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 - (2) The administrator of the unit may give approval under subsection (1)(b) if the administrator believes that a search requiring the removal of clothing is necessary in the circumstances.

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 - (3) A search under this section may be carried out without the person’s consent.

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 - (4) However, before carrying out a search under this section, the authorised security officer must tell the person the reasons for the search and how it is to be carried out.

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 - (5) An authorised security officer may carry out a search under this section with the help, and using the force, that is necessary and reasonable in the circumstances.

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Division 5

Searches of visitors to high security units and other approved services

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377 Application of div 5

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This division applies to a visitor to—

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- (a) a high security unit; or

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- (b) another authorised mental health service, or part of an authorised mental health service, approved by the chief psychiatrist for the purpose of this division.

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378 Power to search visitor

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An authorised security officer for the unit may ask the visitor—

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- (a) to submit to a general search, scanning search or personal search by the authorised security officer; or

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[s 379]

	(b) to submit the visitor's possessions to a search.	1
379	Requirement to explain to visitor	2
	The authorised security officer must tell the visitor in general terms of—	3 4
	(a) the officer's powers in relation to the search; and	5
	(b) how the search is to be carried out; and	6
	(c) the visitor's rights under this division.	7
380	Direction to leave high security unit	8
(1)	If the visitor does not agree to a request under section 378, the authorised security officer may refuse the visitor permission to enter the unit or, if the person is in the unit, direct the person to immediately leave the unit.	9 10 11 12
(2)	If the visitor is directed to leave the unit, the visitor must comply with the direction.	13 14
	Maximum penalty for subsection (2)—20 penalty units.	15
381	Visitor may leave thing with authorised security officer	16
	If the 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 unit.	17 18 19
382	Authorised security officer may ask visitor to leave thing with officer	20 21
(1)	The authorised security officer may ask the visitor to leave a thing the officer believes is a harmful thing with the officer until the visitor leaves the unit.	22 23 24
(2)	If the visitor refuses to comply with a request under subsection (1), the officer may refuse the visitor permission to enter the unit or, if the person is in the unit, direct the person to immediately leave the unit.	25 26 27 28

[s 383]

(3)	If the visitor is directed to leave the unit, the visitor must comply with the direction.	1 2
	Maximum penalty—20 penalty units.	3
383	Visitor may ask for search to stop	4
(1)	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 unit immediately.	5 6 7
(2)	The visitor must leave the unit immediately.	8
	Maximum penalty for subsection (2)—20 penalty units.	9
384	Return of thing to visitor	10
	If the visitor has left a thing with an authorised security officer, the officer must ensure the thing is returned to the visitor if—	11 12 13
(a)	the visitor asks for its return; and	14
(b)	the officer is satisfied the visitor is about to leave the high security unit.	15 16
Division 6	Requirements for searches	17
385	Requirements for personal search	18
(1)	A person authorised under division 3, 4 or 5 to carry out a personal search (the <i>searcher</i>) may do any 1 or more of the following in relation to the person being searched—	19 20 21
(a)	remove and inspect an outer garment or footwear of the person;	22 23
(b)	remove and inspect all things from the pockets of the person's clothing;	24 25
(c)	touch the clothing worn by the person to the extent necessary to detect things in the person's possession;	26 27

[s 386]

	(d) remove and inspect any detected thing.	1
(2)	The searcher may exercise a power under subsection (1)(c) only if—	2
	(a) the searcher is the same sex as the person; and	3
	(b) the search is carried out in a part of a building that ensures the person’s privacy.	4
(3)	The searcher must—	5
	(a) carry out the search in a way that respects the person’s dignity to the greatest possible extent; and	6
	(b) cause as little inconvenience to the person as is practicable in the circumstances.	7
386	Requirements for search requiring the removal of clothing	8
(1)	A person authorised under division 3, 4 or 5 to carry out a search requiring the removal of clothing (the <i>searcher</i>) must be of the same sex as the person being searched.	9
(2)	Before carrying out the search, the searcher must tell the person—	10
	(a) that the person will be required to remove the person’s clothing during the search; and	11
	(b) why it is necessary to remove the clothing.	12
(3)	The searcher must—	13
	(a) ensure, to the extent practicable, that the way in which the person is searched causes minimal embarrassment to the person; and	14
	(b) take reasonable care to protect the person’s dignity; and	15
	(c) carry out the search as quickly as reasonably practicable; and	16
	(d) allow the person to dress as soon as the search is finished.	17

[s 387]

- (4) The searcher must, if reasonably practicable, give the person the opportunity to remain partly clothed during the search, including, for example, by allowing the person to dress his or her upper body before being required to remove clothing from the lower part of the body. 1
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- (5) If the searcher seizes clothing because of the search, the searcher must ensure the person is left with, or given, reasonably appropriate clothing. 6
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387 Requirements for search of possessions 9

- (1) A person authorised under division 3, 4 or 5 to carry out a search of a person's possessions (the *searcher*) may— 10
11
 - (a) open or inspect a thing in the person's possession; and 12
 - (b) remove and inspect any detected thing. 13
- (2) However, the searcher may exercise a power to inspect a thing under subsection (1) only if the person is present or has been given the opportunity to be present. 14
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16
- (3) Subsection (2) does not apply if the person obstructs the searcher in the exercise of the searcher's powers. 17
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Division 7 Records of searches 19

388 Record of search must be made 20

- (1) This section applies if— 21
 - (a) a search requiring the removal of clothing is carried out under division 3 or 4; or 22
23
 - (b) a person seizes anything found during a search under this part. 24
25
- (2) As soon as practicable after carrying out the search, the person who carried out the search must make a written record of the following details of the search— 26
27
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[s 389]

- (a) the reasons for the search; 1
- (b) the names of the persons present during the search; 2
- (c) how the search was carried out; 3
- (d) details of anything seized, including the reasons for 4
seizing. 5

Division 8 Seizure 6

389 Seizure of harmful or other thing 7

- (1) A person authorised under this part to carry out a search (the 8
searcher) may seize anything found during the search that the 9
searcher reasonably suspects is— 10
 - (a) connected with, or is evidence of, the commission or 11
intended commission of an offence against an Act; or 12
 - (b) for a search under division 2, 3 or 4—a harmful thing. 13
- (2) If the searcher believes a seized thing is connected with, or is 14
evidence of, the commission or intended commission of an 15
offence against an Act, the searcher must give it to an 16
authorised inspector for the Act. 17
- (3) The seizure provisions of the Act mentioned in subsection (2) 18
apply to the thing as if the searcher had seized it under the 19
provisions of the Act that relate to the offence. 20
- (4) If the authorised inspector is not reasonably satisfied the thing 21
is evidence of the commission or intended commission of an 22
offence against the Act, the authorised inspector must return it 23
to the searcher who must deal with it under this section. 24
- (5) If the searcher believes a thing seized from a patient, or a 25
thing returned under subsection (4), is a harmful thing, the 26
searcher must— 27
 - (a) keep it for the patient and give it to the patient on the 28
patient's release from the authorised mental health 29
service or public sector health service facility; or 30

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- (b) give it to someone else if the patient is able to, and has given, agreement to do so; or
 - (c) if the searcher is satisfied someone else is entitled to possession of the thing—give or send it to the person; or
 - (d) if the searcher is satisfied it is of negligible value—dispose of it in the way the administrator of the authorised mental health service, or the person in charge of the public sector health service facility, believes appropriate.
 - (6) A thing seized from a visitor, and returned to the searcher under subsection (4), is forfeited to the State if the searcher—
 - (a) can not find the visitor from whom it was seized, after making reasonable inquiries; or
 - (b) can not return it to the visitor, after making reasonable efforts.
 - (7) In applying subsection (6)—
 - (a) subsection (6)(a) does not require the searcher to make inquiries if it would be unreasonable in the particular circumstances to make inquiries to find the visitor; and
 - (b) subsection (6)(b) does not require the searcher to make efforts if it would be unreasonable in the particular circumstances to make efforts to return the thing to the visitor.
 - (8) Regard must be had to a thing's nature, condition and value in deciding—
 - (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.
 - (9) In this section—

authorised inspector, for an Act, means a person who is authorised under the Act to perform inspection and enforcement functions.
-

[s 390]

390	Receipt for seized thing	1
(1)	A person authorised under this part to carry out a search must give a receipt for the thing to the person from whom it was seized.	2 3 4
(2)	The receipt must describe generally the thing seized and its condition.	5 6
391	Access to seized thing	7
(1)	This section applies to a thing seized on a search under this part.	8 9
(2)	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.	10 11 12
(3)	Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.	13 14
Division 9	Identity cards	15
392	Approval of identity card	16
(1)	The administrator of a high security unit must approve an identity card for each authorised security officer for the high security unit.	17 18 19
(2)	An approved identity card for an authorised security officer must—	20 21
(a)	contain a recent photograph of the officer; and	22
(b)	identify the person as an authorised security officer.	23

[s 393]

Division 10	Compensation	1
393	Compensation for damage to possessions	2
(1)	A patient or visitor (the <i>claimant</i>) may claim from the State the cost of repairing or replacing the claimant's possessions damaged in the exercise or purported exercise of a power under this part.	3 4 5 6
(2)	The cost may be claimed and ordered in a proceeding—	7
(a)	brought in a court of competent jurisdiction; or	8
(b)	for an offence against this Act brought against the claimant.	9 10
(3)	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.	11 12 13
(4)	A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.	14 15 16
Division 11	Exclusion of visitors	17
394	Administrator may refuse to allow a person to visit a patient	18 19
(1)	The administrator of an authorised mental health service may refuse to allow a person to visit a patient of the service if the administrator is satisfied the proposed visit will adversely affect the patient's treatment and care.	20 21 22 23
	<i>Example of application of subsection (1)—</i>	24
	The administrator may be satisfied a patient's treatment and care will be adversely affected if, on a previous visit by a person, the patient's mental state deteriorated.	25 26 27
(2)	The administrator must give the person written notice of the decision.	28 29

[s 394]

- (3) The notice must state— 1
 - (a) the reasons for the decision; and 2
 - (b) that the person may appeal to the tribunal against the 3
decision within 28 days after the person receives the 4
notice; and 5
 - (c) how the appeal is made. 6

Chapter 12	Mental Health Review Tribunal reviews and applications	1
		2
		3
Part 1	Preliminary	4
395	Purpose of ch 12	5
	The purpose of this chapter is to provide for the tribunal—	6
	(a) to review the following—	7
	(i) treatment authorities;	8
	(ii) forensic orders;	9
	(iii) court treatment orders;	10
	(iv) the fitness for trial of particular persons;	11
	(v) the imposition of monitoring conditions requiring particular persons to wear tracking devices;	12
		13
	(vi) the detention of minors in high security units; and	14
	(b) to hear applications for the following—	15
	(i) examination authorities;	16
	(ii) approvals of regulated treatment;	17
	(iii) approvals of transfers of particular patients into and out of Queensland.	18
		19
396	Definition for pts 2–5	20
	In parts 2 to 5—	21
	<i>relevant circumstances</i> , of a person, means each of the following—	22
		23
	(a) the person’s mental state and psychiatric history;	24

[s 397]

- (b) the person’s social circumstances including, for example, family and social support; 1
2
- (c) the person’s response to treatment and care and the person’s willingness to continue to receive appropriate treatment and care; 3
4
5
- (d) if relevant, the person’s response to previous treatment in the community; 6
7
- (e) for a review under part 3, 4 or 5— 8
 - (i) any intellectual disability of the person; and 9
 - (ii) the nature of the unlawful act that led to the making of the forensic order or court treatment order and the period of time that has passed since the act happened. 10
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Part 2 Review of treatment authorities 14

Division 1 Preliminary 15

397 Definitions for pt 2 16

- In this part— 17
- applicant review*, of a treatment authority, see section 398(2). 18
- periodic review*, of a treatment authority, see section 398(1). 19
- review*, of a treatment authority, means any of the following— 20
- (a) a periodic review of the authority; 21
 - (b) an applicant review of the authority; 22
 - (c) a tribunal review of the authority. 23
- tribunal review*, of a treatment authority, see section 398(3). 24

Division 2	When particular reviews are conducted	1 2
398	When reviews are conducted	3
(1)	The tribunal must review (a <i>periodic review</i>) a treatment authority—	4 5
(a)	within 28 days after the authority is made; and	6
(b)	within 6 months after the review under paragraph (a) is completed; and	7 8
(c)	within 6 months after the review under paragraph (b) is completed; and	9 10
(d)	at intervals of not more than 12 months after the review under paragraph (c) is completed.	11 12
(2)	Also, the tribunal must review (an <i>applicant review</i>) a treatment authority on application by—	13 14
(a)	the person subject to the authority; or	15
(b)	an interested person for the person mentioned in paragraph (a); or	16 17
(c)	the chief psychiatrist.	18
(3)	Further, the tribunal may at any time, on its own initiative, review (a <i>tribunal review</i>) a treatment authority.	19 20
(4)	This section is subject to sections 399 and 400 and chapter 16, part 1, division 6, subdivision 2.	21 22
399	When periodic review deferred	23
(1)	This section applies if—	24
(a)	an applicant review or a tribunal review (each a <i>previous review</i>) of a treatment authority has been completed—	25 26
(i)	within 6 months before a periodic review (the <i>next scheduled review</i>) of the treatment authority must be conducted under section 398(1)(b) or (c); or	27 28 29

[s 400]

- (ii) within 12 months before a periodic review (also the *next scheduled review*) of the treatment authority must be conducted under section 398(1)(d); and
 - (b) the tribunal is satisfied there are no matters relevant to the next scheduled review that were not considered by the tribunal on the previous review.
- (2) Section 398(1) is taken to require the next scheduled review of the treatment authority to be conducted—
 - (a) if the next scheduled review is to be conducted under section 398(1)(b) or (c)—within 6 months after the previous review was completed; or
 - (b) if the next scheduled review is to be conducted under section 398(1)(d)—within 12 months after the previous review was completed.

400 When tribunal must not conduct review

- The tribunal must not conduct a review of a treatment authority if—
- (a) an appeal to the Mental Health Court from the tribunal’s decision on a review of the treatment authority is pending; and
 - (b) the court has stayed the tribunal’s decision on the review.

Division 3 Applications for review and notices of hearings

401 Application for applicant review to state orders sought

- (1) An application for an applicant review of a treatment authority must state the orders sought by the applicant.
- (2) The orders sought may be—

[s 402]

(a)	an order mentioned in section 406(1); or	1
(b)	an order revoking the treatment authority.	2
402	Notice of hearing	3
(1)	The tribunal must give the following persons written notice of the hearing of a review of a treatment authority—	4
(a)	the person subject to the authority;	5
(b)	for an applicant review, if the applicant is not the person—the applicant;	6
(c)	the administrator of the authorised mental health service responsible for the person;	7
(d)	if the person is a classified patient—the chief psychiatrist.	8
(2)	The notice must be given at least 7 days before the hearing.	9
(3)	If the review is a tribunal review, the notice must state any particular matter the tribunal proposes to consider on the review.	10
		11
		12
		13
		14
		15
		16
Division 4	Decisions and orders	17
403	Decisions on review	18
(1)	On a periodic review of a treatment authority, the tribunal—	19
(a)	must decide to—	20
(i)	confirm the treatment authority; or	21
(ii)	revoke the treatment authority; and	22
(b)	if the tribunal decides to confirm the treatment authority, may make the orders under section 406 it considers appropriate.	23
(2)	On an applicant review of the treatment authority, the tribunal—	24
		25
		26
		27

[s 404]

- (a) must decide whether to make the orders sought by the applicant; and
 - (b) may make the orders it considers appropriate.
- (3) On a tribunal review of the treatment authority, the tribunal—
 - (a) must decide any particular matter stated in the notice given under section 402(3); and
 - (b) may make the orders it considers appropriate.

404 Administrator to provide report

- For a periodic review of a treatment authority under section 398(1)(c)—
- (a) the tribunal must consider whether the appointment of a personal guardian for the person may lead to a less restrictive way for the person to receive treatment and care for the person’s mental illness; and
 - (b) the administrator of the person’s treating health service must give the tribunal a report about whether the appointment of a personal guardian for the person may result in there being a less restrictive way for the person to receive treatment and care for the person’s mental illness.

405 Requirement to revoke treatment authority

- (1) On a review of a treatment authority, the tribunal must revoke the treatment authority if the tribunal considers—
 - (a) the treatment criteria no longer apply to the person subject to the treatment authority; or
 - (b) there is a less restrictive way for the person to receive treatment and care for the person’s mental illness.
- (2) However, subsection (1) does not apply if the tribunal considers the person’s capacity to consent to be treated for the person’s mental illness is not stable.

Examples of when a patient's capacity to consent is not stable—

- the patient gains and loses capacity to consent to be treated during a short time period
- the patient makes different decisions based on the same facts during a short time period

406 Orders if treatment authority confirmed

- (1) If the tribunal confirms the treatment authority, it may do any of the following—
 - (a) if the category of the treatment authority is inpatient—by order, change the category of the treatment authority to community;
 - (b) order, or extend, limited community treatment for the person subject to the treatment authority;
 - (c) by order, change or remove a condition to which the treatment authority is subject to make the treatment authority less restrictive;
 - (d) order the person's transfer to another authorised mental health service to provide treatment and care for the person;
 - (e) make any other orders the tribunal considers appropriate.
- (2) However, the tribunal must make an order under subsection (1)(a) unless the tribunal considers, after having regard to the relevant circumstances of the person, that the person's treatment and care needs, and the safety and welfare of the person and others, can not reasonably be met under a treatment authority if the category of the treatment authority is community.
- (3) In deciding whether to order limited community treatment for the person, and the extent of the treatment, the tribunal must have regard to—
 - (a) the purpose of limited community treatment; and

[s 407]

	(b) the relevant circumstances of the person.	1
(4)	In deciding whether to make an order under subsection (1)(d), the tribunal must have regard to the following—	2 3
	(a) the person’s mental state and psychiatric history;	4
	(b) any intellectual disability of the person;	5
	(c) the person’s treatment and care needs;	6
	(d) the security requirements for the person;	7
	(e) the capacity of the authorised mental health service;	8
	(f) whether the transfer would be in the best interests of the person including, for example, closer proximity to family, carers and other support persons.	9 10 11
(5)	Despite subsections (1), (2) and (3), the tribunal must not do either of the following if the person subject to the treatment authority is a classified patient—	12 13 14
	(a) change the category of the authority or order to community;	15 16
	(b) order, or approve, limited community treatment for the person.	17 18
Part 3	Review of forensic orders (mental condition) and forensic orders (disability)	19 20 21
Division 1	Preliminary	22
407	Application of pt 3	23
	This part applies to a forensic order (mental condition) or forensic order (disability).	24 25

408	Definitions for pt 3	1
	In this part—	2
	<i>applicant review</i> , of a forensic order, see section 409(2).	3
	<i>periodic review</i> , of a forensic order, see section 409(1).	4
	<i>review</i> , of a forensic order, means—	5
	(a) an applicant review of the order; or	6
	(b) a periodic review of the order; or	7
	(c) a tribunal review of the order.	8
	<i>tribunal review</i> , of a forensic order, see section 409(3).	9
Division 2	When particular reviews are conducted	10
		11
409	When reviews are conducted	12
	(1) The tribunal must review (a <i>periodic review</i>) the forensic order—	13
		14
	(a) within 6 months after the order is made; and	15
	(b) at intervals of not more than 6 months after the review under paragraph (a) is completed.	16
		17
	(2) Also, the tribunal must review (an <i>applicant review</i>) the forensic order on application by—	18
		19
	(a) the person subject to the order; or	20
	(b) an interested person for the person mentioned in paragraph (a); or	21
		22
	(c) the Attorney-General; or	23
	(d) if an authorised mental health service is responsible for the person—the chief psychiatrist; or	24
		25
	(e) if the forensic disability service is responsible for the person—the director of forensic disability.	26
		27

[s 410]

(3)	Further, the tribunal may at any time, on its own initiative, review (a <i>tribunal review</i>) the forensic order.	1 2
(4)	This section is subject to sections 410, 411 and 412 and chapter 16, part 1, division 6, subdivision 2.	3 4
410	When periodic review deferred	5
(1)	This section applies if—	6
(a)	an applicant review or a tribunal review (each a <i>previous review</i>) of a forensic order has been completed within 6 months before a periodic review (the <i>next scheduled review</i>) of the forensic order must be conducted under section 409(1)(a) or (b); and	7 8 9 10 11
(b)	the tribunal is satisfied there are no matters relevant to the next scheduled review that were not considered by the tribunal on the previous review.	12 13 14
(2)	Section 409(1) is taken to require the next scheduled review of the forensic order to be conducted within 6 months after the previous review was completed.	15 16 17
411	Requirement to conduct periodic review suspended	18
(1)	This section applies if a person who is subject to a forensic order is transferred to an interstate mental health service under part 11.	19 20 21
(2)	While the interstate mental health service is responsible for the person, the tribunal is not required to conduct a periodic review of the forensic order under section 409(1).	22 23 24
412	When tribunal must not conduct review	25
	The tribunal must not conduct a review of a forensic order if—	26 27
(a)	an appeal to the Mental Health Court from the tribunal's decision on a review of the forensic order is pending; and	28 29 30

- (b) the Mental Health Court has stayed the tribunal's decision on the review of the forensic order. 1
2

Division 3 Applications and notices of hearings 3 4

413 Application for applicant review to state orders sought 5

- (1) An application for an applicant review of a forensic order must state the orders sought by the applicant. 6
7
- (2) The orders sought may be— 8
 - (a) an order mentioned in section 418(1)(a) to (c); or 9
 - (b) an order revoking the forensic order. 10
- (3) However, the application may not seek an order revoking the forensic order during any non-revocation period for the forensic order. 11
12
13

414 Notice of hearing 14

- (1) The tribunal must give the following persons written notice of the hearing of a review of a forensic order— 15
16
 - (a) the person subject to the order; 17
 - (b) for an applicant review if the applicant is not the person—the applicant; 18
19
 - (c) if an authorised mental health service is responsible for the person— 20
21
 - (i) the administrator of the service; and 22
 - (ii) the chief psychiatrist; 23
 - (d) if the forensic disability service is responsible for the person— 24
25
 - (i) the administrator of the forensic disability service; 26
and 27

[s 415]

(ii) the director of forensic disability;	1
(e) the Attorney-General.	2
(2) The notice must be given at least 14 days before the hearing.	3
(3) If the review is a tribunal review, the notice must state any particular matter the tribunal proposes to consider on the review.	4 5 6
 Division 4 Decisions and orders	 7
 415 Application of div 4	 8
This division is subject to division 5.	9
 416 Decisions on review	 10
(1) On a periodic review of the forensic order, the tribunal must decide whether to—	11 12
(a) confirm the order; or	13
(b) revoke the order.	14
(2) If the forensic order is a forensic order (mental condition) and the tribunal decides to revoke the order, the tribunal may also decide to—	15 16 17
(a) make a court treatment order for the person; or	18
(b) make a treatment authority for the person.	19
(3) On an applicant review of the forensic order, the tribunal—	20
(a) must decide whether to make the orders sought by the applicant; and	21 22
(b) may make the orders the tribunal considers appropriate.	23
<i>Example for paragraph (b)—</i>	24
If an applicant seeks an order changing the category of the forensic order from inpatient to community, the tribunal may	25 26

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|------------|--|-----------|
| | decide not to change the category of the order, but may order | 1 |
| | limited community treatment for the person. | 2 |
| (4) | On a tribunal review of the forensic order, the tribunal— | 3 |
| (a) | must decide any particular matter stated in the notice | 4 |
| | given under section 414(3); and | 5 |
| (b) | may make the orders it considers appropriate. | 6 |
| 417 | Requirement to confirm forensic order | 7 |
| (1) | The tribunal must confirm the forensic order if the tribunal | 8 |
| | considers, after having regard to the matters mentioned in | 9 |
| | subsection (2), the order is necessary, because of the person's | 10 |
| | mental condition, to protect the safety of the community, | 11 |
| | including from the risk of serious harm to other persons or | 12 |
| | property. | 13 |
| (2) | The tribunal must have regard to the following matters— | 14 |
| (a) | the relevant circumstances of the person; | 15 |
| (b) | any victim impact statement given to the tribunal under | 16 |
| | section 160 or 634 relating to the unlawful act that led to | 17 |
| | the making of the forensic order; | 18 |
| (c) | if the Mental Health Court made a recommendation in | 19 |
| | the forensic order about an intervention program for the | 20 |
| | person—the implementation of the program and the | 21 |
| | person's willingness to participate in the program if | 22 |
| | offered to the person. | 23 |
| 418 | Orders if forensic order confirmed | 24 |
| (1) | If the tribunal confirms the forensic order, the tribunal may do | 25 |
| | any of the following— | 26 |
| (a) | by order, change the category of the order; | 27 |
| (b) | order or approve limited community treatment for the | 28 |
| | person, or amend or revoke any existing order or | 29 |
| | approval for limited community treatment for the | 30 |
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[s 419]

	person, whether made or given by the Mental Health Court or the tribunal;	1 2
(c)	by order, change or remove a condition to which the forensic order is subject;	3 4
(d)	make any other orders the tribunal considers appropriate.	5 6
	<i>Example for paragraph (d)—</i>	7
	If an applicant seeks an order changing the category of the forensic order from inpatient to community, the tribunal may decide not to change the category of the order, but may order limited community treatment for the person.	8 9 10 11
(2)	However, the tribunal must not do either of the following if the person subject to the forensic order is a classified patient—	12 13 14
(a)	change the category of the order to community;	15
(b)	order, or approve, limited community treatment for the person.	16 17
(3)	This section is subject to section 419.	18
(4)	In this section—	19
	<i>condition</i> includes a monitoring condition.	20
419	Orders about treatment in the community if category of order is inpatient	21 22
(1)	This section applies if—	23
(a)	the tribunal changes the category of the forensic order from community to inpatient; or	24 25
(b)	the category of the forensic order is inpatient and the tribunal does not change the category.	26 27
(2)	The tribunal may—	28
(a)	order that the person have no treatment in the community; or	29 30

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- (b) by order, approve that an authorised doctor or a senior practitioner under the Forensic Disability Act may, at a future time, authorise some or all of the person's treatment to be treatment in the community, to the extent and subject to the conditions decided by the tribunal.
- Examples for paragraph (b)—*
- authorising limited community treatment for a person to enable some of the person's treatment to be treatment in the community
 - changing the category of a forensic order for a person from inpatient to community to enable all of the person's treatment to be treatment in the community
- (3) The tribunal may make an order under subsection (2)(b) only if the tribunal is satisfied, after having regard to the matters mentioned in subsection (4), that there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.
- (4) The tribunal must have regard to the following matters—
- (a) the relevant circumstances of the person;
 - (b) the fact that—
 - (i) an authorised doctor may authorise treatment in the community for the person only if the authorised doctor is satisfied of the matters mentioned in section 215(3) and (4); or
 - (ii) a senior practitioner under the Forensic Disability Act may authorise treatment in the community for the person only if the senior practitioner is satisfied of the matters mentioned in the Forensic Disability Act, section 20(2) and (3);
 - (c) any victim impact statement given to the tribunal under section 160 or 634 relating to the unlawful act that led to the making of the forensic order.

[s 420]

420	Change of category—inpatient to community	1
(1)	The tribunal may change the category of the forensic order from inpatient to community only if the tribunal is satisfied, after having regard to the matters mentioned in subsection (2), that there is not an unacceptable risk to the safety of the community, because of the person’s mental condition, including the risk of serious harm to other persons or property.	2 3 4 5 6 7
(2)	The tribunal must have regard to the following matters—	8
(a)	the relevant circumstances of the person;	9
(b)	any victim impact statement given to the tribunal under section 160 or 634 relating to the unlawful act that led to the making of the forensic order;	10 11 12
(c)	if the Mental Health Court made a recommendation in the forensic order about an intervention program for the person—the implementation of the program and the person’s willingness to participate in the program if offered to the person.	13 14 15 16 17
(3)	If the tribunal changes the category of the order from inpatient to community, or the category of the order is inpatient and the tribunal does not change the category, the tribunal may—	18 19 20
(a)	order that the person receive treatment in the community under the order; or	21 22
(b)	by order, approve that an authorised doctor or a senior practitioner under the Forensic Disability Act may, at a future time, authorise, revoke, or change the person’s treatment in the community, subject to the conditions decided by the court.	23 24 25 26 27
	<i>Example of a change of level of treatment in the community—</i>	28
	a change of the category of the forensic order from community to inpatient, with or without limited community treatment	29 30
	<i>Note—</i>	31
	See section 215 for an authorised doctor’s powers in relation to forensic orders.	32 33

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| (4) In deciding whether to make an order under subsection (3), the tribunal must have regard to the matters mentioned in subsection (2). | 1
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3 |
| (5) An order under subsection (3)(a) must state any conditions the tribunal considers necessary. | 4
5 |

421	Orders if forensic order (mental condition) revoked	6
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| (1) This section applies if— | 7 |
| (a) the forensic order is a forensic order (mental condition);
and | 8
9 |
| (b) the tribunal decides to revoke the forensic order. | 10 |
| (2) The tribunal must decide to make a court treatment order for the person if the tribunal considers a court treatment order, but not a forensic order, is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property. | 11
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16 |
| (3) If the tribunal considers that neither a forensic order nor a court treatment order is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property, the tribunal may— | 17
18
19
20
21 |
| (a) make a treatment authority for the person; or | 22 |
| (b) make no other order for the person. | 23 |
| (4) For making a court treatment order under subsection (2), chapter 5, part 4, division 3 applies as if— | 24
25 |
| (a) a reference in the provisions to the Mental Health Court were a reference to the tribunal; and | 26
27 |
| (b) a reference in the provisions to the person the subject of the reference were a reference to the person the subject of the forensic order. | 28
29
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[s 422]

422	Making of treatment authority	1
(1)	The tribunal may make a treatment authority for the person under section 421(3)(a) only on the recommendation of a psychiatrist who considers, after examining the person, that—	2
		3
	(a) the treatment criteria apply to the person; and	4
		5
	(b) there is no less restrictive way for the person to receive treatment and care for the person’s mental illness.	6
		7
(2)	A treatment authority made under section 421(3)(a)—	8
	(a) must state the following—	9
	(i) the category of the authority;	10
	(ii) the authorised mental health service responsible for the person’s treatment and care under the authority;	11
		12
		13
	(iii) the nature and extent of the treatment and care to be provided to the person;	14
		15
	(iv) any conditions the tribunal considers necessary for the person’s treatment and care; and	16
		17
	(b) is taken to be a treatment authority made under section 46 by the psychiatrist mentioned in subsection (1).	18
		19
(3)	The tribunal may decide the category is inpatient only if the tribunal is satisfied, after having regard to the following matters, that the person’s treatment and care needs and the safety and welfare of the person and others can not reasonably be met if the category of the authority is community—	20
		21
		22
		23
		24
	(a) the person’s mental state and psychiatric history;	25
	(b) the person’s social circumstances including, for example, family and social support;	26
		27
	(c) the person’s response to treatment and care and the person’s willingness to receive appropriate treatment and care;	28
		29
		30
	(d) if relevant, the person’s response to any previous treatment in the community.	31
		32

(4)	However, the tribunal must decide the category of a treatment authority for a classified patient is inpatient.	1 2
Division 5	Restrictions on revoking or amending forensic orders	3 4
423	Orders with non-revocation period	5
	The tribunal must not revoke a forensic order under division 4 during any non-revocation period stated for the order.	6 7
424	Order for person temporarily unfit for trial	8
(1)	This section applies if—	9
(a)	the Mental Health Court made a forensic order for a person because it decided—	10 11
(i)	the person was unfit for trial; but	12
(ii)	the unfitness was not permanent; or	13
(b)	a jury made a section 613 finding or section 645 finding in relation to the person.	14 15
(2)	The tribunal may revoke the forensic order and make a court treatment order for the person.	16 17
(3)	However, the tribunal may not otherwise revoke the forensic order.	18 19
	<i>Note—</i>	20
	If, on a review under part 6, the tribunal decides the person is fit for trial, the forensic order ends on the person's appearance at the mention of the proceeding for the relevant offence. See section 457(2).	21 22 23
425	Order for person charged with prescribed offence	24
(1)	This section applies if a forensic order for a person was made on a reference in relation to a prescribed offence allegedly committed by the person.	25 26 27

[s 426]

(2)	The tribunal must not revoke the forensic order unless—	1
(a)	the person has been examined by—	2
(i)	a psychiatrist who is not a psychiatrist for the person's treating health service; or	3 4
(ii)	another person with expertise in the care of persons who have an intellectual disability who is not a practitioner engaged by the person's treating health service or the forensic disability service; and	5 6 7 8
(b)	the tribunal has considered a report about the examination given by the person who did the examination.	9 10 11
426	Tribunal's order takes effect after suspension ends	12
(1)	This section applies if—	13
(a)	the chief psychiatrist has, under section 302, suspended limited community treatment for the person; and	14 15
	<i>Note—</i>	16
	The person may appeal to the tribunal against the chief psychiatrist's decision to suspend the person's limited community treatment. See section 496.	17 18 19
(b)	the suspension is in effect when the tribunal—	20
(i)	orders or approves limited community treatment for the person; or	21 22
(ii)	orders that the category of the forensic order be changed to community.	23 24
(2)	The tribunal's order takes effect when the suspension ends.	25

Division 6	Other provisions	1
427	Order for transfer of responsibility for forensic patients	2
(1)	If, on a review of a forensic order, the tribunal confirms the order, the tribunal may order that responsibility for the person subject to the order be transferred—	3 4 5
(a)	if an authorised mental health service is responsible for the person—to another authorised mental health service or the forensic disability service; or	6 7 8
(b)	if the forensic disability service is responsible for the person—to an authorised mental health service.	9 10
(2)	In deciding whether to make an order under subsection (1), the tribunal must have regard to the following—	11 12
(a)	the person’s mental state and psychiatric history;	13
(b)	any intellectual disability of the person;	14
(c)	the person’s treatment and care needs;	15
(d)	the security requirements for the person;	16
(e)	the capacity of the authorised mental health service;	17
(f)	whether the transfer would be in the best interests of the person including, for example, closer proximity to family, carers and other support persons.	18 19 20
(3)	However, the tribunal may order under subsection (1) that responsibility for the person be transferred to the forensic disability service only if the chief executive (forensic disability) certifies, in writing, that the forensic disability service has—	21 22 23 24 25
(a)	the physical capacity to accommodate the person; and	26
(b)	the capacity to provide care for the person under the order.	27 28
(4)	For subsection (1), section 155 applies as if—	29

[s 428]

(a)	a reference in the section to the Mental Health Court were a reference to the tribunal; and	1 2
(b)	a reference in the section to section 154(1) were a reference to subsection (1).	3 4
428	Order imposing non-contact condition	5
(1)	This section applies if, on a review of the forensic order, the tribunal—	6 7
(a)	changes the category of the order to community; or	8
(b)	orders or approves limited community treatment for the person subject to the order.	9 10
(2)	The tribunal may impose a condition on the order that the person must not contact a stated person, including, for example, the victim of the unlawful act that led to the making of the order.	11 12 13 14
429	Person with dual disability	15
(1)	This section applies if—	16
(a)	the forensic order is a forensic order (mental condition); and	17 18
(b)	the tribunal is satisfied the person subject to the order has a dual disability and no longer requires involuntary treatment and care for the person’s mental illness.	19 20 21
(2)	The tribunal must—	22
(a)	revoke the forensic order (mental condition); and	23
(b)	make a forensic order (disability) for the person.	24
(3)	For making the forensic order (disability), chapter 5, part 4, divisions 3 and 5 apply as if—	25 26
(a)	a reference in the provisions to the Mental Health Court were a reference to the tribunal; and	27 28

- | | | |
|--|--|---|
| | (b) a reference in the provisions to the person the subject of | 1 |
| | the reference were a reference to the person subject to | 2 |
| | the forensic order (mental condition). | 3 |

Part 4	Review of forensic orders (Criminal Code)	4
		5

430	Application of pt 4	6
	This part applies in relation to a forensic order (Criminal Code).	7 8

431	Tribunal to make forensic order (mental condition) or forensic order (disability)	9 10
	The tribunal must, within 21 days after the tribunal is notified of the making of the forensic order (Criminal Code), conduct a hearing for the purpose of making a forensic order (mental condition) or forensic order (disability) for the person subject to the forensic order (Criminal Code).	11 12 13 14 15

432	Notice of hearing	16
	(1) The tribunal must give the following persons written notice of the hearing—	17 18
	(a) the person;	19
	(b) the Attorney-General;	20
	(c) the chief psychiatrist;	21
	(d) the administrator of the authorised mental health service responsible for the person.	22 23
	(2) The notice must be give at least 7 days before the hearing.	24

[s 433]

433	Making of forensic order	1
(1)	The tribunal must make a forensic order (mental condition) for the person unless subsection (2) applies.	2 3
(2)	The tribunal must make a forensic order (disability) for the person if the tribunal considers the person has an intellectual disability but does not have a dual disability.	4 5 6
(3)	On the making of the forensic order under subsection (1) or (2), the forensic order (Criminal Code) ends.	7 8
434	Application of ch 5 provisions	9
	For making a forensic order (mental condition) or forensic order (disability) under section 433, chapter 5, part 3, divisions 3 and 5 apply as if—	10 11 12
(a)	a reference in the provisions to the Mental Health Court were a reference to the tribunal; and	13 14
(b)	a reference in the provisions to the person the subject of the reference were a reference to the person the subject of the forensic order (Criminal Code).	15 16 17
Part 5	Review of court treatment orders	18 19
Division 1	Preliminary	20
435	Definitions for pt 5	21
	In this part—	22
	<i>applicant review</i> , of a court treatment order, see section 436(2).	23 24
	<i>periodic review</i> , of a court treatment order, see section 436(1).	25

[s 436]

review, of a court treatment order, means any of the following—

- (a) a periodic review of the order;
- (b) an applicant review of the order;
- (c) a tribunal review of the order.

tribunal review, of a court treatment order, see section 436(3).

Division 2 When particular reviews are conducted

436 When reviews are conducted

- (1) The tribunal must review (a *periodic review*) a court treatment order at intervals of not more than 6 months after the order is made.
- (2) Also, the tribunal must review (an *applicant review*) a court treatment order on application by—
 - (a) the person subject to the order; or
 - (b) an interested person for the person mentioned in paragraph (a); or
 - (c) the chief psychiatrist.
- (3) Further, the tribunal may at any time, on its own initiative, review (a *tribunal review*) a court treatment order.
- (4) This section is subject to sections 437 and 438 and chapter 16, part 1, division 6, subdivision 2.

437 When periodic review deferred

- (1) This section applies if—
 - (a) an applicant review or a tribunal review (each a *previous review*) of a court treatment order has been completed within 6 months before a periodic review (the *next*

[s 438]

	<i>scheduled review</i>) of the court treatment order must be conducted under section 436(1); and	1 2
	(b) the tribunal is satisfied there are no matters relevant to the next scheduled review that were not considered by the tribunal on the previous review.	3 4 5
	(2) Section 436(1) is taken to require the next scheduled review of the court treatment order to be conducted within 6 months after the previous review was completed.	6 7 8
438	When tribunal must not conduct review	9
	The tribunal must not conduct a review of a court treatment order if—	10 11
	(a) an appeal to the Mental Health Court from the tribunal’s decision on a review of the court treatment order is pending; and	12 13 14
	(b) the court has stayed the tribunal’s decision on the review of the court treatment order.	15 16
Division 3	Applications and notices of hearings	17 18
439	Application for applicant review to state orders sought	19
	(1) An application for an applicant review of a court treatment order must state the orders sought by the applicant.	20 21
	(2) The orders sought may be—	22
	(a) an order mentioned in section 443(1); or	23
	(b) an order revoking the court treatment order.	24
440	Notice of hearing	25
	(1) The tribunal must give the following persons written notice of the hearing of a review of a court treatment order—	26 27

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- (a) the person subject to the order; 1
 - (b) for an applicant review if the applicant is not the 2
person—the applicant; 3
 - (c) the administrator of the authorised mental health service 4
responsible for the person; 5
 - (d) the chief psychiatrist. 6
 - (2) The notice must be given at least 7 days before the hearing. 7
 - (3) If the review is a tribunal review, the notice must state any 8
particular matter the tribunal proposes to consider on the 9
review. 10

Division 4 Decisions and orders 11

441 Decisions on review 12

- (1) On a periodic review of a court treatment order, the tribunal— 13
 - (a) must decide to— 14
 - (i) confirm the court treatment order; or 15
 - (ii) revoke the court treatment order; and 16
 - (b) if the tribunal decides to confirm the court treatment 17
order, may make the orders under section 443 it 18
considers appropriate. 19
- (2) On an applicant review of a court treatment order, the 20
tribunal— 21
 - (a) must decide whether to make the orders sought by the 22
applicant; and 23
 - (b) may make the orders it considers appropriate. 24
- (3) On a tribunal review of a court treatment order, the tribunal— 25
 - (a) must decide any particular matter stated in the notice 26
given under section 440(3); and 27
 - (b) may make the orders it considers appropriate. 28

[s 442]

- (4) Despite subsections (1) to (3), the tribunal must not revoke a court treatment order if—
 - (a) the Mental Health Court made the court treatment order, or a forensic order (mental condition), for the person because it decided—
 - (i) the person was unfit for trial; but
 - (ii) the unfitness was not permanent; or
 - (b) a jury made a section 613 finding or section 645 finding in relation to the person.

442 Requirement to confirm court treatment order

- (1) On a review of a court treatment order, the tribunal must confirm the order if the tribunal considers, after having regard to the matters mentioned in subsection (2), the order is necessary, because of the person’s mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.
- (2) The tribunal must have regard to the following matters—
 - (a) the relevant circumstances of the person;
 - (b) any victim impact statement given to the tribunal under section 160 or 634 relating to the unlawful act that led to the making of—
 - (i) the court treatment order; or
 - (ii) if the court treatment order was made because a forensic order for the person was revoked—the forensic order;
 - (c) if the Mental Health Court made a recommendation in the court treatment order about an intervention program for the person—the implementation of the program and the person’s willingness to participate in the program if offered to the person.

443	Orders if court treatment order confirmed	1
(1)	If the tribunal confirms the court treatment order, it may do any of the following—	2 3
(a)	if the category of the court treatment order is inpatient—by order, change the category of the court treatment order to community;	4 5 6
(b)	order, or extend, limited community treatment for the person;	7 8
(c)	by order, change or remove a condition to which the court treatment order is subject to make the order less restrictive;	9 10 11
(d)	order the person’s transfer to another authorised mental health service to provide treatment and care for the person.	12 13 14
(2)	However, the tribunal must make an order under subsection (1)(a) unless the tribunal considers, after having regard to the relevant circumstances of the person, that the person’s treatment and care needs, and the safety and welfare of the person and others, can not reasonably be met under a court treatment order with the category of community.	15 16 17 18 19 20
(3)	In deciding whether to order limited community treatment for the person, and the extent of the treatment, the tribunal must have regard to—	21 22 23
(a)	the purpose of limited community treatment; and	24
(b)	the relevant circumstances of the person.	25
(4)	Despite subsections (1) to (3), the tribunal must not do either of the following if the person subject to the court treatment order is a classified patient—	26 27 28
(a)	change the category of the order to community;	29
(b)	order, or approve, limited community treatment for the person.	30 31

[s 444]

(5)	In deciding whether to transfer the person to another authorised mental health service, the tribunal must have regard to—	1 2 3
(a)	the person’s mental state and psychiatric history; and	4
(b)	the person’s treatment and care needs; and	5
(c)	the security requirements for the person; and	6
(d)	the capacity of the authorised mental health service; and	7
(e)	whether the transfer would be in the best interests of the person, including, for example, closer proximity to family, carers and other support persons.	8 9 10
444	Orders if court treatment order revoked	11
(1)	This section applies if the tribunal decides to revoke the court treatment order.	12 13
(2)	The tribunal may—	14
(a)	make a treatment authority for the person; or	15
(b)	make no other order for the person.	16
(3)	The tribunal may make a treatment authority for a person under subsection (2) only if—	17 18
(a)	the person has been examined by a psychiatrist; and	19
(b)	the psychiatrist—	20
(i)	considers—	21
(A)	the treatment criteria apply to the person; and	22 23
(B)	there is no less restrictive way for the person to receive treatment and care for the person’s mental illness; and	24 25 26
(c)	recommends that a treatment authority be made for the person.	27 28
(4)	A treatment authority made under subsection (2)—	29

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- (a) must state the following— 1
- (i) the category of the authority; 2
 - (ii) the authorised mental health service responsible 3
for the person's treatment and care under the 4
authority; 5
 - (iii) the nature and extent of the treatment and care to 6
be provided to the person; 7
 - (iv) the extent of any limited community treatment the 8
person is to receive; 9
 - (v) any conditions the tribunal considers necessary for 10
the person's treatment and care; and 11
- (b) is taken to be a treatment authority made under section 12
46 by the psychiatrist mentioned in subsection (1). 13
- (5) The tribunal may decide the category of the treatment 14
authority is inpatient only if the tribunal is satisfied, after 15
having regard to the following matters, that the person's 16
treatment and care needs and the safety and welfare of the 17
person and others can not reasonably be met if the category of 18
the authority is community— 19
- (a) the person's mental state and psychiatric history; 20
 - (b) the person's social circumstances including, for 21
example, family and social support; 22
 - (c) the person's response to treatment and care and the 23
person's willingness to receive appropriate treatment 24
and care; 25
 - (d) if relevant, the person's response to any previous 26
treatment in the community. 27

[s 445]

Part 6	Review of fitness for trial	1
Division 1	Review	2
445	Application of div 1	3
	This division applies if—	4
	(a) either of the following applies—	5
	(i) on a reference in relation to a person, the Mental Health Court decides the person is unfit for trial but the unfitness for trial is not permanent;	6 7 8
	(ii) on the trial of a person charged with an indictable offence, a jury has made a section 613 finding or section 645 finding in relation to the person; and	9 10 11
	(b) the person has not been found fit for trial; and	12
	(c) the proceeding against the person for the offence has not been discontinued.	13 14
446	When reviews are conducted	15
	(1) The tribunal must review the person's fitness for trial—	16
	(a) for the period of 1 year starting on the day of the court's decision or jury's finding mentioned in section 445—at intervals of not more than 3 months; and	17 18 19
	(b) after the period mentioned in paragraph (a) has ended—at intervals of not more than 6 months after the last review under paragraph (a) is completed.	20 21 22
	(2) Also, the tribunal must review the person's fitness for trial on application by—	23 24
	(a) the person; or	25
	(b) an interested person for the person mentioned in paragraph (a); or	26 27

[s 447]

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- (c) the chief psychiatrist; or 1
 - (d) the director of forensic disability. 2
 - (3) Further, the tribunal may at any time, on its own initiative, 3
review the person's fitness for trial. 4

447 Notice of hearing 5

- (1) The tribunal must give the following persons written notice of 6
the hearing of a review of the person's fitness for trial— 7
 - (a) the person; 8
 - (b) for a review under section 446(2), if the applicant is not 9
the person—the applicant; 10
 - (c) if an authorised mental health service is responsible for 11
the person— 12
 - (i) the administrator of the service; and 13
 - (ii) the chief psychiatrist; 14
 - (d) if the forensic disability service is responsible for the 15
person— 16
 - (i) the administrator of the service; and 17
 - (ii) the director of forensic disability; 18
 - (e) the Attorney-General. 19
- (2) The notice must be given at least 7 days before the hearing. 20

448 Decisions on review 21

- (1) On the hearing of the review, the tribunal must consider the 22
person's mental condition and decide whether the person is fit 23
for trial. 24
- (2) If, on the last review under section 446(1)(a), or a review 25
conducted under section 446(1)(b), the tribunal decides the 26
person is unfit for trial, the tribunal must also decide whether 27
the person is likely to be fit for trial in a reasonable time. 28

[s 449]

Division 2	Procedures following review if person unfit for trial	1 2
449	Application of div 2	3
	This division applies if, on a review under division 1 of the fitness for trial of a person charged with an offence (the <i>relevant offence</i>), the tribunal decides the person is unfit for trial.	4 5 6 7
450	Director of public prosecutions to decide whether proceeding for offence to be discontinued	8 9
	The director of public prosecutions must—	10
	(a) within 28 days after receiving written notice of the tribunal’s decision, decide whether to discontinue the proceeding against the person for the relevant offence; and	11 12 13 14
	<i>Note—</i>	15
	The tribunal must give the director of public prosecutions written notice of the tribunal’s decision that the person is unfit for trial. See section 646(3).	16 17 18
	(b) within 7 days after making the decision under paragraph (a), give the tribunal written notice of the decision.	19 20
451	Proceeding discontinued at end of prescribed period	21
	(1) The proceeding against the person for the relevant offence is discontinued, at the end of the prescribed period, if—	22 23
	(a) the director of public prosecutions has not decided under section 450 to discontinue the proceeding against the person for the relevant offence; or	24 25 26
	(b) the tribunal has not decided the person is fit for trial.	27
	(2) For subsection (1), the prescribed period is—	28

[s 452]

-
- (a) for a proceeding for an offence for which an offender is liable to life imprisonment—7 years from the day the finding of unfitness was made; or

(b) for another proceeding—3 years from the day the finding of unfitness was made.

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5
 - (3) In calculating the prescribed period, any period for which the person was a patient required to return must be disregarded.

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7
 - (4) In this section—

finding of unfitness means—

8

9
 - (a) the Mental Health Court’s decision that the person was unfit for trial; or

10

11
 - (b) the jury’s section 613 finding or section 645 finding in relation to the person.

12

13

452 Effect of discontinuing proceeding 14

- (1) This section applies if the proceeding against the person for the relevant offence is discontinued—

15

16
- (a) by the director of public prosecutions under section 450; or

17

18
- (b) under section 451.

19
- (2) The director of public prosecutions must, within 7 days after the proceeding is discontinued, give the following persons written notice of the discontinuing of the proceeding—

20

21

22
- (a) the person;

23
- (b) the registrar of the court in which the proceeding for the relevant offence was being conducted;

24

25
- (c) if the director of public prosecutions was not the prosecuting authority for the relevant offence—the prosecuting authority for the relevant offence;

26

27

28
- (d) the tribunal;

29
- (e) the chief psychiatrist;

30

[s 453]

(f)	the Attorney-General.	1
(3)	The person can not be prosecuted again for the relevant offence.	2 3
(4)	If the person is subject to a forensic order or court treatment order when the proceeding for the relevant offence is discontinued, the order continues in force.	4 5 6
453	Proceedings may be discontinued at other time	7
	Nothing in this division prevents the proceeding against the person for the relevant offence being discontinued at any time by—	8 9 10
	(a) the director of public prosecutions; or	11
	(b) the complainant.	12
Division 3	Procedures after review if person fit for trial	13 14
454	Application of div 3	15
	This division applies if, on a review under division 1, the tribunal decides the person is fit for trial.	16 17
455	Definitions for div 3	18
	In this division—	19
	<i>relevant court</i> means the court in which the proceeding for the relevant offence is being conducted.	20 21
	<i>relevant offence</i> see section 449.	22

456	Director of public prosecutions to give notice of fitness for trial	1 2
	The director of public prosecutions must, within 7 days after receiving written notice of the tribunal's decision, give the following persons written notice of the tribunal's decision—	3 4 5
	(a) the registrar of the relevant court;	6
	(b) if the director of public prosecutions is not the prosecuting authority for the relevant offence—the prosecuting authority for the relevant offence;	7 8 9
	(c) the chief psychiatrist.	10
457	Listing of proceeding for mention	11
	(1) The registrar of the relevant court must arrange for the proceeding for the relevant offence to be listed for mention—	12 13
	(a) within 7 days after the tribunal's decision; or	14
	(b) if the court cannot be constituted within 7 days after the tribunal's decision—at the earliest opportunity.	15 16
	(2) On the person's appearance at the mention of the proceeding, the forensic order, or court treatment order, to which the person is subject ends.	17 18 19
	(3) An authorised person may take the person from an authorised mental health service in which the person is being detained to the relevant court for the person's appearance at the mention of the proceeding.	20 21 22 23
	(4) However, subsection (3) does not prevent the person appearing at the mention of the proceeding by remote conferencing while remaining at the authorised mental health service.	24 25 26 27
	(5) The person may be detained at the authorised mental health service until—	28 29
	(a) the person leaves the service to appear at the mention of the proceeding; or	30 31

[s 458]

(b)	if the person appears at the mention of the proceeding by remote conferencing while remaining at the health service—the person is taken into custody.	1 2 3
(6)	In this section— <i>mention</i> includes review.	4 5
Part 7	Review of imposition of monitoring conditions requiring wearing of tracking devices	6 7 8 9
458	Application of pt 7 This part applies if the chief psychiatrist amends a forensic order for a person under section 217 to impose a monitoring condition requiring the person to wear a tracking device (the <i>relevant condition</i>). <i>Note—</i> The chief psychiatrist is required to give written notice of the imposition of the relevant condition to the tribunal. See section 217(3)(b).	10 11 12 13 14 15 16 17
459	Review of chief psychiatrist’s decision to impose condition The tribunal must, within 21 days after being notified of the chief psychiatrist’s decision to impose the relevant condition, review the decision.	18 19 20 21 22
460	Notice of hearing The tribunal must give the following persons written notice of the hearing of the review— (a) the person;	23 24 25 26

- (b) the administrator of the authorised mental health service responsible for the person; 1 2
- (c) the chief psychiatrist. 3

461 Decisions on review 4

- (1) On the review, the tribunal must decide to— 5
 - (a) confirm the relevant condition; or 6
 - (b) revoke the relevant condition. 7
- (2) If the tribunal decides to revoke the relevant condition, the tribunal may impose another condition, including a monitoring condition, that is more beneficial for the person. 8 9 10
- (3) In deciding the review, the tribunal must consider whether— 11
 - (a) monitoring of the person is required because— 12
 - (i) there is a significant risk the person would not return to the person's treating health service and the person or someone else might suffer serious harm; or 13 14 15 16
 - (ii) the person has previously failed to fully comply with the conditions of treatment in the community and there is a significant risk of serious harm to the person or someone else; and 17 18 19 20
 - (b) the relevant condition would significantly reduce the risk of serious harm to the person or someone else. 21 22

Part 8 Review of detention of minors in high security units 23 24

462 Application of pt 8 25

This part applies if the chief psychiatrist approves— 26

[s 463]

(a) under section 64, that the administrator of a high security unit may give consent for a minor to be taken to the high security unit for assessment, treatment and care; or

(b) under section 338, the transfer of a minor to a high security unit.

Note—

The administrator of the high security unit must give the tribunal notice of the agreement or transfer. See sections 68 and 345.

463 When reviews are conducted

(1) The tribunal must review the minor's detention in the high security unit—

(a) within 7 days after the tribunal is notified of the chief psychiatrist's approval; and

(b) at intervals of not more than 3 months after the review under paragraph (a) is completed.

(2) Also, the tribunal must review the minor's detention in the high security unit on application by—

(a) the minor; or

(b) an interested person for the minor.

(3) Further, the tribunal may at any time, on its own initiative, review the minor's detention in the high security unit.

464 Notice of hearing

(1) The tribunal must give the following persons written notice of the hearing of a review of the minor's detention in the high security unit—

(a) the minor;

(b) for a review under section 463(2) if the applicant is not the minor—the applicant;

- (c) the administrator of the high security unit;
1
- (d) the chief psychiatrist.
2

Note—
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See section 280(4) for when notice may be given to the minor's parent.
4

- (2) The notice must be given at least 7 days before the hearing.
5
- (3) However, subsection (2) does not apply for the first review of the minor's detention.
6
7

465 Decision on review 8

- (1) On a review of the minor's detention in the high security unit, the tribunal must decide whether the minor—
9
10
- (a) should continue to be detained in the high security unit; or
11
12
- (b) should be transferred from the high security unit to an authorised mental health service that is not a high security unit.
13
14
15
- (2) In deciding the review, the tribunal must have regard to the following—
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17
- (a) the minor's mental state and psychiatric history;
18
- (b) the minor's treatment and care needs;
19
- (c) the minor's security requirements.
20

Part 9 **Applications for examination authorities** 21 22

466 Application for examination authority 23

- (1) The following persons may apply to the tribunal for an authority (an *examination authority*) for another person—
24
25

[s 466]

- (a) the administrator of an authorised mental health service; 1
 - (b) a person authorised in writing by the administrator of an 2
authorised mental health service to make an application 3
under this section; 4
 - (c) a person who has received advice, from a doctor or 5
authorised mental health practitioner, about the clinical 6
matters for the person who is the subject of the 7
application. 8
- Note—* 9
- See section 32 for the powers of an authorised doctor or authorised 10
mental health practitioner under an examination authority. 11
- (2) The approved form for the application must include a 12
statement by a doctor or authorised mental health practitioner 13
about whether the behaviour of the person, or other relevant 14
factors, could reasonably be considered grounds for the 15
involuntary examination of the person. 16
- Note—* 17
- The application must be made in the approved form. See section 616. 18
- (3) In this section— 19
- clinical matters***, for a person, means— 20
- (a) general information about the treatment criteria, their 21
application to the person, and whether there is a less 22
restrictive way for the person to receive treatment and 23
care for the person’s mental illness; and 24
 - (b) whether the behaviour of the person, or other relevant 25
factors, could reasonably be considered grounds for the 26
involuntary examination of the person; and 27
 - (c) options for the treatment and care of the person; and 28
 - (d) how the person might be encouraged to seek voluntary 29
treatment and care. 30

467	Notice of hearing	1
(1)	The tribunal must give the applicant written notice of the hearing of the application.	2 3
(2)	The notice must be given—	4
(a)	at least 3 days before the hearing; or	5
(b)	if the person, or another person acting for the person, agrees to a period of less than 3 days before the hearing—at least the agreed period before the hearing.	6 7 8
468	Decision on application	9
(1)	The tribunal must decide to issue, or refuse to issue, an examination authority for the person.	10 11
(2)	However, the tribunal may decide to issue an examination authority for the person only if the tribunal considers—	12 13
(a)	the person has, or may have, a mental illness; and	14
(b)	the person does not, or may not, have capacity to consent to be treated for the mental illness; and	15 16
(c)	either—	17
(i)	reasonable attempts have been made to encourage the person to be treated voluntarily for the person's mental illness; or	18 19 20
(ii)	it is not practicable to attempt to encourage the person to be treated voluntarily for the person's mental illness; and	21 22 23
(d)	there is, or may be, an imminent risk, because of the person's mental illness, of—	24 25
(i)	serious harm to the person or someone else; or	26
(ii)	the person suffering serious mental or physical deterioration.	27 28
(3)	An examination authority—	29
(a)	must be in the approved form; and	30

[s 469]

	(b) must state the authorised mental health service responsible for the examination of the person under the authority.	1 2 3
469	Duration of examination authority	4
	An examination authority is in force for 7 days after the day it is made.	5 6
470	Copy of examination authority to be given to administrator of authorised mental health service	7 8
	The tribunal must give a copy of an examination authority to the administrator of the authorised mental health service stated in the authority.	9 10 11
Part 10	Applications for approval of regulated treatment	12 13
Division 1	Electroconvulsive therapy	14
471	Application for approval to perform electroconvulsive therapy	15 16
	A psychiatrist may apply to the tribunal for approval to perform electroconvulsive therapy on another person if the psychiatrist is satisfied—	17 18 19
	(a) the person is an adult and is unable to give informed consent to the therapy; or	20 21
	(b) the person is a minor.	22

472 Notice of hearing

- (1) The tribunal must give the following persons written notice of the hearing of the application—
 - (a) the person the subject of the application;
 - (b) if the applicant is not the person mentioned in paragraph (a)—the applicant;
 - (c) if an authorised mental health service is responsible for the person—the administrator of the service.
- (2) The notice must be given—
 - (a) if the application is for approval to perform electroconvulsive therapy on the person in an emergency—
 - (i) at least 3 days before the hearing; or
 - (ii) if the person, or another person acting for the person, agrees to a period of less than 3 days before the hearing—at least the agreed period before the hearing; or
 - (b) otherwise—
 - (i) at least 7 days before the hearing; or
 - (ii) if the person, or another person acting for the person, agrees to a period of less than 7 days before the hearing—at least the agreed period before the hearing.

473 Decision on application

- (1) In deciding the application, the tribunal must give, or refuse to give, approval for electroconvulsive therapy to be performed on the person.
- (2) In deciding whether to give, or refuse to give, the approval, the tribunal must have regard to—
 - (a) if the application relates to an adult who is unable to give informed consent to the therapy—any views,

[s 473]

- wishes or preferences the adult has expressed about the
therapy in an advance health directive; or
- (b) if the application relates to a minor—
- (i) the views of the minor’s parents; and
- (ii) if the minor has capacity to consent to be
treated—the views of the minor.
- Note—*
- See section 14(4) in relation to the capacity of a minor to
consent to be treated.
- (3) The tribunal may give the approval only if the tribunal is
satisfied—
- (a) the performance of the therapy on the person is in the
person’s best interests; and
- (b) evidence supports the effectiveness of the therapy for
the person’s particular mental illness; and
- (c) if the therapy has previously been performed on the
person—of the effectiveness of the therapy for the
person; and
- (d) if the person is a minor—evidence supports the
effectiveness of the therapy for persons of the minor’s
age.
- (4) If the tribunal gives the approval, the approval—
- (a) must state the number of treatments that may be
performed in a stated period under the approval; and
- (b) may be made subject to conditions.

Division 2	Non-ablative neurosurgical procedures	1 2
474	Application for approval to perform non-ablative neurosurgical procedure	3 4
(1)	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 under chapter 8.	5 6 7 8
(2)	The application must be accompanied by a copy of the person's consent.	9 10
475	Notice of hearing	11
(1)	The tribunal must give the following persons written notice of the hearing of the application—	12 13
(a)	the person the subject of the application;	14
(b)	the applicant;	15
(c)	the administrator of the authorised mental health service identified in the application as the service in which the non-ablative neurosurgical procedure is to be performed.	16 17 18 19
(2)	The notice must be given at least 7 days before the hearing.	20
476	Decision on application	21
(1)	In deciding the application, the tribunal must give, or refuse to give, approval for the non-ablative neurosurgical procedure to be performed on the person.	22 23 24
(2)	The tribunal may give the approval only if the tribunal is satisfied—	25 26
(a)	the applicant has fully informed the person of—	27

[s 476]

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|-------|---|----------------------------|
| (i) | the nature, benefits and risks of the non-ablative neurosurgical procedure; and | 1
2 |
| (ii) | alternatives to the procedure; and | 3 |
| (iii) | the consequences of not having the procedure; and | 4 |
| (b) | the person has capacity to give informed consent to the procedure and has given informed consent to the procedure; and | 5
6
7 |
| (c) | the procedure has clinical merit and is appropriate in the circumstances; and | 8
9 |
| (d) | alternatives to the procedure that could reasonably be expected to produce a sufficient and lasting benefit for the person have previously been provided to the person without a sufficient and lasting benefit; and | 10
11
12
13 |
| (e) | the procedure is to be performed by an appropriately qualified person. | 14
15 |
| (3) | For subsection (1)(a), a person has capacity to give informed consent to the procedure if the person has the ability to understand the nature and effect of a decision relating to the procedure, and the ability to make and communicate the decision. | 16
17
18
19
20 |
| (4) | The tribunal may impose the conditions on the approval it considers appropriate. | 21
22 |

Part 11	Applications for approval to transfer particular patients into and out of Queensland	1 2 3
Division 1	Transfers into Queensland	4
477	Definitions for div 1	5
	In this division—	6
	<i>interstate forensic order</i> means an order under a corresponding law of another State, however described, that provides for similar matters to a forensic order (mental condition) or forensic order (disability).	7 8 9 10
	<i>interstate transfer requirements</i> , for a person subject to an interstate forensic order, means the requirements, under the corresponding law of the State in which the order was made, for the person's transfer to another State.	11 12 13 14
478	Who may apply	15
	A person subject to an interstate forensic order, or an interested person for the person, may apply to the tribunal for approval of the transfer of the person from an interstate mental health service to a stated authorised mental health service.	16 17 18 19 20
479	Requirements for application	21
	The application must—	22
	(a) 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	23 24 25 26
	(b) include a written statement from the chief psychiatrist that the chief psychiatrist considers the interstate	27 28

[s 480]

	transfer requirements for the person may be satisfied.;	1
	and	2
(c)	state—	3
(i)	the authorised mental health service proposed to be responsible for the person; or	4 5
(ii)	that the forensic disability service is proposed to be responsible for the person.	6 7
480	Notice of hearing	8
(1)	The tribunal must give the following persons written notice of the hearing of the application—	9 10
(a)	the person;	11
(b)	if the application is made by an interested person for the person—the interested person;	12 13
(c)	if an authorised mental health service is stated in the application—	14 15
(i)	the administrator of the service; and	16
(ii)	the chief psychiatrist;	17
(d)	if the forensic disability service is stated in the application—	18 19
(i)	the administrator of the service; and	20
(ii)	the director of forensic disability;	21
(e)	the Attorney-General.	22
(2)	The notice must be given at least 14 days before the hearing.	23
481	Decision on application	24
(1)	The tribunal must decide to approve, or refuse to approve, the transfer.	25 26
(2)	The tribunal may approve the transfer only if the tribunal is satisfied—	27 28

-
- (a) the transfer is in the best interests of the person, including, for example, closer proximity to family, carers and other support persons; and
 - (b) appropriate treatment and care is available for the person at the stated authorised mental health service; and
 - (c) a forensic order (mental condition) or forensic order (disability) is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.
- (3) The tribunal may give the approval subject to conditions.

482 Making of forensic order

- (1) If the tribunal gives the approval under section 481, the tribunal must make a forensic order (mental condition) for the person unless subsection (2) applies.
- (2) The tribunal must make a forensic order (disability) for the person if the tribunal considers—
 - (a) the person has an intellectual disability but does not have a dual disability; or
 - (b) the person has a dual disability but does not require involuntary treatment and care for the person's mental illness.
- (3) The forensic order (mental condition) or forensic order (disability) takes effect from the time the person arrives in Queensland.
- (4) For making a forensic order (mental condition) or forensic order (disability) under this division, chapter 5, part 4, divisions 3 and 5 applies as if—
 - (a) a reference in the provisions to the Mental Health Court were a reference to the tribunal; and

[s 483]

(b)	a reference in the provisions to the person the subject of the reference were a reference to the person the subject of the interstate forensic order.	1 2 3
483	Satisfaction of interstate transfer requirements	4
	A transfer approved by the tribunal under this division takes effect when the interstate transfer requirements for the person have been satisfied.	5 6 7
484	Transport of person	8
(1)	This section applies if—	9
(a)	the tribunal has approved the transfer of a person under this division; and	10 11
(b)	the interstate transfer requirements for the person have been satisfied.	12 13
(2)	As soon as practicable after the interstate transfer requirements have been satisfied, the administrator of the authorised mental health service must arrange for the transport of the person to the service by an authorised person.	14 15 16 17
(3)	An authorised person may transport the person to the authorised mental health service.	18 19
Division 2	Transfers out of Queensland	20
485	Definition for div 2	21
	In this division—	22
	<i>interstate transfer requirements</i> , for a person subject to a forensic order (mental condition), forensic order (disability) or court treatment order, means the requirements, under the corresponding law of another State, for the person’s transfer to the other State.	23 24 25 26 27

486	Who may apply	1
(1)	A person subject to a forensic order (mental condition), forensic order (disability) or a court treatment order, or an interested person for the person, may apply to the tribunal for approval of the transfer of the person from an authorised mental health service or the forensic disability service to a stated interstate mental health service.	2 3 4 5 6 7
(2)	However, this section does not apply to—	8
(a)	a person who is a classified patient; or	9
(b)	a person the Mental Health Court has decided is unfit for trial but the unfitness for trial is not permanent.	10 11
487	Requirements for application	12
	The application must—	13
(a)	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	14 15 16 17
(b)	include a written statement from the chief psychiatrist that the chief psychiatrist considers the interstate transfer requirements for the person may be satisfied.	18 19 20
488	Notice of hearing	21
(1)	The tribunal must give the following persons written notice of the hearing of the application—	22 23
(a)	the person;	24
(b)	if the application is made by an interested person for the person—the interested person;	25 26
(c)	if an authorised mental health service is responsible for the person—	27 28
(i)	the administrator of the service; and	29
(ii)	the chief psychiatrist;	30

[s 489]

(d)	if the forensic disability service is responsible for the person—	1 2
(i)	the administrator of the service; and	3
(ii)	the director of forensic disability;	4
(e)	the Attorney-General.	5
(2)	The notice must be given at least 14 days before the hearing.	6
489	Decision on application	7
(1)	The tribunal must decide to approve, or refuse to approve, the transfer.	8 9
(2)	The tribunal may approve the transfer only if the tribunal is satisfied—	10 11
(a)	the transfer is in the best interests of the person, including, for example, closer proximity to family, carers and other support persons; and	12 13 14
(b)	appropriate treatment and care is available for the person at the interstate mental health service; and	15 16
(c)	adequate security arrangements will apply to the person.	17
(3)	The tribunal may give the approval subject to conditions.	18
490	Satisfaction of interstate transfer requirements	19
	A transfer approved by the tribunal under this division takes effect when the interstate transfer requirements for the person have been satisfied.	20 21 22
491	Transport of person	23
(1)	This section applies if—	24
(a)	the tribunal has approved the transfer of a person under this division; and	25 26

[s 492]

(b) the interstate transfer requirements for the person have been satisfied.	1 2
(2) As soon as practicable after the interstate transfer requirements have been satisfied, the administrator of the authorised mental health service must arrange for the transport of the person to the interstate mental health service by an authorised person.	3 4 5 6 7
(3) An authorised person may transport the person to the stated interstate mental health service.	8 9
492 Effect on order	10
(1) This section applies to a person transported to an interstate mental health service under this division.	11 12
(2) The person's forensic order (mental condition), forensic order (disability) or court treatment order—	13 14
(a) is in force only if the person returns to Queensland and while the person is in Queensland; and	15 16
(b) ends if the person is out of Queensland for a continuous period of 3 years.	17 18
 Part 12 Miscellaneous	 19
 493 Relationship with ch 16, pt 1	 20
To the extent of any inconsistency with chapter 16, part 1, this chapter prevails.	21 22

[s 494]

Chapter 13 Appeals 1

Part 1 Preliminary 2

494 Purpose of ch 13 3

This chapter provides for the following— 4

- (a) appeals to the tribunal; 5
- (b) appeals from a decision of the tribunal to the Mental 6
Health Court; 7
- (c) appeals from a decision of the Mental Health Court to 8
the Court of Appeal. 9

Part 2 Appeals to the tribunal 10

495 Definitions for pt 2 11

In this part— 12

decision notice means a notice about a decision given under 13
section 303(4), 304(3), 308(7), 310(7), 311(3), 312(4) or 14
394(3). 15

Note— 16

A decision made under section 308(7), 310(7), 311(3) or 312(4) may be 17
made in relation to a forensic disability client. See section 316. 18

party, to an appeal, means— 19

- (a) for an appeal against a decision of the administrator of 20
an authorised mental health service—the appellant or 21
the administrator; and 22
- (b) for an appeal against a decision of the chief 23
psychiatrist—the appellant or the chief psychiatrist; and 24

[s 496]

- | | | |
|-----|---|-------------|
| (c) | for an appeal against a decision of the director of forensic disability—the appellant or director of forensic disability. | 1
2
3 |
|-----|---|-------------|

496	Appeal to tribunal	4
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	A person who has been given, or is entitled to be given, a decision notice may appeal to the tribunal against the decision to which the notice relates.	5 6 7
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497	How to start appeal	8
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- | | | |
|-----|---|----------------|
| (1) | The appeal is started by giving a notice of appeal to the tribunal. | 9
10 |
| (2) | The notice of appeal must be given within 28 days after— | 11 |
| (a) | the day the person is given the decision notice for the decision; or | 12
13 |
| (b) | if the person is not given a decision notice for the decision—the day the person otherwise becomes aware of the decision. | 14
15
16 |
| (3) | The tribunal may, at any time, extend the time for giving the notice of appeal. | 17
18 |
| (4) | The notice of appeal must— | 19 |
| (a) | be in the approved form; and | 20 |
| (b) | state fully the grounds of the appeal and the facts relied on. | 21
22 |

498	Notice of appeal and hearing	23
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|-----|---|----------|
| (1) | The tribunal must give 7 days written notice of the hearing of the appeal to the parties to the appeal. | 24
25 |
| (2) | The notice of the hearing of the appeal must state the following information— | 26
27 |
| (a) | the time and place of the hearing of the appeal; | 28 |

[s 499]

(b)	the nature of the hearing;	1
(c)	the parties' rights to be represented at the hearing.	2
499	Stay of decision pending appeal	3
(1)	The tribunal may stay the decision appealed against to secure the effectiveness of the appeal.	4 5
(2)	A stay—	6
(a)	may be given on the reasonable conditions the tribunal considers appropriate; and	7 8
(b)	operates for the period fixed by the tribunal; and	9
(c)	may be amended or revoked by the tribunal.	10
(3)	The period of a stay must not extend past the time when the appeal is decided.	11 12
(4)	A notice of appeal affects the decision the subject of the notice, or the carrying out of the decision, only if the decision is stayed.	13 14 15
500	Appeal powers	16
(1)	The procedure for the appeal is in accordance with the tribunal rules or, if the rules make no provision or insufficient provision, as directed by the tribunal.	17 18 19
(2)	The appeal is by way of rehearing.	20
(3)	In deciding the appeal, the tribunal may—	21
(a)	confirm the decision appealed against; or	22
(b)	set aside the decision appealed against and substitute another decision; or	23 24
(c)	set aside the decision and return the matter to the person who made the decision with the directions the tribunal considers appropriate.	25 26 27

(4)	If the tribunal substitutes another decision, the substituted decision is for this Act, other than this chapter, taken to be the decision of the person who made the decision.	1 2 3
Part 3	Appeals to Mental Health Court	4
Division 1	Preliminary	5
501	Definition for pt 3	6
	In this part—	7
	<i>party</i> , to an appeal against a decision, means a person who is a party to the appeal under section 503.	8 9
Division 2	Making and hearing appeals	10
502	Who may appeal	11
	A person mentioned in schedule 2, column 2 may appeal to the Mental Health Court against a decision of the tribunal mentioned opposite the person in schedule 2, column 1.	12 13 14
503	Parties to appeal	15
(1)	Each person entitled to appeal against the decision is a party to the appeal.	16 17
(2)	However, if the chief psychiatrist is not the appellant, the chief psychiatrist is only a party to the appeal if the chief psychiatrist elects to be a party to the appeal.	18 19 20
(3)	Also, if the director of forensic disability is not the appellant, the director of forensic disability is only a party to the appeal	21 22

[s 504]

if the director of forensic disability elects to be a party to the 1
appeal. 2

504 How to start appeal 3

- (1) The appeal is started by filing a notice of appeal in the 4
registry. 5
- (2) The notice of appeal must be filed— 6
 - (a) if the appellant is the chief psychiatrist—within 60 days 7
after the decision is made; or 8
 - (b) if paragraph (a) does not apply—within 60 days after 9
the appellant receives written notice of the decision. 10
- (3) The Mental Health Court may, at any time, extend the time for 11
filing the notice of appeal. 12
- (4) The notice of appeal must— 13
 - (a) be in the approved form; and 14
 - (b) state fully the grounds of the appeal and the facts relied 15
on. 16

505 Notice of appeal and hearing 17

- (1) Within 7 days after the notice of appeal is filed, the registrar 18
must give written notice of the appeal to each other person 19
entitled to appeal against the decision. 20
- (2) The registrar must give 7 days written notice of the hearing of 21
the appeal to— 22
 - (a) the parties to the appeal; and 23
 - (b) if an authorised mental health service is responsible for 24
the person the subject of the appeal—the administrator 25
of the service; and 26
 - (c) if the forensic disability service is responsible for the 27
person the subject of the appeal—the administrator of 28
the service. 29

[s 506]

- (3) The notice of the hearing of the appeal must state the following information—
 - (a) the time and place of the hearing of the appeal;
 - (b) the nature of the hearing;
 - (c) the parties' rights to be represented at the hearing.

506 Stay of decision pending appeal

- (1) The Mental Health Court may stay the decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
 - (a) may be given on the conditions the court considers appropriate; and
 - (b) operates for the period fixed by the court; and
 - (c) may be amended or revoked by the court.
- (3) The period of a stay must not extend past the time when the appeal is decided.
- (4) The court may order that the person the subject of the appeal be detained in a stated authorised mental health service for the period of the stay.
- (5) For subsection (4), an authorised person may transport the person to the authorised mental health service stated in the order.
- (6) The administrator of the authorised mental health service stated in the order may detain the person in the service under the order.

507 Notice of stay of decision on review of patient's fitness for trial

- (1) This section applies if—
 - (a) the decision appealed against is a decision of the tribunal on a review of a person's fitness for trial; and

[s 508]

- (b) under section 506, the Mental Health Court stays the decision. 1
2
- (2) The registrar must give written notice to the chief executive (justice) about the stay of the decision appealed against. 3
4
- (3) As soon as practicable after receiving a notice under subsection (2), the chief executive (justice) must give a copy of the notice to— 5
6
7
 - (a) the registrar of the court in which proceedings for the offence in relation to the review of the fitness for trial of the person are to be heard; and 8
9
10
 - (b) the prosecuting authority for the offence; and 11
 - (c) if the person the subject of the decision is a child within the meaning of the *Youth Justice Act 1992*—the chief executive (youth justice). 12
13
14

508 Appeal powers 15

- (1) The procedure for the appeal is in accordance with court rules for the Mental Health Court or, if the rules make no provision or insufficient provision, as directed by the Mental Health Court. 16
17
18
19
- (2) The appeal is by way of rehearing. 20
- (3) In deciding the appeal, the Mental Health Court may— 21
 - (a) confirm the decision appealed against; or 22
 - (b) set aside the decision appealed against and substitute another decision; or 23
24
 - (c) set aside the decision and return the matter to the tribunal with the directions the Mental Health Court considers appropriate. 25
26
27
- (4) If the Mental Health Court substitutes another decision, the substituted decision is taken for this Act other than this chapter to be a decision of the tribunal. 28
29
30

509	Mental Health Court may make forensic order or court treatment order on appeal	1 2
(1)	This section applies if—	3
(a)	an appeal is made against a decision of the tribunal that a person is fit for trial; and	4 5
	<i>Note—</i>	6
	The tribunal may decide a person is fit for trial when reviewing the person’s mental state under chapter 12, part 6.	7 8
(b)	the Mental Health Court decides on the appeal that the person is unfit for trial.	9 10
(2)	The Mental Health Court may make the orders that the court may make under chapter 5, part 4, division 2 as if a reference in the division to a reference in relation to a person were a reference to an appeal against a decision of the tribunal that a person is fit for trial.	11 12 13 14 15
510	Mental Health Court’s order final	16
	Unless the Supreme Court decides that the decision of the Mental Health Court on appeal is affected by jurisdictional error, the decision—	17 18 19
(a)	is final and conclusive; and	20
(b)	can not be impeached for informality or want of form; and	21 22
(c)	can not be appealed against, reviewed, quashed, set aside or called in question in any other way in any court.	23 24

[s 511]

Part 4	Appeals to Court of Appeal	1
511	Who may appeal	2
	The following may appeal to the Court of Appeal against a decision of the Mental Health Court on a reference in relation to a person—	3 4 5
	(a) the person;	6
	(b) the Attorney-General;	7
	(c) the chief psychiatrist;	8
	(d) the director of forensic disability.	9
512	How to start appeal	10
	(1) An appeal is started by filing a notice of appeal with the registrar of the Court of Appeal.	11 12
	(2) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision.	13 14
	(3) However, the Court of Appeal may at any time extend the period for filing the notice of appeal.	15 16
	(4) The notice of appeal must—	17
	(a) be in the approved form; and	18
	(b) state fully the grounds of the appeal and the facts relied on.	19 20
513	Appeal powers	21
	(1) The procedure for the appeal is to be in accordance with court rules for the Court of Appeal or, if the rules make no provision or insufficient provision, as directed by the Court of Appeal.	22 23 24
	(2) In deciding the appeal, the Court of Appeal may—	25
	(a) confirm the decision appealed against; or	26

[s 514]

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- | | |
|---|----------------|
| (b) set aside the decision appealed against and substitute another decision; or | 1
2 |
| (c) set aside the decision and return the matter to the Mental Health Court with the directions the Court of Appeal considers appropriate. | 3
4
5 |
| (3) If the Court of Appeal substitutes another decision, the substituted decision is for this Act other than this part taken to be the decision of the Mental Health Court. | 6
7
8 |
| (4) If the Court of Appeal returns the matter to the Mental Health Court, the Court of Appeal must— | 9
10 |
| (a) remand the person in custody; or | 11 |
| (b) grant the person bail under the <i>Bail Act 1980</i> . | 12 |
| (5) If the Court of Appeal remands the person in custody, the court may order the person the subject of the reference be detained in a stated authorised mental health service. | 13
14
15 |
| (6) The person the subject of the reference may be detained under the court's order in the authorised mental health service stated in the order. | 16
17
18 |
|
514 Notice of decision |
19 |
| The registrar of the Court of Appeal must give a copy of the decision on the appeal to the registrar of the Mental Health Court. | 20
21
22 |

[s 515]

Chapter 14	Monitoring and enforcement	1
		2
Part 1	Preliminary	3
515	Purpose of ch 14	4
	This purpose of this chapter is to provide for the appointment, functions and powers of inspectors for investigating, monitoring and enforcing compliance with this Act.	5 6 7
516	Definitions for ch 14	8
	In this chapter—	9
	<i>court</i> means a Magistrates Court.	10
	<i>disposal order</i> see section 558(2).	11
	<i>electronic document</i> means a document of a type under the <i>Acts Interpretation Act 1954</i> , schedule 1, definition <i>document</i> , paragraph (c).	12 13 14
	<i>former owner</i> see section 553(1).	15
	<i>general power</i> see section 539(1).	16
	<i>help requirement</i> see section 540(1).	17
	<i>identity card</i> , for a provision about inspectors, means an identity card issued under section 522(1).	18 19
	<i>information notice</i> , about a decision, means a notice stating the following—	20 21
	(a) the decision;	22
	(b) the reasons for it;	23
	(c) that the person to whom the notice is given may apply to the chief psychiatrist for a review of the decision within 20 business days after the person receives the notice;	24 25 26

-
- (d) how to apply for a review. 1
- inspector** means a person who holds office under this chapter 2
as an inspector. 3
- offence warning**, for a direction or requirement by an 4
inspector, means a warning that, without a reasonable excuse, 5
it is an offence for the person to whom the direction or 6
requirement is made not to comply with it. 7
- original decision** see section 571(1)(a). 8
- owner**, of a thing that has been seized under this chapter, 9
includes a person who would be entitled to possession of the 10
thing had it not been seized. 11
- personal details requirement** see section 559(5). 12
- person in control**— 13
- (a) of a vehicle, includes— 14
- (i) the vehicle’s driver or rider; and 15
- (ii) anyone who reasonably appears to be, claims to be, 16
or acts as if he or she is, the vehicle’s driver or rider 17
or the person in control of the vehicle; or 18
- (b) of another thing, includes anyone who reasonably 19
appears to be, claims to be, or acts as if he or she is, the 20
person in possession or control of the thing. 21
- reasonably suspects** means suspects on grounds that are 22
reasonable in the circumstances. 23
- review decision** see section 571(1)(b). 24
- review notice** see section 571(1)(c). 25
- review notice day** see section 571(2)(a). 26

[s 517]

Part 2	General provisions about inspectors	1 2
Division 1	Appointment	3
517	Appointment and qualifications	4
(1)	The chief psychiatrist may, by instrument in writing, appoint any of the following persons as inspectors—	5 6
(a)	a public service employee of the department;	7
(b)	a health service employee;	8
(c)	a person prescribed under a regulation.	9
(2)	Also, the chief psychiatrist may, by instrument in writing, appoint a health practitioner, lawyer or another person as an inspector for investigating a matter under chapter 10, part 4.	10 11 12
(3)	However, the chief psychiatrist may appoint a person as an inspector only if the chief psychiatrist is satisfied the person is appropriately qualified.	13 14 15
(4)	Also, the chief psychiatrist is an inspector.	16
518	Functions of inspectors	17
	An inspector's functions are as follows—	18
(a)	to carry out activities for the purpose of an investigation under chapter 10, part 4;	19 20
(b)	for an inspector appointed under section 517(1)—to investigate, monitor and enforce compliance with this Act;	21 22 23
519	Appointment conditions and limit on powers	24
(1)	An inspector holds office on any conditions stated in—	25
(a)	the inspector's instrument of appointment; or	26

	(b) a signed notice given to the inspector; or	1
	(c) a regulation.	2
	(2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers.	3 4
	(3) In this section—	5
	<i>signed notice</i> means a notice signed by the chief psychiatrist.	6
520	When office ends	7
	(1) The office of a person as an inspector ends if any of the following happens—	8 9
	(a) the term of office stated in a condition of office ends;	10
	(b) under another condition of office, the office ends;	11
	(c) the inspector's resignation under section 521 takes effect.	12 13
	(2) Subsection (1) does not limit the ways the office of a person as an inspector ends.	14 15
	(3) In this section—	16
	<i>condition of office</i> means a condition under which the inspector holds office.	17 18
521	Resignation	19
	An inspector may resign by signed notice given to the chief psychiatrist.	20 21
Division 2	Identity cards	22
522	Issue of identity card	23
	(1) The chief psychiatrist must issue an identity card to each inspector.	24 25

[s 523]

- (2) The identity card must—
 - (a) contain a recent photo of the inspector; and
 - (b) contain a copy of the inspector’s signature; and
 - (c) identify the person as an inspector under this Act; and
 - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

523 Production or display of identity card

- (1) In exercising a power in relation to a person in the person’s presence, an inspector must—
 - (a) produce the inspector’s identity card for the person’s inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person’s inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 527(1)(b).

524 Return of identity card

If the office of a person as an inspector ends, the person must return the person’s identity card to the chief psychiatrist within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

Division 3	Miscellaneous provisions	1
525	References to exercise of powers	2
	If—	3
	(a) a provision of this part refers to the exercise of a power by an inspector; and	4
		5
	(b) there is no reference to a specific power;	6
	the reference is to the exercise of all or any inspectors' powers under this chapter or a warrant, to the extent the powers are relevant.	7
		8
		9
526	Reference to document includes reference to reproductions from electronic document	10
		11
	A reference in this part to a document includes a reference to an image or writing—	12
		13
	(a) produced from an electronic document; or	14
	(b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.	15
		16
		17
Part 3	Entry of places by inspectors	18
Division 1	Power to enter	19
527	General power to enter places	20
	(1) An inspector may enter a place if—	21

[s 528]

- (a) an occupier at the place consents under division 2 to the entry and section 530 has been complied with for the occupier; or
 - (b) it is a public place and the entry is made when the place is open to the public; or
 - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 537 has been complied with for the occupier; or
 - (d) it is an authorised mental health service or public sector health service facility and is—
 - (i) open for carrying on business; or
 - (ii) otherwise open for entry.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

Division 2 Entry by consent

528 Application of div 2

This division applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 527(1)(a).

529 Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or

[s 530]

- (b) enter part of the place the inspector reasonably
considers members of the public ordinarily are allowed
to enter when they wish to contact an occupier of the
place. 1 2 3 4

530 Matters inspector must tell occupier 5

Before asking for the consent, the inspector must give a
reasonable explanation to the occupier— 6 7

- (a) about the purpose of the entry, including the powers
intended to be exercised; and 8 9
- (b) that the occupier is not required to consent; and 10
- (c) that the consent may be given subject to conditions and
may be withdrawn at any time. 11 12

531 Consent acknowledgement 13

- (1) If the consent is given, the inspector may ask the occupier to
sign an acknowledgement of the consent. 14 15
- (2) The acknowledgement must state— 16
 - (a) the purpose of the entry, including the powers to be
exercised; and 17 18
 - (b) the following has been explained to the occupier— 19
 - (i) the purpose of the entry, including the powers
intended to be exercised; 20 21
 - (ii) that the occupier is not required to consent; 22
 - (iii) that the consent may be given subject to conditions
and may be withdrawn at any time; and 23 24
 - (c) the occupier gives the inspector or another inspector
consent to enter the place and exercise the powers; and 25 26
 - (d) the time and day the consent was given; and 27
 - (e) any conditions of the consent. 28

[s 532]

- (3) If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier. 1
2
- (4) If— 3
 - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and 4
5
 - (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence; 6
7the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented. 8
9

Division 3 Entry under warrant 10

532 Application for warrant 11

- (1) An inspector may apply to a magistrate for a warrant for a place. 12
13
 - (2) The inspector must prepare a written application that states the grounds on which the warrant is sought. 14
15
 - (3) The written application must be sworn. 16
 - (4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires. 17
18
19
20
- Example—* 21
- The magistrate may require additional information supporting the written application to be given by statutory declaration. 22
23

533 Issue of warrant 24

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence— 25
26
27
28
29

[s 534]

(a)	about a matter being investigated by the inspector under chapter 10, part 4; or	1 2
(b)	of an offence against this Act.	3
(2)	The warrant must state—	4
(a)	the place to which the warrant applies; and	5
(b)	that a stated inspector or any inspector may with necessary and reasonable help and force—	6 7
(i)	enter the place and any other place necessary for entry to the place; and	8 9
(ii)	exercise the inspector's powers; and	10
(c)	particulars of the matter being investigated or offence that the magistrate considers appropriate; and	11 12
(d)	if subsection (1)(b) applies, the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and	13 14 15 16
(e)	the evidence that may be seized under the warrant; and	17
(f)	the hours of the day or night when the place may be entered; and	18 19
(g)	the magistrate's name; and	20
(h)	the day and time of the warrant's issue; and	21
(i)	the day, within 14 days after the warrant's issue, the warrant ends.	22 23
534	Electronic application	24
(1)	An application under section 532 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector reasonably considers it necessary because of—	25 26 27 28
(a)	urgent circumstances; or	29

[s 535]

- (b) other special circumstances, including, for example, the
inspector's remote location. 1 2
- (2) The application— 3
 - (a) may not be made before the inspector prepares the
written application under section 532(2); but 4 5
 - (b) may be made before the written application is sworn. 6
- 535 Additional procedure if electronic application 7**
 - (1) For an application made under section 534, the magistrate
may issue the warrant (the *original warrant*) only if the
magistrate is satisfied— 8 9 10
 - (a) it was necessary to make the application under section
534; and 11 12
 - (b) the way the application was made under section 534 was
appropriate. 13 14
 - (2) After the magistrate issues the original warrant— 15
 - (a) if there is a reasonably practicable way of immediately
giving a copy of the warrant to the inspector, including,
for example, by sending a copy by fax or email, the
magistrate must immediately give a copy of the warrant
to the inspector; or 16 17 18 19 20
 - (b) otherwise— 21
 - (i) the magistrate must tell the inspector the
information mentioned in section 533(2); and 22 23
 - (ii) the inspector must complete a form of warrant,
including by writing on it the information
mentioned in section 533(2) provided by the
magistrate. 24 25 26 27
 - (3) The copy of the warrant mentioned in subsection (2)(a), or the
form of warrant completed under subsection (2)(b) (in either
case the *duplicate warrant*), is a duplicate of, and as effectual
as, the original warrant. 28 29 30 31

[s 536]

- (4) The inspector must, at the first reasonable opportunity, send to the magistrate—
 - (a) the written application complying with section 532(2) and (3); and
 - (b) if the inspector completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
 - (a) attach the documents to the original warrant; and
 - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Despite subsection (3), if—
 - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;
the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (7) This section does not limit section 532.
- (8) In this section—
relevant magistrates court, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

536 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in—
 - (a) the warrant; or
 - (b) compliance with this division;unless the defect affects the substance of the warrant in a material particular.

[s 537]

(2)	In this section—	1
	<i>warrant</i> includes a duplicate warrant mentioned in section 535(3).	2 3
537	Entry procedure	4
(1)	This section applies if an inspector is intending to enter a place under a warrant issued under this division.	5 6
(2)	Before entering the place, the inspector must do or make a reasonable attempt to do the following things—	7 8
(a)	identify himself or herself to a person who is an occupier of the place and is present by producing the inspector's identity card or another document evidencing the inspector's appointment;	9 10 11 12
(b)	give the person a copy of the warrant;	13
(c)	tell the person the inspector is permitted by the warrant to enter the place;	14 15
(d)	give the person an opportunity to allow the inspector immediate entry to the place without using force.	16 17
(3)	However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.	18 19 20 21
(4)	In this section—	22
	<i>warrant</i> includes a duplicate warrant mentioned in section 535(3).	23 24

Part 4	General powers of inspectors after entering places	1 2
538	Application of pt 4	3
(1)	The power under this part may be exercised if an inspector enters a place under section 527(1)(a), (c) or (d).	4 5
(2)	However, if the inspector enters under section 527(1)(a) or (c), the powers under this part are subject to any conditions of the consent or terms of the warrant.	6 7 8
539	General powers	9
(1)	The inspector may do any of the following (each a <i>general power</i>)—	10 11
(a)	search any part of the place;	12
(b)	confer alone with a patient in the place;	13
(c)	make inquiries about the admission, assessment, examination, detention, treatment or care of a patient in the place;	14 15 16
(d)	inspect, examine or film any part of the place or anything at the place;	17 18
(e)	take for examination a thing, or a sample of or from a thing, at the place;	19 20
(f)	place an identifying mark in or on anything at the place;	21
(g)	inspect any document (including a health record) about a patient who—	22 23
(i)	has been examined or assessed or is being examined or assessed in the place; or	24 25
(ii)	has received, or is receiving, treatment or care in the place;	26 27
(h)	inspect any record or register required to be kept under this Act;	28 29

[s 539]

-
- | | | |
|-----|--|----------------------------|
| (i) | take an extract from, or copy, a document at the place, or take the document to another place to copy; | 1
2 |
| (j) | produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing; | 3
4
5
6
7 |
| (k) | take to, into or onto the place and use any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under this part; | 8
9
10
11 |
| (l) | remain at the place for the time necessary to achieve the purpose of the entry. | 12
13 |
| (2) | The inspector may take a necessary step to allow the exercise of a general power. | 14
15 |
| (3) | If the inspector takes a document from the place to copy it, the inspector must copy the document and return it to the place as soon as practicable. | 16
17
18 |
| (4) | If the inspector takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the inspector must produce the document and return the article or device to the place as soon as practicable. | 19
20
21
22
23 |
| (5) | In this section— | 24 |
| | <i>examine</i> includes analyse, test, account, measure, weigh, grade, gauge and identify. | 25
26 |
| | <i>film</i> includes photograph, videotape and record an image in another way. | 27
28 |
| | <i>inspect</i> , a thing, includes open the thing and examine its contents. | 29
30 |

540	Power to require reasonable help	1
(1)	The inspector may make a requirement (a <i>help requirement</i>) of an occupier of the place or a person at the place to give the inspector reasonable help to exercise a general power, including, for example, to produce a document or to give information.	2 3 4 5 6
(2)	When making the help requirement, the inspector must give the person an offence warning for the requirement.	7 8
541	Offence to contravene help requirement	9
(1)	A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.	10 11 12
	Maximum penalty—100 penalty units.	13
(2)	It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.	14 15 16
(3)	However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept under this Act.	17 18 19
	<i>Note—</i>	20
	See, however, section 542.	21
542	Evidential immunity for individuals complying with help requirement	22 23
(1)	Subsection (2) applies if an individual gives or produces information or a document to an inspector under section 540.	24 25
(2)	Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.	26 27 28 29 30

[s 543]

(3)	Subsection (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.	1 2 3 4
Part 5	Seizure by inspectors and forfeiture	5 6
Division 1	Power to seize	7
543	Seizing evidence at a place that may be entered without consent or warrant	8 9
	An inspector who enters a place the inspector may enter under this Act without the consent of an occupier of the place and without a warrant may seize a thing at the place if the inspector reasonably believes the thing is evidence—	10 11 12 13
	(a) about a matter being investigated by the inspector under chapter 10, part 4; or	14 15
	(b) of an offence against this Act.	16
544	Seizing evidence at a place that may be entered only with consent or warrant	17 18
	(1) This section applies if—	19
	(a) an inspector is authorised to enter a place only with the consent of an occupier of the place or a warrant; and	20 21
	(b) the inspector enters the place after obtaining the consent or under a warrant.	22 23
	(2) If the inspector enters the place with the occupier’s consent, the inspector may seize a thing at the place only if—	24 25
	(a) the inspector reasonably believes the thing is evidence—	26

[s 545]

(i)	about a matter being investigated by the inspector under chapter 10, part 4; or	1 2
(ii)	of an offence against this Act; and	3
(b)	seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.	4 5 6
(3)	If the inspector enters the place under a warrant, the inspector may seize the evidence for which the warrant was issued.	7 8
(4)	The inspector may also seize anything else at the place if the inspector reasonably believes—	9 10
(a)	the thing is evidence—	11
(i)	about a matter being investigated by the inspector under chapter 10, part 4; or	12 13
(ii)	of an offence against this Act; and	14
(b)	the seizure is necessary to prevent the thing being hidden, lost or destroyed.	15 16
(5)	The inspector may also seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against this Act.	17 18 19
545	Seizure of property subject to security	20
(1)	An inspector may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.	21 22 23
(2)	However, the seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting for the inspector.	24 25 26

[s 546]

Division 2	Powers to support seizure	1
546	Power to secure seized thing	2
(1)	Having seized a thing under this part, an inspector may—	3
(a)	leave it at the place where it was seized (the <i>place of seizure</i>) and take reasonable action to restrict access to it; or	4 5 6
(b)	move it from the place of seizure.	7
(2)	For subsection (1)(a), the inspector may, for example—	8
(a)	seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or	9 10 11
(b)	for equipment—make it inoperable; or	12
	<i>Example—</i>	13
	make it inoperable by dismantling it or removing a component without which the equipment can not be used	14 15
(c)	require a person the inspector reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subsection (1)(a).	16 17 18 19
547	Offence to contravene other seizure requirement	20
	A person must comply with a requirement made of the person under section 546(2)(c) unless the person has a reasonable excuse.	21 22 23
	Maximum penalty—100 penalty units.	24
548	Offence to interfere	25
(1)	If access to a seized thing is restricted under section 546, a person must not tamper with the thing or with anything used to restrict access to the thing without—	26 27 28

[s 549]

-
- (a) an inspector's approval; or 1
 - (b) a reasonable excuse. 2
 - Maximum penalty—100 penalty units. 3
 - (2) If access to a place is restricted under section 546, a person 4
must not enter the place in contravention of the restriction or 5
tamper with anything used to restrict access to the place 6
without— 7
 - (a) an inspector's approval; or 8
 - (b) a reasonable excuse. 9
 - Maximum penalty—100 penalty units. 10

Division 3 Safeguards for seized things 11

549 Receipt and information notice for seized thing 12

- (1) This section applies if an inspector seizes anything under this 13
part unless— 14
 - (a) the inspector reasonably believes there is no-one 15
apparently in possession of the thing or it has been 16
abandoned; or 17
 - (b) because of the condition, nature and value of the thing it 18
would be unreasonable to require the inspector to 19
comply with this section. 20
- (2) The inspector must, as soon as practicable after seizing the 21
thing, give an owner or person in control of the thing before it 22
was seized— 23
 - (a) a receipt for the thing that generally describes the thing 24
and its condition; and 25
 - (b) an information notice about the decision to seize it. 26
- (3) However, if an owner or person from whom the thing is seized 27
is not present when it is seized, the receipt and information 28
notice may be given by leaving them in a conspicuous 29

[s 550]

- position and in a reasonably secure way at the place at which
the thing is seized. 1 2
- (4) The receipt and information notice may— 3
 - (a) be given in the same document; and 4
 - (b) relate to more than 1 seized thing. 5
- (5) The inspector may delay giving the receipt and information
notice if the inspector reasonably suspects giving them may
frustrate or otherwise hinder an investigation by the inspector
under this Act. 6 7 8 9
- (6) However, the delay may be only for so long as the inspector
continues to have the reasonable suspicion and remains in the
vicinity of the place at which the thing was seized to keep it
under observation. 10 11 12 13

550 Access to seized thing 14

- (1) Until a seized thing is forfeited or returned, the inspector who
seized the thing must allow an owner of the thing— 15 16
 - (a) to inspect it at any reasonable time and from time to
time; and 17 18
 - (b) if it is a document—to copy it. 19
- (2) Subsection (1) does not apply if it is impracticable or would
be unreasonable to allow the inspection or copying. 20 21
- (3) The inspection or copying must be allowed free of charge. 22

551 Return of seized thing 23

- (1) This section applies if a seized thing has some intrinsic value
and is not— 24 25
 - (a) forfeited or transferred under division 4 or 5; or 26
 - (b) subject to a disposal order under part 6. 27
- (2) The inspector must return the seized thing to an owner— 28
 - (a) generally—at the end of 6 months after the seizure; or 29

[s 552]

- (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.
 - (3) Despite subsection (2), if the thing was seized as evidence, the inspector must return the thing seized to an owner as soon as practicable after the inspector is satisfied—
 - (a) its continued retention as evidence is no longer necessary; and
 - (b) it is lawful for the owner to possess it.
 - (4) Nothing in this section affects a lien or other security over the seized thing.

Division 4 Forfeiture

552 Forfeiture by chief psychiatrist decision

- (1) The chief psychiatrist may decide a seized thing is forfeited to the State if an inspector—
 - (a) after making reasonable inquiries, can not find an owner; or
 - (b) after making reasonable efforts, can not return it to an owner.
- (2) However, the inspector is not required to—
 - (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
 - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

Example for paragraph (b)—

the owner of the thing has migrated to another country
- (3) Regard must be had to the thing's condition, nature and value in deciding—
 - (a) whether it is reasonable to make inquiries or efforts; and

[s 553]

- (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable. 1
2
3

553 Information notice about forfeiture decision 4

- (1) If the chief psychiatrist decides under section 552(1) to forfeit a thing, the chief psychiatrist must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision. 5
6
7
8
9
- (2) The information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way. 10
11
12
- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she appeals against the decision. 13
14
15
- (4) However, subsections (1) to (3) do not apply if the place where the thing was seized is— 16
17
 - (a) a public place; or 18
 - (b) a place where the notice is unlikely to be read by the former owner. 19
20

554 Forfeiture on conviction 21

- (1) On the conviction of a person for an offence against this Act, the court may order the forfeiture to the State of— 22
23
 - (a) anything used to commit the offence; or 24
 - (b) anything else the subject of the offence. 25
- (2) The court may make the order— 26
 - (a) whether or not the thing has been seized; or 27
 - (b) if the thing has been seized—whether or not the thing has been returned to the former owner of the thing. 28
29

[s 555]

(3)	The court may make any order to enforce the forfeiture it considers appropriate.	1 2
(4)	This section does not limit the court's powers under another law.	3 4
555	Procedure and powers for making forfeiture order	5
(1)	A forfeiture order may be made on a conviction on the court's initiative or on an application by the prosecution.	6 7
(2)	In deciding whether to make a forfeiture order for a thing, the court—	8 9
(a)	may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and	10 11 12
(b)	must hear any submissions that any person claiming to have any property in the thing may wish to make.	13 14
Division 5	Dealing with property forfeited or transferred to State	15 16
556	When thing becomes property of the State	17
	A thing becomes the property of the State if—	18
(a)	the thing is forfeited to the State under section 552(1) or 554; or	19 20
(b)	the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.	21 22
557	How property may be dealt with	23
(1)	This section applies if, under section 556, a thing becomes the property of the State.	24 25

[s 558]

- (2) The chief psychiatrist may deal with the thing as the chief psychiatrist considers appropriate, including, for example, by destroying it or giving it away. 1
2
3
- (3) The chief psychiatrist must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part. 4
5
6
- (4) If the chief psychiatrist sells the thing, the chief psychiatrist may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing. 7
8
9
- (5) This section is subject to any disposal order made for the thing. 10
11

Part 6 Disposal orders 12

558 Disposal order 13

- (1) This section applies if a person is convicted of an offence against this Act. 14
15
- (2) The court may make an order (a *disposal order*), on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person— 16
17
18
 - (a) anything that was the subject of, or used to commit, the offence; 19
20
 - (b) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act. 21
22
23
- (3) The court may make a disposal order for a thing— 24
 - (a) whether or not it has been seized under this Act; and 25
 - (b) if the thing has been seized—whether or not it has been returned to the former owner. 26
27

-
- | | | |
|-----|--|-------------|
| (4) | In deciding whether to make a disposal order for a thing, the court— | 1
2 |
| (a) | may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and | 3
4
5 |
| (b) | must hear any submissions that any person claiming to have any property in the thing may wish to make. | 6
7 |
| (5) | The court may make any order to enforce the disposal order that it considers appropriate. | 8
9 |
| (6) | This section does not limit the court's powers under another law. | 10
11 |

Part 7	Other information-obtaining powers of inspectors	12 13
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559	Power to require name and address	14
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- | | | |
|-----|---|----------------------|
| (1) | This section applies if an inspector— | 15 |
| (a) | finds a person committing an offence against this Act; or | 16 |
| (b) | finds a person in circumstances that lead the inspector to reasonably suspect the person has just committed an offence against this Act; or | 17
18
19 |
| (c) | has information that leads the inspector to reasonably suspect a person has just committed an offence against this Act. | 20
21
22 |
| (2) | The inspector may require the person to state the person's name and residential address. | 23
24 |
| (3) | The inspector may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to— | 25
26
27
28 |

[s 560]

(a)	be in possession of evidence of the correctness of the stated name or address; or	1 2
(b)	otherwise be able to give the evidence.	3
(4)	When making a personal details requirement, the inspector must give the person an offence warning for the requirement.	4 5
(5)	A requirement under this section is a <i>personal details requirement</i> .	6 7
560	Offence to contravene personal details requirement	8
(1)	A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.	9 10 11
	Maximum penalty—100 penalty units.	12
(2)	A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.	13 14 15
561	Power to require information	16
(1)	This section applies if an inspector reasonably believes—	17
(a)	an offence against this Act has been committed; and	18
(b)	a person may be able to give information about the offence.	19 20
(2)	This section also applies if an inspector reasonably believes a person may be able to give information about a matter being investigated by the inspector under chapter 10, part 4.	21 22 23
(3)	The inspector may, by notice given to the person, require the person to give the inspector information related to the offence, or matter being investigated, at a stated reasonable time and place.	24 25 26 27
(4)	A requirement under subsection (3) is an <i>information requirement</i> .	28 29

(5)	For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.	1 2 3
(6)	In this section— <i>information</i> includes a document.	4 5
562	Offence to contravene information requirement	6
(1)	A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse. Maximum penalty—100 penalty units.	7 8 9 10
(2)	It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.	11 12 13 14
(3)	However, subsection (2) does not apply if information the subject of the information requirement is required to be held or kept under this Act.	15 16 17
	<i>Note—</i> See, however, section 563.	18 19
(4)	In this section— <i>information</i> includes a document.	20 21
563	Evidential immunity for individuals complying with information requirement	22 23
(1)	Subsection (2) applies if an individual gives information to an inspector under section 561.	24 25
(2)	Evidence of the information, and other evidence directly or indirectly derived from the information, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.	26 27 28 29 30

[s 564]

- (3) Subsection (2) does not apply to a proceeding about the false or misleading nature of the information or in which the false or misleading nature of the information is relevant evidence. 1 2 3
- (4) In this section— 4
information includes a document. 5

Part 8 **Miscellaneous provisions** 6
relating to inspectors 7

Division 1 **Damage** 8

564 **Duty to avoid inconvenience and minimise damage** 9

In exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible. 10 11 12

Note— 13

See also section 566. 14

565 **Notice of damage** 15

(1) This section applies if— 16

(a) an inspector damages something when exercising, or purporting to exercise, a power; or 17 18

(b) a person (the *assistant*) acting under the direction or authority of an inspector damages something. 19 20

(2) However, this section does not apply to damage the inspector reasonably considers is trivial or if the inspector reasonably believes— 21 22 23

(a) there is no-one apparently in possession of the thing; or 24

-
- (b) the thing has been abandoned. 1
- (3) The inspector must give notice of the damage to the person 2
who appears to the inspector to be an owner, or person in 3
control, of the thing. 4
- (4) However, if for any reason it is not practicable to comply with 5
subsection (3), the inspector must— 6
- (a) leave the notice at the place where the damage 7
happened; and 8
- (b) ensure it is left in a conspicuous position and in a 9
reasonably secure way. 10
- (5) The inspector may delay complying with subsection (3) or (4) 11
if the inspector reasonably suspects complying with the 12
subsection may frustrate or otherwise hinder the performance 13
of the inspector's functions. 14
- (6) The delay may be only for so long as the inspector continues 15
to have the reasonable suspicion and remains in the vicinity of 16
the place. 17
- (7) If the inspector believes the damage was caused by a latent 18
defect in the thing or other circumstances beyond the control 19
of the inspector or the assistant, the inspector may state the 20
belief in the notice. 21
- (8) The notice must state— 22
- (a) particulars of the damage; and 23
- (b) that the person who suffered the damage may claim 24
compensation under section 566. 25

Division 2 Compensation 26

566 Compensation 27

- (1) A person may claim compensation from the State if the person 28
incurs loss because of the exercise, or purported exercise, of a 29
power by or for an inspector including a loss arising from 30

[s 566]

- compliance with a requirement made of the person under this
part. 1 2
- (2) The compensation may be claimed and ordered in a
proceeding— 3 4
- (a) brought in a court with jurisdiction for the recovery of
the amount of compensation claimed; or 5 6
- (b) for an alleged offence against this Act the investigation
of which gave rise to the claim for compensation. 7 8
- (3) A court may order the payment of compensation only if it is
satisfied it is just to make the order in the circumstances of the
particular case. 9 10 11
- (4) In considering whether it is just to order compensation, the
court must have regard to— 12 13
- (a) any relevant offence committed by the claimant; and 14
- (b) whether the loss arose from a lawful seizure or lawful
forfeiture. 15 16
- (5) A regulation may prescribe other matters that may, or must,
be taken into account by the court when considering whether
it is just to order compensation. 17 18 19
- (6) Section 564 does not provide for a statutory right of
compensation other than is provided by this section. 20 21
- (7) In this section— 22
- loss* includes costs and damage. 23

Part 9	Reviews and appeals about seizure and forfeiture	1 2
567	Right of appeal	3
	A person who has a right to be given an information notice about a decision made under this part has a right to appeal against the decision.	4 5 6
	<i>Note—</i>	7
	Information notices are given under sections 549 and 553.	8
568	Appeal process starts with internal review	9
	(1) Every appeal against a decision must be, in the first instance, by way of an application for an internal review.	10 11
	(2) A person who has a right to appeal against a decision may apply to the chief executive for a review of the decision.	12 13
569	How to apply for review	14
	(1) An application for review of a decision must be—	15
	(a) in the approved form; and	16
	(b) supported by enough information to enable the chief executive to decide the application.	17 18
	(2) The application must be made within 20 days after—	19
	(a) the day the person is given the information notice about the decision; or	20 21
	(b) if the person is not given an information notice about the decision—the day the person otherwise becomes aware of the decision.	22 23 24
	(3) The chief executive may extend the period for applying for the review.	25 26
	(4) The application must not be dealt with by—	27

[s 570]

- (a) the person who made the decision; or 1
- (b) a person in a less senior office than the person who 2
made the decision. 3
- (5) Subsection (4) applies despite the *Acts Interpretation Act* 4
1954, section 27A. 5

570 Stay of operation of decision 6

- (1) An application for review of a decision does not stay the 7
decision. 8
- (2) However, the applicant may immediately apply for a stay of 9
the decision to the court. 10
- (3) The court may stay the decision to secure the effectiveness of 11
the review and a later appeal to the court. 12
- (4) The stay— 13
 - (a) may be given on conditions the court considers 14
appropriate; and 15
 - (b) operates for the period fixed by the court; and 16
 - (c) may be amended or revoked by the court. 17
- (5) The period of the stay must not extend past the time when the 18
chief executive makes a review decision about the decision 19
and any later period the court allows the applicant to enable 20
the applicant to appeal against the review decision. 21
- (6) An application for review of a decision affects the decision, or 22
the carrying out of the decision, only if the decision is stayed. 23

571 Review decision 24

- (1) The chief executive must, within 30 days after receiving the 25
application— 26
 - (a) review the decision (the *original decision*); and 27
 - (b) make a decision (the *review decision*) to— 28
 - (i) confirm the original decision; or 29

(ii)	amend the original decision; or	1
(iii)	substitute another decision for the original decision; and	2 3
(c)	give the applicant notice (the <i>review notice</i>) of the review decision.	4 5
(2)	If the review decision is not the decision sought by the applicant, the review notice must state the following—	6 7
(a)	the day the notice is given to the applicant (the <i>review notice day</i>);	8 9
(b)	the reasons for the decision;	10
(c)	that the applicant may appeal against the decision to the court within 28 days after the review notice day;	11 12
(d)	how to appeal;	13
(e)	that the applicant may apply to the court for a stay of the decision.	14 15
(3)	If the chief executive does not give the review notice within the 30 days, the chief executive is taken to have made a review decision confirming the original decision.	16 17 18
572	Who may appeal	19
	A person who has applied for review of an original decision and is dissatisfied with the review decision may appeal to the court against the decision.	20 21 22
573	Procedure for an appeal to the court	23
(1)	An appeal to the court is started by filing a notice of appeal with the clerk of the court.	24 25
(2)	A copy of the notice must be served on the chief executive.	26
(3)	The notice of appeal must be filed within 28 days after—	27
(a)	if the applicant is given a review notice—the review notice day; or	28 29

[s 574]

- (b) otherwise—the chief executive is taken to have made a review decision confirming the original decision. 1
2
 - (4) The court may, whether before or after the time for filing the notice of appeal ends, extend the period for filing the notice of appeal. 3
4
5
 - (5) The notice of appeal must state fully the grounds of the appeal. 6
7
- 574 Stay of operation of review decision** 8
- (1) The court may grant a stay of the operation of a review decision appealed against to secure the effectiveness of the appeal. 9
10
11
 - (2) A stay— 12
 - (a) may be granted on conditions the court considers appropriate; and 13
14
 - (b) operates for the period fixed by the court; and 15
 - (c) may be amended or revoked by the court. 16
 - (3) The period of a stay stated by the court must not extend past the time when the court decides the appeal. 17
18
 - (4) An appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed. 19
20
- 575 Powers of court on appeal** 21
- (1) In deciding an appeal, the court— 22
 - (a) has the same powers as the chief executive in making the review decision appealed against; and 23
24
 - (b) is not bound by the rules of evidence; and 25
 - (c) must comply with natural justice. 26
 - (2) An appeal is by way of rehearing. 27
 - (3) The court may— 28

[s 576]

(a)	confirm the review decision; or	1
(b)	set aside the review decision and substitute another decision; or	2 3
(c)	set aside the review decision and return the matter to the chief executive with directions the court considers appropriate.	4 5 6
576	Effect of decision of court on appeal	7
(1)	If the court acts to set aside the review decision and return the matter to the chief executive with directions the court considers appropriate, and the chief executive makes a new decision, the new decision is not subject to review or appeal under this part.	8 9 10 11 12
(2)	If the court substitutes another decision, the substituted decision is taken to be the decision of the chief executive, and the chief executive may give effect to the decision as if the decision was the original decision of the chief executive and no application for review or appeal had been made.	13 14 15 16 17

Chapter 15 Offences and legal matters 18

Part 1 Preliminary 19

577	Purpose of ch 15	20
	The purpose of this chapter is to provide for the following—	21
(a)	offences relating to the patients who are unlawfully absent;	22 23
(b)	offences relating to officials;	24

[s 578]

- (c) the custody of patients and the use of reasonable force to detain and treat involuntary patients; 1
2
- (d) evidentiary provisions in relation to offences and the protection of officials from civil liability for particular acts or omissions. 3
4
5

Part 2 Offences relating to patients 6

578 Offence relating to ill-treatment 7

- (1) This section applies to a person who, under this Act or the *Public Health Act 2005*— 8
9
 - (a) is examining, assessing, detaining or providing treatment and care to a person (the *patient*); or 10
11
 - (b) has the custody of the patient. 12
- (2) The person must not ill-treat the patient. 13
Maximum penalty—100 penalty units or 1 year’s imprisonment. 14
15
- (3) In this section— 16
ill-treat includes to wilfully abuse, neglect or exploit. 17

579 Offences relating to patients in custody absconding 18

- (1) This section applies if, under this Act, a person (the *relevant person*) is— 19
20
 - (a) transporting a patient— 21
 - (i) to an authorised mental health service; or 22
 - (ii) to the forensic disability service; or 23
 - (iii) to appear before a court; or 24
 - (iv) to a place of custody; or 25

(b) accompanying a patient while the patient is receiving limited community treatment or on a temporary absence under section 223.	1 2 3
(2) For this section, while the relevant person is acting as mentioned in subsection (1), the patient is in the relevant person's charge.	4 5 6
(3) The relevant person must not wilfully allow the patient to abscond from the relevant person's charge.	7 8
Maximum penalty—200 penalty units or 2 years imprisonment.	9 10
(4) A person must not knowingly help the patient to abscond from the relevant person's charge.	11 12
Maximum penalty—200 penalty units or 2 years imprisonment.	13 14
(5) In this section—	15
<i>patient</i> means the following—	16
(a) a classified patient;	17
(b) a forensic patient;	18
(c) a person subject to a judicial order.	19
580 Other offences relating to absence of patients	20
(1) A person must not—	21
(a) induce, or knowingly help, a patient detained in an authorised mental health service or public sector health service facility to unlawfully absent himself or herself from the service or facility; or	22 23 24 25
(b) knowingly harbour a patient who is unlawfully absent from an authorised mental health service or public sector health service facility.	26 27 28
Maximum penalty—	29

582	Obstructing official	1
(1)	A person must not obstruct an official exercising a power, or someone helping an official exercising a power, unless the person has a reasonable excuse.	2
	Maximum penalty—100 penalty units.	3
(2)	If a person has obstructed an official, or someone helping an official, and the official decides to proceed with the exercise of the power, the official must warn the person that—	4
(a)	it is an offence to cause an obstruction unless the person has a reasonable excuse; and	5
(b)	the official considers the person's conduct an obstruction.	6
(3)	However, a patient does not commit an offence against subsection (1) merely because the patient resists the exercise of the power in relation to himself or herself.	7
(4)	In this section—	8
	<i>obstruct</i> includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.	9
583	Impersonating official	10
	A person must not impersonate an official.	11
	Maximum penalty—100 penalty units.	12
584	Giving official false or misleading information	13
(1)	A person must not, in relation to the administration of this Act, give an official information, or a document containing information, that the person knows is false or misleading in a material particular.	14
	Maximum penalty—100 penalty units.	15
(2)	Subsection (1) applies to information or a document given in relation to the administration of this Act whether or not the	16

[s 585]

information or document was given in response to a specific 1
power under this Act. 2

Part 4 **Custody and use of reasonable** 3
force for detention and 4
treatment 5

585 Custody of particular patients 6

- (1) The following patients are in the custody of the administrator 7
of the patient’s treating health service— 8
- (a) a classified patient; 9
- (b) a forensic patient, if the Mental Health Court decided 10
the person was unfit for trial but the unfitness for trial 11
was not permanent; 12
- (c) a patient subject to a judicial order. 13
- (2) Also, while a person receives treatment and care in an 14
authorised mental health service under section 354, the person 15
is in the custody of the administrator of the authorised mental 16
health service. 17

586 Detaining classified patient (voluntary) 18

A classified patient (voluntary) may be detained in an 19
authorised mental health service for treatment and care for the 20
person’s mental illness. 21

587 Use of reasonable force to detain person in authorised 22
mental health service 23

- (1) This section applies if, under a provision of this Act, a person 24
is authorised or required to be detained in an authorised 25
mental health service. 26

	(2) The administrator of the authorised mental health service, and anyone lawfully helping the administrator, may exercise the power to detain the person in the service with the help, and using the force, that is necessary and reasonable in the circumstances.	1 2 3 4 5
588	Use of reasonable force to detain person in public sector health service facility	6 7
	(1) This section applies if, under section 42, a person is authorised or required to be detained in a public sector health service facility, other than an authorised mental health service.	8 9 10 11
	(2) The person in charge of the public sector health service facility, and anyone lawfully helping the person in charge, may exercise the power to detain the person in the public sector health service facility with the help, and using the force, that is necessary and reasonable in the circumstances.	12 13 14 15 16
589	Treatment of involuntary patients without consent and with use of reasonable force	17 18
	(1) Subject to this Act, an involuntary patient, other than a person subject to an examination authority, recommendation for assessment or judicial order, may be treated for the patient's mental illness without the consent of the patient or anyone else.	19 20 21 22 23
	(2) A person lawfully providing, or lawfully helping to provide, treatment and care to an involuntary patient may use the force that is necessary and reasonable in the circumstances to provide or help provide the treatment and care.	24 25 26 27
	(3) However, subsection (2) does not apply to a person lawfully providing, or lawfully helping to provide, treatment and care to an involuntary patient in a corrective services facility, watch house or youth detention centre.	28 29 30 31

[s 590]

	(4) To avoid any doubt, it is declared that this section does not authorise treatment and care of an involuntary patient that is inconsistent with this Act.	1 2 3
	<i>Example of treatment and care that is inconsistent with this Act—</i>	4
	a psychiatrist performing electroconvulsive therapy on a person other than under chapter 7, part 8, division 3	5 6
590	Examination or assessment of involuntary patients without consent and with use of reasonable force	7 8
	(1) Subject to this Act, an examination or assessment of an involuntary patient may be made under this Act without the consent of the person or anyone else.	9 10 11
	(2) A person lawfully making, or lawfully helping to make, an examination or assessment of an involuntary patient may use the force that is necessary and reasonable in the circumstances to make, or help to make, the examination or assessment of the involuntary patient.	12 13 14 15 16
	(3) However, subsection (2) does not apply to a person lawfully making, or lawfully helping to make, an examination or assessment of an involuntary patient in a corrective services facility, watch house or youth detention centre.	17 18 19 20
	<i>Note—</i>	21
	See also the <i>Guardianship and Administration Act 2000</i> , sections 63 and 75 which deal with carrying out urgent health care and the use of force to carry out health care authorised under that Act.	22 23 24

Part 5	Evidentiary provisions	25
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591	Evidentiary provisions	26
	(1) This section applies to a proceeding under this Act.	27

[s 591]

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- (2) The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—
- (a) the chief psychiatrist's appointment;
 - (b) the appointment of the administrator of an authorised mental health service;
 - (c) an authorised doctor's appointment;
 - (d) an authorised mental health practitioner's appointment;
 - (e) an inspector's appointment;
 - (f) an authorised person's appointment;
 - (g) the authority of the following to do anything under this Act—
 - (i) the Minister;
 - (ii) the chief psychiatrist;
 - (iii) the administrator of an authorised mental health service;
 - (iv) an authorised doctor;
 - (v) an authorised mental health practitioner;
 - (vi) an inspector;
 - (vii) an authorised person.
- (3) A signature purporting to be the signature of the following is evidence of the signature it purports to be—
- (a) the Minister;
 - (b) the chief psychiatrist;
 - (c) the president;
 - (d) the administrator of an authorised mental health service;
 - (e) an authorised doctor;
 - (f) an authorised mental health practitioner;
 - (g) an inspector;
-

[s 592]

- (h) an authorised person. 1
- (4) A certificate purporting to be signed by the chief psychiatrist 2
and stating any of the following matters is evidence of the 3
matter— 4
 - (a) a stated document is a copy of an authority, order, 5
notice, declaration, direction or decision made, issued or 6
given under this Act; 7
 - (b) on a stated day, or during a stated period, a stated person 8
was or was not an involuntary patient, a stated type of 9
involuntary patient or a classified patient (voluntary); 10
 - (c) a stated place is, or was on a stated day or during a 11
stated period, an authorised mental health service or 12
high security unit; 13
 - (d) on a stated day, a stated person was given a stated 14
authority, order, notice, declaration, direction or 15
decision under this Act; 16
 - (e) on a stated day, a stated requirement was made of a 17
stated person; 18
 - (f) a stated document is a copy of a part of a register kept 19
under this Act. 20
- (5) A document purporting to be signed by a member or the 21
executive officer of the tribunal and to be an order or decision, 22
or copy of an order or decision, of the tribunal, is evidence of 23
the order or decision. 24

592 Proceedings for offences 25

- (1) A proceeding for an offence against this Act must be taken in 26
a summary way under the *Justices Act 1886*. 27
- (2) The proceeding must start within the later of— 28
 - (a) 1 year after the offence is committed; or 29
 - (b) 1 year after the offence comes to the complainant's 30
knowledge, but within 2 years after the offence is 31
committed. 32

Chapter 16	Establishment and administration of tribunal and court	1 2 3
Part 1	Mental Health Review Tribunal	4
Division 1	Preliminary	5
593	Definitions for pt 1	6
	In this part—	7
	<i>party</i> , to a proceeding—	8
	(a) for a proceeding under chapter 12—means a person who has a right to appear in person at the hearing of the proceeding; or	9 10 11
	(b) for an appeal to the tribunal under chapter 13—see section 495.	12 13
	<i>proceeding</i> means a proceeding in the tribunal.	14
Division 2	Continuation, jurisdiction and powers	15 16
594	Continuation of Mental Health Review Tribunal	17
	(1) The Mental Health Review Tribunal established under the repealed Act is continued in existence.	18 19
	(2) The tribunal consists of the president, the deputy president and other members.	20 21

[s 595]

595	Jurisdiction	1
	The tribunal has jurisdiction to—	2
	(a) review the following—	3
	(i) treatment authorities;	4
	(ii) forensic orders;	5
	(iii) court treatment orders;	6
	(iv) a person’s fitness for trial;	7
	(v) the imposition of a monitoring condition under section 217 requiring a particular patient to wear a tracking device;	8 9 10
	(vi) the detention of minors in high security units; and	11
	(b) hear applications for the following—	12
	(i) examination authorities;	13
	(ii) approvals of regulated treatments;	14
	(iii) approvals of transfers of particular patients into and out of the Queensland; and	15 16
	(c) decide appeals under chapter 13, part 2.	17
 596	 Procedure of tribunal	 18
	The tribunal must exercise its jurisdiction in a way that is fair, just, economical, informal and timely.	19 20
 597	 Powers	 21
	(1) The tribunal may do all things necessary or convenient to be done for, or in relation to, exercising its jurisdiction.	22 23
	(2) Without limiting subsection (1), the tribunal has the powers conferred on it by this Act.	24 25

Division 3	Members and staff of tribunal	1
598	Appointment of members	2
(1)	The president is to be appointed by the Governor in Council on a full-time basis.	3 4
(2)	The deputy president and other members are to be appointed by the Governor in Council on a full-time or part-time basis.	5 6
(3)	A person is eligible for appointment as the president or deputy president only if the person—	7 8
(a)	is a lawyer of at least 7 years standing; and	9
(b)	has, in the Minister’s opinion, sufficient knowledge of administrative law and this Act.	10 11
(4)	A person is eligible for appointment as another member only if—	12 13
(a)	the person—	14
(i)	is a lawyer of at least 5 years standing; or	15
(ii)	is a psychiatrist; or	16
(iii)	has other qualifications and experience the Minister considers relevant to exercising the tribunal’s jurisdiction; and	17 18 19
(b)	the Minister is satisfied the person has sufficient knowledge of the competencies developed by the president under section 605(3).	20 21 22
(5)	In recommending a person for appointment as a member, the Minister must have regard to—	23 24
(a)	the need for a balanced gender representation in the membership of the tribunal; and	25 26
(b)	the range and experience of members; and	27
(c)	the need for the membership of the tribunal to reflect the social and cultural diversity of the general community.	28 29

[s 599]

(6)	Also, in recommending persons for appointment as members, if the Minister is not responsible for administering the Forensic Disability Act, the Minister must consult with the Minister responsible for administering that Act.	1 2 3 4
(7)	Members are appointed under this Act and not the <i>Public Service Act 2008</i> .	5 6
599	Duration of appointment	7
(1)	The president holds office for a term of not more than 5 years stated in the president's instrument of appointment.	8 9
(2)	The deputy president and other members hold office for a term of not more than 3 years stated in the member's instrument of appointment.	10 11 12
600	Terms of appointment	13
(1)	Members are entitled to be paid the remuneration and allowances decided by the Governor in Council.	14 15
(2)	For matters not provided for by this Act, members hold office on the terms and conditions decided by the Governor in Council.	16 17 18
601	Resignation	19
	A member may resign office by signed notice given to the Minister.	20 21
602	Termination of appointment	22
(1)	The Governor in Council may terminate the appointment of a member if the Governor in Council is satisfied the member—	23 24
(a)	is incapable of satisfactorily performing the member's functions; or	25 26
(b)	performed the member's functions carelessly, incompetently or inefficiently; or	27 28

[s 603]

	(c) is guilty of misconduct that could warrant dismissal from the public service if the member were a public service officer.	1 2 3
	(2) The Governor in Council must terminate the appointment of a member if the member—	4 5
	(a) ceases to be eligible for appointment as a member; or	6
	(b) is convicted of an indictable offence.	7
603	Deputy president to act as president	8
	The deputy president is to act in the office of the president during—	9 10
	(a) any period the office is vacant; or	11
	(b) all periods when the president is absent from duty or from Queensland, or, for another reason, can not perform the functions of the office.	12 13 14
604	Executive officer and other staff	15
	(1) The president must appoint an executive officer of the tribunal and other staff necessary for the tribunal to exercise its jurisdiction.	16 17 18
	(2) The executive officer and other staff are appointed under the <i>Public Service Act 2008</i> .	19 20
	(3) The president is responsible for the organisational unit made up of staff of the tribunal and for the organisational unit's efficient and effective administration and operation.	21 22 23
	(4) The president has all the functions and powers of the chief executive of a department, to the extent the functions and powers relate to the organisational unit made up of staff of the tribunal.	24 25 26 27
605	President's functions generally	28
	(1) The functions of the president include—	29

[s 606]

(a)	ensuring the quick and efficient discharge of the tribunal's business; and	1 2
(b)	giving directions about—	3
(i)	the arrangement of the tribunal's business; and	4
(ii)	the number of members to constitute the tribunal for a particular hearing; and	5 6
(iii)	the members who are to constitute the tribunal for a particular hearing; and	7 8
(iv)	the places and times the tribunal is to sit; and	9
(c)	other functions conferred on the president under this Act.	10 11
(2)	Also, the president must ensure members are adequately and appropriately trained, to enable the tribunal to perform its functions effectively and efficiently.	12 13 14
(3)	For subsection (2), the president must develop competencies in administrative law, the operation of this Act and mental health and intellectual disability issues including forensic mental health and forensic intellectual disability issues.	15 16 17 18
(4)	A direction mentioned in subsection (1) must not be inconsistent with this Act.	19 20
606	President's powers	21
(1)	The president has the powers given under this Act.	22
(2)	Also, the president may do all things necessary or convenient to be done to perform the president's functions.	23 24
Division 4	Constitution of tribunal for hearings	25
607	Members constituting tribunal for particular matters	26
(1)	This section applies to—	27

[s 608]

-
- (a) a proceeding for a review under chapter 12; or
1
 - (b) a proceeding for hearing an application under chapter 12 for—
2
3

 - (i) approval to perform electroconvulsive therapy; or
4
 - (ii) approval of the transfer of a forensic patient into or out of Queensland; or
5
6
 - (c) an appeal under chapter 13, part 2.
7
 - (2) The tribunal must be constituted by at least 3, but not more than 5, members of whom—
8
9

 - (a) at least 1 must be a lawyer; and
10
 - (b) at least 1 must be a psychiatrist or, if a psychiatrist is not readily available but another doctor is available, another doctor; and
11
12
13
 - (c) at least 1 person who is not a lawyer or doctor.
14
 - (3) However, for a proceeding for a review of a treatment authority or for hearing an application for approval to perform electroconvulsive therapy, the tribunal may be constituted by less than 3 members if the president is satisfied—
15
16
17
18

 - (a) for hearing an application for approval to perform electroconvulsive therapy—electroconvulsive therapy has been performed under section 229 or approval to perform electroconvulsive therapy is required urgently; and
19
20
21
22
23
 - (b) it is appropriate, expedient and in the patient's best interests to do so.
24
25

608

Lawyer to constitute tribunal for decision on application for examination authority

26
27

For a proceeding for hearing an application for an examination authority, the tribunal must be constituted by at least 1 member who is a lawyer.

28
29
30

[s 609]

609	Members constituting tribunal for decision on application for approval to perform non-ablative neurosurgical procedure	1 2 3
	For a proceeding for hearing an application for approval to perform a non-ablative neurosurgical procedure, the tribunal must be constituted by 5 members as follows—	4 5 6
	(a) the president, deputy president or another a lawyer of at least 7 years standing;	7 8
	(b) 2 psychiatrists;	9
	(c) 1 neurosurgeon;	10
	(d) 1 member who is not a lawyer or doctor.	11
610	Matters president to consider in constituting tribunal	12
	(1) In deciding the tribunal’s constitution for a proceeding, the president must—	13 14
	(a) for a proceeding in relation to an involuntary patient—	15
	(i) have regard to the safety and welfare of the patient and others; and	16 17
	(ii) have regard to the patient’s mental condition; and	18
	(b) to the extent practicable, include a member who is culturally appropriate to the patient the subject of the proceeding.	19 20 21
	(2) Also, for a proceeding in relation to a minor, if the tribunal is required to be constituted by at least 1 psychiatrist, the psychiatrist must have expertise in child psychiatry.	22 23 24
	<i>Note—</i>	25
	See sections 607(2) and 609 for when the tribunal is required to be constituted by at least 1 psychiatrist.	26 27
611	Presiding member	28
	(1) The presiding member for a proceeding is—	29

[s 612]

-
- (a) if the tribunal is constituted by 1 member—the constituting member; or
1
2
 - (b) if the tribunal is constituted by more than 1 member—the member decided by the president.
3
4
 - (2) However, if the tribunal is constituted under section 607(2) or 608, the presiding member must be a lawyer.
5
6

Division 5 **Examinations, confidentiality orders and reports** 7 8

612 Tribunal may order examination 9

- (1) The tribunal may order a relevant person to submit to an examination by a stated examining practitioner.
10
11
- (2) If the proceeding is for a review under chapter 12, the examining practitioner must not be responsible for the relevant person.
12
13
14
- (3) The order must state the matters on which the examining practitioner must report on to the tribunal.
15
16
- (4) The order may, if the proceeding is for a review under chapter 12—
17
18
- (a) direct an authorised person to transport the relevant person immediately to the examining practitioner; or
19
20
- (b) direct the relevant person to attend at the examining practitioner within a stated time, of not more than 28 days, after the order is made.
21
22
23
- (5) The order authorises the examining practitioner to examine the relevant person without the person’s consent.
24
25
- (6) The examining practitioner must give the tribunal a written report on the examination.
26
27
- (7) In this section—
examining practitioner means—
28
29

[s 613]

- (a) a psychiatrist; or 1
- (b) a health practitioner other than a psychiatrist; or 2
- (c) a person with expertise in the care of persons who have 3
an intellectual disability. 4

relevant person means— 5

- (a) an involuntary patient the subject of any proceeding; or 6
- (b) any person who is the subject of a review under chapter 7
12. 8

613 Confidentiality orders 9

(1) The tribunal may, by order (a *confidentiality order*), prohibit 10
or restrict the disclosure of any of the following to a person 11
the subject of a proceeding— 12

- (a) information given before it; 13
- (b) matters contained in documents filed with, or received 14
by, it; 15
- (c) the reasons for its decision on the proceeding. 16

(2) However, the tribunal may make a confidentiality order only 17
if satisfied the disclosure would— 18

- (a) cause serious harm to the health and wellbeing of the 19
person; or 20
- (b) put the safety of the person or others at serious risk. 21

(3) If the tribunal makes a confidentiality order for the person, the 22
tribunal must— 23

- (a) disclose the information, matters or reasons the subject 24
of the order to a lawyer or another representative of the 25
person; and 26
- (b) give written reasons for the order to the lawyer or other 27
representative. 28

-
- | | |
|--|-------------|
| (4) If the person is not represented, the tribunal must ensure a lawyer or another representative is appointed for subsection (3). | 1
2
3 |
| (5) A person must not contravene a confidentiality order unless the person has a reasonable excuse. | 4
5 |
| Maximum penalty for subsection (5)—100 penalty units. | 6 |

614	Reports for particular review proceedings	7
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- | | |
|--|----------------------|
| (1) This section applies if the tribunal is reviewing any of the following— | 8
9 |
| (a) a treatment authority; | 10 |
| (b) a forensic order (mental condition) or forensic order (disability); | 11
12 |
| (c) a court treatment order; | 13 |
| (d) a person's fitness for trial; | 14 |
| (e) the detention of a minor in a high security unit. | 15 |
| (2) The tribunal must ensure a treating practitioner for the person the subject of the review prepares a report, in the approved form, about— | 16
17
18 |
| (a) the relevant circumstances for the person; and | 19 |
| (b) other matters relevant to a decision the tribunal may make under chapter 2 on the review. | 20
21 |
| (3) At least 7 days before the hearing of the review, the treating practitioner must give a copy of the report to— | 22
23 |
| (a) the tribunal; and | 24 |
| (b) the person the subject of the review. | 25 |
| (4) However, the treating practitioner is not required to comply with subsection (3)(b) if the treating practitioner intends to apply to the tribunal for a confidentiality order in relation to the report. | 26
27
28
29 |
| (5) In this section— | 30 |

[s 615]

	<i>treating practitioner</i> , for a person the subject of a review, means—	1 2
	(a) a psychiatrist treating the person; or	3
	(b) a senior practitioner under the Forensic Disability Act responsible for performing obligations for the person under chapter 2, part 1 of that Act.	4 5 6
Division 6	Procedural provisions for ch 12 proceedings	7 8
Subdivision 1	Applications	9
615	Application of sdiv 1	10
	This subdivision applies to an application made to the tribunal under chapter 12.	11 12
616	Approved form	13
	The application must be made in the approved form.	14
617	Frivolous or vexatious application	15
	If the application is made by the person who is the subject of the proceeding or an interested person for the person, the tribunal may dismiss the application if the tribunal is satisfied the application is frivolous or vexatious.	16 17 18 19
618	Hearing of application	20
	The tribunal must hear the application—	21
	(a) for an application for an examination authority or for approval to perform electroconvulsive therapy on a person in an emergency—as soon as practicable; or	22 23 24

[s 619]

- (b) for any other application under chapter 12, part 10, division 1—as soon as practicable, but not later than 7 days, after the application is made; or
1
2
3
- (c) for any other application—within 28 days after the application is made.
4
5

Subdivision 2 **Adjournment of hearing of particular periodic reviews** 6 7

619 Application of sdiv 2 8

- (1) This subdivision applies if—
9
- (a) the administrator of an authorised mental health service, or the forensic disability service, is responsible for a person (the *relevant person*) subject to a treatment authority or court treatment order; and
10
11
12
13
- (b) within 7 days before the hearing of a periodic review under chapter 12 (the *scheduled review*) of the treatment authority or court treatment order for the relevant person—
14
15
16
17
- (i) the relevant person becomes a patient required to return; and
18
19
- (ii) the person’s treating health service or the forensic disability service can not locate the person.
20
21
- (2) This subdivision also applies if—
22
- (a) an authorised mental health service is responsible for a person (also *the relevant person*) subject to a forensic order; and
23
24
25
- (b) within 14 days before the hearing of a periodic review under chapter 12 (also the *scheduled review*) of the forensic order for the relevant person—
26
27
28
- (i) the relevant person is absent without permission from the person’s treating health service; and
29
30

[s 620]

	(ii) the person’s treating health service can not locate the person.	1 2
620	Definitions for sdiv 2	3
	In this subdivision—	4
	<i>relevant person</i> see section 619(1)(a) and (2)(a).	5
	<i>scheduled review</i> see section 619(1)(b) and (2)(b).	6
621	Adjournment of hearing of scheduled review	7
	(1) The administrator of the relevant person’s treating health service or of the forensic disability service must give the tribunal written notice of the relevant person’s absence.	8 9 10
	(2) When the tribunal receives the notice—	11
	(a) the hearing of the review is taken to be adjourned; and	12
	(b) the requirement for the tribunal to conduct the scheduled review under chapter 12, part 2, 3 or 5 stops applying.	13 14
622	Hearing of scheduled review to be conducted on person’s return	15 16
	(1) On the return of the relevant person to the relevant person’s treating health service, the administrator of the relevant person’s treating health service must give the tribunal written notice of the relevant person’s return.	17 18 19 20
	(2) The tribunal must, within 21 days after the day it receives the notice, hear the scheduled review.	21 22

Division 7	General procedural provisions	1
Subdivision 1	Preliminary	2
623	Application of div 7	3
	This division applies to any proceeding in the tribunal under this Act.	4 5
624	Conducting proceedings generally	6
(1)	The procedure for a proceeding is at the discretion of the tribunal, subject to this Act and the tribunal rules.	7 8
(2)	In all proceedings, the tribunal must act fairly and according to the substantial merits of the case.	9 10
(3)	In conducting a proceeding, the tribunal—	11
(a)	must observe the rules of natural justice; and	12
(b)	must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the matters before the tribunal; and	13 14 15
(c)	is not bound by the rules of evidence; and	16
(d)	may inform itself on a matter in a way it considers appropriate; and	17 18
(e)	must ensure, to the extent practicable, that all relevant material is disclosed to the tribunal to enable it to decide the proceeding with all the relevant facts.	19 20 21
625	Presentation of party's case and inspection of documents	22 23
(1)	A party to a proceeding must be given a reasonable opportunity to present the party's case, and in particular to inspect a document to which the tribunal proposes to have	24 25 26

[s 626]

regard in reaching a decision in the proceeding and to make
submissions about the document. 1 2

- (2) However, a party's right to inspect a document under this
section is subject to a confidentiality order or an order under
section 634(4). 3 4 5

Subdivision 2 Pre-hearing matters 6

626 Matters to be stated in notice of hearing 7

If the tribunal is required to give notice of the hearing of the
proceeding to stated persons, the notice must state the
following— 8 9 10

- (a) the nature of the hearing; 11
(b) the time and place of the hearing; 12
(c) the rights at the hearing of the person who is the subject
of the proceeding. 13 14

627 Right to appear 15

- (1) A person who is entitled be given notice of the hearing of the
proceeding has a right to appear in person at the hearing. 16 17
(2) Also, without limiting subsection (1), the chief psychiatrist
may, with the leave of the tribunal, appear in person at the
hearing of the proceeding. 18 19 20
(3) However, despite subsection (1), the following do not have a
right to appear in person at the hearing of the proceeding— 21 22
(a) the administrator of an authorised mental health service; 23
(b) the administrator of the forensic disability service. 24

628 Attorney-General to give notice of intention to appear 25

- (1) This section applies in relation to the hearing of the following
proceedings— 26 27

-
- (a) a review under chapter 12, part 3 or 4; 1
 - (b) an application under chapter 12, part 11. 2
 - (2) The Attorney-General may be represented at the hearing of 3
the proceeding by a lawyer. 4
 - (3) If the Attorney-General intends to appear or be represented at 5
the hearing of the proceeding, the Attorney-General must, as 6
soon as practicable and not later than 7 days before the 7
hearing, give notice to the tribunal. 8
 - (4) The Attorney-General's role at the hearing of the proceeding 9
is to represent the public interest. 10

629 Disclosure of documents to be relied on in hearing 11

- (1) If a party to a proceeding intends to rely on a document in the 12
hearing of a proceeding, the party must give a copy of the 13
document to each other party to the proceeding at least 3 days 14
before the hearing. 15
- (2) However, if a party to the proceeding intends to apply to the 16
tribunal for a confidentiality order in relation to a document, 17
the party— 18
 - (a) is not required to give a copy of the document under 19
subsection (1) to the person the subject of the 20
proceeding; and 21
 - (b) if the person is represented by a lawyer or another 22
person—must give a copy of the document to the lawyer 23
or other person. 24
- (3) In this section— 25
document does not include a victim impact statement. 26

[s 630]

Subdivision 3	Hearings	1
630	Right of representation and support	2
(1)	The person who is the subject of the proceeding may be represented at the hearing of the proceeding by a nominated support person, a lawyer or another person.	3 4 5
(2)	Also, the person who is the subject of the proceeding may be accompanied at the hearing of the proceeding by—	6 7
(a)	1 nominated support person, family member, carer or other support person; or	8 9
(b)	with the tribunal’s leave, more than 1 nominated support person.	10 11
	<i>Note—</i>	12
	See section 653 for the tribunal’s power to exclude a person from a tribunal proceeding.	13 14
631	Appointment of representative	15
(1)	This section applies if the person the subject of the proceeding is not represented by a lawyer or another person at the hearing of the proceeding.	16 17 18
(2)	The tribunal may appoint a lawyer or another person (the <i>appointed representative</i>) to represent the person if the tribunal considers it would be in the person’s best interests to be represented at the hearing.	19 20 21 22
(3)	Also, the tribunal must appoint a lawyer (also an <i>appointed representative</i>) to represent the person at a hearing if—	23 24
(a)	the person is a minor; or	25
(b)	the hearing is for any of the following—	26
(i)	a review under chapter 12, part 6, division 1 of the person’s fitness for trial;	27 28
(ii)	a review under chapter 12, part 7 of the imposition of a monitoring condition on the forensic order to	29 30

[s 632]

-
- which the person is subject to require the person to
wear a tracking device; 1
2
 - (iii) an application under chapter 12, part 10, division 1,
for approval to perform electroconvulsive therapy
on the person; or 3
4
5
 - (c) the Attorney-General is to appear or be represented at
the hearing. 6
7
 - (4) The appointed representative must— 8
 - (a) to the extent the person is able to express his or her
views, wishes and preferences—represent the person’s
views, wishes and preferences; and 9
10
11
 - (b) to the extent the person is unable to express his or her
views, wishes and preferences—represent the person’s
best interests. 12
13
14
 - (5) If the person is an adult with capacity, the person may, in
writing, waive the right to be represented by the appointed
representative. 15
16
17
 - (6) For subsection (5), the person has capacity to waive the right
if the person has the ability to understand the nature and effect
of a decision to waive the right, and the ability to make and
communicate the decision. 18
19
20
21
 - (7) The appointment of a lawyer as the person’s appointed
representative under subsection (3) is at no cost to the person. 22
23

632 Hearing not open to public 24

- (1) A hearing of a proceeding must not be open to the public
unless the tribunal, by order, directs the hearing or part of the
hearing be open to the public. 25
26
27
- (2) However, the tribunal must not order a hearing be open to the
public if the person the subject of the hearing is a minor. 28
29
- (3) Also, the tribunal may make an order directing a hearing or
part of a hearing be open to the public only if it is satisfied— 30
31

[s 633]

- (a) the person the subject of the hearing, or a lawyer or other representative of the person, has agreed to the order; and 1
2
3
- (b) the order will not result in serious harm to the person's health or risk the safety of anyone else. 4
5

633 Observer may attend hearing 6

- (1) A person (an *observer*) may attend a hearing that is not open to the public under section 632 to observe the hearing if— 7
8
 - (a) the president gives approval for the observer's attendance at the hearing; and 9
10
 - (b) the person the subject of the hearing has agreed to the observer's attendance. 11
12
- (2) However, 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. 13
14
15

634 Victim impact statement 16

- (1) For the hearing of a review of a forensic order or court treatment order for a person in relation to an unlawful act, a victim of the unlawful act or a close relative of the victim may give the tribunal a victim impact statement in relation to the unlawful act. 17
18
19
20
21
- (2) The victim impact statement may include a request by the victim or close relative giving the statement that the tribunal impose a condition on the forensic order or court treatment order that the person must not contact— 22
23
24
25
 - (a) the victim of the unlawful act, or the close relative of the victim, giving the statement; or 26
27
 - (b) another close relative of the victim. 28
- (3) The tribunal must ensure the victim impact statement is not disclosed to the parties to the proceeding unless the victim or close relative giving the statement otherwise asks. 29
30
31

-
- (4) If the victim or close relative giving the statement makes a request under subsection (3), the tribunal may, by order, prohibit the disclosure of the statement to the person subject to the forensic order or court treatment order if the tribunal is satisfied the victim impact statement may adversely affect the health and wellbeing of the person.
- (5) If the tribunal makes an order under subsection (4), the tribunal may disclose the victim impact statement to a lawyer or another representative of the person if the tribunal is satisfied it is in the person's best interests.

635 Requiring witness to attend or produce document or thing

- (1) The presiding member may, by written notice given to a person (an *attendance notice*), require the person to—
- (a) attend a hearing of a proceeding at a stated time and place to give evidence; or
- (b) produce a stated document or thing that is relevant to the hearing.
- Examples of a document that may be relevant to a hearing—*
- a medical report or clinical file for the person the subject of the proceeding
- Note—*
- See section 650 for the consequences of failing to comply with an attendance notice.
- (2) The presiding member may—
- (a) require the evidence to be given on oath; or
- (b) allow a person appearing as a witness at a hearing to give information by tendering a written statement, verified, if the member directs, by oath.
- (3) For subsection (2)(a), the presiding member may administer an oath.

[s 636]

636	Tribunal to allow party to call or give evidence	1
	In a proceeding, the tribunal must allow a party to the proceeding to call or give any evidence.	2 3
637	Proceeding by remote conferencing or on the papers	4
(1)	The tribunal may, if appropriate, conduct all or a part of a proceeding by remote conferencing.	5 6
(2)	Also, for the hearing of a proceeding for a review of a treatment authority, the tribunal may conduct all or a part of the proceeding entirely on the basis of documents, without the parties, their representatives or witnesses appearing at the hearing, if the person the subject of the treatment authority does not wish to attend or be represented by another person at the hearing.	7 8 9 10 11 12 13
(3)	Provisions of this Act applying to a hearing apply with necessary changes in relation to a proceeding conducted under subsection (1) or (2).	14 15 16
	<i>Examples—</i>	17
1	If a hearing is conducted under subsection (1) or (2), section 632 continues to apply to the proceeding as if the parties to the proceeding were present before the tribunal.	18 19 20
2	If a hearing is conducted under subsection (2), section 402 will have no application.	21 22
638	Proceeding in absence of involuntary patient	23
(1)	If a proceeding relates to an involuntary patient, the tribunal may hear the proceeding in the absence of the patient if the tribunal considers—	24 25 26
(a)	either—	27
(i)	the administrator of the patient's treating health service has taken reasonable steps to ensure the patient attends the hearing of the proceeding and the patient is absent because of the patient's own free will; or	28 29 30 31 32

	(ii) the patient is unfit to appear; and	1
	(b) it is appropriate and expedient to do so.	2
	(2) Subsection (1) has effect despite sections 624 and 625.	3
639	Tribunal may conduct hearings of proceedings at same time	4 5
	(1) Nothing in this chapter prevents the tribunal hearing different proceedings under this Act that relate to the same person at the same time.	6 7 8
	(2) Without limiting subsection (1), the tribunal may conduct the hearings of more than 1 review under this chapter that relate to the same person at the same time.	9 10 11
	<i>Examples for subsection (2)—</i>	12
	• hearing an applicant review of a forensic order for a person at the same time as a periodic review of the forensic order for the person	13 14
	• hearing a periodic review of a forensic order for a person at the same time as a review of the person's fitness for trial	15 16
	(3) In deciding whether to conduct more than 1 hearing for the same person at the same time, the tribunal must have regard to whether it is in the person's best interests to do so.	17 18 19
640	Tribunal may adjourn proceeding	20
	The tribunal may adjourn a proceeding for a period of not more than 28 days or a longer period directed by the president.	21 22 23
641	Appointment of assistants	24
	The tribunal may appoint a person with appropriate knowledge or experience to assist it in a proceeding, including, for example—	25 26 27
	(a) a person with appropriate communication skills or appropriate cultural or social knowledge or experience;	28 29
	or	30

[s 642]

- (b) a person with expertise in the care of persons with an intellectual disability. 1
2

642 Dealing with documents or other things 3

- (1) If a document or other thing is produced to the tribunal in a proceeding, the tribunal may— 4
5
 - (a) inspect the document or thing; and 6
 - (b) make copies of, photograph, or take extracts from, the document or thing if it is relevant to the proceeding. 7
8
- (2) The tribunal may also keep the document or thing while it is necessary for the proceeding. 9
10
- (3) While the tribunal keeps a document or other thing, the tribunal must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at the reasonable time and place the tribunal decides. 11
12
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643 Way questions decided 16

- (1) The tribunal’s decision on a question of law arising in a proceeding is the decision of the presiding member on the question. 17
18
19
- (2) However, if the tribunal is constituted by 1 member who is not a lawyer— 20
21
 - (a) the member must refer the question of law to another member who is a lawyer to decide; and 22
23
 - (b) the other member must decide the question; and 24
 - (c) for subsection (1), the decision of the other member is taken to be the decision of the presiding member. 25
26
- (3) If the members constituting the tribunal in a proceeding are divided in opinion about the decision to be made on another question in the proceeding, the tribunal’s decision on the question is— 27
28
29
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[s 644]

-
- (a) if there is a majority of the same opinion—the decision of the majority; or
 - (b) otherwise—the decision of the presiding member.

644 Publication

- (1) 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, in a way it considers appropriate.
- (2) However, the publication of the decision or reasons for the decision must not identify any person.
- (3) Also, the tribunal must ensure the publication of the decision or reasons does not include something the subject of a confidentiality order or an order under section 634(4), if including the thing in the publication would contravene the order.

645 Costs

Each party to a proceeding is to bear the party's own costs.

Subdivision 4 Decision of tribunal

646 Notice of decision

- (1) The tribunal must, within 7 days after making its decision in a proceeding, give each person who was entitled to be given notice of the hearing of the proceeding written notice of the decision.
- (2) The notice must—
 - (a) state that the person to whom the notice is given may ask the tribunal for written reasons for its decision;

[s 647]

(b) state the rights under this Act to appeal the tribunal's
decision. 1
2

(3) Also, if a proceeding is for a review of a person's fitness for
trial under chapter 12, part 6, the tribunal must give the
director of public prosecutions notice of its decision. 3
4
5

Note— 6

If the tribunal decides on the review that the person is unfit for trial, it
must also decide whether the person is likely to be fit for trial in a
reasonable time—see section 448(2). 7
8
9

647 Written reasons for decision 10

(1) The tribunal must, on request by a person mentioned in
section 646(1), give the person written reasons for the
tribunal's decision. 11
12
13

(2) The tribunal must comply with the request within 21 days
after the day it receives the request. 14
15

(3) However, subsection (2) applies subject to a confidentiality
order of the tribunal. 16
17

(4) Despite section 646 and subsections (1) and (2), the tribunal
must give the Attorney-General and chief psychiatrist the
reasons for the tribunal's decision within 21 days after the day
the tribunal receives a request from the Attorney-General or
chief psychiatrist. 18
19
20
21
22

648 Requirement to give effect to tribunal decisions 23

Each of the following persons must, as soon as practicable
after the person receives notice of the tribunal's decision in the
proceeding, ensure the tribunal's decision is given effect— 24
25
26

(a) if the administrator of an authorised mental health
service is responsible for the person the subject of the
proceeding—the administrator; 27
28
29

(b) if the forensic disability service is responsible for the
person the subject of the proceeding— 30
31

- (i) the director of forensic disability; and 1
- (ii) the administrator of the forensic disability service. 2

Subdivision 5Revocation of particular forensic orders and court treatment orders3 4

649 Order for missing person 5

- (1) This section applies if a person who is subject to a relevant order is a patient required to return for a period of more than 3 years. 6
7
8
- (2) The president of the tribunal may revoke the relevant order for the person if the president considers, on information provided to the tribunal by the administrator of the person's treating health service, or of the forensic disability service, that— 9
10
11
12
 - (a) the person is unlikely to return to Queensland; or 13
 - (b) the person is presumed to have died. 14
- (3) The tribunal must, within 7 days after the day the relevant order is revoked, give written notice of the revocation to— 15
16
 - (a) if the administrator of an authorised mental health service is responsible for the person—the administrator of the authorised mental health service; or 17
18
19
 - (b) if the forensic disability service is responsible for the person—the director of forensic disability. 20
21
- (4) In this section— 22

relevant order means— 23

 - (a) a forensic order; or 24
 - (b) a court treatment order. 25

[s 650]

Division 8	Offences and contempt	1
650	Offences by witnesses	2
(1)	A person given an attendance notice must not, without reasonable excuse—	3
(a)	fail to attend as required by the notice; or	4
(b)	fail to continue to attend as required by the presiding member until excused from further attendance; or	5
(c)	fail to produce a document or other thing the person is required to produce by the attendance notice.	6
	Maximum penalty—100 penalty units.	7
(2)	A person appearing as a witness at a hearing of a proceeding must not—	8
(a)	fail to take an oath or make an affirmation when required by the presiding member; or	9
(b)	fail, without reasonable excuse, to answer a question the person is required to answer by the presiding member.	10
	Maximum penalty—100 penalty units.	11
(3)	It is a reasonable excuse for a person to fail to answer a question or to produce a document or other thing if answering the question or producing the document or thing might tend to incriminate the person.	12
651	False or misleading information or document	13
(1)	A person must not state to the tribunal or staff of the tribunal anything the person knows is false or misleading in a material particular.	14
	Maximum penalty—100 penalty units.	15
(2)	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.	16

[s 652]

Maximum penalty—100 penalty units.	1
(3) Subsection (2) does not apply to a person if the person, when giving the document—	2 3
(a) tells the tribunal or staff of the tribunal, to the best of the person's ability, how it is false or misleading; and	4 5
(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.	6 7
652 Fabricating evidence	8
The tribunal is a tribunal for the Criminal Code, section 126.	9
<i>Note—</i>	10
The Criminal Code, section 126 deals with fabricated evidence in judicial proceedings.	11 12
653 Contempt of tribunal	13
(1) A person is in contempt of the tribunal if the person—	14
(a) insults a member or a staff member of the tribunal at a proceeding, or in going to or returning from a proceeding; or	15 16 17
(b) unreasonably interrupts a proceeding, or otherwise misbehaves at a proceeding; or	18 19
(c) creates or continues, or joins in creating or continuing, a disturbance in or near a place where a proceeding is being conducted; or	20 21 22
(d) obstructs or assaults a person attending a proceeding; or	23
(e) obstructs a member in the performance of the member's functions or the exercise of the member's powers; or	24 25
(f) obstructs a person acting under an order made under this Act by the tribunal or a member; or	26 27
(g) without lawful excuse, disobeys a lawful order or direction of the tribunal made or given under this Act; or	28 29

[s 654]

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|-----------------------------------|--|-------------------|
| (h) | does anything at a proceeding or otherwise that would be contempt of court if the tribunal were a court of record. | 1
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3 |
| (2) | The tribunal may order that a person who contravenes subsection (1) at a proceeding be excluded from the place where the proceeding is being conducted. | 4
5
6 |
| (3) | A staff member of the tribunal or a health practitioner, acting under the tribunal's order, may, with the help that is necessary and reasonable in the circumstances, exclude the person from the place. | 7
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10 |
| 654 Punishment of contempt | | 11 |
| (1) | Without limiting the tribunal's power under section 653, a person's contempt of the tribunal may be punished under this section. | 12
13
14 |
| (2) | The president may certify the contempt in writing to the Supreme Court (the <i>court</i>). | 15
16 |
| (3) | For subsection (2), it is enough for the president to be satisfied there is evidence of contempt. | 17
18 |
| (4) | The president may issue a warrant directed to a police officer or all police officers for the arrest of the person to be brought before the court to be dealt with according to law. | 19
20
21 |
| (5) | The <i>Bail Act 1980</i> applies to the proceeding for the contempt started by the certification in the same way it applies to a charge of an offence. | 22
23
24 |
| (6) | The court must inquire into the alleged contempt. | 25 |
| (7) | The court must hear— | 26 |
| (a) | witnesses and evidence that may be produced against or for the person whose contempt was certified; and | 27
28 |
| (b) | any statement given by the person in defence. | 29 |
| (8) | If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had | 30
31 |

[s 655]

	committed the contempt in relation to proceedings in the court.	1 2
(9)	The <i>Uniform Civil Procedure Rules 1999</i> apply to the court's investigation, hearing and power to punish with necessary changes.	3 4 5
(10)	The president's certificate of contempt is evidence of the matters contained in the certificate.	6 7
655	Conduct that is contempt and offence	8
	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.	9 10 11 12
Division 9	Protection and immunities	13
656	Protection and immunities for members	14
(1)	A member has, in the exercise of jurisdiction for this Act, the protection and immunities of a Supreme Court judge exercising the jurisdiction of a judge.	15 16 17
(2)	Also, a member 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.	18 19 20 21
(3)	The burden of proving absence of good faith is on a person who alleges the absence.	22 23
657	Other provisions about protection and immunities	24
(1)	A lawyer or other person who, under this Act, represents a party to a proceeding has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.	25 26 27 28

[s 658]

(2)	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.	1 2 3
(3)	A document produced to the tribunal in a proceeding has the same protection it would have if produced in the Supreme Court.	4 5 6
Division 10 Rules and practice		7
658	Rule-making power	8
(1)	The Governor in Council may make rules for the tribunal under this Act.	9 10
(2)	Rules may be made about the following matters—	11
(a)	the practices and procedures of the tribunal;	12
(b)	fees and expenses payable to witnesses;	13
(c)	fees or costs payable in relation to proceedings and the party by or to whom they are to be paid;	14 15
(d)	service of process, notices, orders or other things on parties and other persons.	16 17
(3)	Rules made under this section are rules of court.	18
659	Directions about practice	19
(1)	Subject to this Act and the tribunal rules, the practice and procedure of the tribunal are as directed by the president.	20 21
(2)	If this Act or the rules do not provide or sufficiently provide for a particular matter, an application for directions may be made to the president.	22 23 24

Division 11	Miscellaneous	1
660	Authentication of documents	2
	A document requiring authentication by the tribunal is sufficiently authenticated if it is signed by a member.	3 4
661	Judicial notice of particular signatures	5
	Judicial notice must be taken of the signature of a member if it appears on a document issued by the tribunal.	6 7
662	Delegation	8
	The president may delegate the president's powers under this Act to the deputy president or another member.	9 10
663	Register	11
(1)	The president must keep a register of—	12
(a)	applications for a review of any of the following—	13
(i)	treatment authorities;	14
(ii)	forensic orders;	15
(iii)	court treatment orders;	16
(iv)	a person's fitness for trial;	17
(v)	the detention of minors in high security units;	18
(b)	applications for any of the following—	19
(i)	examination authorities;	20
(ii)	approvals to perform regulated treatment;	21
(iii)	the transfer of forensic patients into and out of Queensland; and	22 23
(c)	reviews heard by the tribunal; and	24

[s 664]

(d)	decisions of the tribunal on the reviews and applications, and the reasons for the decisions.	1 2
(2)	The president may keep the register in the way the president considers appropriate.	3 4
664	Annual report	5
(1)	Within 90 days after the end of each financial year, the president must prepare and give to the Minister a report on the tribunal's operations during the year.	6 7 8
(2)	The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it.	9 10
Part 2	Mental Health Court	11
Division 1	Preliminary	12
665	Purpose of pt 2	13
	The purpose of this part is to provide for the following—	14
(a)	the continuation of the Mental Health Court, as formerly established under the repealed <i>Mental Health Act 2000</i> ;	15 16
(b)	the constitution, jurisdiction and powers of the court;	17
(c)	procedural provisions for proceedings of the court;	18
(d)	the review of the detention of particular persons in an authorised mental health service or the forensic disability service.	19 20 21

Division 2	Continuation, constitution, jurisdiction and powers	1 2
666	Continuation of Mental Health Court	3
(1)	The Mental Health Court, as formerly established as a superior court of record by section 381 of the repealed Act, is continued in existence.	4 5 6
(2)	The court has a seal that must be judicially noticed.	7
(3)	The court consists of the president of the court and other members of the court.	8 9
667	Constitution	10
(1)	The Mental Health Court is constituted by a member of the court sitting alone.	11 12
(2)	In exercising jurisdiction under this Act, the court must be assisted by 2 assisting clinicians.	13 14
(3)	The assisting clinicians for a hearing must be—	15
(a)	for a hearing other than a hearing relating to a person who has an intellectual disability—2 psychiatrists; or	16 17
(b)	for a hearing relating to a person who has an intellectual disability—	18 19
(i)	2 psychiatrists; or	20
(ii)	1 psychiatrist and 1 person with expertise in the care of persons who have an intellectual disability.	21 22
(4)	However, if the persons mentioned in subsection (3) are not available to assist the court in the hearing of a matter and the member of the court hearing the matter is satisfied it is necessary to hear the matter in the interests of justice, the court may be assisted by—	23 24 25 26 27
(a)	for a hearing other than a hearing relating to a person who has an intellectual disability—1 psychiatrist; or	28 29

[s 668]

- (b) for a hearing relating to a person who has an intellectual disability—
 - (i) 1 psychiatrist; or
 - (ii) 1 person with expertise in the care of persons who have an intellectual disability.
- (5) The member of the court hearing a matter must decide the assisting clinicians who are to assist the court for the hearing.

668 Jurisdiction

- (1) The Mental Health Court has jurisdiction to hear and decide—
 - (a) references under chapter 5; and
 - (b) appeals under this Act; and
 - (c) reviews of the detention of persons in authorised mental health services or the forensic disability service under division 9.
- (2) In exercising its jurisdiction, the court—
 - (a) must inquire into the matter before it; and
 - (b) may inform itself of any matter relating to the matter before it in any way it considers appropriate.
- (3) The court's jurisdiction is not limited, by implication, by a provision of this or another Act.
- (4) A member of the Mental Health Court retains all of the member's jurisdiction as a Supreme Court judge.

669 Powers

Without limiting the powers conferred on it under this or another Act, the Mental Health Court may do all things necessary or convenient to be done for the exercise of its jurisdiction.

Division 3	Membership	1
670	Appointment of members	2
(1)	The Governor in Council may, by commission, appoint a Supreme Court judge to be a member of the Mental Health Court.	3 4 5
(2)	The judge is appointed for the term, of not more than 3 years, stated in the commission.	6 7
671	Appointment does not affect judge's tenure of office	8
(1)	The appointment of, or service by, the judge as a member of the Mental Health Court does not affect—	9 10
(a)	the person's tenure of office as a judge; or	11
(b)	the person's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of the person's office as a judge.	12 13 14
(2)	The person's service as a member of the court is taken to be service as a Supreme Court judge for all purposes.	15 16
672	Resignation of office	17
(1)	The judge may resign office as a member of the Mental Health Court by signed notice of resignation given to—	18 19
(a)	if the judge is the Chief Justice—the Governor; or	20
(b)	otherwise—the Chief Justice.	21
(2)	The notice takes effect when it is given under subsection (1) or, if a later time is stated in the notice, at the later time.	22 23
673	When member's office ends	24
(1)	The judge holds office as a member of the Mental Health Court until the earlier of the following days—	25 26

[s 674]

- (a) the day the person's appointment as a member of the court ends; 1
2
 - (b) if the person resigns as a member of the court—the day the notice of resignation takes effect under section 672; 3
4
 - (c) the day the person ceases to be a Supreme Court judge. 5
- (2) However, if the judge ceases to hold office as a member of the court while hearing a matter, the Governor in Council may, without reappointing the person as a member of the court, continue the person in office for the time necessary to enable the hearing to be completed. 6
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- (3) The person continued in office may exercise the jurisdiction and powers of the court necessary or convenient for the hearing to be completed. 11
12
13

Division 4 President 14

674 Appointment of president 15

- (1) The Governor in Council is to appoint a member of the Mental Health Court to be the president of the court. 16
17
- (2) A person may be appointed as the president of the court at the same time the person is appointed as a member of the court. 18
19

675 Arrangement of business 20

- (1) The president of the Mental Health Court is responsible for the administration of the court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the court. 21
22
23
24
- (2) The president of the court has power to do all things necessary or convenient to be done for the administration of the court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the court. 25
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676	President holds office while member of court	1
	The president of the Mental Health Court holds office as the president of the court while he or she is a member of the court.	2 3
677	Resignation of office	4
(1)	The president of the Mental Health Court may resign office by signed notice of resignation given to—	5 6
(a)	if the president of the court is the Chief Justice—the Governor; or	7 8
(b)	otherwise—the Chief Justice.	9
(2)	The notice takes effect when it is given under subsection (1) or, if a later time is stated in the notice, at the later time.	10 11
(3)	Resignation as the president of the court does not affect the person's membership of the court.	12 13
678	Appointment of acting president	14
	The Governor in Council may appoint a member of the Mental Health Court to act as the president of the court—	15 16
(a)	for any period the office is vacant; or	17
(b)	for any period, or all periods, when the president of the court is absent from duty or from Queensland or can not, for another reason, perform the duties of the office.	18 19 20
Division 5	Assisting clinicians	21
679	Functions	22
(1)	The functions of an assisting clinician are to—	23
(a)	examine material received for a hearing to identify matters requiring further examination and to make recommendations to the Mental Health Court about the matters; and	24 25 26 27

[s 680]

- (b) make recommendations about the making of court examination orders under section 695; and 1
2
- (c) assist the court by advising it— 3
 - (i) on the meaning and significance of clinical evidence; and 4
5
 - (ii) about clinical issues relating to the treatment, care and detention needs of persons under this Act; and 6
7
 - (iii) about clinical issues relating to the care and detention needs of persons under the Forensic Disability Act. 8
9
10
- (2) However, an assisting clinician’s functions are limited to matters within the clinician’s professional expertise. 11
12

680 Appointment 13

- (1) The Governor in Council may, on the recommendation of the Minister, appoint a following person (an *assisting clinician*) by gazette notice to assist the Mental Health Court— 14
15
16
 - (a) a psychiatrist; 17
 - (b) a person with expertise in the care of persons who have an intellectual disability. 18
19

Example for paragraph (b)— 20
a forensic psychologist 21
- (2) In recommending a person for appointment as an assisting clinician, the Minister must be satisfied the person has qualifications and experience necessary to perform an assisting clinician’s functions. 22
23
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- (3) An assisting clinician holds office for the term, of not more than 3 years, stated in the gazette notice. 26
27
- (4) However, a person may not be reappointed as an assisting clinician if the total of the person’s term of appointment would be more than 6 years. 28
29
30

(5)	An assisting clinician is to be appointed under this Act and not under the <i>Public Service Act 2008</i> .	1 2
681	Conditions of appointment	3
(1)	An assisting clinician is entitled to be paid the remuneration and allowances decided by the Governor in Council.	4 5
(2)	An assisting clinician holds office on the terms and conditions, not provided for under this Act, decided by the Governor in Council.	6 7 8
682	Resignation	9
	An assisting clinician may resign office by signed notice given to the Minister.	10 11
683	Termination of appointment	12
(1)	The Governor in Council may terminate the appointment of an assisting clinician if the Governor in Council is satisfied the assisting clinician—	13 14 15
(a)	is incapable of performing the assisting clinician's duties; or	16 17
(b)	has neglected the assisting clinician's duties or performed them incompetently; or	18 19
(c)	has been guilty of misconduct that would warrant dismissal from the public service if the assisting clinician were an officer of the public service.	20 21 22
(2)	The Governor in Council must terminate the appointment of an assisting clinician if the assisting clinician—	23 24
(a)	no longer has the qualifications or experience necessary to perform an assisting clinician's functions; or	25 26
	<i>Example—</i>	27

[s 684]

	a psychiatrist stops holding specialist registration in the specialty of psychiatry under the <i>Health Practitioner Regulation National Law (Queensland) 2009</i>	1 2 3
(b)	is convicted of an indictable offence.	4
Division 6	Mental Health Court Registry and registrar	5 6
684	Mental Health Court Registry	7
(1)	There is a Mental Health Court Registry.	8
(2)	The registry consists of—	9
(a)	the registrar; and	10
(b)	the other staff necessary for the Mental Health Court to exercise its jurisdiction.	11 12
(3)	The registrar and other staff are to be employed under the <i>Public Service Act 2008</i> .	13 14
685	Registry's functions	15
	The registry has the following functions—	16
(a)	to act as the registry for the Mental Health Court;	17
(b)	to provide administrative support to the court;	18
(c)	to perform any other functions conferred on the registry under this Act.	19 20
686	Registrar's functions	21
	The registrar administers the registry and has the functions conferred on the registrar under this or another Act.	22 23

687	Registrar's powers—general	1
(1)	The registrar has the power to do all things necessary or convenient to be done to perform the registrar's functions.	2 3
(2)	In performing a function or exercising a power, the registrar must comply with a direction relating to the performance or exercise given by—	4 5 6
(a)	a member of the Mental Health Court for a proceeding being heard by the member of the court; or	7 8
(b)	the president of the court.	9
 688	 Registrar's power to issue subpoena	 10
(1)	For the Mental Health Court exercising its jurisdiction, the registrar may, on the registrar's own initiative or at the request of a party to a proceeding, issue a subpoena requiring the person to whom the subpoena is directed—	11 12 13 14
(a)	to produce a stated or described document; or	15
(b)	to attend before the court to give evidence.	16
(2)	The person must comply with the subpoena.	17
(3)	Failure to comply with the subpoena without lawful excuse is contempt of court and a person who fails to comply may be dealt with for contempt of court.	18 19 20
 689	 Registrar's power to require production of particular documents	 21 22
(1)	For the Mental Health Court exercising its jurisdiction, the registrar may, by notice given to the administrator of an authorised mental health service or of the forensic disability service, require the administrator to give the registrar a stated or described document.	23 24 25 26 27
(2)	The administrator must comply with the notice despite an obligation under an Act or law not to give the document or disclose information in the document.	28 29 30

[s 690]

- (3) Also, for the court exercising its jurisdiction for a reference in relation to a person, the registrar may ask the prosecuting authority for the offence to give the registrar—
 - (a) a written report about the criminal history of the person; or
 - (b) a brief of evidence in relation to the offence.
- (4) The prosecuting authority must comply with the request.
- (5) Subsection (3) applies to the criminal history in the possession of the prosecuting authority or to which the prosecuting authority has access.

690 Registrar's power to require person to be brought before Mental Health Court

- (1) For the Mental Health Court exercising its jurisdiction, the registrar may—
 - (a) require the administrator of an authorised mental health service or of the forensic disability service to bring a person for whom the service is responsible before the court at a stated time and place; or
 - (b) require the custodian of a person in lawful custody to bring the person before the court at a stated time and place.
- (2) The requirement must be made by notice given to the administrator or custodian.
- (3) The administrator or custodian must comply with the notice.
- (4) For subsection (1), an authorised person may—
 - (a) transport the person from the authorised mental health service or forensic disability service to appear before the court; and
 - (b) on the adjournment of the hearing, transport the person from the court to the authorised mental health service or forensic disability service.

691	Delegation by registrar	1
(1)	The registrar may delegate a function of the registrar under this or another Act to an appropriately qualified member of the staff of the registry.	2 3 4
(2)	In this section—	5
	<i>function</i> includes a power.	6
Division 7	Protection and immunities	7
692	Contempt of court	8
(1)	The Mental Health Court has all the protection, powers, jurisdiction and authority the Supreme Court has for a contempt of court.	9 10 11
(2)	The court must comply with the provisions of the <i>Uniform Civil Procedure Rules 1999</i> relating to contempt of court, with necessary changes.	12 13 14
(3)	The registrar may apply to the court for an order that a person be committed to prison for contempt of court.	15 16
(4)	The court's jurisdiction to punish a contempt of the court may be exercised on the initiative of a member of the court.	17 18
(5)	The court has jurisdiction to punish an act or omission as a contempt of the court, even if a penalty is prescribed for the act or omission.	19 20 21
693	Conduct that is contempt and offence	22
(1)	If conduct of a person is both contempt of the Mental Health Court and an offence, the person may be proceeded against for the contempt or for the offence.	23 24 25
(2)	However, the person is not liable to be punished twice for the same conduct.	26 27

[s 694]

694	Protection and immunities for member of Mental Health Court	1
		2
(1)	A member of the Mental Health Court has, in the exercise of jurisdiction for this Act, the protection and immunities of a Supreme Court judge exercising the jurisdiction of a judge.	3
		4
		5
(2)	A member of the Mental Health Court or an assisting clinician (the <i>official</i>) has, in a proceeding for defamation for a publication made to or by the official in the official's official capacity, a defence of absolute privilege if the publication was made in good faith.	6
		7
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		9
		10
(3)	The burden of proving absence of good faith is on a person who alleges the absence.	11
		12

Division 8	Court examination orders	13
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695	Making of court examination orders	14
(1)	The Mental Health Court may make an order (a <i>court examination order</i>) requiring the person the subject of a proceeding before the court to submit to an examination by a stated psychiatrist, doctor or other practitioner (the <i>examining practitioner</i>).	15
		16
		17
		18
		19
(2)	The court examination order must—	20
	(a) be in the approved form; and	21
	(b) state the matters on which the examining practitioner must report to the court.	22
		23
(3)	The examining practitioner must give a written report on the examination to the court.	24
		25

696	Recommendations and requests for court examination order on references	26
		27
(1)	This section applies if, for a proceeding for a reference in relation to a person, an assisting clinician recommends, or the	28
		29

[s 697]

director of public prosecutions asks, that the Mental Health Court make a court examination order for the person.

- (2) The registrar must give notice of the recommendation or request to the parties to the proceeding.
- (3) The notice must state that the parties may make written submissions on the recommendation or request within the reasonable time stated in the notice.
- (4) The registrar must give the court—
 - (a) the recommendation or request; and
 - (b) any submission made by a party on it.
- (5) The director of public prosecutions must pay the costs of an examination requested by the director of public prosecutions.

697 Transport and detention under court examination order

- (1) This section applies if the Mental Health Court makes a court examination order for a person the subject of a reference.
- (2) For examining the person, the order may also authorise an authorised person to transport the person to a stated authorised mental health service.

Notes—

- 1 The power to take the person includes the power to detain the person for the purpose of transporting the person. See section 359(1).
 - 2 The authorised person may exercise the power to detain and take the person with the help, and using the force, that is necessary and reasonable in the circumstances. See section 359(2).
- (3) However, the court may make an order under subsection (2) only if the court is satisfied there is no other reasonably practicable way to ensure a thorough examination of the person's mental condition.
- (4) The person may be detained in the authorised mental health service for the examination for not more than 3 days unless the court states a longer period in the order.

[s 698]

- (5) The examining practitioner, or anyone lawfully helping the
examining practitioner, may use the force that is necessary
and reasonable in the circumstances to examine the person.

698 What happens at end of examination

- (1) After the end of the time allowed for the person's examination
or on the earlier completion of the person's examination, the
administrator of the authorised mental health service in which
the person is detained must ensure—
- (a) if the person was taken from lawful custody for the
examination—an authorised person transports the
person from the authorised mental health service to the
person's place of custody; or
- (b) if, immediately before the examination, the person was
detained as an involuntary patient in another authorised
mental health service—an authorised person transports
the person to that service; or
- (c) if paragraph (a) or (b) does not apply—arrangements are
made for the person to be transported to the place from
which the person was taken for the examination or for
the person to be transported to another place to which
the person reasonably asks to be taken.
- (2) The person may be detained in the authorised mental health
service until the person is transported, under subsection (1)(a)
or (b), from the service.
- (3) Subsections (1) and (2) do not apply if—
- (a) the person becomes an involuntary patient; or
- (b) an order is made transferring the patient to the
authorised mental health service stated in the court
examination order.

Division 9	Reviews of detention in authorised mental health service or forensic disability service	1 2 3
699	Definition for div 9	4
	In this division—	5
	<i>relevant service</i> means—	6
	(a) an authorised mental health service; or	7
	(b) the forensic disability service.	8
700	Mental Health Court’s power to review detention	9
(1)	The Mental Health Court may, on application by a prescribed person or on its own initiative, review a person’s detention in a relevant service to decide whether the person’s detention is lawful.	10 11 12 13
(2)	However, subsection (1) does not apply if the person’s detention in the relevant service has been ordered by the Mental Health Court.	14 15 16
(3)	An application for review must—	17
	(a) be in the approved form; and	18
	(b) state the grounds on which it is made.	19
(4)	In this section—	20
	<i>prescribed person</i> means the following—	21
	(a) the person who is detained in the relevant service;	22
	(b) an interested person for the person mentioned in paragraph (a);	23 24
	(c) the Attorney-General.	25

[s 701]

701 Notice of hearing

- (1) The registrar must give notice of the hearing of a review of a person's detention to the following—
 - (a) the person who is detained in the relevant service;
 - (b) if the applicant is not the person mentioned in paragraph (a)—the applicant;
 - (c) the administrator of the relevant service;
 - (d) if the relevant service is an authorised mental health service—the chief psychiatrist;
 - (e) if the relevant service is the forensic disability service—the director of forensic disability;
 - (f) the Attorney-General.
- (2) The notice must be given at least 7 days before the hearing.
- (3) The notice must state the following—
 - (a) the time and place of the hearing;
 - (b) the nature of the hearing;
 - (c) the person's rights at the hearing.

702 Parties to proceeding

- (1) The parties to the proceeding for the review are—
 - (a) the person who is detained in the relevant service;
 - (b) if the applicant is not the person mentioned in paragraph (a)—the applicant;
 - (c) if the relevant service is an authorised mental health service—the chief psychiatrist;
 - (d) if the relevant service is the forensic disability service—the director of forensic disability.
- (2) However, the Attorney-General may elect to be a party to the proceeding.

(3)	An election under subsection (2) must be made by filing a written notice in the registry.	1 2
703	Consideration of application	3
(1)	The court must consider the application as soon as practicable after it is made.	4 5
(2)	The court may refuse the application if the court is satisfied the application—	6 7
(a)	may more properly be dealt with by the tribunal on a review under chapter 12; or	8 9
(b)	is frivolous or vexatious.	10
704	Appointment of person to inquire into detention	11
	For reviewing a person's detention in a relevant service, the Mental Health Court may, by order, direct a stated person (the <i>appointed person</i>) to inquire into, and report to the court on, the person's detention in the service.	12 13 14 15
705	Administrator to ensure help given to appointed person	16
	The administrator of the relevant service must ensure the appointed person is given reasonable help to carry out the inquiry.	17 18 19
706	General powers of appointed person	20
(1)	For carrying out the inquiry, the appointed person may exercise 1 or more of the following powers—	21 22
(a)	enter the relevant service;	23
(b)	examine the person;	24
(c)	search any part of the relevant service;	25

[s 707]

(d)	inspect, examine, test, measure, photograph or film any part of the relevant service or any documents or other thing in the service;	1 2 3
(e)	take extracts from, or make copies of, any documents in the relevant service;	4 5
(f)	take into the relevant service any persons, equipment and materials the appointed person reasonably requires for exercising powers in relation to the service.	6 7 8
(2)	The appointed person may exercise a power under subsection (1) with the help, and using the force, that is necessary and reasonable in the circumstances.	9 10 11
707	Appointed person's power to ask questions	12
(1)	The appointed person may require another person to answer a question about the person's detention.	13 14
(2)	When making the requirement, the appointed person must warn the other person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.	15 16 17
(3)	The person must comply with the requirement unless the person has a reasonable excuse.	18 19
	Maximum penalty—100 penalty units.	20
(4)	It is a reasonable excuse for the person to fail to answer the question if complying with the requirement might tend to incriminate the person.	21 22 23
(5)	The person does not commit an offence against subsection (3) if the information sought by the appointed person is not in fact relevant to the person's detention.	24 25 26
708	Mental Health Court may direct person's discharge	27
(1)	This section applies if, after considering the evidence before it, including any report prepared by the appointed person, the Mental Health Court is satisfied that the person's detention in the relevant service is unlawful.	28 29 30 31

[s 709]

(2)	The court must, by order, direct the person be immediately discharged from the relevant service.	1 2
(3)	The administrator of the relevant service must ensure the order is complied with.	3 4
709	Other remedies not affected	5
	This division does not limit any other remedy available to the person.	6 7
Division 10	Procedural provisions	8
710	General right of appearance and representation	9
	A party to a proceeding in the Mental Health Court may—	10
(a)	appear in person at the hearing of the proceeding; or	11
(b)	be represented at the hearing by—	12
(i)	a lawyer; or	13
(ii)	with the leave of the court, a person who is not a lawyer (a <i>representative</i>).	14 15
711	Evidence	16
(1)	In conducting a proceeding, the Mental Health Court is not bound by the rules of evidence unless the court decides it is in the interests of justice that it be bound for the proceeding or a part of the proceeding.	17 18 19 20
(2)	The court may make the decision on application by a party to the proceeding or on its own initiative.	21 22
712	Proof of matters	23
(1)	No party to a proceeding bears the onus of proof of any matter in the proceeding.	24 25

[s 713]

(2)	Subject to section 124, a matter to be decided by the Mental Health Court must be decided on the balance of probabilities.	1 2
713	Directions	3
	The Mental Health Court may give directions about the hearing of a proceeding.	4 5
	<i>Note—</i>	6
	See the <i>Evidence Act 1977</i> , part 3A. The stated purposes of the part include the facilitation of the giving and receiving of evidence, and the making and receiving of submissions, in Queensland court proceedings by audiovisual link or audio link.	7 8 9 10
714	Assisting clinician’s advice before or during adjournment of hearing	11 12
(1)	This section applies to advice given by an assisting clinician to the Mental Health Court—	13 14
(a)	before the hearing of a proceeding starts; or	15
(b)	during an adjournment of the hearing of a proceeding, other than an adjournment for the court to make its decision.	16 17 18
(2)	During the hearing, the court must inform each party to the proceeding of the advice unless the party tells the court it does not require the information.	19 20 21
715	Assisting clinician’s advice during hearing	22
	Advice given by an assisting clinician to the Mental Health Court during the hearing of a proceeding must be given in a way that can be heard by the parties.	23 24 25

716	Particular assisting clinician's advice to be stated in reasons for decision	1 2
(1)	This section applies if the Mental Health Court is satisfied advice given by an assisting clinician to the court materially contributed to the court's decision in a proceeding.	3 4 5
(2)	The court must state the advice in the court's reasons for its decision.	6 7
717	When Mental Health Court may proceed in absence of person	8 9
	The Mental Health Court may proceed to conduct the hearing of a proceeding in the absence of the person who is the subject of the proceeding only if the court is satisfied it is expedient and in the person's best interests to do so.	10 11 12 13
718	Appointment of assistants	14
	The Mental Health Court may appoint a person with appropriate knowledge or experience to assist it in a hearing, including, for example, a person with appropriate communication skills or appropriate cultural or social knowledge or experience.	15 16 17 18 19
719	Court may sit and adjourn hearings	20
	The Mental Health Court may, subject to the court rules—	21
(a)	sit at any time and in any place for the hearing of a proceeding; and	22 23
(b)	adjourn the hearing of a proceeding to any time and place.	24 25
720	Hearings of references generally open to public	26
(1)	The hearing of a proceeding for a reference is open to the public unless the Mental Health Court, by order, directs the hearing or part of the hearing not be open to the public.	27 28 29

[s 721]

(2)	However, the court may make an order directing the hearing or part of the hearing not to be open to the public only if the court is satisfied that it is in the interests of justice.	1 2 3
(3)	This section is subject to section 721.	4
721	Hearings about minors not open to public	5
(1)	This section applies if a minor is the subject of a proceeding in the Mental Health Court.	6 7
(2)	The hearing of the proceeding is not open to the public.	8
(3)	However, the court may permit a person to be present during the hearing if the court is satisfied it is in the interests of justice.	9 10 11
722	Other hearings not generally open to public	12
(1)	This section applies to the following proceedings—	13
(a)	an appeal to the Mental Health Court under this Act;	14
(b)	the review of the detention of a person under division 9.	15
(2)	The hearing of the proceeding must not be open to the public unless the court, by order, directs the hearing or part of the hearing be open to the public.	16 17 18
(3)	However, the court may make an order directing a hearing or part of a hearing be open to the public only if it is satisfied—	19 20
(a)	the person the subject of the proceeding has agreed to the order; and	21 22
(b)	the order will not result in serious harm to the person's health or risk the safety of anyone else.	23 24
(4)	This section is subject to section 721.	25

723 Confidentiality orders

- (1) In a proceeding, the Mental Health Court may, by order (a ***confidentiality order***), prohibit or restrict the disclosure to the person the subject of a proceeding of—
 - (a) information given before it; or
 - (b) matters contained in documents filed with, or received by, it; or
 - (c) the reasons for its decision in the proceeding.
- (2) However, the court may make a confidentiality order only if it is satisfied that the disclosure would—
 - (a) cause serious harm to the health of the person; or
 - (b) put the safety of someone else at serious risk.
- (3) If the court makes a confidentiality order, the court must—
 - (a) disclose to the person's lawyer or representative the information or matters mentioned in subsection (1) to which the order relates; and
 - (b) give to the lawyer or representative written reasons for the order.
- (4) If the person is not represented at the hearing of the proceeding by a lawyer or representative, the court must ensure a lawyer or representative is appointed for subsection (3).
- (5) A person must not contravene a confidentiality order unless the person has a reasonable excuse.
Maximum penalty for subsection (5)—100 penalty units.

724 Costs

Each party to a proceeding in the Mental Health Court is to bear the party's own costs.

[s 725]

725	Death or incapacity of member after hearing started	1
(1)	This section applies if, after a member of the Mental Health Court starts to hear a proceeding, the member dies or becomes incapable of continuing to hear the proceeding.	2 3 4
(2)	A party to the proceeding may, after giving 7 days notice to each other party to the proceeding, apply to the president of the court for an order directing the action to be taken in the proceeding.	5 6 7 8
(3)	The president of the court may, on the application or on the president's own initiative, after consulting with the parties to the proceeding—	9 10 11
(a)	order the proceeding be reheard; or	12
(b)	adjourn the proceeding to allow the incapacitated member of the court to continue when able; or	13 14
(c)	with the consent of the parties, make an order the president of the court considers appropriate about—	15 16
(i)	deciding the proceeding; or	17
(ii)	completing the hearing and deciding the proceeding.	18 19
(4)	If, under subsection (3)(a), a proceeding is reheard, the first hearing is taken not to have happened.	20 21
(5)	An order mentioned in subsection (3)(c) is taken to be a decision of the Mental Health Court.	22 23

Division 11	Rules and practice	24
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726	Rule-making power	25
(1)	The Governor in Council may make rules under this Act.	26
(2)	Rules relating to the Mental Health Court or the registry may only be made with the consent of the president of the court.	27 28
(3)	Rules may be made about the following matters—	29

[s 727]

	(a) regulating the practice and procedure for proceedings in the court;	1 2
	(b) fees and expenses payable to witnesses;	3
	(c) fees and costs payable in relation to proceedings in the court and the party by or to whom they are to be paid;	4 5
	(d) service of process, notices, orders or other things on parties and other persons.	6 7
	(4) Rules made under this section are rules of court.	8
727	Directions about practice	9
	(1) Subject to this Act and the court rules, the practice and procedure of the Mental Health Court are as directed by the president of the court.	10 11 12
	(2) If this Act or the rules do not provide or sufficiently provide for a particular matter, an application for directions may be made to the president of the court.	13 14 15
Division 12	Miscellaneous provisions	16
728	Annual report	17
	(1) Within 90 days after the end of each financial year, the president of the Mental Health Court must prepare and give to the Minister a report on the operations of the Mental Health Court and the registry during the year.	18 19 20 21
	(2) The report must also contain the other information required by the Minister.	22 23
	(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it.	24 25

Chapter 17	Confidentiality	1
Part 1	Preliminary	2
729	Purpose of ch 17	3
	The purpose of this chapter is to provide for—	4
	(a) the confidentiality of information that identifies persons who have received health services for a mental illness; and	5 6 7
	(b) the use and disclosure of particular personal information for particular purposes; and	8 9
	(c) offences relating to the publication of particular judicial proceedings.	10 11
730	Definitions for ch 17	12
	In this chapter—	13
	<i>designated person</i> means a designated person under the <i>Hospital and Health Boards Act 2011</i> , section 139.	14 15
	<i>government entity</i> means a government entity within the meaning of the <i>Public Service Act 2008</i> , section 24.	16 17
	<i>personal information</i> means—	18
	(a) personal information under the <i>Information Privacy Act 2009</i> ; or	19 20
	(b) confidential information under the <i>Hospital and Health Boards Act 2011</i> .	21 22
731	Relationship of ch 17 with other Acts	23
	This chapter applies to the use or disclosure of information mentioned in this chapter despite any prohibition or limitation	24 25

on the use or disclosure under the *Hospital and Health Boards Act 2011*, the *Information Privacy Act 2009* or another Act. 1
2

Part 2 Duty of confidentiality 3

732 Confidentiality of information obtained by designated persons 4 5

- (1) This section applies to each of the following— 6
 - (a) the chief psychiatrist; 7
 - (b) an administrator of an authorised mental health service; 8
 - (c) an authorised doctor; 9
 - (d) an authorised mental health practitioner; 10
 - (e) a member of the staff of the tribunal or registry; 11
 - (f) another designated person performing a function under this Act; 12
13
 - (g) a patient rights adviser. 14
- (2) The person may use or disclose personal information to perform a function under this Act. 15
16
- (3) The *Hospital and Health Boards Act 2011*, sections 142 and 17
143 apply in relation to a patient rights adviser as if a 18
reference in the sections to a designated person included a 19
reference to a patient rights adviser. 20
- (4) A designated person may disclose to a person mentioned in 21
subsection (1), information that is confidential information 22
under the *Hospital and Health Boards Act 2011*, section 139, 23
if the disclosure is for the purpose of enabling the person to 24
perform a function under this Act. 25

[s 733]

733	Confidentiality of information obtained by other persons	1
(1)	This section applies to a person—	2
(a)	who is or has been—	3
(i)	a member of the tribunal; or	4
(ii)	an assisting clinician; or	5
(iii)	a person representing another person at the hearing of a proceeding in the tribunal; or	6
(iv)	a support person accompanying another person at the hearing of a proceeding in the tribunal; or	7
(b)	in that capacity acquires personal information.	8
(2)	The person must not use the personal information or disclose it to anyone else.	9
	Maximum penalty—100 penalty units.	10
(3)	However, the person may use or disclose the personal information—	11
(a)	to the extent necessary to perform the person’s functions under this Act; or	12
(b)	if the use or disclosure is otherwise required or permitted by law; or	13
(c)	if the person to whom the information relates consents to the use or disclosure.	14

Part 3	Permitted use and disclosure	22
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734	Disclosure to identify persons with mental health defence	23
(1)	This section applies to an employee of the department, a Hospital and Health Service or another government entity.	24
(2)	The employee may use or disclose personal information to—	25

[s 735]

	(a) assist in the identification of a person who may have been of unsound mind at the time of an alleged offence or may be unfit for trial; and	1 2 3
	(b) enable the application to the person of provisions of this Act relating to unsoundness of mind and unfitness for trial.	4 5 6
735	Disclosure to identify and offer support to victims	7
	(1) This section applies to an employee of the department, a Hospital and Health Service or another government entity.	8 9
	(2) The employee may use or disclose personal information to assist in the identification of a person who is, or may be, a victim of an unlawful act committed by a person who has a mental illness or other mental condition for the purpose of offering support services to the person.	10 11 12 13 14
736	Disclosure for report by private psychiatrist	15
	A designated person may disclose personal information about a patient, including the patient's health records, if the disclosure is to assist in the preparation of a report by a private psychiatrist engaged by the patient.	16 17 18 19
737	Disclosure for patient rights adviser	20
	A designated person may disclose personal information to a patient rights adviser if the disclosure is to enable the adviser to perform the adviser's functions under section 286.	21 22 23
738	Disclosure of information relating to classified patients	24
	(1) This section applies if the chief psychiatrist considers a person is, or may be, a victim of an unlawful act committed by a person who is a classified patient.	25 26 27

[s 739]

- (2) Subject to subsection (3), the chief psychiatrist may disclose the following personal information about the classified patient to the person—
 - (a) the fact that the patient is a classified patient in an authorised mental health service;
 - (b) the fact, and the date, of a transfer of the patient to another authorised mental health service;
 - (c) the fact that the patient has become a patient required to return, if the chief psychiatrist considers that the information is relevant to the safety and welfare of the person;
 - (d) if the patient stops being a classified patient—the fact that, and the reasons why, the patient has stopped being a classified patient.
- (3) The chief psychiatrist may enter into arrangements with a victim support service to enable the service, on behalf of the chief psychiatrist, to give the information to the person.
- (4) The person must give a written undertaking to preserve the confidentiality of the information.
- (5) The person must not contravene the undertaking.
- Maximum penalty for subsection (5)—100 penalty units.

- 739 Disclosure of particular information relating to persons having contact with forensic disability service**
- (1) This section applies for facilitating—
 - (a) the transfer of a person from the forensic disability service to an authorised mental health service; and
 - (b) the transfer of a person from an authorised mental health service to the forensic disability service; and
 - (c) the provision of care to, a person subject to a forensic order (disability).

[s 740]

- (2) The chief psychiatrist, or the administrator of the authorised mental health service, may disclose personal information about the person to the director of forensic disability or the administrator of the forensic disability service.
- (3) Also, the director of forensic disability or the administrator of the forensic disability service may disclose personal information about the person to the chief psychiatrist or the administrator of the authorised mental health service.

740 Disclosure to lawyers

- (1) A designated person may disclose personal information about a patient, including the patient's health records, to a lawyer if the disclosure is to enable the lawyer to provide legal services to the patient, or the State, for a Mental Health Court or tribunal proceeding.
- (2) If the lawyer is a representative of the State, the lawyer may use the personal information, or disclose it to a victim, only to the extent necessary for the performance of the Attorney-General's role under this or another Act.
- (3) In this section—
victim means a person who is, or may be, a victim of an unlawful act committed by a person who is the subject of a proceeding before the tribunal or Mental Health Court.

741 Disclosure of photograph of patient required to return

- (1) This section applies if an administrator of an authorised mental health service is in possession of a photograph of a person who—
 - (a) is an involuntary patient or a classified patient (voluntary); and
 - (b) has become a patient required to return.
- (2) The administrator may disclose the photograph to the commissioner of the police service, or another person

[s 742]

performing a function in an official capacity, to help locate the person.	1
	2
(3) To remove any doubt, it is declared that the administrator of an authorised mental health service may require an involuntary patient or a classified patient (voluntary) to be photographed for the purpose mentioned in subsection (2).	3
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Part 4	Offences relating to publication of judicial proceedings	7
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742	Definition for pt 4	9
	In this part—	10
	<i>report</i> , of a proceeding, includes a report of part of the proceeding.	11
		12

743	Publication of reports and decisions on references—Mental Health Court and Court of Appeal	13
		14
(1)	A person must not publish a report of a proceeding, or a decision on a proceeding, in the Mental Health Court or Court of Appeal for a reference before the end of the prescribed day after the decision on the proceeding.	15
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	Maximum penalty—200 penalty units or 2 years imprisonment.	19
		20
(2)	In this section—	21
	<i>patient</i> means the person the subject of a reference.	22
	<i>prescribed day</i> means—	23
(a)	for a decision that will result in the patient being brought to trial for the offence under the reference—the end of the trial; or	24
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- (b) for a decision of the Mental Health Court that will not result in the patient being brought to trial for the offence under the reference—
- (i) the day that is 28 days after the date of the decision; or
- (ii) if an appeal to the Court of Appeal against the decision is started within the 28 days, the later of the following—
- (A) the day that is 28 days after the date of the Court of Appeal’s decision on the appeal;
- (B) if the Court of Appeal’s decision on the appeal will result in the patient being brought to trial for the offence—the end of the trial; or
- (iii) if an appeal to the Court of Appeal against the decision is started within the 28 days but is later withdrawn—the day that is 28 days after the date of the decision; or
- (iv) if an appeal to the Court of Appeal against the decision is not started within the 28 days but within that time the patient elects to be brought to trial for the offence—the end of the trial; or
- (c) for a decision of the Court of Appeal that will not result in the patient being brought to trial for the offence under the reference, the later of the following—
- (i) the day that is 28 days after the date of the decision;
- (ii) if the patient elects to be brought to trial for the offence—the end of the trial.

744 Publication of reports of other proceedings

- (1) A person must not publish a report of a proceeding of—
- (a) the tribunal; or

[s 745]

- (b) the Mental Health Court relating to an appeal against a decision of the tribunal; or
 - (c) the Mental Health Court relating to an inquiry by the court.
- Maximum penalty—200 penalty units or 2 years imprisonment.
- (2) However, a person does not commit an offence against subsection (1) if the person publishes the report with the leave of the tribunal or court.
 - (3) The tribunal or court may grant leave to publish the report only if it is satisfied—
 - (a) publication of the report is in the public interest; and
 - (b) the report does not contain information that identifies, or is likely to identify—
 - (i) the person the subject of the proceeding; or
 - (ii) a person who appears as a witness before the tribunal or court in the proceeding; or
 - (iii) a person mentioned or otherwise involved in the proceeding.

745 Publication of information disclosing identity of parties to proceedings

- (1) A person must not publish information that identifies, or is likely to lead to the identification of, a minor who is or has been a party to any proceeding under this Act in the tribunal, Mental Health Court or Court of Appeal.
- Maximum penalty—200 penalty units or 2 years imprisonment.
- (2) A person must not publish information that identifies, or is likely to lead to the identification of, a person other than a minor who is or has been a party to a proceeding mentioned in section 744(1).

[s 746]

Maximum penalty—200 penalty units or 2 years imprisonment.	1 2
(3) However, a person does not commit an offence by publishing information mentioned in subsection (1) or (2) if the registrar of the court, or executive officer of the tribunal, has, in writing, authorised the publication.	3 4 5 6
(4) The registrar of the court, or executive officer of the tribunal, may authorise the publication only if the director considers—	7 8
(a) the publication is necessary to assist in lessening or preventing a serious risk to—	9 10
(i) the life, health or safety of a person, including the person to whom the information relates; or	11 12
(ii) public safety; or	13
(b) the publication is in the public interest.	14
746 Publication of dates of hearings permitted	15
Nothing in this part prevents the disclosure of a date, or time, of a hearing to be held in the Mental Health Court.	16 17
747 Publication of information disclosed at hearing permitted	18
Subject to sections 721, 722, 743, 744 and 745, nothing in this part prevents the disclosure of information disclosed in a hearing of the Mental Health Court.	19 20 21

[s 748]

Chapter 18	General provisions	1
748	Detention of involuntary patient must be in inpatient unit	2
	If an involuntary patient is detained under this Act in an authorised mental health service, the involuntary patient must be detained in an inpatient unit of the service.	3 4 5
749	Use of audiovisual link for examination or assessment	6
	An examination or assessment under this Act may be done by an audiovisual link, if the person making the examination or assessment considers it is clinically appropriate.	7 8 9
750	Disclosure by QCAT of information about personal guardian	10 11
(1)	This section applies to each of the following—	12
(a)	a member of QCAT;	13
(b)	the principal registrar or a registrar under the QCAT Act or another member of the administrative staff of the registry under that Act;	14 15 16
(c)	an adjudicator or assessor appointed under the QCAT Act.	17 18
(2)	If requested by the registrar of the tribunal, or an employee of the department or a Hospital and Health Service who is involved in the administration of this Act, the person may disclose to the registrar, or the person making the request, the following information—	19 20 21 22 23
(a)	whether a personal guardian has been appointed for a stated individual; and	24 25
(b)	if a personal guardian has been appointed—the name and contact details of the personal guardian.	26 27

- (3) The person may give the information despite any other law that would otherwise prohibit or restrict the giving of the information.

751 Protection of officials from liability

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) This section does not apply to an official if the official is a State employee within the meaning of the *Public Service Act 2008*, section 26B(4).
- (4) In this section—
official means—
 - (a) the Minister; or
 - (b) an administrator of an authorised mental health service; or
 - (c) an authorised doctor; or
 - (d) an authorised mental health practitioner; or
 - (e) an inspector; or
 - (f) an authorised person; or
 - (g) a person acting under the direction of a person mentioned in paragraphs (a) to (f).

752 Approved forms

- (1) The president of the Mental Health Court may approve, for this Act, forms for use by or in the Mental Health Court.
- (2) The president of the tribunal may approve, for this Act, forms for use by or in the tribunal.

[s 753]

(3)	The chief psychiatrist may approve, for this Act, forms for use in circumstances not mentioned in subsection (1) or (2).	1 2
753	Regulation-making power	3
	The Governor in Council may make regulations under this Act.	4 5
Chapter 19	Repeal	6
754	Repeal	7
	The Mental Health Act 2000, No. 16 is repealed.	8
Chapter 20	Transitional provisions	9
Part 1	Preliminary	10
755	Definitions for ch 20	11
	In this chapter—	12
	<i>commencement</i> means the commencement of this chapter.	13
	<i>new Act</i> means the <i>Mental Health (Recovery Model) Act 2015</i> .	14 15
	<i>repealed Act</i> means the repealed <i>Mental Health Act 2000</i> .	16

756	Application of new Act in relation to proceedings for unlawful acts	1 2
(1)	To the extent a provision of the new Act relates to a proceeding for an alleged offence, the new Act applies if a proceeding is started after the commencement.	3 4 5
(2)	For subsection (1), it is irrelevant whether the offence is alleged to have been committed before or after the commencement.	6 7 8
(3)	To the extent subsection (1) is inconsistent with any other provision of this chapter, the other provision prevails.	9 10
757	Detention under repealed Act	11
(1)	A person detained under the repealed Act immediately before the commencement is taken to be detained under the new Act and may be dealt with under the new Act.	12 13 14
(2)	To the extent subsection (1) is inconsistent with any other provision of this chapter, the other provision prevails.	15 16
Part 2	Provisions about assessment and detention—repealed Act, chapters 2 and 3	17 18 19
758	Assessment documents	20
(1)	A request for assessment in force under the repealed Act immediately before the commencement ceases to have effect on the commencement.	21 22 23
(2)	A recommendation for assessment in force under the repealed Act immediately before the commencement—	24 25
(a)	is taken to be a recommendation for assessment under the new Act; and	26 27

[s 759]

- (b) remains in force for 7 days after it was made under the repealed Act. 1
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759 Persons subject to assessment documents 3

- (1) This section applies if, immediately before the commencement, a person for whom assessment documents are in force under the repealed Act is being taken under that Act to a place. 4
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7
- (2) The repealed Act continues to apply in relation to the taking of the person as if that Act had not been repealed. 8
9

760 Justices examination order 10

- (1) An application for a justices examination order made under the repealed Act but not decided before the commencement may be heard, or continue to be heard, and dealt with under that Act as if that Act had not been repealed. 11
12
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14
- (2) A justices examination order in force under the repealed Act immediately before the commencement continues in force for the period it would have been in force under that Act. 15
16
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- (3) For the purposes of a justices examination order made because of the application of subsection (1) or mentioned in subsection (2), the repealed Act, chapter 2, part 3, division 2 continues to apply as if the new Act had not commenced. 18
19
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- (4) On examination of a person under the repealed Act as applied under subsection (3), a doctor or authorised mental health practitioner may, under the new Act, decide to make a recommendation for assessment for the person. 22
23
24
25
- (5) The recommendation for assessment is a recommendation for assessment made under section 36. 26
27

761 Emergency examination order 28

- (1) Subsections (2) to (4) apply if, immediately before the commencement, a police officer or an ambulance officer is 29
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[s 762]

taking a person to an authorised mental health service under the repealed Act, section 34.	1 2
(2) The repealed Act, sections 35 and 36 continue to apply in relation to the persons mentioned in subsection (1) as if the new Act had not commenced.	3 4 5
(3) On examination of a person under the repealed Act as applied under subsection (2), a doctor or authorised mental health practitioner may, under the new Act, decide to make a recommendation for assessment for the person.	6 7 8 9
(4) The recommendation for assessment is a recommendation for assessment made under section 36.	10 11
(5) Subsections (6) to (8) apply if, immediately before the commencement, a person—	12 13
(a) is being taken to an authorised mental health service under the repealed Act, section 39, by a psychiatrist, police officer or ambulance officer; or	14 15 16
(b) is being detained in an authorised mental health service under the repealed Act, section 40.	17 18
(6) The repealed Act, sections 39 and 40 continue to apply in relation to the persons mentioned in subsection (5).	19 20
(7) On examination of a person under the repealed Act as applied under subsection (6), a doctor or an authorised mental health practitioner may, under the new Act, decide to make a recommendation for assessment for the person.	21 22 23 24
(8) The recommendation for assessment is a recommendation for assessment made under section 36.	25 26
(9) The repealed Act, section 41 continues to apply in relation to a person the subject of an examination mentioned in this section.	27 28 29
762 Detention for assessment	30
(1) This section applies if, immediately before the commencement—	31 32

[s 763]

- (a) a person is detained in an authorised mental health service for assessment under the repealed Act, section 44; and
 - (b) the assessment period for the person under that Act has not ended; and
 - (c) an assessment of the person under that Act has not been made.
- (2) The person is taken to be detained for assessment, and may be dealt with, under the new Act.
- (3) The assessment period for the person under the new Act is taken to have started when the person's assessment period started under the repealed Act, and may be extended in compliance with the new Act.
- (4) The new Act, section 41(3) applies to an authorised doctor assessing the person only if the administrator has not complied with the repealed Act, section 45 in relation to the person.

763 Agreement for assessment

- (1) This section applies to an agreement for assessment under the repealed Act—
 - (a) for a person's assessment at an authorised mental health service; and
 - (b) that is in force immediately before the commencement.
- (2) For the new Act, the agreement for assessment is taken to be an administrator consent under the new Act for the person's assessment.
- (3) If the person has not been taken for assessment to the authorised mental health service within 72 hours from the commencement, a doctor or authorised mental health practitioner must give written notice to the chief psychiatrist of that fact.

764	Custodian’s assessment authority	1
	A custodian’s assessment authority under the repealed Act is	2
	taken to be a custodian consent for the person subject to the	3
	authority.	4
765	Taking person to authorised mental health service	5
	(1) This section applies if, on the commencement—	6
	(a) a recommendation for assessment and a custodian’s	7
	assessment authority under the repealed Act are in force	8
	for a person, and	9
	(b) the person has not been taken to an authorised mental	10
	health service, under the recommendation and authority,	11
	for assessment.	12
	(2) For the purposes of the new Act, the person may be	13
	transported to the authorised mental health service under the	14
	recommendation and authority.	15
766	Classified patients	16
	(1) A classified patient under the repealed Act immediately	17
	before the commencement is taken to be a classified patient	18
	under the new Act.	19
	(2) A classified patient who consented to being treated and is at	20
	an authorised mental health service immediately before the	21
	commencement is taken to be a classified patient (voluntary).	22
	(3) The new Act, sections 68 and 72 applies to the administrator	23
	of an authorised mental health service only if the	24
	administrator has not complied with the repealed Act, section	25
	70(1)(a) or (c)(i) in relation to the person in custody.	26
	(4) The new Act, section 69 applies to an authorised doctor only	27
	if the administrator of an authorised mental health service has	28
	not complied with the repealed Act, section 70 in relation to	29
	the person in custody.	30

[s 767]

(5)	The new Act, section 73(2) applies to the chief psychiatrist only if the director has not complied with the repealed Act, section 70(2) in relation to the person in custody.	1 2 3
(6)	The new Act, section 73(3) applies to the chief executive (justice) only if the chief executive (justice) has not complied with the repealed Act, section 70(3) in relation to the person in custody.	4 5 6 7
767	Report of authorised doctor	8
(1)	This section applies if—	9
(a)	under the repealed Act, section 74, an authorised doctor has given the director a report about a patient; and	10 11
(b)	the director has not considered the report under the repealed Act, section 83 by the commencement.	12 13
(2)	The report is taken to be a notice received by the chief psychiatrist under section 78 of the new Act and the chief psychiatrist must deal with the notice under that section.	14 15 16
768	Involuntary treatment orders	17
(1)	An involuntary treatment order under the repealed Act that is in force immediately before the commencement is taken to be a treatment authority under the new Act.	18 19 20
(2)	On the commencement—	21
(a)	the category of the treatment authority is the category of the involuntary treatment order; and	22 23
(b)	the new Act applies in relation to the category of the treatment authority as if the authority had been made under the new Act.	24 25 26
(3)	Any conditions of the involuntary treatment order, including conditions about limited community treatment, are taken to be conditions of the treatment authority.	27 28 29

[s 768]

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- (4) Subject to section 772, if, under the repealed Act and immediately before the commencement, limited community treatment was authorised under the involuntary treatment order by an authorised doctor, the limited community treatment is taken to be authorised under the new Act.
- (5) If, on the commencement, the person subject to the treatment authority had not been examined under the repealed Act, section 112 by an authorised psychiatrist, an authorised psychiatrist must review the authority under the new Act, section 51.
- (6) If, on the commencement, notice of the making of the involuntary treatment order had not been given under the repealed Act, section 113, notice must be given in accordance with the new Act, section 50.
- (7) An assessment of the person subject to the treatment authority must be made under the new Act, section 209 within 3 months after the commencement.
- (8) Without limiting subsections (2) to (7)—
- (a) for the purposes of the new Act, the treatment authority is taken to have been made when the involuntary treatment order was made under the repealed Act; and
 - (b) the new Act applies in relation to the treatment authority as if it were made under the new Act.
- (9) To remove any doubt, it is declared that the person subject to the involuntary treatment order is taken to have been subject to the treatment authority for any period during which the person was subject to the order.

Part 3	Provisions about assessment or detention of persons before a court or in custody under chapter 3 of repealed Act	1 2 3 4
769	Court assessment order	5
	A court assessment order under section 58 of the repealed Act that is in effect immediately before the commencement is taken to be an examination order under the new Act.	6 7 8
770	Order of plea of guilty by Supreme or District Court under repealed s 62	9 10
(1)	This section applies if—	11
(a)	before the commencement, the Supreme or District Court made an order under section 62(1) of the repealed Act in relation to a person for an offence; and	12 13 14
(b)	immediately before the commencement, the person was remanded in custody by the court under section 62(2)(c) of the repealed Act.	15 16 17
(2)	From the commencement, the person is taken to be an involuntary patient under the new Act.	18 19

Part 4	Provisions about treatment and care of patients under chapter 4 of repealed Act	1
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		3
771	Treatment plans	4
(1)	This section applies if, before the commencement, a treatment plan was prepared for a patient under the repealed Act, section 124.	5
		6
		7
(2)	The treatment plan is taken to have been recorded by an authorised doctor in the patient's health records under section 206 of the new Act as the treatment and care to be provided to the patient under the new Act.	8
		9
		10
		11
772	Limited community treatment	12
(1)	This section applies if, before the commencement, an authorised doctor for a patient's treating health service authorised limited community treatment for a patient under the repealed Act, section 129 or 131.	13
		14
		15
		16
(2)	The limited community treatment is taken to have been authorised under the new Act, chapter 7.	17
		18
(3)	If the limited community treatment authorised under the repealed Act, section 129 or 131 was authorised subject to conditions, the conditions are taken to have been imposed under the new Act, chapter 7.	19
		20
		21
		22
773	Monitoring conditions	23
(1)	This section applies if, immediately before the commencement, a patient was subject to a monitoring condition imposed under the repealed Act, section 131A.	24
		25
		26
(2)	The monitoring condition is taken to have been imposed under the new Act for the same period and on the same conditions.	27
		28

[s 774]

Part 5	Provisions about restraint and seclusion under chapter 4A of repealed Act	1 2 3
774	Consent to electroconvulsive therapy	4
(1)	This section applies if, immediately before the commencement, a patient had given informed consent to electroconvulsive therapy under the repealed Act, section 139.	5 6 7
(2)	The consent is taken to have been given under the new Act, part 8.	8 9
775	Emergency electroconvulsive therapy	10
(1)	This section applies if, immediately before the commencement, a certificate under the repealed Act, section 140 for emergency electroconvulsive therapy was in force.	11 12 13
(2)	The certificate is taken to have been given under the new Act, chapter 8.	14 15
Part 6	Provisions about movement, transfer and temporary absence of patients under chapter 5 of repealed Act	16 17 18 19
776	Move of patients interstate	20
1)	If, immediately before the commencement, the tribunal had approved the move to another State of a person subject to a forensic order—	21 22 23
(a)	the person is taken to have been transferred to the other State under the new Act, chapter 12; and	24 25

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- (b) for the removal of any doubt, it is declared that, for section 492(2)(b) of the new Act, the 3-year period includes any period before the commencement for which the person was out of Queensland.
- (2) If an application for approval of a transfer of a person to an interstate mental health service was made under section 171 of the repealed Act but not decided before the commencement, the application may continue to be heard under the repealed Act as if the new Act had not commenced.
- (3) If the application is approved, the transfer is taken to have been approved under chapter 12, part 11, division 2 of the new Act.
- Note—*
- See section 492 in relation to the effect on the person's forensic order (mental condition), forensic order (disability) or court treatment order. The order ends if the person is out of Queensland for a continuous period of 3 years.

777 Temporary absences

- (1) This section applies if, immediately before the commencement, the director under the repealed Act had approved a temporary absence under the repealed Act, section 186.
- (2) The temporary absence is taken to have been approved by the chief psychiatrist under the new Act, chapter 7 for the same period and on the same conditions.

[s 778]

Part 7	Provisions about tribunal reviews under chapter 6 of repealed Act	1 2 3
Division 1	Orders and decisions made before commencement	4 5
778	Particular orders and decisions not given effect before commencement	6 7
(1)	This section applies if—	8
(a)	any of the following was made by the tribunal before the commencement—	9 10
(i)	order under section 191(2)(c) or 203(2)(d) of the repealed Act to transfer a patient from 1 authorised mental health service to another;	11 12 13
(ii)	a decision under section 197(1)(b) of the repealed Act that a young patient be transferred from a high security unit to an authorised mental health service that was not a high security unit; and	14 15 16 17
(b)	immediately before the commencement, the order or decision had not been given effect.	18 19
(2)	The order or decision must be given effect under the repealed Act as if the new Act had not commenced.	20 21
779	Particular decisions unaffected by new Act	22
(1)	This section applies to any of the following decisions made by the tribunal before the commencement—	23 24
(a)	a decision under section 212 of the repealed Act about a person’s fitness for trial;	25 26
(b)	a decision under section 233 of the repealed Act to approve—	27 28

[s 780]

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|---|---|
| (i) an application for approval to administer | 1 |
| electroconvulsive therapy on a person; or | 2 |
| (ii) an application for approval to perform | 3 |
| psychosurgery that is a non-ablative neurosurgical | 4 |
| procedure. | 5 |
| (2) The decision continues in effect and is not affected by the | 6 |
| commencement of the new Act. | 7 |

Division 2	Reviews and applications not completed before commencement	8 9
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| 780 | Existing applications to tribunal | 10 |
| | (1) Subsection (2) applies if any of the following applications | 11 |
| | were made under chapter 6 of the repealed Act but not | 12 |
| | decided before the commencement— | 13 |
| | (a) an application for a review; | 14 |
| | (b) an application for approval to administer | 15 |
| | electroconvulsive therapy on a person; | 16 |
| | (c) an application for approval to perform psychosurgery | 17 |
| | that is a non-ablative neurosurgical procedure. | 18 |
| | (2) The review or application may be heard, or continue to be | 19 |
| | heard, and dealt with under the repealed Act as if the new Act | 20 |
| | had not commenced. | 21 |
| | (3) However, chapter 6, part 5A of the repealed Act does not | 22 |
| | apply. | 23 |
| | (4) If— | 24 |
| | (a) an application for approval to perform psychosurgery | 25 |
| | that was made under chapter 6 of the repealed Act but | 26 |
| | not decided before the commencement; and | 27 |
| | (b) subsection (2) does not apply to the application; | 28 |
| | on the commencement, the application lapses. | 29 |

[s 781]

781	Existing reviews started other than by an application	1
(1)	This section applies if a following review was started under the repealed Act and not decided before the commencement—	2 3
(a)	a periodic review or review on the tribunal’s initiative under chapter 6, part 1 of the application of the treatment criteria to a patient for whom an involuntary treatment order was in force;	4 5 6 7
(b)	a periodic review or review on the tribunal’s initiative under chapter 6, part 2 of the detention of a young patient in a high security unit for treatment or care;	8 9 10
(c)	a periodic review or a review on the tribunal’s initiative under chapter 6, part 3 of a forensic patient’s mental condition.	11 12 13
(2)	The review may be heard, or continue to be heard, and dealt with under the repealed Act as if the new Act had not commenced.	14 15 16
(3)	However, chapter 6, part 5A of the repealed Act does not apply for the purposes of the review.	17 18
(4)	On a review mentioned in subsection (1)(c), if the tribunal confirms the forensic order for the patient, the tribunal must consider each of the following for the purposes of the new Act—	19 20 21 22
(a)	whether to change the category of the forensic order (mental condition) or forensic order (disability) to which the person is subject under section 790 or 791;	23 24 25
(b)	whether to order or approve, or revoke an existing order or approval for, limited community treatment;	26 27
(c)	whether the conditions to which the order is subject remain appropriate.	28 29
(5)	Subsection (4) does not limit section 203 of the repealed Act.	30
(6)	In this section	31
	<i>periodic review</i> means a review under section 187(1)(a), 194(1)(a) or 200(1)(a) of the repealed Act.	32 33

[s 782]

782	Effect of tribunal's decision on existing review	1
(1)	A decision made by the tribunal on a review dealt with under the repealed Act as continued in effect under this division has effect for the new Act as if the decision were made under the new Act.	2 3 4 5
(2)	For subsection (1), the decision takes effect under the new Act—	6 7
(a)	if the decision was made under chapter 6, part 1 of the repealed Act—in relation to the treatment authority taken to be made for the person under this part; or	8 9 10
(b)	if the decision was made under chapter 6, part 3 of the repealed Act—in relation to the forensic order (mental condition) or forensic order (disability) taken to be made for the person under this part.	11 12 13 14
(3)	A decision by the tribunal on an application for an approval mentioned in section 780(1)(b) or (c) is taken to have been made under chapter 12, part 10 of the new Act.	15 16 17
(4)	This section is subject to section 784.	18

Division 3	Other provisions	19
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783	When first periodic review under new Act must be conducted	20 21
(1)	This section provides for when a periodic review must be conducted by the tribunal under the new Act, if the matter to be reviewed arose under the repealed Act.	22 23 24
(2)	The first periodic review must be conducted under the new Act as follows—	25 26

[s 783]

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Type of review under new Act	Section of new Act under which first periodic review must be conducted	When first periodic review under new Act must be conducted
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Treatment authority taken to be made for person under s 768

(a) if no corresponding review conducted under repealed Act	s 398(1)(a)	6 weeks after treatment authority was taken to be made
(b) if 1 corresponding review conducted under repealed Act	s 398(1)(b)	6 months after last periodic review of corresponding matter under repealed Act was completed
(c) if 2 corresponding reviews conducted under repealed Act	s 398(1)(c)	6 months after last periodic review of corresponding matter under repealed Act was completed
(d) if 3 or more corresponding reviews conducted under repealed Act	s 398(1)(d)	12 months after last periodic review of corresponding matter under repealed Act was completed

Detention of a minor in a high security unit (detention started before commencement)

(a) if no corresponding review conducted under repealed Act	s 463(1)(a)	7 days after the detention started
(b) if 1 or more corresponding reviews conducted under repealed Act	s 463(1)(b)	3 months after last periodic review of corresponding matter under repealed Act was completed

[s 783]

Type of review under new Act	Section of new Act under which first periodic review must be conducted	When first periodic review under new Act must be conducted
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Forensic order (mental condition) or forensic order (disability) taken to have been made under s 790 or 791

(a) if no corresponding review conducted under repealed Act	s 409(1)(a)	6 months after order taken to have been made
(b) if 1 or more corresponding reviews conducted under repealed Act	s 409(1)(b)	6 months after last periodic review of corresponding matter under repealed Act was completed

Person's fitness for trial—relevant court decision or jury finding made before commencement

(a) if no corresponding review conducted under repealed Act	s 446(1)(a)	3 months starting on the day of the relevant court decision or jury finding
(b) if 1 or more corresponding reviews conducted under repealed Act	s 446(1)(b)	<p>(a) during the year starting on the day of the relevant court decision or jury finding—3 months after last periodic review of corresponding matter under repealed Act was completed</p> <p>(b) after the period mentioned in paragraph (a)—6 months after last periodic review of corresponding matter under repealed Act was completed</p>

(3) In this section—

corresponding review, under the repealed Act for a review under the new Act, means—

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3

[s 784]

- (a) for a review under the new Act of a treatment authority taken to be made for a person under section 768—a periodic review of the application of the treatment criteria to the person for whom an involuntary treatment order was in force under chapter 6, part 1 of the repealed Act; or
 - (b) for a review under the new Act of the detention of a minor in a high security unit—a periodic review of the detention of a young patient in a high security unit for treatment or care under chapter 6, part 2 of the repealed Act; or
 - (c) for a review under the new Act of a forensic order (mental condition) or forensic order (disability) taken to be made for a person under section 790 or 791—a periodic review of the forensic patient’s mental condition under chapter 6, part 3 of the repealed Act; or
 - (d) for a review under the new Act of a person’s fitness for trial—a periodic review of the person’s mental condition under chapter 6, part 4 of the repealed Act.
- periodic review***, under the repealed Act, means a review under section 187(1)(a), 194(1)(a), 200(1)(a) or 209(1)(a) of the repealed Act.
- relevant court decision or jury finding***, for a review of a person’s fitness for trial, means—
- (a) the decision made by the Mental Health Court under the repealed Act that the person was unfit for trial but the unfitness was not of a permanent nature; or
 - (b) the jury’s section 613 or 645 finding within the meaning of the repealed Act in relation to the person.

784 Discontinuing proceeding for offence following review of fitness for trial

(1) This section applies if—

- (a) before the commencement—

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- (i) on a reference under the repealed Act the Mental Health Court decided a person was unfit for trial but the unfitness was not of a permanent nature; or
 - (ii) a jury made a section 613 or 645 finding within the meaning of the repealed Act; and
 - (b) the proceeding against the person for the offence were not discontinued or the person had not been found fit for trial.
 - (2) For a review of the person's fitness for trial under chapter 12 of the new Act, if the tribunal decides the person is unfit for trial the proceeding against the person for the offence must be discontinued under chapter 6, part 4 division 2 of the repealed Act.
 - (3) For subsection (2)—
 - (a) chapter 6, part 4 division 2 of the repealed Act continues to apply despite its repeal; and
 - (b) chapter 12, part 6, division 2 does not apply for discontinuing the proceeding.
 - (4) For subsection (3)(a), chapter 6, part 4 division 2 of the repealed Act applies as if—
 - (a) a reference in section 214 of the repealed Act to a review mentioned in section 212(2) were a reference to a review mentioned in section 446(2) of the new Act; and
 - (b) section 214(2)(b) of the repealed Act provided that the Attorney-General must defer a decision on the matter and order that the tribunal continue to carry out reviews under chapter 12, part 6 of the new Act of the person's mental state; and
 - (c) section 215(3) provided that any period for which the person was a patient required to return must be disregarded in calculating the prescribed period; and
 - (d) a reference in section 216(4), 217(2) or (3) of the repealed Act to a forensic order is taken to be a
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	reference to a forensic order or court treatment order under the new Act; and	1 2
(e)	a reference in the division of the repealed Act to a forensic patient were a reference to a forensic patient within the meaning of the new Act.	3 4 5
785	Non-contact order ends	6
	A non-contact order made under the repealed Act and in effect immediately before the commencement stops effect on the commencement.	7 8 9
Part 8	Provisions about examinations, references and orders under chapter 7 of repealed Act	10 11 12
Division 1	Examinations under ch 7, pt 2 of repealed Act	13 14
786	Making of reference under repealed Act by director	15
(1)	This section applies if—	16
(a)	before the commencement, the director was satisfied chapter 7, part 2 of the repealed Act applied to an involuntary patient; and	17 18 19
(b)	immediately before the commencement, the director had not under section 240(1) of the repealed Act referred the matter of the patient’s mental condition relating to the offence with which the patient was charged to the Mental Health Court or director of public prosecutions.	20 21 22 23 24
(2)	Chapter 7, parts 1 to 3 of the repealed Act continues to apply, as if the new Act had not commenced, for the examination of	25 26

the patient and making of a reference under section 140 of the repealed Act. 1
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(3) A reference made under section 140 of the repealed Act as applied by this section is taken to have been made under the new Act. 3
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Division 2 References 6

- 787 Application of div 2** 7
- This division applies if— 8
- (a) before the commencement, a reference of a person's mental condition was made to the Mental Health Court under the repealed Act; and 9
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- (b) immediately before the commencement, the reference had not been decided by the court. 12
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- 788 Hearing of reference continues under repealed Act** 14
- (1) The reference may be heard, or continue to be heard, and dealt with under the repealed Act as if the new Act had not commenced. 15
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- Note—* 18
- See also section 811 in relation to suspension of the proceeding against the person for the unlawful act to which the reference relates. 19
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- (2) A decision or order made by the court under chapter 7, part 6 of the repealed Act is taken to have been made under chapter 5 of the new Act. 21
22
23
- (3) Without limiting subsection (2)— 24
- (a) an order made by the court under section 273 of the repealed Act is taken to have been made under section 128 of the new Act; and 25
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(b)	limited community treatment approved for the patient by the court under section 275 of the repealed Act is taken to be approved under the new Act.	1 2 3
(4)	Despite subsection (1), sections 278 and 279 of the repealed Act do not apply if the court orders the detention of the patient in an authorised mental health service.	4 5 6
(5)	If the proceeding for the offence alleged to have been committed by the person is stayed under section 280 of the repealed Act, the stay ends in accordance with the new Act.	7 8 9
(6)	Material produced to the court by a victim under section 284 of the repealed Act is taken to be a victim impact statement given to the court for the purposes of the new Act.	10 11 12
789	Appeal against Mental Health Court's decision	13
(1)	An appeal against a decision of the Mental Health Court on the reference may be started under the repealed Act, chapter 8, part 2.	14 15 16
(2)	The Court of Appeal may hear and decide the appeal under the repealed Act as if it had not been repealed.	17 18
Division 3	Forensic orders (Mental Health Court) and forensic orders (Mental Health Court—Disability)	19 20 21
790	Forensic order (Mental Health Court)	22
(1)	This section applies to a forensic order (Mental Health Court) under the repealed Act that is—	23 24
(a)	in force immediately before the commencement; or	25
(b)	made after the commencement under this chapter.	26
(2)	The order is taken to be a forensic order (mental condition) under the new Act.	27 28

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- (3) On the commencement or relevant start day— 1
- (a) the category of the forensic order (mental condition) is 2
inpatient; and 3
- (b) the new Act applies in relation to the category of the 4
forensic order (mental condition) as if the order had 5
been made under the Act. 6
- (4) Any conditions of the forensic order (Mental Health Court), 7
including a non-contact condition, are taken to be conditions 8
of the forensic order (mental condition). 9
- (5) Without limiting subsections (1) to (4)— 10
- (a) for the purposes of the new Act, the forensic order 11
(mental condition) is taken to have been made when the 12
forensic order (Mental Health Court) was made under 13
the repealed Act; and 14
- (b) the new Act applies in relation to the forensic order 15
(mental condition) as if it were made under the Act. 16
- (6) To remove any doubt, it is declared that the person subject to 17
the forensic order (Mental Health Court) is taken to have been 18
subject to the forensic order (mental condition) for any period 19
during which the person was subject to the forensic order 20
(Mental Health Court). 21
- (7) In this section— 22
- relevant start day* means, for a forensic order (mental 23
condition) taken to have been made after the commencement 24
under this chapter, the day the order is taken to have been 25
made. 26

791 Forensic order (Mental Health Court—Disability) 27

- (1) This section applies to a forensic order (Mental Health 28
Court—Disability) under the repealed Act that is— 29
- (a) in force immediately before the commencement; or 30
- (b) made after the commencement under this chapter. 31
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- (2) The order is taken to be a forensic order (disability) under the new Act. 1
2
- (3) On the commencement or relevant start day— 3
 - (a) the category of the forensic order (disability) is residential; and 4
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 - (b) the new Act applies in relation to the category of the forensic order (disability) as if the order had been made under the new Act. 6
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- (4) Any conditions of the forensic order (Mental Health Court—Disability), including a non-contact condition, are taken to be conditions of the forensic order (disability). 9
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- (5) Without limiting subsections (1) to (4)— 12
 - (a) for the purposes of the new Act, the forensic order (disability) is taken to have been made when the forensic order (Mental Health Court—Disability) was made under the repealed Act; and 13
14
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 - (b) the new Act applies in relation to the forensic order (disability) as if it were made under the new Act. 17
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- (6) To remove any doubt, it is declared that the person subject to the forensic order (Mental Health Court—Disability) is taken to have been subject to the forensic order (disability) for any period during which the person was subject to the forensic order (Mental Health Court—Disability). 19
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- (7) In this section— 24
 - relevant start day* means, for a forensic order (disability) taken to have been made after the commencement under this chapter, the day the order is taken to have been made. 25
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792 Limited community treatment for forensic patient 28

- (1) This section applies to a forensic order (mental condition) or forensic order (disability) taken to have been made for a person under this division. 29
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- (2) If, immediately before the commencement, limited community treatment for the person was ordered or approved by the Mental Health Court or the tribunal, or authorised by an authorised doctor—
- (a) the limited community treatment is taken to be ordered or approved, or authorised, under the new Act; and
- (b) the nature and extent of the limited community treatment continues unaffected by the commencement of the new Act.
- (3) If the limited community treatment was authorised under the repealed Act by an authorised doctor, the authorisation may be amended or revoked by an authorised doctor under the repealed Act as if the new Act had not commenced.

793 Review of forensic order under new Act

- (1) This section applies to a forensic order (mental condition) or forensic order (disability) taken to have been made for a person under this division.
- (2) When the tribunal first reviews the order under chapter 12 of the new Act, the tribunal must, if it confirms the order, consider the following—
- (a) whether the category of the order should be—
- (i) inpatient or residential; or
- (ii) community;
- (b) whether to order or approve, or revoke an existing order or approval for, limited community treatment;
- (c) whether the conditions to which the order is subject remain appropriate.
- (3) This section does not limit the powers of the tribunal under chapter 12, part 3.

Division 4	Other provisions	1
794	Order approving interstate transfer under s 288B of repealed Act	2 3
(1)	This section applies if, before the commencement, under a forensic order (Mental Health Court) or forensic order (Mental Health Court—Disability), the Mental Health Court approved a patient move out of Queensland.	4 5 6 7
(2)	On the commencement, the approval is taken to be an approval for the transfer of the patient given under chapter 12, part 11, division 2 of the new Act.	8 9 10
	<i>Note—</i>	11
	Under section 492 of the new Act, the patient’s forensic order (mental condition) or court treatment order ends if the patient is out of Queensland for a continuous period of 3 years.	12 13 14
795	Forensic order (Criminal Code)	15
	For the removal of any doubt, it is declared that the new Act applies in relation to a forensic order (Criminal Code) within the meaning of the repealed Act that was made before the commencement.	16 17 18 19
796	Custody order	20
(1)	This section applies if a custody order is in effect under the repealed Act immediately before the commencement.	21 22
(2)	Chapter 7, part 7, subdivision 3 of the repealed Act is taken to continue to apply in relation to the custody order.	23 24
797	Forensic order (Minister)	25
(1)	This section applies if a forensic order (Minister) is—	26
(a)	in effect for a person immediately before the commencement; or	27 28

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| <p>(b) made under chapter 7, part 7, subdivision 3 of the repealed Act as continued in effect under section 796(2).</p> <p>(2) From the commencement or relevant start day, the order is taken to be a forensic order (mental condition) under the new Act.</p> <p>(3) On the commencement or relevant start day—</p> <p style="padding-left: 20px;">(a) the category of the forensic order (mental condition) is inpatient; and</p> <p style="padding-left: 20px;">(b) the new Act applies in relation to the category of the forensic order (mental condition) as if the order had been made under the Act.</p> <p>(4) Without limiting subsections (1) to (3)—</p> <p style="padding-left: 20px;">(a) for the purposes of the new Act, the forensic order (mental condition) is taken to have been made when the forensic order (Minister) was made under the repealed Act; and</p> <p style="padding-left: 20px;">(b) the new Act applies in relation to the forensic order (mental condition) as if it were made under the new Act.</p> <p>(5) In this section—</p> <p style="padding-left: 20px;"><i>relevant start day</i>, for a forensic order (Minister) mentioned in subsection (1)(b), means the day the order is made.</p> <p>798 Forensic disability client temporarily detained in authorised mental health service</p> <p>(1) This section applies if, immediately before the commencement, a forensic disability client is detained in an authorised mental health service under section 309B of the repealed Act.</p> <p>(2) Section 309B of the repealed Act is taken to continue to apply, despite its repeal, for the detention of the client in the authorised mental health service.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> |
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[s 799]

Part 9	Provisions about information orders under chapter 7A of repealed Act	1 2 3
799	Forensic information orders	4
(1)	This section applies if, immediately before the commencement, a person was entitled to receive information for a patient under a forensic information order.	5 6 7
(2)	The person is taken to be entitled to receive the information mentioned in schedule 1 of the new Act under an information notice under the Act.	8 9 10
800	Classified patient information orders	11
(1)	This section applies if, immediately before the commencement, a person was entitled to receive information for a patient under a classified patient information order.	12 13 14
(2)	The information may continue to be disclosed to the person for the purposes of chapter 17 of the new Act.	15 16
Part 10	Provisions about security of authorised mental health services under chapter 10 of repealed Act	17 18 19 20
801	Exclusion of visitors	21
(1)	This section applies if, immediately before the commencement, an administrator of an authorised mental health service has given a notice, under the repealed Act, section 374, to a person refusing to allow the person to visit a patient in the health service.	22 23 24 25 26

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| (2) | The notice is taken to have been given under the new Act, | 1 |
| | section 394. | 2 |

Part 11	Provisions about Mental Health Court under chapter 11 of repealed Act	3
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802	Mental Health Court registry	6
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| (1) | The Mental Health Court Registry established under the repealed Act continues in existence under the new Act. | 7 |
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| (2) | Without limiting subsection (1), the employment of the registrar and other staff under the repealed Act immediately before the commencement is not affected by the commencement of the new Act. | 9 |
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803	Court examination order	13
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| (1) | This section applies if— | 14 |
| | (a) a court examination order was made under section 422 of the repealed Act before the commencement; and | 15 |
| | | 16 |
| | (b) immediately before the commencement, the person was detained under section 424(5) of the repealed Act. | 17 |
| | | 18 |
| (2) | The court examination order continues in effect under the repealed Act as if the new Act had not commenced. | 19 |
| | | 20 |
| (3) | Sections 422 to 425 of the repealed Act continue to apply for the purposes of the person's examination and detention under the order. | 21 |
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| | | 23 |

[s 804]

804	Inquiry into detention of patient in authorised mental health service	1
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	An inquiry started by the Mental Health Court under chapter 11, part 9 of the repealed Act but not completed before the commencement may be completed under that Act as if the new Act had not commenced.	3
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Part 12	Miscellaneous	7
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805	Mental Health Court, tribunal or another court may make orders about transition from repealed Act to new Act	8
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| (1) | If this chapter makes no or insufficient provision for the transition of a matter before the Mental Health Court, the tribunal or another court for the administration of the new Act, the Mental Health Court, tribunal or other court may make the order it considers appropriate. | 10 |
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| (2) | The order may be made— | 15 |
| (a) | on application of the chief psychiatrist or a party to a proceeding before the court or tribunal; or | 16 |
| | | 17 |
| (b) | on the initiative of the Mental Health Court, tribunal or other court. | 18 |
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806	Notices generally	20
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| (1) | Subsection (2) applies if, immediately before the commencement, a person was required under a provision of the repealed Act to give written or other notice about a particular matter under that Act and had not given the notice by the commencement. | 21 |
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| (2) | The person must give the notice under the provision of the new Act that deals with similar matters to the matters for which notice was required to be given under the repealed Act. | 26 |
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[s 807]

(3)	Subsection (4) applies if—	1
(a)	a person has given a written or other notice about a particular matter under the repealed Act; and	2 3
(b)	on the commencement, a person who would have been required or authorised to do something under the repealed Act on receiving the notice has not yet done the thing; and	4 5 6 7
(c)	a provision of the new Act deals with similar matters to the matters for which the notice was required to be given under the repealed Act and requires or authorises a person to do something on receiving notice of the matters.	8 9 10 11 12
(4)	The requirement or authorisation under the new Act applies in relation to the person required or authorised to do the thing.	13 14
807	Records made under repealed Act	15
(1)	A record about a person that the administrator of an authorised mental health service is required to keep under the repealed Act immediately before the commencement must be kept with the patient's health records mentioned in section 206 of the new Act.	16 17 18 19 20
(2)	Subsection (1) applies subject to a direction made by the chief psychiatrist.	21 22
808	Subpoenas	23
	A subpoena issued under the repealed Act before the commencement under the repealed Act is taken to have been issued under the new Act.	24 25 26
809	Authorised mental health services and high security units	27 28
(1)	An authorised mental health service under the repealed Act is an authorised mental health service under the new Act.	29 30

[s 810]

- | | | |
|-----|--|--------|
| (2) | A high security unit under the repealed Act is a high security unit under the new Act. | 1
2 |
|-----|--|--------|

810	Office holders	3
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|-----|---|--|
| (1) | This section applies to a person holding office under the repealed Act, by appointment or otherwise, immediately before the commencement if the person's office is provided for under the new Act. | 4
5
6
7 |
| (2) | The person continues to hold the office under the new Act. | 8 |
| | <i>Example of persons who continue to hold office under the new Act—</i> | 9 |
| | <ul style="list-style-type: none"> • the administrator of an authorised mental health service or high security unit • an authorised doctor or authorised mental health practitioner • the president, deputy president and other members of the Mental Health Court • the registrar of the Mental Health Court • the president and other members, and executive officers, of the tribunal | 10
11
12
13
14
15
16
17 |
| (3) | If the name of the office has changed under the new Act, the person holds office under the changed name. | 18
19 |
| (4) | Without limiting subsection (3)— | 20 |
| | (a) the director under the repealed Act is the chief psychiatrist on the commencement; and | 21
22 |
| | (b) an assisting psychiatrist is an assisting clinician on the commencement. | 23
24 |
| (5) | The person holds office— | 25 |
| | (a) for the remainder of the term, if any, provided for under the repealed Act; and | 26
27 |
| | (b) on the conditions provided for under the new Act. | 28 |
| (6) | If the person held office as an assisting psychiatrist under the repealed Act, for section 680 of the new Act the period for which the person holds office as an assisting clinician includes | 29
30
31 |

[s 811]

	the period for which the person held office as an assisting psychiatrist under the repealed Act.	1 2
(7)	A person who assumes office as an assisting clinician under subsection (6) cannot be reappointed as an assisting clinician if the total period for which the person has held office under the appointment, as an assisting psychiatrist or assisting clinician, is more than 6 years.	3 4 5 6 7
(8)	Subsection (6) does not apply until the assisting psychiatrist's term of office ends on or after the commencement.	8 9
811	Suspended proceedings	10
(1)	This section applies to proceedings for an offence if, on the commencement, the proceedings are suspended under the repealed Act.	11 12 13
(2)	The suspension ends in accordance with the new Act.	14
812	Reviews relating to serious risks	15
(1)	This section applies to a review under the repealed Act, section 493AC if the review was started but not completed before the commencement.	16 17 18
(2)	The review may be continued under the new Act, chapter 10, part 5 by the chief psychiatrist as if the chief psychiatrist were directed to undertake the review under that part.	19 20 21
813	Appeals	22
(1)	An appeal against a decision mentioned in the repealed Act, section 319 made before the commencement may be started or continued under the repealed Act, chapter 8, part 1.	23 24 25
(2)	The Mental Health Court may hear, or continue to hear, and decide the appeal under the repealed Act as if it had not been repealed.	26 27 28

[s 814]

(3)	An appeal against a decision of the Mental Health Court on a reference before the commencement may be started or continued under the repealed Act, chapter 8, part 2.	1 2 3
(4)	The Court of Appeal may hear, or continue to hear, and decide the appeal under the repealed Act as if it had not been repealed.	4 5 6
(5)	For giving effect to a decision under subsection (2) or (4), the court may make the orders it considers necessary having regard to the new Act.	7 8 9
814	Annual reports	10
(1)	This section applies if a person is required to give a report under the repealed Act, section 435, 487 or 494 (each a <i>previous section</i>) and the report has not been given before the commencement.	11 12 13 14
(2)	The person is not required to give the report.	15
(3)	However, the first report given under a provision of the new Act that corresponds to a previous section must include the matters that would have been required to be included in the report under the previous provision.	16 17 18 19
815	References to orders and authorities under repealed Act	20
	A reference in a document to an order or authority under the repealed Act may, if the context permits, be taken to include a reference to a corresponding order or authority provided for under the new Act.	21 22 23 24
816	Transitional regulation-making power	25
(1)	A regulation (a <i>transitional regulation</i>) may make provision about a matter for which—	26 27
(a)	it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the	28 29

[s 817]

-
- operation of the repealed Act to the operation of the new
Act; and
- (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a
day not earlier than the day of commencement.
- (3) A transitional regulation must declare it is a transitional
regulation.
- (4) This section and any transitional regulation expire 1 year after
the day of the commencement.

Chapter 21 Amendment of Acts

Part 1 Amendment of this Act

817 Act amended

This part amends this Act.

818 Amendment of long title

Long title, from ‘, and further’—
omit.

[s 819]

Part 2	Amendment of Criminal Code	1
819	Code amended	2
	This part amends the Criminal Code.	3
820	Amendment of ss 145A(a), 227C(3), definition <i>lawful custody</i>, 266 and 358	4
	Sections 145A(a), 227C(3), definition <i>lawful custody</i> , 266 and 358, ' <i>Mental Health Act 2000</i> '—	5
	<i>omit, insert—</i>	6
	<i>Mental Health (Recovery Model) Act 2015</i>	7
821	Amendment of s 613 (Want of understanding of accused person)	8
	Section 613(3), from 'kept in custody'—	9
	<i>omit, insert—</i>	10
	admitted to an authorised mental health service to be dealt with under the <i>Mental Health (Recovery Model) Act 2015</i> .	11
822	Amendment of s 645 (Accused person insane during trial)	12
	Section 645(1), from 'kept in strict custody'—	13
	<i>omit, insert—</i>	14
	admitted to an authorised mental health service to be dealt with under the <i>Mental Health (Recovery Model) Act 2015</i> .	15
823	Amendment of s 647 (Acquittal on ground of insanity)	16
	Section 647(1), from 'kept in strict custody'—	17
	<i>omit, insert—</i>	18

[s 824]

admitted to an authorised mental health service to be 1
dealt with under the *Mental Health (Recovery Model)* 2
Act 2015. 3

824 Amendment of s 678 (Definitions) 4

Section 678(1)(b)(ii), ‘*Mental Health Act 2000*, section 5
281’— 6

omit, insert— 7

Mental Health (Recovery Model) Act 2015, section 8
129 9

Part 3 Amendment of Forensic Disability Act 2011 10
11

825 Act amended 12

This part amends the *Forensic Disability Act 2011*. 13

826 Amendment of s 4 (How purpose is to be achieved) 14

Section 4(d)(iii), ‘limited’— 15

omit. 16

827 Amendment of s 6 (Application of Act) 17

Section 6, ‘forensic order (Mental Health 18
Court—Disability)’— 19

omit, insert— 20

forensic order (disability) 21

[s 828]

828	Amendment of s 7 (General principles)	1
	Section 7(e), example—	2
	<i>omit.</i>	3
829	Amendment of s 10 (Who is a <i>forensic disability client</i>)	4
(1)	Section 10(1) to (4)—	5
	<i>omit, insert—</i>	6
(1)	A <i>forensic disability client</i> is an adult with an intellectual or cognitive disability for whom a forensic order (disability) is in force, if under the Mental Health Act the forensic disability service is responsible for the adult.	7 8 9 10 11
	<i>Note—</i>	12
	See the Mental Health Act, section 154 in relation to who is responsible for an adult for whom a forensic order (disability) is in force.	13 14 15
(2)	Section 10(5), ‘limited’—	16
	<i>omit.</i>	17
(3)	Section 10(5)—	18
	<i>renumber</i> as section 10(2).	19
830	Amendment of s 14 (Preparing plan for client)	20
	Section 14(6), definition <i>relevant plans</i> , paragraph (c), ‘treatment plan under the Mental Health Act applying to the client’—	21 22 23
	<i>omit, insert—</i>	24
	planned treatment and care recorded in the client’s health records under the Mental Health Act	25 26
831	Amendment of s 15 (Content of plan)	27
	Section 15(3), note, ‘limited’—	28

	<i>omit.</i>	1
832	Replacement of ch 2, pt 2, hdg (Limited community treatment)	2
	Chapter 2, part 2, heading—	3
	<i>omit, insert—</i>	4
	Part 2 Community treatment	5
833	Amendment of s 20 (Authorising limited community treatment)	6
	(1) Section 20, ‘limited’—	7
	<i>omit.</i>	8
	(2) Section 20(2), from ‘only if’—	9
	<i>omit, insert—</i>	10
	only if—	11
	(a) the tribunal or Mental Health Court has	12
	ordered or approved the community	13
	treatment; and	14
	(b) the senior practitioner is satisfied, having	15
	regard to the matters stated in subsection	16
	(3), there is not an unacceptable risk to the	17
	safety of the community, because of the	18
	client’s intellectual or cognitive disability,	19
	including the risk of serious harm to other	20
	persons or property.	21
	(3) Section 20—	22
	<i>insert—</i>	23
	(3) For subsection (2), the senior practitioner must	24
	have regard to the following matters—	25
	(a) for limited community treatment—the fact	26
	that the purpose of limited community	27
		28
		29

[s 834]

	treatment is to support the client's	1
	rehabilitation by transitioning the client to	2
	living in the community with appropriate	3
	care and support;	4
(b)	the client's current mental state and	5
	intellectual disability;	6
(c)	the client's social circumstances including,	7
	for example, family and social support;	8
(d)	the client's response to care and support	9
	including, if relevant, the client's response	10
	to care and support in the community;	11
(e)	the client's willingness to continue to	12
	receive appropriate care and support;	13
(f)	the nature of the unlawful act that led to the	14
	making of the applicable forensic order and	15
	the amount of time that has passed since the	16
	act occurred.	17
(4)	Also, if the senior practitioner authorises the	18
	community treatment, the senior practitioner	19
	must have regard to the matters mentioned in	20
	subsection (3) in deciding the nature and	21
	conditions of the community treatment.	22
834	Amendment of s 21 (Limited community treatment on	23
	order of tribunal or Mental Health Court)	24
(1)	Section 21, heading, 'Limited community'—	25
	<i>omit, insert—</i>	26
	Community	27
(2)	Section 21, 'limited'—	28
	<i>omit.</i>	29

[s 835]

835	Amendment of s 22 (What individual development plan must state about limited community treatment)	1
	Section 22, ‘limited’—	2
	<i>omit.</i>	3
		4
836	Amendment of s 26 (Who is allied person if client does not have capacity to choose)	5
	Section 26(2), ‘or the Mental Health Act’—	6
	<i>omit.</i>	7
		8
837	Insertion of new ch 4, pts 3 and 4	9
	Chapter 4—	10
	<i>insert—</i>	11
	Part 3 Temporary absence	12
	32A Absence of client with director’s approval	13
	(1) The director may, by written notice, approve the absence of a forensic disability client from the forensic disability service—	14
		15
	(a) to receive medical, dental or optical treatment; or	16
		17
	(b) to appear before a court, tribunal or other body; or	18
		19
	(c) for another purpose the director considers to be appropriate on compassionate grounds.	20
		21
	(2) The notice must state the approved period of absence.	22
		23
	(3) The approval may be given on the conditions the director considers appropriate, including, for example, a condition that the client is to be in the care of a stated person for the period of absence.	24
		25
		26
		27
		28

[s 838]

Part 4	Rights of allied person	1
32B Allied person to be notified of transfer of responsibility for forensic disability client		2 3
(1) This section applies if the responsibility for a forensic disability client is transferred, under section 113A or the Mental Health Act, chapter 11, part 5—		4 5 6 7
(a) from the forensic disability service to an authorised mental health service; or		8 9
(b) from an authorised mental health service to the forensic disability service.		10 11
(2) The administrator must give the client's allied person notice of the transfer of responsibility for the client.		12 13 14
(3) Subsection (2) does not apply if the allied person is the client's nominated support person under the Mental Health Act.		15 16 17
838 Omission of ch 5 (Transfer and temporary absence of forensic disability clients)		18 19
Chapter 5—		20
<i>omit.</i>		21
839 Amendment of s 47 (Relationship with Disability Services Act)		22 23
Section 47(a), 'limited'—		24
<i>omit.</i>		25
840 Amendment of s 84 (Procedure for appeal)		26
(1) Section 84(1), '376 to 380'—		27
<i>omit, insert—</i>		28

	497 to 500	1
(2)	Section 84(2)—	2
	<i>omit, insert—</i>	3
(2)	For subsection (1), the Mental Health Act, section 497(2) applies as if a reference to a decision notice for the decision were a reference to the notice of the decision required to be given under section 82(2).	4 5 6 7 8
841	Amendment of s 91 (Policies and procedures about detention, care and support of clients)	9 10
	Section 91(2)(c), ‘special notification clients’—	11
	<i>omit, insert—</i>	12
	forensic disability clients for whom the offence leading to the making of the applicable forensic order is a prescribed offence within the meaning of the Mental Health Act	13 14 15 16
842	Omission of s 92 (Giving information about client to director (mental health) or nominee)	17 18
	Section 92—	19
	<i>omit.</i>	20
843	Omission of s 98 (Administrator’s obligation to ensure forensic order is given effect)	21 22
	Section 98—	23
	<i>omit.</i>	24

[s 844]

844	Amendment of s 113 (Taking client to forensic disability service or authorised mental health service)	1
		2
(1)	Section 113(1)(f), ‘the Mental Health Act, section 309B has ended.’ and note—	3
		4
	<i>omit, insert—</i>	5
	section 113A has ended.	6
(2)	Section 113(2)(b)(ii)—	7
	<i>omit, insert—</i>	8
	(ii) the director and the chief psychiatrist agree that the client be taken to the authorised mental health service for temporary detention under section 113A.	9
		10
		11
		12
		13
(3)	Section 113(2)(b), note—	14
	<i>omit.</i>	15
(4)	Section 113(3)(a) and (b)—	16
	<i>omit, insert—</i>	17
	(a) if the client is to be detained in the forensic disability service—the forensic disability service; or	18
		19
		20
	(b) if the client is to undertake community treatment—the place where the client is to undertake the community treatment.	21
		22
		23
(5)	Section 113(4), ‘limited’—	24
	<i>omit.</i>	25
(6)	Section 113(4) to (6), ‘a health practitioner’—	26
	<i>omit, insert—</i>	27
	an authorised person under the Mental Health Act	28
(7)	Section 113(4), ‘director (mental health)’—	29
	<i>omit, insert—</i>	30

chief psychiatrist	1
(8) Section 113(9)—	2
<i>omit.</i>	3
845 Insertion of new s 113A	4
Chapter 9, part 1—	5
<i>insert—</i>	6
113A Temporary admission of client to authorised mental health service	7
	8
(1) This section applies if a client is taken to an authorised mental health service under section 113.	9 10 11
(2) The director and the chief psychiatrist may agree to transfer responsibility for the client from the forensic disability service to the authorised mental health service for an agreed period.	12 13 14 15
<i>Note—</i>	16
See the Mental Health Act, section 154 in relation to who is responsible for an adult subject to a forensic order (disability).	17 18 19
(3) Subject to subsection (4), the agreed period must not be more than 3 days.	20 21
(4) The director and the chief psychiatrist may agree that the client be detained in the authorised mental health service for more than 3 days if—	22 23 24
(a) both the director and the chief psychiatrist are satisfied it is in the client's best interests to do so having regard to the client's health and safety; and	25 26 27 28
(b) the director has given the chief psychiatrist written notice detailing the arrangements for returning the responsibility for the client to	29 30 31

[s 846]

	the forensic disability service, before or at	1
	the end of the longer period.	2
(5)	The chief psychiatrist must give written notice of	3
	an agreement mentioned in subsection (2) or (4)	4
	to the administrator of the authorised mental	5
	health service.	6
846	Amendment of s 114 (Application of pt 2)	7
	Section 114, ‘limited’—	8
	<i>omit.</i>	9
847	Amendment of s 115 (Entry of places)	10
	Section 115, ‘limited’—	11
	<i>omit.</i>	12
848	Amendment of s 116 (Offences relating to ill-treatment)	13
	Section 116(1)(c), ‘limited’—	14
	<i>omit.</i>	15
849	Amendment of s 117 (Offences relating to forensic disability clients absconding)	16 17
	Section 117(1)(d)—	18
	<i>omit.</i>	19
850	Amendment of s 122 (Confidentiality of information—other persons)	20 21
	Section 122(3)(d), ‘director (mental health)’—	22
	<i>omit, insert—</i>	23
	chief psychiatrist	24

851	Omission of s 123 (Disclosure of confidential information)	1
	Section 123—	2
	<i>omit.</i>	3
		4
852	Amendment of s 126 (Evidentiary provisions)	5
	Section 126(2)(a)(ii), ‘director (mental health)’—	6
	<i>omit, insert—</i>	7
	chief psychiatrist	8
853	Amendment of s 128 (Protection of officials from liability)	9
	Section 128(3), definition <i>official</i> , paragraph (b), ‘director (mental health)’—	10
	<i>omit, insert—</i>	11
	chief psychiatrist	12
		13
854	Omission of ch 10 (Application of Mental Health Act)	14
	Chapter 10—	15
	<i>omit.</i>	16
855	Amendment of s 141 (Review by director)	17
(1)	Section 141(4), ‘202 for the hearing of a review of the client’s mental condition’—	18
	<i>omit, insert—</i>	19
	414 for the hearing of a review of the forensic order	20
	(disability) to which the client is subject	21
		22
(2)	Section 141(5)(c)—	23
	<i>omit, insert—</i>	24

[s 856]

	(c) any period for which the administrator of an authorised mental health service was responsible for the client under section 154 of the Mental Health Act.	1 2 3 4
	(3) Section 141(5), example, ‘limited’— <i>omit.</i>	5 6
856	Omission of s 142 (Transfer from forensic disability service to authorised mental health service) Section 142— <i>omit.</i>	7 8 9 10
857	Amendment of s 144 (Administration of medication for particular purposes) (1) Section 144(1)— <i>omit.</i> (2) Section 144(2), ‘also’— <i>omit.</i> (3) Section 144(2), ‘a client to’— <i>omit, insert—</i> a forensic disability client to or from	11 12 13 14 15 16 17 18 19
858	Omission of s 149 (Director taken to have complied with particular requirements) Section 149— <i>omit.</i>	20 21 22 23
859	Omission of s 152 (Care of client detained temporarily in authorised mental health service) Section 152—	24 25 26

	<i>omit.</i>	1
860	Amendment of s 155 (Use of reasonable force)	2
	Section 155(1)(a), ‘37, 113(2) or (3)’—	3
	<i>omit, insert—</i>	4
	113(2)	5
861	Amendment of ch 13, hdg (Transitional provision)	6
	Chapter 13, heading, ‘provision’—	7
	<i>omit, insert—</i>	8
	provisions	9
862	Insertion of new ch 13, pt 1, hdg	10
	Chapter 13, before section 160—	11
	<i>insert—</i>	12
	Part 1	13
	Transitional provision	14
	for Forensic Disability	15
	Act 2011	
863	Insertion of new ch 13, pt 2	16
	Chapter 13—	17
	<i>insert—</i>	18
	Part 2	19
	Transitional provisions	20
	for Mental Health	21
	(Recovery Model) Act	22
	2015	

[s 863]

161 Application of s 141

The period mentioned in section 141(5)(c) is taken to include a period for which the forensic disability client was—

- (a) detained temporarily in an authorised mental health service under the repealed *Mental Health Act 2000*, section 309B; or
- (b) absent from the health service while undertaking limited community treatment within the meaning of that Act, or under an approval given under that Act, section 186.

162 Application of transitional provisions to forensic disability clients

- (1) A provision of the *Mental Health (Recovery Model) Act 2015*, chapter 20 applies for a forensic disability client to the extent—
 - (a) the provision operates in relation to a previously applied provision; and
 - (b) the context permits.
- (2) This section does not limit the operation of the *Mental Health (Recovery Model) Act 2015*, chapter 20.
- (3) In this section—
previously applied provision means a provision of the repealed *Mental Health Act 2000* that was, immediately before the commencement, an applied provision under this Act.

163 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which—

-
- (a) it is necessary to make provision to allow or
facilitate the doing of anything to achieve
the transition from the operation of the
previous Act to the operation of the
amended Act; and
- (b) the amended Act or the *Mental Health
(Recovery Model) Act 2015* does not make
provision or sufficient provision.
- (2) A transitional regulation may have retrospective
operation to a day not earlier than the day of
commencement.
- (3) A transitional regulation must declare it is a
transitional regulation.
- (4) This section and any transitional regulation
expire 1 year after the day of the commencement.
- (5) In this section—
amended Act means this Act as in force on the
commencement.
previous Act means this Act as in force
immediately before the commencement.

864 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *applicable forensic order*, *applied
provisions*, *director (mental health)*, *forensic information
order*, *forensic order (Mental Health Court—Disability)*,
patient, *special notification client* and *transfer order*—
omit.
- (2) Schedule 2—
insert—
applicable forensic order, in relation to a
forensic disability client, means the forensic
order (disability) that is in force for the client.

[s 865]

<i>chief psychiatrist</i> see the Mental Health Act, schedule 4.	1 2
<i>community treatment</i> , for a forensic disability client, means—	3 4
(a) if the applicable forensic order is an order with the category of community under the Mental Health Act—the provision of care and support for the client in the community under the order; or	5 6 7 8 9
(b) if the applicable forensic order is an order with the category of residential under the Mental Health Act—limited community treatment for the client.	10 11 12 13
<i>forensic order (disability)</i> see the Mental Health Act, schedule 4.	14 15
(3) Schedule 2, definition <i>limited community treatment</i> , after ‘community’—	16 17
<i>insert—</i>	18
for up to 7 days	19
(4) Schedule 2, definition <i>Mental Health Act</i> , ‘2000’—	20
<i>omit, insert—</i>	21
2015	22

Part 4	Amendment of Powers of Attorney Act 1998	23 24
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865 Act amended	25
This part amends the <i>Powers of Attorney Act 1998</i> .	26

866	Amendment of s 6A (Relationship with Guardianship and Administration Act 2000)	1 2
	Section 6A(1)(c), note, ‘psychosurgery’—	3
	<i>omit, insert—</i>	4
	a non-ablative neurosurgical procedure	5
867	Amendment of s 38 (Act’s relationship with Mental Health Act)	6 7
	Section 38, ‘ <i>Mental Health Act 2000</i> ’—	8
	<i>omit, insert—</i>	9
	<i>Mental Health (Recovery Model) Act 2015</i>	10
868	Amendment of sch 2 (Types of matters)	11
(1)	Schedule 2, section 5(3)—	12
	<i>insert—</i>	13
	(d) psychosurgery for the principal.	14
(2)	Schedule 2, section 7(e), ‘psychosurgery’—	15
	<i>omit, insert—</i>	16
	a non-ablative neurosurgical procedure	17
(3)	Schedule 2, section 15—	18
	<i>omit, insert—</i>	19
	15 Psychosurgery	20
	<i>Psychosurgery</i> is a procedure on the brain that	21
	involves deliberate damage to, or removal of, brain	22
	tissue for the treatment of a mental illness.	23
(4)	Schedule 2—	24
	<i>insert—</i>	25

[s 869]

15A Non-ablative neurosurgical procedure	1
A <i>non-ablative neurosurgical procedure</i> is a	2
procedure on the brain that does not involve deliberate	3
damage to, or removal of, brain tissue for the	4
treatment of a mental illness.	5
869 Amendment of sch 3 (Dictionary)	6
Schedule 3—	7
<i>insert—</i>	8
<i>non-ablative neurosurgical procedure</i> see	9
schedule 2, section 15A.	10
Part 5 Amendment of Public Health Act 2005	11
	12
870 Act amended	13
This part amends the <i>Public Health Act 2005</i> .	14
871 Amendment of s 7 (How object is mainly achieved)	15
(1) Section 7(d) to (i)—	16
<i>renumber</i> as section 7(e) to (j).	17
(2) Section 7—	18
<i>insert—</i>	19
(d) providing for persons who have a serious	20
mental impairment or mental illness to be	21
transported to a treatment or care place; and	22

872	Insertion of new ch 4A	1
	After section 157—	2
	<i>insert—</i>	3
	Chapter 4A Health of persons	4
	with serious mental	5
	impairment or	6
	mental illness	7
	 Part 1 Preliminary	 8
	 157A Definitions for ch 4A	 9
	In this chapter—	10
	<i>administrator</i> see the <i>Mental Health (Recovery Model) Act 2015</i> , schedule 3.	11 12
	<i>ambulance officer</i> see the <i>Ambulance Service Act 1991</i> , schedule.	13 14
	<i>authorised mental health practitioner</i> see the <i>Mental Health (Recovery Model) Act 2015</i> , schedule 3.	15 16 17
	<i>authorised mental health service</i> see the <i>Mental Health (Recovery Model) Act 2015</i> , schedule 3.	18 19
	<i>emergency examination authority</i> see section 157D(1).	20 21
	<i>examination period</i> see section 157E(1).	22
	<i>public sector health service facility</i> see the <i>Hospital and Health Boards Act 2011</i> , schedule 2.	23 24 25
	<i>treatment</i> see the <i>Mental Health (Recovery Model) Act 2015</i> , schedule 3.	26 27

[s 872]

treatment or care place means a public sector health service facility, authorised mental health service or another place, other than a watch house, where a person may receive treatment and care appropriate to the person's needs.

Example of another place where a person may receive treatment and care appropriate to the person's needs—
the person's home

**Part 2 Taking person to
treatment or care place**

**157B Ambulance officer or police officer may
detain and transport person**

- (1) This section applies if an ambulance officer or police officer believes—
- (a) a person appears to have—
 - (i) a serious mental impairment as a result of the effects of drugs or alcohol; or
 - (ii) a mental illness; and
 - (b) because of the person's impairment or illness there is an immediate risk of harm to the person; and
 - (c) one or both of the following apply—
 - (i) the person requires urgent treatment and care for the impairment or illness;
 - (ii) an examination of the person may result in a recommendation for assessment being made for the person under the *Mental Health (Recovery Model) Act 2015*.

[s 872]

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- (2) If the police officer enters a place under the *Police Powers and Responsibilities Act 2000*, section 609, the police officer may consider advice received from a health practitioner about the person in forming a view as to whether there is an imminent risk of injury to a person.
- (3) The ambulance officer or police officer may detain the person and transport the person to a treatment or care place.
- (4) If the treatment or care place is a public sector health service facility that is not an inpatient hospital, the person may only be transported to the facility with the approval of the person in charge of the facility.
- (5) If the person is detained and transported to a treatment or care place, other than an authorised mental health service or public sector health service facility, the person can not be compelled to stay at the place unless an Act otherwise requires.
- Note—*
- See section 157E.
- (6) In this section—
- health practitioner*** means a person registered under the Health Practitioner Regulation National Law, or another person who provides health services, including, for example, a social worker.
- inpatient hospital*** means a hospital where a person may be discharged on a day other than the day on which the person was admitted to the hospital.
- mental illness*** see the *Mental Health (Recovery Model) Act 2015*, section 10.

[s 872]

157C What ambulance officer or police officer must tell person	1
	2
(1) The ambulance officer or police officer must—	3
(a) tell the person that the officer is detaining the person and transporting the person to a treatment or care place; and	4
	5
	6
(b) explain to the person how taking action under paragraph (a) may affect the person.	7
	8
(2) The ambulance officer or police officer must take reasonable steps to ensure the person understands the information given under subsection (1), including by telling the person or explaining the thing to the person—	9
	10
	11
	12
	13
(a) in an appropriate way having regard to the person's age, culture, mental impairment or illness, communication ability and any disability; and	14
	15
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	17
(b) in a way, including, for example, in a language, the person is most likely to understand.	18
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 157D Giving emergency examination authority	 21
(1) If the ambulance officer or police officer takes the person to a treatment or care place that is an authorised mental health service or public sector health service facility, the officer must immediately give an authority (an <i>emergency examination authority</i>) for the person.	22
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(2) The authority must—	28
(a) be in the approved form; and	29
(b) state the time when it is given.	30
(3) The person may be detained in the treatment or care place while the authority is being given.	31
	32

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- (4) Immediately after giving the authority, the
ambulance officer or police officer must give the
emergency examination authority to a health
service employee at the treatment or care place.

157E Detention in treatment or care place

- (1) A person subject to an emergency examination
authority may be detained in a treatment or care
place that is an authorised mental health service
or public sector health service facility for a
period (the *examination period*) of 6 hours
starting when the authority is made.
- (2) A doctor or health practitioner must explain the
effect of the authority to the person.
- (3) The doctor or health practitioner must take
reasonable steps to ensure the person understands
the information given under subsection (2),
including by telling the person or explaining the
information to the person—
- (a) in an appropriate way having regard to the
person's age, culture, mental impairment or
illness, communication ability and any
disability; and
- (b) in a way, including, for example, in a
language, the person is most likely to
understand.
- (4) Also, a doctor or health practitioner may extend
or further extend the examination period to not
more than 12 hours after it starts if the doctor or
health practitioner believes the extension is
necessary to carry out or finish an examination of
the person under section 157F.

[s 872]

157F Examination	1
(1) A doctor or health practitioner may examine a person subject to an emergency examination authority to decide the person's treatment and care needs.	2 3 4 5
(2) Also, a doctor or authorised mental health practitioner may examine the person to decide whether to make a recommendation for assessment for the person under the <i>Mental Health (Recovery Model) Act 2015</i> .	6 7 8 9 10
(3) An examination may be carried out using an audiovisual link if the doctor or health practitioner examining the person believes it is clinically appropriate.	11 12 13 14
(4) In this section— <i>audiovisual link</i> means facilities that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places.	15 16 17 18 19

Part 3	Powers	20
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157G Use of force to detain and transport	21
An ambulance officer or police officer may exercise the power to detain and transport a person under this chapter with the help, and using the force, that is necessary and reasonable in the circumstances.	22 23 24 25

157H Transfer to another treatment or care place	26
(1) This section applies if—	27
(a) a person subject to an emergency examination authority is transported to a treatment or care place that is an authorised	28 29 30

[s 872]

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|---|----|
| mental health service or public sector health | 1 |
| service facility; and | 2 |
| (b) a doctor or authorised mental health | 3 |
| practitioner believes it is necessary for the | 4 |
| person to be transported to another | 5 |
| treatment or care place that is an authorised | 6 |
| mental health service or public sector health | 7 |
| service facility. | 8 |
| (2) An authorised person under the <i>Mental Health</i> | 9 |
| (<i>Recovery Model</i>) Act 2015 may transport the | 10 |
| person under the emergency examination | 11 |
| authority to the other treatment or care place. | 12 |
| <i>Note—</i> | 13 |
| A person subject to an emergency examination authority | 14 |
| may only be detained in a treatment or care place for the | 15 |
| examination period, or the examination period as | 16 |
| extended under section 157E(4). | 17 |

157I Use of reasonable force to detain person 18

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| (1) This section applies if, under an emergency | 19 |
| examination authority, a person may be detained | 20 |
| in an authorised mental health service or public | 21 |
| sector health service facility. | 22 |
| (2) The administrator of the authorised mental health | 23 |
| service or the person in charge of the public | 24 |
| sector health service facility, and anyone | 25 |
| lawfully helping the administrator or person in | 26 |
| charge, may exercise the power to detain the | 27 |
| person in the service or facility with the help, and | 28 |
| using the force, that is necessary and reasonable | 29 |
| in the circumstances. | 30 |

[s 872]

157J Examination of person without consent and with use of reasonable force	1 2
(1) An examination of a person subject to an emergency examination authority may be made under this chapter without the consent of the person or anyone else.	3 4 5 6
(2) A person lawfully examining the person, or lawfully helping to examine the person, may use the force that is necessary and reasonable in the circumstances to examine, or help examine, the person.	7 8 9 10 11
157K Return after examination or treatment and care to person's requested place	12 13
(1) This section applies if—	14
(a) a person is transported from the community to a treatment or care place that is an authorised mental health service or public sector health service facility; and	15 16 17 18
(b) at the end of the examination period, or the examination period as extended under section 157E(4), for the person, a recommendation for assessment under the <i>Mental Health (Recovery Model) Act 2015</i> is not given for the person.	19 20 21 22 23 24
(2) If the person is detained in an authorised mental health service, the administrator of the service must take reasonable steps to ensure the person is returned to a place reasonably requested by the person.	25 26 27 28 29
(3) If the person is detained in a public sector health service facility, the person in charge of the facility must take reasonable steps to ensure the person is returned to a place reasonably requested by the person.	30 31 32 33 34

157L Relationship with *Guardianship and Administration Act 2000*

This chapter does not affect the operation of the *Guardianship and Administration Act 2000*, section 63 in relation to providing urgent health care under that Act to a person.

873 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

administrator, for chapter 4A, see section 157A.

ambulance officer, for chapter 4A, see the *Ambulance Service Act 1991*, schedule.

authorised mental health practitioner, for chapter 4A, see the *Mental Health (Recovery Model) Act 2015*, schedule 3.

authorised mental health service, for chapter 4A, see the *Mental Health (Recovery Model) Act 2015*, schedule 3.

emergency examination authority, for chapter 4A, see section 157D(1).

examination period, for chapter 4A, see section 157E(1).

public sector health service facility, for chapter 4A, see the *Hospital and Health Boards Act 2011*, schedule 2.

treatment, for chapter 4A, see the *Mental Health (Recovery Model) Act 2015*, schedule 3.

treatment or care place, for chapter 4A, see section 157A.

[s 874]

Chapter 22	Minor and consequential amendments	1
		2
874	Acts amended	3
	Schedule 4 amends the Acts it mentions.	4

Schedule 1	Information that applicant, or applicant's nominee, is entitled to receive under an information notice	1 2 3 4
	section 306, definition <i>information notice</i>	5
1	Information about reviews	6
	The fact, and date and time of hearing, of any of the following reviews of the relevant patient's order—	7 8
	(a) an applicant review;	9
	(b) a periodic review;	10
	(c) a tribunal review;	11
	(d) a fitness for trial review.	12
2	Information about transfer application	13
	The fact, and date and time of hearing, of an application under chapter 12, part 11, division 2, for approval to transfer the patient out of Queensland.	14 15 16
3	Information about tribunal decisions	17
	(1) Subject to subsection (3), a written statement of a decision of the tribunal relating to the relevant patient identifying—	18 19
	(a) the date of the decision; and	20
	(b) the decision made.	21
	(2) For a decision that increases the level of treatment in the community received by the relevant patient, a brief explanation of the decision.	22 23 24
	<i>Examples of brief explanations for a decision that increases the level of treatment in the community received by a relevant patient—</i>	25 26
	an authorised doctor has stated that the patient has responded well to treatment during a stated time period	27 28

Schedule 1

	an authorised doctor has stated that the patient has complied with limited community treatment conditions	1 2
	the patient has participated in programs recommended by the Mental Health Court	3 4
	the patient has undertaken to comply with non-contact conditions	5
(3)	If the decision on a review mentioned in section 1 changes a condition of the relevant patient's order, a written statement of the decision identifying the decision made, only if the chief psychiatrist is satisfied the decision is relevant to the safety and welfare of the applicant for the information notice.	6 7 8 9 10
4	Information about appeals	11
	For an appeal relating to the relevant patient's order—	12
(a)	the fact, and date and time of hearing, of the appeal; and	13
(b)	a brief explanation of the nature of the appeal; and	14
(c)	a written statement of the decision on appeal identifying—	15 16
(i)	the date of the decision; and	17
(ii)	the decision made.	18
5	Information about absences	19
(1)	The fact that a relevant patient is absent without permission, only if the chief psychiatrist is satisfied the information is relevant to the safety and welfare of the applicant for the information notice.	20 21 22 23
(2)	The fact that a relevant patient has returned to an authorised mental health service, after having been absent without permission, if the chief psychiatrist has provided information under subsection (1) about the absence.	24 25 26 27
6	Miscellaneous information	28
(1)	The name of the authorised mental health service responsible for the relevant patient.	29 30

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|-----|--|-------------|
| (2) | The fact, and date of, a transfer of the responsibility for the relevant patient to another authorised mental health service or the forensic disability service. | 1
2
3 |
| (3) | The fact, and date of, a decision of the tribunal under section 649 of the Act to revoke the relevant patient's order. | 4
5 |

Schedule 2 Who may appeal to Mental Health Court

1

2

section 502

3

Column 1 Decision	Column 2 Appellant
a decision of the tribunal on a review of a treatment authority under chapter 12, part 2	(a) the person the subject of the authority or an interested person acting on behalf of the person; or (b) the chief psychiatrist
a decision of the tribunal on a review of a forensic order (mental condition) or forensic order (disability) under chapter 12, part 3	(a) the person the subject of the order or an interested person acting on behalf of the person; or (b) the Attorney-General; (c) if an authorised mental health service is responsible for the person—the chief psychiatrist; or (d) if the forensic disability service is responsible for the person—the director of forensic disability
a decision of the tribunal on a review of a forensic order (Criminal Code) under chapter 12, part 4	(a) the person the subject of the order; or (b) the chief psychiatrist; or (c) the Attorney-General
a decision of the tribunal on a review of a court treatment order under chapter 12, part 5	(a) the person the subject of the order or an interested person acting on behalf of the person; or (b) the chief psychiatrist

Column 1 Decision	Column 2 Appellant
a decision of the tribunal on a review of a person's fitness for trial under chapter 12, part 6	(a) the person the subject of the review or an interested person acting on behalf of the person; or (b) the Attorney-General; or (c) if an authorised mental health service is responsible for the person—the chief psychiatrist; or (d) if the forensic disability service is responsible for the person—the director of forensic disability
a decision of the tribunal on a review of the imposition of a condition requiring a forensic patient to wear a tracking device under chapter 12, part 7	(a) the person the subject of the order; or (b) the chief psychiatrist
a decision of the tribunal on a review of the detention of a minor in a high security unit under chapter 12, part 8	(a) the minor or an interested person acting on behalf of the minor; or (b) the chief psychiatrist
a decision of the tribunal on an application for approval to perform a regulated treatment on a patient chapter 12, part 10	(a) the patient; or (b) the psychiatrist who made the application; or (c) the chief psychiatrist
a decision of the tribunal on an application for the transfer of a particular person into or out of Queensland under chapter 12, part 11	(a) the person or an interested person acting on behalf of the person; or (b) the Attorney-General; or (c) if an authorised mental health service is responsible for the person—the chief psychiatrist; or (d) if the forensic disability service is responsible for the person—the director of forensic disability

Schedule 3	Dictionary	1
	section 9	2
<i>administrator</i> —		3
(a) of an authorised mental health service—means the person appointed under section 321 as the administrator of the service; or		4 5 6
(b) of the forensic disability service—means the director under the Forensic Disability Act.		7 8
<i>administrator consent</i> , for chapter 3, see section 57.		9
<i>advance health directive</i> means an advance health directive under the <i>Powers of Attorney Act 1998</i> .		10 11
<i>ambulance officer</i> means an ambulance officer appointed under the <i>Ambulance Service Act 1991</i> , section 13.		12 13
<i>applicant review</i> —		14
(a) of a treatment authority, for chapter 12, part 2—see section 398(2); or		15 16
(b) of a forensic order, for chapter 12, part 3—see section 409(2); or		17 18
(c) of a court treatment order, for chapter 12, part 5—see section 436(2).		19 20
<i>applicant's nominee</i> , for chapter 10, part 6, see section 307(2)(b).		21 22
<i>appointed person</i> see section 704.		23
<i>appointing person</i> , for chapter 7, part 10, division 2, see section 235.		24 25
<i>approved device</i> , for chapter 8, see section 243.		26
<i>approved form</i> means a form approved under section 752.		27
<i>assessment</i> , of a person, means an assessment of the person under—		28 29

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- | | |
|--|----------------|
| (a) chapter 2, part 3; or | 1 |
| (b) chapter 7. | 2 |
| assessment period , for chapter 2, see section 42(4). | 3 |
| assisting clinician see section 680(1). | 4 |
| associated offence see section 114. | 5 |
| attendance notice , for chapter 16, part 1, see section 635(1). | 6 |
| attorney , of a person, means— | 7 |
| (a) an attorney, other than the public guardian, appointed by
the person under an advance health directive; or | 8
9 |
| (b) an attorney, other than the public guardian, appointed by
the person under an enduring power of attorney for a
personal matter. | 10
11
12 |
| audiovisual link means facilities that enable reasonably
contemporaneous and continuous audio and visual
communication between persons at different places. | 13
14
15 |
| authorised doctor means— | 16 |
| (a) a doctor appointed as an authorised doctor under section
327(1); or | 17
18 |
| (b) a health practitioner, other than a doctor, appointed to
perform the functions of an authorised doctor under
section 327(3). | 19
20
21 |
| authorised mental health practitioner means a health
practitioner appointed as an authorised mental health
practitioner under section 328. | 22
23
24 |
| authorised mental health service means— | 25 |
| (a) a health service, or part of a health service, declared to
be an authorised mental health service under section
318; or | 26
27
28 |
| (b) an authorised mental health service (regional); or | 29 |
| (c) a high security unit. | 30 |
| authorised mental health service (regional) means an
authorised mental health service declared to be an authorised | 1
2 |
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Schedule 3

mental health service (regional) under section 320.	3
authorised person see section 346.	4
authorised psychiatrist means an authorised doctor who is a psychiatrist.	5 6
authorised security officer , for chapter 11, part 7, see section 370.	7 8
brief of evidence means—	9
(a) a brief of evidence compiled by the prosecuting authority for the offence that includes any of the following—	10 11 12
(i) an indictment or bench charge sheets;	13
(ii) summaries or particulars of allegations;	14
(iii) witness statements;	15
(iv) exhibits or photographs of exhibits;	16
(v) transcripts of proceedings;	17
(vi) a record of interview or transcript of a record of interview;	18 19
(vii) a person's criminal history; or	20
(b) an expert's report or medical record.	21
capacity , to consent to be treated, see section 14.	22
care , in relation to a person with an intellectual disability, includes the provision of rehabilitation, the development of living skills, support and other services.	23 24 25
carer means an individual who provides, in a non-contractual and unpaid capacity, ongoing care or assistance to another person who, because of disability, frailty, chronic illness or pain, requires assistance with everyday tasks.	26 27 28 29
category , of a treatment authority, forensic order or court treatment order, means—	30 31
(a) for a treatment authority, forensic order (mental condition) or court treatment order—	1 2
(i) inpatient; or	3

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|---|----|
| (ii) community; or | 4 |
| (b) for a forensic order (disability)— | 5 |
| (i) residential; or | 6 |
| (ii) community. | 7 |
| <i>chief executive (forensic disability)</i> means the chief executive | 8 |
| of the department in which the Forensic Disability Act is | 9 |
| administered. | 10 |
| <i>chief executive (justice)</i> means the chief executive of the | 11 |
| department in which the Criminal Code is administered. | 12 |
| <i>chief executive (youth justice)</i> means the chief executive of | 13 |
| the department in which the <i>Youth Justice Act 1992</i> is | 14 |
| administered. | 15 |
| <i>chief psychiatrist</i> means the person appointed as the chief | 16 |
| psychiatrist under section 289. | 17 |
| <i>classified patient</i> means— | 18 |
| (a) a classified patient (involuntary); or | 19 |
| (b) a classified patient (voluntary). | 20 |
| <i>classified patient (involuntary)</i> means a person who— | 21 |
| (a) is taken from a place of custody and admitted to an | 22 |
| authorised mental health service under chapter 3; and | 23 |
| (b) is subject to any of the following— | 24 |
| (i) a recommendation for assessment; | 25 |
| (ii) a treatment authority; | 26 |
| (iii) a forensic order; | 27 |
| (iv) a court treatment order. | 28 |
| <i>classified patient (voluntary)</i> means a person who— | 29 |
| (a) is taken from a place of custody and admitted to an | 30 |
| authorised mental health service under chapter 3; and | 31 |
| (b) consents under section 61 or 71 to receiving treatment or | 1 |
| care for the person's mental illness in the authorised | 2 |
| mental health service. | 3 |
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Schedule 3

<i>close relative</i> , of a person, means—	4
(a) the person’s spouse; or	5
(b) a child, grandchild, parent, brother, sister, grandparent, aunt or uncle (whether of whole or half-blood) of the person or the person’s spouse.	6 7 8
<i>community category</i> , for a treatment authority, forensic order (mental condition), forensic order (disability) or court treat- ment order, means the person subject to the authority or order may live in the community while receiving treatment and care.	9 10 11 12 13
<i>confidentiality order</i> , for—	14
(a) the Mental Health Court—see section 723; or	15
(b) the tribunal—see section 613(1).	16
<i>contact</i> , a person, means—	17
(a) intentionally initiate contact with the person in any way, including for example, by phone, mail, fax, email or other technology; or	18 19 20
(b) intentionally follow, loiter near, watch or approach the person; or	21 22
(c) intentionally loiter near, watch, approach or enter a place where the person lives, works or visits.	23 24
<i>corrective services facility</i> see the <i>Corrective Services Act</i> 2006, schedule 4.	25 26
<i>corrective services officer</i> see the <i>Corrective Services Act</i> 2006, schedule 4.	27 28
<i>corresponding law</i> means a law of another State that is declared under a regulation to be a corresponding law.	29 30
<i>court</i> , for chapter 6, part 4, see section 195.	31
<i>court examination order</i> see section 695.	32
<i>court treatment order</i> see section 143.	1

<i>criminal history</i> , of a person, means the person's criminal history within the meaning of the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> and—	2 3 4
(a) despite sections 6, 8 and 9 of that Act, includes a conviction of the person to which any of the sections applies; and	5 6 7
(b) despite section 5 of that Act, includes a charge made against the person for an offence.	8 9
<i>custodian</i> , for a person in lawful custody, means the person having the custody of the person.	10 11
<i>custodian consent</i> , for chapter 3, see section 57.	12
<i>decision notice</i> , for chapter 13, part 2, see section 495.	13
<i>deputy president</i> , of the tribunal, means the deputy president of the tribunal.	14 15
<i>designated person</i> , for chapter 17, see section 730.	16
<i>detention centre</i> means a detention centre under the <i>Youth Justice Act 1992</i> .	17 18
<i>detention centre officer</i> means a person authorised under the <i>Youth Justice Act 1992</i> , section 264, to exercise powers of a detention centre officer under this Act.	19 20 21
<i>diminished responsibility</i> see section 113.	22
<i>director of forensic disability</i> means the Director of Forensic Disability under the Forensic Disability Act.	23 24
<i>director of public prosecutions</i> see the <i>Director of Public Prosecutions Act 1984</i> .	25 26
<i>disposal order</i> , for chapter 14, see section 558(2).	27
<i>dual disability</i> , for a person, means the person has—	28
(a) a mental illness; and	29
(b) an intellectual disability.	30
<i>electroconvulsive therapy</i> means the application of electric current to specific areas of the head to produce a generalised seizure that is modified by general anaesthesia and the	31 32 1

administration of a muscle relaxing agent for the treatment of a mental illness.	2 3
electronic document , for chapter 14, see section 516.	4
emergency examination authority see the <i>Public Health Act</i> , section 157D.	5 6
employ includes engage on a contract for services.	7
enduring power of attorney for a personal matter means an enduring power of attorney for a personal matter within the meaning of the <i>Powers of Attorney Act 1998</i> .	8 9 10
examination authority see section 466.	11
examination order see section 180(2).	12
examination report , for chapter 6, part 2, division 2, see section 182.	13 14
executive officer , of the tribunal, means the person employed under section 604.	15 16
expert's report , for chapter 5, part 5, division 2, see section 161.	17 18
Forensic Disability Act means the <i>Forensic Disability Act 2011</i> .	19 20
forensic disability client means a forensic disability client under the Forensic Disability Act.	21 22
forensic disability service means the forensic disability service under the Forensic Disability Act.	23 24
forensic order means—	25
(a) a forensic order (mental condition); or	26
(b) a forensic order (disability); or	27
(c) a forensic order (Criminal Code).	28
forensic order (Criminal Code) means an order made under the Criminal Code, section 613, 645 or 647 that a person be admitted to a stated authorised mental health service to be dealt with under this Act.	29 30 31 32
forensic order (disability) see section 142.	1

<i>forensic order (mental condition)</i>	see section 142.	2
<i>forensic patient</i>	means a person subject to a forensic order.	3
<i>former owner</i> ,	for chapter 14, see section 553(1).	4
<i>general power</i> ,	for chapter 14, see section 539(1).	5
<i>general search</i> ,	for chapter 11, part 7, see section 370.	6
<i>government entity</i> ,	for chapter 17, see section 730.	7
<i>harm</i>	includes physical, psychological and emotional harm.	8
<i>harmful thing</i>	means anything—	9
(a)	that may be used to—	10
(i)	threaten the security or good order of an authorised mental health service; or	11 12
(ii)	threaten a person's health or safety; or	13
(b)	that, if used by a patient in an authorised mental health service, is likely to adversely affect the patient's treatment or care.	14 15 16
<i>Examples of harmful things—</i>		17
1	a gun or replica of a gun	18
2	a dangerous drug	19
3	alcohol	20
4	medication	21
<i>health practitioner</i>	means a person registered under the Health Practitioner Regulation National Law, or another person who provides health services, including, for example, a social worker.	22 23 24 25
<i>health record</i> ,	for a person, means the person's hospital record or another document recording the person's health history, condition and treatment.	26 27 28
<i>health service</i>	means a service for maintaining, improving and restoring people's health and wellbeing, and includes a community health facility.	29 30 31
<i>health service chief executive</i>	see the <i>Hospital and Health Boards Act 2011</i> , schedule 2.	1 2

Schedule 3

health service employee see the <i>Hospital and Health Boards Act 2011</i> , schedule 2.	3 4
help requirement , for chapter 14, see section 540(1).	5
high security patient means a patient in a high security unit.	6
high security unit means a public sector mental health service, or part of a public sector mental health service, declared to be a high security unit under section 319.	7 8 9
Hospital and Health Service means a Hospital and Health Service under the <i>Hospital and Health Boards Act 2011</i> .	10 11
identity card means—	12
(a) for a provision about authorised doctors and authorised mental health practitioners—an identity card issued under section 333(1); or	13 14 15
(b) for a provision about security officers—an identity card approved under section 392(1); or	16 17
(c) for a provision about inspectors—an identity card issued under section 522(1).	18 19
information notice see section 306.	20
informed consent , to a person's treatment by regulated treatment, see section 225.	21 22
inpatient category , for a treatment authority, forensic order (mental condition) or court treatment order, means the person subject to the authority or order—	23 24 25
(a) must be detained in an inpatient unit of an authorised mental health service while receiving treatment and care; and	26 27 28
(b) may receive limited community treatment.	29
inspector , for chapter 14, see section 516.	30
intellectual disability means—	31
(a) an intellectual disability within the meaning of the Forensic Disability Act; or	32 33
(b) a cognitive disability within the meaning of the Forensic Disability Act.	1 2

<i>interested person</i> , for a person, means—	3
(a) the person's nominated supported person; or	4
(b) another individual who has a sufficient interest in the person.	5 6
<i>interstate forensic order</i> , for chapter 12, part 11, division 1, see section 477.	7 8
<i>interstate mental health service</i> means a health service in another State that performs corresponding, or substantially corresponding, functions to an authorised mental health service.	9 10 11 12
<i>interstate order</i> means an order under a corresponding law that corresponds to a treatment authority.	13 14
<i>interstate transfer requirements</i> —	15
(a) for chapter 12, part 11, division 1, see section 477; or	16
(b) for chapter 12, part 11, division 2, see section 485.	17
<i>investigation report</i> , for chapter 10, see section 298.	18
<i>involuntary patient</i> see section 11.	19
<i>judicial order</i> means an order, requiring or permitting the detention of a person in an authorised mental health service, made by a court under any of the following—	20 21 22
(a) section 127;	23
(b) section 180;	24
(c) section 186(1)(c)(ii);	25
(d) section 196(2);	26
(e) section 695;	27
(f) section 506(4);	28
(g) section 513(5).	29
<i>less restrictive way</i> , for a person to receive treatment and care for the person's mental illness, see section 13.	30 31
<i>limited community treatment</i> means treatment and care of a person in the community, including in the grounds and	1 2

Schedule 3

buildings (other than an inpatient unit) of an authorised mental health service, for a period of not more than 7 days, that is authorised under this Act.	3 4 5
<i>mechanical restraint</i> see section 244.	6
<i>member</i> , of the tribunal, means a member of the tribunal, and includes the president and deputy president.	7 8
<i>mental condition</i> includes a mental illness and an intellectual disability.	9 10
<i>mental illness</i> see section 10.	11
<i>monitoring condition</i> see section 217(1).	12
<i>nominated support person</i> see section 235.	13
<i>non-ablative neurosurgical procedure</i> means a procedure on the brain, that does not involve deliberate damage to or removal of brain tissue, for the treatment of a mental illness.	14 15 16
<i>non-revocation period</i> , for a forensic order, see section 151(2).	17 18
<i>occupier</i> , of a place, includes the following—	19
(a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;	20 21
(b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;	22 23
(c) if no-one apparently occupies the place—any person who is an owner of the place.	24 25
<i>of</i> , a place, includes at or on the place.	26
<i>offence</i> , in relation to a reference, see section 111.	27
<i>offence warning</i> , for chapter 14, see section 516.	28
<i>official</i> , for chapter 15, part 3, see section 581.	29
<i>original decision</i> , for chapter 14, see section 571(1)(a).	30
<i>owner</i> , for chapter 14, see section 516.	31
<i>parent</i> , of a minor, includes—	32

-
- (a) a person who exercises parental responsibility for the minor, other than a person standing in the place of a parent of a minor on a temporary basis; and
- (b) for an Aboriginal minor—a person who, under Aboriginal tradition, is regarded as a parent of the child; and
- (c) for a Torres Strait Islander minor—a person who, under Island custom, is regarded as a parent of the minor.
- party***—
- (a) to an appeal—
- (i) for chapter 13, part 2, see section 495; or
- (ii) for chapter 13, part 3, see section 501; or
- (b) to a proceeding, for chapter 16, part 1, see section 593.
- patient***, for chapter 9, see section 269.
- patient required to return*** means a patient—
- (a) in relation to whom an administrator of an authorised mental health service has made a direction or request under 351; and
- (b) who has not been transported under the request, or come or returned voluntarily, to the service or facility.
- patient rights adviser*** means a person appointed as a patient rights adviser under section 285(2).
- periodic review***—
- (a) of a treatment authority, for chapter 12, part 2—see section 398(1); or
- (b) of a forensic order, for chapter 12, part 3—see section 409(1); or
- (c) of a court treatment order, for chapter 12, part 5—see section 436(1).
- personal details requirement***, for chapter 14, see section 559(5).

Schedule 3

<i>personal guardian</i> , of a person, means a guardian for a	1
personal matter appointed by QCAT for the person, other than	2
the public guardian, under the <i>Guardianship and</i>	3
<i>Administration Act 2000</i> .	4
<i>personal information</i> , for chapter 17, see section 730.	5
<i>personal search</i> , for chapter 11, part 7, see section 370.	6
<i>person in control</i> , for chapter 14, see section 516.	7
<i>person in custody</i> see section 58.	8
<i>place</i> includes the following—	9
(a) premises;	10
(b) vacant land;	11
(c) a place in Queensland waters;	12
(d) a place held under more than 1 title or by more than 1	13
owner;	14
(e) the land or water where a building or structure, or a	15
group of buildings or structures, is situated.	16
<i>policy</i> means a policy made by the chief psychiatrist under	17
section 294.	18
<i>postal article</i> , for chapter 11, part 7, see section 370.	19
<i>practice guideline</i> means a practice guideline made by the	20
chief psychiatrist under section 294.	21
<i>premises</i> includes—	22
(a) a building or other structure; and	23
(b) a part of a building or other structure; and	24
(c) a caravan or vehicle; and	25
(d) a cave or tent; and	26
(e) premises held under more than 1 title or by more than 1	27
owner.	28
<i>prescribed offence</i> means an offence against any of the	29
following provisions of the Criminal Code—	30

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- | | |
|---|----------------------|
| (a) section 302 (Definition of <i>murder</i>) and 305 (Punishment of murder); | 1
2 |
| (b) section 303 (Definition of <i>manslaughter</i>) and 310 (Punishment of manslaughter); | 3
4 |
| (c) section 306 (Attempt to murder); | 5 |
| (d) section 317 (Acts intended to cause grievous bodily harm and other malicious acts); | 6
7 |
| (e) section 320 (Grievous bodily harm); | 8 |
| (f) section 349 (Rape); | 9 |
| (g) section 350 (Attempt to commit rape); | 10 |
| (h) section 351 (Assault with intent to commit rape). | 11 |
| <i>president</i> , of the tribunal, means the president of the tribunal. | 12 |
| <i>presiding member</i> , of the tribunal for a proceeding, means the tribunal member who, under section 611 is the presiding member of the tribunal for the proceeding. | 13
14
15 |
| <i>proceeding</i> , for chapter 16, part 1, see section 593. | 16 |
| <i>prosecuting authority</i> , for an offence, means the commissioner of the police service, director of public prosecutions or other entity responsible for prosecuting the proceeding for the offence. | 17
18
19
20 |
| <i>psychiatrist</i> means— | 21 |
| (a) a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the speciality of psychiatry, other than as a student; or | 22
23
24
25 |
| (b) a person registered under the Health Practitioner Regulation National Law with limited registration to practise in an area of need in a specialist position in psychiatry. | 26
27
28
29 |
| <i>psychiatrist report</i> see section 83. | 30 |
| <i>psychosurgery</i> means a procedure on the brain, that involves deliberate damage to, or removal of brain tissue, for the treatment of a mental illness. | 31
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33 |
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Schedule 3

public guardian means the public guardian under the <i>Public Guardian Act 2014</i> .	1 2
public place means—	3
(a) a place, or part of the place—	4
(i) the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or	5 6 7
<i>Examples of a place that may be a public place under subparagraph (i)—</i>	8 9
a beach, a park, a road	10
(ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or	11 12 13
<i>Examples of a place that may be a public place under subparagraph (ii)—</i>	14 15
a saleyard, a showground	16
(b) a place that is a public place under another Act.	17
public sector health service see the <i>Hospital and Health Boards Act 2011</i> , schedule 2.	18 19
public sector health service facility see the <i>Hospital and Health Boards Act 2011</i> , schedule 2.	20 21
public sector mental health service means an authorised mental health service that is a public sector health service.	22 23
publish means—	24
(a) publish to the public by way of television, newspaper, radio, the internet or other form of communication; and	25 26
(b) the public dissemination of information, including, for example, distributing information by leaflets in letterboxes, or announcing information at a meeting.	27 28 29
purpose of limited community treatment see section 16.	30
recommendation for assessment , for a person, means a recommendation for assessment for the person made under section 36.	31 32 33

<i>records system</i> , for chapter 7, part 10, see section 237.	1
<i>reduction and elimination plan</i> , for chapter 8, see section 263.	2 3
<i>reference</i> , in relation to a person, see section 111.	4
<i>referral period</i> see section 97.	5
<i>registered nurse</i> has the meaning given by the Health Practitioner Regulation National Law.	6 7
<i>registrar</i> means the registrar of the Mental Health Court.	8
<i>registry</i> means the Mental Health Court Registry.	9
<i>regulated treatment</i> see section 224.	10
<i>relevant circumstances</i> —	11
(a) of a person the subject of a reference, for chapter 5, part 4—see section 138; or	12 13
(b) of a patient, for chapter 7—see section 202; or	14
(c) of a person, for chapter 12, parts 2 to 5—see section 396.	15 16
<i>relevant court</i> , for chapter 12, part 6, division 3, see section 455.	17 18
<i>relevant offence</i> , for chapter 12, part 6, division 3, see section 449.	19 20
<i>relevant patient</i> , for chapter 10, part 6, see section 306.	21
<i>relevant period</i> , for chapter 4, part 5, see section 97.	22
<i>relevant person</i> , for chapter 16, part 1, division 6, subdivision 2, see section 619(1)(a) and (2)(a).	23 24
<i>relevant unlawful act</i> , for chapter 5, part 5, division 3, see section 166.	25 26
<i>remote conferencing</i> means—	27
(a) teleconferencing; or	28
(b) videoconferencing; or	29

Schedule 3

- (c) another form of communication that allows persons taking part in the proceeding to hear and take part in discussions as they happen.
1
2
3
- report**, for chapter 17, part 4, see section 742.
4
- representative** see section 710.
5
- required information**, for chapter 8, see section 243.
6
- required time and way**, for chapter 8, see section 243.
7
- residential category**, for a forensic order (disability), means the person subject to the order—
8
9
- (a) must be detained in the forensic disability service or an authorised mental health service; and
10
11
- (b) may receive limited community treatment.
12
- responsible officer**, of an interstate mental health service, means an entity responsible for—
13
14
- (a) authorising the admission of persons who have a mental illness, who are from another State, to the interstate mental health service; or
15
16
17
- (b) authorising the transfer of persons who have a mental illness from the interstate mental health service to another State.
18
19
20
- restraint and seclusion policy**, for chapter 8, see section 243.
21
- review**—
22
- (a) of a treatment authority, for chapter 12, part 2—see section 397; or
23
24
- (b) of a forensic order, for chapter 12, part 3—see section 408; or
25
26
- (c) of a court treatment order, for chapter 12, part 5—see section 435.
27
28
- review decision**, for chapter 14, see section 571(1)(b).
29
- review notice**, for chapter 14, see section 571(1)(c).
30
- review notice day**, for chapter 14, see section 571(2)(a).
31
- review period**, for chapter 2, part 4, see section 51(2).
32

<i>scanning search</i> , for chapter 11, part 6, see section 370.	1
<i>scheduled review</i> , for chapter 16, part 1, division 6, subdivision 2, see section 619(1)(b) and (2)(b).	2 3
<i>search requiring the removal of clothing</i> , for chapter 11, part 6, see section 370.	4 5
<i>seclusion</i> see section 254.	6
<i>section 613 finding</i> see section 192(2), definition <i>relevant finding</i> , paragraph (a).	7 8
<i>section 645 finding</i> see section 192(2), definition <i>relevant finding</i> , paragraph (b).	9 10
<i>security officer</i> , for chapter 11, part 6, see section 370.	11
<i>seizure provisions</i> , for chapter 11, part 6, see section 370.	12
<i>serious offence</i> means an indictable offence, other than an offence that is a relevant offence within the meaning of the Criminal Code, section 552BA(4).	13 14 15
<i>Note—</i>	16
A charge of an indictable offence that is a relevant offence within the meaning of the Criminal Code, section 552BA(4) must, subject to the Criminal Code, section 552D, be heard and decided summarily—see the Criminal Code, section 552BA(2).	17 18 19 20
<i>staff</i> , of the tribunal, means a person employed under section 604.	21 22
<i>stated service—</i>	23
(a) for chapter 6, part 2, division 2—see section 180(4); or	24
(b) for chapter 6, part 4—see section 196(2).	25
<i>statement of rights</i> see section 270(1).	26
<i>tracking device</i> means any electronic device capable of being worn, and not removed, by a person for the purpose of finding or monitoring the geographical location of the person.	27 28 29
<i>transfer criteria</i> , for chapter 11, part 5, see section 337.	30
<i>transfer recommendation</i> , for chapter 3, see section 62(1).	31

Schedule 3

transport , of a person, includes moving the person using physical restraint.	1 2
treating health service , for a patient, means the authorised mental health service responsible for the patient's treatment and care.	3 4 5
treatment , of a person who has a mental illness or other mental condition, includes anything done, or to be done, with the intention of having a therapeutic effect on the person's illness, including the provision of a diagnostic procedure.	6 7 8 9
treatment in the community means—	10
(a) for a person subject to a treatment authority, forensic order (mental condition) or court treatment order—	11 12
(i) if the category is inpatient—limited community treatment; or	13 14
(ii) if the category is community—treatment and care of the person under the order while the person is living in the community; or	15 16 17
(b) for a person subject to a forensic order (disability)—	18
(i) if the category is residential—limited community treatment; or	19 20
(ii) if the category is community—treatment and care of the person under the order while the person is living in the community.	21 22 23
treatment authority , for a person, see section 46.	24
treatment criteria see section 12.	25
tribunal means the Mental Health Review Tribunal continued under section 594.	26 27
tribunal review —	28
(a) of a treatment authority, for chapter 12, part 2—see section 398(3);	29 30
(b) of a forensic order, for chapter 12, part 3—see section 409(3); or	31 32

-
- (c) of a court treatment order, for chapter 12, part 5—see
section 436(3). 1 2
- tribunal rules*** means rules of court made under section 658. 3
- unit***— 4
- (a) for chapter 11, part 7, division 4, means— 5
- (i) a high security unit; or 6
- (ii) an authorised mental health service, or part of an
authorised mental health service, mentioned in
section 375(b); or 7 8 9
- (b) for chapter 11, part 7, division 5, means— 10
- (i) a high security unit; or 11
- (ii) an authorised mental health service, or part of an
authorised mental health service, mentioned in
section 377(b). 12 13 14
- unlawful act***, of a person, includes an act or omission of the
person constituting an offence for which the person is
charged. 15 16 17
- unlawfully*** means without authority under this Act or other
legal authority, justification or excuse. 18 19
- unsound mind*** see section 112. 20
- vehicle***— 21
- (a) means a vehicle under the *Transport Operations (Road
Use Management) Act 1995*; and 22 23
- (b) includes a vessel under that Act. 24
- victim***, of an unlawful act, means the person against whom the
unlawful act was committed or allegedly committed. 25 26
- victim impact statement***, in relation to an unlawful act, means
a written statement that— 27 28
- (a) is signed and dated; and 29
- (b) states the particulars of the harm caused to a victim, or
close relative of the victim, by the unlawful act; and 30 31
- (c) may have attached to it— 32
-

Schedule 3

(i)	documents supporting the particulars, including,	1
	for example, medical reports; or	2
(ii)	photographs, drawings or other images.	3
<i>victim support service</i>	means an entity in a hospital or health	4
	service, or the department, that provides support services to	5
	victims of unlawful acts.	6
<i>warrant for apprehension</i>	means a warrant for apprehension	7
	issued under section 364.	8
<i>youth detention centre</i>	means a detention centre established	9
	under the <i>Youth Justice Act 1992</i> .	10

Schedule 4	Minor or consequential amendments of particular legislation	1
		2
		3
	section 874	4
Bail Act 1980		5
1	Particular references to Mental Health Act 2000	6
	Each of the following provisions is amended by omitting	7
	‘ <i>Mental Health Act 2000</i> ’ and inserting ‘ <i>Mental Health</i>	8
	<i>(Recovery Model) Act 2015</i> ’—	9
	• section 11(6)(a)	10
	• section 21(1)(c)(i)	11
	Child Protection (Offender Prohibition Order) Act 2008	12
1	Schedule, definition <i>forensic order</i>, ‘<i>Mental Health Act 2000</i>’—	13
	<i>omit, insert—</i>	14
	<i>Mental Health (Recovery Model) Act 2015</i>	15
		16
2	Schedule, definition <i>forensic order</i>, paragraph (b) and (c)—	17
	<i>omit, insert—</i>	18
	(b) forensic order (mental condition);	19
	(c) forensic order (disability).	20
		21

Child Protection (Offender Reporting) Act 2004

		1
1	Section 13(7) and (8), ‘Mental Health Act 2000, chapter 8, part 2’—	2
	<i>omit, insert—</i>	3
	<i>Mental Health (Recovery Model) Act 2015</i>	4
		5
2	Section 13(9), ‘Mental Health Act 2000, section 203’—	6
	<i>omit, insert—</i>	7
	<i>Mental Health (Recovery Model) Act 2015, section 416</i>	8
		9
3	Section 25(1)(c), example, ‘Mental Health Act 2000’—	10
	<i>omit, insert—</i>	11
	<i>Mental Health (Recovery Model) Act 2015</i>	12
4	Section 58(1), ‘decision is made under section 173, 186, 203 or 289 of the Mental Health Act 2000’—	13
	<i>omit, insert—</i>	14
	decision mentioned in the <i>Mental Health (Recovery Model) Act 2015</i> , section 146, 147, 222, 223, 416 or 489 is made	15
		16
		17
		18
5	Schedule 5, definition <i>forensic order</i>, ‘Mental Health Act 2000’—	19
	<i>omit, insert—</i>	20
	<i>Mental Health (Recovery Model) Act 2015</i>	21
		22
6	Schedule 5, definition <i>forensic order</i>, paragraph (b) and (c)—	23
	<i>omit, insert—</i>	24
		25

	(b) forensic order (mental condition);	1
	(c) forensic order (disability).	2
7	Schedule 5, definition <i>forensic reportable offender</i>, ‘Mental Health Act 2000’—	3 4
	<i>omit, insert—</i>	5
	<i>Mental Health (Recovery Model) Act 2015</i>	6
	Commissions of Inquiry Act 1950	7
1	Section 5B(3), definition <i>administrator</i>, paragraph (a), ‘Mental Health Act 2000’—	8 9
	<i>omit, insert—</i>	10
	<i>Mental Health (Recovery Model) Act 2015</i>	11
2	Section 5B(3), definition <i>authorised mental health service</i>, ‘Mental Health Act 2000, schedule’—	12 13
	<i>omit, insert—</i>	14
	<i>Mental Health (Recovery Model) Act 2015, schedule 3</i>	15
3	Section 5B(3), definition <i>involuntary patient</i>, ‘Mental Health Act 2000, schedule’—	16 17
	<i>omit, insert—</i>	18
	<i>Mental Health (Recovery Model) Act 2015, schedule 3</i>	19
	Coroners Act 2003	20
1	Section 9(1)(b)—	21
	<i>omit, insert—</i>	22
	(b) the person was—	23

Schedule 4

(i)	being detained in an authorised mental health service as an involuntary patient under the <i>Mental Health (Recovery Model) Act 2015</i> ; or	1 2 3 4
(ii)	being detained in a public sector health service facility or authorised mental health service under an emergency examination authority under the <i>Public Health Act 2005</i> ; or	5 6 7 8 9
(iii)	being transported to or from an authorised mental health service under the <i>Mental Health (Recovery Model) Act 2015</i> ; or	10 11 12 13
(iv)	undertaking limited community treatment under the <i>Mental Health (Recovery Model) Act 2015</i> while in the physical presence of a health service employee; or	14 15 16 17 18
(v)	temporarily absent from an authorised mental health service under an approval given under the <i>Mental Health (Recovery Model) Act 2015</i> , section 222 or 223 while in the physical presence of a health service employee; or	19 20 21 22 23 24 25
2	Particular references to Mental Health Act 2000	26
	Each of the following provisions is amended by omitting ‘ <i>Mental Health Act 2000</i> ’ and inserting ‘ <i>Mental Health (Recovery Model) Act 2015</i> ’—	27 28 29
	• section 9(4), definition <i>authorised mental health service</i>	30
	• section 10(2), definition <i>custody</i> , paragraph (c)(ii)	31
	• section 47(3), definition <i>relevant Act</i> , paragraph (a)(iv)	32

Corrective Services Act 2006	1
1 Particular references to Mental Health Act 2000	2
Each of the following provisions is amended by omitting	3
‘ <i>Mental Health Act 2000</i> ’ and inserting ‘ <i>Mental Health</i>	4
<i>(Recovery Model) Act 2015</i> ’—	5
• section 6(3)(d)	6
• section 68(5)	7
• schedule 4, definition <i>authorised mental health service</i>	8
• schedule 4, definition <i>prisoner</i> , item 1, paragraph (b)	9
2 Section 319S(2)(b), ‘<i>Mental Health Act 2000</i>, chapter 7, part 6’—	10
<i>omit, insert—</i>	11
<i>Mental Health (Recovery Model) Act 2015</i> , chapter 5,	12
part 3	13
	14
Crime and Corruption Act 2001	15
1 Section 83(2)—	16
<i>omit, insert—</i>	17
(2) If the attendance before the commission of a	18
patient detained in an authorised mental health	19
service under the <i>Mental Health (Recovery</i>	20
<i>Model) Act 2015</i> is required, the chairman may,	21
by notice given to the administrator of the	22
authorised mental health service, direct the	23
administrator to produce the patient named in the	24
notice at a stated time and place.	25
2 Section 83(6), definitions <i>administrator</i> and <i>patient</i>—	26
<i>omit.</i>	27

Schedule 4

3	Section 83(6)—	1
	<i>insert—</i>	2
	<i>administrator</i> , of an authorised mental health	3
	service, means an administrator of the service	4
	under the <i>Mental Health (Recovery Model) Act</i>	5
	<i>2015</i> , schedule 3.	6
	<i>authorised mental health service</i> see the <i>Mental</i>	7
	<i>Health (Recovery Model) Act 2015</i> , schedule 3.	8

Criminal Law Amendment Act 1945	9
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1	Section 18(8) and (8A), ‘director of mental health’—	10
	<i>omit, insert—</i>	11
	chief psychiatrist	12
2	Section 18(14), definition <i>director of mental health</i>—	13
	<i>omit, insert—</i>	14
	<i>chief psychiatrist</i> means the person appointed as	15
	the chief psychiatrist under the <i>Mental Health</i>	16
	<i>(Recovery Model) Act 2015</i> , section 289.	17

Criminal Proceeds Confiscation Act 2002	18
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1	Section 112(1)(a), ‘<i>Mental Health Act 2000</i>, chapter 7, part 6’—	19
	<i>omit, insert—</i>	20
	<i>Mental Health (Recovery Model) Act 2015</i> , chapter 5,	21
	part 3	22
		23

Disability Services Act 2006

		1
1	Section 123(5)(a), ‘Mental Health Act 2000, section 284’—	2
	<i>omit, insert—</i>	3
	<i>Mental Health (Recovery Model) Act 2015, section</i>	4
	168	5
2	Section 123(9)(a), ‘Mental Health Act 2000, section 426’—	6
	<i>omit, insert—</i>	7
	<i>Mental Health (Recovery Model) Act 2015, section</i>	8
	723	9
3	Section 123(9)(b), ‘Mental Health Act 2000, section 318’—	10
	<i>omit, insert—</i>	11
	<i>Mental Health (Recovery Model) Act 2015, section</i>	12
	165	13
4	Section 123(10), ‘Mental Health Act 2000, section	14
	318(2)’—	15
	<i>omit, insert—</i>	16
	<i>Mental Health (Recovery Model) Act 2015, section</i>	17
	165(2)	18
5	Section 124(1)(b), ‘the person’s mental condition under	19
	the <i>Mental Health Act 2000</i>, chapter 6, part 3 or 4’—	20
	<i>omit, insert—</i>	21
	a forensic order to which the person is subject, or the	22
	person’s fitness for trial, under the <i>Mental Health</i>	23
	<i>(Recovery Model) Act 2015</i> , chapter 12, part 3, 4 or 6	24

Schedule 4

6	Section 124(2)(c), ‘under the <i>Mental Health Act 2000</i>, section 203A’—	1 2
	<i>omit, insert—</i>	3
	or other person mentioned in the <i>Mental Health (Recovery Model) Act 2015</i> , section 425	4 5
7	Section 124(5)(a), ‘<i>Mental Health Act 2000</i>, section 464’—	6
	<i>omit, insert—</i>	7
	<i>Mental Health (Recovery Model) Act 2015</i> , section 634	8 9
8	Section 124(9), ‘<i>Mental Health Act 2000</i>, section 458’—	10
	<i>omit, insert—</i>	11
	<i>Mental Health (Recovery Model) Act 2015</i> , section 613	12 13
9	Section 128(4)(a), ‘<i>Mental Health Act 2000</i>, section 284’—	14
	<i>omit, insert—</i>	15
	<i>Mental Health (Recovery Model) Act 2015</i> , section 169	16 17
10	Section 128(4)(c), ‘<i>Mental Health Act 2000</i>, section 426’—	18
	<i>omit, insert—</i>	19
	<i>Mental Health (Recovery Model) Act 2015</i> , section 723	20 21
11	Section 128(7), ‘<i>Mental Health Act 2000</i>, section 318’—	22
	<i>omit, insert—</i>	23
	<i>Mental Health (Recovery Model) Act 2015</i> , section 165	24 25

12	Section 128(8), ‘Mental Health Act 2000, section 318(2)’—	1
	<i>omit, insert—</i>	2
	<i>Mental Health (Recovery Model) Act 2015, section</i>	3
	<i>165(2)</i>	4
13	Section 129(1)(b), ‘the person’s mental condition under the <i>Mental Health Act 2000</i>, chapter 6, part 3 or 4’—	5
	<i>omit, insert—</i>	6
	a forensic order to which the person is subject, or the	7
	person’s fitness for trial, under the <i>Mental Health</i>	8
	<i>(Recovery Model) Act 2015</i> , chapter 12, part 3, 4 or 6	9
		10
14	Section 129(2)(c), ‘under the <i>Mental Health Act 2000</i>, section 203A’—	11
	<i>omit, insert—</i>	12
	or other person mentioned in the <i>Mental Health</i>	13
	<i>(Recovery Model) Act 2015</i> , section 425	14
		15
15	Section 129(4)(a), ‘<i>Mental Health Act 2000</i>, section 464’—	16
	<i>omit, insert—</i>	17
	<i>Mental Health (Recovery Model) Act 2015</i> , section	18
	634	19
16	Section 129(4)(c), ‘<i>Mental Health Act 2000</i>, section 458’—	20
	<i>omit, insert—</i>	21
	<i>Mental Health (Recovery Model) Act 2015</i> , section	22
	613	23
17	Section 144, definition <i>authorised psychiatrist</i>, ‘<i>Mental Health Act 2000</i>, schedule’—	24
	<i>omit, insert—</i>	25
	<i>Mental Health (Recovery Model) Act 2015</i> , schedule 3	26
		27

Schedule 4

18	Section 144, definition <i>director of mental health</i>—	1
	<i>omit, insert—</i>	2
	<i>chief psychiatrist</i> means the person appointed as	3
	the chief psychiatrist under the <i>Mental Health</i>	4
	<i>(Recovery Model) Act 2015</i> , section 289.	5
19	Section 145(4), definition <i>mental illness</i>, ‘<i>Mental Health Act 2000</i>, section 12’—	6
	<i>omit, insert—</i>	7
	<i>Mental Health (Recovery Model) Act 2015</i> , section 10	8
20	Particular references to involuntary treatment order under the <i>Mental Health Act 2000</i>	10
	Each of the following provisions is amended by omitting	11
	‘involuntary treatment order under the <i>Mental Health Act</i>	12
	<i>2000</i> ’ and inserting ‘treatment authority under the <i>Mental</i>	13
	<i>Health (Recovery Model) Act 2015</i> ’—	14
	• section 156(3)(d)	15
	• section 159(1)(a)(i)	16
	• section 162(b)	17
	• section 163(3)	18
	• section 164(5)(b)	19
	• section 173(2)(b)	20
	• section 175(1)(b)	21
	• section 177(1)(c)	22
	• section 178(4)(b)	23
	• section 192(2)(c)	24
21	Particular references to <i>Mental Health Act 2000</i>	25
	Each of the following provisions is amended by omitting	26
	‘ <i>Mental Health Act 2000</i> ’ and inserting ‘ <i>Mental Health</i>	27
	<i>(Recovery Model) Act 2015</i> ’—	28
		29

	• section 159(2)(a)	1
	• section 175(3)(a)	2
	• section 176(1)(a)	3
	• section 176(3), definition <i>consult</i>	4
22	Part 6, division 4, subdivision 3, heading, ‘involuntary treatment order’	5 6
	<i>omit, insert—</i>	7
	treatment authority	8
23	Particular references to director of mental health	9
	Each of the following provisions is amended by omitting ‘director of mental health’ and inserting ‘chief psychiatrist’—	10 11
	• section 164(6), definition <i>relevant director</i> , paragraph (b)	12 13
	• section 177(3), definition <i>relevant director</i> , paragraph (b)	14 15
24	Schedule 8, definition <i>director of mental health</i>—	16
	<i>omit, insert—</i>	17
	<i>chief psychiatrist</i> , for part 6, see section 144.	18
	Guardianship and Administration Act 2000	19
1	Particular references to involuntary treatment order under the Mental Health Act 2000	20 21
	Each of the following provisions is amended by omitting ‘involuntary treatment order under the <i>Mental Health Act 2000</i> ’ and inserting ‘treatment authority under the <i>Mental Health (Recovery Model) Act 2015</i> ’—	22 23 24 25
	• section 13A(6)(f)	26

Schedule 4

•	section 29(1)(c)(vi)	1
•	section 80W(1)(b)	2
•	section 80ZA(b)(vi)	3
•	section 80ZE(5)(a)	4
•	section 80ZH(3)(c)	5
•	section 80ZP(f)	6
•	section 80ZQ(e)	7
•	section 80ZS(2)(b)(v)	8
•	section 118(1)(g)(iii)	9
2	Particular references to director of mental health	10
	Each of the following provisions is amended by omitting	11
	‘director of mental health’ and inserting ‘chief psychiatrist’—	12
•	section 13A(6)(f)	13
•	section 29(1)(c)(vi)	14
•	section 80ZA(b)(vi)	15
•	section 80ZP(f)	16
•	section 80ZQ(e)	17
•	section 118(1)(g)(iii)	18
3	Particular references to Mental Health Act 2000	19
	Each of the following provisions is amended by omitting	20
	‘ <i>Mental Health Act 2000</i> ’ and inserting ‘ <i>Mental Health</i>	21
	<i>(Recovery Model) Act 2015</i> ’—	22
•	section 80W(1)(c)(i)	23
•	section 80ZE(5)(b)(i)	24
4	Section 65(4), note, ‘psychosurgery’—	25
	<i>omit, insert—</i>	26

	a non-ablative neurosurgical procedure	1
5	Section 68(1), ‘psychosurgery’—	2
	<i>omit, insert—</i>	3
	a non-ablative neurosurgical procedure	4
6	Section 80U, definition <i>authorised psychiatrist</i>, ‘<i>Mental Health Act 2000</i>, schedule’—	5
	<i>omit, insert—</i>	6
	<i>Mental Health (Recovery Model) Act 2015</i> , schedule 3	7
		8
7	Schedule 2, section 5(3)—	9
	<i>insert—</i>	10
	(d) psychosurgery for the adult.	11
8	Schedule 2, section 7(e), ‘psychosurgery’—	12
	<i>omit, insert—</i>	13
	a non-ablative neurosurgical procedure	14
9	Schedule 2, section 15—	15
	<i>omit, insert—</i>	16
	15 Psychosurgery	17
	<i>Psychosurgery</i> is a procedure on the brain, that	18
	involves deliberate damage to or removal of brain	19
	tissue, for the treatment of a mental illness.	20
	15A Non-ablative neurosurgical procedure	21
	A <i>non-ablative neurosurgical procedure</i> is a	22
	procedure on the brain, that does not involve	23
	deliberate damage to or removal of brain tissue, for the	24
	treatment of a mental illness.	25

Schedule 4

10	Schedule 4, definition <i>director of mental health</i>—	1
	<i>omit, insert—</i>	2
	<i>chief psychiatrist</i> means the person appointed as	3
	the chief psychiatrist under the <i>Mental Health</i>	4
	(<i>Recovery Model</i>) Act 2015, section 289.	5
	<i>non-ablative neurosurgical procedure</i> see	6
	schedule 2, section 15A.	7
	 Hospital and Health Boards Act 2011	8
1	Particular references to director of mental health	9
	Each of the following provisions is amended by omitting	10
	‘director of mental health’ and inserting ‘chief psychiatrist’—	11
	• section 111, heading and subsection (2)	12
	• section 139(d)	13
2	Section 111(3), definition <i>authorised mental health</i>	14
	<i>service, ‘Mental Health Act 2000, section 495’—</i>	15
	<i>omit, insert—</i>	16
	<i>Mental Health (Recovery Model) Act 2015, section</i>	17
	318	18
3	Schedule 2, definition <i>director of mental health</i>—	19
	<i>omit, insert—</i>	20
	<i>chief psychiatrist</i> means the person appointed as	21
	the chief psychiatrist under the <i>Mental Health</i>	22
	(<i>Recovery Model</i>) Act 2015, section 289.	23

Limitation of Actions Act 1974	1
1 Section 5(3)(a), ‘Mental Health Act 2000’—	2
<i>omit, insert—</i>	3
<i>Mental Health (Recovery Model) Act 2015</i>	4
Penalties and Sentences Act 1992	5
1 Section 163(3)(a), ‘Mental Health Act 2000, chapter 7, part 6’—	6
<i>omit, insert—</i>	7
<i>Mental Health (Recovery Model) Act 2015, chapter 5, part 3</i>	8
	9
	10
Police Powers and Responsibilities Act 2000	11
1 Section 12(1), example—	12
<i>omit, insert—</i>	13
<i>Example—</i>	14
A police officer who has entered a place under section 609 may, under the <i>Public Health Act 2005</i> , section 157B, take a person to a treatment or care place within the meaning of that Act.	15
	16
	17
	18
2 Schedule 1, entry for Mental Health Act 2000—	19
<i>omit, insert—</i>	20
<i>Mental Health (Recovery Model) Act 2015</i>	21
3 Schedule 1—	22
<i>insert—</i>	23
<i>Public Health Act 2005, chapter 4A</i>	24

Public Guardian Act 2014 1

**1 Section 39, definitions *consumer* and *visitable site*,
'Mental Health Act 2000'—** 2
3

omit, insert— 4

Mental Health (Recovery Model) Act 2015 5

2 Section 47(4)(c)— 6

omit, insert— 7

(c) the chief psychiatrist under the *Mental* 8
Health (Recovery Model) Act 2015; 9

**3 Section 51, definition *authorised mental health service*,
'Mental Health Act 2000, schedule'—** 10
11

omit, insert— 12

Mental Health (Recovery Model) Act 2015, schedule 3 13

Public Service Act 2008 14

**1 Schedule 1, entry for Mental Health Review Tribunal,
'Mental Health Act 2000'—** 15
16

omit, insert— 17

Mental Health (Recovery Model) Act 2015 18

Residential Services (Accreditation) Act 2002 19

1 Section 4(5)(b), 'Mental Health Act 2000'— 20

omit, insert— 21

Mental Health (Recovery Model) Act 2015 22

Residential Tenancies and Rooming Accommodation Act 2008	1 2
1 Section 44(1)(c), ‘Mental Health Act 2000’—	3
<i>omit, insert—</i>	4
<i>Mental Health (Recovery Model) Act 2015</i>	5
Statutory Instruments Act 1992	6
1 Schedule 2A, ‘Mental Health Act 2000’—	7
<i>omit, insert—</i>	8
<i>Mental Health (Recovery Model) Act 2015</i>	9
Terrorism (Preventative Detention) Act 2005	10
1 Section 62(1)(c), ‘Mental Health Act 2000’—	11
<i>omit, insert—</i>	12
<i>Mental Health (Recovery Model) Act 2015</i>	13
Victims of Crime Assistance Act 2009	14
1 Section 15(1), note, ‘Mental Health Act 2000, see section 284’—	15 16
<i>omit, insert—</i>	17
<i>Mental Health (Recovery Model) Act 2015, see section 168</i>	18 19
2 Section 16(2), note, paragraph (b)—	20
<i>omit, insert—</i>	21

	(b) the <i>Mental Health (Recovery Model) Act 2015</i> , chapter 10, part 6.	1 2
	Weapons Act 1990	3
1	Section 53(7), definition <i>excluded person</i>, paragraph (f)— <i>omit, insert—</i>	4 5
	(f) who, in the 5 year period immediately before the day the person signs the approved form under this section, has been subject to an involuntary assessment order under the <i>Mental Health (Recovery Model) Act 2015</i> or a similar order under the <i>Mental Health Act 2000</i> , or a similar order in another State; or	6 7 8 9 10 11
	Working with Children (Risk Management and Screening) Act 2000	12 13
1	Section 332(5)(a), ‘<i>Mental Health Act 2000</i>, section 284’— <i>omit, insert—</i>	14 15
	<i>Mental Health (Recovery Model) Act 2015</i> , section 168	16 17
2	Section 332(9)(a), ‘<i>Mental Health Act 2000</i>, section 426’— <i>omit, insert—</i>	18 19
	<i>Mental Health (Recovery Model) Act 2015</i> , section 723	20 21
3	Section 332(9)(b), ‘<i>Mental Health Act 2000</i>, section 318’— <i>omit, insert—</i>	22 23
	<i>Mental Health (Recovery Model) Act 2015</i> , section 165	24 25

4	Section 332(10), ‘Mental Health Act 2000, section 318(2)’—	1 2
	<i>omit, insert—</i>	3
	<i>Mental Health (Recovery Model) Act 2015, section 165(2)</i>	4 5
5	Section 333(1)(b), ‘the person’s mental condition under the Mental Health Act 2000, chapter 6, part 3 or 4’—	6 7
	<i>omit, insert—</i>	8
	a forensic order to which the person is subject, or the person’s fitness for trial, under the <i>Mental Health (Recovery Model) Act 2015</i> , chapter 12, part 3, 4 or 6	9 10 11
6	Section 333(2)(c), ‘Mental Health Act 2000, section 203A’—	12 13
	<i>omit, insert—</i>	14
	<i>Mental Health (Recovery Model) Act 2015, section 425</i>	15 16
7	Section 333(5)(a), ‘Mental Health Act 2000, section 464’—	17
	<i>omit, insert—</i>	18
	<i>Mental Health (Recovery Model) Act 2015, section 634</i>	19 20
8	Section 333(9), ‘Mental Health Act 2000, section 458’—	21
	<i>omit, insert—</i>	22
	<i>Mental Health (Recovery Model) Act 2015, section 613</i>	23 24
9	Section 337(4)(a), ‘Mental Health Act 2000, section 284’—	25
	<i>omit, insert—</i>	26

Schedule 4

	<i>Mental Health (Recovery Model) Act 2015</i> , section 168	1 2
10	Section 337(4)(c), ‘Mental Health Act 2000, section 426’— <i>omit, insert—</i>	3 4
	<i>Mental Health (Recovery Model) Act 2015</i> , section 723	5 6
11	Section 337(7), ‘Mental Health Act 2000, section 318’— <i>omit, insert—</i>	7 8
	<i>Mental Health (Recovery Model) Act 2015</i> , section 165	9 10
12	Section 337(8), ‘Mental Health Act 2000, section 318(2)’— <i>omit, insert—</i>	11 12
	<i>Mental Health (Recovery Model) Act 2015</i> , section 165(2)	13 14
13	Section 338(1)(b), ‘Mental Health Act 2000, chapter 6, part 3 or 4’— <i>omit, insert—</i>	15 16 17
	<i>Mental Health (Recovery Model) Act 2015</i> , chapter 12, part 3, 4 or 6	18 19
14	Section 338(2)(c), ‘Mental Health Act 2000, section 203A’— <i>omit, insert—</i>	20 21 22
	<i>Mental Health (Recovery Model) Act 2015</i> , section 425	23 24
15	Section 338(4)(a), ‘Mental Health Act 2000, section 464’— <i>omit, insert—</i>	25 26

	<i>Mental Health (Recovery Model) Act 2015</i> , section 634	1 2
16	Section 338(4)(c), ‘<i>Mental Health Act 2000</i>, section 458’— <i>omit, insert—</i>	3 4
	<i>Mental Health (Recovery Model) Act 2015</i> , section 613	5 6
	Youth Justice Act 1992	7
1	Particular references to Mental Health Act 2000	8
	Each of the following provisions is amended by omitting ‘ <i>Mental Health Act 2000</i> ’ and inserting ‘ <i>Mental Health (Recovery Model) Act 2015</i> ’—	9 10 11
	• section 61 and heading	12
	• section 264(1)	13

Authorised by the Parliamentary Counsel