

# TASMANIA

---

## MENTAL HEALTH (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2013

---

### CONTENTS

#### **PART 1 – PRELIMINARY**

1. Short title
2. Commencement

#### **PART 2 – TRANSITIONAL PROVISIONS**

##### *Division 1 – Preliminary*

3. Interpretation

##### *Division 2 – Facilities and infrastructure*

4. Assessment and treatment facilities
5. Secure institutions

##### *Division 3 – Personnel and administration*

6. Chief Forensic Psychiatrist
7. Approved medical practitioners
8. Approved psychiatric nurses
9. Authorised officers
10. Authorised persons
11. Approved nurses
12. Official Visitors
13. Tribunals
14. Loss of remuneration, &c.

***Division 4 – Persons in custody***

- 15. Persons in custody

***Division 5 – Involuntary patients***

- 16. Applications for involuntary admission and detention
- 17. Initial orders for admission
- 18. Continuing care orders
- 19. Community treatment orders
- 20. Suspended community treatment orders
- 21. Authorisations for temporary admission
- 22. Consents
- 23. Physical restraint
- 24. Seclusion
- 25. Leaves of absence
- 26. Transfers

***Division 6 – Forensic patients***

- 27. Forensic patients
- 28. Forensic patient request to return to prison
- 29. Treatments and procedures
- 30. Physical restraint of forensic patient
- 31. Seclusion of forensic patient
- 32. Force
- 33. Leaves of absence for patients not subject to restriction orders
- 34. Leaves of absence for patients subject to restriction orders
- 35. Removals to hospitals, secure institutions, &c.
- 36. Return of forensic patients to secure mental health unit
- 37. Orders bringing persons before court

***Division 7 – Tribunals and proceedings***

- 38. Records of defunct Tribunals
- 39. Uncommenced proceedings of defunct Tribunals
- 40. Court proceedings
- 41. Summoning witnesses

- 42. Requirement for report
- 43. Requirement for medical examination
- 44. Determinations of Tribunal

***Division 8 – Official visitors***

- 45. Complaints to official visitor
- 46. Official Visitor reports

***Division 9 – Miscellaneous transitional provisions***

- 47. Transfer of patients to secure mental health unit
- 48. Actions, &c., under intergovernmental agreements
- 49. Tribunals
- 50. Provision of reports
- 51. Transitional clinical guidelines and standing orders
- 52. Saving and transitional regulations

**PART 3 – MISCELLANEOUS**

- 53. Administration of Act
- 54. Consequential amendments

**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**



# **MENTAL HEALTH (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2013**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*  
15 October 2013

*(Brought in by the Minister for Health, the Honourable  
Michelle Anne O'Byrne)*

## **A BILL FOR**

**An Act to amend certain legislation and provide for transitional matters consequent on the enactment of the *Mental Health Act 2013*, to repeal and rescind certain legislation consequent on that enactment and for related purposes**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Mental Health (Transitional and Consequential Provisions) Act 2013*.

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

s. 2

Part 1 – Preliminary

---

**2. Commencement**

This Act commences on the day on which all of the provisions of the *Mental Health Act 2013* commence.

*Mental Health (Transitional and Consequential Provisions) Act  
2013  
Act No. of*

Part 2 – Transitional Provisions

s. 3

---

**PART 2 – TRANSITIONAL PROVISIONS**

*Division 1 – Preliminary*

**3. Interpretation**

(1) In this Part –

*commencement day* means the day on which  
all of the provisions of the new Act  
commence;

*defunct Tribunal* means –

- (a) the Mental Health Tribunal  
constituted under the old Act; or
- (b) the Forensic Tribunal established  
under the old Act;

*new Act* means the *Mental Health Act 2013*;

*new mental health scheme* means the scheme  
for the assessment, treatment and care of  
persons with mental illness provided for  
by the new Act;

*new Tribunal* means the Tribunal as  
established and constituted under the new  
Act;

*old Act* means the *Mental Health Act 1996* as  
in force immediately before the  
commencement day;

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

s. 4

Part 2 – Transitional Provisions

---

***old mental health scheme*** means the scheme for the care and treatment of persons with mental illnesses that was in place under the old Act;

***old Tribunal*** means the Mental Health Tribunal constituted under the old Act;

***transitional period*** means the 6-month period commencing on the commencement day;

***transitional necessity*** means an action that is, or may be, necessary or expedient to facilitate an orderly and fair transition from the old mental health scheme to the new mental health scheme.

- (2) If an expression used in this Part is defined in the new Act, whether for the new Act generally or for a particular Chapter, Part or Division of the new Act, the expression has, unless the contrary intention appears, the same meaning in this Part as in the new Act or, as the case may be, particular Chapter, Part or Division of the new Act.

***Division 2 – Facilities and infrastructure***

**4. Assessment and treatment facilities**

- (1) A place that was an approved hospital under the old Act is an approved hospital under the new Act.



*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

Part 2 – Transitional Provisions

**s. 5**

- 
- (2) A place that was an assessment centre under the old Act is an approved assessment centre under the new Act.
  - (3) A place that was a secure mental health unit under the old Act is a secure mental health unit under the new Act.
  - (4) For the purposes of subsections (1), (2) and (3), if a place that was an approved hospital, assessment centre or secure mental health unit under the old Act held that status conditionally, its status as an approved hospital, approved assessment centre or secure mental health unit under the new Act is subject to the same conditions.
  - (5) Subsections (1), (2) and (3) are taken to be approvals under section 140 of the new Act taking effect on the commencement day.
  - (6) For the purposes of section 142 of the new Act, anything that the Minister reasonably considers to be a transitional necessity constitutes reasonable grounds for revocation.

**5. Secure institutions**

- (1) An institution that was a secure institution under the old Act and that is not an approved facility is a secure institution under the new Act.
- (2) Subsection (1) is taken to be an approval under section 141 of the new Act.

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

s. 6

Part 2 – Transitional Provisions

---

***Division 3 – Personnel and administration***

**6. Chief Forensic Psychiatrist**

- (1) The person who held the office of Chief Forensic Psychiatrist under the old Act is the Chief Forensic Psychiatrist under the new Act, on the same terms and conditions specified in his or her instrument of appointment under the old Act.
- (2) However, unless sooner terminated, the person's appointment as Chief Forensic Psychiatrist under the new Act is terminated when whichever of the following occurs first:
  - (a) the fifth anniversary of the person's appointment as Chief Forensic Psychiatrist under the old Act;
  - (b) the person resigns, retires or otherwise relinquishes the appointment;
  - (c) a loss of professional standing or other event that would render the person ineligible to be appointed as the Chief Forensic Psychiatrist under the new Act.
- (3) Nothing in subsection (2) is to be taken as disqualifying the person from seeking or accepting subsequent appointment as a Chief Psychiatrist under the new Act if, at the relevant time, he or she is eligible to be so appointed.

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

Part 2 – Transitional Provisions

**s. 7**

---

**7. Approved medical practitioners**

- (1) A person who was an approved medical practitioner under the old Act is an approved medical practitioner under the new Act.
- (2) Subsection (1) is taken to be a medical practitioner approval under section 138 of the new Act taking effect on the commencement day.
- (3) However, unless sooner terminated, the person's appointment as an approved medical practitioner under the new Act is terminated when whichever of the following occurs first:
  - (a) the fifth anniversary of the commencement day;
  - (b) the person resigns, retires or otherwise relinquishes the appointment or the appointment is revoked;
  - (c) the person ceases to meet the criteria for appointment under section 138 of the new Act.
- (4) A notice of the appointment of a medical practitioner published in the *Gazette* under the old Act is taken to be publication under section 138(16) of the new Act.
- (5) For the purposes of section 138(14) of the new Act, any matter that the Chief Psychiatrist considers to be a transitional necessity is

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

s. 8

Part 2 – Transitional Provisions

---

reasonable grounds for revocation of an approval.

**8. Approved psychiatric nurses**

All approvals of persons as approved psychiatric nurses under the old Act are revoked.

**9. Authorised officers**

- (1) A person who was an authorised officer under the old Act or the *Mental Health Regulations 2009* is approved as a mental health officer under the new Act.
- (2) An approval under subsection (1) is taken to be an approval under section 139 of the new Act taking effect on the commencement day.
- (3) Unless sooner terminated, a person's authorisation under the new Act is terminated when whichever of the following occurs first:
  - (a) the fifth anniversary of the commencement day;
  - (b) the person resigns, retires or otherwise relinquishes the authorisation or the authorisation is revoked;
  - (c) the person ceases to meet the criteria for appointment under section 139 of the new Act.

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

Part 2 – Transitional Provisions

**s. 10**

- 
- (4) For the purposes of section 139(6) of the new Act, any matter that the Chief Psychiatrist considers to be a transitional necessity may be reasonable grounds for revoking an approval under subsection (1).
  - (5) Section 139(9) of the new Act does not apply to an approval under subsection (1) of this section.

**10. Authorised persons**

- (1) Subject to this section –
  - (a) a person who was an authorised person for the purposes of Part 10A of the old Act is an authorised person for the purposes of Parts 4 and 5 of Chapter 2 of the new Act (to the extent that the person’s authorisation under the old Act is translatable to and exercisable under the new Act); and
  - (b) a person who was an authorised person for the purposes of a provision of Part 10A of the old Act is, if there is a corresponding provision in Part 4 or 5 of Chapter 2 of the new Act, an authorised person for that corresponding provision (to the extent that the person’s authorisation under the old Act is translatable to and exercisable under the new Act).
- (2) The person’s status as an authorised person may be revoked at any time by –

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

s. 11

Part 2 – Transitional Provisions

---

- (a) the CFP (if the status was conferred by the Chief Forensic Psychiatrist under the old Act); or
  - (b) the controlling authority of any SMHU where the authorised person is for the time being employed, engaged or attending (if the status was conferred by the controlling authority of an SMHU under the old Act).
- (3) For the purposes of subsection (2), anything that the CFP or relevant controlling authority reasonably considers to be a transitional necessity constitutes reasonable grounds for revocation.

**11. Approved nurses**

All authorisations of registered nurses to exercise the power contained in section 23(2) of the old Act are revoked.

**12. Official Visitors**

- (1) A person who was appointed as coordinator under section 74P(2) of the old Act is taken to be the Principal Official Visitor under the new Act until whichever of the following occurs first:
- (a) the transitional period ends;
  - (b) the person ceases to meet the criteria for appointment as set out in section 155(3) of the new Act;

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

Part 2 – Transitional Provisions

**s. 13**

- 
- (c) the person vacates office or is removed from office under Schedule 5 to the new Act.
  - (2) A person who was an official visitor under the old Act is taken to be an Official Visitor under the new Act until whichever of the following occurs first:
    - (a) the transitional period ends;
    - (b) the person ceases to meet the criteria for appointment as set out in section 155(3) of the new Act;
    - (c) the person vacates office or is removed from office under Schedule 5 to the new Act.
  - (3) Notwithstanding clause 5(4) of Schedule 5 to the new Act, the Governor may remove a Principal Official Visitor from office during the transitional period if the Governor considers it to be a transitional necessity.
  - (4) Notwithstanding clause 6(4) of Schedule 5 to the new Act, the Principal Official Visitor may remove an Official Visitor from office during the transitional period if the Principal Official Visitor considers it to be a transitional necessity.

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

s. 13

Part 2 – Transitional Provisions

---

**13. Tribunals**

- (1) The old Tribunal is dissolved and all appointments under clause 1(1)(a) of Schedule 1 to the old Act are revoked.
- (2) The Forensic Tribunal under the old Act is dissolved and all appointments under section 73U(2) of the old Act are revoked.
- (3) However, a person who held an appointment referred to in subsection (1) or (2) is, if qualified, eligible to be appointed as a member of the new Tribunal.
- (4) Any proceedings that, immediately before the commencement day, were on foot before a defunct Tribunal, are to be continued before the new Tribunal.
- (5) All arrangements or appointments under section 73X, 73Y and 73Z of, and clause 8 of Schedule 1 to, the old Act of persons to assist the old Tribunal are revoked.

**14. Loss of remuneration, &c.**

- (1) A person whose appointment, approval or authorisation is revoked under this Part is not, on that account, entitled to any remuneration or compensation.
- (2) However, subsection (1) does not limit the operation of section 16 of the *Acts Interpretation Act 1931* in its application to any remuneration,



*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

Part 2 – Transitional Provisions

**s. 15**

---

fees or allowances to which the person may have been entitled in respect of the appointment, authorisation or approval before the commencement day.

***Division 4 – Persons in custody***

**15. Persons in custody**

- (1) This section applies if, immediately before the commencement day, a person was in the custody of a police officer, authorised officer or approved nurse (*custodian*) under the old Act.
- (2) Despite the repeal of the old Act, the custodian may continue to hold the person in custody.
- (3) In the case of custody under section 15(1) of the old Act –
  - (a) section 16(1) and (2) of the old Act continue to apply; and
  - (b) the person must be released from custody if –
    - (i) before or during the authorised detention period –
      - (A) informed consent is given to assess or treat the person under the new Act; or
      - (B) an assessment order or treatment order is made in

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

s. 15

Part 2 – Transitional Provisions

---

respect of the person  
under the new Act; or

(C) the custodian reasonably  
forms the belief that the  
person no longer meets  
the criteria for being taken  
into custody under either  
section 15(1)(a) and (b) of  
the old Act or  
section 17(1)(a), (b) and  
(c) of the new Act; or

(ii) the authorised detention period  
expires and none of the things  
referred to in subparagraph (i) has  
occurred.

(4) In the case of custody under section 23(2) of the old Act, the person must be released from custody when the period referred to in subsection (3) of that section expires if, by then, an assessment order or treatment order has not been made in respect of the person under the new Act.

(5) In the case of custody under section 26(3) of the old Act, the custodian must take action, as soon as possible, to have the person assessed by an approved medical practitioner to –

(a) confirm whether the person meets the  
assessment criteria; and

(b) determine if the person also meets the  
treatment criteria.

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

Part 2 – Transitional Provisions

s. 15

- 
- (6) In the case of custody under section 28(5) of the old Act, the custodian must take the person to the approved hospital as soon as practicable so that the patient, without informed consent, can be admitted to, and detained in, the approved facility for the purpose of receiving treatment.
- (7) In the case of custody under section 38(1) of the old Act, the custodian must return the person to the relevant approved hospital as soon as practicable.
- (8) In the case of custody under section 44B(1) of the old Act, the custodian must take the person to the relevant approved hospital as soon as practicable so that the patient, without informed consent, can be admitted to, and detained in, the approved facility for the purposes of receiving treatment.
- (9) In the case of custody under section 73F(2) of the old Act, the custodian must return the patient to the relevant SMHU as soon as practicable.
- (10) If the transport of a patient under this section had not actually commenced or was still in progress immediately before the commencement day, the custodian in charge of the patient in connection with the transport is taken to be a custodian or escort referred to in Schedule 2 to the new Act and is invested with all the powers of a custodian or escort set out in that Schedule.
- (11) In this section –
- custody* includes protective custody.

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

s. 16

Part 2 – Transitional Provisions

---

***Division 5 – Involuntary patients***

**16. Applications for involuntary admission and detention**

On the commencement day, an application under section 25 of the old Act lapses if it has not resulted in an order being made under section 26 of that Act.

**17. Initial orders for admission**

- (1) Subject to subsection (2), an initial order made under the old Act and in force immediately before the commencement day is taken to be an assessment order under the new Act.
- (2) An initial order referred to in subsection (1) in respect of a person ceases to have effect when whichever of the following occurs first:
  - (a) the expiration of a period of 72 hours after the order is made, if the person has not been admitted to an approved facility within that time;
  - (b) the expiration of a period of 24 hours after the person is admitted to an approved hospital if the order has not been –
    - (i) confirmed by an approved medical practitioner under section 26(5) of the old Act, where the person was examined

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

Part 2 – Transitional Provisions

s. 18

- 
- before midnight on  
31 December 2013; or
- (ii) affirmed by an approved medical practitioner under section 32 of the new Act, where the person was examined after midnight on 31 December 2013;
- (c) the expiration of a period of 72 hours after the person is admitted to an approved hospital if the order has been confirmed by an approved medical practitioner under section 26(5) of the old Act before midnight on 31 December 2013;
- (d) at the end of the period for which the order was extended, if the order was affirmed and extended under section 32 of the new Act after midnight on 31 December 2013;
- (e) the order is discharged –
- (i) by a medical practitioner under section 35 of the new Act; or
- (ii) by the Tribunal under section 180 of the new Act;
- (f) a treatment order is made in respect of the person.

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**s. 18**

Part 2 – Transitional Provisions

---

**18. Continuing care orders**

- (1) Subject to subsection (2), a continuing care order under the old Act in force immediately before the commencement day continues in force according to its terms as a treatment order made under the new Act.
- (2) An order continued under subsection (1) continues in force until whichever of the following occurs first:
  - (a) the order is discharged by –
    - (i) a medical practitioner under section 49 of the new Act; or
    - (ii) the Tribunal under section 181 of the new Act;
  - (b) the expiration of a period of 6 months, or such shorter period as may be specified in the order, commencing on the day the order was made.
- (3) Section 181(1)(a) of the new Act does not apply to a continuing care order that has been –
  - (a) reviewed by the old Tribunal under section 52(1) or (2) of the old Act; and
  - (b) continued under subsection (1).

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

Part 2 – Transitional Provisions

**s. 19**

---

**19. Community treatment orders**

- (1) Subject to subsection (2), a community treatment order made under section 41 of the old Act in force immediately before the commencement day continues in force according to its terms as a treatment order under the new Act.
- (2) An order continued under subsection (1) continues in force until whichever of the following occurs first:
  - (a) the order is discharged by –
    - (i) a medical practitioner under section 49 of the new Act; or
    - (ii) the Tribunal under section 181 of the new Act;
  - (b) the expiration of a period of 12 months, or such shorter period as may be specified in the order, commencing on the day the order was made.
- (3) Section 181(1)(a) of the new Act does not apply to a community treatment order that has been –
  - (a) reviewed by the old Tribunal under section 52(1) or (2) of the old Act; and
  - (b) continued under subsection (1).

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

s. 20

Part 2 – Transitional Provisions

---

**20. Suspended community treatment orders**

If a community treatment order is in place on 31 December 2013 and suspended under section 44(3), (3A) or (3B) of the old Act –

- (a) the order continues to be suspended while the person remains a patient in the hospital and reactivates, according to its terms, as a treatment order under the new Act on the discharge of the person from the hospital, unless it has otherwise ceased to have effect; and
- (b) the person's treating medical practitioner must –
  - (i) apply to the Tribunal under section 47(2)(a) of the new Act; or
  - (ii) discharge the order under section 49 of the new Act, if the treating medical practitioner is an approved medical practitioner; or
  - (iii) apply to an approved medical practitioner for the discharge of the order if the treating medical practitioner is not an approved medical practitioner.



*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

Part 2 – Transitional Provisions

**s. 21**

---

**21. Authorisations for temporary admission**

An authorisation for temporary admission under section 44A of the old Act that is in place on 31 December 2013 continues in force according to its terms until whichever of the following occurs first:

- (a) the expiration of a period of 14 days after the authorisation is made;
- (b) the treatment order to which the authorisation relates ceases to have effect;
- (c) the Tribunal discharges the authorisation;
- (d) an approved medical practitioner discharges the authorisation.

**22. Consents**

Any consent to a treatment given by a person or patient, or on behalf of a person or patient, under the old Act or the *Guardianship and Administration Act 1995*, and subsisting immediately before the commencement day, continues in force on and after that day according to its terms until the first of the following:

- (a) the consent is withdrawn by the person or body who gave it;
- (b) the Tribunal makes a treatment order, or varies an existing treatment order, to

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

s. 23

Part 2 – Transitional Provisions

---

provide authority for the treatment  
consented to;

(c) 30 June 2014.

**23. Physical restraint**

An authorisation to place a person under bodily restraint under section 34 of the old Act that is in force immediately before the commencement day continues in force as an authorisation of mechanical or physical restraint, as the case may be, under section 57 of the new Act.

**24. Seclusion**

An authorisation to seclude a patient under section 35 of the old Act that is in force immediately before the commencement day continues in force as an authorisation of seclusion under section 56 of the new Act.

**25. Leaves of absence**

- (1) This section applies to a grant of a leave of absence to an involuntary patient under section 37 of the old Act that had not been taken, completed or cancelled by the commencement day.
- (2) Subject to subsection (3), the grant of the leave of absence continues in force according to its terms and conditions as a grant of a leave of absence under section 60 of the new Act.

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

Part 2 – Transitional Provisions

**s. 26**

- 
- (3) A leave of absence continued under this section expires 14 days after the commencement day.
  - (4) To avoid doubt, section 60(10), (11) and (12) of the new Act apply to the leave of absence.

**26. Transfers**

Any transfer initiated under section 39 of the old Act, though not completed by the commencement day, may proceed, and, for that purpose, that section of the old Act, other than subsections (4) and (5), continues in force.

***Division 6 – Forensic patients***

**27. Forensic patients**

- (1) This section applies to a person who, immediately before the commencement day, was being detained by the controlling authority of a secure mental health unit under section 72A or 72B of the old Act.
- (2) Detention of the person continues –
  - (a) if section 72A applies, for the relevant period specified in subsection (2) of that section; or
  - (b) if section 72B applies, for the relevant period specified in subsection (7) of that section.
- (3) On and from the commencement day –

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

s. 28

Part 2 – Transitional Provisions

---

- (a) sections 69 and 70 of the new Act apply to a person whose detention under section 72A of the old Act is continued under this section; and
  - (b) sections 65, 66 and 67 of the new Act apply to a person whose detention under section 72B of the old Act is continued under this section.
- (4) If the detention of a forensic patient has been extended for a period under section 36A(6) of the *Corrections Act 1997*, the detention continues for that longer period.

**28. Forensic patient request to return to prison**

A determination to return a voluntary forensic patient referred to in section 72E of the old Act to the custody of the Director of Corrective Services or the Secretary (Youth Justice) continues in force according to its terms and conditions as if it were an agreement of the CFP under subsection (6) of section 70 of the new Act and that section applies to the extent that it is, or becomes, relevant.

**29. Treatments and procedures**

Any medical treatment or procedure authorised under section 72G, 72H, 72I or 72J of the old Act may be continued in accordance with those provisions, and for that purpose those sections of

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

Part 2 – Transitional Provisions

**s. 30**

---

the old Act continue in force, until any of the following occurs:

- (a) the treatment is completed;
- (b) consent for the treatment or procedure is withdrawn;
- (c) the Supreme Court or Family Court decides that treatment should not be continued;
- (d) the Tribunal makes a decision under Part 5 of Chapter 2 of the new Act about the person's treatment;
- (e) the Tribunal makes a decision under Part 3 of Chapter 3 of the new Act about the person's treatment;
- (f) the person is made the subject of an assessment order or a treatment order;
- (g) if the treatment is urgent circumstances treatment, any of the events referred to in section 87(9) of the new Act occurs.

**30. Physical restraint of forensic patient**

An authorisation to place a person under bodily restraint under section 72L of the old Act that is in force immediately before the commencement day continues in force as an authorisation of mechanical or physical restraint, as the case may be, under section 95 of the new Act.

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

s. 31

Part 2 – Transitional Provisions

---

**31. Seclusion of forensic patient**

An authorisation to seclude a patient under section 72N of the old Act that is in force immediately before the commencement day continues in force as an authorisation of seclusion under section 94 of the new Act.

**32. Force**

Any use of force initiated under the old Act, that is being exercised immediately before midnight on 31 December 2013, may continue to be exercised to the extent that it is authorised under the new Act.

**33. Leaves of absence for patients not subject to restriction orders**

- (1) This section applies to a grant of a leave of absence to a forensic patient under section 72P of the old Act that had not been taken, completed or cancelled by the commencement day.
- (2) The grant of the leave of absence continues in force according to its terms and conditions as a grant of a leave of absence under section 82 of the new Act.
- (3) To avoid doubt –
  - (a) sections 82 and 83 of the new Act apply to the leave of absence (to the extent that it may be relevant); and

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

Part 2 – Transitional Provisions

**s. 34**

- (b) section 84 of the new Act applies to the leave of absence (to the extent that it may become relevant).

**34. Leaves of absence for patients subject to restriction orders**

- (1) This section applies to a grant of a leave of absence to a forensic patient under section 72Q of the old Act that had not been taken, completed or cancelled by the commencement day.
- (2) The grant of the leave of absence continues in force according to its terms and conditions as a grant of a leave of absence under section 78 of the new Act.
- (3) To avoid doubt, sections 78, 79 and 80 of the new Act apply to the leave of absence to the extent that they may be relevant.

**35. Removals to hospitals, secure institutions, &c.**

- (1) Any removal of a forensic patient directed under section 73E(1) of the old Act though not commenced or completed by the commencement day may proceed as a removal under section 73 of the new Act.
- (2) If the removal had not actually commenced or was still in progress immediately before the commencement day, a person appointed under section 73E(2) of the old Act to take charge of the forensic patient in connection with the

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

s. 36

Part 2 – Transitional Provisions

---

removal is taken to be, and is invested with all the powers of, an authorised person referred to in section 73(4) of the new Act.

- (3) Any failure to comply with section 73(2), (3) or (6) of the new Act in respect of the removal does not affect or invalidate the removal.

**36. Return of forensic patients to secure mental health unit**

- (1) An authorisation issued under section 73F of the old Act continues in force according to its terms as if it were an authorisation issued under section 75 of the new Act.
- (2) A warrant issued under section 73G of the old Act continues in force according to its terms as if it were a warrant issued under section 76 of the new Act.

**37. Orders bringing persons before court**

An order made under section 73K of the old Act continues in force according to its terms as if it were an order made under section 116 of the new Act.



*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

Part 2 – Transitional Provisions

s. 38

---

***Division 7 – Tribunals and proceedings***

**38. Records of defunct Tribunals**

All reports, registers and other records made, received, held or maintained by a defunct Tribunal are records of the new Tribunal.

**39. Uncommenced proceedings of defunct Tribunals**

Where an application or motion has been made in proceedings before a defunct Tribunal and the proceedings have not been commenced, or have been commenced but not determined, by the commencement day –

- (a) the proceedings are taken to be proceedings before the new Tribunal; and
- (b) the Registrar and the President may make any orders and determinations that the Registrar or President may make under and for the purposes of the new Act.

**40. Court proceedings**

Any court proceedings under the old Act that were commenced but not finally determined before the commencement day are to be continued in accordance with the new Act.

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

s. 41

Part 2 – Transitional Provisions

---

**41. Summoning witnesses**

A summons issued under section 59 or 74F of the old Act continues in force according to its terms as if it were a summons issued by the Tribunal under clause 1 of Part 4 of Schedule 4 to the new Act.

**42. Requirement for report**

Where a defunct Tribunal has required a report under section 36, 46, 60, 71, 72 or 74G of the old Act and the report has not, on the commencement day, been provided, the requirement continues in force according to its terms as if it were a requirement under clause 3 of Part 4 of Schedule 4 to the new Act.

**43. Requirement for medical examination**

Where a defunct Tribunal has required a person to submit to a medical examination under section 61 or 74H of the old Act and the person has not, on the commencement day, submitted to the examination, the requirement continues in force according to its terms as if it were a requirement under clause 2 of Part 4 of Schedule 4 to the new Act.

**44. Determinations of Tribunal**

A determination of a defunct Tribunal continues to have effect according to its terms as if it were

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

Part 2 – Transitional Provisions

s. 45

---

a determination made by the Mental Health Tribunal under the new Act.

***Division 8 – Official visitors***

**45. Complaints to official visitor**

Any complaint made to an official visitor about a matter occurring before the commencement day is to be investigated by the Principal Official Visitor in accordance with the new Act or, if a Principal Official Visitor has not been appointed at the time the complaint is made, by an Official Visitor in accordance with the new Act.

**46. Official Visitor reports**

- (1) A request to report to the Minister under section 80 of the old Act continues to have effect as if it were a request under section 165(3)(b) of the new Act.
- (2) A requirement to provide a report to the Secretary under section 81 of the old Act continues to have effect as if it were a requirement under section 166 of the new Act.
- (3) An annual report required to be given under section 166 of the new Act is to include any information relevant to the performance of the Official Visitor's functions in the 6-month period immediately before the commencement day.

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

s. 47

Part 2 – Transitional Provisions

---

***Division 9 – Miscellaneous transitional provisions***

**47. Transfer of patients to secure mental health unit**

A decision to admit an involuntary patient to a secure mental health unit made before the commencement day that has not, on that day, resulted in the person's admission to an SMHU, has effect as if it were an authorisation given under section 63 of the new Act.

**48. Actions, &c., under intergovernmental agreements**

Anything done or omitted to be done under a provision of Part 12 of the old Act and having effect immediately before the commencement day is taken to have been done or omitted to be done under the corresponding provision of Chapter 4 of the new Act and, subject to that Chapter, has effect accordingly.

**49. Tribunals**

A direction given by a defunct Tribunal before the commencement day but not carried out by that day is taken to be a direction given by the new Tribunal.

**50. Provision of reports**

An annual report required to be given by the Tribunal under section 178 of the new Act is to include any relevant information from a defunct

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

Part 2 – Transitional Provisions

**s. 51**

---

Tribunal for the 6-month period immediately before the commencement day.

**51. Transitional clinical guidelines and standing orders**

- (1) Clinical guidelines or standing orders issued by a Chief Psychiatrist under section 151 or 152, respectively, of the new Act may include matters of a transitional nature.
- (2) Clinical guidelines or standing orders issued under subsection (1) are valid only for, or in respect of, the transitional period.

**52. Saving and transitional regulations**

- (1) The Governor may make regulations of a savings or transitional nature necessary or expedient for –
  - (a) bringing the new Act and new mental health scheme into operation; or
  - (b) retiring the old mental health scheme and disposing of questions or issues arising under the old Act or from its repeal.
- (2) The regulations may –
  - (a) be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations; and

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

s. 52

Part 2 – Transitional Provisions

---

- (b) authorise any matter to be from time to time determined, applied, approved or regulated by the Minister, a Chief Psychiatrist or the Tribunal; and
- (c) provide for any savings or transitional matter to take effect on the commencement day or a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made; and
- (d) if no provision or insufficient provision is made in this Act in respect of a matter or transitional necessity, provide that for the transitional period (or any specified portion thereof) a specific provision of the new Act does not apply, or applies with or without specified modifications, to that matter.

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

Part 3 – Miscellaneous

s. 53

---

**PART 3 – MISCELLANEOUS**

**53. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Health; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Health and Human Services.

**54. Consequential amendments**

The legislation specified in Schedule 1 is amended as specified in that Schedule.

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

sch. 1

---

**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

Section 54

***Acts Interpretation Act 1931***

1. Section 46 is amended by omitting “section 4(1) of the *Mental Health Act 1996*” from the definition of *mental disorder* and substituting “the *Mental Health Act 2013*”.

***Administration and Probate Act 1935***

1. Section 40(1)(b) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

***Alcohol and Drug Dependency Act 1968***

1. Section 2(1) is amended as follows:
  - (a) by omitting the definitions of *hospital* and *hospital authority* and substituting the following definitions:

***hospital*** means a place equipped for the care of patients on a live-in basis (whether or not provision is also made for the treatment of outpatients);

***hospital authority*** means the body or person responsible for administering a hospital;



*Mental Health (Transitional and Consequential Provisions) Act  
2013  
Act No. of*

**sch. 1**

---

(b) by omitting the definition of *officer of the mental health service*.

2. Section 6 is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

***Ambulance Service Act 1982***

1. Section 36(2)(d) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

***Children, Young Persons and Their Families Act 1997***

1. Section 3(1) is amended by omitting paragraph (d) from the definition of *information-sharing entity* and substituting:
  - (d) a controlling authority of an approved hospital, approved assessment centre or secure mental health unit, all within the meaning of the *Mental Health Act 2013*;  
or

***Commissions of Inquiry Act 1995***

1. Section 22(5)(b) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

*Mental Health (Transitional and Consequential Provisions) Act  
2013  
Act No. of*

**sch. 1**

---

***Community Protection (Offender Reporting) Regulations  
2006***

1. Regulation 8 is amended by omitting “*Mental Health Act 1996*” from column 2 of item 1 in the table and substituting “*Mental Health Act 2013*”.

***Coroners Act 1995***

1. Section 3 is amended as follows:
  - (a) by omitting the definition of *authorised officer*;
  - (b) by omitting “*Mental Health Act 1996*” from the definition of *controlling authority* and substituting “*Mental Health Act 2013*”;
  - (c) by inserting the following definition after the definition of *Magistrates Rule Committee*:

***mental health officer*** means a mental health officer within the meaning of the *Mental Health Act 2013*;
  - (d) by omitting “*Mental Health Act 1996*” from paragraph (b) of the definition of *person held in care* and substituting “*Mental Health Act 2013*”;
  - (e) by omitting subparagraph (iii) from paragraph (a) of the definition of *person*

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

---

*held in custody* and substituting the following subparagraph:

- (iii) a mental health officer; or
- (f) by omitting “authorised officer” from paragraph (d) of the definition of *reportable death* and substituting “mental health officer”;
- (g) by omitting “*Mental Health Act 1996*” from paragraph (a) of the definition of *secure mental health unit* and substituting “*Mental Health Act 2013*”.

**2.** Section 19(4) is amended as follows:

- (a) by omitting from paragraph (c) “authorised officer” and substituting “mental health officer”;
- (b) by omitting “authorised officer” second occurring and substituting “mental health officer”.

**3.** Section 24(1)(e) is amended by omitting “authorised officer” and substituting “mental health officer”.

***Corrections Act 1997***

**1.** Section 3 is amended as follows:

*Mental Health (Transitional and Consequential Provisions) Act  
2013  
Act No. of*

**sch. 1**

---

- (a) by inserting the following definition after the definition of *Board*:

***Chief Forensic Psychiatrist*** has the same meaning as in the *Mental Health Act 2013*;

- (b) by inserting the following definition after the definition of *medical officer*:

***Mental Health Tribunal*** means the Mental Health Tribunal established under the *Mental Health Act 2013*;

- (c) by omitting “*Mental Health Act 1996*” from the definition of *secure mental health unit* and substituting “*Mental Health Act 2013*”.

2. After section 4, the following section is inserted in Part 1:

**4A. Inconsistency with *Mental Health Act 2013***

Where there is an inconsistency between this Act and the *Mental Health Act 2013*, this Act prevails to the extent of that inconsistency.

3. Section 6(2) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

sch. 1

---

4. Section 36A is amended as follows:

- (a) by omitting the definition of *Chief Forensic Psychiatrist* from subsection (1);
- (b) by omitting “*Mental Health Act 1996*” from the definition of *controlling authority* in subsection (1) and substituting “*Mental Health Act 2013*”;
- (c) by omitting the definition of *Forensic Tribunal* from subsection (1);
- (d) by omitting “*Mental Health Act 1996*” from the definition of *mental illness* in subsection (1) and substituting “*Mental Health Act 2013*”;
- (e) by omitting from subsection (4) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;
- (f) by omitting from subsection (5) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;
- (g) by omitting from subsection (6) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;
- (h) by inserting the following subsection after subsection (9):
  - (10) If a prisoner or detainee is moved to a secure mental health unit

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

**sch. 1**

---

under this section, the Director is to notify the Mental Health Tribunal of that fact as soon as practicable.

**5.** Section 36B is repealed and the following section is substituted:

**36B. Appeal against direction under section 36A**

- (1) A prisoner or detainee may appeal to the Mental Health Tribunal against –
  - (a) the failure to make a direction under section 36A(2) or (3) if the prisoner or detainee has made a request under section 36A(2)(a)(ii); or
  - (b) the requirement by the Chief Forensic Psychiatrist under section 36A(7) for the Director to remove the prisoner or detainee from a secure mental health unit.
- (2) The commencing of an appeal does not affect the operation of the direction or requirement appealed against.
- (3) An appeal is to be heard and determined by the Mental Health Tribunal within 7 days from receipt of the appeal.
- (4) The *Mental Health Act 2013* applies to the hearing and determination of an

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

---

appeal, regardless of whether or not the prisoner or detainee has a mental illness, as if it were a review under that Act.

6. Section 40(1A) is amended as follows:
  - (a) by omitting from paragraph (a) “or under a direction under section 36B(8)”;
  - (b) by omitting from paragraph (b) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.
7. Section 72(11) is amended as follows:
  - (a) by omitting the definition of *Chief Forensic Psychiatrist*;
  - (b) by omitting “*Mental Health Act 1996*” from the definition of *forensic patient* and substituting “*Mental Health Act 2013*”.
8. Section 87A(1) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

***Criminal Code Act 1924***

1. Schedule 1 is amended as follows:
  - (a) by omitting from section 106(d) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

**sch. 1**

---

- (b) by omitting from section 106(da) “continuing care” and substituting “treatment”;
- (c) by omitting from section 106(g) “continuing care” and substituting “treatment”;
- (d) by omitting from section 106(h) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;
- (e) by omitting “*Mental Health Act 1996*” from the definition of *mental illness* in section 126(4) and substituting “*Mental Health Act 2013*”;
- (f) by omitting the definition of *Chief Forensic Psychiatrist* from section 348(1) and substituting the following definition:

***Chief Forensic Psychiatrist*** has the same meaning as in the *Mental Health Act 2013*;
- (g) by omitting “*Mental Health Act 1996*” from the definition of *secure mental health unit* in section 348(1) and substituting “*Mental Health Act 2013*”;
- (h) by omitting from section 348(3)(b) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;



*Mental Health (Transitional and Consequential Provisions) Act  
2013  
Act No. of*

sch. 1

---

- (i) by omitting from section 348(4)(b) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;
- (j) by omitting from section 348(8) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;
- (k) by omitting from section 348(11)(b) “Part 10A of the *Mental Health Act 1996*” and substituting “Parts 4 and 5 of Chapter 2 of the *Mental Health Act 2013*”.

***Criminal Justice (Mental Impairment) Act 1999***

1. The long title is amended by omitting “, the *Mental Health Act 1996*”.
2. Section 3 is amended as follows:
  - (a) by omitting “*Mental Health Act 1996*” from the definition of *approved hospital* and substituting “*Mental Health Act 2013*”;
  - (b) by omitting “*Mental Health Act 1996*” from the definition of *Chief Forensic Psychiatrist* and substituting “*Mental Health Act 2013*”;
  - (c) by omitting the definitions of *community treatment order* and *continuing care order* and substituting the following definition:

*Mental Health (Transitional and Consequential Provisions) Act  
2013  
Act No. of*

**sch. 1**

---

***Chief Civil Psychiatrist*** has the same meaning as in the *Mental Health Act 2013*;

- (d) by omitting the definition of *Forensic Tribunal*;
- (e) by inserting the following definition after the definition of *immediate family*:

***Mental Health Tribunal*** has the same meaning as in the *Mental Health Act 2013*;

- (f) by omitting “*Mental Health Act 1996*” from the definition of *secure mental health unit* and substituting “*Mental Health Act 2013*”;
- (g) by inserting the following definition after the definition of *supervision order*:

***treatment order*** has the same meaning as in the *Mental Health Act 2013*;

- 3. Section 18(2) is amended by omitting paragraphs (c) and (d) and substituting the following :

(c) make a treatment order; or

- 4. Section 21(1) is amended by omitting paragraphs (c) and (d) and substituting the following paragraph:

(c) make a treatment order; or

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

sch. 1

- 
5. Part 4 is amended by omitting “**PERSONS LIABLE TO FORENSIC ORDERS, CONTINUING CARE ORDERS AND COMMUNITY TREATMENT ORDERS**” from the heading to that Part and substituting “**PERSONS LIABLE TO FORENSIC ORDERS AND TREATMENT ORDERS**”.
  6. Section 22 is amended by omitting “, continuing care order or community treatment order” from the definition of *defendant* and substituting “or treatment order”.
  7. Section 26(1) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.
  8. Section 29 is amended as follows:
    - (a) by omitting from subsection (1)(a) “continuing care” and substituting “treatment”;
    - (b) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:
      - (b) the Chief Civil Psychiatrist is satisfied that the defendant has become fit to stand trial –
    - (c) by omitting from subsection (1) “medical practitioner” second occurring and substituting “Chief Civil Psychiatrist”;

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

**sch. 1**

---

- (d) by omitting from subsection (3A)(a) “continuing care” and substituting “treatment”;
- (e) by omitting from subsection (3A)(b)(ii) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;
- (f) by omitting from subsection (3A)(b)(ii) “continuing care order” and substituting “treatment order that requires the defendant to be detained in that hospital”;
- (g) by omitting from subsection (3A)(b)(iii) “order.” and substituting “order.”;
- (h) by inserting the following subparagraph after subparagraph (iii) in subsection (3A)(b):
  - (iv) the Chief Civil Psychiatrist if the defendant is not subject to a restriction order or supervision order.
- (i) by omitting from subsection (5) “continuing care” and substituting “treatment”;
- (j) by omitting from subsection (6)(b) “continuing care” and substituting “treatment”.

**9.** Section 29A is amended as follows:

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

---

- (a) by omitting from subsection (3) “Forensic Tribunal” and substituting “Mental Health Tribunal”;
- (b) by omitting from subsection (4) “does” and substituting “and section 213 of the *Mental Health Act 2013* do”.

**10.** Section 30(1) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

**11.** Section 31 is amended as follows:

- (a) by omitting paragraph (e) from the definition of *prescribed person* in subsection (1) and substituting the following paragraph:
  - (e) a mental health officer within the meaning of the *Mental Health Act 2013*; or
- (b) by omitting from subsection (4) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;
- (c) by omitting from subsection (6)(c) “Forensic Tribunal” first occurring and substituting “Mental Health Tribunal”;
- (d) by omitting from subsection (6)(c) “Forensic Tribunal” second occurring and substituting “that Tribunal”;

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

---

- (e) by omitting from subsection (7)(a) “Forensic Tribunal” and substituting “Mental Health Tribunal”;
- (f) by omitting from subsection (7)(b) “Forensic Tribunal” and substituting “Mental Health Tribunal”;
- (g) by omitting from subsection (7) “Forensic Tribunal” third occurring and substituting “that Tribunal”.

**12.** Division 5A of Part 4 is repealed.

**13.** Section 36(2) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

**14.** Section 37 is amended as follows:

- (a) by omitting from subsection (1) “*Mental Health Act 1996* by the Forensic Tribunal” and substituting “*Mental Health Act 2013* by the Mental Health Tribunal”;
- (b) by omitting from subsection (2) “Forensic Tribunal” and substituting “Mental Health Tribunal”;
- (c) by omitting from subsection (3) “Forensic Tribunal” and substituting “Mental Health Tribunal”;

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

- 
- (d) by omitting from subsection (4) “Forensic Tribunal” and substituting “Mental Health Tribunal”;
  - (e) by omitting from subsection (4)(a) “, continuing care order or community” and substituting “or”;
  - (f) by omitting from subsection (5) “Forensic Tribunal” and substituting “Mental Health Tribunal”;
  - (g) by omitting from subsection (5)(a) “continuing care order or community”;
  - (h) by omitting from subsection (6) “Forensic Tribunal” and substituting “Mental Health Tribunal”;
  - (i) by omitting from subsection (7) “Forensic Tribunal” first occurring and substituting “Mental Health Tribunal”;
  - (j) by omitting from subsection (7) “Forensic” second occurring;
  - (k) by omitting from subsection (7)(a) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

- 15.** Section 39(1A)(a) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

**sch. 1**

---

**16.** Section 41(1B) is amended by omitting “continuing care” and substituting “treatment”.

**17.** Section 41A is repealed and the following section is substituted:

**41A. Authorisation of persons**

The Chief Forensic Psychiatrist may authorise a person, or a member of a class of persons, for the purposes of any or all of the provisions of this Act as may be specified in the authorisation.

**18.** Section 42A is amended as follows:

- (a) by omitting “, continuing care order or community” from the definition of *defendant* in subsection (1) and substituting “or a”;
- (b) by inserting the following paragraph after paragraph (b) in subsection (2):
  - (ba) the Chief Civil Psychiatrist if the defendant is not subject to a forensic order;
- (c) by omitting from subsection (2)(e) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;
- (d) by omitting from subsection (2)(e) “community”.



*Mental Health (Transitional and Consequential Provisions) Act  
2013  
Act No. of*

**sch. 1**

---

- 19.** After section 44, the following section is inserted in Part 5:

**45. Transitional provision on commencement of  
*Mental Health Act 2013***

A continuing care order or a community treatment order made under this Act, and in force immediately before the day on which all of the provisions of the *Mental Health Act 2013* commence, continues in effect after that day as if the order were a treatment order made under the *Mental Health Act 2013*.

***Forensic Procedures Act 2000***

- 1.** Section 26(3)(a) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.
- 2.** Section 28(1)(a) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

***Integrity Commission Act 2009***

- 1.** Section 47(4)(b) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

---

2. Section 71(4)(b) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

***Justices Act 1959***

1. Section 47 is amended as follows:
  - (a) by omitting “under section 11A of the *Mental Health Act 1996*” from the definition of *Chief Forensic Psychiatrist* in subsection (1) and substituting “under the *Mental Health Act 2013*”;
  - (b) by omitting “*Mental Health Act 1996*” from the definition of *mental illness* in subsection (1) and substituting “*Mental Health Act 2013*”;
  - (c) by omitting from subsection (5)(b) “Part 10A of the *Mental Health Act 1996*” and substituting “Parts 4 and 5 of Chapter 2 of the *Mental Health Act 2013*”;
  - (d) by omitting from subsection (6)(b) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;
  - (e) by omitting subsection (10).
2. Section 144(4)(cf) is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

*Mental Health (Transitional and Consequential Provisions) Act  
2013  
Act No. of*

**sch. 1**

---

***Land Titles Act 1980***

1. Section 138G(3) is amended by omitting paragraph (a) and substituting the following paragraph:
  - (a) while he or she is subject to an assessment order or treatment order under the *Mental Health Act 2013*; or

***Limitation Act 1974***

1. Section 2(3) is amended by omitting paragraph (a) and substituting the following paragraph:
  - (a) while he or she is subject to an assessment order or treatment order under the *Mental Health Act 2013*; or

***Local Government Act 1993***

1. Section 254(2)(d) is amended by omitting “initial order or a continuing care order under the *Mental Health Act 1996*” and substituting “assessment order or treatment order under the *Mental Health Act 2013*”.
2. Section 255(3)(c)(iii) is amended by omitting “initial order or a continuing care order under the *Mental Health Act 1996*” and substituting “assessment order or treatment order under the *Mental Health Act 2013*”.

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

---

3. Section 270(1)(g) is amended by omitting “initial order or a continuing care order under the *Mental Health Act 1996*” and substituting “assessment order or treatment order under the *Mental Health Act 2013*”.

***Mental Health Act 2013***

1. Section 3(1) is amended by inserting after the definition of *clinical reasons* the following definition:

***communication aid*** means any electronic or other device used to assist a person to communicate;

2. Section 7 is amended as follows:

(a) by omitting from subsection (1) “it is established, on the balance of probabilities,” and substituting “a person or body considering that capacity under this Act is satisfied”;

(b) by omitting from subsection (2) “it is established on the balance of probabilities” and substituting “a person or body considering that capacity under this Act is satisfied”.

3. Section 21(3)(c) is amended by omitting “after the end of the month in which it is made” and substituting “as soon as practicable”.

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

---

4. Section 55(8) is amended by omitting paragraph (a) and substituting the following paragraphs:
  - (a) to advise the patient, orally or in writing, of the authorisation as soon as practicable after it is given;
  - (ab) to give a copy of the authorisation to the patient (together with a statement of rights in a CCP approved form);
5. Section 56(2) is amended by inserting after paragraph (i) the following paragraph:
  - (ia) the patient must not be deprived of any communication aid that the patient uses in communicating on a daily basis, except as may be strictly necessary for the patient's safety or the preservation of the communication aid for the patient's future use; and
6. Section 57(2) is amended by inserting after paragraph (i) the following paragraph:
  - (ia) the patient must not be deprived of any communication aid that the patient uses in communicating on a daily basis, except as may be strictly necessary for the patient's safety or the preservation of the communication aid for the patient's future use; and

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

**sch. 1**

---

7. Section 58(2) is amended by inserting after paragraph (a) the following paragraph:
  - (ab) give a copy of the record to the patient, together with a statement of rights in a CCP approved form; and
8. Section 62 is amended by inserting after paragraph (i) the following paragraph:
  - (ia) the right, while in an approved hospital, not to be unreasonably deprived of any communication aid;
9. Section 76(1)(b) is amended by omitting “continuing care” and substituting “treatment”.
10. Section 87(8) is amended by omitting paragraph (a) and substituting the following paragraphs:
  - (a) to advise the patient, orally or in writing, of the authorisation as soon as practicable after it is given;
  - (ab) to give a copy of the authorisation to the patient (together with a statement of rights in a CFP approved form);
11. Section 94(2) is amended by inserting after paragraph (i) the following paragraph:
  - (ia) the patient must not be deprived of any communication aid that the patient uses

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

---

in communicating on a daily basis,  
except as may be strictly necessary for  
the patient's safety or the preservation of  
the communication aid for the patient's  
future use; and

**12.** Section 95(2) is amended by inserting after paragraph (i) the following paragraph:

(ia) the patient must not be deprived of any communication aid that the patient uses in communicating on a daily basis, except as may be strictly necessary for the patient's safety or the preservation of the communication aid for the patient's future use; and

**13.** Section 96(2) is amended by inserting after paragraph (a) the following paragraph:

(ab) give a copy of the record to the patient, together with a statement of rights in a CFP approved form; and

**14.** Section 108 is amended by inserting after paragraph (k) the following paragraph:

(ka) the right not to be unreasonably deprived of any communication aid;

**15.** Section 128(1)(c) is amended by omitting "at the end of the month in which the treatment is given" and substituting "as soon as practicable".

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

**sch. 1**

---

**16.** Section 132 is amended as follows:

- (a) by inserting in subsection (3)(b) “patient, the patient’s representative and the” after “to the”;
- (b) by inserting the following subsection after subsection (3):
  - (3A) A mental health authority may give any information that has been withheld, deferred or qualified under subsection (1) to a medical practitioner nominated by the patient or by the patient’s representative.
- (c) by omitting paragraph (c) from subsection (4);
- (d) by omitting the definition of *information* from subsection (6) and substituting the following definition:

***information*** means information that, if disclosed or disclosed fully to the patient either directly or through an intermediary, could reasonably be expected to –

- (a) seriously harm the patient’s health; or
- (b) place the safety of other persons at risk –



*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

---

but does not include –

- (c) information required to be given when seeking, in accordance with the requirements of section 8 or 9, a person’s informed consent to a treatment; or
- (d) information which is required to be given elsewhere under this Act;

**17.** Section 133 is amended as follows:

- (a) by omitting from subsection (1)(a) “patient in an SMHU” and substituting “forensic patient or an involuntary patient”;
- (b) by omitting from subsection (1)(b) “patient in an SMHU” and substituting “forensic patient or an involuntary patient”;
- (c) by inserting in subsection (1)(b) “or an involuntary patient” after “as a forensic patient”;
- (d) by inserting in subsection (1)(c) “or an involuntary patient” after “patient”;
- (e) by omitting from subsection (1)(d) “patient in an SMHU” and substituting

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

**sch. 1**

---

“forensic patient or an involuntary patient”;

(f) by omitting from subsection (2)(a) “an SMHU patient” and substituting “a forensic patient or an involuntary patient”;

(g) by omitting paragraph (b) from subsection (2) and substituting the following paragraph:

(b) if the patient is a forensic patient, expressly authorised by the CFP.

(h) by inserting in subsection (3) “or Tribunal” after “court”.

**18.** Section 181(1)(d) is amended by inserting “if the detention is pursuant to section 42(2)(c)” after “section 42(3)”.

**19.** Section 230 is amended as follows:

(a) by inserting in paragraph (a) “, other than Parts 2 and 3 of Chapter 3,” after “Act”;

(b) by omitting from paragraph (b) “Minster” and substituting “Minister”;

(c) by inserting in paragraph (b) “, other than those Parts,” after “Act”;

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

- 
- (d) by omitting from paragraph (b) “Services.” and substituting “Services; and”;
  - (e) by inserting the following paragraphs after paragraph (b):
    - (c) the administration of Parts 2 and 3 of Chapter 3 is assigned to the Minister for Justice; and
    - (d) the department responsible to that Minister in relation to the administration of those Parts is the Department of Justice.

**20.** Schedule 4 is amended by omitting the definition of *party* from clause 1 of Part 1 and substituting:

*party*, to any proceedings, means any or all of the following:

- (a) the person who applied to commence the proceedings;
- (b) the person in respect of whom an order is sought;
- (c) if an order is sought in respect of a child, a parent of the child;
- (d) the patient’s representative, including a support person;

*Mental Health (Transitional and Consequential Provisions) Act  
2013  
Act No. of*

**sch. 1**

---

- (e) the controlling authority of the facility in which the patient is or has been accommodated;
- (f) the relevant Chief Psychiatrist;
- (g) the Secretary;
- (h) the Director of Corrective Services or the Secretary (Youth Justice), as appropriate;
- (i) the Public Guardian or Deputy Public Guardian;
- (j) any other person that the Tribunal determines has a proper interest in the proceedings;

***Personal Information Protection Act 2004***

1. Clause 10(1)(c)(iii) of Schedule 1 is amended by omitting “the *Mental Health Act 1996*” and substituting “an assessment order or treatment order under the *Mental Health Act 2013*”.

***Police Service Act 2003***

1. Section 29(1) is amended by omitting paragraph (a) and substituting the following paragraph:
  - (a) a mental illness within the meaning of the *Mental Health Act 2013*; or

*Mental Health (Transitional and Consequential Provisions) Act  
2013  
Act No. of*

**sch. 1**

---

***Property Agents and Land Transactions Act 2005***

1. Section 4(3)(b) is amended by omitting “a continuing care order under section 28 of the *Mental Health Act 1996*” and substituting “an assessment order or treatment order under the *Mental Health Act 2013*”.

***Sentencing Act 1997***

1. Section 4 is amended as follows:
  - (a) by omitting “*Mental Health Act 1996*” from the definition of *approved hospital* and substituting “*Mental Health Act 2013*”;
  - (b) by omitting “*Mental Health Act 1996*” from the definition of *approved medical practitioner* and substituting “*Mental Health Act 2013*”;
  - (c) by omitting “*Mental Health Act 1996*” from the definition of *Chief Forensic Psychiatrist* and substituting “*Mental Health Act 2013*”;
  - (d) by omitting the definition of *continuing care order*;
  - (e) by omitting “*Mental Health Act 1996*” from the definition of *mental illness* and substituting “*Mental Health Act 2013*”;

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

---

- (f) by omitting “*Mental Health Act 1996*” from the definition of *secure mental health unit* and substituting “*Mental Health Act 2013*”;
- (g) by omitting “*Corrections Act 1997.*” from the definition of *supervisor* and substituting “*Corrections Act 1997;*”;
- (h) by inserting the following definition after the definition of *supervisor*:

*treatment order* has the meaning given  
by section 76.

- 2. Part 10 is amended by omitting “**ASSESSMENT, CONTINUING CARE, SUPERVISION AND RESTRICTION ORDERS**” from the heading to that Part and substituting “**ASSESSMENT, TREATMENT, SUPERVISION AND RESTRICTION ORDERS**”.
- 3. Section 75 is amended as follows:
  - (a) by inserting in subsection (1)(b) “Chief Civil Psychiatrist,” after “report of the”;
  - (b) by omitting from subsection (1)(c) “an approved medical practitioner at the approved hospital to which it is proposed to admit the person” and substituting “the Chief Civil Psychiatrist if it is proposed

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

**sch. 1**

---

to admit the person to an approved hospital”;

- (c) by omitting from subsection (1)(d) “continuing care” and substituting “treatment”;
- (d) by inserting in subsection (5) “Chief Civil Psychiatrist or the” after “by the”;
- (e) by inserting in subsection (6) “Chief Civil Psychiatrist or the” after “otherwise, the”;
- (f) by inserting in subsection (7) “Chief Civil Psychiatrist or the” after “report of the”;
- (g) by inserting in subsection (8) “Chief Civil Psychiatrist or the” after “report of the”;
- (h) by inserting in subsection (8)(b) “Chief Civil Psychiatrist or the” after “matters the”;
- (i) by inserting in subsection (8)(b) “Chief Civil Psychiatrist or the” after “if the”.

- 4.** Section 76 is repealed and the following section is substituted:

**76. What is a treatment order?**

- (1) A treatment order is an order for the detention of the person in respect of

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

---

whom it is made as an involuntary patient in the approved hospital specified in the order for the term not exceeding 6 months specified in the order.

- (2) Once made, a treatment order is taken to be a treatment order made under the *Mental Health Act 2013*.

**5.** Section 78 is amended as follows:

- (a) by inserting in subsection (4) “, Chief Civil Psychiatrist” after “psychiatrist”;
- (b) by omitting from subsection (6)(b) “Part 10A of the *Mental Health Act 1996*” and substituting “Parts 4 and 5 of Chapter 2 of the *Mental Health Act 2013*”.

**6.** Section 79 is amended as follows:

- (a) by omitting from subsection (1) “continuing care” twice occurring and substituting “treatment”;
- (b) by omitting from subsection (2) “continuing care” twice occurring and substituting “treatment”;
- (c) by omitting from subsection (3)(a) “continuing care” and substituting “treatment”;



*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

- 
- (d) by omitting from subsection (4)  
“continuing care” twice occurring and  
substituting “treatment”.

7. Section 79B(2) is amended by omitting  
“continuing care” and substituting “treatment”.

***Trustee Act 1898***

1. Section 36 is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.
2. Section 49 is amended by omitting “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

***Youth Justice Act 1997***

1. Section 3(1) is amended as follows:
- (a) by inserting the following definition after  
the definition of *authorised police officer*:
- Chief Forensic Psychiatrist*** has the  
same meaning as in the *Mental Health Act 2013*;
- (b) by inserting the following definitions  
after the definition of *legal representative*:

*Mental Health (Transitional and Consequential Provisions) Act  
2013  
Act No. of*

**sch. 1**

---

***Mental Health Tribunal*** has the same meaning as in the *Mental Health Act 2013*;

***mental illness*** has the same meaning as in the *Mental Health Act 2013*;

- (c) by inserting the following definition after the definition of *Secretary*:

***secure mental health unit*** has the same meaning as in the *Mental Health Act 2013*;

2. After section 5, the following section is inserted in Part 1:

**5A. Inconsistency with *Mental Health Act 2013***

Where there is an inconsistency between this Act and the *Mental Health Act 2013*, this Act prevails to the extent of that inconsistency.

3. Section 105 is amended as follows:

- (a) by inserting the following definition before the definition of *approved hospital* in subsection (1):

***approved assessment centre*** has the same meaning as in the *Mental Health Act 2013*;

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

**sch. 1**

- 
- (b) by omitting “*Mental Health Act 1996*” from the definition of *approved hospital* in subsection (1) and substituting “*Mental Health Act 2013*”;
  - (c) by omitting the definitions of *assessment centre* and *Chief Forensic Psychiatrist* from subsection (1);
  - (d) by omitting the definitions of *mental illness* and *secure mental health unit* from subsection (1);
  - (e) by inserting in subsection (2)(b) “approved” after “in an”;
  - (f) by omitting from subsection (5) “an assessment centre or hospital” and substituting “an approved assessment centre or approved hospital”;
  - (g) by omitting from subsection (5) “assessment centre or hospital” second occurring and substituting “approved assessment centre or approved hospital”;
  - (h) by inserting in subsection (7) “approved” after “to an”;
  - (i) by inserting in subsection (7)(a) “approved” after “to the specified”;
  - (j) by inserting in subsection (7)(b) “approved” after “from the”;

*Mental Health (Transitional and Consequential Provisions) Act*  
2013  
*Act No. of*

**sch. 1**

---

- (k) by inserting in subsection (8) “approved” after “to an”;
- (l) by inserting in subsection (8) “approved” after “specified”;
- (m) by omitting from subsection (9)(b) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;
- (n) by omitting from subsection (9)(c) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”.

**4.** Section 134A is amended as follows:

- (a) by omitting the definition of *Chief Forensic Psychiatrist* from subsection (1);
- (b) by omitting “*Mental Health Act 1996*” from the definition of *controlling authority* in subsection (1) and substituting “*Mental Health Act 2013*”;
- (c) by omitting the definitions of *mental illness* and *secure mental health unit* from subsection (1);
- (d) by inserting the following subsection after subsection (7):
  - (8) If a detainee is admitted to a secure mental health unit under this section, notification is to be given by the Secretary (Youth

*Mental Health (Transitional and Consequential Provisions) Act*  
*2013*  
*Act No. of*

sch. 1

---

Justice) to the Mental Health  
Tribunal as soon as practicable.

5. Section 134B is repealed and the following section is substituted:

**134B. Appeal against direction under section 134A**

- (1) A detainee may appeal to the Mental Health Tribunal in respect of –
  - (a) the failure to make a direction under section 134A(2) or (3) if the detainee has made a request under section 134A(2)(a)(ii); or
  - (b) the requirement by the Chief Forensic Psychiatrist under section 134A(5).
- (2) The commencing of an appeal does not affect the operation of the direction or requirement appealed against.
- (3) An appeal is to be heard and determined by the Mental Health Tribunal within 7 days from receipt of the appeal.
- (4) The *Mental Health Act 2013* applies to the hearing and determination of an appeal, regardless of whether or not the detainee has a mental illness, as if it were a review under that Act.