

## CLAUSE NOTES

### *Mental Health Amendment Bill 2016*

- Clause 1**            **Short Title**  
This clause provides for the Act's citation.
- Clause 2**            **Commencement**  
This clause provides for the Act's commencement.
- Clause 3**            **Principal Act**  
This clause identifies the *Mental Health Act 2013* as the Principal Act to which the Bill relates.
- Clause 4**            **Long title amended**  
This clause amends the Principal Act's long title to remove references to "care".  
  
The amendment complements proposed amendments to sections 12 and 13 of the Principal Act at clauses 8 and 9.
- Clause 5**            **Section 3 amended (Interpretation)**  
This clause amends section 3 of the Principal Act to modify the way in which certain terms used in the Principal Act are to be interpreted and applied.  
The clause:
- Amends the definition of "Director" to confirm that for the purposes of the Principal Act, the Director is the Director of Corrective Services appointed under the *Corrective Services Act 1997*
  - Omits the definition of "give". This complements the proposed insertion of a new section 226 at clause 68
  - Amends the definition of "representative" to refer to the patient's Australian lawyer. The term "Australian lawyer" is defined in the *Acts Interpretation Act 1931* and the proposed amendment is intended to ensure consistency with that Act, and with the *Legal Profession Act 2007*.
- Clause 6**            **Section 6 amended (Meaning of treatment)**  
This clause amends section 6 of the Principal Act to confirm that for the purposes of the Principal Act, the term "treatment" does not include seclusion, chemical restraint, mechanical restraint and physical restraint.

**Clause 7**                   Section 11 amended (Timing of actions)

This clause amends section 11 of the Principal Act to confirm the need for relevant actions to be taken as soon as practicable, unless the contrary intention appears.

**Clause 8**                   Section 12 amended (Objects of Act)

This clause amends section 12 of the Principal Act to remove references to “care”.

The amendments complement proposed amendments to the Principal Act’s long title, and to section 13 of the Principal Act at clauses 4 and 9.

**Clause 9**                   Section 13 amended (Status of Act)

This clause amends section 13 of the Principal Act to remove references to “care”.

The amendment complements proposed amendments to the Principal Act’s long title, and to section 12 of the Principal Act at clauses 4 and 8.

The intention of the amendments is to:

- Clarify the Principal Act’s status in relation to other sources of authority for the care of persons with a mental illness which exist in Tasmania, including the *Guardianship and Administration Act 1995*
- Confirm that where there is a choice between using the provisions of the Principal Act, or the provisions of another Act, to provide for a person’s care, the provisions of the other Act are to be used to the extent that the provisions of the other Act provide the necessary authority.

For the purposes of this document, the term “care” is intended to refer to matters relating to a person’s longer term accommodation needs, general health care or dental care, or decisions about a person’s estate.

**Clause 10**                  Section 16 amended (Circumstances in which treatment may be given)

This clause amends section 16 of the Principal Act to remove those parts of the section which purport to prohibit the giving of treatment to a voluntary patient, involuntary patient or forensic patient.

The Principal Act operates alongside other laws which provide authority for the provision of treatment to people with a mental illness, including the common law.

The intention is to remove those parts of section 16 which may be read as limiting or affecting the operation of other laws, including the common law.

**Clause 11**                  Section 23 amended (Application for assessment order)

This clause amends section 23 of the Principal Act to remove the requirement for an application for an assessment order to be in a Chief Civil Psychiatrist approved form.

The intention is to remove unnecessary limitations which currently exist with respect to the making of an application and to provide applicants with flexibility around the making of an application.

The amendment complements proposed amendments to section 24 of the Principal Act at clause 12 to remove the requirement for a medical practitioner making an assessment order to be satisfied that an application is in the correct form.

## **Clause 12**

### **Section 24 amended (Making an assessment order)**

This clause amends section 24 of the Principal Act to:

- Remove the requirement for a medical practitioner making an assessment order to be in receipt of an application for the order. The intention is to enable a medical practitioner to make an assessment order whether or not the practitioner is in receipt of an application for the order
- Remove the requirement for a medical practitioner to be satisfied that the applicant for an assessment order is entitled to make the application, and that the application is in the correct form. This is consistent with other proposed amendments to section 24 to remove the requirement for a medical practitioner to be in receipt of an application for the order
- Remove the requirement for a medical practitioner making an assessment order to have examined the patient in the 72-hour period immediately before or after receiving the application and insert a requirement for the medical practitioner to have examined the person in the 24-hour period immediately before the assessment order is made. The intention is to ensure that the medical practitioner's examination occurs proximate to the making of the assessment order
- Confirm the medical practitioner's ability to make an assessment order authorising a patient's admission to, and if necessary, detention in an approved hospital
- Confirm the medical practitioner's ability to make an assessment order without having received an application for the order
- Ensure consistency of language with other sections of the Principal Act.

## **Clause 13**

### **Section 26 amended (Form and content of assessment order)**

This clause makes a number of amendments to section 26 of the Principal Act.

This includes amendments to:

- Remove the requirement for an assessment order to identify the person who applied for it. This complements proposed amendments to section 24 of the Principal Act at clause 12 to

remove the requirement for a medical practitioner making an assessment order to be in receipt of an application for the order

- Remove the requirement for an assessment order to affirm that (and state how) the patient meets the assessment criteria and insert a requirement that an assessment order affirms that the patient needs to be assessed against the assessment criteria. This is to ensure consistency with section 24 of the Principal Act, which enables a medical practitioner to make an assessment order if he or she is satisfied from an examination of the patient that the person needs to be assessed against the assessment criteria.

The clause further amends section 26 of the Principal Act to:

- Remove the requirement for an assessment order to recommend an assessment setting and insert a requirement that an assessment order specifies an assessment setting
- Remove subsection 3, which enables an assessment order to include a requirement that a patient be detained in an approved hospital, and insert a requirement for an assessment order to specify if the order authorises the patient's admission to, and detention in, an approved hospital.

The amendments complement proposed amendments to sections 27 and 31 of the Principal Act at clauses 14 and 15.

## **Clause 14**

### **Section 27 amended (Effect of assessment order)**

This clause makes a number of amendments to section 27 of the Principal Act to:

- Ensure consistency of language with other sections of the Principal Act
- Provide a single source of authority for the actions that may be taken in respect of a person who is subject to an assessment order, including the patient's escort by Mental Health Officer or police officer in relevant circumstances.

The amendments achieve this by extending section 27 of the Principal Act to incorporate matters that are currently provided for in existing section 31 of the Principal Act, and restructuring that section to aid readability.

The amendments complement the proposed repeal of section 31 of the Principal Act at clause 15.

## **Clause 15**

### **Section 31 repealed**

This clause repeals section 31 of the Principal Act.

The amendment complements proposed amendments to section 27 of the Principal Act at clause 14.

## **Clause 16**

### **Section 35 amended (Discharge of assessment order by medical practitioner or Tribunal)**

This clause amends section 35 of the Principal Act to limit the circumstances in which a medical practitioner may discharge an assessment order.

Currently, section 35 enables a medical practitioner to discharge an assessment order at any time for sufficient cause, provided the practitioner is satisfied that the patient does not meet the assessment criteria.

The section does not identify how the medical practitioner should satisfy him or herself of these matters.

The amendments are intended to enable a medical practitioner to discharge an assessment order only if the practitioner:

- Has examined the patient and is satisfied from that examination that the patient does not meet the assessment criteria, or
- Has not examined the patient but is satisfied, on other reasonable grounds that the patient does not meet the assessment criteria.

The term “other reasonable grounds” is not defined. The intention is to capture grounds which are reasonable in the circumstances. This might include information about the patient’s state of mental health provided by another medical practitioner, or member of nursing staff.

## **Clause 17**

### **Section 37 amended (Application for treatment order)**

This clause amends section 37 of the Principal Act to remove the requirement for an application for a treatment order in respect of a person to be accompanied by a proposed treatment plan for the person.

This amendment complements proposed new section 42 and the proposed repeal of section 46 at clauses 21 and 24.

The clause further amends section 37 of the Principal Act to change the form that the statement of rights required to be given to a person under the section is to take.

Section 37 currently requires the applicant for a treatment order to provide the person to whom the application relates with a statement of rights in an MHT approved form.

A document that is in an MHT approved form is a document that has been provided or approved by the Mental Health Tribunal. This is by virtue of subsection 2 of section 3 of the Principal Act.

The Mental Health Tribunal consists of several members; and the requirement for a statement of rights to be approved by each of those members is unnecessary and can be cumbersome.

The intention is to enable the President of the Tribunal, rather than the Tribunal as a whole, to approve the form of the statement of rights required to be given under section 37.

**Clause 18**      **Section 38 amended (Interim treatment order)**

This clause amends section 38 of the Principal Act to:

- Ensure consistency of language with other sections of the Act
- Confirm that an interim treatment order may provide for a combination of treatment settings and for the admission, and re-admission, of a patient who is subject to an interim treatment order to those settings. This amendment is intended to facilitate treatment orders which provide for treatment across treatment settings and complements proposed new section 47A at clause 26, which provides for the involuntary admission (or re-admission) to, and, if necessary, detention in an approved hospital of an involuntary patient in relevant circumstances.

**Clause 19**      **Section 39 amended (Determination of application for treatment order)**

This clause amends section 39 of the Principal Act to enable the Mental Health Tribunal to make a treatment order in respect of a person only if the Tribunal is satisfied that:

- A treatment plan has been prepared for the person, and
- The requirements of section 53(2) of the Principal Act appear to have been met with respect to the treatment plan.

The amendments complement proposed new section 42 and the repeal of section 46 at clauses 21 and 24.

The clause further amends section 39 of the Principal Act to:

- Ensure consistency of language with other sections of the Principal Act
- Confirm that a treatment order may provide for a combination of treatment settings and for the admission, and re-admission, of a patient subject to a treatment order to those settings. This amendment is intended to facilitate treatment orders which provide for treatment across treatment settings and complements proposed new section 47A at clause 26, which provides for the involuntary admission (or re-admission) to, and, if necessary, detention in an approved hospital of an involuntary patient in relevant circumstances.

**Clause 20**      **Section 41 amended (Form and content of treatment order)**

This clause amends section 41 of the Principal Act to require a treatment order to be in a form approved by the President of the Tribunal.

Section 41 of the Principal Act currently requires a treatment order to be in an MHT approved form.

A document that is in an MHT approved form is a document that has been provided or approved by the Mental Health Tribunal. This is by virtue of subsection 2 of section 3 of the Principal Act.

The Mental Health Tribunal consists of several members; and the requirement for a statement of rights to be approved by each of those members is unnecessary and can be cumbersome.

The intention is to enable the President of the Tribunal, rather than the Tribunal as a whole, to approve the form of a treatment order made under the Principal Act.

The clause further amends section 41 of the Principal Act to:

- Insert a requirement that the treatment order specifies a treatment setting. This replaces the existing requirement for a treatment order to specify the treatment plan for a person and that the treatment, and treatment setting under the order are to be in accordance with the treatment plan, and
- Insert a requirement that the treatment order specifies if the order authorises the patient's admission to, and detention in, an approved hospital. This replaces existing subsection 3, which enables a treatment order to include a requirement in relation to treatment setting and detention.

The amendments complement proposed new section 42 and the proposed repeal of section 46 at clauses 21 and 24.

## **Clause 21**

### **Section 42 substituted**

This clause repeals existing section 42 of the Principal Act and substitutes a new section 42 to that Act.

#### **Section 42. Effect of treatment order**

New section 42 is intended to provide a single source of authority for the treatment that may be given and the actions that may be taken with respect to a person who is subject to a treatment order.

New section 42 incorporates the matters that are currently provided for in existing section 46 of the Principal Act and complements the proposed repeal of that section.

The intention is to provide a single source of authority for:

- The treatment that may be given to an involuntary patient subject to a treatment order, where this is the treatment specified in the order
- The patient's admission to, and if necessary, detention in, an approved hospital, and
- The patient's escort by Mental Health Officer or police officer in relevant circumstances.

The amendments do this by:

- Removing the link between a patient's treatment plan, if varied at all, and the treatment that may be given to the patient under the order
- Removing the link between a patient's treatment plan, if varied at all,

and the ability for the patient to be admitted to, and detained in, an approved facility for the purposes of receiving treatment.

The amendments distinguish between a patient's admission to and detention in an approved facility. This ensures consistency with the language used in other sections of the Principal Act.

The amendments also complement proposed new section 47A at clause 26, which provides for the involuntary admission (or re-admission) to, and, if necessary, detention in an approved hospital of an involuntary patient in relevant circumstances, and the inclusion of provisions clarifying the ability for the Mental Health Tribunal to make a treatment order which provides for a combination of treatment settings and for the admission, and re-admission, of a patient subject to a treatment order to those settings.

**Clause 22**      **Section 44 amended (Duration of treatment order)**

This clause amends section 44 of the Principal Act to confirm that the section is subject to section 48 of the Principal Act, which enables the Mental Health Tribunal to renew a Treatment Order for a period not exceeding 12 months in relevant circumstances.

**Clause 23**      **Section 45 amended (Action to be taken by Tribunal on making treatment order)**

This clause amends section 45 of the Principal Act to change the form that the statement of rights required to be given to a person under the section is to take.

Section 45 of the Principal Act currently requires the Mental Health Tribunal to provide a patient with a statement of rights in an MHT approved form.

A document that is in an MHT approved form is a document that has been provided or approved by the Mental Health Tribunal. This is by virtue of subsection 2 of section 3 of the Principal Act.

The Mental Health Tribunal consists of several members; and the requirement for a statement of rights to be approved by each of those members is unnecessary and can be cumbersome.

The intention is to enable the President of the Tribunal, rather than the Tribunal as a whole, to approve the form of the statement of rights required to be given under section 45.

**Clause 24**      **Section 46 repealed**

This clause repeals section 46 of the Principal Act.

The amendments complement proposed amendments to section 42 of the Principal Act at clause 21.

## **Clause 25**

### **Section 47 amended (Failure to comply with treatment order)**

This clause amends section 47 of the Principal Act to:

- Reflect proposed new section 42 and the proposed repeal of section 46 of the Principal Act at clauses 21 and 24
- Reflect proposed amendments to section 55 of the Principal Act at clause 31 to enable urgent circumstances treatment to be authorised by an approved medical practitioner, and
- Ensure consistency of language with other sections of the Principal Act.

## **Clause 26**

### **Section 47A inserted**

This clause inserts a new section 47A to the Principal Act.

#### **Section 47A. Admission to prevent possible harm**

New section 47A regulates the admission, or readmission, of a patient who is subject to a treatment order that provides for a combination of treatment settings and for the admission and readmission of the patient to those settings to an approved hospital in relevant circumstances.

Subsection 1 establishes the criteria that must be met before a patient may be admitted, or readmitted, to an approved hospital under section 47A.

These include that:

- The patient is subject to a treatment order that provides for a combination of treatment settings and for the admission and readmission of the patient to those settings
- The patient has complied with the treatment order
- The patient's treating medical practitioner is satisfied on reasonable grounds that, despite the patient's compliance with the order, the patient's health or safety or the safety of another person has been, or is likely to be, seriously harmed, and
- The patient's treating medical practitioner is satisfied on reasonable grounds that the harm, or likely harm, cannot be adequately addressed except through the patient's admission, or readmission to, and if necessary, detention in, an approved hospital.

Subsection 2 identifies the action that may be taken by the patient's treating medical practitioner if the criteria in subsection 1 are met.

Subsection 3 limits the operation of subsection 2 as it applies to children. In particular it prevents a medical practitioner from seeking to have a patient who is a child admitted to, and if necessary, detained in, an approved hospital under subsection 2, unless the practitioner is satisfied that the hospital in which the child is to be admitted, and if necessary, detained:

- Has facilities and staff for the treatment and care of the patient, and

- Is the most appropriate place to accommodate the patient in the circumstances.

Factors relevant to this determination 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 child's particular needs.

## **Clause 27**

### **Section 48 amended (Renewal of treatment order)**

This clause makes a number of amendments to section 48 of the Principal Act.

The clause amends subsection 3 to require an application for renewal to be accompanied by particulars of any recommended change in treatment, and particulars of any recommended change to the treatment setting. The amendments reflect proposed new section 65A of the Act at clause 38, which requires an application for renewal of a treatment order for an involuntary patient who has been admitted to a secure mental health unit to be accompanied by particulars of any recommended change to the treatment setting only.

The clause also amends subsections 4 and 9 to enable the statement of rights required to be given to a patient under those subsections to be in a form approved by the President of the Tribunal.

Subsections 4 and 9 of section 48 currently require a patient to be provided with a statement of rights in an MHT approved form.

A document that is in an MHT approved form is a document that has been provided or approved by the Mental Health Tribunal. This is by virtue of subsection 2 of section 3 of the Principal Act.

The Mental Health Tribunal consists of several members; and the requirement for a statement of rights to be approved by each of those members is unnecessary and can be cumbersome.

The intention is to enable the President of the Tribunal, rather than the Tribunal as a whole, to approve the form of the statement of rights required to be given under subsections 4 and 9 of section 48.

## **Clause 28**

### **Section 49 amended (Discharge of treatment order by medical practitioner or Tribunal)**

This clause amends section 49 of the Principal Act to enable the discharge paper referred to in that section to be in a form approved by the President of the Tribunal.

Section 49 of the Principal Act currently requires the discharge of a treatment order to be effected by means of a signed instrument in writing in an MHT approved form (referred to as a discharge paper).

A document that is in an MHT approved form is a document that has been provided or approved by the Mental Health Tribunal. This is by

virtue of subsection 2 of section 3 of the Principal Act.

The Mental Health Tribunal consists of several members; and the requirement for the form of a discharge paper to be approved by each of those members is unnecessary and can be cumbersome.

The intention is to enable the President of the Tribunal, rather than the Tribunal as a whole, to approve the form of the discharge paper referred to in section 49.

**Clause 29**      **Section 52 amended (Form of treatment plan)**

This clause amends section 52 to confirm that a treatment plan that is not in a Chief Civil Psychiatrist approved form is not invalid merely because it is not in that form.

**Clause 30**      **Section 54 amended (Variation of treatment plan)**

This clause amends section 54 of the Principal Act by removing the requirement for a medical practitioner who varies a treatment plan to give relevant documentation to the Mental Health Tribunal.

The amendments complement proposed amendments to sections 42 and 46 of the Principal Act at clauses 21 and 24, and proposed amendments to sections 37 and 39 of the Principal Act at clauses 17 and 19 insofar as the amendments remove references to the patient's treatment plan, from provisions which identify the treatment that may be given to a patient, and the setting in which that treatment may be given.

The requirement for a varied treatment plan to be provided to the Mental Health Tribunal is otiose within this context.

**Clause 31**      **Section 55 amended (Urgent circumstances treatment)**

This clause amends section 55 of the Principal Act to:

- Enable an approved medical practitioner, instead of the Chief Civil Psychiatrist or a delegate, to authorise urgent circumstances treatment
- Remove the requirement for an application before the authorisation may be given
- Remove the requirement for an approved medical practitioner to have assessed the patient and to have concluded certain matters about the patient from that assessment
- Clarify associated notification and advice requirements, and
- Make other associated amendments.

The intention is to enable urgent circumstances treatment to be authorised by an approved medical practitioner if the practitioner has concluded, from an examination of the patient, that the criteria referred to in new subsection 3 are met, and without the need for an application or separate examination by another approved medical practitioner.

**Clause 32****Section 56 amended (Seclusion)**

This clause amends section 56 of the Principal Act to insert a requirement for the Chief Civil Psychiatrist to issue standing orders for section 56 of the Principal Act.

**Clause 33****Section 59 amended (Transfer of involuntary patients between approved hospitals)**

This clause amends section 59 of the Principal Act to:

- Clarify the ability for a transfer direction to be given orally or in writing
- Insert a requirement for a transfer direction that is given orally or in writing to be confirmed in writing in a Chief Civil Psychiatrist approved form as soon as practicable after it is given, and
- Ensure consistency of language with other sections of the Principal Act.

The amendments also re-order the section's provisions to aid readability.

**Clause 34****Section 60 amended (Leave of absence from approved hospital)**

This clause amends section 60 of the Principal Act to clarify that leave of absence from an approved hospital must not be granted to an involuntary patient for a continuous period of more than 14 days.

**Clause 35****Section 61 amended (Absence from approved hospital without leave or in breach of condition, &c.)**

This clause amends section 61 of the Principal Act to:

- Extend the section's application to a patient who is absent without leave from an approved hospital, and
- Insert a requirement for the patient's treating medical practitioner to alert the Mental Health Tribunal of the circumstances of the patient's absence.

**Clause 36****Section 63 amended (Admission)**

This clause amends section 63 of the Principal Act to confirm the effect of a treatment order on the detention of a patient who has been admitted to a secure mental health unit under section 63 of the Principal Act.

**Clause 37****Section 65 amended (Period of detention)**

This clause amends section 65 of the Principal Act to clarify that:

- A patient who is subject to an assessment order may be detained in a secure mental health unit until such time as the assessment order expires or is discharged, subject to any orders of the Tribunal and the application of either paragraph (a), or paragraph (b) of the section, and

- A patient who is subject to a treatment order may be detained in a secure mental health unit until such time as the treatment order expires or is discharged, subject to any orders of the Tribunal and the application of either paragraph (a), or paragraph (b) of the section.

**Clause 38**      **Section 65A inserted**

This clause inserts a new section 65A to the Principal Act.

**65A. Renewal of treatment order for patient in SMHU**

New section 654A modifies the application of Division 2 of Part 3 of Chapter 2 of the Principal Act as it applies to an involuntary patient who has been admitted to the secure mental health unit under section 63 of the Principal Act.

**Clause 39**      **Section 73 amended (Transfer of forensic patients to hospitals, &c.)**

This clause amends section 73 to clarify the ability for a transfer direction issued under section 73 to be given orally or in writing.

The amendment complements proposed amendments to section 59 of the Principal Act at clause 33 and is intended to ensure consistency of language between the two provisions.

**Clause 40**      **Section 78 amended (When leave of absence for forensic patients subject to restriction orders may be granted)**

This clause amends section 78 of the Principal Act to enable the statement of rights required to be given to a patient for whom leave has been granted or refused under this section to be in a form approved by the President of the Tribunal.

Section 78 currently requires a patient to be provided with a statement of rights in an MHT approved form.

A document that is in an MHT approved form is a document that has been provided or approved by the Mental Health Tribunal. This is by virtue of subsection 2 of section 3 of the Principal Act.

The Mental Health Tribunal consists of several members; and the requirement for a statement of rights to be approved by each of those members is unnecessary and can be cumbersome.

The intention is to enable the President of the Tribunal, rather than the Tribunal as a whole, to approve the form of the statement of rights referred to in section 78.

**Clause 41**      **Section 79 amended (Extension, variation and cancellation of leave of absence)**

This clause amends section 79 of the Principal Act to impose certain obligations on the Mental Health Tribunal and the Secretary (Corrections) in respect of the extension, or variation of conditions, of leave of absence

granted to a forensic patient who is subject to a restriction order.

The clause amends subsection 3 to require an application for extension of leave to be lodged at least 20 days before the leave expires. This is relevant given the requirements imposed by new subsections 3A and 3B and is intended to ensure that there is sufficient time for eligible persons to be contacted, and to make a submission to the Tribunal, prior to the leave expiring.

The clause also inserts new subsections 3A and 3B.

New subsection 3A requires:

- The Mental Health Tribunal to notify the Secretary (Corrections) of an application for an extension or variation of conditions of leave
- The Secretary (Corrections) to check the Eligible Persons Register to see whether there are any eligible persons in relation to the patient the subject of the application and to notify any eligible persons of the application and of their right to make a written submission in respect of it, and
- The Mental Health Tribunal to notify any other person of the application and of that person's right to make a written submission in respect of it.

New subsection 3B requires the Mental Health Tribunal to consider any submissions received under new subsection 3A before extending or varying the conditions of leave.

The amendments reflect requirements which apply when an initial application for leave is received and are intended to ensure that any eligible persons and other relevant persons are advised of an application to extend or vary the conditions of such leave, and are provided with an opportunity to make a submission in respect of it.

## **Clause 42**

### **Section 83 amended (Extension, variation and cancellation of leave of absence)**

This clause amends section 83 of the Principal Act to impose certain obligations on the Chief Forensic Psychiatrist and the Secretary (Corrections) in relation to the extension, or variation of conditions, of leave of absence granted to a forensic patient who is not subject to a restriction order.

The clause inserts new subsections 2A, 2B and 2C.

New subsection 2A requires:

- The Chief Forensic Psychiatrist to notify the Secretary (Corrections) that he or she is considering whether or not to extend, or vary the conditions of, leave
- The Secretary (Corrections) to check the Eligible Persons Register to see whether there are any eligible persons in relation to the patient and to notify any eligible persons that consideration is being given to

extending, or varying the conditions of, the leave and of their right to make a written submission in respect of it, and

- The Chief Forensic Psychiatrist to notify any other person that consideration is being given to extending, or varying the conditions of, leave and of that person's right to make a written submission in respect of it.

New subsection 2B requires the Chief Forensic Psychiatrist to notify the (Secretary) Corrections that he or she is considering whether or not to extend, or vary, the conditions of leave at least 20 days before the leave is due to expire. This is necessary given the requirements imposed by new subsection 2A and is intended to ensure that there is sufficient time for eligible persons to be contacted, and to make a submission to the Chief Forensic Psychiatrist, prior to the leave expiring.

New subsection 3A requires the Chief Forensic Psychiatrist to consider any submissions received under new subsection 2A before extending or varying the conditions of leave.

The amendments reflect requirements which apply when an initial application for leave is received and are intended to ensure that any eligible persons and other relevant persons are advised when consideration is being given to extending or varying the conditions of such leave, and are provided with an opportunity to make a submission in respect of it.

## **Clause 43**

### **Section 87 amended (Urgent circumstances treatment)**

This clause amends section 87 of the Principal Act to:

- Enable an approved medical practitioner, instead of the Chief Forensic Psychiatrist or a delegate, to authorise urgent circumstances treatment
- Remove the requirement for an application before the authorisation may be given
- Remove the requirement for an approved medical practitioner to have assessed the patient and to have concluded certain matters about the patient from that assessment
- Clarify associated notification and advice requirements, and
- Make other associated amendments.

The intention is to enable urgent circumstances treatment to be authorised by an approved medical practitioner if the practitioner has concluded, from an examination of the patient, that the criteria referred to in new subsection 3 are met, and without the need for an application or separate examination by another approved medical practitioner.

**Clause 44**      **Section 88 amended (Authorisation of treatment by Tribunal)**

This clause amends section 88 of the Principal Act to enable the Tribunal's authorisation of treatment, and the statement of rights required to be given to a patient under the section, to be in a form approved by the President of the Tribunal.

Section 88 currently requires the Tribunal's authorisation of treatment, and the statement of rights required to be given to a patient under the section, to be in an MHT approved form.

A document that is in an MHT approved form is a document that has been provided or approved by the Mental Health Tribunal. This is by virtue of subsection 2 of section 3 of the Principal Act.

The Mental Health Tribunal consists of several members; and the requirement for documentation to be approved by each of those members is unnecessary and can be cumbersome.

The intention is to enable the President of the Tribunal, rather than the Tribunal as a whole, to approve the form of the Tribunal's authorisation of treatment, and the statement of rights, referred to in section 88.

**Clause 45**      **Section 91 amended (Interim authorisation of treatment by Tribunal member)**

This clause amends section 91 of the Principal Act to enable the Tribunal's authorisation of treatment, advice of any revocation or variation of that authorisation, and the statement of rights required to be given to a patient under the section, to be in a form approved by the President of the Tribunal.

A document that is in an MHT approved form is a document that has been provided or approved by the Mental Health Tribunal. This is by virtue of subsection 2 of section 3 of the Principal Act.

The Mental Health Tribunal consists of several members; and the requirement for documentation to be approved by each of those members is unnecessary and can be cumbersome.

The intention is to enable the President of the Tribunal, rather than the Tribunal as a whole, to approve the form of the Tribunal's authorisation of treatment, advice of any revocation or variation of that authorisation, and the statement of rights, referred to in section 91.

**Clause 46**      **Section 94 amended (Seclusion)**

This clause amends section 94 of the Principal Act to insert a requirement for the Chief Forensic Psychiatrist to issue standing orders for section 94 of the Principal Act.

**Clause 47**      **Section 110 amended (Screening of persons seeking entry to SMHU)**

This clause amends section 110 of the Principal Act to refer to Australian lawyers.

The term “Australian lawyer” is defined in the *Acts Interpretation Act 1931* and the proposed amendment is intended to ensure consistency with that Act, and with the *Legal Profession Act 2007*.

**Clause 48**      **Section 136 amended (Monthly reports on voluntary inpatients)**

This clause amends section 136 of the Principal Act to enable the monthly report referred to in that section to be in a form approved by the President of the Tribunal.

Section 136 of the Principal Act currently requires the controlling authority of an approved facility to prepare a monthly report on the accommodation and treatment of certain voluntary inpatients in an MHT approved form.

A document that is in an MHT approved form is a document that has been provided or approved by the Mental Health Tribunal. This is by virtue of subsection 2 of section 3 of the Principal Act.

The Mental Health Tribunal consists of several members; and the requirement for documentation to be approved by each of those members is unnecessary and can be cumbersome.

The intention is to enable the President of the Tribunal, rather than the Tribunal as a whole, to approve the form of the monthly report required to be provided under section 136.

**Clause 49**      **Section 149 amended (Delegation)**

This clause amends section 149 of the Principal Act to remove the power to authorise the giving of urgent circumstances treatment from the definition of restricted professional power provided in subsection 3.

The amendment complements proposed amendments to sections 55 and 87 of the Principal Act at clauses 31 and 43 to enable an approved medical practitioner, rather than the Chief Civil Psychiatrist or Chief Forensic Psychiatrist, to authorise urgent circumstances treatment.

**Clause 50**      **Section 167 amended (Establishment)**

This clause amends section 167 of the Principal Act to require the Tribunal to consist of at least one person who is an Australian lawyer with not less than five years' standing as an Australian legal practitioner.

The intention is to ensure consistency with provisions in other Acts covering similar functions such as the *Health Practitioners Tribunal Act 2010* and *Magistrates Court Act 1987*, which impose similar requirements on legal members of the judicial and quasi-judicial bodies established under those Acts.

The amendments also reflect the *Legal Profession Act 2007*, which differentiates between a person who has been admitted to the legal profession (an Australian lawyer) and a person who is entitled to practice (an Australian legal practitioner).

**Clause 51****Section 169 amended (Powers)**

Section 169 of the Principal Act currently provides the Tribunal with the power to issue guidelines, require reports, and approve forms.

This clause amends section 169 of the Principal Act to instead provide the President of the Tribunal with the power to issue guidelines, require reports and approve forms.

The Mental Health Tribunal consists of several members; and the requirement for each of those members to be involved in these matters is unnecessary and can be cumbersome.

Enabling the President of the Tribunal, rather than the Mental Health Tribunal as a whole to perform these functions is consistent with other proposed amendments to the Principal Act.

**Clause 52****Section 172 amended (Interim determinations on adjournment)**

This clause amends section 172 of the Principal Act to remove limitations on the Mental Health Tribunal's ability to adjourn proceedings.

**Clause 53****Section 173 amended (Questions of law)**

Section 173 of the Principal Act provides the Tribunal with the ability 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.

This clause amends section 173 to enable the President of the Tribunal to refer a question of law to the Supreme Court.

The Mental Health Tribunal consists of several members; and it is unnecessary for each of those members to be involved every time a question of law is referred to the Supreme Court.

Enabling the President of the Tribunal, rather than the Mental Health Tribunal as a whole to refer a question of law is consistent with other proposed amendments to the Principal Act.

**Clause 54****Section 176 amended (Registrar and staff)**

Section 176 of the Principal Act enables the Tribunal to make arrangements with the Secretary for the services of State Servants to be made available to the Tribunal.

This clause amends section 176 to enable the President of the Tribunal to make arrangements with the Secretary.

The Mental Health Tribunal consists of several members; and it is unnecessary for each of those members to be involved in the making of arrangements under section 176 of the Principal Act.

Enabling the President of the Tribunal, rather than the Mental Health Tribunal as a whole to make arrangements with the Secretary is consistent

with other proposed amendments to the Principal Act.

**Clause 55**      **Clause 178 amended (Annual report)**

Section 178 of the Principal Act equires the Tribunal to provide the Minister for Justice with an annual report.

This clause amends section 178 to require the President of the Tribunal to provide the Minister with an annual report.

The Mental Health Tribunal consists of several members; and it is unnecessary for each of those members to be involved in the act of providing an annual report to the Minister for Justice.

Enabling the President of the Tribunal, rather than the Mental Health Tribunal as a whole to provide the Minister with an annual report is consistent with other proposed amendments to the Principal Act.

**Clause 56**      **Section 179 amended (The Tribunal's review function)**

This clause amends section 179 of the Principal Act to refer specifically to the authorisation of treatment for any forensic patient.

The amendment complements the proposed insertion of new section 192A to the Principal Act at clause 60.

**Clause 57**      **Section 180 amended (Review of assessment order)**

This clause amends section 180 of the Principal Act to enable the statement of rights required to be given to a patient under that section to be in a form approved by the President of the Tribunal.

Section 180 currently requires the Tribunal to give a patient a statement of rights in an MHT approved form.

A document that is in an MHT approved form is a document that has been provided or approved by the Mental Health Tribunal. This is by virtue of subsection 2 of section 3 of the Principal Act.

The Mental Health Tribunal consists of several members; and the requirement for a statement of rights to be approved by each of those members is unnecessary and can be cumbersome.

The intention is to enable the President of the Tribunal, rather than the Tribunal as a whole, to approve the form of the statement of rights required to be provided under section 180.

**Clause 58**      **Section 181 amended (Review of treatment order)**

This clause amends the timeframes associated with the review of treatment orders by the Mental Health Tribunal.

The clause:

- Amends subsection 1(a) and (b) to require the Tribunal to review a treatment order within 60 days after it is made and again within 180 days after it is made, if the order is still in effect at the relevant time

- Amends subsection (c) to require the Tribunal to review a treatment order at further intervals not exceeding 180 days, for so long as the order remains in effect
- Amends subsection 1(d) to complement amendments to section 42 of the Principal Act at clause 21
- Inserts a new subsection 2A confirming that the Tribunal may vary a treatment order without conducting a review
- Amends subsection 3(a) to require the Tribunal to give a patient a copy of rights in a form approved by the President of the Tribunal, rather than by the Tribunal as a whole, and
- Amends subsections 1(d) and (4) to ensure consistency of language with other sections of the Principal Act.

## **Clause 59**

### **Section 191 amended (Review of determination relating to leave of absence)**

This clause amends 191 of the Principal Act to clarify the maximum continuous period for which the Tribunal may grant an involuntary patient leave, or direct that an involuntary patient may be granted leave, on review.

The amendments complement proposed amendments to section 60 of the Principal Act at clause 34.

## **Clause 60**

### **Section 192A inserted**

This clause inserts a new section 192A to the Principal Act.

#### **Section 192A. Tribunal to review forensic patient's treatment authorisation**

New section 192A regulates the review, by the Mental Health Tribunal, of the authorisation of treatment for a forensic patient.

Subsection 1:

- Requires the Tribunal to review the authorisation of treatment for a forensic patient within 60 days, and 180 days after the authorisation is made, if the authorisation is still in effect at the relevant time
- Requires the Tribunal to review the authorisation at further intervals not exceeding 180 days for so long as the authorisation remains in effect
- Enables the Tribunal to review the authorisation at any other time on its own motion or application of a person with standing
- Requires the Tribunal to conduct a review before a division of three members
- Enables the Tribunal to conduct a review without a hearing, and
- Identifies the actions that the Tribunal may take on review.

Subsection 2 identifies the actions that the Tribunal is required to take

after reviewing an authorisation.

The intention is to establish a review framework for the authorisation of treatment of a forensic patient that is similar to the review framework that applies to treatment orders under section 181 of the Principal Act.

**Clause 61**      **Section 195 amended (Form of applications for review, &c.)**

This clause amends section 195 of the Principal Act to:

- Require an application to the Tribunal to be in a form approved by the President of the Tribunal, rather than by the Tribunal as a whole
- Remove requirements around the matters that must be included in an application to the Tribunal, and
- Refer to an Australian lawyer. The term “Australian lawyer” is defined in the *Acts Interpretation Act 1931* and the proposed amendment is intended to ensure consistency with that Act, and with the *Legal Profession Act 2007*.

**Clause 62**      **Section 197 amended (On-paper reviews by Registrar)**

This clause amends section 197 of the Principal Act to complement proposed amendments to section 181 of the Principal Act at clause 58 and the proposed inclusion of new section 192A to the Act at clause 60.

The intention is to make it clear that the President of the Tribunal may not authorise the Registrar to review a 60-day or 180-day review of a treatment order, or a 60-day or 180-day review of the authorisation of treatment for a forensic patient.

**Clause 63**      **Section 199 amended (Evidence of Tribunal determination or direction)**

This clause amends section 199 of the Principal Act to extend the section’s application to a direction of the Tribunal.

**Clause 64**      **Section 212 amended (Special powers of ambulance officers and medical practitioners acting as MHO)**

This clause amends section 212 of the Principal Act to extend the section’s application to approved medical officers.

The intention is to enable a medical practitioner who is also approved as a Mental Health Officer under the Principal Act to sedate a patient who is being transported by ambulance in relevant circumstances.

**Clause 65**      **Section 213 amended (Unlawful treatment)**

The Principal Act operates alongside other laws which provide authority for the provision of treatment to people with a mental illness, including the common law.

This clause amends section 213 of the Principal Act to exclude treatment that is authorised under the Principal Act or any other law, from the category of unlawful treatments the subject of the section.

The proposed amendments complement proposed amendments to section 16 of the Principal Act at clause 10.

**Clause 66**      **Section 221 amended (Delegation by controlling authority)**

This clause amends section 221 of the Principal Act to provide the controlling authority of an approved facility with the ability to delegate his or her responsibilities under Acts other than the *Mental Health Act 2013*.

**Clause 67**      **Section 224 substituted**

This clause inserts new sections 224 and 224A to the Principal Act.

**Section 224. Correction of orders, &c. where validity not affected**

New section 224 regulates the correction of an error in an order, determination, direction or other document produced under the Principal Act in circumstances where the validity of the order, determination, direction or other document is not affected by the error.

The new section clarifies when the validity of an order, determination, direction or other document is not affected by an error and identifies the person or body who may correct an error in the order, determination, direction or other document.

**Section 224A. Correction of orders, &c. where validity affected**

New section 224A regulates the correction of an error in an order, determination, direction or other document made by the Tribunal under the Principal Act in circumstances where the validity of the order, determination, direction or other document is affected by the error.

The new section enables the Tribunal to correct an error in an order, determination, direction or other document that affects the validity of the order, determination, direction or other document on its own motion or on application and regulates the manner in which this may occur.

**Clause 68**      **Section 226 substituted**

This clause inserts a new section 226 to the Principal Act.

**Section 226. Service of documents**

New section 226 regulates the giving or service of a notice or other document that is required to be given or served under the Principal Act.

In particular the new section requires a notice or other document that is required to be given or served to a voluntary inpatient, involuntary patient or forensic patient under the Principal Act to be given to the patient.

The new section also defines the term “give” to include causing the notice or other document to be given.

The new section complements proposed amendments to section 3 at clause 5, to remove the meaning of “give”.

**Clause 69**      Schedule 3 amended (Membership of Tribunal)

This clause amends:

- Clause (7) of Schedule 3 to enable the Governor to remove a member from office if the member fails, without the permission of the President of the Tribunal, to make himself or herself available to attend to Tribunal matters for a period longer than three months
- Clause 11 of Schedule 3 to enable the President of the Tribunal to authorise a person with special expertise to assist the Tribunal with relevant matters.

**Clause 70**      Schedule 4 amended (Proceedings of Tribunal)

This clause amends clause 11 of Schedule 4 to enable the President of the Tribunal to publish a record of its proceedings.

**Clause 71**      Repeal of Act

This clause provides for the Act's automatic repeal one year after all of the Act's provisions have commenced.