

# **CLAUSE NOTES**

## ***Mental Health (Transitional and Consequential Provisions) Bill 2013***

<b>Part I</b>	<b>Preliminary</b>
<b>Clause 1</b>	<b>Short Title</b> Sets out how the Act may be cited.
<b>Clause 2</b>	<b>Commencement</b> Provides for the Act to commence on the day on which all of the provisions of the <i>Mental Health Act 2013</i> commence.
<b>Clause 3</b>	<b>Interpretation</b> Subclause 1 governs how terms and phrases used in the Act are to be interpreted, and applied. Subclause 2 clarifies that expressions used in the Act which are defined in the <i>Mental Health Act 2013</i> , have the meaning given to them by the <i>Mental Health Act 2013</i> .
<b>Clause 4</b>	<b>Assessment and treatment facilities</b> Clarifies the status that places that were approved hospitals, assessment centres and secure mental health units under the <i>Mental Health Act 1996</i> , will have under the <i>Mental Health Act 2013</i> . Subclause 1 applies to approved hospitals. Subclause 2 applies to assessment centres. Subclause 3 applies to secure mental health units. Subclause 4 applies to facilities with conditional approval under the <i>Mental Health Act 1996</i> . Subclause 5 establishes when approvals taken to be approvals pursuant to subclauses 1, 2 and 3 take effect. Subclause 6 enables the Minister to revoke an approval deemed to have been given pursuant to this clause if the Minister reasonably considers this to be necessary or expedient to facilitate an orderly and fair transition from the scheme established by the <i>Mental Health Act 1996</i> , to the scheme established by the <i>Mental Health Act 2013</i> .
<b>Clause 5</b>	<b>Secure institutions</b> Clarifies the status that an institution that was a secure institution under the <i>Mental Health Act 1996</i> , will have under the <i>Mental Health Act 2013</i> .
<b>Clause 6</b>	<b>Chief Forensic Psychiatrist</b>

Subclause 1 provides that the person who held the office of Chief Forensic Psychiatrist under the *Mental Health Act 1996* is the Chief Forensic Psychiatrist under the *Mental Health Act 2013* and clarifies the terms and conditions which will apply the person's appointment under the *Mental Health Act 2013*.

Subclause 2 sets out when a person's appointment as Chief Forensic Psychiatrist under subclause 1, ends.

Subclause 3 makes it clear that a person whose appointment as Chief Forensic Psychiatrist ends pursuant to subclause 2, may be subsequently appointed as a Chief Psychiatrist under the *Mental Health Act 2013* if the person is, at the particular point in time, eligible to be so appointed.

## **Clause 7**

### **Approved medical practitioners**

Subclause 1 provides that a person who was an approved medical practitioner under the *Mental Health Act 1996* is an approved medical practitioner under the *Mental Health Act 2013*.

Subclause 2 sets out when an approval under subclause 1 takes effect while subclause 3 sets out when an approval under subclause 1 ends.

Subclause 4 provides for matters relevant to the publication of approvals under subclause 1.

Subclause 5 enables the Chief Psychiatrist to revoke an approval under subclause 1 if the Chief Psychiatrist reasonably considers this to be necessary or expedient to facilitate an orderly and fair transition from the scheme established by the *Mental Health Act 1996*, to the scheme established by the *Mental Health Act 2013*.

## **Clause 8**

### **Approved psychiatric nurses**

States that approvals of persons as approved psychiatric nurses under the *Mental Health Act 1996* will cease to have effect when the *Mental Health Act 2013* commences on 1 January 2014.

## **Clause 9**

### **Authorised officers**

Subclause 1 provides that a person who was an authorised officer under the *Mental Health Act 1996* or *Mental Health Regulations 2009* is approved as a mental health officer under the *Mental Health Act 2013*.

Subclause 2 sets out when an approval under subclause 1 takes effect while subclause 3 sets out when an approval under subclause 1 ends.

Subclause 4 enables the Chief Psychiatrist to revoke an approval under subclause 1 if the Chief Psychiatrist reasonably considers this to be necessary or expedient to facilitate an orderly and fair transition from the scheme established by the *Mental Health Act 1996*, to the scheme established by the *Mental Health Act 2013*.

Subclause 5 provides for matters relevant to the publication of approvals under subclause 1.

## **Clause 10**

### **Authorised persons**

Subclause 1 provides that a person who was an authorised person for the purposes of relevant parts of the *Mental Health Act 1996* is an authorised person for the purposes of equivalent

relevant parts of the *Mental Health Act 2013*.

Subclause 2 sets out when an authorisation under subclause 1 ends.

Subclause 3 enables the Chief Psychiatrist to revoke an authorisation under subclause 1 if the Chief Psychiatrist reasonably considers this to be necessary or expedient to facilitate an orderly and fair transition from the scheme established by the *Mental Health Act 1996*, to the scheme established by the *Mental Health Act 2013*.

## **Clause 11**

### **Approved nurses**

This clause makes it clear that approvals of persons as nurses under the *Mental Health Act 1996* will cease to have effect when the *Mental Health Act 2013* commences on 1 January 2014.

## **Clause 12**

### **Official Visitors**

Subclause 1 provides that a person who was appointed as coordinating Official visitor under the *Mental Health Act 1996* is taken to be the Principal Official Visitor under the *Mental Health Act 2013* for a maximum period of six months or until one of the events noted in subclause 1 occurs, whichever occurs first.

Subclause 2 provides that a person who was an Official Visitor under the *Mental Health Act 1996* is to be taken as an Official Visitor under the *Mental Health Act 2013* for a maximum period of six months, or until one of the events noted in subclause 2 occurs, whichever occurs first.

Subclause 3 makes it clear that the Governor may remove a Principal Official Visitor from office within the *Mental Health Act 2013*'s first six months of operation if the Governor reasonably considers this to be necessary or expedient to facilitate an orderly and fair transition from the scheme established by the *Mental Health Act 1996*, to the scheme established by the *Mental Health Act 2013*.

Subclause 4 makes it clear that the Principal Official Visitor may remove an Official Visitor from office within the *Mental Health Act 2013*'s first six months of operation if the Principal Official Visitor reasonably considers this to be necessary or expedient to facilitate an orderly and fair transition from the scheme established by the *Mental Health Act 1996*, to the scheme established by the *Mental Health Act 2013*.

## **Clause 13**

### **Tribunals**

Subclauses 1 and 2 make it clear that the Mental Health Tribunal and Forensic Tribunal established under the *Mental Health Act 1996* are dissolved and that appointments of members to the Tribunals under the *Mental Health Act 1996* are revoked.

Subclause 3 makes it clear that a person who was a member of the Mental Health Tribunal or Forensic Tribunal under the *Mental Health Act 1996* is eligible to be appointed as a member of the Mental Health Tribunal under the *Mental Health Act 2013*.

Subclause 4 regulates proceedings that are in the process of being considered by the Mental Health Tribunal or Forensic

Tribunal under the *Mental Health Act 1996* at the time of the *Mental Health Act 2013*'s commencement.

Subclause 5 makes it clear that arrangements or appointments made under the *Mental Health Act 1996* to enable or assist the Forensic Tribunal or Mental Health Tribunal to exercise its powers and functions are revoked.

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

Subclause 1 makes it clear that a person whose appointment is revoked pursuant to clauses 6 – 14 of the Act is not entitled to any remuneration or compensation arising from the revocation.

Subclause 2 qualifies subclause 1 as it relates to the operation of certain aspects of section 16 of the *Acts Interpretation Act 1931*.

**Clause 15****Persons in custody**

This clause clarifies how a person who is in custody, including protective custody, at the time the *Mental Health Act 2013* commences is to be treated under the *Mental Health Act 2013* and the steps that must be taken with respect to the person once the *Mental Health Act 2013* has commenced.

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

This clause makes it clear that an application for a person's involuntary admission and detention lapses if, by the time the *Mental Health Act 2013* commences, the application has not resulted in an initial order being made.

**Clause 17****Initial orders for admission**

Subclause 1 provides that an initial order made under the *Mental Health Act 1996* that is in force immediately before the *Mental Health Act 2013* commences is to be taken to be an assessment order under the *Mental Health Act 2013*.

Subclause 2 sets out when an initial order taken to be an assessment order pursuant to subclause 1, ends.

**Clause 18****Continuing care orders**

Subclause 1 provides that a continuing care order made under the *Mental Health Act 1996* that is in force immediately before the *Mental Health Act 2013* commences is to be taken to be a treatment order under the *Mental Health Act 2013*.

Subclause 2 sets out when a continuing care order that is taken to be a treatment order pursuant to subclause 1, ends.

Subclause 3 clarifies that the requirement under the *Mental Health Act 2013* for the Tribunal to review a treatment order within 30 days after it is made if it is still in effect does not apply to a continuing care order that is taken to be a treatment order pursuant to subclause 1 that had been reviewed by the Mental Health Tribunal under the *Mental Health Act 1996* within 28 days



after the date when the order was made or renewed.

**Clause 19****Community treatment orders**

Subclause 1 provides that a community treatment order made under the *Mental Health Act 1996* that is in force immediately before the *Mental Health Act 2013* commences is to be taken to be a treatment order under the *Mental Health Act 2013*.

Subclause 2 sets out when a community treatment order that is taken to be a treatment order pursuant to subclause 1, ends.

Subclause 3 clarifies that the requirement under the *Mental Health Act 2013* for the Tribunal to review a treatment order within 30 days after it is made if it is still in effect does not apply to a community treatment order that is taken to be a treatment order pursuant to subclause 1 that had been reviewed by the Mental Health Tribunal under the *Mental Health Act 1996* within 28 days after the date when the order was made or renewed.

**Clause 20****Suspended community treatment orders**

States that a community treatment order that is suspended at the time the *Mental Health Act 2013* commences:

- continues to be suspended while the patient to whom it is subject remains a patient in the hospital, and
- reactivates as a treatment order when the person is discharged from hospital, unless the community treatment order has otherwise ceased to have effect.

The clause also clarifies the steps that must be taken with respect to a suspended community treatment order once the *Mental Health Act 2013* has commenced.

**Clause 21****Authorisations for temporary admission**

States that an authorisation for temporary admission that is in place immediately before the *Mental Health Act 2013* commences continues in force for a maximum period of 14 days from the time that the authorisation was made.

**Clause 22****Consents**

Provides that consent to treatment given by a person or patient, or on behalf of a person or patient either under the *Mental Health Act 1996* or the *Guardianship and Administration Act 1995* that is in place immediately before the *Mental Health Act 2013* commences continues in force for a maximum period of six months.

**Clause 23****Physical restraint**

Provides that an authorisation to place an involuntary patient under bodily restraint under the *Mental Health Act 1996* that is in force immediately before the *Mental Health Act 2013* commences continues in force as an authorisation of mechanical or physical restraint under the *Mental Health Act 2013*.

**Clause 24****Seclusion**

Provides that an authorisation to keep an involuntary patient in seclusion under the *Mental Health Act 1996* that is in force immediately before the *Mental Health Act 2013* commences continues in force as an authorisation of seclusion under the *Mental Health Act 2013*.

**Clause 25****Leaves of absence**

Clarifies how a grant of a leave of absence under the *Mental Health Act 1996* that had not been taken, completed or cancelled by the time the *Mental Health Act 2013* commences is to be treated under the *Mental Health Act 2013*.

The clause determines the maximum period for which the leave may be continued and sets out the sections of the *Mental Health Act 2013* which apply to the leave of absence.

**Clause 26****Transfers**

Clarifies how a transfer initiated under the *Mental Health Act 1996* that had not been completed by the time the *Mental Health Act 2013* commences is to be treated under the *Mental Health Act 2013* and sets out the sections of the *Mental Health Act 2013* that apply to the transfer.

**Clause 27****Forensic patients**

Clarifies the period for which a person who is being detained by the controlling authority of a secure mental health unit under the *Mental Health Act 1996* may be detained under the *Mental Health Act 2013* and sets out the sections of the *Mental Health Act 2013* that apply to the detention.

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

Provides that a determination to return a voluntary forensic patient to the custody of the Director of Corrective Services or the Secretary (Youth Justice) under section 72E of the *Mental Health Act 1996* continues in force according to its terms as an agreement made under section 70(6) of the *Mental Health Act 2013* and sets out the sections of the *Mental Health Act 2013* that apply to the agreement.

**Clause 29****Treatments and procedures**

Provides that a medical treatment or procedure authorised under relevant sections the *Mental Health Act 1996* may continue in force in accordance with those sections, and sets out the

circumstances in which the authorisation ends.

- Clause 30                      Physical restraint of forensic patient**
- Provides that an authorisation to place a forensic patient under bodily restraint under the *Mental Health Act 1996* that is in force immediately before the *Mental Health Act 2013* commences continues in force as an authorisation of mechanical or physical restraint under section 95 of the *Mental Health Act 2013*.
- Clause 31                      Seclusion of forensic patient**
- Provides that an authorisation to place to keep a forensic patient in seclusion under the *Mental Health Act 1996* that is in force immediately before the *Mental Health Act 2013* commences continues in force as an authorisation of seclusion under section 94 of the *Mental Health Act 2013*.
- Clause 32                      Force**
- Provides that any use of force initiated under the *Mental Health Act 1996* that is being exercised immediately before the *Mental Health Act 2013* commences may continue to be exercised to the extent that the force is authorised under the *Mental Health Act 2013*.
- Clause 33                      Leaves of absence for patients not subject to restriction orders**
- Clarifies how a grant of a leave of absence to a forensic patient who is not subject to a restriction order under the *Mental Health Act 1996* that had not been taken, completed or cancelled by the time the *Mental Health Act 2013* commences is to be treated under the *Mental Health Act 2013*.
- The clause provides that the grant of leave continues in force according to its terms and conditions as a grant of leave of absence under section 82 of the *Mental Health Act 2013*, and sets out the sections of the *Mental Health Act 2013* which apply to the leave of absence.
- Clause 34                      Leaves of absence for patients subject to restriction orders**
- Clarifies how a grant of a leave of absence granted to a forensic patient who is subject to a restriction order under the *Mental Health Act 1996* that had not been taken, completed or cancelled by the time the *Mental Health Act 2013* commences is to be treated under the *Mental Health Act 2013*.
- The clause provides that the grant of leave continues in force according to its terms and conditions as a grant of leave of

absence under section 78 of the *Mental Health Act 2013* and sets out the sections of the *Mental Health Act 2013* which apply to the leave of absence.

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

Clarifies the status of a direction to remove a forensic patient to a hospital, a health service within the meaning of the *Health Complaints Act 1995*, premises where such a health service is provided or a secure institution directed under the *Mental Health Act 1996* where the removal had not commenced or been completed by the date of the *Mental Health Act 2013*'s commencement, under the *Mental Health Act 2013*.

The clause also sets out matters relevant to the powers and functions of a person appointed to take charge of a forensic patient being removed to a hospital, a health service within the meaning of the *Health Complaints Act 1995*, premises where such a health service is provided or a secure institution and makes it clear that any failure to comply with certain sections of the *Mental Health Act 2013* in respect of the removal does not affect or invalidate the removal.

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

Subclause 1 clarifies the status of an authorisation for the return of a forensic patient who is not subject to a restriction order and who is absent without leave or who has contravened a condition of leave to a secure mental health unit issued under section 73F of the *Mental Health Act 1996*, under the *Mental Health Act 2013*.

Subclause 2 clarifies the status of a warrant issued by a Magistrate for the return of a forensic patient who is absent without leave and suspected to be no longer in Tasmania under section 73G of the *Mental Health Act 1996*, under the *Mental Health Act 2013*.

**Clause 37****Orders bringing persons before court**

Clarifies the status of an order issued by a judge directing the controlling authority to bring the patient before the court specified in the order or the judge or magistrate who is present to be dealt with according to law, or to give evidence under section 73K of the *Mental Health Act 1996*, under the *Mental Health Act 2013*.

**Clause 38****Records of defunct Tribunal**

Provides that records made, received, held or maintained by the Mental Health Tribunal and Forensic Tribunal under the *Mental Health Act 1996* are records of the Mental Health Tribunal under the *Mental Health Act 2013*.



- Clause 39**                      **Uncommenced proceedings of defunct Tribunals**
- Clarifies the status of proceedings of the Mental Health Tribunal or Forensic Tribunal under the *Mental Health Act 1996* that have not commenced, or that have commenced but not been determined by the date of the *Mental Health Act 2013*'s commencement, under the *Mental Health Act 2013*.
- The clause also clarifies the orders and determinations that the Registrar and President may make under and for the purposes of the *Mental Health Act 2013*.
- Clause 40**                      **Court proceedings**
- Clarifies the status of Court proceedings that were commenced under the *Mental Health Act 1996* but not finally determined by the date of the *Mental Health Act 2013*'s commencement, under the *Mental Health Act 2013*.
- Clause 41**                      **Summoning witnesses**
- Clarifies the status of summonses issued by the Tribunal under the *Mental Health Act 1996*, under the *Mental Health Act 2013*.
- Clause 42**                      **Requirement for report**
- Clarifies the status of a requirement by the Mental Health Tribunal or Forensic Tribunal under the *Mental Health Act 1996* for a report that has not, by the date of the *Mental Health Act 2013*'s commencement, been provided, under the *Mental Health Act 2013*.
- Clause 43**                      **Requirement for medical examination**
- Clarifies the status of a requirement by the Mental Health Tribunal or Forensic Tribunal for a person to submit to a medical examination under the *Mental Health Act 1996* that has not, by the date of the *Mental Health Act 2013*'s commencement, resulted in the person having submitted to the examination, under the *Mental Health Act 2013*.
- Clause 44**                      **Determinations of Tribunal**
- Clarifies the status of a determination of the Mental Health Tribunal or Forensic Tribunal under the *Mental Health Act 1996*, under the *Mental Health Act 2013*.
- Clause 45**                      **Complaints to official visitor**
- Clarifies the status of a complaint made to an official visitor about a matter occurring prior to the date of the *Mental Health*

*Act 2013's commencement, under the Mental Health Act 1996.*

The clause makes it clear that such a complaint is to be investigated by the Principal Official Visitor or an Official Visitor in accordance with the *Mental Health Act 2013*.

**Clause 46****Official Visitor reports**

Subclauses 1 and 2 clarify the status of reports requested or required to be provided or given under sections 80 or 81 respectively of the *Mental Health Act 1996*, under the *Mental Health Act 2013*.

Subclause 3 requires the report required to be given by the Principal Official Visitor to the Minister for Health under the *Mental Health Act 2013* to include any information relevant to the performance of Official Visitor functions in the six month period preceding the date of the *Mental Health Act 2013*'s commencement.

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

Clarifies the status of a decision to admit an involuntary patient to a secure mental health unit made before the date of the *Mental Health Act 2013*'s commencement that has not resulted in the patient's admission to the secure mental health unit by 1 January 2014, under the *Mental Health Act 2013*.

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

Clarifies the status of things done or omitted to be done under the *Mental Health Act 1996* which have effect immediately prior to the date of the *Mental Health Act 2013*'s commencement, under the *Mental Health Act 2013*.

**Clause 49****Tribunals**

Clarifies the status of a direction issued by the Mental Health Tribunal or Forensic Tribunal under the *Mental Health Act 1996* that has not been carried out by the date of the *Mental Health Act 2013*'s commencement, under the *Mental Health Act 2013*.

**Clause 50****Provisions of reports**

Requires the report required to be given by the Mental Health Tribunal to the Minister for Health under the *Mental Health Act 2013* to include any relevant information from the Mental Health Tribunal or Forensic Tribunal under the *Mental Health Act 1996* for the six month period preceding the date of the *Mental Health Act 2013*'s commencement.

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

Subclause 1 provides the Chief Civil Psychiatrist or Chief Forensic Psychiatrist with the ability to include matters of a transitional nature in clinical guidelines or standing orders issued

under the *Mental Health Act 2013*.

Subclause 2 establishes the period for which clinical guidelines and standing orders issued under subclause 1, are valid.

**Clause 52                      Saving and transitional regulations**

Subclause 1 provides the Governor with the ability to make regulations of a savings or transitional nature for certain purposes.

Subclause 2 sets out matters relevant to any regulations made under subclause 1.

**Clause 53                      Administration of Act**

Assigns administrative responsibility of the Act to the Minister for Health, and determines that the Department responsible to the Minister in relation to the administration of the Act is the Department of Health and Human Services, until such time as provision is made for administration of the Act under section 4 of the *Administrative Arrangements Act 1990*.

**Clause 54                      Consequential amendments**

Identifies the location of legislation that is amended by the Act, with reference to Schedule 1.

**Schedule 1                    Consequential Amendments**

***Acts Interpretation Act 1931***

**Clause 1**                      Amends section 46 of the *Acts Interpretation Act 1931* to refer to the *Mental Health Act 2013*.

***Administration and Probate Act 1935***

**Clause 1**                      Amends section 40(1)(b) of the *Administration and Probate Act 1935* to refer to the *Mental Health Act 2013*.

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

- Clause 1** Amends section 2(1) by:
- Inserting new definitions for “hospital” and “hospital authority” which do not refer to terminology used in the *Mental Health Act 1996*
  - Omitting the definition of “officer of the mental health service”. This term is no longer used in the *Alcohol and Drug Dependency Act 1968* and is being removed for this reason.
- Clause 2** Amends section 6 of the *Alcohol and Drug Dependency Act* to refer to the *Mental Health Act 2013*.

***Ambulance Service Act 1982***

- Clause 1** Amends section 36(2)(d) of the *Ambulance Service Act 1982* to refer to the *Mental Health Act 2013*.

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

- Clause 1** Amends section 3(1) of the *Children, Young Persons and Their Families Act* to refer to the *Mental Health Act 2013* and to ensure consistency with terminology used in the *Mental Health Act 2013*.

***Commissions of Inquiry Act 1995***

- Clause 1** Amends section 22(5)(b) of the *Commissions of Inquiry Act 1995* to refer to the *Mental Health Act 2013*.

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

- Clause 1** Amends regulation 8 of the *Community Protection (Offender Reporting) Regulations 2006* to refer to the *Mental Health Act 2013*.

***Coroner's Act 1995***

- Clause 1** Amends section 3 of the *Coroner's Act 1995* by:
- Omitting the definition of “authorised officer”
  - Amending the definitions of “controlling authority”, “person held in care” and “secure mental health unit” to refer to the *Mental Health Act 2013*
  - Inserting a definition for “mental health officer”
  - Further amending the definition of “person held in care” and amending the definition of “reportable death” to refer to “mental health officer” rather than to “authorised officer”
- Clause 2** Amends section 19(4) by replacing references to “authorised officer” with references to “mental health officer”
- Clause 3** Amends section 24(1)(e) by replacing the reference to “authorised officer” with a reference to “mental health officer”

***Corrections Act 1997***

- Clause 1** Amends section 3 of the *Corrections Act 1997* by:
- Inserting definitions for “Chief Forensic Psychiatrist” and “Mental Health Tribunal” given the proposed removal of definitions for these terms from section 36A of the *Corrections Act 1997*
  - Amending the definition of “secure mental health unit” to refer to the *Mental Health Act 2013*.
- Clause 2** Inserts a new section 4A clarifying the relationship between the *Corrections Act 1997* and *Mental Health Act 2013*.
- Clause 3** Amends section 6(2) to refer to the *Mental Health Act 2013*.
- Clause 4** Amends section 36A of the *Corrections Act 1997* by:
- Omitting the definitions of “Chief Forensic Psychiatrist”, “Forensic Tribunal” and “Mental Health Tribunal” from subsection 1 given the proposed insertion of definitions for “Chief Forensic Psychiatrist” and “Mental Health Tribunal” in section 3
  - Amending the definitions of “controlling authority” and “mental illness” to refer to the *Mental Health Act 2013*
  - Amending subsections 4, 5 and 6 to refer to the *Mental Health Act 2013*
  - Inserting a new subclause 10 requiring the Director, Corrections to notify the Mental Health Tribunal if a prisoner or detainee is moved to a secure mental health unit under section 36A of the *Corrections Act 1997*. This is to facilitate the Tribunal’s review role in relation to such admissions under section 185 of the *Mental Health Act 2013*.
- Clause 5** Repeals section 36B of the *Corrections Act 1997* and inserts a new section 36B Appeal against direction under section 36A.
- The *Mental Health Act 2013* contains provisions enabling the Mental Health Tribunal to review the admission to a secure mental health unit of a prisoner or youth detainee, a function that is authorised by section 36B of the *Corrections Act 1997*.
- The repeal of section 36B in favour of a new section 36B which does not authorise the Mental Health Tribunal to review the admission of a secure mental health unit of a prisoner or youth detainee is consistent with the inclusion of provisions for this purpose in the *Mental Health Act 2013*.
- Clause 6** Amends section 40(1A) of the *Corrections Act 1997* by:
- Amending paragraph (a) to omit references to section 36B(8)

given the proposed repeal of section 36B in favour of a new section 36B which does not contain a subsection which is reflective of subsection 8

- Amending paragraph (b) to refer to the *Mental Health Act 2013*.

#### **Clause 7**

Amends section 72(11) of the *Corrections Act 1997* by:

- Omitting the definition of “Chief Forensic Psychiatrist” given the proposed insertion of a definition for “Chief Forensic Psychiatrist” in section 3
- Amending the definition of “forensic patient” to refer to the *Mental Health Act 2013*.

#### **Clause 8**

Amends section 87A(1) to refer to the *Mental Health Act 2013*.

### ***Criminal Code Act 1924***

#### **Clause 1**

Amends Schedule 1 to the *Criminal Code Act 1924* by:

- Amending sections 106(d), 106(g), the definition of mental illness contained in section 126(4), the definition of secure mental health unit contained in section 348(1), section 348(3)(b), section 348(4)(b) and section 348(8) of the *Criminal Code Act 1924* to refer to the *Mental Health Act 2013*
- Amending section 106(da) of the *Criminal Code Act 1924* to refer to a treatment order made under the *Criminal Justice (Mental Impairment) Act 1999* give the proposed amendment of that Act to refer to treatment orders rather than to continuing care orders
- Amending section 106(g) of the *Criminal Code Act 1924* to refer to a treatment order made under the *Sentencing Act 1997* given the proposed amendment of that Act to refer to treatment orders rather than to continuing care orders
- Amending section 348(1) of the *Criminal Code Act 1924* to insert a new definition of “Chief Forensic Psychiatrist” which refers to the *Mental Health Act 2013*
- Amending section 348(11)(b) to refer to the *Mental Health Act 2013* and relevant components thereof.

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



- Clause 1** Amends the *Criminal Justice (Mental Impairment) Act 1999*'s long title by removing a reference to the *Mental Health Act 1996*.
- Clause 2** Amends section 3 of the *Criminal Justice (Mental Impairment) Act 1999* by:
- Amending the definitions of “approved hospital”, “Chief Forensic Psychiatrist” and “secure mental health unit” to refer to the *Mental Health Act 2013*
  - Omitting the definitions of “community treatment order”, “continuing care order” and “Forensic Tribunal” and inserting definitions for “Chief Civil Psychiatrist”, “Mental Health Tribunal” and “treatment order” to reflect terminology used in, and orders available under, the *Mental Health Act 2013*.
- Clause 3** Amends section 18(2) of the *Criminal Justice (Mental Impairment) Act 1999* by omitting paragraphs (c) and (d) and inserting a new paragraph (c) to reflect terminology used in, and orders available under, the *Mental Health Act 2013*.
- Clause 4** Amends section 21(1) of the *Criminal Justice (Mental Impairment) Act 1999* by omitting paragraphs (c) and (d) and inserting a new paragraph (c) to reflect terminology used in, and orders available under, the *Mental Health Act 2013*.
- Clause 5** Amends the heading of Part 4 of the *Criminal Justice (Mental Impairment) Act 1999* to reflect terminology used in, and orders available under, the *Mental Health Act 2013*.
- Clause 6** Amends section 22 of the *Criminal Justice (Mental Impairment) Act 1999* to reflect terminology used in, and orders available under, the *Mental Health Act 2013*.
- Clause 7** Amends section 26(1) of the *Criminal Justice (Mental Impairment) Act 1999* to refer to the *Mental Health Act 2013*
- Clause 8** Amends section 29 of the *Criminal Justice (Mental Impairment) Act 1999* by:
- Amending subsections (1)(a), (3A)(a), (3A)(b)(ii), (5) and (6)(b) to reflect terminology used in, and orders available under, the *Mental Health Act 2013*
  - Amending subsections (1) and (1)(b) to replace references to “medical practitioner” and “senior approved medical practitioner” respectively with “Chief Civil Psychiatrist” given the inclusion of this statutory role in the *Mental Health Act 2013*

- Amending subsection (3A)(b)(ii) to refer to the *Mental Health Act 2013*
- Inserting a new subparagraph (iii) in subsection (3A)(b) to refer to the Chief Civil Psychiatrist given the inclusion of this statutory role in the *Mental Health Act 2013*.

- Clause 9** Amends section 29A of the *Criminal Justice (Mental Impairment) Act 1999* by:
- Amending subsection (3) to reflect terminology used in the *Mental Health Act 2013*
  - Amending subsection (4) to reflect the inclusion in the *Mental Health Act 2013* of section 213 which makes it an offence for a person to give a patient unlawful treatment.
- Clause 10** Amends section 30(1) of the *Criminal Justice (Mental Impairment) Act 1999* to refer to the *Mental Health Act 2013*.
- Clause 11** Amends section 31 of the *Criminal Justice (Mental Impairment) Act 1999* by:
- Amending subsections (1)(e), (6)(c), (7), (7)(a) and (7)(b) to refer to the *Mental Health Act 2013* and to reflect terminology used in the *Mental Health Act 2013*
  - Amending subsection (4) to refer to the *Mental Health Act 2013*.
- Clause 12** Repeals Division 5A of Part 4 of the *Criminal Justice (Mental Impairment) Act 1999*.
- Clause 13** Amends section 36(2) of the *Criminal Justice (Mental Impairment) Act 1999* to refer to the *Mental Health Act 2013*
- Clause 14** Amends subsections (1), (2), (3), (4), (4a), (5), (5)(a), (6), (7) and (7)(a) of section 37 of the *Criminal Justice (Mental Impairment) Act 1999* to reflect terminology used in the *Mental Health Act 2013* and to refer to the *Mental Health Act 2013*.
- Clause 15** Amends section 39(1A)(a) of the *Criminal Justice (Mental Impairment) Act 1999* to refer to the *Mental Health Act 2013*
- Clause 16** Amends section 41(1B) of the *Criminal Justice (Mental Impairment) Act 1999* to reflect terminology used in the *Mental Health Act 2013*.
- Clause 17** Repeals section 41A of the *Criminal Justice (Mental Impairment) Act 1999* in favour of a new section 41A Authorisation of persons.
- The new section specifically enables the Chief Forensic Psychiatrist to authorise a person, or a member of a class of persons, for the purposes of any or all provisions of the *Criminal Justice (Mental Impairment) Act 1999*.

- Clause 18** Amends section 42A of the *Criminal Justice (Mental Impairment) Act 1999* by:
- Amending subsections (1) and (2)(e) to reflect terminology used in the *Mental Health Act 2013*
  - Inserting a new subparagraph after subsection (2)(b) to refer to the Chief Civil Psychiatrist given the inclusion of this statutory role in the *Mental Health Act 2013*
  - Amending subsection (2)(e) to refer to the *Mental Health Act 2013*.

- Clause 19** Inserts a new section 45 Transitional Provisions on commencement of the *Mental Health Act 2013*, to Part 5 of the *Criminal Justice (Mental Impairment) Act 1999*.
- The new section providing that a continuing care order or community treatment order made under the *Criminal Justice (Mental Impairment) Act 1999* that is in force immediately before the *Mental Health Act 2013*'s commencement continues in effect as if it were a treatment order made under the *Mental Health Act 2013*.

#### ***Forensic Procedures Act 2000***

- Clause 1** Amends section 26(3)(a) of the *Forensic Procedures Act 2000* to refer to the *Mental Health Act 2013*.
- Clause 2** Amends section 28(1)(a) of the *Forensic Procedures Act 2000* to refer to the *Mental Health Act 2013*.

#### ***Integrity Commission Act 2009***

- Clause 1** Amends section 47(4)(b) of the *Integrity Commission Act 2009* to refer to the *Mental Health Act 2013*.
- Clause 2** Amends section 71(4)(b) of the *Integrity Commission Act 2009* to refer to the *Mental Health Act 2013*.

#### ***Justices Act 1959***

- Clause 1** Amends section 47 of the *Justices Act 1959* by:
- Amending the definitions of “Chief Forensic Psychiatrist” and “mental illness” contained in subsection (1), and subsection (6)(b), to refer to the *Mental Health Act 2013*
  - Amending subsection (5)(b) to refer to the *Mental Health Act 2013* and relevant components thereof
  - Omitting subsection 10 given the inclusion of provisions enabling the Secretary to delegate powers and functions in the *Mental Health Act 2013*.

- Clause 2** Amends section 144(4)(cf) of the *Justices Act 1959* to refer to the *Mental Health Act 2013*.

### ***Land Titles Act 1980***

- Clause 1** Amends section 138G(3) of the *Land Titles Act 1980* to refer to the *Mental Health Act 2013* and to reflect terminology used in the *Mental Health Act 2013*.

### ***Limitation Act 1974***

- Clause 1** Amends section 2(3) of the *Limitation Act 1974* to refer to the *Mental Health Act 2013* and to reflect terminology used in the *Mental Health Act 2013*.

### ***Local Government Act 1993***

- Clause 1** Amends section 254(2)(d) of the *Local Government Act 1993* to refer to the *Mental Health Act 2013* and to reflect terminology used in the *Mental Health Act 2013*.
- Clause 2** Amends section 255(3)(c)(iii) of the *Local Government Act 1993* to refer to the *Mental Health Act 2013* and to reflect terminology used in the *Mental Health Act 2013*.
- Clause 3** Amends section 270(1)(g) of the *Local Government Act 1993* to refer to the *Mental Health Act 2013* and to reflect terminology used in the *Mental Health Act 2013*.

### ***Mental Health Act 2013***

- Clause 1** Amends section 3(1) of the *Mental Health Act 2013* by inserting a definition of “communication aid”.
- The definition is intended to capture a device, including an electronic device, which is used by a person to assist him or her to communicate.
- Clause 2** Amends the capacity test contained in section 7 of the *Mental Health Act 2013* to insert criteria which may be applied by both a medical practitioner, and a court or Tribunal.
- This is relevant given the requirement for a medical practitioner to be satisfied that a person does not have decision making capacity to make a decision about his or her own assessment, before making an assessment order under the *Mental Health Act 2013*.
- The intention is not to change the nature of the test required to be performed under section 7 of the *Mental Health Act 2013* nor to insert a test which may be used to arrive at a different outcome for persons subject to it. The intention is rather to achieve a test which may meaningfully and lawfully be applied by medical practitioners, as well as by courts and Tribunals.
- Clause 3** Amends section 21(3)(c) of the *Mental Health Act 2013* to require records required to be made by a Mental Health Officer or police officer who releases a person from protective custody to be given to the Chief Civil Psychiatrist as soon as practicable rather than after the end of the month in which the record was made.
- This is relevant given the power for the Chief Civil Psychiatrist to directly intervene with respect to assessment and treatment generally pursuant to section 147 of the *Mental Health Act 2013*.
- The intention is to ensure that the Chief Civil Psychiatrist is made aware of matters which may potentially be relevant to the exercise of that power, as soon as is practicable in the circumstances.
- Clause 4** Amends section 55(8) of the *Mental Health Act 2013* to insert a requirement for an involuntary patient in respect of whom urgent circumstances treatment has been authorised to be advised, orally or in writing, of the authorisation as soon as practicable after it is given.
- Clause 5** Amends section 56(2) of the *Mental Health Act 2013* to extend the items that an involuntary patient who has been placed in seclusion must not be deprived of except as may be strictly

necessary for the patient's safety or the preservation of the relevant item for the patient's future use, to a communication aid that the patient uses in communicating on a daily basis.

The intention is to ensure that consideration is given to providing patients who have been secluded with access to a device which the patient uses to assist him or her to communicate on a daily basis within a framework which recognises that it may be necessary to deprive patients of access to such devices for the patient's safety, or for the preservation of the item for the patient's future use, during the period of seclusion.

- Clause 6** Amends section 57(2) of the *Mental Health Act 2013* to extend the items that an involuntary patient who has been placed under restraint must not be deprived of except as may be strictly necessary for the patient's safety or the preservation of the relevant item for the patient's future use, to a communication aid that the patient uses in communicating on a daily basis.
- The intention is to ensure that consideration is given to providing patients who have been placed under restraint with access to a device which the patient uses to assist him or her to communicate on a daily basis within a framework which recognises that it may be necessary to deprive patients of access to such devices for the patient's safety, or for the preservation of the item for the patient's future use, during the period of restraint.
- Clause 7** Amends section 58(2) of the *Mental Health Act 2013* to require a person who authorises seclusion or restraint in respect of an involuntary patient to give a copy of a record of the matter to the patient, together with a statement of rights in a Chief Civil Psychiatrist approved form.
- Clause 8** Amends section 62 of the *Mental Health Act 2013* to insert the right, while in an approved hospital, for an involuntary patient not to be unreasonably deprived of any communication aid.
- This is consistent with the proposal to amend sections 56 and 57 of the *Mental Health Act 2013* in respect of communication aids.
- Clause 9** Amends section 76(1)(b) of the *Mental Health Act 2013* to reflect amendments to terminology proposed to be made to the *Criminal Justice (Mental Impairment) Act 1999* by this Act.
- Clause 10** Amends section 87(8) of the *Mental Health Act 2013* to insert a requirement for a forensic patient in respect of whom urgent circumstances treatment has been authorised to be advised, orally or in writing, of the authorisation as soon as practicable after it is given.
- Clause 11** Amends section 94(2) of the *Mental Health Act 2013* to extend the items that a forensic patient who has been placed in seclusion must not be deprived of except as may be strictly necessary for the patient's safety or the preservation of the relevant item for the patient's future use, to a communication aid that the patient uses in communicating on a daily basis.
- The intention is to ensure that consideration is given to providing patients who have been secluded with access to a



device which the patient uses to assist him or her to communicate on a daily basis within a framework which recognises that it may be necessary to deprive patients of access to such devices for the patient's safety, or for the preservation of the item for the patient's future use, during the period of seclusion.

- Clause 12** Amends section 95(2) of the *Mental Health Act 2013* to extend the items that a forensic patient who has been placed under restraint must not be deprived of except as may be strictly necessary for the patient's safety or the preservation of the relevant item for the patient's future use, to a communication aid that the patient uses in communicating on a daily basis.
- The intention is to ensure that consideration is given to providing patients who have been placed under restraint with access to a device which the patient uses to assist him or her to communicate on a daily basis within a framework which recognises that it may be necessary to deprive patients of access to such devices for the patient's safety, or for the preservation of the item for the patient's future use, during the period of restraint.
- Clause 13** Amends section 96(2) of the *Mental Health Act 2013* to require a person who authorises seclusion or restraint in respect of a forensic patient to give a copy of a record of the matter to the patient, together with a statement of rights in a Chief Forensic Psychiatrist approved form.
- Clause 14** Amends section 108 of the *Mental Health Act 2013* to insert the right for a forensic patient not to be unreasonably deprived of any communication aid.
- This is consistent with the proposed amendments to amend sections 94 and 95 of the *Mental Health Act 2013* in respect of communication aids.
- Clause 15** Amends section 128(1)(c) of the *Mental Health Act 2013* to require records required to be made by a person's treating medical practitioner in respect of special psychiatric treatment to be given to the Chief Civil Psychiatrist or Chief Forensic Psychiatrist, and to the Mental Health Tribunal, as soon as practicable rather than after the end of the month in which the record was made.
- This is relevant given the power for the Chief Civil Psychiatrist and Chief Forensic Psychiatrist to directly intervene with respect to assessment and treatment generally pursuant to section 147 of the *Mental Health Act 2013*.
- This is also relevant given the Tribunal's review functions which may extend to special psychiatric treatment.
- The intention is to ensure that the Chief Psychiatrists and the Tribunal are made aware of matters which may potentially be relevant to the exercise of their powers and functions, as soon

as is practicable in the circumstances.

- Clause 16** Amends section 132 of the *Mental Health Act 2013* to limit the circumstances in which information may be withheld from a patient or private person, and in which the giving of information to a patient or private person may be deferred or qualified.
- This includes to require notice of the withholding, deferral or qualification of information, with reasons, to the patient and the patient’s representative, and to clarify the ability for a mental health authority to give any information that has been withheld, deferred or qualified to a medical practitioner nominated by the patient or the patient’s representative.
- The clause inserts a new definition of “information” which excludes information which is required to be given when seeking a person’s informed consent to treatment, or which is required to be given to a patient or other person elsewhere under the *Mental Health Act 2013*.
- The new definition also clarifies the circumstances in which information may be withheld.
- Clause 17** Amends section 133 of the *Mental Health Act 2013* to extend provisions prohibiting the publication of information about forensic patients, to involuntary patients.
- Clause 18** Amends section 181(1)(d) of the *Mental Health Act 2013* to clarify the circumstances in which the Mental Health Tribunal is required to review a treatment order consequent upon the detention of an involuntary patient in an approved hospital.
- The intention is to require the Tribunal to conduct a review within three days of being notified of the patient’s detention, only when the patient’s detention is as a result of failure to comply with a treatment order under section 47 of the *Mental Health Act 2013*.
- Clause 19** Amends section 230 of the *Mental Health Act 2013* to assign administrative responsibility for those parts of the *Mental Health Act 2013* which relate to the Mental Health Tribunal and Official Visitors, to the Minister for Justice.
- Clause 20** Amends clause 1 of Part 1 of Schedule 4 to insert a new definition of “party to proceedings”.
- The intention is to provide clarity around the persons who may be a party to Tribunal proceedings and to make it clear that this includes the person who applied to commence the proceedings, the person for whom an Order is sought, if relevant, a patient’s parent or representative, and any other person that the Tribunal

determines has a proper interest in the proceedings.

***Personal Information Protection Act 2004***

**Clause 1** Amends clause 10(1)(c)(iii) of Schedule 1 to the *Personal Information Protection Act 2004* to refer to the *Mental Health Act 2013* and to reflect terminology used in the *Mental Health Act 2013*.

***Police Service Act 2003***

**Clause 1** Amends section 29(1) of the *Police Service Act 2003* to refer to the *Mental Health Act 2013* and to reflect terminology used in the *Mental Health Act 2013*.

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

**Clause 1** Amends section 4(3)(b) of the *Property Agents and Land Transactions Act 2005* to refer to the *Mental Health Act 2013* and to reflect terminology used in the *Mental Health Act 2013*.

***Sentencing Act 1997***

- Clause 1** Amends section 4 of the *Sentencing Act 1997* by:
- Amending the definitions of “approved hospital”, “approved medical practitioner”, “Chief Forensic Psychiatrist”, “mental illness” and “secure mental health unit” to refer to the *Mental Health Act 2013*
  - Omitting the definition of “continuing care order” and inserting a definition for “treatment order” to reflect the terminology used in, and orders available under, the *Mental Health Act 2013*
  - Making other minor drafting changes.
- Clause 2** Amends the heading of Part 10 of the *Sentencing Act 1997* to reflect terminology used in, and orders available under, the *Mental Health Act 2013*.
- Clause 3** Amends section 75 of the *Sentencing Act 1997* by:
- Amending subsections (1)(b), (1)(c), (5), (6), (7), (8) and (8)(b) to include the Chief Civil Psychiatrist as a person who may produce a report to the Court given the inclusion of this statutory role in the *Mental Health Act 2013*
  - Amending subsection (1)(d) to reflect terminology used in, and orders available under, the *Mental Health Act 2013*.
- Clause 4** Repeals section 76 of the *Sentencing Act 1997* in favour of a new section 76 What is a treatment order?
- The new section defines a treatment order consistently with the definitions and terminology used in the *Mental Health Act 2013*.
- The new section also makes it clear that once made, a treatment order made pursuant to the section is taken to be a treatment order made under the *Mental Health Act 2013*.
- Clause 5** Amends section 78 of the *Sentencing Act 1997* by:
- Amending subsection 4 to include the Chief Civil Psychiatrist as a person who may produce a report to the Court given the inclusion of this statutory role in the *Mental Health Act 2013*
  - Amending subsection 6(b) to refer to the *Mental Health Act 2013* and relevant parts thereof.
- Clause 6** Amends section 79 of the *Sentencing Act 1997* to reflect terminology used in, and orders available under, the *Mental Health Act 2013*.
- Clause 7** Amends section 79B(2) of the *Sentencing Act 1997* to reflect

terminology used in, and orders available under, the *Mental Health Act 2013*.

***Trustee Act 1898***

**Clause 1** Amends section 36 of the *Trustee Act 1898* to refer to the *Mental Health Act 2013*.

**Clause 2** Amends section 49 of the *Trustee Act 1898* to refer to the *Mental Health Act 2013*.

***Youth Justice Act 1997***

- Clause 1** Amends section 3(1) of the *Youth Justice Act 1997* by inserting definitions for “Chief Forensic Psychiatrist”, “Mental Health Tribunal”, “mental illness” and “secure mental health unit” given the proposed removal of definitions for these terms from section 105 of the *Youth Justice Act 1997*.
- Clause 2** Inserts a new section 5A clarifying the relationship between the *Youth Justice Act 1997* and *Mental Health Act 2013*.
- Clause 3** Amends section 105 of the *Youth Justice Act 1997* by:
- Omitting the definition of “assessment centre” and inserting a new definition for “approved assessment centre” which refers to the *Mental Health Act 2013*
  - Amending the definition of “approved hospital” to refer to the *Mental Health Act 2013*
  - Omitting the definitions of “Chief Forensic Psychiatrist”, “mental illness” and “secure mental health unit” given the proposed insertion of definitions for these terms in section 3 of the *Youth Justice Act 1997*
  - Making a number of other minor drafting changes to subsections (2)(b), (5), (7), (7)(a), (7)(b) and (8) to reflect terminology used in the *Mental Health Act 2013*
  - Amending subsections (9)(b) and (9)(c) to refer to the *Mental Health Act 2013*.
- Clause 4** Amends section 134A of the *Youth Justice Act 1997* by:
- Omitting the definitions of “Chief Forensic Psychiatrist”, “mental illness” and “secure mental health unit” from subsection (1) given the proposed insertion of definitions for these terms in section 3 of the *Youth Justice Act 1997*
  - Amending the definition of “controlling authority” in subsection (1) to refer to the *Mental Health Act 2013*
  - Inserting a new subclause (8) requiring the Secretary, Youth Justice to notify the Mental Health Tribunal if a detainee is moved to a secure mental health unit under section 134A of the *Youth Justice Act 1997*. This is to facilitate the Tribunal’s review role in relation to such admissions under section 185 of the *Mental Health Act 2013*.
- Clause 5** Repeals section 134B of the *Youth Justice Act 1997* and inserts a new section 134B Appeal against direction under section 134A.
- The *Mental Health Act 2013* contains provisions enabling the Mental Health Tribunal to review the admission to a secure mental health unit of a detainee, a function that is authorised by



section 134A of the *Youth Justice Act 1997*.

The repeal of section 134B in favour of a new section 134B which does not authorise the Mental Health Tribunal to review the admission of a secure mental health unit of a detainee is consistent with the inclusion of provisions for this purpose in the *Mental Health Act 2013*.