

# **CLAUSE NOTES**

***Mental Health Bill 2012***

<b>Chapter 1</b>	<b>Preliminary</b>
<b>Part 1</b>	<b>Short Title and Commencement</b> This Part sets out the Act's short title and commencement.
<b>Clause 1</b>	<b>Short Title</b> This clause sets out how the Act may be cited.
<b>Clause 2</b>	<b>Commencement</b> This clause governs the Act's commencement.
<b>Part 2</b>	<b>Interpretation</b> This Part governs how terms, phrases and concepts used in the Act are to be interpreted and applied.
<b>Clause 3</b>	<b>Interpretation</b> This clause governs how terms and phrases used in the Act are to be interpreted and applied. In particular, subclause 1 provides that: <ul style="list-style-type: none"> <li>• <b>Chemical restraint</b> is defined to mean medication that is given to a person with a mental illness for the primary purpose of controlling the person's behaviour. The intention is to distinguish between medication that is given to treat the symptoms of a person's mental illness or physical condition, and medication that is given to exert control over a person where the medication is not immediately necessary for any medically identified condition and when the intended effect is to sedate the person and restrict their behaviour</li> <li>• <b>Child</b> is defined as a person who is less than 18 years of age. This is consistent with the <i>Tasmanian Age of Majority Act 1973</i> which provides that a person attains full capacity when they turn 18, for the purposes of the laws of the State. The Act regulates children differently to adults in some respects and the meaning has been included to make it clear to whom particular components of the Act apply</li> <li>• <b>Disability</b> is defined with reference to the meaning of disability contained in the <i>Tasmanian Guardianship and Administration Act 1995</i>. The meaning has relevance for clause 4, which provides that a person is not to be taken to have a mental illness for the purposes of the Act, by reason only of the person's intellectual or physical</li> </ul>

disability

- **General health care** is defined to mean treatment that is not primarily directed at treating or alleviating a mental illness. The intention is to distinguish general health care, which is not intended to be regulated by the Act, from treatment as defined in clause 6, which is intended to be regulated by the Act
- **Parent** is defined broadly in terms of the responsibilities that a parent has in relation to his or her children. The intention is for the meaning to accommodate legally appointed guardians, a person who has parental responsibilities by virtue of an order made under the *Commonwealth Family Law Act 1975*, and a person acting on the authority of a parent of a child.

Subclause 2 clarifies matters relevant to approved forms.

Subclause 3 makes it clear that notes included in the Act do not form part of the Act, and do not have force of law.

#### **Clause 4**

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

This clause establishes a threshold for the operation and application of the powers contained within the Act.

Subclause 1 establishes when a person may be taken to have a mental illness for the purposes of the Act.

Subclause 2 qualifies subclause 1. The intention is to ensure that a person may not be taken to have a mental illness for the purposes of the Act, solely because the person meets one or more of the criteria or factors listed in subclause 2.

The intention is to ensure that only those people with a mental illness for whom the application of the Act may be appropriate, are brought within the scope of the Act.

#### **Clause 5**

##### **Meaning of assessment**

This sets out what “assessment” means for the purposes of the Act.

The clause has relevance for the making of Assessment Orders insofar as it delineates the clinical processes that may be performed under the authority of an Assessment Order.

#### **Clause 6**

##### **Meaning of treatment**

This clause sets out what “treatment” means for the purposes of the Act.

The clause has relevance primarily for the making of Treatment Orders insofar as it delineates and describes the type and nature of the professional interventions that may be authorised by a Treatment Order.

The intention is to capture the range of interventions which may be necessary to treat a person’s mental illness, including:

- Interventions necessary to reduce the risk that a person with a mental illness may, because of the mental illness, pose to themselves or to others, and
- Electro convulsive therapy,

while excluding interventions in relation to which the Act is not intended to apply.

Subclause 1 sets out the types of interventions that are intended to be captured within the meaning of treatment.

Subclause 2 sets out the types of interventions that are not intended to be captured within the meaning of treatment. The

types of procedures which are excluded, and the reasons for this, are as follows:

- Special psychiatric treatment is regulated in Part 6 of Chapter 2 of this Act as a special category of treatment. The intention is to distinguish treatment as defined in this clause, from special psychiatric treatment so as to ensure that special psychiatric treatment is authorised only pursuant to Part 6 of Chapter 2 of this Act, and not pursuant to any other provision or Part of the Act
- Termination of pregnancy, procedures that could render a person permanently infertile, and removal of tissue that cannot be replaced naturally for transplantation purposes, are each regulated as special treatments under the *Guardianship and Administration Act 1995* which enables such treatments to be performed only in specified circumstances. The establishment of a separate authorisation process for these treatments is considered to be outside of the Act's scope and these treatments are excluded from the Act for that reason
- General health care. The Act is concerned with providing for the assessment, treatment and care of individuals with mental illness who lack decision-making capacity in relation to these matters, for and in relation to the mental illness. The intention is not to regulate the provision of general health care to persons who are unable to make their own decision in this regard. Rather, authority for the provision of general health care to a person with a disability who is incapable of giving consent to the carrying out of general health care is, and will continue to be, regulated pursuant to the *Guardianship and Administration Act 1995*.

## **Clause 7**

### **Capacity of adults and children to make decisions about their own assessment and treatment**

This clause governs matters relevant to the decision-making capacity of adults and children.

The clause is a threshold test insofar as a person may only be placed on an Assessment or Treatment Order if they lack decision-making capacity; conversely a person may only be taken to have given informed consent to assessment or treatment if they have decision-making capacity.

Subclause 1 applies to adults. It presumes that adults of sound mind are legally competent to make their own assessment and treatment decisions. On this basis the subclause enables a decision maker to determine that an adult lacks decision-making capacity only if it is established on the balance of probabilities that the matters referred to in parts (a) and (b) of the subclause, apply.

Subclause 2 applies to children. It presumes that children are not legally competent to make their own assessment and treatment decisions. On this basis the subsection enables a decision maker to determine that a child has decision-making capacity only if it is established on the balance of probabilities that the matters referred to in parts (a) and (b) of the subclause, apply.

The intention is to require decision makers to consider whether a person who is being asked to make a decision about assessment or treatment, truly understands the nature and consequences of the decision that they are being asked to make.

Subsection 3 establishes how certain components of subclauses 1 and 2 are to be understood, in the application of those components to the tests contained in subclauses 1 and 2.

In setting out the criteria that must be met before a person may be found to lack the ability to make their own decision about assessment and treatment, the clause seeks to bring tests of decision-making capacity that apply to persons with a mental illness, into line with tests of decision-making capacity that are understood to apply generally at common law for persons experiencing general health conditions.

The clause is intended to apply to a broad range of decisions about assessment or treatment, including decisions to withhold informed consent to assessment or treatment.

Limiting the criteria to those referred to in the clause is

intended to ensure that assessments of an individual's decision-making capacity are not value-based.

## **Clause 8**

### **Meaning of *informed consent* to assessment or treatment**

This clause governs informed consent to assessment or treatment.

Subclause 1 applies to both assessment and treatment decisions and enables a medical practitioner to regard a person's consent to an assessment or treatment as being informed if he or she is satisfied of the matters referred to in parts (a), (b) and (c) of the subclause.

Subclause 2 expands on and clarifies the matters referred to in subclause 1(b) in their application to a treatment. The intention is to ensure that the treating medical practitioner and the person giving informed consent have discussed the treatment in a way that has enabled the person to disclose any priorities, expectations, and fears about the treatment, and that following this discussion the person has been given information that is considered, by either the treating medical practitioner or person, to be of importance to the person's decision.

Subclause 3 expands on and clarifies the matters referred to in subclause 1(c) in their application to an assessment or a treatment.

Subclause 4 governs the language and form of information, explanations or answers given to a person under subclause 2.

Subclause 5 governs the withdrawal of consent to an assessment or treatment, by a person with decision-making capacity.

## **Clause 9**

### **Informed consent for child who lacks capacity to decide on own assessment and treatment**

This clause governs the giving of informed consent for the assessment or treatment of a child who lacks decision-making capacity by a parent of the child.

Subclause 2 governs the giving of consent by one parent and confirms that consent that is given by one parent is sufficient.

The intention is to provide authority for a parent to provide consent for a child who lacks decision-making capacity. The intention is not however to require or compel a parent to provide that consent, nor is it to prevent consent from being obtained from more than one parent.

There may be situations where it is not appropriate for a parent to provide consent, for example if the parent is concerned about the impact that providing the consent may have on their relationship with the child. In other situations it may not be



possible to locate a parent with the authority to provide informed consent in a timeframe that is conducive to facilitating treatment for the child concerned. This may occur if it is necessary to, for example, apply to the Family Court for an order pursuant to the Commonwealth *Family Law Act 1975*. In such situations the intention is for the provisions of the Act to apply.

Subclauses 3 and 4 governs withdrawal of consent to assessment or treatment for a child who lacks decision-making capacity, by a parent. The requirement for each parent to withdraw the consent has relevance given the ability for one parent to provide informed consent, pursuant to subclause 1 – within this context the withdrawal of consent by one parent will be ineffective if consent was originally given by both parents, or if a parent of the child other than the parent that withdraws consent, provides informed consent pursuant to subclause 1.

**Clause 10****Identifying patients of relatives etc**

This clause clarifies the nature of the obligation, contained in various provisions of the Act, for documentation to be given to a person or patient's representative or support person.

**Clause 11****Timing of actions**

This clause has relevance for clauses within the Act which require an action to be taken as a consequence of an event. Its purpose is to make it clear that unless the relevant provision provides otherwise, the requirement is to take the action as soon as practicable after the relevant event has occurred.

**Part 3****Objects, Status and Scope of Act**

This Part determines the objects and scope of the Act and its status in relation to certain other laws.

**Clause 12****Objects of Act**

This clause, clause 15 and Schedule 1 jointly determine how the Act's provisions are to be interpreted and applied.

Specifically:

- Object (a), which refers to the assessment, treatment and care of persons with mental illness, is intended to ensure that the provisions of the Act are interpreted with a view to maintaining continuity of care across treatment settings for persons subject to Assessment and/or Treatment Orders
- Object (b), which refers to providing for appropriate oversight and safeguards in relation to the assessment, treatment and care of persons with mental illness, is intended to emphasise the particular vulnerability of persons with a mental illness who do not have decision-making capacity with respect to their own assessment and treatment such that a substitute decision is needed, and, given this vulnerability, the need for assessment and treatment decisions to be transparent and subject to independent scrutiny and review
- Object (c), which refers to giving everyone involved with the assessment, treatment and care of persons with mental illness clear direction about their rights and responsibilities, is concerned with ensuring that persons who have rights under the Act are aware of what these are, so that they can be exercised and upheld

- Object (d), which refers to providing assessment, treatment and care in the least restrictive setting consistent with clinical need, legal and judicial constraints, public safety and public health, safety and welfare, is consistent with international rights instruments which require treatment and care to be provided in the least restrictive environment consistent with these matters. This object is intended to operate alongside mental health service delivery principle (b), which requires all persons exercising responsibilities under the Act to interfere with or restrict the rights of persons with mental illness in the least restrictive way and to the least extent consistent with the protection of those persons, the protection of the public and the proper delivery of the relevant service
- Object (e), which refers to promoting voluntary over involuntary assessment and treatment and the making of free and informed assessment and treatment choices, is consistent with the Act's focus on decision-making capacity as a threshold criterion for the application of the Act's provisions

## Clause 13

### Status of Act

This clause governs the Act's status in relation to other sources of authority for the assessment, treatment and care of persons with a mental illness.

The Act regulates the assessment, treatment and care of persons with mental illness who lack decision-making capacity and who need assessment or treatment for their own health or safety or for the safety of others. It is intended that the provisions of the Act will be the primary source of authority for the assessment, treatment and care of members of this group

The intention is not to exclude other sources of authority that may exist, but to ensure that where there is a choice between using the provisions of this Act, or using the provisions of another Act, the provisions of this Act are utilised to the extent that they provide the necessary authority for the action that is proposed to be taken.

Within this context:

- The provision of treatment to adults and children with a mental illness who have decision-making capacity will continue to be regulated via the general common law, subject to the provisions of this Act which impact on the provision of that treatment and care – for example Part 6 of Chapter 2 which regulates special psychiatric treatment
- The provision of treatment to children with a mental illness who lack decision-making capacity and for whom informed consent to assessment or treatment is given by a parent will continue to be regulated via the common law, subject to the provisions of the Act which impact on the provision of that treatment and care – for example clauses 7, 8 and 9 as they apply to children who lack decision-making capacity
- The provision of urgent medical or dental treatment to an adult or a child with a disability who is incapable of giving consent to the carrying out of medical or dental treatment will continue to be regulated by section 40 of the *Guardianship and Administration Act 1995* as currently occurs
- The provision of treatment for a mental illness to a person with a disability who is incapable of giving consent to the treatment but who does not meet the treatment criteria contained in the Act, will continue to be regulated via Part 6 of the *Guardianship and Administration Act 1995*

- The provision of medical or dental treatment other than treatment for a mental illness to an adult or a child who is incapable of giving consent to the treatment will continue to be regulated via Part 6 of the *Guardianship and Administration Act 1995*

<b>Clause 14</b>	<b>Act binds Crown</b> <p>This clause governs the Act's application to the Crown.</p>
<b>Chapter 2</b>	<b>Assessment, Treatment and Management of Patients</b>
<b>Part 1</b>	<b>Principles and policies</b> <p>This Part sets out principles and policies relevant to the Act.</p>
<b>Clause 15</b>	<b>Mental health service delivery principles</b> <p>Clause 13, this clause and Schedule 1 jointly determine how the Act's provisions are to be interpreted and applied.</p> <p>This clause requires all persons exercising responsibilities under the Act, including statutory officers, police officers and members and staff of the Mental Health Tribunal, to have regard to the mental health service delivery principles set out in Schedule 1 when exercising those responsibilities.</p>
<b>Clause 16</b>	<b>Circumstances in which treatment may be given</b> <p>This clause sets out the treatment policy which underpins the Act. The clause is intended to clarify the circumstances in which treatment may be given to a person under the Act and to provide a 'ready reference' for consumers, clinicians and others in relation to this aspect of the Act.</p>
<b>Part 2</b>	<b>Protective custody</b> <p>This Part governs protective custody.</p>
<b>Clause 17</b>	<b>Power to take person into protective custody</b> <p>This clause provides authority for a person to be taken into protective custody.</p> <p>The manner in which mental health officers and police officers are to perform custody and escort functions is outlined in Schedule 2 Custody and Escort Functions.</p>
<b>Clause 18</b>	<b>Handover of person taken into protective custody</b> <p>This clause governs the handover of a person who is taken into protective custody.</p> <p>Subclause 1 requires a person who is in protective custody to be taken to an approved assessment centre.</p> <p>Subclause 1 also enables a mental health officer or police officer who has a person in protective custody to ask any mental health</p>

officer at the approved assessment centre to which the person is taken, to take over the person's protective custody.

Subclause 2, in turn, requires a mental health officer who is asked to take over a person's custody pursuant to subclause 1 to do so, unless it would be unsafe in the circumstances for this to occur.

Circumstances in which it might be unsafe to accept a person's custody include if the behaviour of the person in custody is sufficiently volatile to require a continued police presence.

Subclause 3 makes it clear that the handover of a person's custody pursuant to subclauses 1 and 2 or in any other circumstances should not be taken as having interrupted the person's custody. This has particular relevance for clause 20, which places a limitation on the period of time for which a person may be held in protective custody after they have arrived at an assessment centre. The intention is to ensure that the time for which a person is considered to have been held in custody should be calculated notwithstanding any handover of custody that may have occurred.

## **Clause 19**

### **Dealing with person in protective custody**

This clause governs how a person in protective custody who has been escorted to an approved assessment centre pursuant to clause 18, should be dealt with.

In particular subclause 2 requires the controlling authority of the assessment centre to which a person has been taken pursuant to clause 18, to:

- Give the person a statement of rights in a form approved by the Chief Civil Psychiatrist. It is intended that the statement would list the rights that the person has pursuant to the Act, along with any other general legal rights that the person may have outside of the Act to, for example, contact a representative or support person, and
- Have the person examined by a medical practitioner within four hours of the person having arrived at the assessment centre to see whether the person needs to be assessed against the assessment or treatment criteria. The requirement for the examination to occur within four hours is linked to the requirement in clause 20 for a person to be released from protective custody if the person has been at the assessment centre for more than four hours calculated from the time of their arrival at the centre.

## **Clause 20**

### **Release of person from protective custody**

The clause governs matters relevant to a person's release from protective custody.

Subclauses 1 and 2 jointly require a mental health officer or police officer who has a person in protective custody to release that person from the protective custody if and when:

- The person gives informed consent to be assessed or treated. Such a person would not meet the assessment or treatment criteria such that the custody – the purpose of which is to have the person assessed with regard to those criteria – would be unnecessary, or
- An Assessment or Treatment Order is made. A person who is subject to an Assessment or Treatment Order may be detained in an approved facility pursuant to the Order – this would effectively remove the need for the person to remain in protective custody, or
- The mental health officer or police officer who has the person in protective custody forms the belief that the



person no longer meets the criteria outlined in clause 17,  
or

- Four hours have passed since the person's arrival at the assessment centre and none of the matters noted in subclause 1(a) have occurred in that period

The intention is to ensure that there are clear trigger points at which a person must be released from protective custody, and that in addition to this a person is not detained in an approved assessment centre pursuant to the protective custody provisions for more than four hours.

## **Clause 21**

### **Records etc**

This clause governs record keeping associated with protective custody.

In particular, the clause requires certain records to be given to the person who was in protective custody, and for copies of records that are made to be given to the Chief Civil Psychiatrist on a monthly basis.

Requiring records to be kept and provided to the person the subject of the protective custody enables that person to firstly have a record of that custody and secondly enables the person to contact the Chief Civil Psychiatrist or other oversight body, should they believe that their rights have been abused in relation to that custody.

Requiring records to be provided to the Chief Civil Psychiatrist ensures that matters relevant to protective custody may be appropriately oversighted by the Chief Civil Psychiatrist. In particular requiring records to be provided to the Chief Civil Psychiatrist on a regular basis is consistent with the Chief Civil Psychiatrist's responsibilities in relation to ensuring that the objects and principles of the Act are met with respect to patients including involuntary patients and voluntary inpatients.

## **Part 3**

### **Involuntary patients**

This Part governs Assessment and Treatment Orders, and related matters.

## **Clause 22**

### **Who can make an assessment order?**

This clause governs who can make an Assessment Order.

## **Clause 22**

### **Application for assessment order**

This clause governs applications for Assessment Orders.

Subclauses 1 and 2 jointly determine who can apply for an Assessment Order.

In particular, subclause 2 requires an applicant be satisfied, from a personal knowledge of the person for whom the Order is being sought, that the person has or might have a mental illness. The person must also be satisfied that a reasonable attempt to have the person assessed with informed consent has failed, or that it would be futile or inappropriate to make an attempt to have the person assessed with informed consent.

The intention is to ensure that an Assessment Order is made

only when other means of having the patient assessed have been unsuccessful, as may occur if the person has failed to attend appointments scheduled for the purposes of assessing the person, or would be inappropriate in the circumstances, for example in the event that the person is significantly unwell and in need of immediate assessment where this is not considered to be able to occur, because of the person's state of mental health, with informed consent.

Subclause 3 determines the form that an application is to take.

## **Clause 24**

### **Determination of application for assessment order**

This clause governs how applications for Assessment Orders are to be determined.

Subclause 1 sets out the circumstances in which a medical practitioner may make an Assessment Order. In particular subclause 1 requires a medical practitioner who makes out an Assessment Order to:

- Have examined the person for whom the application has been made, within the period commencing 72 hours before the application is received and ending 72 hours after its receipt. While most examinations will occur after an application is received there may be circumstances where this is not the case. For example the application may be made in response to a medical practitioner's concern about the mental state of a person that they saw the previous day. Allowing an examination to have occurred before an application is received enables medical practitioners to speak with, for example, the person's guardian or community case worker to gain information about the person's recent behaviour before determining whether or not an Order is necessary. Without flexibility around when an application may be received the person's examination and assessment may be delayed. Enabling flexibility also prevents the potential use of more restrictive means of having the person examined and assessed, and
- Be satisfied that the person needs to be assessed against the assessment criteria, and that a reasonable attempt to have the person assessed with informed consent has failed or that it would be futile or inappropriate to make an attempt to have the person assessed on this basis. The intention is to ensure that an Assessment Order is made only when other means of having the patient assessed have been unsuccessful, as may occur if the person has failed to attend appointments scheduled for the purposes of assessing the person, or would be inappropriate in the circumstances, for example in the event that the person is so significantly unwell that they are not considered, on the face of it, to be capable of giving informed consent.

Subclause 2 enables a medical practitioner to make an Assessment Order that requires the patient's detention in an approved hospital.

Subclause 3 limits the operation of subclause 2, in relation to

children. In particular it prevents a medical practitioner from making an Assessment Order requiring the detention of a child in an approved hospital unless the practitioner is satisfied that the hospital in which it is intended to detain the child:

- Has the facilities and staff for the child to be assessed, and
- Is the most appropriate place to accommodate the child in the circumstances.

Factors relevant to this determination might include whether:

- The particular hospital has staff who are suitably qualified and experienced to assess children, and the ability to accommodate the child in an environment that is suitable for the particular child's needs, and
- There are alternatives to the child's detention, including whether it is possible for the child to be assessed at a facility other than an approved hospital and/or as an outpatient.

## **Clause 25**

### **Assessment criteria**

This clause determines the criteria which must be met before an Assessment Order may be made, as follows:

- Criterion (a) requires the person to have, or to appear to have, a mental illness that is in need of treatment for the person's health or safety, or for the safety of others. This criterion seeks to enable early intervention at a point when the person's illness and the risk that this is considered to pose to their health or safety or the safety of others is first identified, and
- Criterion (b) refers to the need for the Assessment Order so that the person can be properly assessed with regard to the mental illness or the making of a Treatment Order. This criterion is intended to make it clear that a person may not be taken to meet the Assessment Criteria if there are other options for assessing the person properly with regard to the mental illness or the making of a Treatment Order, and is consistent with Object (d) which is concerned with providing assessment, treatment and care in the least restrictive setting consistent with clinical need, legal and judicial constraints, public safety and public health, safety and welfare, and with mental health service delivery principle (b), which is concerned with interfering with the rights of persons with mental illness in the least restrictive way and to the least extent consistent with the protection of the person, the public and the proper delivery of the relevant service, and
- Criterion (c) requires the person to lack decision-making capacity. This criterion is included to make it clear that a person may only be placed on an Assessment Order if the person lacks the capacity to make a decision about their own assessment.

## **Clause 26**

### **Form and content of assessment order**

This clause governs the form and content of an Assessment Order that is made pursuant to clause 24.

In particular:

- Subclause 3 clarifies the ability for an Assessment Order to include a requirement that the patient be detained in an approved hospital, pursuant to subclauses 2 and 3 of clause 24, and
- Subclause 4 clarifies the ability for an Assessment Order to

specify or provide for any matters, incidental to the assessment of the person in respect of whom the Assessment Order has been made, that the medical practitioner making the Order considers it necessary or desirable to include in the circumstances, without compromising the validity of the Order. The intention is to enable an Assessment Order to validly include matters that are directly connected with the patient's assessment, which the medical practitioner making the Order thinks should be included in the Order, in the relevant circumstances. This might include, for example, a requirement that the patient be assessed by a particular health professional. The intention is to ensure that Orders which contain such conditions remain valid and to prevent the inclusion of arbitrary conditions or requirements.

**Clause 27****Effect of assessment order**

This clause sets out what an Assessment Order is authority for.

Subclause 1 makes it clear that an Assessment Order is authority for the patient to be assessed by an approved medical practitioner, without the patient's informed consent, for the purposes specified in the subclause.

Subclause 2 confirms that an Assessment Order is not authority for the patient to be given treatment.

**Clause 28****When does assessment order take effect**

This clause determines when an Assessment Order takes effect.

**Clause 29****Action to be taken by medical practitioner on making assessment order**

This clause governs the actions that are to be taken by a medical practitioner who makes an Assessment Order.

In particular the clause requires a medical practitioner who makes an Assessment Order to:

- Give the patient a copy of the Order, and
- Give the patient a statement of rights in a form approved by the Chief Civil Psychiatrist. It is intended that the statement would list the rights that the patient has pursuant to the Act, including the right to apply to the Mental Health Tribunal for a review of the Order pursuant to clause 180.

**Clause 30****Assessment of patient**

This clause governs a patient's assessment pursuant to an Assessment Order.

Subclause 1 requires a patient to be assessed by an approved medical practitioner within 24 hours of the Order taking effect.

Subclause 2 requires the approved medical practitioner who conducts the assessment pursuant to subclause 1, to be someone other than the medical practitioner who applied for, or made, the Assessment Order. An approved medical practitioner may continue to perform medical practitioner functions under the Act and the inclusion of this requirement is to ensure that at least two separate people examine the patient, and (if the Order is affirmed) determine that the Order is necessary.

**Clause 31****Ensuring patient presents for assessment**



This clause governs matters relevant to a patient's assessment.

Subclause 1(a) provides that an Assessment Order is authority for the patient to be taken under escort by any mental health officer or police officer to make sure that he or she presents for the assessment that is authorised by the Order. Taking the patient under escort may be necessary if, for example, the patient has refused to self-present at the place of assessment, or if the patient is unable to present at an assessment centre voluntarily – for example if the patient is physically incapacitated.

Subclause 1(b) provides that an Assessment Order is also authority for a patient whose admission to and detention in an approved facility is authorised by the terms of the Assessment Order to which they are subject, to be admitted to and detained in an approved facility for and in connection with the assessment that is authorised by the Order.

Subclauses 2 and 3 establish how the person's escort is to be initiated.

## **Clause 32**

### **Affirmation or discharge of assessment order**

This clause governs the actions available to an approved medical practitioner who assesses a patient pursuant to clause 30.

Subclause 2 requires an approved medical practitioner who assesses a patient pursuant to clause 30 to immediately either affirm, or discharge, the Assessment Order.

Subclause 3 governs the affirmation of an Assessment Order.

Subclause 4 provides authority for an approved medical practitioner who has affirmed an Assessment Order pursuant to subclause 3, to also extend the operation of the Order for up to a further 72 hours.

This clause, together with clause 30, have the effect of establishing the maximum time period for which an Assessment Order may be in effect, namely 96 hours (comprised of a maximum period of 24 hours before the approved medical practitioner is required to conduct the assessment pursuant to clause 30 and a maximum period of 72 hours for which the Order may be extended, if affirmed pursuant to this clause).

Subclauses 5, 6 and 7 govern matters relevant to the affirmation of an Order.

Subclause 8 governs matters relevant to the discharge of an Order.

## **Clause 33**

### **Action to be taken by medical practitioner on affirming assessment order**

This clause governs the actions to be taken by an approved medical practitioner who affirms an Assessment Order pursuant to clause 32.

In particular subclause 1 requires an approved medical practitioner who affirms an Assessment Order to give notice of the affirmation to persons including the patient, the Chief Civil Psychiatrist and the Mental Health Tribunal.

The subclause does not require a statement of rights to be given to the patient. This is because such a statement is required to be given at the time the Order is made, pursuant to clause 29. The provision of an additional statement at this point is not, however, precluded by the clause.

Giving notice of the affirmation to the Chief Civil Psychiatrist is relevant given the Chief Civil Psychiatrist's power of direct intervention provided for pursuant to clause 147.

Giving notice of the affirmation to the Mental Health Tribunal is relevant given the Tribunal's ability to review the making of an Assessment Order pursuant to clause 180.

**Clause 34****Duration of assessment order**

This clause governs the duration of an Assessment Order. The intention is to clarify the operation of clauses 30, 32 and 35 as they relate to the time for which an Assessment Order may be considered to remain in place.

**Clause 35****Discharge of assessment order by medical practitioner or Tribunal**

This clause governs the discharge of an Assessment Order by a medical practitioner, or the Mental Health Tribunal.

In particular subclauses 1 and 2 jointly enable an Assessment Order to be discharged at any time by:

- The medical practitioner who made the Order, or
- By any approved medical practitioner, or
- By the Mental Health Tribunal.

Subclause 3 regulates discharge by a medical practitioner (including an approved medical practitioner).

Subclause 4 requires a medical practitioner who discharges an Assessment Order pursuant to this clause to give notice of the discharge to persons including the former patient, the Chief Civil Psychiatrist and the Mental Health Tribunal.

**Clause 36****Who can make a treatment order**

This clause governs who can make a Treatment Order.

**Clause 37****Application for treatment order**

This clause governs applications for Treatment Orders, and provides for related matters.

Subclause 1 governs who can apply for a Treatment Order.

Subclause 2 makes it clear that an application may be made regardless of whether the person or patient is, at the time that the application is made, subject to an Assessment Order.

Subclause 3 governs applications made for patients who are, at the time of application, subject to an Assessment Order.

Subclause 4 governs applications made for persons who are not, at the time of application, subject to an Assessment Order. The subclause provides that an application for a person who is not subject to an Assessment Order should only be made if:

- The applicant and one other approved medical practitioner

have each separately assessed the person within the seven days prior to the application being made, and

- Both the applicant and the other approved medical practitioner are satisfied, from the assessments that they have each conducted, that the person meets the treatment criteria.

Subclause 5 establishes certain requirements in relation to applications. In particular the subclause requires an application to be accompanied by:

- A proposed treatment plan. At the time of application the plan in place for some persons or patients may be minimal. In this instance the plan is likely to include only basic information about the person or patient's likely diagnosis and the kinds of treatment that, if the diagnosis is confirmed, are considered likely to be required. It is expected that the treatment plan considered by the Mental Health Tribunal at the time that the Tribunal considers whether or not to make the Treatment Order will be significantly more complete, and
- An indication of whether an interim Treatment Order is needed. This is crucial for determining whether the Order is made by the Mental Health Tribunal pursuant to clause 39, or by a single member of the Tribunal pursuant to clause 38.

Subclause 6 requires an applicant for a Treatment Order to do things including the following:

- Give the person or patient the subject of the application a copy of the application, and
- Give the person or patient the subject of the application a statement of rights in a form approved by the Chief Civil Psychiatrist. It is intended that the statement would list the rights that the person or patient has pursuant to the Act, which includes the right to be a party to proceedings and to be represented, and the right to apply for a review of any Treatment Order that is made, pursuant to clause 181.

## **Clause 38**

### **Interim Treatment Order**

This clause provides authority for a single member of the Mental Health Tribunal to make an interim Treatment Order.

Subclause 1 sets out the matters that the Tribunal member must be satisfied of, before making an interim Treatment Order, including that:

- The person or patient meets the treatment criteria, and
- The Mental Health Tribunal cannot determine the application immediately and the delay that would be involved in waiting for a Tribunal decision under clause 39 if the interim Treatment Order is not made would, or is likely to, seriously harm the person or patient's health or safety or the safety of other persons. The intention is for interim Treatment Orders to be sought, and made, only when necessary and in circumstances where it is not feasible to wait for a Tribunal decision under clause 39.

Subclause 2 provides authority for an interim Treatment Order to include a requirement:

- That the treatment setting for the patient be a specific approved hospital or assessment centre, or a premises or other place – for example, the Royal Hobart Hospital or at the patient's usual general practice, or
- That the treatment setting for the patient be a type of approved hospital or assessment centre, or a type of premises or other place, specified in the Order – for example, a Mental Health Services community team site or a general practice staffed with mental health practice nurses, or
- That, for the purposes of receiving treatment, a patient be detained in:
  - A specific approved hospital – for example, the Northside Mental Health Clinic, or
  - A type of approved hospital – for example, at an approved hospital that is equipped to cater for geriatric clients.

Subclause 3 limits the operation of subclause 2, in relation to children. In particular it prevents a member of the Tribunal from making an interim Treatment Order that requires a child to be detained in an approved hospital unless the member is satisfied that the hospital in which it is intended the child be

detained:

- Has the facilities and staff for the child to be treated, and
- Is the most appropriate place to accommodate the child in the circumstances.

Factors relevant to this determination might include whether:

- The particular hospital has staff who are suitably qualified and experienced to treat children and the ability to accommodate the child in an environment that is suitable for the particular child's needs, and whether
- There are alternatives to the child's detention, including whether it is possible for the child to be treated at a facility other than an approved hospital and/or as an outpatient.

Subclause 4 confirms the Tribunal member's ability to make an interim Treatment Order on the basis of an application alone, and without conducting a hearing or engaging in any further investigation into the matters presented in the application. The intention is to ensure that the Tribunal member may make an interim Treatment Order quickly and on the basis of the information presented to him or her, if this is considered to be needed in the circumstances, given the need for the application to be considered by the Mental Health Tribunal if the intention is for the Order to continue, pursuant to clause 39, and within ten days of the interim Order having been made.

Subclause 5 governs the form and content of an interim Treatment Order that is made pursuant to this clause.

Subclause 6 provides that an interim Treatment Order should be taken, for the purposes of the Act other than the provisions specified in the subclause, to be a Treatment Order made by the Mental Health Tribunal.

Subclause 7 establishes when an interim Treatment Order takes effect and for how long it continues in effect. The intention is for interim Treatment Orders to be used as a temporary measure and only when the matter cannot be determined by the Mental Health Tribunal pursuant to clause 39 within a timeframe that is consistent with the patient's health and safety, and the safety of others.

Subclause 8 confirms the ability for any Tribunal member to revoke or amend an interim Treatment Order made pursuant to this clause, at any time.

Subclause 9 provides that an interim Treatment Order lapses

after ten days, if the Tribunal has not determined the application which prompted the making of the interim Order, by that time.



## **Clause 39**

### **Determination of application for treatment order**

This clause provides authority for the Mental Health Tribunal to make a Treatment Order.

Subclause 1 sets out the matters that the Mental Health Tribunal must be satisfied of before making a Treatment Order, including that the person meets the treatment criteria.

Subclause 2 provides authority for a Treatment Order to include a requirement:

- That the treatment setting for the patient be a specific approved hospital or assessment centre, or a premises or other place – for example, the Royal Hobart Hospital or at the patient’s usual general practice, or
- That the treatment setting for the patient be a type of approved hospital or assessment centre, or a type of premises or other place, specified in the Order – for example, a Mental Health Services community team site or a general practice staffed with mental health practice nurses, or
- That, for the purposes of receiving treatment, a patient be detained in:
  - A specific approved hospital – for example, the Northside Mental Health Clinic, or
  - A type of approved hospital – for example, at an approved hospital that is equipped to cater for geriatric clients.

Subclause 3 limits the operation of subclause 2, in relation to children. In particular it prevents the Tribunal from making a Treatment Order that requires a child to be detained in an approved hospital unless the member is satisfied that the hospital in which it is intended the child be detained:

- Has the facilities and staff for the child to be treated, and
- Is the most appropriate place to accommodate the child in the circumstances.

Factors relevant to this determination might include whether:

- The particular hospital has staff who are suitably qualified and experienced to treat children and the ability to accommodate the child in an environment that is suitable for the particular child’s needs, and whether
- There are alternatives to the child’s detention, including

whether it is possible for the child to be treated at a facility other than an approved hospital and/or as an outpatient.

Subclause 4 requires the Tribunal to:

- Consider an application as soon as practicable after it is received – this is intended to ensure that interim Treatment Orders are made out only when the Tribunal cannot determine the application within a reasonable time period, and that interim Treatment Orders which are made pursuant to clause 38, are considered by the Tribunal by way of a hearing at which the patient may appear and be represented, as quickly as practicable, and
- Consider the application by way of a hearing at which the patient has the right to appear, and be represented.

Subclause 5 provides that an application for a Treatment Order lapses and is rendered invalid if the Tribunal does not consider the matter within ten days of the application being lodged. The intention is to require the Tribunal to consider an application as soon as practicable so that a determination may be made of whether or not the patient meets the treatment criteria, at a hearing at which the patient has the right to appear and be represented, in as short a time frame as possible.

Subclause 6 expands on subclause 4 by requiring the Tribunal hearing to consider an application at a hearing before at least three Tribunal members.

## **Clause 40**

### **Treatment criteria**

This clause establishes the criteria that must be met before a Treatment Order (including an interim Treatment Order) may be made, as follows:

- Criterion (a) refers to the need for the person or patient to have a mental illness. This criterion is included to ensure that a Treatment Order is made out only for a person for whom the powers available under the Act are appropriate
- Criterion (b) refers to serious harm that the mental illness will or is likely to cause to the person's health or safety, or to the safety of others, if treatment is not given. The intention is to balance the need for intervention with the need to ensure that only those persons for whom the mechanisms available under the Act are needed, are placed on a Treatment Order, given the extent to which a Treatment Order may infringe the rights of the person subject to it
- Criterion (c) refers to the need for there to be a link between the person's state of mental health, and the treatment that is proposed to be authorised by way of a Treatment Order. The criterion is in particular intended to prevent the making of a Treatment Order which authorises treatment which is either not appropriate to treat the person's illness or is not considered to be an effective means of treating the person's condition
- Criterion (d) refers to the need for the Order. The intention is to emphasise the importance of an Order being made only when this is absolutely necessary and is the only mechanism for ensuring that the person is adequately treated
- Criterion (e) refers to the need for the person to lack decision-making capacity. This criterion is included to make it clear that a person may only be placed on a Treatment Order if they lack the capacity to make a decision about their own treatment.

## **Clause 41**

### **Form and content of treatment order**

This clause governs the form and content of a Treatment Order. In particular, subclause 2 provides that a Treatment Order must specify matters including:

- The treatment, or types of treatment, that the Order is

authorising, and

- The treatment plan that is to apply, and
- That the treatment and treatment setting are to be those specified in the treatment plan, either as made pursuant to clause 53 or as varied pursuant to clause 54, and
- The Order's expected maximum duration.

Subclause 3 clarifies the ability for a Treatment Order to require particular treatment settings and the patient's detention, pursuant to subclauses 2 and 3 of clause 39.

Subclause 4 enables the Tribunal to discharge any Assessment Order to which the patient was subject at the time the Treatment Order was made, by specifying this in the Treatment Order itself. The intention is to ensure that a patient is not subject to both an Assessment and a Treatment Order, and to avoid the need for a separate discharge process for the Assessment Order which may otherwise be considered to be required.

Subclause 5 clarifies the ability for a Treatment Order to specify or provide for any matters, incidental to the patient's treatment, that the Tribunal considers it necessary or desirable to include in the circumstances, without compromising the validity of the Order. The intention is to enable a Treatment Order to validly include matters that are directly connected with the patient's treatment, which the Tribunal thinks should be included in the Order, in the relevant circumstances. This might include, for example, a requirement that the patient be treated by a particular health professional. The intention is to ensure that Orders which contain such conditions remain valid and to prevent the inclusion of arbitrary conditions or requirements.

## **Clause 42**

### **Effect of treatment order**

This clause sets out what a Treatment Order is authority for.

Subclause 1 provides that a Treatment Order is authority for the patient:

- To be given the treatment that is specified in the Order and referred to in the treatment plan specified in the Order, either as made pursuant to clause 53 or as varied pursuant to clause 54, without that patient's consent, or
- If the Order specifies a type of treatment - to be given treatment of that type as specified in the treatment plan for the patient, either as made pursuant to clause 53 or as varied pursuant to clause 54, without that patient's consent.

Subclause 2(a) makes it clear that a Treatment Order which specifies an approved facility and which refers to an approved facility in the treatment plan specified in the Order, either as made pursuant to clause 53 or as varied pursuant to clause 54, is authority for the patient to be admitted to, and detained in, the facility which is so specified, without that patient's consent so that the treatment specified in the Order may be provided.

Subclause 2(b) makes it clear that a Treatment Order which specifies a type of approved facility and which refers to that type of approved facility in the treatment plan specified in the Order, either as made pursuant to clause 53 or as varied pursuant to clause 54, is authority for the patient to be admitted to, and detained, in a facility of that type, without that patient's consent so that the treatment specified in the Order may be provided.

Subclause 2(c) refers to clause 47, which regulates the action to be taken in the event that a patient is found to have failed to comply with an Order. Subclause 2(c) provides that if clause 47 applies, a Treatment Order is also authority for the patient who is subject to it to be detained in an approved hospital or approved assessment centre.

Subclauses 2(d), (e) and (f) jointly govern how long a patient who is detained in an approved facility where the detention has occurred pursuant to the terms of subclause 2(a), (b) or (c), may be detained in that facility.

Subclause 3 requires the controlling authority of a facility to which a patient has been admitted pursuant to subclauses 2(a), (b) or (c), to notify the Mental Health Tribunal and the Chief Civil Psychiatrist, of the patient's admission.

This is of relevance given:

- The requirement in clause 181 for the Tribunal to review the Treatment Order of a patient who had been admitted to an approved facility pursuant to subclauses 2(a), (b), or (c) within three days of being notified of the patient's admission, pursuant to subclause 3 of this clause, and
- The Chief Civil Psychiatrist's ability to intervene in relation to matters involving the general assessment and treatment of patients including persons subject to Treatment Orders, pursuant to clause 147.

- Clause 43**                      **When does treatment order take effect?**
- This clause establishes when a Treatment Order takes effect.
- Clause 44**                      **Duration of treatment order**
- This clause governs the duration of a Treatment Order.
- Clause 45**                      **Action to be taken by Tribunal on making treatment order**
- This clause governs the actions that the Tribunal is to take, on making a Treatment Order.
- In particular, subclause 1 requires the Tribunal to do the following when it makes a Treatment Order:
- Give the patient notice that the Order has been made, and
  - Give the patient a copy of the Order, and
  - Given the patient a statement of rights in a form approved by the Mental Health Tribunal. It is intended that the statement would list the rights that the patient has pursuant to the Act, including the right to apply for the Order to be reviewed by the Tribunal, pursuant to clause 181, and
  - Give notice that the Order has been made, and a copy of the Order, to persons including the Chief Civil Psychiatrist.
- The requirement to give notice to the Chief Civil Psychiatrist is relevant given the Chief Civil Psychiatrist's ability to intervene in relation to matters involving the general assessment and treatment of patients including patients subject to Treatment Orders, pursuant to clause 147.
- Clause 46**                      **Ensuring patient presents for treatment, &c**
- This clause governs matters relevant to a patient's treatment.
- Subclause 1 provides that a Treatment Order is authority for the patient to be taken under escort by a mental health officer or police officer to ensure that he or she presents for treatment under the Order.
- Subclause 2 establishes how the person's escort is to be initiated.
- Clause 47**                      **Failure to comply with treatment order**
- This clause governs the failure, by a patient, to comply with a Treatment Order.

Subclause 1 establishes the criteria that must be met before a patient may be considered to have failed to comply with a Treatment Order.

Subclauses 2 establishes the actions that may be taken in the event that the criteria in subclause 1 are considered to be met. The actions that may be taken are limited to:

- Applying to the Tribunal for the treatment or treatment setting specified in the Treatment Order to be varied pursuant to clause 181, or
- Asking, pursuant to clause 46(2)(a), for the patient to be taken under escort so that he or she may be involuntarily admitted to an approved facility and detained there pursuant to clause 42(2)(c), or
- Applying to the Chief Civil Psychiatrist for authorisation to give the patient urgent circumstances treatment pursuant to clause 55.

Subclause 3 limits the operation of subclause 2, in relation to children. In particular it prevents a treating medical practitioner from applying or asking for a child to be detained in an approved hospital pursuant to subclause 2, unless the practitioner is satisfied that the hospital in which it is intended the child be detained:

- Has the facilities and staff necessary to assess the child, and
- Is the most appropriate place to accommodate the child in the circumstances.

Factors relevant to this determination might include whether:

- The particular hospital has staff who are suitably qualified and experienced to treat children and the ability to accommodate the child in an environment that is suitable for that child's particular needs
- There are other alternatives, including whether it is possible for the child to be treated at a facility other than an approved hospital and/or as an outpatient.



## **Clause 48**

### **Renewal of treatment order**

This clause governs the renewal of Treatment Orders.

Subclause 1 governs who may apply for a Treatment Order to be renewed, and provides authority for the Mental Health Tribunal to renew a Treatment Order that is applied for pursuant to this clause.

Subclause 2 governs when an application for renewal is to be made.

Subclause 3 sets out requirements in relation to applications made pursuant to subclause 1. In particular the subclause requires an application to be accompanied by:

- A copy of the Treatment Order that the application is seeking to renew, and
- Details of any change that is sought to the treatment or treatment setting specified in the Treatment Order, and
- A statement from the applicant confirming that the patient still meets the treatment criteria and explaining how it is expected that they will continue to do so for the duration of the renewal period. This requirement is intended to ensure that an application is made only in relation to patients who, despite having received treatment pursuant to the Treatment Order, are still considered to meet the treatment criteria, and for whom continued treatment pursuant to an Order is considered to be necessary.

Subclause 4 requires an approved medical practitioner who applies for a Treatment Order to be renewed to do certain things including:

- Give a copy of the application referred to in subclause 3, to the patient, and
- Give the patient a statement of rights in a form approved by the Mental Health Tribunal. It is intended that the statement would list the rights that the patient has pursuant to the Act, including the right to appear and be represented at a hearing to consider the renewal of the Order, and
- Give a copy of the application to persons including the Chief Civil Psychiatrist. This is of relevance given the Chief Civil Psychiatrist's ability to intervene in relation to matters involving the general assessment and treatment of patients including patients subject to Treatment Orders,

pursuant to clause 147.

Subclauses 5, 6, 7 and 8 regulate matters relevant to the renewal process.

Subclause 9 and 10 govern what the Tribunal is required to do, on renewing a Treatment Order. This includes:

- Notifying the patient that the Order has been renewed, and
- Giving the patient a statement of rights in a form approved by the Mental Health Tribunal. It is intended that the statement would list the rights that the patient has pursuant to the Act, including the right to apply to the Tribunal for any Treatment Order that is renewed to be reviewed pursuant to clause 181, and
- Notifying persons including the Chief Civil Psychiatrist, that the Order has been renewed. This is relevant because of the Chief Civil Psychiatrist's ability to intervene in relation to matters involving the general assessment and treatment of patients including patients subject to Treatment Orders, pursuant to clause 147.

**Clause 49****Discharge of treatment order by medical practitioner or Tribunal**

This clause governs the discharge of a Treatment Order by a medical practitioner, or the Tribunal.

Subclause 1 determines who a Treatment Order may be discharged by.

Subclause 2 regulates discharge by an approved medical practitioner.

Subclause 3 qualifies the operation of subclause 2 in situations where the approved medical practitioner who discharges the Treatment Order is not the patient's treating medical practitioner. In this instance, the discharge may only occur if:

- The approved medical practitioner has consulted with the treating medical practitioner about whether or not the patient meets the treating criteria, and
- The treating medical practitioner agrees with the approved medical practitioner's conclusion that the patient does not meet the treatment criteria.

The intention is to require consultation to occur with the medical practitioner who is, at the time of the consultation referred to in subclause 3, the medical practitioner who is responsible for the patient's treatment.

Subclauses 4 and 5 determines the actions that an approved medical practitioner who discharges a Treatment Order is to take, on discharging an Order.

**Clause 50****Nature of treatment plan**

This clause introduces the concept of treatment plans and outlines what a treatment plan is.

**Clause 51****Requirement for treatment plan**

This clause obliges the Chief Civil Psychiatrist to ensure that each involuntary patient has a treatment plan.

**Clause 52****Form of treatment plan**

This clause sets out the form that a treatment plan is to take.

**Clause 53****Preparation of treatment plan**

This clause sets out how a treatment plan is to be prepared.

Subclause 1 establishes who may prepare a treatment plan.

Subclause 2 determines who the person preparing the treatment plan is required to consult with. In particular:

- Subclause 2(a) requires consultation to occur with the patient for whom the plan is being prepared, and
- Subclause 2(b) enables consultation to also occur with any other persons that the person preparing the plan considers appropriate in the circumstances, but only after the patient has been consulted.

The intention is to provide the patient with the opportunity to be informed of any intention to consult with other persons, so that the patient can express their views about this. The intention is not however to prevent consultation from occurring with, for example, family members or other support persons of the person for whom the plan is being prepared. Such persons may have a good knowledge of the patient's mental health and have information about the patient's treatment and care history that would otherwise be unavailable to the person preparing the plan.

This approach is consistent both with the Act's focus on maximising consumer involvement in care and treatment processes, and with mental health service delivery principle (k) which is concerned with involving persons receiving services, and their families and support persons, where this is appropriate, in decision making. The clause attempts to balance patient autonomy with the need to involve carers and family members in a patient's treatment.

The amount and type of information that may be disclosed to a person who is consulted pursuant to subclause 2(b) is limited by the terms of clause 134.

Subclause 3 establishes the actions that a person who has prepared a treatment plan pursuant to this clause, is to take. In particular, the subclause requires a copy of the plan to be given to the patient, and to the Chief Civil Psychiatrist.

Requiring the plan to be given to the Chief Civil Psychiatrist is relevant given the Chief Civil Psychiatrist's ability to intervene in relation to matters involving the general assessment and treatment of patients including those for whom a plan has been prepared, pursuant to clause 147.

## **Clause 54**

### **Variation of treatment plan**

This clause sets out how a treatment plan prepared pursuant to clause 53, may be varied.

Subclause 1 establishes who may vary a treatment plan.

Subclause 2 limits the variations that may be made pursuant to subclause 1. The intention is to ensure that a patient's rights are not restricted to any greater degree than is authorised by the Treatment Order to which the patient is subject, and that any decision to restrict a patient's rights is made by the Tribunal pursuant to clause 39 or by a Tribunal member pursuant to clause 38, at a hearing at which the patient has the right to appear and be represented.

Subclause 3 determines who the person varying the treatment plan is required to consult with. In particular:

- Subclause 3(a) requires consultation to occur with the patient for whom the plan is being prepared, and
- Subclause 3(b) enables consultation to also occur with any other persons that the person preparing the plan considers appropriate in the circumstances, but only after the patient has been consulted.

Subclause 4 establishes the actions that a person who has varied a treatment plan pursuant to this clause, is to take. In particular, the subclause requires a copy of the varied plan to be given to the Chief Civil Psychiatrist and the Mental Health Tribunal and for notice of the variation to be given to the patient.

Requiring a copy of the varied plan to be given to the Chief Civil Psychiatrist is relevant given the Chief Civil Psychiatrist's ability to intervene in relation to matters involving the general assessment and treatment of patients including those for whom a plan has been prepared, pursuant to clause 147.

Requiring a copy of the varied plan to be given to the Tribunal is relevant given the relationship that exists between treatment plans and Treatment Orders, and the Tribunal's role in making and reviewing Orders pursuant to clauses 39 and 181 respectively.

## **Clause 55**

### **Urgent circumstances treatment**

This clause enables treatment to be given to an involuntary patient, without informed consent or Mental Health Tribunal authorisation if the treatment is authorised by the Chief Civil Psychiatrist as being urgently needed in the patient's best

interests.

The intention is to provide a mechanism for treatment which would otherwise require Tribunal authorisation, in circumstances where it is not possible to obtain that authorisation. This may occur if, for example, it is not possible to contact a member of the Tribunal so that an interim Treatment Order may be made pursuant to clause 38 in circumstances where a person subject to an Assessment Order needs treatment which, if it were not given, would result in a significant deterioration in the patient's mental health.

The intention is not however to supplant or replace the ability for a patient to be given treatment that is needed in an emergency, and that it would be permissible to give pursuant to clause 40 of the *Guardianship and Administration Act*.

The matters that the Chief Civil Psychiatrist must be satisfied of before authorising the treatment are set out in subclause 5.

Subclause 6 requires the Chief Civil Psychiatrist to advise the Mental Health Tribunal of the authorisation. This would enable the Mental Health Tribunal to, for example, enable a single member of the Tribunal to consider an application that has been made as soon as practicable pursuant to clause 38; or for the Tribunal to consider reviewing any Treatment Order that may already be in place with a view to determining the ongoing suitability of the treatment that is authorised by the Order, pursuant to clause 181.

Subclause 8 imposes certain obligations on an applicant for urgent circumstances treatment. This includes giving the patient a copy of the Chief Civil Psychiatrist's authorisation, together with a statement of rights in a Chief Civil Psychiatrist approved form. It is intended that the statement would list the rights that the patient has pursuant to the Act, including the right to apply to the Mental Health Tribunal for a review of the urgent circumstances treatment pursuant to clause 186.

Subclause 9 sets out how long the urgent circumstances treatment may be given for.

## **Clause 56**

### **Seclusion**

This clause governs the seclusion of an involuntary patient in an approved hospital.

Subclause 1 sets out the circumstances in which a patient may be secluded. In particular the subclause requires:

- If the patient is an adult – for the seclusion to be authorised by either the Chief Civil Psychiatrist, a medical practitioner or an approved nurse, and
- If the patient is a child – for the seclusion be authorised by the Chief Civil Psychiatrist only, and
- For the person authorising the seclusion to be satisfied that it is a reasonable intervention in the circumstances.

Subclause 2 determines the monitoring and oversight arrangements that are to apply in relation to a patient who is secluded, including:

- A requirement that the patient be clinically observed at least every 15 minutes, and
- A requirement that the patient be examined by a medical practitioner or approved nurse at least every four hours, and
- A requirement that the patient be examined by an approved medical practitioner at least every 12 hours, and
- A requirement that the patient not be secluded for more than seven hours unless the extension is authorised by the Chief Civil Psychiatrist.

Subclause 3 makes it clear that a patient's seclusion is to be taken as continuing despite any observation or examination that occurs pursuant to subclause 2 while subclause 4 makes it clear that a patient is not to be secluded as a way of punishing the patient, or because this is merely convenience.

Record keeping and reporting requirements associated with seclusion are as outlined in clause 58.

The intention of the clause is to ensure that a patient is secluded only when this is considered necessary and appropriate in all the circumstances. This is consistent with national and international approaches to seclusion which require seclusion to be used as a last resort, given the highly restrictive and serious nature of the practice. This is also consistent with the Act's Objects, component (d) of which is to provide for the assessment, treatment and care of persons with mental illnesses to be given

in the least restrictive setting consistent with clinical need, legal and judicial constraints, public safety and patient health, safety and welfare and mental health service delivery principle (b) which is to interfere with or restrict the rights of persons with mental illness in the least restrictive way and to the least extent consistent with the protection of those persons, the protection of the public and the proper delivery of the relevant service.



## **Clause 57**

### **Restraint**

This clause governs the placing of an involuntary patient in an approved hospital or assessment centre, under chemical, mechanical or physical restraint.

Subclause 1 establishes the circumstances in which a patient may be placed under restraint. In particular the subclause requires:

- In the case of chemical or mechanical restraint – for the restraint to be authorised by the Chief Civil Psychiatrist, or
- In the case of physical restraint of a child – for the restraint to be authorised by the Chief Civil Psychiatrist, or
- In the case of physical restraint of an adult – for the restraint to be authorised by the Chief Civil Psychiatrist, a medical practitioner or an approved nurse, and
- For the person authorising the restraint to be satisfied that it is a reasonable intervention in the circumstances, and
- In the case of mechanical restraint, for the means of restraint to be authorised in advance by the Chief Civil Psychiatrist.

Subclause 5 requires the Chief Civil Psychiatrist to issue standing orders for the use of restraint. Subclause 1 requires any restraint that is authorised to be managed in accordance with those standing orders and any clinical guidelines that are otherwise issued by the Chief Civil Psychiatrist.

Subclause 2 determines the oversight arrangements that are to apply in relation to a patient who is placed under restraint, including:

- A requirement that the patient be clinically observed at least every 15 minutes, and
- A requirement that the patient be examined by a medical practitioner or approved nurse at least every four hours, and
- A requirement that the patient be examined by an approved medical practitioner at least every 12 hours, and
- A requirement that the patient not be restrained for more than seven hours unless this is authorised by the Chief Civil Psychiatrist.

Subclause 3 makes it clear that a patient is not to be placed

under restraint as a way of punishing the patient, or because this is merely convenient.

Subclause 4 distinguishes restraint which is required to be authorised by and pursuant to this clause, from the emergency short-term, physical restraint of a patient to:

- Prevent the person or patient from harming him or herself or others, or
- Prevent the person from damaging or interfering with the facility's operation or the operation of any equipment, or
- Break up a dispute or fight involving the patient – for example as may occur if persons involved in a physical dispute are separated, or
- Facilitate the patient's movement to or attendance at any place, for any lawful purpose.

The intention is to ensure that the clause does not restrict:

- The use of physical restraint to prevent immediate harm to the patient or others and which is understood to be lawful pursuant to common law, or
- The use of force which may be necessary in escorting a person to or from an approved facility or other place, and which is permitted pursuant to the provisions of this Act including Schedule 2 Custody and Escort Provisions.

Record keeping and reporting requirements associated with the placing of an involuntary patient under restraint are as outlined in clause 58.

The intention of the clause is to ensure that a patient is placed under restraint only when this is considered necessary and appropriate in all the circumstances. This is consistent with national and international approaches to restraint which require a person to be placed under restraint as a last resort, given the highly restrictive and serious nature of the practice. This is also consistent with the Act's Objects, component (d) of which is to provide for the assessment, treatment and care of persons with mental illnesses to be given in the least restrictive setting consistent with clinical need, legal and judicial constraints, public safety and patient health, safety and welfare and mental health service delivery principle (b) which is to interfere with or restrict the rights of persons with mental illness in the least restrictive way and to the least extent consistent with the protection of those persons, the protection of the public and the proper delivery of the relevant service.

In relation to chemical restraint the intention is to ensure that a person subject to an Assessment Order or Treatment Order may only be chemically restrained, as this term is defined in clause 3, in certain narrow circumstances and when specifically authorised, and that the use of chemical restraint in these circumstances is transparent, is regulated, and is oversighted.

## **Clause 58**

### **Records, &c.**

This clause governs record keeping in relation to seclusion and restraint which is authorised pursuant to clauses 56 and 57 respectively.

In particular the clause requires records to be kept, and requires a copy of records kept to be given to the Chief Civil Psychiatrist and to the Mental Health Tribunal.

This is of relevance given:

- The Chief Civil Psychiatrist's ability to intervene in relation to the use of seclusion and the use of restraint pursuant to clause 147, and
- The Mental Health Tribunal's ability to review the use of seclusion and restraint, pursuant to clause 187.

## **Clause 59**

### **Transfer of involuntary patients between approved hospitals**

This clause governs the transfer of involuntary patients between approved hospitals.

Subclause 1 sets out the circumstances in which the Chief Civil Psychiatrist may direct that an involuntary patient be transferred from one approved hospital to another.

Subclause 2 governs the form that any direction issued pursuant to subclause 1 is to take.

Subclauses 3 and 4 imposes certain obligations on the Chief Civil Psychiatrist including to give the patient being transferred a copy of the transfer direction, together with a statement of rights in a Chief Civil Psychiatrist approved form. It is intended that the statement would list the rights that the patient has pursuant to the Act, including the right to apply to the Mental Health Tribunal for a review of the transfer pursuant to clause 190.

Subclauses 5 and 6 set out what a transfer direction is authority for while subclause 7 clarifies matters regarding the custody of the patient who has been transferred pursuant to this clause.

## **Clause 60**

### **Leave of absence from approved hospital**

This clause governs an involuntary patient's leave of absence from an approved hospital.

Subclause 1 governs who may grant a patient leave of absence from an approved hospital.

Subclause 2 determines the nature of the leave that may be

granted.

Subclause 3 governs who may apply for a patient's leave for personal reasons.

Subclause 4 imposes certain obligation on staff at approved hospitals to assist an involuntary patient who wishes to apply for leave.

Subclause 5 governs the form in which leave is to be granted while subclauses 6, 7 and 8 jointly regulate the conditions that may be attached to leave and provide for related matters.

Subclause 10 enables leave to be extended, varied or cancelled while subclauses 11 and 12 clarify and regulate certain matters relating to the extension, variation or cancellation of leave.

Subclauses 9 and 13 impose certain obligations on an approved medical practitioner who grants, or refuses, an application for leave including giving the patient a copy of the leave pass (if the leave is granted) or notice of the refusal (if the leave is refused), together with a statement of rights in a Chief Civil Psychiatrist approved form. It is intended that the statement would list the rights that the patient has pursuant to the Act, including the right to apply to the Mental Health Tribunal for a review of determinations relating to leave of absence pursuant to clause 191.

**Clause 61****Failure to comply with condition of leave of absence from approved hospital**

This subclause governs matters relating to a patient's failure to comply with a condition of a leave of absence from an approved hospital, and other related matters.

Subclause 1 specifies the circumstances in which the actions authorised by subclauses 2, 3 and 4, may be taken.

**Clause 62****Rights of involuntary patients**

This clause sets out the rights of involuntary patients, under and pursuant to this Act.

**Clause 63****Admission**

This clause governs the admission of an involuntary patient to a secure mental health unit and provides for related matters.

Subclause 1 and 2 jointly enable the Chief Forensic Psychiatrist to authorise the admission of an involuntary patient who is being detained in an approved hospital to a secure mental health unit and set out the matters that the Chief Forensic Psychiatrist must be satisfied of before authorising the admission. This includes that:

- The patient is a danger to him or herself, or to others, because of his or her mental illness, and
- The danger that the patient poses to him or herself has become so serious that the patient's continued detention in an approved hospital is untenable, and
- A secure mental health unit is, in the circumstances, the only appropriate place where the patient can be safely detained.

The intention is to ensure that only involuntary patients who cannot continue to be safely detained in an approved hospital, are admitted to a secure mental health unit. This is because of the highly restrictive nature of secure mental health units and the significant increase in restrictions on rights that patients accommodated in such units experience. The intention is to ensure that involuntary patients are only detained in such an environment when the impact on the person's rights, of being detained in that environment, is outweighed by the danger that the patient would continue to pose to him or herself if he or she were not detained in a secure mental health unit.

Subclause 2 determines what the Chief Forensic Psychiatrist

must be satisfied of, before being able to admit a patient who is a child to a secure mental health unit, pursuant to subclause 1. Specifically, the Chief Forensic Psychiatrist must be satisfied that the child can be detained separately from adults, and that the probable benefits of accommodating the patient in a secure mental health unit outweigh the probable risks.

Subclause 3 clarifies and confirms the ability for an involuntary patient admitted to a secure mental health unit pursuant to this clause, to be treated under the authority of any Treatment Order to which they may be subject. This is of relevance given the inclusion of specific provisions in the Act which enable the Mental Health Tribunal to authorise treatment for forensic patients and is intended to provide clarity in respect of this matter.

The clause is not intended to apply to the admission of an involuntary patient who is also a prisoner or youth detainee. The admission of prisoners to the secure mental health unit is regulated by and pursuant to the provisions of the *Corrections Act 1997* while the admission of youth detainees to the secure mental health unit is regulated by and pursuant to the provisions of the *Youth Justice Act 1997*. The intention is to require the admission of such persons to continue to be regulated by and pursuant to the provisions of those Acts.

## **Clause 64**

### **Admissions procedure, extensions and transfer**

Subclause 1 governs the admission, extension of admission and transfer of involuntary patients admitted to a secure mental health unit pursuant to clause 63.

Subclause 1 requires the Chief Forensic Psychiatrist to:

- Determine how long the involuntary patient may be detained in a secure mental health unit for, and
- Give the patient notice of his or her admission, together with a statement of rights in a Chief Forensic Psychiatrist form. It is intended that the statement would list the rights that the person has pursuant to the Act, while detained in a secure mental health unit, including the right to apply to the Mental Health Tribunal for a review of his or her admission to the secure mental health unit pursuant to clause 182, and
- Give notice of the admission to the Mental Health Tribunal. This is of relevance given the requirement for the Tribunal to review the admission pursuant to clause 182.

Subclauses 2, 3 and 4 govern the extension of a period of admission determined pursuant to subclause 1 and provide for related matters. In particular, subclause 4 requires the Chief Forensic Psychiatrist to notify the patient of any extension made under subclause 2, and the reasons for it, along with a statement of rights in a Chief Forensic Psychiatrist approved form. It is intended that the statement would list the rights that the person has pursuant to the Act, while detained in a secure mental health unit, including the right to apply to the Mental Health Tribunal for a review of his or her admission to the secure mental health unit pursuant to clause 182. The Chief Forensic Psychiatrist is also required to notify the Tribunal of any extension that is made.

Subclauses 5, 6, 7, 8 and 9 regulate the return of an involuntary patient who has been admitted to a secure mental health unit pursuant to clause 63, to an approved hospital.

## **Clause 65**

### **Period of detention**

This clause governs the period of time for which an involuntary patient who has been transferred to a secure mental health unit pursuant to clause 63 may be detained in the secure mental health unit.



<b>Clause 66</b>	<p><b>Admitted involuntary patient to be treated as a forensic patient for certain purposes</b></p> <p>This clause governs how the provisions of the Act which apply to forensic patients, apply to involuntary patients who have been transferred to a secure mental health unit pursuant to clause 63.</p>
<b>Clause 67</b>	<p><b>Leave of absence for involuntary SMHU patient</b></p> <p>This clause modifies the provisions contained within Division 6 of Part 4 of the Act in their application to involuntary patients who have been transferred to a secure mental health unit pursuant to clause 63.</p>
<b>Part 4</b>	<p><b>Admission and Custody of Forensic Patients</b></p> <p>This Part governs the admission and custody of forensic patients, and provides for related matters.</p>
<b>Clause 68</b>	<p><b>Admission</b></p> <p>This clause provides for the admission of a number of categories of people to a secure mental health unit and confirms that a person who is admitted to a secure mental health unit pursuant to this section, is a forensic patient for the purposes of the Act.</p>
<b>Clause 69</b>	<p><b>Period of detention</b></p> <p>This clause clarifies the period of time for which a person who has been admitted to a secure mental health unit pursuant to clause 68, may be detained in such a unit.</p>
<b>Clause 70</b>	<p><b>Certain forensic patients may request return to prison, &amp;c</b></p> <p>This clause provides a mechanism for prisoners and youth detainees whose removal to a secure mental health unit was on the request of the prisoner or youth detainee, to ask to be returned to prison or youth detention.</p> <p>The clause regulates how such a request should be made and imposes certain obligations on the Chief Forensic Psychiatrist in relation to requests that are made.</p> <p>Subclause 9 applies in the event that a request is refused. That subclause requires the Chief Forensic Psychiatrist to give notice of any refusal to the patient, along with reasons for the refusal and a statement of rights in a Chief Forensic Psychiatrist approved form. It is intended that the statement would list the rights that the person has pursuant to the Act, including the right to apply to the Mental Health Tribunal for a review of the</p>

refusal to return the patient to prison or youth detention,  
pursuant to clause 183.

## **Clause 71**

### **Custody**

This clause governs matters relevant to a forensic patient's custody while the patient is admitted to a secure mental health unit.

## **Clause 72**

### **Transfer of forensic patients between SMHUs**

This clause regulates the transfer of a forensic patient between secure mental health units.

Subclause 1 sets out the circumstances in which the Chief Forensic Psychiatrist may direct that a forensic patient be transferred from one secure mental health unit to another.

Subclause 2 governs the form that any direction issued pursuant to subclause 1 is to take.

Subclauses 3 and 4 jointly impose certain obligations on the Chief Forensic Psychiatrist including to give the patient being transferred a copy of the transfer direction, together with a statement of rights in a Chief Forensic Psychiatrist approved form. It is intended that the statement would list the rights that the patient has pursuant to the Act, including the right to apply to the Mental Health Tribunal for a review of the transfer pursuant to clause 190.

Subclauses 5 and 6 jointly set out what a transfer direction is authority for while subclause 7 clarifies matters regarding the custody of the patient who has been transferred pursuant to this clause.

## **Clause 73**

### **Transfer of forensic patients to hospitals, &c.**

This clause regulates the transfer of a forensic patient from a secure mental health unit to a secure institution, an approved hospital, a health service within the meaning of the *Health Complaints Act 1995* or premises where such a health service is provided.

Subclause 1 enables the Chief Forensic Psychiatrist to direct that a forensic patient be removed from a secure mental health unit and transferred to a secure institution, an approved hospital, a health service within the meaning of the *Health Complaints Act 1995* or premises where such a health service is provided.

Subclauses 2 and 3 jointly govern the form that any direction issued pursuant to subclause 1 is to take.

Subclauses 4 and 5 jointly set out what a transfer direction is authority for and provides the person escorting the patient with

certain authorities.

Subclause 6 imposes certain obligations on the Chief Forensic Psychiatrist including to give the patient being transferred a copy of the transfer direction, together with a statement of rights in a Chief Forensic Psychiatrist approved form. It is intended that the statement would list the rights that the patient has pursuant to the Act, including the right to apply to the Mental Health Tribunal for a review of the transfer pursuant to clause 190.

- Clause 74**                      **Application of Part to places other than SMHUs**
- This clause clarifies how the provisions of Part 4 of Chapter 2 of this Act are to apply to a forensic patient while he or she is in a secure institution, an approved hospital, a health service within the meaning of the *Health Complaints Act 1995* or premises where such a health service is provided, or another place.
- Clause 75**                      **Return of forensic patient in Tasmania to SMHU**
- This clause regulates the return of certain forensic patients including those who have absconded from the custody of the controlling authority of a secure mental health unit, to the secure mental health unit.
- Clause 76**                      **Return of forensic patient outside Tasmania to SMHU**
- This clause regulates the return of certain forensic patients, that a Magistrate is satisfied should be in the custody of the controlling authority of a secure mental health unit, and where there are reasonable grounds to suspect that the patient has absconded from that custody and is no longer in Tasmania, to the secure mental health unit.
- Clause 77**                      **Definitions for this Division**
- This clause defines terms used in Division 5 of Part 4 of Chapter 2 of this Act.
- Clause 78**                      **When leave of absence for forensic patients subject to restriction orders may be granted**
- This clause governs leave of absence for forensic patients subject to restriction orders.
- Subclause 1 governs who may grant a forensic patient who is subject to a restriction order, leave of absence from a secure mental health unit.
- Subclauses 2, 3 and 4 determine the nature of the leave that may be granted and regulate matters relevant to an application for leave.
- Subclause 5 imposes certain obligations on staff at secure mental health units to assist a forensic patient who is subject to a restriction order, and who wishes to apply for leave.
- Subclause 6 governs how leave may be granted.
- Subclauses 7 and 8 jointly impose certain obligations on the Tribunal and the Secretary (Corrections) in relation to eligible

persons and other persons who the Tribunal considers should be notified of an application that has been made pursuant to this clause.

Subclauses 9, 10 and 11 jointly regulate matters relevant to conditions that may be attached to leave and provide for related matters.

Subclauses 11 and 13 impose certain obligations on the Chief Forensic Psychiatrist and the Tribunal in relation to leave that is granted or refused, including giving the patient a copy of relevant records and, in relation to the Tribunal, a statement of rights in a Mental Health Tribunal approved form. It is intended that the statement would list the rights that the patient has pursuant to the Act, including the right to apply to the Mental Health Tribunal for a review of determinations relating to leave of absence pursuant to clause 191.

- Clause 79                      Extension, variation and cancellation of leave of absence**
- This clause governs the extension, variation and cancellation of leave of absence that has been granted pursuant to clause 78.
- In particular, subclause 7 clause enables a patient's leave to be cancelled, by notice to the patient, if a responsible authority reasonably believes that the continuation of the leave would, or is likely to, seriously endanger the patient's health or safety, or place the safety of other persons at serious risk.
- Clause 80                      Victims to be notified of leave of absence of patient**
- This clause establishes a mechanism for certain eligible persons to be notified of leave that is granted pursuant to clause 78, before the leave is taken.
- Clause 81                      Definitions for this Division**
- This clause defines terms used in Division 6 of Part 4 of Chapter 2 of this Act.
- Clause 82                      When leave of absence for forensic patients not subject to restriction orders may be granted**
- This clause governs leave of absence for forensic patients who are not subject to restriction orders.
- Subclause 1 governs who may grant a forensic patient who is not subject to a restriction order, leave of absence from a secure mental health unit.
- Subclauses 2, 3, 4 and 6 determine the nature of the leave that may be granted and regulate matters relevant to an application for leave.
- Subclause 5 imposes certain obligations on staff at secure mental health units to assist a forensic patient who is subject to a restriction order, and who wishes to apply for leave.
- Subclauses 7, 8 and 9 jointly impose certain obligations on the Chief Forensic Psychiatrist and the Secretary (Corrections) in relation to eligible persons, the Director (Corrections) and the Secretary (Youth Justice) and other persons who the Chief Forensic Psychiatrist considers should be notified of an application that has been made pursuant to this clause.
- Subclause 10, 11 and 12 govern matters relevant to conditions that may be attached to leave and provide for related matters.
- Subclauses 13 and 14 impose certain obligations on the treating medical practitioner and Chief Forensic Psychiatrist in relation to

leave that is granted or refused.



**Clause 83                      Extension, variation and cancellation of leave of absence**

This clause governs the extension, variation and cancellation of leave of absence that has been granted pursuant to clause 82.

In particular, subclause 5 enables a patient's leave to be cancelled, by notice to the patient, if a responsible authority reasonably believes that the continuation of the leave would, or is likely to, seriously endanger the patient's health or safety, or place the safety of other persons at serious risk.

**Clause 84                      Victims to be notified of leave of absence of patient**

This clause establishes a mechanism for certain eligible persons to be notified of leave that is granted pursuant to clause 82, before the leave is taken.

**Part 5                          Treatment and Management of Forensic Patients**

This Part governs the treatment and management of forensic patients, and provides for related matters.

**Clause 85                      Interpretation of Part**

This clause defines terms used in Part 5 of Chapter 2 of this Act.

**Clause 86                      Application of Part to places other than SMHUs**

This clause clarifies how the provisions of Part 5 of Chapter 2 of this Act are to apply to a forensic patient who is being detained in a secure institution, an approved hospital, a health service within the meaning of the *Health Complaints Act 1995* or premises where such a health service is provided or other place.

In particular subclause 3 modifies the operation of clause 113 subclause 1 as it applies to a health service within the meaning of the *Health Complaints Act 1995* or premises where such a health service is provided or other place, given the use of such facilities for purposes other than the detention of forensic patients and by persons other than forensic patients and the need to ensure that the regulation imposed by clause 113, does not apply more broadly than is intended.

**Clause 87                      Urgent circumstances treatment**

This clause enables treatment to be given to a forensic patient, without informed consent or Mental Health Tribunal authorisation if the treatment is authorised by the Chief Forensic Psychiatrist as being urgently needed in the patient's best interests.

The intention is to provide a mechanism for treatment which would otherwise require Tribunal authorisation, in circumstances where it is not possible to obtain that authorisation. This may occur if, for example, it is not possible to contact a member of the Tribunal so that treatment may be authorised pursuant to clause 91 in circumstances where the patient needs treatment which, if it were not given, would result in a significant deterioration in the patient's health.

The intention is not however to supplant or replace the ability for a patient to be given treatment that is needed in an emergency, and that it would be permissible to give pursuant to clause 40 of the *Guardianship and Administration Act 1995*.

The matters that the Chief Forensic Psychiatrist must be satisfied of before authorising the treatment are set out in subclause 5.

Subclause 6 requires the Chief Forensic Psychiatrist to advise the Mental Health Tribunal of the authorisation. This would allow the Mental Health Tribunal to, for example, determine that a single member of the Tribunal should consider an application for authorisation of treatment pursuant to clause 91 as soon as practicable. For forensic patients who are subject to Treatment Orders the advice may enable the Tribunal to review the subsisting Treatment Order with a view to determining the ongoing suitability of the treatment that is authorised by the Order, pursuant to clause 181.

Subclause 8 imposes certain obligations on an applicant for urgent circumstances treatment. This includes giving the patient a copy of the Chief Forensic Psychiatrist's authorisation, together with a statement of rights in a Chief Forensic Psychiatrist approved form. It is intended that the statement would list the rights that the patient has pursuant to the Act, including the right to apply to the Mental Health Tribunal for a review of the urgent circumstances treatment pursuant to clause 186.

Subclause 9 sets out how long the urgent circumstances treatment may be given for.

## **Clause 88**

### **Authorisation of treatment by Tribunal**

This clause provides authority for the Mental Health Tribunal to authorise treatment for a forensic patient.

Subclause 1 sets out the matters that the Mental Health Tribunal must be satisfied of before authorising treatment for a forensic patient. The criteria referred to in subclause 1 are substantively reflective of the treatment criteria outlined in clause 40.

Subclause 2 requires the Tribunal to consider the application by way of a hearing at which the patient has the right to appear, and be represented, before a division of the Tribunal constituted by three members.

Subclause 3 provides authority for the Tribunal to authorise treatment conditionally or unconditionally.

Subclause 4 governs the form that an authorisation issued pursuant to this clause is to be in.

Subclause 5 imposes certain obligations on the Tribunal including giving a copy of the authorisation and a statement of rights in a Mental Health Tribunal approved form, to the forensic patient for whom treatment has been authorised pursuant to this clause. It is intended that the statement would list the rights that the patient has pursuant to the Act, including the right to apply to the Mental Health Tribunal for a review of the matter pursuant to clause 193.

## **Clause 89**

### **Discharge of Tribunal treatment authorisation**

This clause provides for the discharge of an authorisation pursuant to clause 88.

## **Clause 90**

### **Authorisation becomes treatment order when patient ceases to be a forensic patient**

This clause enables an authorisation made under clause 88 to effectively become a Treatment Order at such time as the patient to whom the authorisation made under clause 88 relates ceases to be a forensic patient.

This clause is intended to provide continuity of authorisation of treatment for forensic patients who are discharged from the secure mental health unit to another setting, including to the community or if the patient is returned to prison or youth detention, with a view to avoiding the need to apply for a Treatment Order for persons who have already been determined, by the Mental Health Tribunal, to meet the criteria

referred to in subclause I of clause 88.

## **Clause 91**

### **Interim authorisation of treatment by Tribunal member**

This clause provides authority for a single member of the Mental Health Tribunal to authorise treatment for a forensic patient on an interim basis.

Subclause 1 sets out the matters that the single member of the Tribunal must be satisfied of, before authorising treatment for a forensic patient, including that:

- The criteria referred to in clause 88 subclause 1(b), (c), (d) and (e) are satisfied, and
- The Tribunal cannot immediately determine the application, and
- Achieving the treatment outcomes would be compromised by waiting for the treatment to be authorised by the Tribunal pursuant to clause 88.

The intention is for interim authorisation to be sought, and given, only when necessary and in circumstances where it is not feasible to wait for a Tribunal decision under clause 88.

Subclause 2 confirms the Tribunal member's ability to authorise treatment on the basis of an application alone, and without conducting a hearing or engaging in any further investigation into the matter. The intention is to ensure that the Tribunal member may authorise the treatment quickly and on the basis of the information presented to him or her, if this is considered to be needed in the circumstances.

Subclauses 4, 5 and 11 jointly require the Tribunal member to advise the patient and others of the authorisation, and provide for related matters.

Subclause 6 provides the Tribunal member or the Tribunal with the authority to revoke or vary an authorisation given pursuant to this clause at any time, while subclauses 7, 8 and 11 jointly set out the actions that are to be taken in the event that the authorisation is so revoked or varied.

Subclauses 9 and 10 are concerned with how long an authorisation made under this clause has effect for. In particular, subclause 10 provides that an authorisation made under this clause lapses after 14 days if, by then, the Tribunal has not determined the matter under clause 88.

## **Clause 92**

### **Interpretation of Division**

This clause defines terms used in Division 3 of Part 5 of

Chapter 2 of this Act.

## **Clause 93**

### **Force**

This clause regulates the application of force to a forensic patient.

Subclause 1 sets out the circumstances in which force may be applied.

Subclause 2 makes it clear that the clause is not intended to give any authority for force to be applied to a forensic patient as a means of punishment, or because this is merely convenient.

Subclause 3 sets out who is authorised, by the Act, to apply force pursuant to this clause.

## **Clause 94**

### **Seclusion**

This clause governs the seclusion of a forensic patient.

Subclause 1 sets out the circumstances in which a patient may be secluded. In particular the subclause requires:

- If the patient is an adult – for the seclusion to be authorised by either the Chief Forensic Psychiatrist, a medical practitioner or an approved nurse, and
- If the patient is a child – for the seclusion be authorised by the Chief Forensic Psychiatrist only, and
- For the person authorising the seclusion to be satisfied that it is a reasonable intervention in the circumstances.

Subclause 2 determines the oversight arrangements that are to apply in relation to a patient who is secluded, including:

- A requirement that the patient be clinically observed at least every 15 minutes, and
- A requirement that the patient be examined by a medical practitioner or approved nurse at least every four hours, and
- A requirement that the patient be examined by an approved medical practitioner at least every 12 hours, and
- A requirement that the patient not be secluded for more than seven hours unless this is authorised by the Chief Forensic Psychiatrist.

Subclause 3 makes it clear that a patient's seclusion is to be taken as continuing despite any observation or examination that occurs pursuant to subclause 2 while subclause 4 makes it clear that a patient is not to be secluded as a way of punishing the

patient, or because this is merely convenient.

Record keeping and reporting requirements associated with the seclusion of forensic patients are as outlined in clause 96.

The intention of the clause is to ensure that a patient is secluded only when this is considered necessary and appropriate in all the circumstances. This is consistent with national and international approaches to seclusion which require seclusion to be used as a last resort, given the highly restrictive and serious nature of the practice. This is also consistent with the Act's Objects, component (d) of which is to provide for the assessment, treatment and care of persons with mental illnesses to be given in the least restrictive setting consistent with clinical need, legal and judicial constraints, public safety and patient health, safety and welfare and mental health service delivery principle (b) which is to interfere with or restrict the rights of persons with mental illness in the least restrictive way and to the least extent consistent with the protection of those persons, the protection of the public and the proper delivery of the relevant service.



## **Clause 95**

### **Restraint**

This clause governs the placing of a forensic patient under chemical, mechanical or physical restraint.

Subclause 1 establishes the circumstances in which a patient may be placed under restraint. In particular the subclause requires:

- In the case of chemical or mechanical restraint – for the restraint to be authorised by the Chief Forensic Psychiatrist, or
- In the case of physical restraint of a child – for the restraint to be authorised by the Chief Forensic Psychiatrist, or
- In the case of physical restraint of an adult – for the restraint to be authorised by the Chief Forensic Psychiatrist, a medical practitioner or an approved nurse, and
- For the person authorising the restraint to be satisfied that it is a reasonable intervention in the circumstances, and
- In the case of mechanical restraint, for the means of restraint to be authorised in advance by the Chief Forensic Psychiatrist.

Subclause 5 requires the Chief Forensic Psychiatrist to issue standing orders for the use of restraint. Subclause 1 requires any restraint that is authorised to be managed in accordance with those standing orders and any clinical guidelines that are otherwise issued by the Chief Forensic Psychiatrist.

Subclause 2 determines the oversight arrangements that are to apply in relation to a patient who is placed under restraint, including:

- A requirement that the patient be clinically observed at least every 15 minutes, and
- A requirement that the patient be examined by a medical practitioner or approved nurse at least every four hours, and
- A requirement that the patient be examined by an approved medical practitioner at least every 12 hours, and
- A requirement that the patient not be restrained for more than seven hours unless this is authorised by the Chief Forensic Psychiatrist.

Subclause 3 makes it clear that a patient is not to be placed

under restraint as a way of punishing the patient, or because this is merely convenient.

Subclause 4 distinguishes restraint which is required to be authorised by and pursuant to this clause, from the emergency, short-term, physical restraint of a patient to:

- Prevent the patient from harming him or herself or others, or
- Prevent the patient from damaging, or interfering with, the facility's operation or the operation of any equipment, or
- Break up a dispute or fight involving the patient – for example as may occur if persons involving a physical dispute are separated, or
- Facilitate the patient's movement to or attendance at any place, for any lawful purpose.

The intention is to ensure that the clause does not restrict:

- The use of force authorised pursuant to clause 93, or
- The use of force which may be necessary in escorting a patient to or from an approved facility or other place, and which is permitted pursuant to the provisions of this Act including Schedule 2 Custody and Escort Provisions.

Record keeping and reporting requirements associated with the placing of a forensic patient under restraint are as outlined in clause 96.

The intention of the clause is to ensure that a patient is placed under restraint only when this is considered necessary and appropriate in all the circumstances. This is consistent with national and international approaches to restraint which require a person to be placed under restraint as a last resort, given the highly restrictive and serious nature of the practice. This is also consistent with the Act's Objects, component (d) of which is to provide for the assessment, treatment and care of persons with mental illnesses to be given in the least restrictive setting consistent with clinical need, legal and judicial constraints, public safety and patient health, safety and welfare and mental health service delivery principle (b) which is to interfere with or restrict the rights of persons with mental illness in the least restrictive way and to the least extent consistent with the protection of those persons, the protection of the public and the proper delivery of the relevant service.

In relation to chemical restraint the intention is to ensure that a forensic patient may only be chemically restrained, as this term

is defined in clause 3, in certain narrow circumstances and when specifically authorised, and that the use of chemical restraint in these circumstances is transparent, is regulated, and is oversighted.

**Clause 96****Records**

This clause governs record keeping in relation to the use of force which is authorised pursuant to clause 93, and seclusion or restraint which is authorised pursuant to clauses 94 and 95 respectively.

In particular the clause requires records to be kept, and requires a copy of records kept to be given to the Chief Forensic Psychiatrist and to the Mental Health Tribunal.

This is of relevance given:

- The Chief Forensic Psychiatrist's ability to intervene in relation to the use of seclusion and the use of restraint pursuant to clause 147, and
- The Mental health Tribunal's ability to review the use of seclusion and restraint, pursuant to clause 187.

**Clause 97****Patient visiting rights**

This clause sets out the rights of forensic patients to receive, and refuse to receive, visitors.

**Clause 98****Privileged visitors, callers and correspondents**

This clause identifies who is a privileged visitor, privileged caller or privileged correspondent, for the purposes of this Act.

**Clause 99****Entry of visitors**

This clause regulates the entry of visitors, including privileged visitors, to a secure mental health unit and makes it an offence for a visitor to fail to comply with directions given by a responsible official.

**Clause 100****Visitor identity**

This clause enables visitors including privileged visitors seeking to enter a secure mental health unit to be required to provide proof of identity or status.

**Clause 101****Visitor information**

This clause enables visitors other than privileged visitors seeking to enter a secure mental health unit to be required to provide certain information.

**Clause 102****Refusal of visits**

This clause regulates the refusal of visits and makes it an offence

for a person to fail to comply with a responsible official's direction.

- Clause 103**      **Termination of visits**
- This clause sets out the circumstances in which a visit may be terminated and makes it an offence for a visitor, including a privileged visitor, to fail to comply with a direction given by a responsible official, pursuant to this clause.
- Clause 104**      **Arrest, &c. of visitors who fail to comply with directions**
- This clause sets out the circumstances in which a visitor who fails to comply with a direction issued under clauses 99, 102 or 103 may be removed from a secure mental health unit or detained until the visitor can be arrested by the police.
- The clause also provides authority for a police officer to arrest a person to whom the clause applies, without a warrant.
- Clause 105**      **Police visits**
- This clause governs visits by police.
- Clause 106**      **Patient telephone rights**
- This clause sets out the rights of a forensic patient to make or refuse to make, and to receive or refuse to receive, telephone calls.
- The clause clarifies the circumstances in which a responsible official may refuse to allow a patient to make or receive a telephone call.
- The clause requires a person who makes or who wishes to make a telephone call to a patient, including a privileged caller, to provide certain information and enables a responsible official to refuse to allow a telephone call to be made or to continue if the information is not given.
- Clause 107**      **Patient correspondence rights**
- This clause sets out the rights of a forensic patient to send or refuse to send, and to receive or refuse to receive, mail.
- The clause clarifies the circumstances in which a responsible official may refuse to allow a patient to send or receive mail.
- The clause provides authority for any mail sent to or received by the patient, other than mail sent to or by a privileged correspondent, to be opened and read.
- Clause 108**      **Further rights of forensic patients**
- This clause sets out the rights of forensic patients, under and

pursuant to this Act.

<b>Clause 109</b>	<p><b>Authorisation of persons</b></p> <p>This clause provides the Chief Forensic Psychiatrist or the controlling authority of a secure mental health unit with the ability to authorise a person or a member of a class of persons for certain provisions of the Act.</p>
<b>Clause 110</b>	<p><b>Screening of persons seeking entry to SMHU</b></p> <p>This clause enables the Chief Forensic Psychiatrist or controlling authority of a secure mental health unit to require persons seeking to enter the secure mental health unit to be screened, and to refuse to allow persons who refuse to be screened, into the unit.</p>
<b>Clause 111</b>	<p><b>Searches</b></p> <p>This clause governs the performance of searches.</p> <p>The clause determines the circumstances in which a search may be performed, and who may authorise a search.</p> <p>Importantly the clause requires searches that involving touching or undressing of a person, or touching a person's clothing or personal belongings to be carried out by an authorised person of the same gender as the person being searched and only in the presence of persons of the same gender; and in privacy.</p>
<b>Clause 112</b>	<p><b>Seizure</b></p> <p>This section provides for items to be seized following a search conducted under clause 111.</p>
<b>Clause 113</b>	<p><b>Certain things not to be brought into SMHU</b></p> <p>This clause makes it an offence for certain items to be brought into or sent into a secure mental health unit, and enables a person who is found to have brought or sent such an item into a unit to be arrested by a police officer without a warrant.</p>
<b>Clause 114</b>	<p><b>Records, &amp;c.</b></p> <p>This clause governs record keeping in relation to matters including searches, detention and arrests, seizure, police visits and the exercise of telephone, correspondence and visiting rights.</p>
<b>Clause 115</b>	<p><b>Interpretation of Division</b></p> <p>This clause defines terms used in Division 8 of Part 5 of Chapter 2 of this Act.</p>



<b>Clause 116</b>	<p><b>Bringing patients before courts</b></p> <p>This clause provides a mechanism to bring a forensic patient before a court if the patient is charged with a new offence.</p>
<b>Clause 117</b>	<p><b>Presence at taking of certain depositions</b></p> <p>This clause enables a forensic patient to be present at the taking of a deposition in certain circumstances.</p>
<b>Clause 118</b>	<p><b>Court may proceed in absence of forensic patient, &amp;c.</b></p> <p>This clause provides for a court to be able to proceed in the absence of the forensic patient if the patient is legally represented or for the hearing or proceedings to be held in any place the court considers appropriate.</p>
<b>Clause 119</b>	<p><b>Notifying victims of final release, &amp;c.</b></p> <p>This clause provides for eligible persons to be notified before a forensic patient is released or transferred from a secure mental health unit.</p>
<b>Clause 120</b>	<p><b>Application of <i>Corrections Act 1997</i> to forensic patients who are prisoners</b></p> <p>This clause determines how the <i>Corrections Act 1997</i> applies to forensic patients who are prisoners.</p>
<b>Clause 121</b>	<p><b>Preservation of royal prerogative of mercy</b></p> <p>This section preserves the royal prerogative of mercy for forensic patients who are also prisoners.</p>
<b>Part 6</b>	<p><b>Special Psychiatric Treatment</b></p> <p>This Part governs special psychiatric treatment.</p>
<b>Clause 122</b>	<p><b>Meaning of special psychiatric treatment</b></p> <p>This clause defines special psychiatric treatment for the purposes of the Act as:</p> <ul style="list-style-type: none"> <li>• Psychosurgery; or</li> <li>• Any treatment declared by the regulations, to be special psychiatric treatment.</li> </ul> <p>Psychosurgery is defined further in subclause 2.</p>
<b>Clause 123</b>	<p><b>Application of Part</b></p> <p>This clause governs who the Part applies to.</p>

## **Clause 124                      Restriction on provision of special psychiatric treatment**

This clause makes it an offence to give a patient special psychiatric treatment unless:

- The treatment has been authorised by the Mental Health Tribunal pursuant to clause 125, and
- Informed consent has been given for the treatment, if the treatment is:
  - Psychosurgery, or
  - A treatment which the regulations specify requires informed consent.

## **Clause 125                      Clinical restriction on authorisation of special psychiatric treatment**

This clause enables the Mental Health Tribunal to authorise special psychiatric treatment in certain circumstances.

Subclause 1 requires the Mental Health Tribunal, a Chief Psychiatrist, an independent expert and an approved medical practitioner to all be of the view that:

- The person for whom the authorisation has been sought has a mental illness that is amenable to the special psychiatric treatment that is proposed, and
- The special psychiatric treatment is a reasonable and appropriate treatment for the patient having regard to the patient's condition and treatment history and the risks and benefits of the special psychiatric treatment, and
- The treatment is necessary for the patient's health or safety or the safety of other persons.

The Mental Health Tribunal is also required to be satisfied that informed consent has been given for the treatment, if the treatment is psychosurgery or a treatment which the regulations specify requires informed consent.

## **Clause 126                      Procedural restriction on authorisation of special psychiatric treatment**

This clause requires the Mental Health Tribunal to consider whether or not to authorise special psychiatric treatment at a hearing held before at least three members, and on the unanimous vote of all members.

This is relevant given the terms of clause 171 and clause 1 of Part 5 of Schedule 4, which enable the Tribunal to determine a

matter by majority. The intention is to prevent the Tribunal from both considering the matter before less than three members, and from determining the matter by majority.

**Clause 127****Tribunal obligations regarding authorisations**

This clause provides for the matters that the Tribunal must ensure are specified in an authorisation issued under clause 125.

The clause also requires a copy of the authorisation to be given to the patient, and to the Chief Civil or Chief Forensic Psychiatrist (depending on the patient's status).

**Clause 128****Records, &c.**

This clause governs record keeping in relation to special psychiatric treatment.

**Part 7****Information**

This clause establishes to whom certain information must or may be given. The intention is to balance the need for decisions made by patients with the ability to decide to whom they wish information to be given, with the need to ensure that information may be given to persons other than the patient, in certain specified circumstances, without the patient's consent.

**Part 7****Information**

This Part governs matters relevant to information.

**Clause 129****Statements of rights on admission and discharge**

This clause requires a statement of rights to be given to every person who is:

- Admitted to an approved facility as a patient, and
- Discharged from an approved facility.

This is in addition to the requirement in various other provisions of the Act for statements of rights to be given.

The intention is to ensure that patients are informed of the rights that they have under the Act at each key transition point, as a means of ensuring that the person is equipped to exercise their rights in as full a manner as possible.

It is intended that the statement given to the person at this point would list the rights that the person has pursuant to the Act, along with any other rights that the person may have including the right to apply to the Mental Health Tribunal for a review of any Treatment Order to which the person may be subject, pursuant to clause 181.

**Clause 130****Notification of certain admissions, transfers and**

## **discharges**

This clause requires efforts to be made to provide notification of a patient or prospective patient's actual or impending admission to, discharge from or transfer between approved facilities or other places under this Act, to at least one of the following persons:

- A representative or support person of the patient; or
- Any other person that the controlling authority reasonably regards as having a proper interest in the patient's welfare – for example a family member or, if the patient is a child, the patient's parent.

The clause makes it clear that the notification may be given over any objection by the patient, but only if:

- An approved medical practitioner advises that the notification would be desirable having regard to the patient's health or safety or the safety of other persons, or
- The Tribunal directs the controlling authority to give the notification.

The intention is to ensure that at least one other person is aware of the patient or impending patient's location, and to enable this to occur in certain circumstances despite any objection raised by the patient.

## **Clause 131**

### **Notification of certain leave and unlawful absences**

This clause requires efforts to be made to provide notification of matters relevant to a patient's leave, to at least one of the following persons:

- A representative or support person of the patient; or
- Any other person that the controlling authority reasonably regards as having a proper interest in the patient's welfare.

Notification of a person's impending leave of absence may be given only where the patient raises no objection. Notification of other matters specified in the clause may however be given regardless of the patient's objection to this occurring.

The intention is to ensure that at least one other person is aware of the patient's location, in relation to impending leave of absence unless the patient objects to this occurring, and of other matters relevant to the patient's leave in the event that the patient has absconded or has contravened a condition of leave, and to enable notification of other matters relevant to the patient's leave to be given in certain circumstances despite any objection raised by the patient.

## **Clause 132**

### **Withholding, &c., of information by mental health authorities**

This clause enables certain information that, if disclosed or disclosed fully to the patient, could reasonably be expected to seriously harm the patient's health or safety, or seriously compromise the patient's care or treatment, or place the safety of other persons at risk, to be withheld or qualified, or for disclosure to be deferred, in certain circumstances.

The clause requires the withholding of information pursuant to this clause to be recorded, and for notice of the withholding, deferral or qualification to be given to the Tribunal and, if relevant, the Chief Civil or Chief Forensic Psychiatrist.

This is of relevance given:

- The ability for a Chief Psychiatrist to intervene in relation to the giving or withholding of patient information pursuant to clause 147, and
- The Mental Health Tribunal's ability to review withholding of information from a patient, pursuant to clause 189, and the requirement for this to occur if applied for by a person with the necessary standing.

- Clause 133**      **Publication of sensitive information about patients**
- This clause states that a person must not publish, for financial or other gain, certain sensitive information about and related to a person's forensic patient status, without the express authorisation of the Chief Forensic Psychiatrist and the express and free authorisation of the person who is or has been a secure mental health unit patient.
- Clause 134**      **Disclosure of confidential, &c., information about patients**
- This clause prevents the disclosure of certain information of a confidential or personal nature about a patient in circumstances other than those specified in the subclause.
- The intention is to balance the need for patient information to be maintained confidentially with the occasional need to disclose that information, if the need to do so outweighs the need for it to be kept confidential.
- Clause 135**      **Translation, interpreters, &c.**
- This clause imposes obligations on all persons exercising responsibilities under this Act to ensure that information that is given to patients, representatives and support persons is given in a language or form that the patient, support person or representative understands.
- Clause 136**      **Monthly reports on voluntary inpatients**
- This clause imposes obligations on the controlling authority of approved facilities to provide information about the accommodation and treatment of persons who have been voluntary inpatients of the relevant approved facility for more than four months since the date of the person's last admission, to the Mental Health Tribunal and the Chief Civil Psychiatrist.
- This is of relevance given:
- The Chief Civil Psychiatrist's ability to intervene in relation to matters involving the general assessment and treatment of patients generally, pursuant to clause 147, and
  - The requirement for the Mental Health Tribunal to review the status of long-term voluntary inpatients once the person has been such a patient for more than six months, pursuant to clause 184.
- Clause 137**      **Parents of child patients to be given same information**

### **as patients**

This clause requires information that is required to be given to a patient who is a child, to be given to a parent of the child at the same time, unless the child objects to this occurring.

This is of relevance given:

- The ability for a parent to provide informed consent to assessment and treatment for a child who lacks capacity to make their own decision in this regard, pursuant to clause 9, and
- The role that parents continue to have in relation to the general care and wellbeing of their children, regardless of how or by whom the child's treatment and care is authorised



## **Part 8**

### **Approved personnel and facilities**

This Part governs the approval of personnel and facilities.

#### **Clause 138**

##### **Medical practitioners and nurses**

This clause provides authority for the Chief Civil or Chief Forensic Psychiatrist to approve individuals or members of a class of persons as medical practitioners and nurses for provisions of this Act that fall within their respective jurisdiction, and for provisions of other Acts in relation to which they have responsibilities.

#### **Clause 139**

##### **Mental health officers**

This clause provides authority for the Chief Civil or Chief Forensic Psychiatrist to approve individuals or members of a class of persons as mental health officers for provisions of this Act that fall within their respective jurisdiction, and for provisions of other Acts in relation to which they have responsibilities.

The clause enables either Chief Psychiatrist to confer an approval on an individual or class of ambulance officer only with the consent of the Director of Ambulance under the *Ambulance Service Act 1982*; and on an individual or class of police officer only with the consent of the Commissioner of Police.

#### **Clause 140**

##### **Hospitals and other facilities**

This clause provides authority for the Minister for Health to approve premises as hospitals, assessment centres or secure mental health units for this Act if satisfied that the relevant premises are properly built, equipped and staffed to assess or treat:

- In the case of approved hospitals and approved assessment centres - involuntary patients with mental illness, and
- In the case of secure mental health units - forensic patients.

#### **Clause 141**

##### **Secure institutions**

This clause provides authority for the Minister for Health to approve an institution other than an approved facility as a secure institution for the purposes of this Act.

#### **Clause 142**

##### **Revocation of approvals for hospitals and other facilities**

This clause governs the revocation of approvals of premises as

hospitals, assessment centres and secure mental health units issued under clause 140.

## **Chapter 3                      Oversight and Review**

### **Part I                              Chief Psychiatrists**

This Part governs the appointment, powers and functions of the Chief Civil Psychiatrist and the Chief Forensic Psychiatrist.

#### **Clause 143                      Chief Civil Psychiatrist**

This clause provides authority for the Governor to appoint a psychiatrist with at least five years' experience in practicing psychiatry, as Chief Civil Psychiatrist.

The clause also clarifies the Chief Civil Psychiatrist's overall responsibilities.

Consideration will be given during the implementation period associated with the Act, to whether or not one person should be appointed to the role of Chief Civil Psychiatrist and Chief Forensic Psychiatrist. The intention is for the clause to enable one person to be appointed pursuant to both this clause and clause 144, should this be considered necessary or desirable in the circumstances.

#### **Clause 144                      Chief Forensic Psychiatrist**

This clause provides authority for the Governor to appoint a psychiatrist with at least five years' experience in practicing psychiatry, as Chief Forensic Psychiatrist.

The clause also clarifies the Chief Forensic Psychiatrist's overall responsibilities.

#### **Clause 145                      Term of office**

This clause governs the duration of an appointment made under clauses 143 or 144 and confirms that a Chief Psychiatrist may, if eligible, be reappointed.

#### **Clause 146                      Functions and powers**

This clause sets out the powers and functions of the Chief Civil and Chief Forensic Psychiatrists.

#### **Clause 147                      Power of direct intervention**

This clause provides each Chief Psychiatrist with authority to directly intervene with regard to a range of matters concerning patients within his or her jurisdiction, and provides for related matters.

**Clause 148****Independence**

This clause sets out the status that the Chief Civil Psychiatrist and the Chief Forensic Psychiatrist have when acting or forming any opinion in clinical matters.

In relation to these matters the clause confirms that each of the Chief Psychiatrists is independent, and is not subject to the direction of the Minister, the other Chief Psychiatrist, or any other person.

**Clause 149****Delegation**

This clause confirms the ability for each of the Chief Psychiatrists to delegate certain powers and functions.

The clause provides that a Chief Psychiatrist may only delegate restricted professional powers including the power to authorise the giving of urgent circumstances treatment or to authorise seclusion or restraint, to a medical practitioner.

**Clause 150****Reporting**

This clause requires each Chief Psychiatrist to provide the Minister for Health with an annual report and requires the Minister to lay the report before each House of Parliament.

**Clause 151****Clinical guidelines**

This clause provides each Chief Psychiatrist with the ability to issue clinical guidelines and clarifies the purpose of any guidelines that are issued pursuant to this clause.

In particular the clause makes it clear that a person exercising responsibilities under this Act in respect of a matter for which clinical guidelines have been issued is to comply with those guidelines; and that a failure by a person to comply with clinical guidelines constitutes grounds for instituting professional, or if relevant, occupational disciplinary action against that person, particularly if the failure to comply leads to unfavourable patient outcomes that might otherwise have been avoided or if there is a history of disregard.

**Clause 152****Standing orders**

This clause provides each Chief Psychiatrist with the ability to issue standing orders and clarifies the purpose of any orders that are issued pursuant to this clause.

In particular the clause makes it clear that a person exercising responsibilities under this Act in respect of a matter for which

standing orders have been issued must comply with those orders; and that a failure by a person to comply with standing orders constitutes grounds for instituting professional, or if relevant, occupational disciplinary action against that person.

<b>Clause 153</b>	<p><b>Matters common to clinical guidelines and standing orders</b></p> <p>This clause governs matters relevant to the development and content of clinical guidelines issued pursuant to clause 151 and standing orders issued pursuant to clause 152.</p> <p>In particular the clause makes it clear that clinical guidelines and standing orders may not contain provisions that are repugnant to the provisions of this or any other Act; and that in the event of any inconsistency with the provisions of any Act, the provisions of that Act prevail.</p>
<b>Part 2</b>	<p><b>Official Visitors</b></p> <p>This Part governs the appointment, powers and functions of the Principal Official Visitor, and of Official Visitors.</p> <p>The intention is for this Part of the Act to be administered by the Minister for Justice, at such time as the Part commences.</p>
<b>Clause 154</b>	<p><b>Interpretation of Part</b></p> <p>This clause clarifies how references to an Official Visitor in this Part are to be interpreted.</p>
<b>Clause 155</b>	<p><b>Appointment</b></p> <p>This clause provides authority for the Governor to appoint a Principal Official Visitor, on the recommendation of the Minister for Justice. The clause also provides authority for the Principal Official Visitor to appoint one or more Official Visitors.</p> <p>Subclause 2 lists a range of factors including holding an appointment (other than that of an Official Visitor) under this Act or having a financial interest in an approved facility that would preclude a person from being appointed to either of these offices. The intention is to ensure that only individuals who are free from any actual or potential conflict of interest, are appointed as the Principal Official Visitor or as an Official Visitor.</p>
<b>Clause 156</b>	<p><b>Functions of Principal Official Visitor</b></p> <p>This clause sets out the functions of the Principal Official Visitor.</p>
<b>Clause 157</b>	<p><b>Functions of Official Visitors</b></p> <p>This clause sets out the functions of Official Visitors.</p>
<b>Clause 158</b>	<p><b>Delegation</b></p> <p>This clause provides the Principal Official Visitor with the power</p>

to delegate any of his or her functions, other than the power of delegation, to an Official Visitor.

## **Clause 159 Powers of Official Visitors**

This clause sets out the powers of the Principal Official Visitor and Official Visitors, including any Official Visitor to whom Principal Official Visitor functions have been delegated pursuant to clause 158.

## **Clause 160 Visits**

This clause governs visits by Official Visitors to approved facilities and premises in or from which a patient is being provided with services under this Act, and provides for related matters.

Subclause 1 requires the Principal Official Visitor to arrange for each approved hospital, approved assessment centre and secure mental health unit to be visited by an Official Visitor on a monthly basis.

Subclause 2 requires the Principal Official Visitor to arrange for premises other than approved hospitals, approved assessment centres or secure mental health units, to be visited on request. This power has been included given the ability for a Treatment Order to:

- Specify that the treatment setting under the Order is to be in accordance with the treatment plan, which may, for example, specify a community health centre as the place at which the patient is to receive the treatment authorised by the Order, and
- Specify or provide for any matters incidental to the person's treatment, which may, for example, require the person to reside at a particular place of supported accommodation for a given period of time.

The inclusion of such a requirement in an Order is a restriction on a person's rights and the intention is to ensure that there is oversight of such restrictions.

## **Clause 161 Complaints**

This clause regulates the making of complaints to Official Visitors.

## **Clause 162 Independence**

This clause sets out the status that Official Visitors have when performing functions, exercising powers and forming opinions.



**Clause 163****Obligation of officials to assist Official Visitors, &c.**

This clause obliges persons exercising responsibilities under this Act to assist patients to see or complain to an Official Visitor.

In particular, subclause 3 requires a person discharging responsibilities under this Act who knows that a patient has expressed a wish to see or complain to an Official Visitor, to do the things referred to in the subclause, to the maximum extent of the person's lawful and physical capacity to do so, and consistent with the patient's wishes.

In particular the clause confirms the ability for a patient to ask that an Official Visitor not be granted access to records relating to the patient's assessment, treatment and care. The intention is to balance the need for Official Visitors to have access to information to enable them to perform their functions appropriately with the patient's right to have control over when and to whom sensitive information concerning their assessment, treatment and care, is provided.

**Clause 164****Identification**

This clause provides for identity cards to be issued to the Principal Official Visitor, and to Official Visitors and regulates their use and retrieval.

**Clause 165****Operational and monthly reporting, &c.**

This clause requires the Principal Official Visitor to:

- Report certain known or suspected contraventions of the Act to the Health Complaints Commissioner or Ombudsman, and
- Provide the Minister for Health with a quarterly report on Official Visitor activities, and
- Provide the Minister for Health with additional reports on specified matters at the Minister's request.

The clause also enables the Principal Official Visitor to give the Minister for Health or a Chief Psychiatrist a private report on any matter relating to Official Visitor responsibilities or activities.

**Clause 166****Annual report**

This clause requires the Principal Official Visitor to provide the Minister for Health with an annual report and requires the Minister to lay the report before each House of Parliament.

## **Part 3**

### **Mental Health Tribunal**

This clause governs the establishment, powers and functions of the Mental Health Tribunal.

The intention is for this Part of the Act to be administered by the Minister for Justice, at such time as the Part commences.

#### **Clause 167**

##### **Establishment**

This clause provides for the establishment of the Mental Health Tribunal.

The clause requires the Tribunal to consist of:

- At least one person who is an Australian lawyer with at least five years' experience as an Australian lawyer, and
- At least one person who is a psychiatrist as defined in clause 3, and
- At least four other members.

The clause provides for each member to be appointed by the Governor and enables the Governor to appoint one of the Australian lawyer members as President of the Tribunal, and one of the other members as Deputy President of the Tribunal.

The clause provides for the Tribunal to regulate its own proceedings.

#### **Clause 168**

##### **Functions**

This clause sets out the Mental Health Tribunal's functions, including to make, vary, renew and discharge Treatment Orders and the power to authorise special psychiatric treatment.

#### **Clause 169**

##### **Powers**

This clause determines the Mental Health Tribunal's powers, including the power to:

- Issue guidelines, and
- Require reports, and
- Approve forms.

#### **Clause 170**

##### **Divisions**

This clause enables the Tribunal to sit in divisions and imposes certain requirements in relation to how divisions are to be constituted.

In particular, the clause provides that:

- A division consists of either one member, or three or more members, chosen by the President, and
- The President may either constitute or be a member of, a division, and
- The President is to ensure that a division of three or more members has at least one member who is an Australian lawyer, and one member who is a psychiatrist.

<b>Clause 171</b>	<p><b>Acting by majority</b></p> <p>This clause provides for the Tribunal, when constituted of three or more members, to act by majority.</p>
<b>Clause 172</b>	<p><b>Interim determinations on adjournment</b></p> <p>This clause provides for the Tribunal to adjourn proceedings, and to make interim determinations on adjournment, in certain circumstances.</p>
<b>Clause 173</b>	<p><b>Questions of law</b></p> <p>This clause enables the Tribunal to refer any question of law that may arise in a hearing or determination of proceedings to the Supreme Court in the form of a special case for determination.</p>
<b>Clause 174</b>	<p><b>Appeal from determinations</b></p> <p>This clause governs appeals from Tribunal determinations.</p>
<b>Clause 175</b>	<p><b>Appeals procedure</b></p> <p>This clause regulates matters regarding appeals made pursuant to clause 174.</p>
<b>Clause 176</b>	<p><b>Registrar and staff</b></p> <p>This clause provides for the appointment of a State Servant employed in the Department of Justice as Registrar of the Tribunal, and for arrangements to be made for the services of other State Servants employed in the Department of Justice to be made available to the Tribunal so that it may perform its powers and functions.</p>
<b>Clause 177</b>	<p><b>Register</b></p> <p>This clause requires the Registrar to keep a register of applications made to the Tribunal, and Tribunal determinations.</p>
<b>Clause 178</b>	<p><b>Annual report</b></p> <p>This clause requires the Mental Health Tribunal to provide the Minister for Justice with an annual report and requires the Minister to lay the report before each House of Parliament.</p>
<b>Clause 179</b>	<p><b>The Tribunal's review function</b></p> <p>This clause sets out the Tribunal's review functions under this Act. The clause also refers to the Tribunal's review functions:</p> <ul style="list-style-type: none"> <li>• In relation to admissions of prisoners to secure mental</li> </ul>

health units as provided for by section 36B of the *Corrections Act 1997*, and

- In relation to admissions of youth detainees to secure mental health units as provided for by section 134B of the *Youth Justice Act 1997*, and
- In relation to restriction orders or supervision orders made under the *Criminal Justice (Mental Impairment) Act 1999*, as provided by section 37 of that Act.

<b>Clause 180</b>	<p><b>Review of assessment order</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of the making of an Assessment Order.</p>
<b>Clause 181</b>	<p><b>Review of treatment order</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of a Treatment Order.</p>
<b>Clause 182</b>	<p><b>Review of involuntary admission to SMHU</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of the admission (or any extension of the admission) of an involuntary patient to a secure mental health unit pursuant to clauses 63 and 64 of this Act.</p>
<b>Clause 183</b>	<p><b>Review of refusal to return forensic patient to external custodian</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of a refusal by the Chief Forensic Psychiatrist under clause 70 of this Act to return prisoners and youth detainees whose removal to a secure mental health unit was on request, to prison or youth detention.</p>
<b>Clause 184</b>	<p><b>Review of status of voluntary inpatient</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of the status of a voluntary inpatient.</p>
<b>Clause 185</b>	<p><b>Review of admission to SMHU of prisoner or youth detainee</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of the admission of a prisoner or youth detainee to a secure mental health unit pursuant to the provisions of the <i>Corrections Act 1997</i> and <i>Youth Justice Act 1997</i> respectively.</p>
<b>Clause 186</b>	<p><b>Review of urgent circumstances treatment</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of urgent circumstances treatment authorised pursuant to clauses 55 or 87 of this Act.</p>
<b>Clause 187</b>	<p><b>Review of seclusion and restraint</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of seclusion authorised by clauses 56 or 94 of this Act, and restraint authorised by clauses 57 or 95 of this Act.</p>

<b>Clause 188</b>	<p><b>Review of force</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of the application of force to a forensic patient pursuant to clause 93 of this Act.</p>
<b>Clause 189</b>	<p><b>Review of withholding of information from patient</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of the withholding by a person of information from a patient pursuant to clause 132 of this Act.</p>
<b>Clause 190</b>	<p><b>Review of involuntary patient or forensic patient transfer within Tasmania</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of the transfer within Tasmania of an involuntary patient pursuant to clause 59 of this Act, or of a forensic patient pursuant to clauses 72 or 73 of this Act.</p>
<b>Clause 191</b>	<p><b>Review of determination relating to leave of absence</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of the grant, refusal or variation of a leave of absence to an involuntary patient pursuant to clause 60 of this Act, or to a forensic patient who is not subject to a restriction order pursuant to clauses 82 or 83 of this Act.</p>
<b>Clause 192</b>	<p><b>Review of exercise of visiting, telephone or correspondence right</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of a decision concerning a forensic patient's visiting, telephone or correspondence rights pursuant to Divisions 4 and 5 of Part 5 of Chapter 2 of this Act.</p>
<b>Clause 193</b>	<p><b>Other reviews</b></p> <p>This clause governs the review, by the Mental Health Tribunal, of any decision or matter for which express provision is not otherwise made in Division 2 of Part 3 of Chapter 3 of this Act.</p>
<b>Clause 194</b>	<p><b>General powers, &amp;c., on review</b></p> <p>This clause regulates matters relevant to the conduct of any review, by the Mental Health Tribunal.</p>
<b>Clause 195</b>	<p><b>Form of applications for review, &amp;c.</b></p> <p>This clause governs application made to the Mental Health</p>

Tribunal.



<b>Clause 196</b>	<b>Refusal of review</b>  This clause enables the Tribunal to refuse to review matters in certain circumstances.
<b>Clause 197</b>	<b>On-paper reviews by Registrar</b>  This clause enables the President of the Mental Health Tribunal to authorise the Registrar of the Tribunal to review any matter or class of matter, other than a 30 or 90 day review of a Treatment Order, in certain circumstances.
<b>Clause 198</b>	<b>Preliminary evaluation</b>  This clause enables the President of the Mental Health Tribunal to direct the Registrar of the Tribunal or any Mental Health Tribunal staff member to do a preliminary evaluation of any application and perform related functions, and governs the performance of such evaluations.
<b>Clause 199</b>	<b>Evidence of Tribunal determination</b>  This clause sets out matters relevant to a determination of the Tribunal.
<b>Chapter 4</b>	<b>Intergovernmental agreements</b>  This Chapter governs intergovernmental agreements.
<b>Part 1</b>	<b>Preliminary</b>  This Part provides for preliminary matters relevant to intergovernmental agreements.
<b>Clause 200</b>	<b>Interpretation of Chapter</b>  This clause defines terms used Chapter 4 of this Act.
<b>Clause 201</b>	<b>Power of Minister to enter into interstate agreements</b>  This clause provides authority for the Minister for Health to enter into interstate transfer agreements and interstate control agreements, on behalf of Tasmania.
<b>Part 2</b>	<b>Interstate transfer agreements</b>  This Part governs interstate transfer agreements.
<b>Clause 202</b>	<b>Nature of interstate transfer agreements</b>  This clause sets out what an interstate transfer agreement is.

<b>Clause 203</b>	<p><b>Operation of interstate transfer agreements</b></p> <p>This clause governs how interstate transfer agreements made pursuant to this Chapter are to operate.</p>
<b>Clause 204</b>	<p><b>Effect of certain transfers</b></p> <p>This clause determines the effect of certain transfers made pursuant to an interstate transfer agreement.</p>
<b>Part 3</b>	<p><b>Interstate control agreements</b></p> <p>This Part governs interstate control agreements.</p>
<b>Clause 205</b>	<p><b>Nature of interstate control agreements</b></p> <p>This clause sets out what an interstate control agreement is.</p>
<b>Clause 206</b>	<p><b>Power of Tasmanian officials to act under corresponding law</b></p> <p>This clause provides authority for certain Tasmanian officials, to discharge responsibilities conferred on the official under a law of another State providing for the treatment and care of persons with a mental illness.</p>
<b>Clause 207</b>	<p><b>Power of interstate officials to act in Tasmania</b></p> <p>This clause provides authority for certain interstate officials to discharge responsibilities conferred on the official under a law of another State providing for the treatment and care of persons with a mental illness, in Tasmania.</p>
<b>Clause 208</b>	<p><b>Apprehension, &amp;c., of involuntary patients, &amp;c., from interstate</b></p> <p>This clause governs the apprehension of certain persons including persons who have absconded from a mental health facility in another State, and who are found at large in Tasmania.</p>
<b>Clause 209</b>	<p><b>Apprehension, &amp;c., of involuntary patients, &amp;c., found interstate</b></p> <p>This clause governs the apprehension of certain patients including involuntary patients or forensic patients who have absconded from an approved hospital or secure mental health unit, and who are found at large in a State with which Tasmania has an agreement under Chapter 4 of this Act.</p>
<b>Clause 210</b>	<p><b>Apprehension of persons under supervision orders found</b></p>

**interstate**

This clause governs the apprehension of a person in breach of a supervision order who is found at large in a State with which Tasmania has an agreement under Chapter 4 of this Act.

## **Chapter 5**

## **Miscellaneous**

### **Part I**

### **General**

This Part governs general miscellaneous matters.

### **Clause 211**

### **Remote medical procedures**

This clause governs the performance of medical procedures for the purposes of this Act.

### **Clause 212**

### **Special powers of ambulance officer acting as MHO**

This clause provides ambulance officers who are approved as mental health officers for the purposes of this Act pursuant to clause 139, with the authority to sedate a patient who is being transported by ambulance under this Act, in certain circumstances.

The clause requires an ambulance officer who exercises the power of sedation under this clause to provide the Chief Civil Psychiatrist with a report of the matter.

This is of relevance given the Chief Civil Psychiatrist's role in ensuring that the Objects of the Act contained in clause 12, which require assessment, treatment and care to be provided in the least restrictive setting consistent with clinical need, legal and judicial constraints, public safety and public health, safety and welfare, and the mental health service delivery principles referred to in clause 15 and outlined in Schedule 1, which require all persons exercising responsibilities under the Act to respect, observe and promote the inherent rights, liberty, dignity, autonomy and self-respect of persons with mental illness, are upheld in relation to involuntary patients generally.

The intention is to provide a mechanism for ambulance officers who have been approved by the Chief Civil Psychiatrist as mental health officers for this Act, to lawfully sedate patients being transported pursuant to the Act, where this is reasonably considered to be necessary or prudent having regard to field protocols approved by the Director of Ambulance, pursuant to the *Poisons Act 1971*.

Ambulance officers currently sedate patients being transported where this is considered necessary in all the circumstances to ensure the patient's safety and that of other persons including other road users and ambulance service staff, pursuant to the common law. The intention is to ensure that this practice is made transparent, is regulated, and is appropriately oversights, in relation to the transport of persons with a mental illness,

pursuant to the Act.

## **Part 2**

### **Offences**

This Part provides for a number of offences.

#### **Clause 213**

##### **Unlawful treatment**

This clause makes it an offence for a person to give a patient treatment without informed consent or, in the absence of informed consent, authorisation under this Act.

#### **Clause 214**

##### **Obstruction of persons discharging responsibilities under Act, &c.**

This clause makes it an offence for a person to hinder or obstruct certain persons in the discharge of any responsibilities under this Act.

#### **Clause 215**

##### **Contravention of Tribunal determinations**

This clause makes it an offence for a person to contravene a determination or direction of the Tribunal.

#### **Clause 216**

##### **False or misleading statements**

This clause makes it an offence for a person to give a false or misleading statement.

## **Part 3**

### **Legal and administrative**

This Part governs certain legal and administrative matters.

#### **Clause 217**

##### **Immunities**

This clause provides certain persons with immunity from liability in certain circumstances.

#### **Clause 218**

##### **Delegation**

This clause provides the Minister with authority to delegate certain responsibilities under this Act.

#### **Clause 219**

##### **Delegation by controlling authority**

This clause provides the controlling authority of an approved facility with authority to delegate any of his or her responsibilities under this Act, other than the power of delegation.

#### **Clause 220**

##### **Conflicts of interest**

This clause governs conflicts of interest, and prevents a person who has a clear conflict of interest as provided for in the clause,

from discharging a responsibility in respect of a patient under this Act.

<b>Clause 221</b>	<p><b>Defects in appointments, &amp;c.</b></p> <p>This clause regulates appointments, approvals, authorisations or delegations which have a defect or irregularity of form or process.</p>
<b>Clause 222</b>	<p><b>Errors affecting orders</b></p> <p>This clause regulates errors affecting Orders made under this Act.</p>
<b>Clause 223</b>	<p><b>Status of notices</b></p> <p>This clause governs the status of notices under this Act.</p>
<b>Clause 224</b>	<p><b>Service of documents</b></p> <p>This clause governs notices or other documents served under this Act.</p>
<b>Clause 225</b>	<p><b>Regulations</b></p> <p>This clause provides the Governor with the authority to make regulations for the purposes of this Act.</p>
<b>Clause 226</b>	<p><b>Amendment of Schedule I</b></p> <p>This clause provides the Governor with the authority to amend Schedule I of this Act at any time, by order, and requires any order issued by the Governor pursuant to this clause:</p> <ul style="list-style-type: none"> <li>• Not to be treated as an instrument of a legislative character for the purposes of the <i>Subordinate Legislation Act 1992</i>, but</li> <li>• To be treated as if it were a regulation for the purposes of sections 47(3), (3A), (4), (5), (6) and (7) of the <i>Acts Interpretation Act 1931</i>.</li> </ul> <p>The intention is to ensure that Schedule I, which contains the mental health service delivery principles, may be amended over time to ensure that the Act's principles remain contemporary without the need to engage in a complex and time consuming legislative amendment process.</p>
<b>Clause 227</b>	<p><b>Administration of Act</b></p> <p>This clause governs the administration of the Act.</p> <p>The clause provides that the administration of the Act is assigned to the Minister for Health until such time as an order is made in relation to the Act, under section 4 of the <i>Administrative</i></p>



*Arrangements Act 1990.*

The intention into the future is for those Parts of the Act which are concerned with Official Visitors and the Mental Health Tribunal to be administered by the Minister for Justice, with the remaining Parts being administered by the Minister for Health.

<b>Clause 228</b>	<p><b>Legislation repealed</b></p> <p>This clause provides that the legislation specified in Schedule 6 is repealed by this Act.</p>
<b>Clause 229</b>	<p><b>Legislation rescinded</b></p> <p>This clause provides that the legislation specified in Schedule 7 is rescinded by this Act.</p>
<b>Schedule 1</b>	<p><b>Mental Health Service Delivery Principles</b></p> <p>Clause 13, clause 15 and this Schedule jointly provide guidance about how the Act's provisions should be read and interpreted.</p> <p>This Schedule identifies the mental health service delivery principles established by clause 15 of this Act.</p>
<b>Schedule 2</b>	<p><b>Custody and escort provisions</b></p> <p>This clause sets out how custody and escort functions provided for or referred to in this Act, are to be performed.</p>
<b>Part 1</b>	<b>Preliminary</b>
<b>Clause 1</b>	<p><b>Interpretation</b></p> <p>This clause defines terms used in Schedule 2 of this Act.</p> <p>In particular, the clause sets out what the terms frisk search and ordinary search mean, for the purposes of the Schedule.</p>
<b>Part 2</b>	<b>Powers and duties</b>
<b>Clause 1</b>	<p><b>General powers, &amp;c., of custodians and escorts</b></p> <p>This clause sets out the general powers and responsibilities that custodians and escorts have, when performing custodian and escort functions under this Act, including:</p> <ul style="list-style-type: none"> <li>• The ability to use reasonable force against a patient if the patient resists being taken into protective custody or under escort, and</li> <li>• The ability to use reasonable force against a person who tries to prevent the patient from being taken into protective custody or under escort, and</li> <li>• The ability to enter premises without a warrant if a custodian or escort reasonably believes that a patient may be found on those premises, and</li> <li>• The ability to transfer physical control of the patient to</li> </ul>

another custodian or escort or to another police officer, mental health officer or authorised person.

<b>Clause 2</b>	<p><b>Search powers of custodians and escorts</b></p> <p>This clause governs the performance of frisk searches and ordinary searches, as defined in clause 1 of Part 1 of Schedule 2, by custodians and escorts.</p>
<b>Clause 3</b>	<p><b>Proof of identity</b></p> <p>This clause governs requirements around proof of identity for a person purporting to exercise, discharge or perform a responsibility as a custodian or escort.</p>
<b>Clause 4</b>	<p><b>Schedule does not limit certain powers</b></p> <p>This clause makes it clear that the powers noted in this Schedule are not intended to limit any powers of arrest, search and seizure that a person has under Tasmanian law.</p>
<b>Part 3</b>	<b>Policy</b>
<b>Schedule 1</b>	<p><b>Custody and escort policy</b></p> <p>This clause sets how custody and escort functions should be performed.</p> <p>In particular, the clause provides that, as far as practicable:</p> <ul style="list-style-type: none"> <li>• The use of non-police custodians, escorts and assistants is to be preferred – this is to ensure a ‘health first’ response, and</li> <li>• Patients should be transported with the least delay and discomfort as circumstances reasonably allow. This includes in relation to a person who is in protective custody and who is being escorted to an assessment centre.</li> </ul>
<b>Schedule 3</b>	<p><b>Membership of Tribunal</b></p> <p>This clause has effect in respect of the membership of the Mental Health Tribunal.</p>
<b>Clause 1</b>	<p><b>Term of office</b></p> <p>This clause governs matters relevant to the terms of office of the President of the Tribunal, the Deputy President of the Tribunal and of other Tribunal members.</p>
<b>Clause 2</b>	<p><b>Extension of term of office</b></p> <p>This clause enables a Tribunal member’s term of appointment to</p>

be taken to continue, in certain circumstances.

<b>Clause 3</b>	<b>Holding other office</b>  This clause governs the holding, by a Tribunal member, of certain other offices.
<b>Clause 4</b>	<b>State Service Act</b>  This clause sets out how the <i>State Service Act 2000</i> applies to a Tribunal member.
<b>Clause 5</b>	<b>Remuneration and conditions of appointment</b>  This clause governs the remuneration of Tribunal members, and the conditions on which a member holds office.
<b>Clause 6</b>	<b>Filling of vacancies</b>  This enables the Governor to appoint a person to the office of a member that has become vacant, for the remainder of the member's term of office.
<b>Clause 7</b>	<b>Vacation of office</b>  This clause sets out when a member vacates office, and when the Governor may remove a member from office.
<b>Clause 8</b>	<b>Validity of proceedings, &amp;c.</b>  This clause governs matters relevant to the validity of proceedings.
<b>Clause 9</b>	<b>Deputy President</b>  This clause sets out the circumstances in which the Deputy President of the Tribunal may exercise and perform the powers of the President of the Tribunal.
<b>Clause 10</b>	<b>Delegation of President</b>  This clause provides the President of the Mental Health Tribunal with authority to delegate certain of his or her responsibilities under this Act, to the Deputy President of the Mental Health Tribunal.
<b>Clause 11</b>	<b>Expert assistance</b>  This clause governs the authorisation, by the Tribunal, of persons with special expertise, to assist the Tribunal in relation to certain matters.
<b>Schedule 4</b>	<b>Proceedings of Tribunal</b>

<b>Part 1</b>	<b>Interpretation</b>
<b>Clause 1</b>	<p><b>Interpretation</b></p> <p>This clause defines terms used in Schedule 4 of this Act.</p> <p>In particular, the clause defines a party, to any proceedings, as including any person intervening in those proceedings.</p>
<b>Part 2</b>	<b>General Procedures</b>
<b>Clause 1</b>	<p><b>Sittings</b></p> <p>This clause governs when and where the Tribunal is to sit.</p>
<b>Clause 2</b>	<p><b>Persons with standing</b></p> <p>This clause sets out who has standing to institute or intervene in proceedings.</p>
<b>Clause 3</b>	<p><b>Persons who may intervene</b></p> <p>This clause sets out who has standing to intervene in proceedings.</p>
<b>Clause 4</b>	<p><b>Notice</b></p> <p>This clause requires the Tribunal to ensure that a party to any proceedings is given reasonable notice of each hearing held in the course of those proceedings, and enables the Tribunal to notify other persons of the hearing, as it thinks fit in the circumstances.</p>
<b>Clause 5</b>	<p><b>General principles</b></p> <p>This clause governs how the Tribunal is to conduct its proceedings.</p> <p>In particular, the clause requires the Tribunal to observe the rules of procedural fairness, which requires the Tribunal to, amongst other things, provide patients with an opportunity to be heard when making decisions which affect that patient's rights or interests.</p>
<b>Clause 6</b>	<p><b>Evidence</b></p> <p>This clause governs how evidence may be given to and before the Tribunal, and provides for related matters.</p>
<b>Clause 7</b>	<p><b>Representation</b></p> <p>This clause governs matters concerning attendance by a party to</p>

proceedings at hearings held in those proceedings, and the representation of a party to proceedings.

In particular the clause requires the Tribunal to make arrangements for the representation of a patient in certain circumstances.



<b>Clause 8</b>	<b>Appearance</b> This clause governs a patient's attendance at any proceedings.
<b>Clause 9</b>	<b>Privacy</b> This clause sets out matters concerning the privacy of Tribunal hearings and regulates how a Tribunal determination that proceedings should be open to the public may be challenged.
<b>Clause 10</b>	<b>Record of proceedings</b> This clause requires the Tribunal to make and keep a record of each of its proceedings.
<b>Clause 11</b>	<b>Publication of proceedings</b> This clause enables the Tribunal to publish a de-identified record of any of its proceedings, in certain circumstances.
<b>Part 3</b>	<b>Facilitation of proceedings</b>
<b>Clause 1</b>	<b>Practice directions</b> This clause enables the President of the Mental Health Tribunal to issue, vary, revoke and/or publish, practice directions.
<b>Part 4</b>	<b>Powers</b>
<b>Clause 1</b>	<b>General powers</b> This clause sets out the Mental Health Tribunal's general powers in relation to proceedings, including the ability for the Tribunal to issue a summons, and to adjourn proceedings.
<b>Clause 2</b>	<b>Medical assessment</b> This clause authorises the Tribunal to require a patient in any proceedings to have a medical examination in certain circumstances.
<b>Clause 3</b>	<b>Reports</b> This clause enables the Tribunal to require a Chief Psychiatrist or controlling authority of an approved facility to provide it with certain information.
<b>Clause 4</b>	<b>Visits</b> This clause enables the Tribunal or any member of the Tribunal to visit and interview any patient in private, in respect of whom

an application has been made to the Tribunal.

<b>Clause 5</b>	<p><b>Contempt of Tribunal</b></p> <p>This clause governs when a person is in contempt of the Tribunal and the actions that may be taken if and when a person is in contempt.</p>
<b>Part 5</b>	<b>Votes and decisions</b>
<b>Clause 1</b>	<p><b>Voting</b></p> <p>This clause determines how questions arising for determination by the Tribunal are to be determined and confirms that this may be by a majority of votes of the members present and voting.</p>
<b>Clause 2</b>	<p><b>Announcement of decision</b></p> <p>This clause provides authority for the Tribunal to announce its determinations and regulates how an announcement may be made.</p>
<b>Part 6</b>	<b>Miscellaneous</b>
<b>Clause 1</b>	<p><b>Statements of reasons</b></p> <p>This clause enables a party to any proceedings to apply to the Tribunal for a written statement of reasons and requires the Tribunal to comply with the request, and regulates the timeframes within which a request must be made, and the statement provided.</p>
<b>Schedule 5</b>	<b>Official Visitors</b>
<b>Clause 1</b>	<p><b>Term of office</b></p> <p>This clause governs matters relevant to the terms of office of the Principal Official Visitor, and Official Visitors.</p>
<b>Clause 2</b>	<p><b>Holding other office</b></p> <p>This clause governs the holding, by the Principal Official Visitor or an Official Visitor, of certain other offices.</p>
<b>Clause 3</b>	<p><b>State Service Act</b></p> <p>This clause sets out how the State Service Act applies to the office of Principal Official Visitor and to Official Visitors.</p>
<b>Clause 4</b>	<p><b>Remuneration and conditions of appointment</b></p> <p>This clause governs the remuneration of the Principal Official Visitor and of Official Visitors, and determines the conditions on</p>

which the Principal Official Visitor and Official Visitors may hold office.

**Clause 5**

**Vacation of office of Principal Official Visitor, &c.**

This clause sets out when the Principal Official Visitor vacates office, and regulates when the Governor may remove a person from the office of Principal Official Visitor.

**Clause 6**

**Vacation of office of Official Visitor, &c.**

This clause sets out when an Official Visitor vacates office, and regulates when the Principal Official Visitor may remove a person from the office of Official Visitor.

**Schedule 6**

**Legislation repealed**

This Schedule identifies legislation revoked by clause 228 of this Act.

**Schedule 7**

**Legislation rescinded**

This Schedule identifies the legislation revoked by clause 299 of this Act.