

TASMANIA

MENTAL HEALTH AMENDMENT BILL 2016

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Long title amended
5. Section 3 amended (Interpretation)
6. Section 6 amended (Meaning of *treatment*)
7. Section 11 amended (Timing of actions)
8. Section 12 amended (Objects of Act)
9. Section 13 amended (Status of Act)
10. Section 16 amended (Circumstances in which treatment may be given)
11. Section 23 amended (Application for assessment order)
12. Section 24 amended (Making an assessment order)
13. Section 26 amended (Form and content of assessment order)
14. Section 27 amended (Effect of assessment order)
15. Section 31 repealed
16. Section 35 amended (Discharge of assessment order by medical practitioner or Tribunal)
17. Section 37 amended (Application for treatment order)
18. Section 38 amended (Interim treatment order)

19. Section 39 amended (Determination of application for treatment order)
20. Section 41 amended (Form and content of treatment order)
21. Section 42 substituted
 42. Effect of treatment order
22. Section 44 amended (Duration of treatment order)
23. Section 45 amended (Action to be taken by Tribunal on making treatment order)
24. Section 46 repealed
25. Section 47 amended (Failure to comply with treatment order)
26. Section 47A inserted
 - 47A. Admission to prevent possible harm
27. Section 48 amended (Renewal of treatment order)
28. Section 49 amended (Discharge of treatment order by medical practitioner or Tribunal)
29. Section 52 amended (Form of treatment plan)
30. Section 54 amended (Variation of treatment plan)
31. Section 55 amended (Urgent circumstances treatment)
32. Section 56 amended (Seclusion)
33. Section 59 amended (Transfer of involuntary patients between approved hospitals)
34. Section 60 amended (Leave of absence from approved hospital)
35. Section 61 amended (Absence from approved hospital without leave or in breach of condition &c.)
36. Section 63 amended (Admission)
37. Section 65 amended (Period of detention)
38. Section 65A inserted
 - 65A. Renewal of treatment order for patient in SMHU
39. Section 73 amended (Transfer of forensic patients to hospitals, &c.)
40. Section 78 amended (When leave of absence for forensic patients subject to restriction orders may be granted)
41. Section 79 amended (Extension, variation and cancellation of leave of absence)

42. Section 83 amended (Extension, variation and cancellation of leave of absence)
43. Section 87 amended (Urgent circumstances treatment)
44. Section 88 amended (Authorisation of treatment by Tribunal)
45. Section 91 amended (Interim authorisation of treatment by Tribunal member)
46. Section 94 amended (Seclusion)
47. Section 110 amended (Screening of persons seeking entry to SMHU)
48. Section 136 amended (Monthly reports on voluntary inpatients)
49. Section 149 amended (Delegation)
50. Section 167 amended (Establishment)
51. Section 169 amended (Powers)
52. Section 172 amended (Interim determinations on adjournment)
53. Section 173 amended (Questions of law)
54. Section 176 amended (Registrar and staff)
55. Section 178 amended (Annual report)
56. Section 179 amended (The Tribunal's review function)
57. Section 180 amended (Review of assessment order)
58. Section 181 amended (Review of treatment order)
59. Section 191 amended (Review of determination relating to leave of absence)
60. Section 192A inserted
 - 192A. Tribunal to review forensic patient's treatment authorisation
61. Section 195 amended (Form of applications for review, &c.)
62. Section 197 amended (On-paper reviews by Registrar)
63. Section 199 amended (Evidence of Tribunal determination or direction)
64. Section 212 amended (Special powers of ambulance officers and medical practitioners acting as MHO)
65. Section 213 amended (Unlawful treatment)
66. Section 221 amended (Delegation by controlling authority)

- 67. Section 224 substituted
 - 224. Correction of orders, &c., where validity not affected
 - 224A. Correction of orders, &c., where validity affected
- 68. Section 226 substituted
 - 226. Service of documents
- 69. Schedule 3 amended (Membership of Tribunal)
- 70. Schedule 4 amended (Proceedings of Tribunal)
- 71. Repeal of Act

MENTAL HEALTH AMENDMENT BILL 2016

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

SHANE DONNELLY, *Clerk of the House*
27 October 2016

*(Brought in by the Minister for Health, the Honourable
Michael Darrel Joseph Ferguson)*

A BILL FOR

An Act to amend the *Mental Health Act 2013*

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

1. Short title

This Act may be cited as the *Mental Health Amendment Act 2016*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Principal Act

In this Act, the *Mental Health Act 2013** is referred to as the Principal Act.

*No. 2 of 2013

Mental Health Amendment Act 2016
Act No. of

s. 4

4. Long title amended

The long title of the Principal Act is amended by omitting “, treatment and care” and substituting “and treatment”.

5. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting “appointed under the *Corrections Act 1997*” after “Services” in the definition of *Director*;
- (b) by omitting the definition of *give*;
- (c) by inserting “Australian” after “patient’s” in paragraph (b) of the definition of *representative*.

6. Section 6 amended (Meaning of *treatment*)

Section 6 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) For the purposes of this Act, *treatment* does not include seclusion, chemical restraint, mechanical restraint or physical restraint.

7. Section 11 amended (Timing of actions)

Section 11 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) Where this Act requires an action to be taken, then, unless the contrary intention appears, the action must be taken as soon as practicable.

8. Section 12 amended (Objects of Act)

Section 12 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “, treatment and care” and substituting “and treatment”;
- (b) by omitting from paragraph (b) “, treatment and care” and substituting “and treatment”;
- (c) by omitting from paragraph (c) “, treatment and care” and substituting “and treatment”;
- (d) by omitting from paragraph (d) “, treatment and care” and substituting “and treatment”.

Mental Health Amendment Act 2016
Act No. of

s. 9

9. Section 13 amended (Status of Act)

Section 13 of the Principal Act is amended by omitting “, treatment and care” and substituting “and treatment”.

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

Section 16 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (1);
- (b) by omitting paragraph (b) from subsection (2);
- (c) by omitting paragraph (b) from subsection (3).

11. Section 23 amended (Application for assessment order)

Section 23 of the Principal Act is amended by omitting subsection (3).

12. Section 24 amended (Making an assessment order)

Section 24 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (a) and (b) from subsection (1);

Mental Health Amendment Act 2016
Act No. of

s. 13

(b) by omitting paragraph (d) from subsection (1) and substituting the following paragraph:

(d) the examination must have been done in the 24-hour period immediately before the assessment order is made;

(c) by omitting subsection (2) and substituting the following subsection:

(2) A medical practitioner may make an assessment order authorising a patient's admission to and, if necessary, detention in an approved hospital.

(d) by omitting from subsection (3) "requiring a patient who is a child to be detained in" and substituting "authorising a patient who is a child to be admitted to and, if necessary, detained in";

(e) by inserting the following subsection after subsection (3):

(4) A medical practitioner may make an assessment order without having received an application for the order.

Mental Health Amendment Act 2016
Act No. of

s. 13

13. Section 26 amended (Form and content of assessment order)

Section 26 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subsection (2);
- (b) by omitting paragraphs (d) and (e) from subsection (2) and substituting the following paragraphs:
 - (d) affirms that the patient needs to be assessed against the assessment criteria; and
 - (e) specifies an assessment setting; and
 - (ea) specifies if the order authorises the patient's admission to and detention in an approved hospital; and
- (c) by omitting subsection (3).

14. Section 27 amended (Effect of assessment order)

Section 27 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

- (2) An assessment order is authority –
 - (a) for any MHO or police officer to take the patient under escort to

ensure that he or she presents for assessment under the order; and

- (b) if authorised to do so –
 - (i) by the terms of the order; or
 - (ii) by a medical practitioner under subsection (4) –

for the patient to be admitted to an approved facility and, if necessary, detained in an approved facility for and in connection with that assessment.

- (3) For the purposes of subsection (2) –
 - (a) the medical practitioner who makes the assessment order or any other medical practitioner may request that the patient be taken under escort (in which case the medical practitioner is to ensure that the escort is given a copy of the order); and
 - (b) the custody and escort provisions apply, and continue to apply for so long as the patient is subject to the assessment order.
- (4) Despite subsection (2)(b)(ii), a medical practitioner is not to authorise a patient who is a child to be admitted to and, if necessary, detained in an approved

Mental Health Amendment Act 2016
Act No. of

s. 15

hospital unless the medical practitioner is satisfied that the hospital –

- (a) has facilities and staff for the assessment of the patient; and
 - (b) is, in the circumstances, the most appropriate place to accommodate the patient.
- (5) An assessment order is not authority for a patient to be given any treatment.

15. Section 31 repealed

Section 31 of the Principal Act is repealed.

16. Section 35 amended (Discharge of assessment order by medical practitioner or Tribunal)

Section 35(2) of the Principal Act is amended by inserting “, after examining the patient or on other reasonable grounds,” after “satisfied”.

17. Section 37 amended (Application for treatment order)

Section 37 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (5);
- (b) by omitting from subsection (6)(a) “an MHT approved form” and substituting “a form approved by the President”.

18. Section 38 amended (Interim treatment order)

Section 38 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(b) “for” and substituting “that, for”;
- (b) by omitting from subsection (2)(b) “be” and substituting “may be admitted to and, if necessary,”;
- (c) by inserting the following subsection after subsection (2):
 - (2A) An interim treatment order may provide for a combination of treatment settings and for the admission and re-admission of the patient to those settings.
- (d) by omitting from subsection (3) “detained in” and substituting “admitted to and, if necessary, detained in”.

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

Section 39 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(c) “criteria.” and substituting “criteria; and”;
- (b) by inserting the following paragraphs after paragraph (c) in subsection (1):

Mental Health Amendment Act 2016
Act No. of

s. 20

- (d) a treatment plan has been prepared for the person; and
 - (e) the requirements of section 53(2) appear to have been met with respect to the treatment plan.
- (c) by omitting from subsection (2)(b) “be” and substituting “may be admitted to and, if necessary,”;
 - (d) by inserting the following subsection after subsection (2):
 - (2A) A treatment order may provide for a combination of treatment settings and for the admission and re-admission of the patient to those settings.
 - (e) by omitting from subsection (3) “detained in” and substituting “admitted to and, if necessary, detained in”.

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

Section 41 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “an MHT approved form” and substituting “a form approved by the President of the Tribunal”;

- (b) by omitting paragraph (d) from subsection (2) and substituting the following paragraphs:
 - (d) specifies a treatment setting; and
 - (da) specifies if the order authorises the patient's admission to and, if necessary, detention in an approved hospital; and
- (c) by omitting subsection (3).

21. Section 42 substituted

Section 42 of the Principal Act is repealed and the following section is substituted:

42. Effect of treatment order

- (1) A treatment order is authority for the patient to be given, without informed consent, the treatment, or type of treatment, specified in the order.
- (2) A treatment order is authority –
 - (a) for the patient to be admitted to and, if necessary, detained in an approved facility, or type of approved facility, for the purposes of receiving treatment, if the terms of the order so specify; or
 - (b) in any case, if section 47 or section 47A applies in relation to

Mental Health Amendment Act 2016
Act No. of

s. 21

the patient, authority for the patient to be admitted to and, if necessary, detained in an approved facility (other than an SMHU) –

until whichever of the following first occurs:

- (c) the order is varied so as to provide for a different treatment setting;
 - (d) if the detention is authorised under the order, the order ceases to have effect under this Act.
- (3) If a patient is admitted to an approved facility under this section, the controlling authority of the approved facility is to notify the Tribunal and the CCP of the patient's admission.
- (4) A treatment order in respect of a person is authority for any MHO or police officer to take the patient under escort to ensure that he or she presents for treatment under the order.
- (5) For the purposes of subsection (2), the Tribunal, any member of the Tribunal, the Registrar, the CCP or any medical practitioner may request that the patient be taken under escort (in which case the maker of the request is to give the escort a copy of the treatment order).

- (6) If a patient is taken under escort in accordance with this section, the custody and escort provisions apply, and continue to apply for so long as the patient is subject to the treatment order.

22. Section 44 amended (Duration of treatment order)

Section 44 of the Principal Act is amended by omitting “A” and substituting “Subject to section 48, a”.

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

Section 45(a) of the Principal Act is amended by omitting “an MHT approved form” and substituting “a form approved by the President of the Tribunal”.

24. Section 46 repealed

Section 46 of the Principal Act is repealed.

25. Section 47 amended (Failure to comply with treatment order)

Section 47 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (b) and (c) from subsection (2) and substituting the following paragraphs:

Mental Health Amendment Act 2016
Act No. of

s. 26

- (b) seek to have the patient admitted to and, if necessary, detained in an approved facility under and in accordance with section 42; or
 - (a) authorise urgent circumstances treatment under section 55 if the treating medical practitioner is an approved medical practitioner; or
 - (b) seek authorisation to give urgent circumstances treatment under section 55 if the treating medical practitioner is not an approved medical practitioner.
- (b) by omitting from subsection (3) “detained in” and substituting “admitted to and, if necessary, detained in”.

26. Section 47A inserted

After section 47 of the Principal Act, the following section is inserted in Division 2:

47A. Admission to prevent possible harm

- (1) This section applies if –
 - (a) a 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; and

- (b) the patient has complied with the treatment order; and
 - (c) the treating medical practitioner is satisfied on reasonable grounds that –
 - (i) despite the patient's compliance, the patient's health or safety or the safety of any other person has been, or is likely to be, seriously harmed; and
 - (ii) the harm, or likely harm, cannot be adequately addressed except by way of the patient's admission or readmission to and, if necessary, detention in an approved hospital.
- (2) If this section applies, the treating medical practitioner may, according to the circumstances, seek to have the patient taken under escort and involuntarily admitted to, and detained in, an approved facility under and in accordance with section 42.
- (3) However, the treating medical practitioner is not to seek to have a patient who is a child admitted to and, if necessary, detained in an approved hospital unless the treating medical practitioner is satisfied that the hospital –

Mental Health Amendment Act 2016
Act No. of

s. 27

- (a) has facilities and staff for the treatment and care of the patient; and
- (b) is, in the circumstances, the most appropriate place to accommodate the patient.

27. Section 48 amended (Renewal of treatment order)

Section 48 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (3) and substituting the following paragraphs:
 - (b) particulars of any recommended change in treatment; and
 - (ba) particulars of any recommended change to the treatment setting; and
- (b) by omitting from subsection (4)(a) “an MHT approved form” and substituting “a form approved by the President of the Tribunal”;
- (c) by omitting from subsection (9)(a) “an MHT approved form” and substituting “a form approved by the President of the Tribunal”.

28. Section 49 amended (Discharge of treatment order by medical practitioner or Tribunal)

Section 49(4) of the Principal Act is amended by omitting “an MHT approved form” and substituting “a form approved by the President of the Tribunal”.

29. Section 52 amended (Form of treatment plan)

Section 52 of the Principal Act is amended by omitting subsection (2).

30. Section 54 amended (Variation of treatment plan)

Section 54(4) of the Principal Act is amended by omitting paragraph (c).

31. Section 55 amended (Urgent circumstances treatment)

Section 55 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “the CCP” and substituting “an approved medical practitioner”;
- (b) by omitting from subsection (2) “The CCP” and substituting “An approved medical practitioner”;
- (c) by omitting from subsection (2) “CCP” second occurring and substituting “approved medical practitioner”;

Mental Health Amendment Act 2016
Act No. of

s. 31

(d) by omitting subsections (3), (4), (5) and (6) and substituting the following subsection:

(3) An approved medical practitioner may give the authorisation if, and only if, he or she has concluded from an examination that –

(a) the patient has a mental illness that is generally in need of treatment; and

(b) the urgent circumstances treatment is necessary for –

(i) the patient's health or safety; or

(ii) the safety of other persons; and

(c) the urgent circumstances treatment is likely to be effective and appropriate in terms of the outcomes referred to in section 6(1); and

(d) achieving the necessary treatment outcome would be compromised by waiting for the urgent circumstances treatment to be authorised by the Tribunal (or by a member

Mental Health Amendment Act 2016
Act No. of

s. 31

thereof on an interim basis).

- (e) by omitting from subsection (7) “CCP” first occurring and substituting “approved medical practitioner”;
- (f) by omitting from subsection (7) “CCP” second occurring and substituting “approved medical practitioner”;
- (g) by omitting from subsection (8) “applicant” and substituting “approved medical practitioner”;
- (h) by omitting paragraphs (a) and (ab) from subsection (8) and substituting the following paragraphs:
 - (a) to ensure that the patient is advised of the authorisation as soon as possible after it is given;
 - (ab) to give a copy of the authorisation to the CCP and the Tribunal;
 - (ac) to give a copy of the authorisation to the patient (together with a statement of rights in a CCP approved form);
- (i) by omitting paragraph (b) from subsection (9);
- (j) by inserting the following paragraph after paragraph (d) in subsection (9):

Mental Health Amendment Act 2016
Act No. of

s. 32

- (da) the assessment order, treatment order or interim treatment order ceases or is discharged;
- (k) by omitting subsection (10).

32. Section 56 amended (Seclusion)

Section 56 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (4A) Notwithstanding the discretionary nature of the power under section 152(1), the CCP must ensure that standing orders are issued for this section.

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

Section 59 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “The” and substituting “Except in an emergency, the”;
- (b) by omitting from subsection (2) “, specifying the mode and conditions of transport, and is invalid if not in that form”;
- (c) by inserting the following subsections after subsection (2):

Mental Health Amendment Act 2016
Act No. of

s. 33

- (2A) In an emergency, the transfer direction may be given orally or in writing.
- (2B) If a transfer direction is given orally in accordance with subsection (2A), it must be confirmed in writing in a CCP approved form as soon as practicable after it is given.
- (2C) The transfer direction is authority for an MHO to –
 - (a) take the patient under escort; and
 - (b) remove the patient from the transferring hospital; and
 - (c) take the patient to the other hospital.
- (2D) For the purposes of subsection (2C) –
 - (a) the CCP may request that the patient be taken under escort (in which case the CCP is to ensure that the escort is given a copy of the transfer direction); and
 - (b) the custody and escort provisions apply.

Mental Health Amendment Act 2016
Act No. of

s. 34

(d) by omitting subsections (4), (5) and (6) and substituting the following subsection:

(4) The CCP is to ensure that, if practicable, the actions required by subsection (3)(a) and (b) are taken before the transfer takes place.

(e) by omitting from subsection (7) “admission, or detention” twice occurring and substituting “admission and, if necessary, detention”.

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

Section 60 of the Principal Act is amended as follows:

(a) by omitting from subsection (2) “, and for any period not exceeding 14 days”;

(b) by inserting the following subsection after subsection (3):

(3A) Leave must not be granted for a continuous period of more than 14 days.

(c) by inserting in subsection (10)(a) “a continuous period of” after “exceed”;

(d) by inserting in subsection (11)(a) “a continuous period of” after “exceed”.

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

Section 61 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

(1A) This section also applies if a patient is absent from an approved hospital without leave.

- (b) by inserting in subsection (2) “is to alert the Tribunal and” after “practitioner”.

36. Section 63 amended (Admission)

Section 63(3) of the Principal Act is amended by inserting “and the treatment order has effect as if it provided for the patient’s detention in the SMHU” after “order”.

37. Section 65 amended (Period of detention)

Section 65 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “made.” and substituting “made; or”;

- (b) by inserting the following paragraphs after paragraph (b):

Mental Health Amendment Act 2016
Act No. of

s. 38

- (c) if the patient is subject to an assessment order, the assessment order expires or is discharged; or
 - (d) if the patient is subject to a treatment order, the treatment order expires or is discharged –
- whichever occurs first.

38. Section 65A inserted

After section 65 of the Principal Act, the following section is inserted in Division 8:

65A. Renewal of treatment order for patient in SMHU

In its application to an involuntary patient admitted to an SMHU under section 63, Division 2 of Part 3 of Chapter 2 is modified as follows:

- (a) when renewing a treatment order under section 48, the Tribunal may specify a treatment setting other than an SMHU;
- (b) section 48(3)(b) does not apply;
- (c) the CPF is the person to whom notice under section 48(9)(b)(iii) is to be given.

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

Section 73(3) of the Principal Act is amended by omitting “by any other convenient means” and substituting “in writing”.

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

Section 78(13)(b) of the Principal Act is amended by omitting “an MHT approved form” and substituting “a form approved by the President of the Tribunal”.

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

Section 79 of the Principal Act is amended as follows:

(a) by omitting from subsection (3) “10” and substituting “20”;

(b) by inserting the following subsections after subsection (3):

(3A) Once an application for an extension or variation of conditions of leave has been made, the following provisions apply:

(a) the Tribunal is to notify the Secretary

Mental Health Amendment Act 2016
Act No. of

s. 41

- (Corrections) of the application;
- (b) the Secretary (Corrections) is to check the Eligible Persons Register to determine whether there are any eligible persons in relation to the patient;
 - (c) if there are such eligible persons, the Secretary (Corrections) is to make a reasonable attempt to notify each of them of the application and of their right to make written submissions in respect of it within 10 days after the eligible person is notified;
 - (d) the Tribunal is to notify any other person who, in the Tribunal's opinion, should be notified of the application, and of that person's right to make written submissions in respect of it within 10 days, after being notified of the application.
- (3B) The Tribunal is to consider any submissions received under subsection (3A) before extending

or varying the conditions of leave.

42. Section 83 amended (Extension, variation and cancellation of leave of absence)

Section 83 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (2A) In considering whether or not to extend, or vary the conditions of, leave, the following provisions apply:
- (a) the CFP is to notify the Secretary (Corrections) that an extension or variation of the leave is under consideration;
 - (b) the Secretary (Corrections) is to check the Eligible Persons Register to determine whether there are any eligible persons in relation to the patient;
 - (c) if there are such eligible persons, the Secretary (Corrections) is to make a reasonable attempt to notify each of them of the consideration and of their right to make written submissions in respect of it within 10 days after the eligible person is notified;
 - (d) the CFP is to notify any other person who, in the CFP's

Mental Health Amendment Act 2016
Act No. of

s. 43

opinion, should be notified of the consideration and of that person's right to make written submissions in respect of it within 10 days after being notified of the application.

- (2B) In the case of an extension of leave, the CFP is to notify the Secretary (Corrections) under subsection (2A)(a) not less than 20 days before the leave is due to expire.
- (2C) The CFP is to consider any submissions received under subsection (2A) before extending or varying the conditions of the leave.

43. Section 87 amended (Urgent circumstances treatment)

Section 87 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "the CFP" and substituting "an approved medical practitioner";
- (b) by omitting from subsection (2) "CFP" twice occurring and substituting "approved medical practitioner";
- (c) by omitting subsections (3), (4), (5) and (6) and substituting the following subsection:

- (3) The approved medical practitioner may give the authorisation if, and only if, he or she has concluded from an examination that –
- (a) the patient has a mental illness that is generally in need of treatment; and
 - (b) the urgent circumstances treatment is necessary for –
 - (i) the patient's health or safety; or
 - (ii) the safety of other persons; and
 - (c) the urgent circumstances treatment is likely to be both effective and appropriate in terms of the outcomes referred to in section 6(1); and
 - (d) achieving the necessary treatment outcome would be compromised by waiting for the urgent circumstances treatment to be authorised by the Tribunal (or by a member thereof on an interim basis).

Mental Health Amendment Act 2016
Act No. of

s. 43

- (d) by omitting from subsection (7) “CFP” first occurring and substituting “approved medical practitioner”;
- (e) by omitting from subsection (7) “CFP” second occurring and substituting “approved medical practitioner”;
- (f) by omitting from subsection (8) “applicant” and substituting “approved medical practitioner”;
- (g) by omitting paragraphs (a) and (ab) from subsection (8) and substituting the following paragraphs:
 - (a) to ensure that the patient is advised of the authorisation as soon as possible after it is given;
 - (ab) to give a copy of the authorisation to the CFP and the Tribunal;
 - (ac) to give a copy of the authorisation to the patient (together with a statement of rights in a CFP approved form);
- (h) by omitting paragraph (b) from subsection (9);
- (i) by inserting the following paragraph after paragraph (d) in subsection (9):
 - (da) the patient is discharged from the SMHU;
- (j) by omitting subsection (10).

44. Section 88 amended (Authorisation of treatment by Tribunal)

Section 88 of the Principal Act is amended as follows:

- (a) by omitting from subsection (4) “an MHT approved form” and substituting “a form approved by the President of the Tribunal”;
- (b) by omitting from subsection (5)(a) “an MHT approved form” and substituting “a form approved by the President of the Tribunal”.

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

Section 91 of the Principal Act is amended as follows:

- (a) by omitting from subsection (5) “an MHT approved form” and substituting “a form approved by the President of the Tribunal”;
- (b) by omitting from subsection (8) “an MHT approved form” and substituting “a form approved by the President of the Tribunal”;
- (c) by omitting from subsection (11)(a) “an MHT approved form” and substituting “a form approved by the President of the Tribunal”.

Mental Health Amendment Act 2016
Act No. of

s. 46

46. Section 94 amended (Seclusion)

Section 94 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (5) Notwithstanding the discretionary nature of the power under section 152(1), the CFP must ensure that CFP standing orders are issued for this section.

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

Section 110(3) of the Principal Act is amended by inserting “Australian” after “police officers,”.

48. Section 136 amended (Monthly reports on voluntary inpatients)

Section 136(2)(a) of the Principal Act is amended by omitting “an MHT approved form” and substituting “a form approved by the President of the Tribunal”.

49. Section 149 amended (Delegation)

Section 149(3) of the Principal Act is amended by omitting paragraph (a) from the definition of *restricted professional power*.

50. Section 167 amended (Establishment)

Section 167(2)(a) of the Principal Act is amended by omitting “at least 5 years’

experience as such” and substituting “not less than 5 years’ standing as an Australian legal practitioner”.

51. Section 169 amended (Powers)

Section 169(2) of the Principal Act is amended as follows:

- (a) by omitting “Without limiting subsection (1), the Tribunal may ” and substituting “The President of the Tribunal has the power to ”;
- (b) by omitting from paragraph (a) “its” and substituting “the Tribunal’s”;
- (c) by omitting from paragraph (b) “its” and substituting “the Tribunal’s”;
- (d) by omitting from paragraph (c) “its” and substituting “the Tribunal’s”.

52. Section 172 amended (Interim determinations on adjournment)

Section 172(1) of the Principal Act is amended by omitting “, but not more than twice, and only if the total period of all such adjournments together is not more than 30 days”.

53. Section 173 amended (Questions of law)

Section 173 of the Principal Act is amended by inserting “President of the” after “The”.

Mental Health Amendment Act 2016
Act No. of

s. 54

54. Section 176 amended (Registrar and staff)

Section 176(2) of the Principal Act is amended by inserting “President of the” after “The”.

55. Section 178 amended (Annual report)

Section 178(1) of the Principal Act is amended as follows:

- (a) by inserting “President of the” after “The”;
- (b) by omitting “its” and substituting “the Tribunal’s”.

56. Section 179 amended (The Tribunal’s review function)

Section 179(1) of the Principal Act is amended by inserting after paragraph (e) the following paragraph:

- (ea) the authorisation of treatment for any forensic patient; and

57. Section 180 amended (Review of assessment order)

Section 180(e)(i) of the Principal Act is amended by omitting “an MHT approved form” and substituting “a form approved by the President of the Tribunal”.

58. Section 181 amended (Review of treatment order)

Section 181 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “30” and substituting “60”;
- (b) by omitting from subsection (1)(b) “90” and substituting “180”;
- (c) by omitting from subsection (1)(c) “90” and substituting “180”;
- (d) by omitting from subsection (1)(d) “detention at” and substituting “admission to”;
- (e) by omitting from subsection (1)(d) “detention is pursuant to section 42(2)(c)” and substituting “admission is pursuant to section 42(2)(b)”;
- (f) by inserting the following subsection after subsection (2):
 - (2A) The Tribunal may vary a treatment order whether or not it has conducted a review under this section.
- (g) by omitting from subsection (3)(a) “an MHT approved form” and substituting “a form approved by the President of the Tribunal”;

Mental Health Amendment Act 2016
Act No. of

s. 59

- (h) by omitting from subsection (4) “detained in” and substituting “admitted to and, if necessary, detained in”.

59. Section 191 amended (Review of determination relating to leave of absence)

Section 191(f) of the Principal Act is amended as follows:

- (a) by omitting from subparagraph (i) “a discrete period of leave exceeding” and substituting “leave for a continuous period of more than”;
- (b) by omitting from subparagraph (ii) “a discrete period of leave exceeding” and substituting “leave for a continuous period of more than”.

60. Section 192A inserted

After section 192 of the Principal Act, the following section is inserted in Division 2:

192A. Tribunal to review forensic patient’s treatment authorisation

- (1) The following provisions apply to the review of the authorisation of treatment for a forensic patient:
 - (a) the Tribunal must review the authorisation within 60 days after it is made, if it is still in effect;

- (b) the Tribunal must further review the authorisation within 180 days after it is made, if it is still in effect;
 - (c) after the further review referred to in paragraph (b), the Tribunal must further review the authorisation at intervals not exceeding 180 days for so long as it remains in effect;
 - (d) the Tribunal may review the authorisation at any other time –
 - (i) on its own motion; or
 - (ii) on the application of any person with the necessary standing;
 - (e) the review is to be conducted by a division of 3 members but need not involve a hearing;
 - (f) on review, the Tribunal may affirm, vary or discharge the authorisation.
- (2) Within 24 hours of reviewing an authorisation, the Tribunal is to –
- (a) give a copy of its determination to the patient (together with a statement of rights in a form approved by the President of the Tribunal); and

Mental Health Amendment Act 2016
Act No. of

s. 61

(b) give a copy of its determination to –

(i) the controlling authority of the relevant SMHU; and

(ii) the CFP.

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

Section 195 of the Principal Act is amended as follows:

(a) by omitting from subsection (1)(a) “an MHT approved form” and substituting “a form approved by the President of the Tribunal”;

(b) by omitting paragraphs (b), (c), (d), (e) and (f) from subsection (1);

(c) by inserting in subsection (3)(b) “Australian” after “this,”.

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

Section 197 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

(4) This section does not apply to –

- (a) a 60-day or 180-day review of a treatment order; or
- (b) a 60-day or 180-day review of the authorisation of treatment for a forensic patient.

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

Section 199 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or direction” after “A determination”;
- (b) by inserting in subsection (1)(a) “or direction” after “determination”;
- (c) by inserting in subsection (3) “or direction” after “a determination”;
- (d) by inserting in subsection (3) “or direction” after “the determination”.

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

Section 212 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or an approved medical officer” after “An approved ambulance officer”;

Mental Health Amendment Act 2016
Act No. of

s. 65

- (b) by inserting in subsection (1) “or approved medical officer” after “the approved ambulance officer”;
- (c) by inserting in subsection (2) “or approved medical officer” after “officer”;
- (d) by inserting in subsection (3) “or approved medical officer” after “officer”;
- (e) by inserting the following definition after the definition of *approved ambulance officer* in subsection (5):

approved medical officer means a
medical practitioner who is
approved as an MHO for this Act;

65. Section 213 amended (Unlawful treatment)

Section 213(2) of the Principal Act is amended by inserting “or any other law” after “Act”.

66. Section 221 amended (Delegation by controlling authority)

Section 221 of the Principal Act is amended by inserting “or any other Act” after “Act”.

67. Section 224 substituted

Section 224 of the Principal Act is repealed and the following sections are substituted:

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

- (1) The validity of an order, determination, direction or other document produced under this Act is not affected by an error unless –
 - (a) the error relates to the grounds on which the order, determination, direction or other document was made and proper grounds for making it did not exist; or
 - (b) as a result of the error, the order, determination, direction or other document does not comply with a mandatory requirement of this Act relating to the making of the order, determination, direction or other document.
- (2) An error in an order, determination, direction or other document made by the Tribunal under this Act that does not affect the validity of the order, determination, direction or other document may be corrected by the Registrar or the President.
- (3) An error in a CCP approved form that does not affect its validity may be corrected by the CCP.
- (4) An error in a CFP approved form that does not affect its validity may be corrected by the CFP.

Mental Health Amendment Act 2016
Act No. of

s. 67

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

- (1) An error in an order, determination, direction or other document made by the Tribunal under this Act that affects the validity of the order, determination, direction or other document may be corrected at any time by the Tribunal –
 - (a) on its own motion; or
 - (b) on the application of an approved medical practitioner; or
 - (c) on the application of any person with the necessary standing.
- (2) When correcting an order, determination, direction or other document, the Tribunal –
 - (a) is to consist of 3 members; and
 - (b) need not conduct a hearing.
- (3) Within 24 hours after correcting an order, determination, direction or other document under this section, the Tribunal must –
 - (a) give a copy of the corrected document to the patient (together with a statement of rights in a form approved by the President); and

- (b) give a copy of the corrected document to –
 - (i) if the patient has been, is or will be admitted to, or detained in, an approved hospital, the controlling authority of that approved hospital; or
 - (ii) if the patient is a forensic patient, the CFP and the controlling authority of the relevant SMHU; or
 - (iii) in any other case, the CCP.

68. Section 226 substituted

Section 226 of the Principal Act is repealed and the following section is substituted:

226. Service of documents

- (1) A notice or other document that is required to be given or served under this Act is effectively given or served if –
 - (a) in the case of a natural person who is –
 - (i) a voluntary inpatient; or
 - (ii) a forensic patient; or

Mental Health Amendment Act 2016
Act No. of

s. 68

(iii) an involuntary patient who is being detained in an approved facility under the authority of an assessment order or a treatment order –

the document is given to the person; or

(b) in the case of any other natural person, the document is –

(i) given to the person; or

(ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the server of the document; or

(iii) faxed to the person's fax number; or

(iv) emailed to the person's email address; or

(c) in the case of any other person, it is –

(i) left at, or sent by post to, the person's principal or registered office or principal place of business; or

(ii) faxed to the person's fax number; or

(iii) emailed to the person's email address.

(2) For the purposes of this section –

give, in relation to a notice or other document, includes cause the notice or other document to be given.

69. Schedule 3 amended (Membership of Tribunal)

Schedule 3 to the Principal Act is amended as follows:

(a) by omitting from clause 7(2)(a) “Tribunal’s permission” and substituting “permission of the President of the Tribunal”;

(b) by inserting in clause 11(1) “President of the” after “The”.

70. Schedule 4 amended (Proceedings of Tribunal)

Schedule 4 to the Principal Act is amended by inserting in clause 11(1) of Part 2 “President of the” after “The”.

Mental Health Amendment Act 2016
Act No. of

s. 71

71. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.