

TASMANIA

MENTAL HEALTH AMENDMENT (SECURE MENTAL HEALTH UNIT) BILL 2005

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MENTAL HEALTH AMENDMENT (SECURE MENTAL HEALTH UNIT) BILL 2005

*(Brought in by the Minister for Health and Human Services,
the Honourable David Edward Llewellyn)*

A BILL FOR

An Act to establish a secure mental health unit within the mental health system, to establish the Forensic Tribunal, to amend the *Mental Health Act 1996* for these purposes, to amend certain other Acts and for related purposes

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

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Mental Health Amendment (Secure Mental Health Unit) Act 2005*.

2. Commencement

This Act commences on 20 February 2006.

PART 2 – MENTAL HEALTH ACT 1996 AMENDED**3. Principal Act**

In this Part, the *Mental Health Act 1996** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting “or the Chief Forensic Psychiatrist” after “hospital” in the definition of “approved psychiatric nurse”;
- (b) by inserting the following definition after the definition of “authorised officer”:

“authorised person” means a person, or a person of a class of persons, authorised by the Chief Forensic Psychiatrist or the controlling authority of a secure mental health unit for the purposes of Part 10A or a provision of that Part, as specified in the authorisation;

- (c) by inserting the following definition after the definition of “bodily restraint”:

*No. 31 of 1996

“Chief Forensic Psychiatrist” means
the Chief Forensic Psychiatrist
appointed under section 11A;

- (d) by omitting “hospital or an assessment centre” from paragraph (a) of the definition of “controlling authority” and substituting “hospital, assessment centre or secure mental health unit”;
- (e) by omitting paragraph (b) from the definition of “controlling authority” and substituting the following paragraph:
 - (b) in the case of any other hospital, assessment centre or secure mental health unit, the body or person specified to be the controlling authority in the Minister’s approval under section 9, 10 or 10A;
- (f) by inserting “Mental Health” after “of the” in the definition of “Deputy President”;
- (g) by inserting “Mental Health” after “the” in the definition of “determination”;
- (h) by inserting the following definitions after the definition of “Director”:

“forensic patient” means a person
who is admitted to a secure
mental health unit in accordance
with section 72A and who has not
been discharged from that secure
mental health unit;

“Forensic Tribunal” means the Forensic Tribunal established by section 73T;

“Forensic Tribunal Member Register” means a register kept under section 74L;

“functions” includes duties;

- (i) by omitting “the Tribunal” twice occurring from the definition of “jurisdiction” and substituting “the Mental Health Tribunal”;
- (j) by inserting the following definitions after the definition of “jurisdiction”:

“legal practitioner” has the same meaning as in the *Legal Profession Act 1993*;

“Mental Health Tribunal” means the Mental Health Review Tribunal continued under section 48 as the Mental Health Tribunal;

- (k) by omitting “section 73” from the definition of “official visitor” and substituting “section 74P”;
- (l) by inserting the following definition after the definition of “parent”:

“patient” means a person admitted as a patient to an approved hospital, assessment centre or secure mental health unit under this Act;

- (m) by inserting the following definition after the definition of “person responsible”:

“premises” includes a part of premises;

- (n) by inserting “Mental Health” after “of the” in the definition of “President”;
- (o) by inserting the following definitions after the definition of “President”:

“prison” means –

- (a) a prison within the meaning of the *Corrections Act 1997*; or
- (b) a detention centre within the meaning of the *Youth Justice Act 1997*;

“prisoner” means –

- (a) a prisoner within the meaning of the *Corrections Act 1997*; or
- (b) a detainee within the meaning of the *Corrections Act 1997*; or
- (c) a person who is serving a sentence of detention imposed under the *Youth Justice Act 1997* or is subject to an order under that Act remanding the person to a detention centre;

- (p) by omitting “holding an authorisation” from the definition of “psychiatric nurse” and substituting “who is qualified”;
- (q) by inserting the following definition after the definition of “psychiatric nurse”:

“psychiatrist” means a registered medical practitioner who is a Fellow of the Royal College of Australian and New Zealand College of Psychiatrists or who has been registered either under section 21(2)(e) of the *Medical Practitioners Registration Act 1996* to practise in the specialty of psychiatry or under section 21(2)(g) of that Act to practise as a psychiatrist in a declared area of need;

- (r) by inserting “Mental Health” after “of the” in the definition of “registrar”;
- (s) by inserting the following definition after the definition of “regulations”:

“restriction order” means a restriction order made under the *Criminal Justice (Mental Impairment) Act 1999* or *Sentencing Act 1997*;

- (t) by inserting the following definitions after the definition of “Secretary”:

“Secretary (Corrections)” means the Secretary of the responsible

Department in relation to the
Corrections Act 1997;

“Secretary (Youth Justice)” means
the Secretary of the responsible
Department in relation to the
Youth Justice Act 1997;

“secure institution” means an
institution approved to be a
secure institution under
section 73D;

“secure mental health unit” means
premises, or a part of premises,
approved by the Minister under
section 10A to be a secure mental
health unit;

“sentence of imprisonment” includes
a sentence of detention imposed
under the *Youth Justice Act 1997*;

- (u) by omitting the definition of “Tribunal”
and substituting the following
definitions:

“statutory authority” means an
incorporated or unincorporated
body which is established,
constituted or continued by or
under an Act or under the royal
prerogative, being a body which,
or of which the governing
authority, wholly or partly
comprises a person or persons
appointed by the Governor, a
Minister of the Crown or another
statutory authority;

“supervision order” means a supervision order made under the *Criminal Justice (Mental Impairment) Act 1999* or *Sentencing Act 1997*;

“Victims Register” means the victims register referred to in section 72 of the *Corrections Act 1997*;

“young prisoner” means –

- (a) a person who is serving a sentence of detention imposed under the *Youth Justice Act 1997* and, if not a forensic patient, would be serving that sentence in a detention centre; or
- (b) a person who is subject to an order under that or another Act remanding the person to a detention centre.

5. Section 5AA inserted

After section 5 of the Principal Act, the following section is inserted in Part 1:

5AA. Meaning of “informed consent”

- (1) A person is taken to have given informed consent to proposed medical treatment if, and only if, the following requirements are satisfied:

- (a) the person is, in the opinion of the medical practitioner who is responsible for administering the proposed treatment, mentally capable of understanding the general nature and effect of the proposed treatment;
 - (b) the person, after being given the information required under subsection (2), freely and voluntarily consents to the proposed treatment;
 - (c) the person has not withdrawn the consent.
- (2) The medical practitioner who is responsible for the administration of medical treatment to a person must give the person whose consent to medical treatment is sought –
 - (a) a clear explanation of the proposed treatment; and
 - (b) a description, without concealment or distortion, of the benefits and disadvantages of the treatment, including a statement of the risk of adverse consequences; and
 - (c) a description of alternative forms of treatment that may be available and their benefits and disadvantages; and

- (d) clear answers to questions asked by the person; and
- (e) a reasonable opportunity to obtain independent medical or other advice.

6. Section 5A amended (Application of Act)

Section 5A of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “restriction order, supervision order,” after “a”;
- (b) by inserting in paragraph (b) “restriction order, supervision order or” after “a”.

7. Section 6 amended (Objects of Act)

Section 6 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “patients with” and substituting “patients, forensic patients and persons subject to supervision orders or community treatment orders who have”;
- (b) by inserting the following paragraph after paragraph (c):
 - (ca) to provide for the authorising of medical treatment by the Forensic Tribunal; and

- (c) by omitting from paragraph (j) “community.” and substituting “community; and”;
- (d) by inserting the following paragraph after paragraph (j):
 - (k) to ensure that, in relation to patients, all appropriate measures are taken to protect the safety of the patients and other persons.

8. Section 7 amended (Principle of minimum interference with civil rights)

Section 7 of the Principal Act is amended as follows:

- (a) by inserting “forensic patient or person subject to a supervision order or community treatment order,” after “involuntary patient,”;
- (b) by omitting from paragraph (a) “and interference with the patient’s” and substituting “or person and interference with that patient’s or person’s”;
- (c) by omitting from paragraph (a) “the patient and others;” and substituting “that patient or person and other persons and, in relation to a forensic patient, the good order and security of the secure mental health unit;”;
- (d) by omitting from paragraph (b) “the patient’s” first occurring and substituting “that patient’s or person’s”;

- (e) by omitting from paragraph (b)(i) “the patient’s” and substituting “that patient’s or person’s”;
- (f) by omitting from paragraph (b)(ii) “the patient and others.” and substituting “that patient or person and other persons; and”;
- (g) by inserting the following subparagraph after subparagraph (ii) in paragraph (b):
 - (iii) in the case of a forensic patient, the good order and security of the secure mental health unit.

9. Section 9 amended (Approval of hospitals)

Section 9 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “the controlling” and substituting “the prospective controlling”;
- (b) by inserting in subsection (1) “that is intended to be an approved hospital” after “a hospital”;
- (c) by omitting from subsection (2)(b) “the controlling” and substituting “the prospective controlling”;
- (d) by omitting subsection (3) and substituting the following subsection:
 - (3) An approval –
 - (a) is to specify who is the controlling authority for

the approved hospital if
the approved hospital is
not to be maintained and
operated by the State; and

- (b) may be granted on any
conditions the Minister
considers appropriate.

**10. Section 10 amended (Approval of assessment
centres)**

Section 10 of the Principal Act is amended as
follows:

- (a) by omitting from subsection (1) “the
controlling” and substituting “the
prospective controlling”;
- (b) by inserting in subsection (1) “premises
that are intended to be” after “authority
of”;
- (c) by inserting in subsection (1) “premises
as an” after “approve the”;
- (d) by omitting from subsection (2)(b) “the
controlling” and substituting “the
prospective controlling”;
- (e) by omitting subsection (3) and
substituting the following subsection:

(3) An approval –

- (a) is to specify who is the
controlling authority for
the assessment centre if

the assessment centre is
not to be maintained and
operated by the State; and

- (b) may be granted on any
conditions the Minister
considers appropriate.

11. Section 10A inserted

After section 10 of the Principal Act, the
following section is inserted in Division 1:

10A. Approval of secure mental health units

- (1) The Minister, on the application of a prospective controlling authority of premises that are intended to be a secure mental health unit, may approve the premises to be a secure mental health unit for the care and treatment of persons subject to restriction orders.
- (2) Before the Minister approves a secure mental health unit under this section, the Minister must be satisfied that –
- (a) the secure mental health unit is properly equipped and staffed for the care and treatment of forensic patients; and
- (b) the prospective controlling authority is a suitable body or person to be in charge of a secure mental health unit.
- (3) An approval –

- (a) is to specify who is the controlling authority for the secure mental health unit if the secure mental health unit is not to be maintained and operated by the State; and
- (b) may be granted on any conditions the Minister considers appropriate.

12. Section 11 amended (Revocation of approval)

Section 11(2)(a) of the Principal Act is amended by omitting “hospital or assessment centre” and substituting “approved hospital, assessment centre or secure mental health unit”.

13. Part 2, Division 1A inserted

After section 11 of the Principal Act, the following Division is inserted in Part 2:

Division 1A – Chief Forensic Psychiatrist**11A. Chief Forensic Psychiatrist**

- (1) The Secretary may appoint –
 - (a) a State Service officer or State Service employee employed in the Department who is a psychiatrist; or
 - (b) with the consent of another Head of a State Service Agency, a State

Service officer or State Service
employee employed in that
Agency who is a psychiatrist –

to be Chief Forensic Psychiatrist and that
officer or employee may hold that office
in conjunction with State Service
employment.

(2) The Chief Forensic Psychiatrist holds
office for the period, and on the terms
and conditions, specified in his or her
instrument of appointment.

(3) The Secretary may appoint –

(a) a State Service officer or State
Service employee employed in
the Department who is a
psychiatrist; or

(b) with the consent of another Head
of a State Service Agency, a State
Service officer or State Service
employee employed in that
Agency who is a psychiatrist –

to act in the office of Chief Forensic
Psychiatrist if the Chief Forensic
Psychiatrist has died, resigned or been
removed from office and a new Chief
Forensic Psychiatrist has not been
appointed.

(4) A person appointed to act in the office of
Chief Forensic Psychiatrist –

- (a) may act in that office in conjunction with State Service employment; and
- (b) while acting in that office, is taken to be the Chief Forensic Psychiatrist.

11B. Role, functions and powers of Chief Forensic Psychiatrist

- (1) The Chief Forensic Psychiatrist is to report to the Secretary in relation to –
 - (a) the care and treatment of forensic patients and persons subject to supervision orders; and
 - (b) whether the objects of this Act are being met with respect to forensic patients, persons subject to supervision orders and secure mental health units.
- (2) The Chief Forensic Psychiatrist has the functions imposed by this and any other Act.
- (3) The Chief Forensic Psychiatrist has the following powers:
 - (a) the power to make standing orders –
 - (i) for the management and security of secure mental health units; and

- (ii) for the welfare, protection, care, treatment and control of forensic patients and persons subject to supervision orders; and
 - (iii) as otherwise required or contemplated by this Act;
- (b) all other powers given by this and any other Act;
- (c) the power to do all things necessary or convenient to perform his or her functions.

11C. Protection from liability of Chief Forensic Psychiatrist

- (1) The Chief Forensic Psychiatrist does not incur any personal liability in respect of any act done or omitted to be done by the Chief Forensic Psychiatrist in good faith in the performance or exercise, or purported performance or exercise, of any of his or her functions or powers or in the administration or execution, or purported administration or execution, of this Act.
- (2) Subsection (1) does not preclude the Crown from incurring liability that the Chief Forensic Psychiatrist would, but for that subsection, incur.

14. Part 2, Division 3 substituted

Division 3 of Part 2 of the Principal Act is repealed and the following Division is substituted:

Division 3 – Delegations**14. Delegation by Minister**

The Minister may delegate any of his or her functions or powers under this Act, other than this power of delegation.

14A. Delegations by Secretary, controlling authority and Chief Forensic Psychiatrist

- (1) The Secretary may delegate any of his or her functions or powers under this Act, other than this power of delegation and the power to appoint the Chief Forensic Psychiatrist or a person to act in the office of Chief Forensic Psychiatrist under section 11A.
- (2) The controlling authority of an approved hospital, assessment centre or secure mental health unit may delegate any of its functions or powers under this or any other Act, other than this power of delegation.
- (3) The Chief Forensic Psychiatrist may delegate any of his or her functions or powers under this or any other Act, other than this power of delegation.

15. Section 29 amended (Term and renewal of continuing care order)

Section 29(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “the Tribunal,” and substituting “the Mental Health Tribunal,”;
- (b) by inserting in paragraph (d) “is not” after “renewed or”;
- (c) by omitting from paragraph (d) “renewed.” and substituting “renewed; or”;
- (d) by inserting the following paragraph after paragraph (d):
 - (e) the patient becomes a forensic patient.

16. Part 5, Division 2 repealed

Division 2 of Part 5 of the Principal Act is repealed.

17. Section 34 amended (Physical restraint)

Section 34(c) of the Principal Act is amended by inserting “Mental Health” after “by the”.

18. Section 35 amended (Seclusion of involuntary patients)

Section 35(2)(a)(i) of the Principal Act is amended by inserting “Mental Health” after “by the”.

19. Section 36 amended (Monthly reports on bodily restraint and seclusion)

Section 36 of the Principal Act is amended by inserting “Mental Health” after “the”.

20. Section 39 amended (Transfer of involuntary patient)

Section 39 of the Principal Act is amended as follows:

- (a) by inserting in subsection (4) “Mental Health” after “The”;
- (b) by inserting in subsection (5) “Mental Health” after “subsection (4), the”.

21. Section 44 amended (Term and renewal of community treatment order)

Section 44(4)(b) of the Principal Act is amended by omitting “the Tribunal,” and substituting “the Mental Health Tribunal,”.

22. Section 46 amended (Monthly reports)

Section 46 of the Principal Act is amended by inserting “Mental Health” after “the”.

23. Part 9: Heading amended

Part 9 of the Principal Act is amended by inserting in the heading to that Part “**MENTAL HEALTH**” after “**THE**”.

24. Part 9, Division 1: Heading amended

Division 1 of Part 9 of the Principal Act is amended by inserting in the heading to that Division “*Mental Health*” after “*the*”.

25. Section 48 amended (Establishment of Mental Health Tribunal)

Section 48 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “Mental Health” after “The”;
- (b) by inserting in subsection (2)(b) “Mental Health” after “of the”;
- (c) by inserting in subsection (3) “Mental Health” after “of the”.

26. Section 49 amended (Mental Health Tribunal to sit in divisions)

Section 49 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “Mental Health” after “The”;
- (b) by inserting in subsection (3) “Mental Health” after “division of the”;
- (c) by inserting in subsection (4) “Mental Health” after “the”.

27. Section 50 amended (Mental Health Tribunal may act by majority)

Section 50 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “Mental Health” after “If the”;
- (b) by omitting from subsection (1)(a) “the Tribunal” and substituting “the Mental Health Tribunal”;
- (c) by inserting in subsection (1)(b) “Mental Health” after “decision of the”;
- (d) by inserting in subsection (2) “Mental Health” after “of the”.

28. Part 9, Division 2: Heading amended

Division 2 of Part 9 of the Principal Act is amended by inserting in the heading to that Division “***Mental Health***” after “***The***”.

29. Section 51 amended (Functions of Mental Health Tribunal)

Section 51 of the Principal Act is amended as follows:

- (a) by inserting “Mental Health” after “functions of the”;
- (b) by inserting the following paragraph after paragraph (d):
 - (da) to review a decision to admit an involuntary patient to a secure mental health unit under section 72B; and
- (c) by inserting in paragraph (e) “Mental Health” after “on the”.

30. Section 52 amended (Reviews of certain orders, authorisations and admissions)

Section 52 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “Mental Health” after “The”;
- (b) by inserting in subsection (2) “Mental Health” after “The”;

- (c) by inserting in subsection (3) “Mental Health” after “The”;
- (d) by inserting the following subsection after subsection (3):
 - (3A) The Mental Health Tribunal must review the admission of an involuntary patient to a secure mental health unit under section 72B within 3 days after the date on which the patient is so admitted.
- (e) by inserting in subsection (4) “Mental Health” after “section, the”;
- (f) by inserting in subsection (4) “Mental Health” after “of the”;
- (g) by inserting in subsection (5) “Mental Health” after “The”;
- (h) by inserting in subsection (6) “Mental Health” after “The”.

31. Section 53 amended (Applications for review)

Section 53(5) of the Principal Act is amended by inserting “Mental Health” after “by the”.

32. Section 54 amended (Notification and hearing of review)

Section 54(1)(d) of the Principal Act is amended by inserting “Mental Health” after “the”.

33. Part 9, Division 3: Heading amended

Division 3 of Part 9 of the Principal Act is amended by inserting in the heading to that Division “***Mental Health***” after “***The***”.

34. Section 55 amended (Times and places of sittings)

Section 55 of the Principal Act is amended by inserting “Mental Health” after “The”.

35. Section 56 amended (General principles for hearings by Mental Health Tribunal)

Section 56 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “Mental Health” after “The”;
- (b) by inserting in subsection (2) “Mental Health” after “The”.

36. Section 57 amended (Representation in proceedings before Mental Health Tribunal)

Section 57 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “Mental Health” after “before the”;
- (b) by inserting in subsection (3) “Mental Health” after “before the”;

- (c) by inserting in subsection (4) “Mental Health” after “before the”.

37. Section 58 amended (Evidence before Mental Health Tribunal)

Section 58 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “Mental Health” after “The”;
- (b) by inserting in subsection (2) “Mental Health” after “the”;
- (c) by inserting in subsection (3) “Mental Health” after “the”;
- (d) by inserting in subsection (4) “Mental Health” after “given before the”;
- (e) by inserting in subsection (4)(b) “Mental Health” after “the”;
- (f) by inserting in subsection (5) “Mental Health” after “witness before the”;
- (g) by inserting in subsection (6) “Mental Health” after “to the”.

38. Section 59 amended (Summonses to witnesses)

Section 59 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “Mental Health” after “The”;

- (b) by inserting in subsection (2) “Mental Health” after “by the”;
- (c) by inserting in subsection (2) “Mental Health” after “and the”.

39. Section 60 amended (Power to require reports, &c.)

Section 60 of the Principal Act is amended as follows:

- (a) by inserting “Mental Health” after “The”;
- (b) by inserting in paragraph (a) “Mental Health” after “the”.

40. Section 61 amended (Medical examinations)

Section 61 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “Mental Health” after “The”;
- (b) by inserting in subsection (2) “Mental Health” after “before the”;
- (c) by inserting in subsection (2) “Mental Health” after “of the”;
- (d) by inserting in subsection (3) “Mental Health” after “The”;
- (e) by inserting in subsection (6) “Mental Health” after “provide the”.

41. Section 62 amended (Visits by Mental Health Tribunal)

Section 62 of the Principal Act is amended as follows:

- (a) by inserting “Mental Health” after “The”;
- (b) by inserting “Mental Health” after “the”.

42. Section 63 amended (Right of Public Guardian and Secretary to intervene)

Section 63 of the Principal Act is amended by inserting “Mental Health” after “before the”.

43. Section 64 amended (Proceedings to be closed)

Section 64 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “Mental Health” after “before the”;
- (b) by inserting in subsection (2) “Mental Health” after “before the”;
- (c) by inserting in subsection (3) “Mental Health” after “subsection (2), the”;
- (d) by inserting in subsection (4) “Mental Health” after “proceedings, the”.

44. Part 9, Division 4: Heading amended

Division 4 of Part 9 of the Principal Act is amended by inserting in the heading to that Division “***Mental Health***” after “*the*”.

45. Section 65 amended (Powers of Mental Health Tribunal on review)

Section 65 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “Mental Health” after “The”;
- (b) by inserting in subsection (1)(b) “Mental Health” after “the”;
- (c) by inserting in subsection (1)(c) “Mental Health” after “directions the”;
- (d) by inserting in subsection (2) “Mental Health” after “The”;
- (e) by omitting from subsection (2) “the Tribunal” and substituting “it”.

46. Section 66 amended (Evidence of Mental Health Tribunal’s determination)

Section 66 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “Mental Health” after “by the”;

- (b) by inserting in subsection (2) “Mental Health” after “member of the”;
- (c) by inserting in subsection (3) “Mental Health” after “made by the”.

47. Section 67 amended (Obligation to comply with determinations)

Section 67 of the Principal Act is amended by inserting “Mental Health” after “the”.

48. Section 68 amended (Register)

Section 68 of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “Mental Health” after “the”;
- (b) by inserting in paragraph (b) “Mental Health” after “the”.

49. Section 69 amended (Annual report of Mental Health Tribunal)

Section 69(1) of the Principal Act is amended by inserting “Mental Health” after “The”.

50. Parts 10A and 10B inserted

After section 72 of the Principal Act, the following Parts are inserted:

PART 10A – SECURE MENTAL HEALTH UNITS***Division 1 – Admission to secure mental health units*****72A. Admission of forensic patients**

- (1) A person may be admitted to a secure mental health unit as a forensic patient if –
- (a) the person is subject to a restriction order; or
 - (b) the person is subject to a supervision order and is apprehended under section 31 of the *Criminal Justice (Mental Impairment) Act 1999*; or
 - (c) the person is subject to an order under section 39(1)(b)(ii) of the *Criminal Justice (Mental Impairment) Act 1999*; or
 - (d) the person is subject to an assessment order made under the *Sentencing Act 1997*; or
 - (e) the person is subject to an order made under section 47 of the *Justices Act 1959* committing him or her to a secure mental health unit; or
 - (f) the person is subject to an order made under section 348 of the *Criminal Code* remanding him or her to a secure mental health unit; or

- (g) the person is subject to an order made under section 105 of the *Youth Justice Act 1997* remanding him or her to a secure mental health unit; or
- (h) the person is subject to any other order of a court made under the *Criminal Justice (Mental Impairment) Act 1999*, the *Criminal Code Act 1924*, the *Sentencing Act 1997*, the *Youth Justice Act 1997* or the *Justices Act 1959* remanding or committing him or her to or in, or otherwise requiring him or her to be detained in, a secure mental health unit; or
- (i) in the case of a person who is a prisoner but not a detainee under the *Youth Justice Act 1997*, the Director makes a direction under section 36A(2) or (3) of the *Corrections Act 1997* that the person be removed from a prison to a secure mental health unit; or
- (j) in the case of a person who is a detainee under the *Youth Justice Act 1997*, the Secretary (Youth Justice) makes a direction under section 134A(2) or (3) of that Act that the person be removed from a detention centre to a secure mental health unit.

- (2) A forensic patient may be detained by the controlling authority of a secure mental health unit –
- (a) if the patient is subject to a restriction order, until the order is discharged; or
 - (b) if the patient is subject to a supervision order, for the period allowed under section 31(6), (7) or (8) of the *Criminal Justice (Mental Impairment) Act 1999*; or
 - (c) if the patient is subject to an order referred to in subsection (1)(c), (d), (e), (f), (g) or (h), until the order ends by reason of the terms of the order or the provisions of any Act; or
 - (d) if the patient is a prisoner admitted to the secure mental health unit by a direction referred to in subsection (1)(i), until whichever of the following events first occurs:
 - (i) the end of the period specified in the direction or an agreement made under section 36A(5) of the *Corrections Act 1997*;
 - (ii) the end of the period of 48 hours, or such longer period as agreed between the Director and the Chief Forensic Psychiatrist,

after the Chief Forensic Psychiatrist requires the Director to remove the person from the secure mental health unit under section 36A(7) of the *Corrections Act 1997*;

- (iii) the end of the period of 48 hours after the Chief Forensic Psychiatrist determines under section 72E(4) that it would be appropriate for the patient to be returned to the custody of the Director or any longer period agreed under that section;
 - (iv) the prisoner is released from prison on parole under the *Corrections Act 1997*;
 - (v) where the prisoner is a detainee, within the meaning of the *Corrections Act 1997*, the order remanding or otherwise committing him or her to prison ends;
 - (vi) the prisoner completes his or her sentence of imprisonment; or
- (e) if the patient is a young prisoner admitted to the secure mental

health unit by a direction referred to in subsection (1)(j), until whichever of the following events first occurs:

- (i) the end of the period specified in the direction;
- (ii) the end of the period of 48 hours, or such longer period as agreed between the Secretary (Youth Justice) and the Chief Forensic Psychiatrist, after the Chief Forensic Psychiatrist requires that Secretary to remove the young prisoner from the secure mental health unit under section 134A(5) of the *Youth Justice Act 1997*;
- (iii) the end of the period of 48 hours after the Chief Forensic Psychiatrist determines under section 72E(4) that it would be appropriate for the young prisoner to be returned to the custody of the Secretary (Youth Justice) or any longer period agreed under that section;
- (iv) the young prisoner is released from detention

on a supervised release order under the *Youth Justice Act 1997*;

(v) where the young prisoner has not been sentenced for the offence in respect of which he or she is being detained in custody, the order remanding or otherwise committing him or her to a detention centre ends;

(vi) the young prisoner completes his or her sentence of imprisonment.

72B. Admission of involuntary patients

- (1) A person may be admitted to a secure mental health unit otherwise than as a forensic patient if –
- (a) the person is an involuntary patient in an approved hospital; and
 - (b) the controlling authority of that hospital determines that the person should be transferred to a secure mental health unit for the protection of that person or other patients in, and the staff of, that hospital; and
 - (c) the Chief Forensic Psychiatrist is satisfied that –

- (i) as a result of mental illness the person poses a serious and substantial risk to others; and
 - (ii) a secure mental health unit is the only appropriate place available to accommodate the person in the circumstances; and
 - (iii) adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the person.
- (2) If a person is admitted to a secure mental health unit under this section –
 - (a) that person is not a forensic patient; and
 - (b) that person is not an involuntary patient while in the secure mental health unit, except as provided in subsection (3), but becomes an involuntary patient on his or her transfer back to an approved hospital; and
 - (c) except where this Act provides otherwise or a contrary intention appears, while that person is admitted to the secure mental health unit this Act applies to that person as if he or she were a

forensic patient who is not
subject to a restriction order.

- (3) A person admitted to a secure mental health unit under this section remains an involuntary patient for the purposes of Division 2 of Part 12 and is not to be treated as a forensic patient for the purposes of section 73G.
- (4) Before or as soon as practicable after the admission of an involuntary patient to a secure mental health unit –
 - (a) the Chief Forensic Psychiatrist is to notify the Mental Health Tribunal and the person responsible for the patient of the admission; and
 - (b) the Chief Forensic Psychiatrist and the controlling authorities of the approved hospital and secure mental health unit concerned are to determine, jointly, the period for which the patient may be detained in the secure mental health unit.
- (5) The Chief Forensic Psychiatrist and the controlling authorities of the approved hospital and secure mental health unit concerned, jointly, may extend the period determined under subsection (4).
- (6) If at any time the Chief Forensic Psychiatrist is satisfied that a patient admitted to a secure mental health unit under this section no longer meets the

requirements for that admission, the Chief Forensic Psychiatrist is to require the controlling authorities of the approved hospital and secure mental health unit concerned to return the patient to the approved hospital.

- (7) A patient admitted under this section may be detained by the controlling authority of a secure mental health unit –
- (a) for the period determined under subsection (4) or that period as extended under subsection (5) or as shortened by the Mental Health Tribunal under section 72C(3)(b); or
 - (b) if the Chief Forensic Psychiatrist has required the return of the patient to an approved hospital, until 24 hours after the requirement was made, or such longer period as jointly determined by the Chief Forensic Psychiatrist and the controlling authorities of the approved hospital and secure mental health unit concerned; or
 - (c) if the Mental Health Tribunal under section 72C directs that the patient is to be returned to the approved hospital, until 24 hours after the requirement was made, or such longer period as authorised by the Mental Health Tribunal.

72C. Review of admission under section 72B

- (1) The Mental Health Tribunal is to review the admission of an involuntary patient to a secure mental health unit under section 72B within 3 days after being notified of that admission.
- (2) The Mental Health Tribunal may conduct a review under this section despite its failure or inability to notify the person responsible for the involuntary patient as required by section 54(1)(b).
- (3) On reviewing the admission of an involuntary patient to a secure mental health unit, the Mental Health Tribunal may –
 - (a) confirm the admission and the period for which the patient can be detained in the secure mental health unit determined by the Chief Forensic Psychiatrist and the controlling authorities of the approved hospital and secure mental health unit concerned; or
 - (b) confirm the admission but shorten that period; or
 - (c) direct that the patient be returned to the approved hospital.
- (4) The Mental Health Tribunal is to notify the Chief Forensic Psychiatrist, the controlling authorities of the approved hospital and secure mental health unit concerned and the person responsible for

the patient of its decision under subsection (3) as soon as practicable.

72D. Notifying next of kin, &c., of admission

- (1) On the admission of a person to a secure mental health unit as a patient under section 72A or 72B, the controlling authority of the secure mental health unit may notify one or more of the following persons of that admission unless the patient has objected to the notification:
 - (a) the person responsible for the patient;
 - (b) the next of kin of the patient;
 - (c) a member of the family of the patient;
 - (d) a person with whom the patient has had a longstanding relationship.
- (2) Before notifying a person under subsection (1) of the admission of a patient, the controlling authority is to ensure that the patient has been consulted and given the opportunity to object to the notification unless it or an approved medical practitioner is of the opinion that the patient is incapable of understanding the purpose and meaning of the consultation.
- (3) For the purposes of subsection (1)(d), the question of whether a person has had a

longstanding relationship with a patient is to be determined by the controlling authority.

72E. Right of certain forensic patients to request return to prison

(1) In this section –

“voluntary forensic patient” means a forensic patient referred to in section 72A(1)(i) or (j) if the direction under section 36A(2) or (3) of the *Corrections Act 1997* or section 134A(2) or (3) of the *Youth Justice Act 1997* that removed the patient to the secure mental health unit was made at the request of the patient.

- (2) At any time, a voluntary forensic patient may request the Chief Forensic Psychiatrist, in writing, that he or she be returned to the custody of the Director or the Secretary (Youth Justice).
- (3) On receipt of the request of a voluntary forensic patient, the Chief Forensic Psychiatrist is to ensure that the patient is assessed by an approved medical practitioner for the purpose of determining whether it would be suitable for the patient to be returned to the custody of the Director or the Secretary (Youth Justice).

- (4) If the Chief Forensic Psychiatrist, after considering the assessment of the approved medical practitioner, determines that it would be appropriate to return the voluntary forensic patient to the custody of the Director or the Secretary (Youth Justice) –
- (a) the Chief Forensic Psychiatrist, as soon as practicable, is to require the Director or the Secretary (Youth Justice) to remove the patient from the secure mental health unit; and
 - (b) the patient is to be so removed from the secure mental health unit and transferred to the custody of the Director or the Secretary (Youth Justice) within 48 hours after the requirement is made under paragraph (a) or such longer period as agreed between the Chief Forensic Psychiatrist and the Director or that Secretary.
- (5) If the Chief Forensic Psychiatrist determines that it would not be appropriate to return the voluntary forensic patient to a prison, the patient is taken not to be a voluntary forensic patient from the time that determination is made.
- (6) If the Chief Forensic Psychiatrist determines that it would not be appropriate to return the voluntary forensic patient to a prison, the patient

may apply within 7 days to the Forensic Tribunal for a review of the determination.

- (7) On the review of a determination of the Chief Forensic Psychiatrist, the Forensic Tribunal may confirm the determination or revoke the determination.
- (8) If the Forensic Tribunal revokes the determination of the Chief Forensic Psychiatrist, subsection (4) applies as if the Chief Forensic Psychiatrist had determined that it would be appropriate to return the voluntary forensic patient to the custody of the Director or the Secretary (Youth Justice).

Division 2 – Medical treatment of forensic patients

72F. Interpretation of “medical treatment”

In this Division –

“medical treatment” does not include –

- (a) any treatment that is intended, or is reasonably likely, to have the effect of rendering the forensic patient permanently infertile; or
- (b) termination of pregnancy; or
- (c) any removal of non-regenerative tissue for the

purposes of
transplantation; or

- (d) any other medical or dental treatment that is declared by regulations in force under the *Guardianship and Administration Act 1995* to be special treatment for the purposes of Part 6 of that Act;

“non-regenerative tissue” means tissue that, after injury or removal, is not replaced in the body of a living person by natural processes of growth or repair.

72G. Medical treatment generally

- (1) In this section –

“disability” has the same meaning as in the *Guardianship and Administration Act 1995*.

- (2) Medical treatment may be administered to a forensic patient who is not incapable of giving informed consent by reason of a disability and who has attained the age of 18 years in any of the following situations:
- (a) the forensic patient has given informed consent to the administration of the treatment;

- (b) the administration of the treatment to the forensic patient is authorised under section 72H, 72I or 72J.
- (3) Medical treatment may be administered to a forensic patient who is not incapable of giving informed consent by reason of a disability and who is under the age of 18 years in any of the following situations:
 - (a) the forensic patient has given informed consent to the administration of the treatment;
 - (b) the administration of the treatment to the forensic patient is authorised under section 72H, 72I or 72J.
- (4) Medical treatment may be administered to a forensic patient who is incapable of giving informed consent by reason of a disability, regardless of the age of the forensic patient, in any of the following situations:
 - (a) a person responsible for the forensic patient under the *Guardianship and Administration Act 1995* has consented to the treatment;
 - (b) the administration of the treatment is otherwise authorised by or under Part 6 of that Act;

- (c) the administration of the treatment to the forensic patient is authorised under section 72H, 72I or 72J.
- (5) Section 38 of the *Guardianship and Administration Act 1995* does not apply in respect of the administration of medical treatment authorised under this Division.
- (6) A reference in this Part to consent by a forensic patient to the administration of treatment or medical treatment means, in relation to a forensic patient who has not attained the age of 18 years –
 - (a) consent by the forensic patient if he or she is capable of giving informed consent; or
 - (b) consent by the parent of the forensic patient if the forensic patient is not capable of giving informed consent for a reason other than a disability; or
 - (c) consent by the Secretary if –
 - (i) the forensic patient is not capable of giving informed consent for a reason other than a disability; and
 - (ii) the whereabouts of the parent of the forensic patient is unable after reasonable inquiry to be

ascertained, or the parent has refused or failed to consent, is likely to refuse or fail to consent or has withdrawn consent.

72H. Medical treatment for forensic patients who do not consent in urgent circumstances

(1) In this section –

“**disability**” has the same meaning as in the *Guardianship and Administration Act 1995*.

(2) Medical treatment in respect of a mental illness may be administered to a forensic patient if –

(a) an approved medical practitioner is of the opinion that –

(i) the forensic patient is suffering a mental illness that is amenable to the treatment; and

(ii) either –

(A) the forensic patient is incapable by reason of a disability of giving informed consent; or

- (B) informed consent to the treatment has been refused or not given, is likely to be refused or not given or has been withdrawn by the forensic patient; and
 - (iii) urgent treatment is necessary in the best interests of the forensic patient or for the protection of other persons; and
 - (iv) delaying the treatment until it can be authorised under section 72I or 72J is likely to be contrary to the best interests of the forensic patient or pose a risk to the safety of other persons; and
- (b) the Chief Forensic Psychiatrist has authorised the treatment.
- (3) Medical treatment may be administered to a forensic patient under subsection (2) until the first of the following occurs:
 - (a) an approved medical practitioner determines that the circumstances specified in subsection (2) as necessary for the administration of the treatment no longer exist;

- (b) authorisation for the treatment is given or refused by the Forensic Tribunal or a member of the Forensic Tribunal under section 72I or 72J;
 - (c) the end of the period of 96 hours commencing when the treatment is first administered.
- (4) Before medical treatment is administered under subsection (2), an approved medical practitioner is to make reasonable effort to obtain informed consent to the administration of the treatment –
 - (a) from the forensic patient; or
 - (b) if the approved medical practitioner is of the opinion that the forensic patient is incapable of giving informed consent by reason of a disability, from any person responsible who can give the informed consent under section 43 of the *Guardianship and Administration Act 1995* in relation to the forensic patient.
- (5) If medical treatment is administered under subsection (2), the Chief Forensic Psychiatrist is to notify the Forensic Tribunal, in writing, of the following details within 7 days after authorisation for the treatment ends under subsection (3) unless the continued administration of the treatment is authorised under section 72I or 72J:

- (a) the name of the forensic patient;
 - (b) the treatment administered;
 - (c) the length of time during which the treatment was so administered;
 - (d) the reasons for so administering the treatment.
- (6) A particular type or form of medical treatment may not be administered to a particular forensic patient under subsection (2) if that type or form of medical treatment has previously been proposed in respect of, or administered to, the patient under that subsection and –
- (a) on an application under section 72I(2), either the Forensic Tribunal or a member of the Forensic Tribunal has refused under section 72I or 72J to authorise the administration of that treatment to the patient; or
 - (b) not less than 30 days has passed since the previous administration of that treatment to the patient ended.

72I. Authorisation of medical treatment by Forensic Tribunal

- (1) In this section –

“**disability**” has the same meaning as in the *Guardianship and Administration Act 1995*.

- (2) An approved medical practitioner, the Chief Forensic Psychiatrist or the controlling authority of a secure mental health unit may apply in writing to the Forensic Tribunal for an authorisation to administer medical treatment in respect of a mental illness to a forensic patient if an approved medical practitioner is of the opinion that the forensic patient is suffering a mental illness that is amenable to the treatment and –
 - (a) the forensic patient is incapable of giving informed consent by reason of a disability; or
 - (b) the forensic patient has refused or failed to consent, is likely to refuse or fail to consent or has withdrawn consent to the administration of the treatment.
- (3) As soon as practicable after receiving an application, the Forensic Tribunal is to conduct a hearing in respect of the application.
- (4) If after conducting the hearing the Forensic Tribunal is satisfied that –
 - (a) the forensic patient has a mental illness that is amenable to medical treatment; and

- (b) an approved medical practitioner has recommended medical treatment for the illness but –
 - (i) the forensic patient is incapable of giving informed consent to the administration of the treatment by reason of a disability; or
 - (ii) the forensic patient has refused or failed to consent, is likely to refuse or fail to consent or has withdrawn consent to the administration of the treatment; and
- (c) the treatment should be administered to the forensic patient in the best interests of the forensic patient or for the protection of other persons –

the Forensic Tribunal may authorise the administration of the medical treatment to the forensic patient during the period, and subject to any conditions, specified in the authorisation.

- (5) If after conducting the hearing the Forensic Tribunal is not satisfied of the matters specified in subsection (4), the Forensic Tribunal must refuse to authorise the administration of the medical treatment to the forensic patient.

72J. Interim authorisation

- (1) A member of the Forensic Tribunal may authorise the administration of medical treatment in respect of a mental illness to a forensic patient if –
 - (a) an application for an authorisation of the medical treatment has been made to the Forensic Tribunal under section 72I(2); and
 - (b) the member considers that the treatment should be administered to the forensic patient in the best interests of the forensic patient or for the protection of other persons; and
 - (c) the member considers that the delay in administering the treatment that would occur while awaiting the decision of the Forensic Tribunal under section 72I should he or she not make the authorisation would be detrimental to the best interests of the forensic patient or would endanger the safety of other persons.
- (2) The member of the Forensic Tribunal may make the decisions under subsection (1)(b) and (c) on the basis of the application alone and without further investigation.

- (3) If the member of the Forensic Tribunal is not satisfied of the matters specified in subsection (1), the member must refuse to authorise the administration of the medical treatment to the forensic patient.
- (4) An authorisation under subsection (1) is to be communicated to the applicant and the Chief Forensic Psychiatrist by any means the member of the Forensic Tribunal considers appropriate but, if the communication is not in writing, the member is to confirm it in writing as soon as practicable.
- (5) An authorisation under subsection (1) has effect until the application made under section 72I(2) is determined by the Forensic Tribunal, unless sooner revoked.
- (6) The member of the Forensic Tribunal who authorised the administration of medical treatment to the forensic patient under subsection (1) or the Forensic Tribunal may revoke or amend the authorisation at any time.

72K. Right to second opinion

- (1) In this section –

“first medical practitioner” means the medical practitioner referred to in subsection (2) who is administering or intends to

administer medical treatment to a forensic patient;

“original treatment” means the medical treatment referred to in subsection (2) that the first medical practitioner is administering or intends to administer.

(2) If a medical practitioner administers or intends to administer medical treatment to a forensic patient and the administration of that treatment –

(a) is not authorised by the Forensic Tribunal under section 72I; or

(b) is not authorised by a member of the Forensic Tribunal under section 72J –

the forensic patient, or another person who is authorised to consent to the administration of medical treatment to the forensic patient, may request that another medical practitioner give an opinion in respect of the necessity for and appropriateness of the treatment.

(3) On receipt of a request for a second opinion under subsection (2), the medical practitioner is to notify the Chief Forensic Psychiatrist of that request as soon as practicable.

(4) As soon as practicable after a request for a second opinion under subsection (2) is made, the Chief Forensic Psychiatrist

must arrange for and facilitate the provision of that second opinion to the forensic patient by a medical practitioner, or other person, approved by the Forensic Tribunal for the purpose of giving such second opinions.

(5) If –

(a) the second opinion is that –

(i) the original treatment is unnecessary or inappropriate; or

(ii) another medical treatment would be equally or more suitable; and

(b) the first medical practitioner remains of the belief that the original treatment should be administered to the forensic patient; and

(c) the Chief Forensic Psychiatrist agrees that the original treatment should be administered to the forensic patient –

the Chief Forensic Psychiatrist is to apply to the Forensic Tribunal under section 72I for an authorisation to administer the original treatment to the forensic patient and the original treatment is not to be administered to the forensic patient unless authorised under that section or section 72J.

- (6) A forensic patient is not to be taken to have refused or failed to consent to medical treatment if he or she has requested a second opinion from a medical practitioner under subsection (2) and either –
- (a) is awaiting that second opinion; or
 - (b) has refused to consent to the treatment because that second opinion recommended that the treatment was unnecessary or inappropriate or that another medical treatment was equally or more suitable; or
 - (c) has consented to an alternative treatment proposed in that second opinion.
- (7) Despite subsection (6) –
- (a) if the original treatment is for a mental illness, section 72H continues to apply in relation to the administration of the original treatment to the forensic patient in the circumstances specified in that section; and
 - (b) if the original treatment is for a medical condition other than a mental illness, the original treatment may be administered to the forensic patient if a medical practitioner considers it necessary –

- (i) to save the patient's life;
or
- (ii) to prevent serious damage
to the patient's health; or
- (iii) except in the case of
special treatment within
the meaning of the
*Guardianship and
Administration Act 1995*,
to prevent the patient
from suffering or
continuing to suffer
significant pain or
distress.

Division 3 – Non-medical treatment of forensic patients
Subdivision 1 – Restraint and seclusion

72L. Physical restraint

- (1) A forensic patient may be placed under
bodily restraint only as permitted under
this section.
- (2) A forensic patient may be placed under
bodily restraint if the restraint –
 - (a) is necessary –
 - (i) for medical treatment of
the patient; or
 - (ii) to prevent injury to the
patient or to other
persons; or

- (iii) to prevent the patient from destroying or damaging property; or
- (iv) to prevent the patient from escaping from the custody of the controlling authority of the secure mental health unit or another person who has the custody of the forensic patient under an order of a court; or
- (v) to maintain order in, and the security of, the secure mental health unit in which the patient is situated; or
- (vi) for any other purpose specified in guidelines issued by the Forensic Tribunal; and

(b) is authorised –

- (i) by a medical practitioner or an approved psychiatric nurse for a period of less than 4 hours; or
- (ii) by guidelines issued by the Forensic Tribunal; or
- (iii) by standing orders issued by the Chief Forensic Psychiatrist; and

- (c) is applied for no longer than authorised as specified by the medical practitioner or approved psychiatric nurse referred to in paragraph (b) or as otherwise authorised by guidelines issued by the Forensic Tribunal or standing orders issued by the Chief Forensic Psychiatrist; and
- (d) is applied in accordance with any guidelines issued by the Forensic Tribunal.

72M. Use of force

A medical practitioner, an authorised person, another person at a secure mental health unit, a person who has the custody of the forensic patient under an order of a court and a person assisting such medical practitioner, authorised person, other person or person having such custody may use such force as is reasonable in the circumstances for –

- (a) the purpose of preventing injury to the forensic patient or to other persons or preventing the forensic patient from destroying or damaging property; or
- (b) the purpose of placing a forensic patient under bodily restraint; or
- (c) the purpose of preventing a forensic patient from escaping

from the custody of the controlling authority of a secure mental health unit or another person who has the custody of the forensic patient under an order of a court; or

- (d) the purpose of administering medical treatment to the forensic patient; or
- (e) any other purpose specified in guidelines issued by the Forensic Tribunal or standing orders issued by the Chief Forensic Psychiatrist.

72N. Seclusion of forensic patients

- (1) A forensic patient may be kept in seclusion only if –
 - (a) the seclusion is necessary –
 - (i) for medical treatment of the patient; or
 - (ii) to prevent injury to the patient or to other persons; or
 - (iii) to prevent the patient from destroying or damaging property; or
 - (iv) to ensure that the patient does not escape from the custody of the controlling

authority of the secure
mental health unit or
another person who has
custody of the patient
under an order of a court;
or

(v) to maintain order in, and
the security of, the secure
mental health unit in
which the patient is
situated; and

(b) the seclusion is authorised by a
medical practitioner or an
approved psychiatric nurse, by
guidelines issued by the Forensic
Tribunal or by standing orders
issued by the Chief Forensic
Psychiatrist; and

(c) the patient is kept in seclusion for
no longer than authorised; and

(d) the seclusion is in accordance
with any guidelines issued by the
Forensic Tribunal.

(2) If a patient is kept in seclusion –

(a) the patient must –

(i) be visited by a nurse who
is registered under the
Nursing Act 1995 at
intervals of not more than
15 minutes or in
accordance with

guidelines issued by the
Forensic Tribunal; and

- (ii) be examined at intervals of not more than 4 hours by a medical practitioner or an approved psychiatric nurse; and
- (b) if the patient is kept in seclusion for more than 7 hours –
 - (i) that portion of the seclusion exceeding 7 hours must be authorised by the Chief Forensic Psychiatrist; and
 - (ii) the patient must be examined at least once every 12 hours by a medical practitioner in addition to the examinations required by paragraph (a); and
- (c) bedding and clothing that is appropriate in the circumstances must be provided; and
- (d) food and drink must be provided at the appropriate times; and
- (e) adequate toilet arrangements must be made for the patient.

72O. Monthly reports on bodily restraint and seclusion

- (1) Within 3 days after the end of each month, the Chief Forensic Psychiatrist must send to the Forensic Tribunal a report on the use of bodily restraint and seclusion on forensic patients in each secure mental health unit during that month.
- (2) The report is to be in a form approved by the chairperson of the Forensic Tribunal.
- (3) For each case of bodily restraint the report must specify –
 - (a) the name of the forensic patient; and
 - (b) the form of restraint used; and
 - (c) the reasons for the restraint; and
 - (d) the name of the person who authorised the use of restraint; and
 - (e) the period for which the forensic patient was kept under bodily restraint.
- (4) For each case of seclusion the report must specify –
 - (a) the name of the forensic patient; and
 - (b) the place of seclusion; and

- (c) the reasons for the seclusion; and
- (d) the name of the person who authorised the seclusion of the forensic patient; and
- (e) the period for which the forensic patient was kept in seclusion.

Subdivision 2 – Leave of absence

72P. Leave of absence for forensic patients generally

- (1) This section applies to a forensic patient other than a forensic patient who is subject to a restriction order.
- (2) This section does not apply in relation to the attendance of a forensic patient at a court.
- (3) Any of the following persons may apply to the Chief Forensic Psychiatrist for leave of absence for a forensic patient for personal reasons:
 - (a) the forensic patient;
 - (b) a person responsible for the forensic patient;
 - (c) a relative or close friend of the forensic patient;
 - (d) any other person who is granted leave to apply by the Chief Forensic Psychiatrist.

- (4) Without limiting the personal reasons for which an application for leave of absence for a forensic patient may be made, those reasons may include –
- (a) visiting a sick or dying relative or other person; and
 - (b) attendance at the funeral of a relative or other person; and
 - (c) attendance at a wedding, birth or graduation of a relative or other person; and
 - (d) attendance at an occasion of family importance; and
 - (e) if the person is an Aboriginal person within the meaning of the *Aboriginal Lands Act 1995*, attendance at an event of special cultural or spiritual significance; and
 - (f) attendance at a religious event or service.
- (5) The approved medical practitioner responsible for the medical treatment of a forensic patient may apply to the Chief Forensic Psychiatrist for leave of absence for the forensic patient for any of the following purposes:
- (a) the personal reasons of the forensic patient;

- (b) the rehabilitation or reintegration into the community of the forensic patient;
 - (c) any other purpose the approved medical practitioner considers necessary or appropriate.
- (6) An application for leave of absence for a forensic patient may be made in person, in writing, by telephone, facsimile machine or email or by any other means of communication.
- (7) On receipt of an application for leave of absence for a forensic patient, the Chief Forensic Psychiatrist –
 - (a) is to request the Secretary (Corrections) to search the Victims Register and notify each victim registered in relation to the forensic patient in that Register of the application and of the victim's right to make written submissions in respect of the application unless it is not practicable to notify such a victim in the circumstances; and
 - (b) if the forensic patient is also a prisoner, is to notify the Director or the Secretary (Youth Justice) of the application and of his or her right to make written submissions in respect of the application; and

- (c) is to notify any member of the forensic patient's family that the Chief Forensic Psychiatrist considers should be notified of the application and of the member's right to make written submissions in respect of the application; and
 - (d) after considering any written submissions made by persons notified under this subsection, grant or refuse to grant leave of absence to the forensic patient.
- (8) If the forensic patient is serving a sentence of detention within the meaning of the *Youth Justice Act 1997*, leave of absence may be granted only if the Secretary (Youth Justice) consents to it.
- (9) On granting a leave of absence under this section, the Chief Forensic Psychiatrist must –
 - (a) record, in writing, the terms of the leave of absence, including any conditions on which the leave of absence is granted; and
 - (b) provide a copy of the record to the forensic patient and the controlling authority of the secure mental health unit.
- (10) Leave of absence may only be granted for leave within Tasmania.
- (11) Leave of absence may be granted –

- (a) for a particular period or for a particular purpose, or both; and
 - (b) subject to any conditions the Chief Forensic Psychiatrist considers necessary in the interests of the forensic patient or for the protection of other persons; and
 - (c) by any means of verbal or written communication, including by telephone, facsimile machine and email.
- (12) If leave of absence is granted for a particular purpose without specifying a particular period for that leave of absence, the approved medical practitioner responsible for the treatment of the forensic patient in the secure mental health unit may determine the period or periods for which the forensic patient may be absent from the secure mental health unit on leave of absence for that particular purpose.
- (13) If leave of absence is granted for a particular period, the Chief Forensic Psychiatrist may extend that period at any time by notice in writing provided to the forensic patient.
- (14) The leave of absence of a forensic patient who is a young prisoner may only be extended under subsection (13) if the Secretary (Youth Justice) consents to it.

- (15) Without limiting the conditions that may be imposed in respect of leave of absence, a condition may provide that the forensic patient is to be in the care and custody of a person specified in the condition during that leave of absence.
- (16) The Chief Forensic Psychiatrist may amend the conditions of a leave of absence at any time by notice in writing provided to the forensic patient.
- (17) The conditions of a leave of absence of a forensic patient who is a young prisoner may only be amended under subsection (16) if the Secretary (Youth Justice) consents to it.
- (18) For the purposes of subsection (16), the conditions of a leave of absence may be amended by –
 - (a) adding a new condition, whether or not the leave of absence is already subject to conditions; or
 - (b) omitting a condition; or
 - (c) omitting a condition and substituting another condition; or
 - (d) inserting matter in a condition; or
 - (e) omitting matter from a condition; or
 - (f) omitting matter from a condition and substituting other matter.

- (19) The Secretary, the Chief Forensic Psychiatrist, the controlling authority of the secure mental health unit, the approved medical practitioner responsible for the medical treatment of the forensic patient in the secure mental health unit or another approved medical practitioner may cancel a leave of absence granted under this section at any time in writing provided to the forensic patient if the Secretary, Chief Forensic Psychiatrist, controlling authority or medical practitioner believes that there is a significant risk of harm to the patient or to other persons if the leave of absence is not cancelled.
- (20) If the leave of absence of a forensic patient is cancelled, an authorised officer or police officer may apprehend the forensic patient and return him or her to the secure mental health unit and, for that purpose may –
- (a) enter, without warrant, any premises where the authorised officer or police officer suspects the forensic patient may be; and
 - (b) be accompanied by such assistants as the authorised officer or police officer considers appropriate; and
 - (c) use such force and bodily restraint as the authorised officer or police officer considers reasonable in the circumstances.

72Q. Leave of absence for forensic patients on restriction orders

- (1) This section applies to a forensic patient who is subject to a restriction order.
- (2) This section does not apply in relation to the attendance of a forensic patient at a court.
- (3) Any of the following persons may apply, in writing, to the Forensic Tribunal for leave of absence for a forensic patient for personal reasons:
 - (a) the forensic patient;
 - (b) a person responsible for the forensic patient;
 - (c) a relative or close friend of the forensic patient;
 - (d) any other person who is granted leave to apply by the Forensic Tribunal.
- (4) Without limiting the personal reasons for which an application for leave of absence for a forensic patient may be made, those reasons may include –
 - (a) visiting a sick or dying relative or other person; and
 - (b) attendance at the funeral of a relative or other person; and

- (c) attendance at a wedding, birth or graduation of a relative or other person; and
 - (d) attendance at an occasion of family importance; and
 - (e) if the person is an Aboriginal person within the meaning of the *Aboriginal Lands Act 1995*, attendance at an event of special cultural or spiritual significance; and
 - (f) attendance at a religious event or service.
- (5) The Chief Forensic Psychiatrist may apply to the Forensic Tribunal for leave of absence for a forensic patient for any of the following purposes:
 - (a) the personal reasons of the forensic patient;
 - (b) the rehabilitation or reintegration into the community of the forensic patient;
 - (c) any other purpose the Chief Forensic Psychiatrist considers necessary or appropriate.
- (6) On receipt of an application for leave of absence for a forensic patient, the Forensic Tribunal –
 - (a) is to request the Secretary (Corrections) to search the Victims Register and notify any

victim registered in relation to the forensic patient in that Register of the application and of the victim's right to make written submissions in respect of the application unless it is not practicable to notify such a victim in the circumstances; and

- (b) is to notify any member of the forensic patient's family that the Forensic Tribunal considers should be notified of the application and of the member's to make written submissions in respect of the application; and
- (c) after considering –
 - (i) any written submissions made by any such victims or family members; and
 - (ii) any submissions made by the forensic patient; and
 - (iii) any submissions made by the Chief Forensic Psychiatrist, an approved medical practitioner or the controlling authority of the secure mental health unit; and
 - (iv) any other written submissions the Forensic Tribunal considers relevant –

grant or refuse to grant leave of absence to the forensic patient.

- (7) On granting a leave of absence under this section, the Forensic Tribunal must –
 - (a) record, in writing, the terms of the leave of absence, including any conditions on which the leave of absence is granted; and
 - (b) provide a copy of the record to the forensic patient and the controlling authority of the secure mental health unit.
- (8) Leave of absence may only be granted for leave within Tasmania.
- (9) Leave of absence may be granted –
 - (a) for a particular period or for a particular purpose, or both; and
 - (b) subject to any conditions the Forensic Tribunal considers necessary in the interests of the forensic patient or for the protection of other persons.
- (10) If a leave of absence is granted for a particular period, whether or not for a particular purpose, the Forensic Tribunal may extend that period by notice in writing provided to the forensic patient.
- (11) If leave of absence is granted for a particular purpose without specifying a particular period for that leave of

absence, the Chief Forensic Psychiatrist may –

- (a) determine the period or periods during which the forensic patient may be absent from the secure mental health unit on leave of absence for that particular purpose; and
 - (b) extend that period or any of those periods or determine further periods during which the forensic patient may be absent from the secure mental health unit on leave of absence for that particular purpose.
- (12) The Chief Forensic Psychiatrist is to notify the forensic patient, in writing, of any determination made under subsection (11).
- (13) Without limiting the conditions that may be imposed in respect of leave of absence, a condition may provide that the forensic patient is to be in the care and custody of a person specified in the condition during that leave of absence.
- (14) The Forensic Tribunal may amend the conditions of a leave of absence at any time by notice in writing provided to the forensic patient.
- (15) For the purposes of subsection (14), the conditions of a leave of absence may be amended by –

- (a) adding a new condition, whether or not the leave of absence is already subject to conditions; or
 - (b) omitting a condition; or
 - (c) omitting a condition and substituting another condition; or
 - (d) inserting matter in a condition; or
 - (e) omitting matter from a condition; or
 - (f) omitting matter from a condition and substituting other matter.
- (16) The Forensic Tribunal, the Secretary, the Chief Forensic Psychiatrist, the controlling authority of the secure mental health unit, the approved medical practitioner responsible for the medical treatment of the forensic patient in the secure mental health unit or another approved medical practitioner may cancel a leave of absence granted under this section at any time in writing provided to the forensic patient if the Forensic Tribunal, Secretary, controlling authority or approved medical practitioner considers that there is a significant risk of harm to the forensic patient or to other persons if the leave of absence is not cancelled.
- (17) If the Secretary, the Chief Forensic Psychiatrist, the controlling authority of the secure mental health unit, the approved medical practitioner

responsible for the medical treatment of the forensic patient in the secure mental health unit or another approved medical practitioner cancels a leave of absence, he or she is to notify the Forensic Tribunal, in writing, of the cancellation.

- (18) If the leave of absence of a forensic patient is cancelled, an authorised officer or police officer may apprehend the forensic patient and return him or her to the secure mental health unit and, for that purpose may –
- (a) enter, without warrant, any premises where the authorised officer or police officer suspects the forensic patient may be; and
 - (b) be accompanied by such assistants as the authorised officer or police officer considers appropriate; and
 - (c) use such force and bodily restraint as the authorised officer or police officer considers reasonable in the circumstances.

72R. Notification of victims

- (1) If under section 72P or 72Q the Forensic Tribunal, the Secretary, the Chief Forensic Psychiatrist, the controlling authority of the secure mental health unit or an approved medical practitioner grants, extends or cancels a leave of

absence or amends the conditions to which a leave of absence is subject, that person must request the Secretary (Corrections) to notify each victim registered in the Victims Register in relation to the forensic patient, in writing, of the grant, extension, cancellation or amendment as soon as practicable.

- (2) Following the grant of leave of absence or the amendment of the conditions to which a leave of absence is subject, the forensic patient must not be released from the secure mental health unit on the leave of absence until each victim registered in the Victims Register in relation to the forensic patient has been notified of the grant or amendment except where it is not practicable in the circumstances to do so.

Subdivision 3 – Visits, telephone calls and mail

72S. Interpretation of Subdivision

In this Subdivision –

“exempt visitor” means –

- (a) a judge; and
- (b) a magistrate; and
- (c) the Ombudsman or an officer of the Ombudsman; and
- (d) the Public Guardian; and
- (e) a legal practitioner; and

- (f) a member of the Forensic Tribunal; and
- (g) a person specified as an exempt visitor for the purposes of this Subdivision in standing orders issued by the Chief Forensic Psychiatrist; and
- (h) a prescribed person.

72T. Visits

- (1) A person may enter a secure mental health unit as a visitor at any reasonable time, and at reasonable intervals, as determined by the controlling authority or Chief Forensic Psychiatrist.
- (2) Despite subsection (1), the controlling authority, the Chief Forensic Psychiatrist or an authorised person may refuse to allow a person, other than an exempt visitor, to enter the secure mental health unit if it, he or she considers that –
 - (a) the visit would be detrimental to the health and welfare of a forensic patient or his or her treatment; or
 - (b) the visit would pose a risk of harm or distress to a forensic patient or any other person in the secure mental health unit; or
 - (c) if the visit is for the purpose of visiting a forensic patient, the

Chief Forensic Psychiatrist or an approved medical practitioner is of the opinion that the forensic patient is seriously or acutely unwell; or

- (d) the visit would or might endanger the good order or security of the secure mental health unit; or
 - (e) the visit is or might be for an illegal purpose.
- (3) The controlling authority, the Chief Forensic Psychiatrist or an authorised person may direct a person who has been refused admission to the secure mental health unit under subsection (2) to leave the secure mental health unit or the immediate vicinity of the secure mental health unit immediately.
- (4) The controlling authority, the Chief Forensic Psychiatrist or an authorised person may give to a visitor such directions as are necessary for the management, good order and security of the secure mental health unit.
- (5) A visitor must obey a direction given under subsection (3) or (4).

Penalty: Fine not exceeding 5 penalty units.

- (6) If a person refuses or fails to comply with a direction under subsection (3) or (4) –

- (a) an authorised person, with such assistants and using such force as he or she considers appropriate in the circumstances, may remove the person from the secure mental health unit or detain the person for such time as is necessary for the person to be arrested by a police officer under paragraph (b); and
- (b) the person may be arrested by a police officer without warrant.

72U. Visitors to give information

- (1) A person who wishes to enter as a visitor a secure mental health unit in which a forensic patient is situated must, if asked by the controlling authority, the Chief Forensic Psychiatrist or an authorised person, provide to the controlling authority, Chief Forensic Psychiatrist or authorised person –
 - (a) proof of the person's identity, including fingerprints and other biometric data approved by standing order issued by the Chief Forensic Psychiatrist; and
 - (b) information as to the person's address, occupation, age and relationship to the forensic patient to be visited; and

- (c) information as to the purpose of the visit.
- (2) A person must not, under subsection (1), knowingly provide to the controlling authority, Chief Forensic Psychiatrist or authorised person an identity or information that is false or misleading.

Penalty: Fine not exceeding 5 penalty units.

72V. Visits by police

- (1) If a police officer for the purpose of visiting a forensic patient enters or wishes to enter a secure mental health unit, the forensic patient –
 - (a) may refuse that visit; and
 - (b) is not required to answer questions asked by the police officer during that visit; and
 - (c) at his or her request, may have present at, or observing with or without sound, any part of that visit a medical practitioner, member of staff of the secure mental health unit or legal practitioner.
- (2) If a police officer proposes to visit a forensic patient, the controlling authority is to ensure that the forensic patient is advised of his or her rights under this section.

72W. Refusal of visitor

A forensic patient may refuse a visit from a visitor.

72X. Visit may be terminated

- (1) The controlling authority, the Chief Forensic Psychiatrist or an authorised person may direct a person, other than an exempt visitor, who has entered a secure mental health unit for the purposes of visiting a forensic patient to leave the secure mental health unit or part of the secure mental health unit immediately if it, he or she believes on reasonable grounds that the visit to the forensic patient –
 - (a) is, or would be, detrimental to the health and welfare of the forensic patient or his or her treatment; or
 - (b) is posing, or would pose, a risk of harm to the forensic patient or any other person in the secure mental health unit; or
 - (c) is not, or would not be, appropriate because the Chief Forensic Psychiatrist or an approved medical practitioner is of the opinion that the forensic patient is seriously or acutely unwell; or
 - (d) is endangering, or would or might endanger, the good order or

security of the secure mental health unit; or

- (e) is, or would or might be, for an illegal purpose.

- (2) A person must comply with a direction under subsection (1).

Penalty: Fine not exceeding 5 penalty units.

- (3) If a person refuses or fails to comply with a direction under subsection (1) –

- (a) an authorised person, with such assistants and using such force as he or she considers appropriate in the circumstances, may remove the person from the secure mental health unit or detain the person for such time as is necessary for the person to be arrested by a police officer under paragraph (b); and

- (b) the person may be arrested by a police officer without warrant.

- (4) The controlling authority or the Chief Forensic Psychiatrist may request an exempt visitor to leave the secure mental health unit or part of a secure mental health unit immediately if it, he or she believes on reasonable grounds that the visit to the forensic patient –

- (a) is, or would be, detrimental to the health and welfare of the forensic patient or his or her treatment; or
- (b) is posing, or would pose, a risk of harm to the forensic patient or any other person in the secure mental health unit; or
- (c) is not, or would not be, appropriate because the Chief Forensic Psychiatrist or an approved medical practitioner is of the opinion that the forensic patient is seriously or acutely unwell; or
- (d) is endangering, or would or might endanger, the good order or security of the secure mental health unit; or
- (e) is, or would or might be, for an illegal purpose.

72Y. Formal searches

- (1) In this section –

“formal search” means a search to detect the presence of drugs, weapons or articles which the controlling authority does not allow to be brought into the secure mental health unit, whether carried out personally or by an electronic or mechanical device.

- (2) A person who wishes to enter or remain in a secure mental health unit as a visitor must submit to a formal search if asked by the controlling authority, the Chief Forensic Psychiatrist or an authorised person to do so.
- (3) If a person refuses to submit to a formal search when asked to do so under subsection (2), the controlling authority, the Chief Forensic Psychiatrist or an authorised person may direct the person to leave the secure mental health unit immediately.
- (4) A person must comply with a direction under subsection (3).

Penalty: Fine not exceeding 5 penalty units.

- (5) If a person refuses or fails to comply with a direction under subsection (3) –
 - (a) an authorised person, with such assistants and using such force as he or she considers appropriate in the circumstances, may detain the person for such time as is necessary for the person to be arrested by a police officer under paragraph (b); and
 - (b) the person may be arrested by a police officer without warrant.

72Z. Telephone calls

(1) In this section –

“exempt caller” means –

- (a) a judge; and
- (b) a magistrate; and
- (c) the Ombudsman or an officer of the Ombudsman; and
- (d) the Public Guardian; and
- (e) a legal practitioner; and
- (f) a member of the Forensic Tribunal; and
- (g) a person specified as an exempt caller for the purposes of this section in standing orders issued by the Chief Forensic Psychiatrist; and
- (h) a prescribed person;

“telephone call” means any communication made by using a telephone, radio or similar electronic device, including a communication consisting of a text message or picture.

(2) A forensic patient has the right to receive and make telephone calls at any reasonable time, and at reasonable

intervals, as determined by the controlling authority of the secure mental health unit or the Chief Forensic Psychiatrist.

- (3) Despite subsection (2), the controlling authority, the Chief Forensic Psychiatrist or an authorised person may refuse to allow the forensic patient to receive a telephone call from, or make a telephone call to, a person, other than an exempt caller, if –

(a) it, he or she considers that –

- (i) the call would be detrimental to the health and welfare of the forensic patient or his or her treatment; or
- (ii) the call would or might pose a risk of harm or distress to the forensic patient or any other person in the secure mental health unit; or
- (iii) making or receiving the call is not, or would not be, appropriate because the Chief Forensic Psychiatrist or an approved medical practitioner is of the opinion that the forensic patient is seriously or acutely unwell; or

- (iv) the call would or might endanger the good order or security of the secure mental health unit; or
 - (v) the call would or might cause harm, distress or offence to the person receiving the telephone call; or
 - (vi) the call would or might be for an illegal purpose; or
 - (b) the person to whom the telephone call is or is to be made has notified the Chief Forensic Psychiatrist, the controlling authority of the secure mental health unit or the prison or detention centre in which the forensic patient was held before becoming a forensic patient that he or she does not wish to receive telephone calls from the forensic patient.
- (4) If the controlling authority, the Chief Forensic Psychiatrist or an authorised person refuses to allow a forensic patient to receive or make a telephone call, the controlling authority, Chief Forensic Psychiatrist or authorised person is to provide written notice of that refusal and the reasons for it to the Forensic Tribunal within 7 days.
- (5) If asked by the controlling authority of a secure mental health unit, the Chief

Forensic Psychiatrist or an authorised person to do so, a person who makes, or wishes to make, a telephone call to a forensic patient must provide to the controlling authority, Chief Forensic Psychiatrist or authorised person –

- (a) proof of the person's identity; and
 - (b) information as to the person's address, occupation, age and relationship to the forensic patient to be called; and
 - (c) information as to the purpose of the call.
- (6) A person must not, under subsection (5), knowingly provide to the controlling authority, Chief Forensic Psychiatrist or authorised person an identity or information that is false or misleading.

Penalty: Fine not exceeding 5 penalty units.

- (7) If a forensic patient makes a telephone call or receives a telephone call made on a reverse charges basis, the controlling authority or an authorised person may require the forensic patient to pay the costs of the call.

73. Mail

- (1) In this section –

“exempt correspondent” means –

- (a) a judge; and
- (b) a magistrate; and
- (c) a legal practitioner,
barrister or solicitor; and
- (d) any court or any
commission, committee,
tribunal or other board
connected to the legal
process, or an officer of
any court or any such
commission, committee,
tribunal or other board;
and
- (e) a medical practitioner,
another health provider or
a health service; and
- (f) the Secretary, the
Secretary (Corrections)
and the Secretary (Youth
Justice); and
- (g) the Chief Forensic
Psychiatrist; and
- (h) the Health Complaints
Commissioner or an
officer of the Health
Complaints
Commissioner; and
- (i) the Ombudsman or an
officer of the
Ombudsman; and

- (j) the Anti-Discrimination Commissioner or an officer of the Anti-Discrimination Commissioner; and
- (k) the Office of the Public Guardian or an officer of that Office; and
- (l) the Forensic Tribunal or a member of the Forensic Tribunal; and
- (m) an official visitor; and
- (n) the Ethics Committee established under section 9 of the *Disability Services Act 1992* or a member of the Ethics Committee; and
- (o) a statutory authority connected to the legal process or concerned with the rights or treatment of prisoners or patients in hospitals or an officer of such a statutory authority; and
- (p) a person specified as an exempt correspondent in guidelines issued by the Forensic Tribunal; and
- (q) a person specified as an exempt correspondent in

standing orders issued by
the Chief Forensic
Psychiatrist; and

(r) a prescribed person;

“mail or email” includes a part of
mail or email.

- (2) A forensic patient has the right to receive and send mail and, if the facility is provided at the secure mental health unit, email at any reasonable time, and at reasonable intervals, as determined by the controlling authority of the secure mental health unit.
- (3) The controlling authority, the Chief Forensic Psychiatrist or an authorised person may require that any mail or email sent to or by a forensic patient, other than mail or email sent by or to an exempt correspondent, be opened and read by an authorised person.
- (4) Despite subsection (2), the controlling authority, the Chief Forensic Psychiatrist or an authorised person may refuse to allow the forensic patient to receive mail or email from, or send mail or email to, a person other than an exempt correspondent if –
- (a) it, he or she considers that –
- (i) the mail or email would be detrimental to the health and welfare of the

forensic patient or his or her treatment; or

- (ii) the mail or email would pose a risk of harm or distress to the forensic patient or any other person in the secure mental health unit; or
- (iii) receiving or sending the mail or email is not, or would not be, appropriate because the Chief Forensic Psychiatrist or an approved medical practitioner is of the opinion that the forensic patient is seriously or acutely unwell; or
- (iv) the mail or email would or might endanger the good order or security of the secure mental health unit; or
- (v) the mail or email would or might cause harm, distress or offence to the person receiving the mail or email or another person; or
- (vi) the mail or email would or might be for an illegal purpose; or

- (b) the person to whom the mail or email is addressed has notified the controlling authority of the secure mental health unit, the prison or detention centre in which the forensic patient was held before becoming a forensic patient or the Chief Forensic Psychiatrist that he or she does not wish to receive mail or email from the forensic patient.
- (5) If the controlling authority, the Chief Forensic Psychiatrist or an authorised person refuses to allow a forensic patient to receive or send any mail or email, the controlling authority, Chief Forensic Psychiatrist or authorised person is to provide written notice of that refusal and the reasons for it to the Forensic Tribunal within 7 days.
- (6) If a forensic patient sends mail or email or receives mail or email for which a charge or fee is payable by the sender or recipient, the controlling authority or an authorised person may require the forensic patient to do so at his or her own expense.

***Subdivision 4 – Further matters relating to treatment of
forensic patients***

73A. Further rights of forensic patients

- (1) Every forensic patient has the following rights:

- (a) the right to be provided with an explanation of his or her mental illness or disability and proposed medical treatment and other treatment for the illness or disability;
- (b) the right to be provided with food that is adequate to maintain the health and wellbeing of the forensic patient;
- (c) the right to be provided with special dietary food if the Chief Forensic Psychiatrist is satisfied that such food is necessary for medical reasons, on account of the forensic patient's religious beliefs or because the forensic patient is a vegetarian;
- (d) the right to be provided with basic clothing that is suitable for the climate and adequate to maintain the health of the forensic patient;
- (e) the right to wear suitable clothing owned by the forensic patient;
- (f) the right to have access to medical care and treatment and medical advice reasonably necessary for the preservation of health;
- (g) the right to have access to dental treatment and dental advice

reasonably necessary for the preservation of dental health;

- (h) the right to practise a religion of the forensic patient's choice and, if consistent with the security, good order and management of the secure mental health unit, to join with other forensic patients in practising that religion and to possess such articles as are necessary for the practice of that religion;
 - (i) subject to Subdivision 3, the right to receive visits from persons at reasonable times and reasonable periods with each visit being of a reasonable length;
 - (j) the right to advise next of kin, or a person with whom the forensic patient has had a longstanding relationship, of his or her admission to the secure mental health unit;
 - (k) the right to have access to legal advice;
 - (l) the right to be provided with information about the rules and conditions which will govern the forensic patient's behaviour in the secure mental health unit.
- (2) For the purposes of subsection (1)(j), the question of whether a person has had a longstanding relationship with a forensic

patient is to be determined by the Chief Forensic Psychiatrist.

73B. Medical tests for HIV, &c.

(1) In this section –

“**approved counsellor**” means a person approved by the Secretary of the responsible Department in relation to the *HIV/AIDS Preventive Measures Act 1993* for the purposes of this section;

“**HIV**” means Human Immunodeficiency Virus.

(2) The Chief Forensic Psychiatrist may require a forensic patient to undergo a test for HIV or other blood-borne diseases carried out by a medical practitioner or a nurse registered under the *Nursing Act 1995* –

(a) as soon as practicable on admission to the secure mental health unit; and

(b) at such regular intervals as the Chief Forensic Psychiatrist considers appropriate or necessary in the circumstances.

(3) If a forensic patient refuses to undergo a test, an approved counsellor nominated by the Chief Forensic Psychiatrist for the purpose is to counsel the forensic patient

in respect of the necessity or desirability of undergoing the test.

- (4) A medical practitioner or nurse who, under subsection (2), carries out a test the result of which is positive is to submit a report of the result to the Chief Forensic Psychiatrist as soon as practicable after obtaining the result.
- (5) The provisions of Divisions 1 and 2 of Part 2, other than section 16, of the *HIV/AIDS Preventive Measures Act 1993* apply to the testing of forensic patients for HIV under this section.
- (6) Section 15 of the *HIV/AIDS Preventive Measures Act 1993* applies as if a reference to an approved health care worker authorised by a medical practitioner is a reference to a nurse registered under the *Nursing Act 1995*.

***Subdivision 5 – Transfer of forensic patient to another
secure mental health unit or a secure institution***

**73C. Transfer of forensic patient to another
secure mental health unit**

- (1) The Chief Forensic Psychiatrist may direct that a forensic patient be transferred from one secure mental health unit to another secure mental health unit if –
 - (a) the transfer is necessary or desirable –

- (i) for the care or treatment of the patient; or
 - (ii) for the purpose of avoiding or minimising risk to other persons; and
 - (b) the controlling authorities concerned agree to the transfer.
- (2) If the Chief Forensic Psychiatrist has directed the transfer of a forensic patient, the Chief Forensic Psychiatrist or the controlling authority of the secure mental health unit may appoint a person to take charge of the forensic patient while being transferred from one secure mental health unit to the other.
- (3) While the forensic patient is being transferred from one secure mental health unit to the other –
- (a) the forensic patient remains in the custody of the controlling authority of the secure mental health unit from which he or she is being removed until he or she is admitted to the secure mental health unit to which he or she is being transferred; and
 - (b) the person appointed under subsection (2) has the authority to act in the name of the controlling authority and as an authorised person for the purposes of this Part.

- (4) When the forensic patient is transferred, an order for detention of the forensic patient has effect as if it provided for the detention of the forensic patient in the secure mental health unit to which the forensic patient is transferred.
- (5) The Forensic Tribunal may, on application by the forensic patient or another person who satisfies the Forensic Tribunal that he or she has a proper interest in the matter, review a decision to transfer a forensic patient under this section.
- (6) On a review under subsection (5), the Forensic Tribunal may confirm, vary or revoke the decision and give consequential directions.

73D. Secure institution

The Minister may approve an institution other than a hospital as a secure institution.

73E. Removal of forensic patient to hospital, secure institution, &c.

- (1) The Chief Forensic Psychiatrist may direct that a forensic patient be removed from a secure mental health unit to a hospital, a health service within the meaning of the *Health Complaints Act 1995*, premises where such a health service is provided or a secure institution.

- (2) On the making of a direction under subsection (1), the Chief Forensic Psychiatrist or the controlling authority of the secure mental health unit may appoint a person to take charge of the forensic patient while the forensic patient is in the hospital, health service, premises or secure institution pursuant to the direction.
- (3) While the forensic patient is in a hospital, health service, premises or secure institution pursuant to a direction under subsection (1) –
 - (a) the forensic patient remains in the custody of the controlling authority of the secure mental health unit; and
 - (b) the person appointed under subsection (2) has the authority to act in the name of the controlling authority and as an authorised person for the purposes of this Part.

Division 4 – Return of forensic patients to secure mental health unit

73F. Return of forensic patients in Tasmania to secure mental health unit

- (1) This section applies to a forensic patient who is not subject to a restriction order.

Note The return to a secure mental health unit of a forensic patient subject to a restriction order is provided for in the *Criminal Justice (Mental Impairment) Act 1999*.

(2) If a forensic patient –

- (a) is absent without leave of absence granted under Subdivision 2 of Division 3 while in the custody of the controlling authority of the secure mental health unit; or
- (b) contravenes a condition on which such a leave of absence was so granted –

the controlling authority may authorise a police officer or an authorised officer, in writing, to take the patient into protective custody and return him or her to the secure mental health unit as soon as practicable.

- (3) This section does not apply if the order under which the forensic patient is liable to detention in a prison or a secure mental health unit has been discharged or has expired without being renewed.

73G. Return of forensic patients outside Tasmania to secure mental health unit

- (1) This section applies to a forensic patient other than one who is subject to –
 - (a) an order of detention referred to in section 41(1A) of the *Criminal Justice (Mental Impairment) Act 1999*; or
 - (b) a continuing care order referred to in section 41(1B) of that Act.

- (2) A magistrate may issue a warrant authorising the arrest of a forensic patient and his or her return to a secure mental health unit if he or she suspects on reasonable grounds that the forensic patient –
- (a) is absent without leave of absence granted under Subdivision 2 of Division 3 while in the custody of the controlling authority of the secure mental health unit; and
 - (b) is no longer in Tasmania.

Division 5 – Miscellaneous

73H. Searching persons in secure mental health unit

- (1) For the security or good order and management of a secure mental health unit, or for the safety of persons in a secure mental health unit, the controlling authority of the secure mental health unit or the Chief Forensic Psychiatrist may require or authorise an authorised person to do one or more of the following in accordance with the requirement or authorisation:
- (a) search any part of the secure mental health unit;
 - (b) search and examine a forensic patient, a visitor to the secure mental health unit, a member of the staff of the secure mental

- health unit, a medical practitioner or another person present in the secure mental health unit;
- (c) search and examine any thing in the secure mental health unit;
 - (d) as well as the formal search required by section 72Y, require a person wishing to enter or remain in a secure mental health unit to submit to a search and examination of the person and of any thing in the person's possession or under the person's control;
 - (e) conduct any search or examination under paragraph (a), (b), (c) or (d) at random.
- (2) A search or examination of a person, or a thing in a person's possession or under a person's control, may be conducted without the person's consent and using such restraint and force as is reasonable in the circumstances if –
- (a) the person is a forensic patient; or
 - (b) the person is a member of the staff of a secure mental health unit who has refused to submit himself or herself or the thing in or under his or her possession or control for search or examination while in the secure mental health unit.

- (3) If a person, other than a forensic patient or a member of the staff of the secure mental health unit, refuses to submit to be searched or examined under this section while in the secure mental health unit, an authorised person may direct the person to leave the secure mental health unit immediately.
- (4) A person must comply with a direction under subsection (3).

Penalty: Fine not exceeding 5 penalty units.

- (5) If a person refuses or fails to comply with a direction under subsection (3) –
 - (a) an authorised person may detain the person for such time as is necessary for the person to be arrested by a police officer under paragraph (b); and
 - (b) the person may be arrested by a police officer without warrant.
- (6) A search or examination of a visitor to the secure mental health unit under this section that involves the visitor undressing or the person who makes the search touching the visitor is to be made by a medical practitioner, or member of staff of the secure mental health unit, of the same gender as the visitor and in the presence of persons of that gender only unless the Chief Forensic Psychiatrist directs otherwise.

- (7) For the purpose of exercising the powers conferred by this section, an authorised person may use such force, means and assistants as he or she considers reasonably necessary for the purpose.

73I. Seizure

- (1) In carrying out a search or examination under section 72Y or 73H, the Chief Forensic Psychiatrist or an authorised person may seize any one or more of the following:
- (a) any thing found in the secure mental health unit, whether in a person's possession or not, which the Chief Forensic Psychiatrist or authorised person believes on reasonable grounds jeopardises or is likely to jeopardise the security or good order and management of the secure mental health unit or the safety of persons in the secure mental health unit;
 - (b) any thing found on a forensic patient or in or under a forensic patient's possession or control, other than a thing which the forensic patient is authorised to wear or to possess under this Part, the regulations, standing orders issued by the Chief Forensic Psychiatrist or a direction of the controlling authority;

- (c) any thing which the Chief Forensic Psychiatrist or authorised person believes on reasonable grounds jeopardises or is likely to jeopardise the security or good order or management of the secure mental health unit or the safety of persons in the secure mental health unit, despite that thing being something the forensic patient is authorised to wear or to possess under this Part, the regulations, standing orders issued by the Chief Forensic Psychiatrist or a direction of the controlling authority.
- (2) If the Chief Forensic Psychiatrist or an authorised person seizes any thing under subsection (1), the Chief Forensic Psychiatrist or authorised person is to immediately inform the controlling authority of the secure mental health unit of that fact.
- (3) The controlling authority of the secure mental health unit is to ensure that any thing seized under this section –
 - (a) from a visitor or member of the staff of the secure mental health unit is returned to that visitor or member of staff when he or she leaves the secure mental health unit; or
 - (b) from a forensic patient is, on the discharge of the forensic patient

from the secure mental health unit, returned to or given into the custody of the forensic patient, the Director, the Secretary (Youth Justice) or the controlling authority of an approved hospital, as appropriate –

unless that thing is a drug of dependence or a thing which is illegal for a person to possess or carry.

73J. Offence to bring certain things into secure mental health unit

- (1) A person must not bring into a secure mental health unit a thing that the Chief Forensic Psychiatrist or the controlling authority has not authorised to be brought into the secure mental health unit.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (2) If a member of the staff of a secure mental health unit finds a person contravening subsection (1), an authorised person, with such assistants and using such force as he or she considers appropriate in the circumstances, may detain that person pending the arrival of a police officer.
- (3) A police officer may arrest without warrant a person who the police officer

reasonably believes has contravened subsection (1).

- (4) In addition to any other penalty that may be imposed, a person who is convicted of an offence against subsection (3) is not entitled to be employed in or undertake any work, including the practice of medicine, in any secure mental health unit unless the Secretary determines otherwise.

73K. Bringing prisoners before courts

- (1) In this section –

“**new offence**” means –

- (a) an offence other than the offence which was the cause of a person becoming a prisoner; or
 - (b) an offence other than the offence which resulted in a person being detained in a secure mental health unit under an order of a court; or
 - (c) in the case of an involuntary patient admitted to a secure mental health unit, any offence.
- (2) If a patient in the custody of the controlling authority of a secure mental health unit is charged with a new offence, a justice, by written order, may direct the controlling authority to bring the patient before the court specified in the order or the judge or magistrate who

is then present to be dealt with according to law.

- (3) A judge or magistrate may order the controlling authority of a secure mental health unit to bring a patient in the custody of the controlling authority before the judge or magistrate to give evidence.
- (4) If a justice, judge or magistrate is considering making an order under subsection (2) or (3), the justice, judge or magistrate is to take into account the advice of the Chief Forensic Psychiatrist or an approved medical practitioner as to the fitness of the patient to attend at court.
- (5) The controlling authority of a secure mental health unit –
 - (a) is to comply with an order under subsection (2) or (3) as soon as practicable; and
 - (b) when complying with the order, is to comply with the standing orders issued by the Chief Forensic Psychiatrist.
- (6) Before making an order under subsection (3), a judge or magistrate may require an applicant to deposit sufficient money to pay all the expenses involved in bringing the patient before the court and maintaining the patient from the time he or she leaves, until the time of return to, the secure mental health unit.

73L. Presence at taking of certain depositions

- (1) If a patient in the custody of the controlling authority of a secure mental health unit has received notice of an intention to take the deposition of a person dangerously ill and unable to travel, the controlling authority, at the request of a judge or magistrate, may bring the patient to a place specified in the request for the taking of the deposition.
- (2) If a judge or magistrate is considering making a request under subsection (1), the judge or magistrate is to take into account the advice of the Chief Forensic Psychiatrist or an approved medical practitioner as to the fitness of the patient to attend at the taking of the deposition.

73M. Court may proceed in absence of forensic patient, &c.

Despite any other law to the contrary, on the advice of the Chief Forensic Psychiatrist a court may –

- (a) hear a matter or otherwise proceed with proceedings before the court in the absence of a forensic patient who is a party to the proceedings if the forensic patient has legal representation; or

- (b) hold the hearing or proceedings in any place the court considers appropriate.

73N. Custody

While a person is a forensic patient, he or she is in the custody of the controlling authority of the secure mental health unit to which the person is admitted as a forensic patient unless he or she is in the custody of another person under an order of a court.

73O. Application of Part to places other than secure mental health units

If a forensic patient is in the custody of the controlling authority of a secure mental health unit but is being detained in a hospital, a health service within the meaning of the *Health Complaints Act 1995*, premises where such a health service is provided, a secure institution or another place, those provisions of this Part as are appropriate apply –

- (a) in respect of the forensic patient as if he or she were in the secure mental health unit; and
- (b) in respect of the hospital, health service, premises, secure institution or other place as if it were a secure mental health unit.

73P. Notifying victims of release

Before a forensic patient is released from a secure mental health unit or transferred to another secure mental health unit, the controlling authority is to request the Secretary (Corrections) to search the Victims Register and notify any victim registered in relation to the forensic patient in that Register that the forensic patient is being so released or transferred unless it is not practicable to notify such a victim in the circumstances.

73Q. Application of *Corrections Act 1997* to forensic patients who are prisoners

- (1) Except as provided in subsection (2), Parts 4, 5, 6, 7 and 9 of the *Corrections Act 1997* do not apply to a forensic patient who is also a prisoner.
- (2) Sections 86 and 87(1)(b) of the *Corrections Act 1997* apply to a forensic patient who is also a prisoner.

73R. Warrant of commitment not void

A warrant of commitment is not to be held void by reason of a formal defect in it.

73S. Preservation of royal prerogative of mercy

Nothing in this Act is to be construed so as to limit or affect in any way the exercise in relation to a forensic patient who is also a prisoner of the royal prerogative of mercy.

PART 10B – FORENSIC TRIBUNAL***Division 1 – Establishment of Forensic Tribunal*****73T. Establishment of Forensic Tribunal**

- (1) The Forensic Tribunal is established.
- (2) All courts and persons acting judicially must take judicial notice of any document purporting to be made by the Forensic Tribunal and presume that it was duly made by the Forensic Tribunal.

73U. Membership of Forensic Tribunal

- (1) The Forensic Tribunal consists of –
 - (a) the President of the Mental Health Tribunal; and
 - (b) the President of the Board; and
 - (c) one other member.
- (2) The member of the Forensic Tribunal referred to in subsection (1)(c) is appointed by the Minister –
 - (a) from the Forensic Tribunal Member Register; and

- (b) for the term, or for the purposes of a particular matter, as determined by the Minister.
- (3) The President of the Mental Health Tribunal is the chairperson of the Forensic Tribunal.
- (4) Schedule 1A has effect with respect to membership of the Forensic Tribunal.
- (5) An act or decision of the Forensic Tribunal is not invalidated by reason only of a defect or irregularity in the appointment of a member.

73V. Functions and powers of Forensic Tribunal

- (1) The Forensic Tribunal has the following functions:
 - (a) to hear and determine applications for leave from the secure mental health unit in respect of forensic patients who are subject to restriction orders;
 - (b) to carry out under section 37 of the *Criminal Justice (Mental Impairment) Act 1999* reviews of orders made under that Act in relation to their application to forensic patients;
 - (c) to hear and determine applications under section 72I for the authorisation of medical treatment for forensic patients;

- (d) to receive reports relating to medical treatment provided to forensic patients without informed consent;
 - (e) to receive reports relating to the seclusion and restraint of forensic patients;
 - (f) to receive reports relating to restrictions imposed with respect to the receipt, or sending or making, by forensic patients of mail, email and telephone calls;
 - (g) to issue guidelines for the purposes of sections 72L, 72M and 72N;
 - (h) to review, as provided by section 36B of the *Corrections Act 1997*, decisions as to whether or not prisoners are to be admitted to a secure mental health unit;
 - (i) to review, as provided by section 134B of the *Youth Justice Act 1997*, decisions as to whether or not young prisoners are to be admitted to a secure mental health unit;
 - (j) other functions imposed by this or any other Act.
- (2) The Forensic Tribunal has power to do all things necessary or convenient to be done in connection with the performance of its functions.

73W. Decisions of Forensic Tribunal

- (1) A majority of the members of the Forensic Tribunal is competent to transact any business of the Forensic Tribunal.
- (2) A decision in which a majority of the members of the Forensic Tribunal agree is a decision of the Forensic Tribunal.

73X. Staff of Forensic Tribunal

- (1) The Secretary of the Department is to arrange for the services of State Service employees or State Service officers employed in the Department to be made available to enable the Forensic Tribunal to perform and exercise its functions and powers.
- (2) A State Service employee or State Service officer made available under subsection (1) may serve the Forensic Tribunal in conjunction with State Service employment.

73Y. Assistance, resources and facilities

The Secretary of the Department is to arrange to be provided to the Forensic Tribunal from the resources of the Department such assistance, resources and facilities as are necessary to enable the Forensic Tribunal to perform and exercise its functions and powers.

73Z. Appointment of persons to assist Forensic Tribunal

The Forensic Tribunal may appoint a legal practitioner, medical practitioner or other person with appropriate expertise to assist the Forensic Tribunal in proceedings before it.

Division 2 – Proceedings of Forensic Tribunal**74. Interpretation of Division**

In this Division –

“party to proceedings” includes –

- (a) the forensic patient; and
- (b) if relevant, the Chief Forensic Psychiatrist; and
- (c) if relevant, the controlling authority of the secure mental health unit; and
- (d) any other person to whom the Forensic Tribunal has given a notice of review in respect of the proceedings.

74A. Sittings

The Forensic Tribunal is to sit at times and places determined by its chairperson.

74B. Notification of hearings

The Forensic Tribunal –

- (a) is to give reasonable notice of a hearing of proceedings to each party; and
- (b) unless it considers that it is not appropriate in the circumstances, is to give reasonable notice of a hearing of proceedings to each of the following persons who is not a party:
 - (i) the Public Guardian;
 - (ii) the Chief Forensic Psychiatrist;
 - (iii) the controlling authority of the secure mental health unit concerned;
 - (iv) the Director of Public Prosecutions.

74C. General principles for hearings

- (1) The Forensic Tribunal, in hearing a matter, including a review of a decision –
 - (a) must act according to good conscience having regard to the objects and principles specified in sections 6 and 7; and
 - (b) is bound by the rules of natural justice.

- (2) The Forensic Tribunal must avoid unnecessary formality.

**74D. Representation in proceedings before
Forensic Tribunal**

- (1) A party to proceedings –
 - (a) is entitled to be present, in person, when the Forensic Tribunal hears the proceedings unless the Forensic Tribunal determines otherwise; and
 - (b) may appear personally in the proceedings or be represented by a legal practitioner or other person.
- (2) For the purposes of subsection (1)(a), the Forensic Tribunal may determine that a party to proceedings, including the forensic patient, may not be present in person if it is of the opinion that it may be detrimental to the health of the forensic patient for the person to be so present.
- (3) If the Forensic Tribunal determines that a party to proceedings may not be present in person, the party is entitled to be present by audio link, or audio visual link, within the meaning of the *Evidence (Audio and Audio Visual Links) Act 1999*, if so determined, and as determined, by the Forensic Tribunal.

- (4) The Forensic Tribunal may not determine that a party to proceedings may be present by audio link or audio visual link if the facilities are not available.
- (5) The Forensic Tribunal may make arrangements, including adjournment of the proceedings, for the representation of a party to proceedings before it.

74E. Evidence before Forensic Tribunal

- (1) The Forensic Tribunal is not bound by the rules of evidence but may inform itself as it considers appropriate.
- (2) Evidence before the Forensic Tribunal may be given –
 - (a) orally, in writing or partly orally and partly in writing; and
 - (b) on oath or affirmation or by statutory declaration.
- (3) An oath or affirmation to a witness may be administered by any member of the Forensic Tribunal.
- (4) Evidence given before the Forensic Tribunal is not admissible in civil or criminal proceedings other than –
 - (a) in proceedings for an offence against this Act; or
 - (b) in proceedings for an offence committed at, or arising out of, a

- hearing before the Forensic Tribunal; or
- (c) in any other proceedings under this Act; or
 - (d) in proceedings under the *Criminal Justice (Mental Impairment) Act 1999* or *Guardianship and Administration Act 1995*; or
 - (e) in proceedings where another Act specifically allows or requires the admission of that evidence.
- (5) A person who appears as a witness before the Forensic Tribunal has the same protection as a witness in proceedings before the Court.
- (6) Despite sections 127A and 127B of the *Evidence Act 2001*, a medical practitioner or counsellor may disclose to the Forensic Tribunal information without the consent of the forensic patient to whom the information relates.

74F. Summoning of witnesses

- (1) The Forensic Tribunal, on its own initiative or on the application of a party to proceedings, may summon a person –
 - (a) to appear before it and give evidence at the time and place specified in the summons; or

- (b) to provide any documents to the Forensic Tribunal as specified in the summons; or
 - (c) to so appear before it and so provide documents.
- (2) A summons must be served personally, by post or as otherwise determined by the Forensic Tribunal.
- (3) Without limiting the manner in which the Forensic Tribunal may determine a summons to be served, it may determine that service is to be by substituted service.

74G. Power to require reports, &c.

- (1) The Forensic Tribunal may require the Chief Forensic Psychiatrist or the controlling authority of a secure mental health unit or an approved hospital to provide it with –
 - (a) a report on the forensic patient to whom proceedings before the Forensic Tribunal relate; and
 - (b) copies of records about the care and treatment of such a forensic patient.
- (2) If a forensic patient to whom proceedings before the Forensic Tribunal relate was transferred to the secure mental health unit from a prison, the Forensic Tribunal

may require the Director or the Secretary (Youth Justice) to provide it with –

- (a) a report on the forensic patient;
and
- (b) copies of records about the care and treatment of the forensic patient while in the prison.

74H. Medical examinations

- (1) In this section –

“medical examination” includes an examination of the physical, psychological and mental capacities of a forensic patient.

- (2) The Forensic Tribunal, by notice in writing, may require a forensic patient to whom proceedings before the Forensic Tribunal relate to submit to a medical examination by a medical practitioner specified by the Forensic Tribunal, including a medical practitioner who is a member of the Forensic Tribunal.
- (3) The Forensic Tribunal must not require a patient to submit to a medical examination unless, having regard to the relevant inquiry, it is reasonable to require that examination.
- (4) A notice under subsection (2) is to specify –

- (a) the name of the medical practitioner who is to carry out the examination; and
 - (b) the date, time and place of the examination.
- (5) The date, time and place specified for a medical examination must be reasonable.
- (6) The medical practitioner who carries out the medical examination must provide the Forensic Tribunal and the patient with a written report on the results of that examination.

74I. Visits by Forensic Tribunal

The Forensic Tribunal, or any one or more of its members, may visit and interview in private any forensic patient by or in respect of whom an application has been made to the Forensic Tribunal or who is the subject of a forensic order being reviewed by the Forensic Tribunal.

74J. Right of certain persons to intervene

The Public Guardian, the controlling authority of a secure mental health unit, the Director of Public Prosecutions and the Chief Forensic Psychiatrist may intervene and be represented in any proceedings before the Forensic Tribunal.

74K. Proceedings to be closed

- (1) All proceedings before the Forensic Tribunal are closed to members of the public unless the Tribunal otherwise orders.
- (2) If proceedings before the Forensic Tribunal are open to the public, a person who is directly interested in the proceedings may request the Tribunal to have the proceedings or part of the proceedings closed to the public.
- (3) On a request under subsection (2), the Forensic Tribunal may direct that any person –
 - (a) who in its opinion is not directly interested in the proceedings; or
 - (b) who has not been authorised by the Tribunal to be present at the proceedings –is to be excluded from the place where the proceedings are being, or are to be, heard.
- (4) If a person hinders or disrupts the proper conduct of the proceedings, the Forensic Tribunal may exclude the person from the hearing.

Division 3 – Forensic Tribunal Member Register**74L. Forensic Tribunal Member Register**

- (1) The Secretary must keep a register of persons from whom the member of the Forensic Tribunal referred to in section 73U(1)(c) is to be appointed.
- (2) A person, in writing, may request the Secretary to remove the person's name from the Forensic Tribunal Member Register at any time.
- (3) The Secretary is to –
 - (a) keep the Forensic Tribunal Member Register current; and
 - (b) remove from the Forensic Tribunal Member Register the name of any person who has been entered in it for a period of 3 years and has not been nominated, or has not made an application, for further entry in the Register at the end of that period; and
 - (c) remove from the Forensic Tribunal Member Register the name of any person who has requested it; and
 - (d) remove from the Forensic Tribunal Member Register the name of any person who the Secretary has become aware is no longer residing in the State or is

no longer qualified or suitable to be entered in the Register.

74M. Calling for interested persons

For the purposes of ensuring that a reasonable selection of people is entered in the Forensic Tribunal Member Register, the Secretary, on the recommendation of the Chief Forensic Psychiatrist, may –

- (a) by advertising in 3 daily newspapers published and circulating in the State, request any person, or any person of a class specified in the request, interested in being entered in the Forensic Tribunal Member Register to apply to the Secretary; and
- (b) request State Service officers and State Service employees, or persons employed in or for the purposes of a statutory authority, that the Secretary considers have functions or powers that are relevant to the matters that the Forensic Tribunal is required to consider to apply for entry in the Forensic Tribunal Member Register; and
- (c) request persons, or persons of a class specified in the request, who are employed in or concerned

with the provision of health services to apply for entry in the Forensic Tribunal Member Register.

74N. Entering persons in Forensic Tribunal Member Register

- (1) On receipt of an application for the entry of a person in the Forensic Tribunal Member Register, the Secretary must inquire into the qualifications and suitability of the person to be so entered.
- (2) If the Secretary considers that the nominee or applicant is qualified and suitable to be entered in the Forensic Tribunal Member Register, the Secretary is to –
 - (a) enter in the Register the person's name, address and qualifications, and any other information the Secretary considers appropriate; and
 - (b) notify the person, in writing, that the person has been entered in the Forensic Tribunal Member Register and that the person will remain in the Register for the period of 3 years.
- (3) Despite subsection (2), the Secretary is not to enter the name of a person in the Forensic Tribunal Member Register unless –

- (a) in the case of a State Service officer or State Service employee employed in a State Service Agency other than the Department, the Head of the State Service Agency has consented to that officer or employee being so entered in the Forensic Tribunal Member Register; or
 - (b) in the case of a person employed in, or for the purposes of, a statutory authority and required by any Act to devote the whole of his or her time to the duties of that employment, the statutory authority has consented to that person being so entered in the Forensic Tribunal Member Register.
- (4) In determining who is qualified and suitable to be entered in the Forensic Tribunal Member Register, the Secretary is to seek the advice of the Chief Forensic Psychiatrist.

Division 4 – Miscellaneous

74O. Annual report of Forensic Tribunal

- (1) The Forensic Tribunal must, in respect of each financial year, prepare an annual report giving full particulars of the exercise of its powers under this Act during the financial year and must provide the Minister with the report before the following 30 September.

- (2) The Minister must cause the report to be laid before each House of Parliament within 14 sitting-days of that House after receiving the report.

51. Section 73 amended (Appointment of official visitors)

Section 73 of the Principal Act is amended as follows:

- (a) by renumbering the section as section 74P;
- (b) by omitting from subsection (2)(b) “hospital –” and substituting “hospital; or”;
- (c) by inserting the following paragraph after paragraph (b) in subsection (2):
 - (c) for a nominated secure mental health unit –
- (d) by omitting from subsection (2) “region or hospital” and substituting “such region, hospital or secure mental health unit”;
- (e) by omitting from subsection (3)(b) “Crown or an approved hospital” and substituting “Crown, an approved hospital or a secure mental health unit”;
- (f) by omitting from subsection (3)(c) “hospital.” and substituting “hospital or a secure mental health unit.”.

52. Section 74 renumbered

Section 74 of the Principal Act is renumbered as section 74Q:

53. Section 75 amended (Functions of official visitor)

Section 75 of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “or secure mental health unit” after “hospital”;
- (b) by omitting from paragraph (b) “region or approved hospital” and substituting “region, approved hospital or secure mental health unit”;
- (c) by omitting from paragraph (c) “region or approved hospital” and substituting “region, approved hospital or secure mental health unit”.

54. Section 77 amended (Visiting approved hospitals and secure mental health unit)

Section 77 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or secure mental health unit” after “hospital”;
- (b) by inserting in subsection (2) “or secure mental health unit” after “hospital”;
- (c) by omitting from subsection (3) “senior approved medical practitioner of an

approved hospital or another member of staff” and substituting “Chief Forensic Psychiatrist, or the senior approved medical practitioner or another member of staff of an approved hospital or a secure mental health unit”;

- (d) by inserting in subsection (3)(a) “or secure mental health unit” after “hospital”;
- (e) by inserting in subsection (3)(b) “or forensic patients and other patients in the secure mental health unit” after “hospital”;
- (f) by inserting in subsection (3)(c) “or forensic patients and other patients in the secure mental health unit” after “hospital”;
- (g) by inserting in subsection (3)(d) “in the hospital or forensic patients and other patients in the secure mental health unit” after “patients”.

55. Section 78 amended (Controlling authority to facilitate visits on request)

Section 78 of the Principal Act is amended as follows:

- (a) by inserting “or a forensic patient or other patient in a secure mental health unit” after “approved hospital”;
- (b) by inserting “or secure mental health unit” after “the hospital”.

56. Section 79 substituted

Section 79 of the Principal Act is repealed and the following section is substituted:

79. Reports of suspected contravention of this Act

If an official visitor suspects on reasonable grounds a contravention of this Act in relation to the care or treatment of a patient with a mental illness, the official visitor must report the suspicion and the grounds on which it is held to –

- (a) the Mental Health Tribunal if the patient is in an approved hospital; or
- (b) the Forensic Tribunal if the patient is a forensic patient or an involuntary patient in a secure mental health unit.

57. Section 81 amended (Annual report by coordinating official visitor)

Section 81(1) of the Principal Act is amended by inserting “or secure mental health unit” after “hospital”.

58. Section 82 amended (Transfer agreements)

Section 82 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) The Minister may enter into an agreement with the Minister responsible for the administration of a corresponding law providing for the transfer of –
 - (a) involuntary patients; and
 - (b) forensic patients who are not also prisoners.

59. Section 83 amended (Effect of transfer agreements)

Section 83 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “or forensic patient” after “patient”;
- (b) by inserting in subsection (1)(a) “or secure mental health unit” after “hospital”;
- (c) by inserting in subsection (1)(b) “or forensic patient” after “patient”;
- (d) by inserting in subsection (1)(b) “or secure mental health unit” after “hospital”;
- (e) by inserting the following subsection after subsection (3):
 - (4) On a transfer of a forensic patient as mentioned in subsection (1)(b), an order for his or her detention under the law of the relevant State or Territory has effect, subject to any adaptations and

modifications for which the relevant agreement provides, as if it were a restriction order, continuing care order, order imposing a sentence of imprisonment or other order made in this State.

60. Section 83B amended (Agreements for the return, &c., of absconding involuntary patients)

Section 83B(1)(a) of the Principal Act is amended by inserting “or secure mental health unit” after “hospital”.

61. Section 83F amended (Apprehension, &c., of involuntary patients found interstate)

Section 83F of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “or secure mental health unit” after “the approved hospital”;
- (b) by inserting in paragraph (a) “or secure mental health unit” after “that approved hospital”;
- (c) by inserting “or secure mental health unit” after “to that approved hospital”.

62. Section 84 amended (Protection relating to reports and information)

Section 84(1) of the Principal Act is amended as follows:

- (a) by omitting “Tribunal” first occurring and substituting “Mental Health Tribunal or Forensic Tribunal”;
- (b) by omitting “Tribunal” second occurring and substituting “Mental Health Tribunal or Forensic Tribunal”;
- (c) by omitting from paragraph (b) “Tribunal” twice occurring and substituting “Mental Health Tribunal or Forensic Tribunal”.

63. Section 85 amended (Confidentiality of information)

Section 85 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Tribunal” first occurring and substituting “Mental Health Tribunal or Forensic Tribunal”;
- (b) by omitting from subsection (1)(b) “Tribunal” and substituting “Mental Health Tribunal or Forensic Tribunal”;
- (c) by omitting from subsection (1)(c) “President.” and substituting “President or a member of the Forensic Tribunal; or”;

- (d) by inserting the following paragraph after paragraph (c) in subsection (1):
 - (d) where the disclosure of the information is authorised or required by a court or authorised under any law.
- (e) by omitting from subsection (3) “Tribunal” and substituting “Mental Health Tribunal or Forensic Tribunal”.

64. Section 86 amended (Protection from liability)

Section 86 of the Principal Act is amended by omitting “Tribunal” three times occurring and substituting “Mental Health Tribunal or Forensic Tribunal”.

65. Section 88 amended (Removal, &c., of involuntary patient or forensic patient)

Section 88 of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “or secure mental health unit” after “hospital”;
- (b) by inserting the following paragraph after paragraph (a):
 - (ab) remove a forensic patient from a secure mental health unit; or
- (c) by inserting in paragraph (b) “or forensic patient” after “patient”.

66. Section 89 amended (Obstruction)

Section 89 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “Tribunal” and substituting “Mental Health Tribunal or Forensic Tribunal”;
- (b) by inserting the following paragraph after paragraph (b):
 - (ba) the Chief Forensic Psychiatrist; or

67. Section 90 amended (Confidentiality)

Section 90 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(c) “Board or the Tribunal.” and substituting “Board, the Mental Health Tribunal or the Forensic Tribunal; or”;
- (b) by inserting the following paragraph after paragraph (c) in subsection (2):
 - (d) in the case of information about a forensic patient, the disclosure is authorised or required by a law.
- (c) by inserting the following subsections after subsection (2):
 - (3) A person, for profit or for financial or other consideration, must not publish –

(a) the fact that another person is a patient in a secure mental health unit; or

(b) any picture of another person who is a patient in a secure mental health unit that relates to the person's status as a forensic patient –

without the written consent of that other person and the Chief Forensic Psychiatrist.

(4) Subsection (3) does not prohibit the publication of a report on any court proceedings which is not otherwise prohibited by or under any law.

68. Section 91 amended (Non-compliance with legal process)

Section 91 of the Principal Act is amended as follows:

(a) by inserting in paragraph (a) “Mental Health Tribunal or Forensic” after “before the”;

(b) by omitting paragraph (c) and substituting the following paragraphs:

(c) misbehaves before the Mental Health Tribunal or Forensic

Tribunal or otherwise interrupts the Tribunal's proceedings; or

- (ca) insults the Mental Health Tribunal or Forensic Tribunal, a member of the Tribunal or a person assisting the Tribunal; or
- (c) by inserting in paragraph (d) "or affirmed" after "sworn";
- (d) by inserting in paragraph (d) "Mental Health Tribunal or Forensic" after "the".

69. Section 93 amended (Disqualification of certain medical practitioners)

Section 93(b) of the Principal Act is amended by inserting "or a secure mental health unit" after "hospital".

70. Section 95 amended (Regulations)

Section 95 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):
 - (1A) Without limiting the generality of subsection (1), the regulations may make provision for the purposes of –
 - (a) the maintenance of good order in a secure mental health unit or other place

in which a forensic patient
is detained; and

- (b) the safety of forensic
patients and other persons
in a secure mental health
unit or other place in
which a forensic patient is
detained.

- (b) by omitting subsection (5) and
substituting the following subsection:

- (5) The regulations may contain
provisions of a savings or
transitional nature consequent on
the enactment of this Act or any
Act that amends this Act.

- (c) by omitting from subsection (6) “day”
second occurring and substituting “day,
whether or not that day precedes the day
on which the regulations containing that
provision are made”.

71. Section 98 repealed

Section 98 of the Principal Act is repealed.

72. Schedule 1 amended (Members and staff of the Mental Health Tribunal)

Schedule 1 to the Principal Act is amended as
follows:

- (a) by inserting in the heading “**MENTAL
HEALTH**” after “**THE**”;

- (b) by inserting in clause 1(1) “Mental Health” after “member of the”;
- (c) by inserting in clause 1(3) “Mental Health” after “of the”;
- (d) by inserting in clause 1(4) “Mental Health” after “of the”;
- (e) by inserting in clause 2 “Mental Health” after “member of the”;
- (f) by inserting in clause 2(a) “Mental Health” after “which the”;
- (g) by inserting in clause 2(b) “Mental Health” after “of the”;
- (h) by inserting in clause 3(1) “and powers as a member of the Mental Health Tribunal or as a member of the Forensic Tribunal” after “President’s functions”;
- (i) by inserting in clause 3(1)(a)(i) “and powers” after “functions”;
- (j) by inserting in clause 3(1)(a)(iii) “and powers” after “functions”;
- (k) by inserting in clause 3(2) “and powers” after “functions”;
- (l) by inserting in clause 3(3) “and powers” after “functions”;
- (m) by omitting from clause 4 “functions,” and substituting “functions and powers as a member of the Mental Health Tribunal or the Forensic Tribunal,”;

- (n) by inserting in clause 5(5) “Mental Health” after “matter by the”;
- (o) by inserting in clause 5(5) “Mental Health” after “determined by the”;
- (p) by inserting in clause 6(b) “Mental Health” after “by the”;
- (q) by inserting in clause 6 “Mental Health” after “determined by the”;
- (r) by inserting in clause 7(1) “Mental Health” after “registrar of the”;
- (s) by inserting in clause 7(1) “Mental Health” after “functioning of the”;
- (t) by inserting in clause 8 “Mental Health” after “The”;
- (u) by omitting from clause 8 “Tribunal” second occurring and substituting “Mental Health Tribunal”.

73. Schedule 1A inserted

After Schedule 1 to the Principal Act, the following Schedule is inserted:

SCHEDULE 1A – MEMBERSHIP OF FORENSIC TRIBUNAL

Section 73U(4)

1. Interpretation

In this Schedule –

“appointed member” means the member of the Forensic Tribunal referred to in section 73U(1)(c);

“meeting” includes, where appropriate, proceeding and hearing;

“member” means a member of the Forensic Tribunal.

2. Holding other office

The holder of an office who is required by the terms of his or her employment to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

3. State Service Act 2000

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.
- (2) A person may hold the office of member in conjunction with State Service employment.

4. Extension of term of office

- (1) If the term for which a person is appointed as the President or President of the Board expires after the Forensic Tribunal has commenced a hearing into a matter but before that matter is finalised by the Forensic Tribunal –
 - (a) the person is taken for the purposes of that matter to continue in the office of President or President of the Board until that matter is finalised by the Forensic Tribunal; and
 - (b) another person appointed as President or President of the Board is taken, for those purposes and until that matter is finalised, not to be the President or President of the Board.
- (2) If the term for which the appointed member is appointed expires after the Forensic Tribunal has commenced a hearing into a matter but before that matter is finalised by the Forensic Tribunal, that term is extended until the matter is so finalised.

5. Remuneration and conditions of appointment

- (1) A member is entitled to be paid such remuneration and allowances as the Minister determines.

- (2) A member who is a State Service employee or State Service officer is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) An appointed member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment or as determined by the Minister.

6. Acting chairperson

- (1) The member who is the President of the Board may perform and exercise the functions and powers of the chairperson of the Forensic Tribunal if –
 - (a) the President of the Mental Health Tribunal is absent from Tasmania or from duty as chairperson of the Forensic Tribunal; or
 - (b) the President of the Mental Health Tribunal is otherwise unable to perform the functions of the office of chairperson; or
 - (c) the office of President is vacant.
- (2) While the member who is the President of the Board is acting as chairperson of the Forensic Tribunal under this section –

- (a) that member is taken to be the chairperson; and
- (b) the Deputy President of the Mental Health Tribunal is not the chairperson.

7. Vacation of office

- (1) An appointed member vacates office if –
 - (a) he or she dies; or
 - (b) he or she resigns by written notice given to the Minister; or
 - (c) he or she is suspended or removed from office under subclause (2); or
 - (d) his or her appointment as member is terminated under subclause (3).
- (2) The Minister may suspend or remove an appointed member from office if satisfied that the member is unable to perform adequately or competently the duties of the office through illness or for any other reason.
- (3) The appointment of a member under section 73U(1)(c) is terminated if the member –
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the

member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or

- (b) is convicted in Tasmania of an indictable offence or is convicted elsewhere of an offence which if committed in Tasmania would be an indictable offence.

8. Filling of vacancies

If the office of an appointed member becomes vacant, the Minister may appoint a person from the Forensic Tribunal Member Register to the vacant office for the remainder of that member's term, until the matter in respect of which that member was appointed is finalised or while the office is vacant.

PART 3 – CORONERS ACT 1995 AMENDED**74. Principal Act**

In this Part, the *Coroners Act 1995** is referred to as the Principal Act.

75. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “approved pathologist”:

“authorised officer” means an authorised officer within the meaning of the *Mental Health Act 1996*;

- (b) by inserting the following definition after the definition of “body”:

“controlling authority” means a controlling authority within the meaning of the *Mental Health Act 1996*;

- (c) by inserting “or in a secure mental health unit or another place while in the custody of the controlling authority of a secure mental health unit, within the meaning of that Act” after “*Mental Health Act 1996*” in paragraph (b) of the definition of “person held in care”;

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- (d) by inserting the following subparagraphs after subparagraph (ii) in paragraph (a) of the definition of “person held in custody”:
 - (iii) an authorised officer; or
 - (iv) the controlling authority of a secure mental health unit; or
 - (v) a prescribed person within the meaning of section 31 of the *Criminal Justice (Mental Impairment) Act 1999*; or
 - (vi) a person who has custody under the order of a court for the purposes of taking the person to or from a court; or
- (e) by omitting “centre or police custody” from paragraph (c) of the definition of “reportable death” and substituting “centre, a secure mental health unit, police custody or the custody of a person who had custody under an order of a court for the purposes of taking that person to or from a court”;
- (f) by omitting “officer or correctional officer” from paragraph (d) of the definition of “reportable death” and substituting “officer, correctional officer, authorised officer or a prescribed person within the meaning of section 31 of the *Criminal Justice (Mental Impairment) Act 1999*”;

- (g) by inserting the following definition after the definition of “reportable death”:

“secure mental health unit” means –

- (a) a secure mental health unit within the meaning of the *Mental Health Act 1996*; or
- (b) any other place in which a person is being detained while in the custody of the controlling authority of a secure mental health unit;

76. Section 19 amended (Obligation to report death)

Section 19(4) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “centre or police custody” and substituting “centre, a secure mental health unit, police custody or the custody of a person who had custody under an order of a court for the purposes of taking that person to or from a court”;
- (b) by omitting from paragraph (c) “police officer or correctional officer” and substituting “a police officer, correctional officer, authorised officer or prescribed person, within the meaning of section 31 of the *Criminal Justice (Mental Impairment) Act 1999*,”;

- (c) by omitting “officer or correctional officer” second occurring and substituting “officer, correctional officer, authorised officer or prescribed person”.

77. Section 24 amended (Jurisdiction of coroner to hold inquest into a death)

Section 24(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (d) “centre or police custody” and substituting “centre, a secure mental health unit, police custody or the custody of a person who had custody under an order of a court for the purposes of taking that person to or from a court”;
- (b) by omitting from paragraph (e) “police officers or correctional officers” and substituting “a police officer, correctional officer, authorised officer or prescribed person, within the meaning of section 31 of the *Criminal Justice (Mental Impairment) Act 1999*,”.

78. Section 28 amended (Findings, &c., of coroner investigating a death)

Section 28(5) of the Principal Act is amended by inserting “a secure mental health unit,” after “prison,”.

PART 4 – CORRECTIONS ACT 1997 AMENDED**79. Principal Act**

In this Part, the *Corrections Act 1997** is referred to as the Principal Act.

80. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of “Secretary” the following definition:

“**secure mental health unit**” has the same meaning as in the *Mental Health Act 1996*;

81. Section 36 amended (Removal of prisoners and detainees to other prisons and to hospitals, &c.)

Section 36(1) of the Principal Act is amended by omitting “institution.” and substituting “institution other than a secure mental health unit.”.

82. Sections 36A and 36B inserted

After section 36 of the Principal Act, the following sections are inserted in Part 5:

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36A. Removal of prisoners and detainees to secure mental health units

(1) In this section –

“Chief Forensic Psychiatrist” has the same meaning as in the *Mental Health Act 1996*;

“controlling authority” has the same meaning as in the *Mental Health Act 1996*;

“disability” means a restriction or lack of ability to perform an activity in a normal manner that –

(a) results from an absence, loss or abnormality of mental, psychological, intellectual, cognitive, physiological or anatomical structure or function; but

(b) is not a mental illness;

“Forensic Tribunal” has the same meaning as in the *Mental Health Act 1996*;

“mental illness” has the same meaning as in the *Mental Health Act 1996*.

(2) The Director may direct that a prisoner or detainee who appears to be suffering from a mental illness be removed from a prison, or a hospital or institution to which he or she has been removed under

section 36, to a secure mental health unit
if –

(a) either –

(i) the Director determines
that it is in the best
interests of the prisoner or
detainee or other persons
in the prison, hospital or
institution for the prisoner
or detainee to be removed
to a secure mental health
unit; or

(ii) the prisoner or detainee
has requested that he or
she be removed to a
secure mental health unit;
and

(b) the Chief Forensic Psychiatrist is
satisfied that –

(i) the prisoner or detainee is
suffering from a mental
illness; and

(ii) the admission of the
prisoner or detainee is
necessary for his or her
care or treatment; and

(iii) adequate facilities and
staff exist at the secure
mental health unit for the
appropriate care and
treatment of the prisoner
or detainee.

- (3) The Director may direct that a prisoner or detainee who has a disability be removed from a prison, or a hospital or institution to which he or she has been removed under section 36, to a secure mental health unit if –
- (a) the Director considers that it is necessary to so remove the prisoner or detainee for his or her own health, wellbeing or safety or for the protection of other persons; and
 - (b) the Director considers that appropriate treatment, care, rehabilitation or other services cannot be provided in the prison, or a hospital or institution to which the prisoner or detainee can be removed under section 36; and
 - (c) the Chief Forensic Psychiatrist is satisfied that –
 - (i) the admission of the prisoner or detainee is necessary for his or her care or treatment; and
 - (ii) adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the prisoner or detainee.

- (4) If the Chief Forensic Psychiatrist is not satisfied of the matters specified in subsection (2)(b) or subsection (3)(c), the Secretary, after considering the written reasons of the Chief Forensic Psychiatrist for not being so satisfied, may request the Secretary of the responsible Department in relation to the *Mental Health Act 1996* to review the decision of the Chief Forensic Psychiatrist.
- (5) If following a review of a decision undertaken on a request made under subsection (4) the Secretary of the responsible Department in relation to the *Mental Health Act 1996* agrees to the making of a direction under subsection (2) or (3), the Director may make that direction despite the matters specified in subsection (2)(b) or (3)(c) not being satisfied.
- (6) A prisoner or detainee admitted to a secure mental health unit under a direction under subsection (3) may be detained in the secure mental health unit for no longer than the period specified in the direction or, if the Secretary of the responsible Department in relation to the *Mental Health Act 1996* has agreed on a review under subsection (4) to the making of the direction, no longer than the period specified in that agreement.
- (7) If at any time while a prisoner or detainee admitted to a secure mental health unit under a direction under subsection (2) or (3) is so detained in that

unit the Chief Forensic Psychiatrist considers that the prisoner or detainee would no longer benefit from being in that unit, the Chief Forensic Psychiatrist may require the Director to remove the prisoner or detainee from that unit.

- (8) The Director is to comply with a requirement made under subsection (7).
- (9) While a prisoner is detained in a secure mental health unit following a direction under subsection (2) or (3), including while the prisoner is on authorised leave from that secure mental health unit, that prisoner is taken to be serving his or her sentence of imprisonment.

36B. Appeal against direction under section 36A

- (1) In this section –

“Forensic Tribunal” has the same meaning as in the *Mental Health Act 1996*.

- (2) A prisoner or detainee may appeal to the Forensic Tribunal in respect of –
 - (a) the making of a direction under section 36A(2) or (3); or
 - (b) the failure to make such a direction if the prisoner or detainee has requested it under section 36A(2)(a)(ii); or
 - (c) the requirement by the Chief Forensic Psychiatrist under section 36A(7) for the Director to

remove the prisoner or detainee
from a secure mental health unit.

- (3) The commencing of an appeal does not affect the operation of the direction or requirement appealed against.
- (4) An appeal is to be heard and determined by the Forensic Tribunal within 14 days.
- (5) The *Mental Health Act 1996* applies to the hearing and determination of an appeal, regardless of whether or not the prisoner or detainee has a mental illness, as if it were an appeal made under that Act.
- (6) On hearing an appeal, the Forensic Tribunal may –
 - (a) revoke the direction or requirement; or
 - (b) amend the direction or requirement; or
 - (c) confirm the direction or requirement; or
 - (d) require the Director to make a direction under section 36A(2) or (3).
- (7) The Director must comply with a requirement under subsection (6)(d) to make a direction and a direction made in compliance with that requirement is valid despite the matters specified in section 36A(2)(b) or (3)(c) not being satisfied.

- (8) If the Forensic Tribunal revokes a direction under section 36A(2) or (3) and the prisoner or detainee is at that time in a secure mental health unit, the Forensic Tribunal is to direct the Director to remove the prisoner or detainee from the secure mental health unit as soon as may be practicably arranged.
- (9) The Director must comply with a direction under subsection (8).

83. Section 39 amended (Effect of directions and orders under sections 36, 36A, 36B, 37, 37A and 38)

Section 39(1) of the Principal Act is amended as follows:

- (a) by omitting “section 36, 37 or 38” and substituting “section 36, 36A, 36B, 37, 37A or 38”;
- (b) by omitting from paragraph (b) “prison” and substituting “prison, hospital, an institution or a secure mental health unit”.

84. Section 40 amended (Custody of prisoners and detainees removed pursuant to sections 36, 36A, 37, 37A and 38)

Section 40 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or secure mental health unit” after “a prison”;

- (b) by omitting from subsection (1) “section 36, 37 or 38” and substituting “section 36, 37, 37A or 38”;
- (c) by inserting the following subsection after subsection (1):
 - (1A) A prisoner or detainee who is removed to a secure mental health unit under section 36A –
 - (a) is in the legal custody of the Director while being removed to the secure mental health unit or returned to a prison on discharge from the secure mental health unit or under a direction under section 36B(8); but
 - (b) is not in the legal custody of the Director while he or she is in the secure mental health unit or otherwise in the custody of the controlling authority of a secure mental health unit as provided by the *Mental Health Act 1996*.
- (d) by omitting from subsection (2)(a) “section 36, 37 or 38” and substituting “section 36, 36A, 37, 37A or 38”;
- (e) by omitting from subsection (2)(b) “place” and substituting “place, other than a secure mental health unit,”;

- (f) by inserting in subsection (2)(c) “or a secure mental health unit” after “paragraph (b)”.

85. Section 72 amended (Release on parole)

Section 72 of the Principal Act is amended as follows:

- (a) by inserting in subsection (4)(g) “and, if he or she has been in a secure mental health unit, while in that secure mental health unit” after “prison”;
- (b) by omitting from subsection (4)(j) “prisoner” third occurring and substituting “prisoner, including in the case of a prisoner who is or has been a forensic patient any report of the Chief Forensic Psychiatrist”;
- (c) by omitting subsection (11) and substituting the following subsection:

(11) In this section –

“Chief Forensic Psychiatrist”

has the same meaning as in the *Mental Health Act 1996*;

“forensic patient” has the same meaning as in the *Mental Health Act 1996*;

“restriction order” means a restriction order made under the *Criminal*

*Justice (Mental
Impairment) Act 1999 or
Sentencing Act 1997;*

“victims register” means a register kept by the Secretary in which a victim of an offence in respect of which the offender has been sentenced to a term of imprisonment, or has been made subject to a restriction order, may have his or her name listed at his or her request.

86. Section 83BA inserted

After section 83B of the Principal Act, the following section is inserted in Division 3:

83BA. Application of Part 8 to person in secure mental health unit

This Part applies in respect of a sentence of imprisonment which is being served, or part of which is being served, in a secure mental health unit.

PART 5 – CRIMINAL CODE ACT 1924 AMENDED**87. Principal Act**

In this Part, the *Criminal Code Act 1924** is referred to as the Principal Act.

88. Principal Act amended

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting paragraphs (d) and (da) from section 106 and substituting the following paragraphs:
 - (d) a restriction order made under the *Criminal Justice (Mental Impairment) Act 1999* or any other order under that Act that commits a person to detention in a secure mental health unit, within the meaning of the *Mental Health Act 1996*;
 - (da) a continuing care order made under the *Criminal Justice (Mental Impairment) Act 1999*;
 - (db) apprehension of a person under section 31 of the *Criminal Justice (Mental Impairment) Act 1999*;

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(b) by omitting paragraph (h) from section 106 and substituting the following paragraph:

(h) a restriction order made under section 75(1) of the *Sentencing Act 1997* or any other order under that Act that commits a person to detention in a secure mental health unit, within the meaning of the *Mental Health Act 1996*.

(c) by omitting section 348 and substituting the following section:

348. On adjournment of trial accused may be remanded, &c.

(1) In this section –

“Chief Forensic Psychiatrist”

means the Chief Forensic Psychiatrist appointed under section 11A of the *Mental Health Act 1996*;

“secure mental health unit”

has the same meaning as in the *Mental Health Act 1996*;

“specified” means specified in an order under this section that commits an accused person to a secure mental health unit.

(2) When a trial is adjourned, the judge may –

- (a) direct the trial to be held either at that or a later sitting of the court; and
 - (b) either –
 - (i) remand the accused person accordingly; or
 - (ii) in a proper case, admit the accused person to bail and, if necessary, enlarge the recognisances of the witnesses.
- (3) Instead of remanding the accused person to a gaol or detention centre, or to the custody of the Director of Corrective Services or the Secretary of the responsible Department in relation to the *Youth Justice Act 1997*, the judge may commit him or her to a secure mental health unit if –
- (a) the judge considers that remand is appropriate in the circumstances; and
 - (b) the accused person appears to be suffering from a mental illness within the meaning of the *Mental Health Act 1996*; and

- (c) the judge considers that the accused person should be admitted to a secure mental health unit for his or her own health or safety or for the protection of others; and
- (d) the Chief Forensic Psychiatrist has provided a report to the effect that –
 - (i) the admission of the accused person to the secure mental health unit is necessary for his or her care or treatment; and
 - (ii) adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the accused person; and
 - (iii) in the case of an accused person who has not attained the age of 18 years, the secure mental health unit is the most appropriate place available to

accommodate him
or her in the
circumstances
having regard to
the objectives and
general principles
set out in sections
4 and 5 of the
*Youth Justice Act
1997*.

- (4) Each of the following persons may apply at any time to the Supreme Court for the variation or revocation of an order under this section that commits an accused person to a secure mental health unit:
- (a) the Director of Public Prosecutions;
 - (b) the Secretary of the responsible Department in relation to the *Mental Health Act 1996*;
 - (c) the Chief Forensic Psychiatrist;
 - (d) the accused person.
- (5) The Chief Forensic Psychiatrist must apply to the Supreme Court for the revocation of an order under this section that commits an accused person to a secure mental health unit if the Chief Forensic Psychiatrist is of the

opinion that the accused person no longer requires such treatment or would no longer benefit from such treatment.

- (6) On hearing an application, the judge –
 - (a) may vary, revoke or confirm the order committing the accused person to a secure mental health unit; and
 - (b) if the judge revokes the order, may make any other order he or she could have made under this section.
- (7) An application is to be heard and determined within 14 days after it is made.
- (8) The Secretary of the responsible Department in relation to the *Mental Health Act 1996* may delegate his or her power under subsection (4)(b) to apply for the variation or revocation of an order under this section.
- (9) If a judge makes an order under this section that commits a person to a secure mental health unit –
 - (a) the judge is to specify in the order that the specified person, or a

person of the specified class of person, is to be responsible for taking the accused person to the specified secure mental health unit; and

- (b) the judge may specify in the order that that or another specified person, or a person of that or another specified class of person, is to be responsible for bringing the accused person from the specified secure mental health unit before the Court in connection with the exercise by the Court of its powers under this Act.
- (10) A copy of an order under this section that commits an accused person to a secure mental health unit and the report of the Chief Forensic Psychiatrist are to accompany the accused person to the specified secure mental health unit.
 - (11) While an accused person is the responsibility of a person as specified in an order that commits the accused person to a secure mental health unit, that person –

- (a) has the custody of the accused person; and
 - (b) the accused person is taken to be a forensic patient for the purposes of the application of relevant provisions of Part 10A of the *Mental Health Act 1996*.
- (12) A judge may make such orders as to the distribution and security of the report provided by the Chief Forensic Psychiatrist as he or she considers necessary or appropriate.
- (13) Unless a judge orders otherwise, the Chief Forensic Psychiatrist must give, as soon as practicable, a copy of his or her report to –
 - (a) the prosecutor; and
 - (b) the legal practitioner representing the accused person or, if the accused person is unrepresented, the accused person.
- (14) The prosecution or the defence may dispute the whole or any part of the report of the Chief Forensic Psychiatrist.
- (15) If the whole or any part of the report of the Chief Forensic Psychiatrist is disputed, a judge

must not take into consideration the report or part in dispute unless the party disputing the report or part has had the opportunity –

- (a) to lead evidence on the disputed matters; and
- (b) to cross-examine on the disputed matters the Chief Forensic Psychiatrist or, if the Chief Forensic Psychiatrist has delegated his or her function of writing the report, the author of the report.

**PART 6 – CRIMINAL JUSTICE (MENTAL
IMPAIRMENT) ACT 1999 AMENDED**

89. Principal Act

In this Part, the *Criminal Justice (Mental Impairment) Act 1999** is referred to as the Principal Act.

90. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of “authorised person”:

“approved hospital” has the same meaning as in the *Mental Health Act 1996*;

- (b) by omitting “Attorney-General” from the definition of “authorised person” and substituting “Chief Forensic Psychiatrist”;

- (c) by inserting the following definitions after the definition of “authorised person”:

“Chief Forensic Psychiatrist” has the same meaning as in the *Mental Health Act 1996*;

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“community treatment order” has the meaning given by section 31C;

“continuing care order” has the meaning given by section 31B;

- (d) by inserting the following definitions after the definition of “Director”:

“forensic order” means a restriction order or supervision order;

“Forensic Tribunal” means the Forensic Tribunal established under section 73T of the *Mental Health Act 1996*;

- (e) by omitting the definitions of “responsible medical officer”, “restriction order” and “special facility” and substituting the following definitions:

“restriction order” has the meaning given by section 24;

“secure mental health unit” has the same meaning as in the *Mental Health Act 1996*;

- (f) by omitting the definition of “supervision order” and substituting the following definition:

“supervision order” has the meaning given by section 29A;

91. Section 4 amended (Application of Act)

Section 4(2) of the Principal Act is amended by inserting “and a supervision order” after “order”.

92. Sections 6 and 7 repealed

Sections 6 and 7 of the Principal Act are repealed.

93. Section 18 amended (Effect of findings)

Section 18 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

- (2) If a defendant is found not guilty of the offence charged on the ground of insanity or on a finding being made to that effect, or a finding cannot be made that the defendant is not guilty of an offence, the court is to –
 - (a) make a restriction order; or
 - (b) release the defendant and make a supervision order; or
 - (c) make a continuing care order; or
 - (d) release the defendant and make a community treatment order; or
 - (e) release the defendant on such conditions as the court considers appropriate; or

(f) release the defendant
unconditionally.

(3) Despite subsection (2), only the Supreme Court may make a restriction order or supervision order under that subsection.

94. Section 21 substituted

Section 21 of the Principal Act is repealed and the following sections are substituted:

21. Procedure for dealing with persons found not guilty by reason of insanity

(1) On a verdict that a person is not guilty of an offence on the ground of insanity or on a finding being made to that effect, the court is to –

- (a) make a restriction order; or
- (b) release the defendant and make a supervision order; or
- (c) make a continuing care order; or
- (d) release the defendant and make a community treatment order; or
- (e) release the defendant on such conditions as the court considers appropriate; or
- (f) release the defendant
unconditionally.

- (2) Despite subsection (1), only the Supreme Court may make a restriction order or supervision order under that subsection.

21A. Referral of matter of forensic order to Supreme Court

- (1) If a magistrate is of the opinion, after taking into account the matters required to be considered in determining the order to be made, that a forensic order should be made in respect of a defendant, the magistrate may refer the matter to the Supreme Court for determination.
- (2) On the referral of a matter to the Supreme Court under subsection (1) –
 - (a) the Supreme Court must enquire into the circumstances of the case; and
 - (b) the Supreme Court has the same powers to deal with the defendant as if the defendant had been dealt with in the Supreme Court.

95. Part 4: Heading amended

Part 4 of the Principal Act is amended by omitting “**SUPERVISION**” from the heading to that Part and substituting “**FORENSIC ORDERS, CONTINUING CARE ORDERS AND COMMUNITY TREATMENT ORDERS**”.

96. Section 22 amended (Interpretation: Part 4)

Section 22 of the Principal Act is amended by omitting “restriction order” from the definition of “defendant” and substituting “forensic order, continuing care order or community treatment order”.

97. Part 4, Division 2 repealed

Division 2 of Part 4 of the Principal Act is repealed.

98. Sections 24 and 25 substituted

Sections 24 and 25 of the Principal Act are repealed and the following section is substituted:

24. Restriction orders

A restriction order is an order requiring the person to whom it applies to be admitted to and detained in a secure mental health unit until the order is discharged by the Supreme Court.

99. Section 26 amended (Discharge of restriction orders)

Section 26 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “person who is detained under a restriction order” and substituting “defendant subject to a

restriction order, the Secretary of the responsible Department in relation to the *Mental Health Act 1996* or the Chief Forensic Psychiatrist”;

- (b) by inserting in subsection (1) “restriction” after “discharge of the”;
- (c) by omitting paragraph (a) from subsection (3) and substituting the following paragraph:
 - (a) an application is to be in writing with a copy served on the Director of Public Prosecutions and, if the defendant is not the applicant, on the defendant; and
- (d) by omitting from subsection (3)(c) “applicant” and substituting “defendant”;
- (e) by omitting from subsection (3)(g) “Director” and substituting “Chief Forensic Psychiatrist”;
- (f) by omitting from subsection (3)(g) “applicant” and substituting “defendant”;
- (g) by omitting from subsection (4) “applicant” and substituting “applicant, the defendant”.

100. Sections 27 and 28 substituted

Sections 27 and 28 of the Principal Act are repealed and the following section is substituted:

27. Powers of Supreme Court on discharge of restriction order

If the Supreme Court discharges a restriction order, it may make any other order in respect of the defendant that it could have made under section 18(2) or 21.

101. Section 29 amended (Subsequent fitness for trial of person subject to continuing care order or forensic order)

Section 29 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “section 23(d)” and substituting “section 18(2)”;
- (b) by inserting in subsection (2)(a) “or supervision order” after “order”;
- (c) by omitting from subsection (2)(a) “section 24” and substituting “section 18(2)”;
- (d) by omitting from subsection (2)(b) “responsible medical officer” and substituting “Chief Forensic Psychiatrist”;
- (e) by omitting from subsection (2) “responsible medical officer” second occurring and substituting “Chief Forensic Psychiatrist”;

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

(3A) If the Attorney-General determines under subsection (3)(b) that no further proceedings are to be taken against the defendant, he or she is to –

- (a) request the court before which the defendant was found to be unfit to stand trial to dismiss the proceedings against the defendant and discharge the continuing care order, restriction order or supervision order; and
- (b) notify the following persons of that determination:

- (i) the defendant;

- (ii) the controlling authority, within the meaning of the *Mental Health Act 1996*, of the approved hospital in which the defendant is detained if the defendant is subject to a continuing care order;

- (iii) the Chief Forensic Psychiatrist if the defendant is subject to a restriction order or supervision order.
- (g) by omitting from subsection (5) “the continuing care order or the restriction order” and substituting “or discharge the continuing care order, restriction order or supervision order”;
- (h) by inserting the following subsection after subsection (5):
 - (6) On receipt of a request from the Attorney-General under subsection (3A)(a), the appropriate court must –
 - (a) dismiss the proceedings against the defendant; and
 - (b) revoke or discharge the continuing care order, restriction order or supervision order.

102. Section 29A inserted

Before section 30 of the Principal Act, the following section is inserted in Division 5:

29A. Supervision orders

- (1) A supervision order is an order releasing the person to whom it applies under the

supervision of the Chief Forensic Psychiatrist and on such conditions as to the supervision of that person and such other conditions as the court considers appropriate.

- (2) Without limiting the conditions that may be specified in a supervision order, such conditions may include any one or more of the following conditions:
 - (a) a condition requiring the defendant to take medication or submit to the administration of medical treatment as specified in the order or as determined by the Chief Forensic Psychiatrist;
 - (b) a condition requiring the defendant to comply with any directions as to supervision given by the Chief Forensic Psychiatrist.
- (3) If a defendant who is subject to a supervision order notifies the person responsible for his or her medical treatment that he or she objects to taking medication or the administration of medical treatment as required by or under the order, that person or the Chief Forensic Psychiatrist is to notify the Forensic Tribunal, in writing, of that objection within 7 days.
- (4) Section 38 of the *Guardianship and Administration Act 1995* does not apply in respect of the taking of medication by, or the administration of medical

treatment to, a defendant if the defendant takes the medication or submits to the administration of the medical treatment in compliance with a supervision order even though the defendant objects to doing so.

103. Section 30 amended (Variation or revocation of supervision order)

Section 30 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “court that made the order may, on the application of the Attorney-General,” and substituting “Supreme Court may, on the application of the Secretary of the responsible Department in relation to the *Mental Health Act 1996*, the Chief Forensic Psychiatrist,”;
- (b) by omitting from subsection (1) “court” second occurring and substituting “Supreme Court”;
- (c) by omitting from subsection (1) “this Part” and substituting “section 18(2) or 21”;
- (d) by omitting from subsection (3) “a court” and substituting “the Supreme Court”;
- (e) by omitting from subsection (3) “court” second occurring and substituting “Supreme Court”;

- (f) by inserting the following subsections after subsection (3):
- (4) Before determining an application, the Supreme Court may order the Chief Forensic Psychiatrist, the controlling authority of a secure mental health unit or any other person or body to provide a report in respect of the matters specified in the order.
 - (5) For the purposes of a report, the defendant is to make himself or herself available for examination as required by the Chief Forensic Psychiatrist, the controlling authority of a secure mental health unit or the person or body providing the report.
 - (6) The Chief Forensic Psychiatrist, the controlling authority of a secure mental health unit or the person or body who provides a report is to provide a copy of it to the applicant, defendant and Director of Public Prosecutions as soon as practicable.
 - (7) For the purposes of a hearing by the Supreme Court for the variation or revocation of a supervision order –
 - (a) an application is to be in writing with a copy served on the Director of

Public Prosecutions and, if the defendant is not the applicant, on the defendant; and

- (b) the Director of Public Prosecutions or counsel representing the Director of Public Prosecutions must appear for the Crown at the hearing of the application; and
- (c) the defendant may be present at the hearing of the application unless the Court makes an order to the contrary; and
- (d) the applicant, the defendant and the Director of Public Prosecutions may call evidence in support of, or in opposition to, the application; and
- (e) if a party causes a report to be prepared relating to the application and intends to tender the report as evidence, that party must provide each other party with a copy of the report; and
- (f) if a party puts any such report in evidence –

- (i) each other party is entitled to cross-examine the person who made the report; and
- (ii) the party who put the report in evidence may, after any such cross-examination, examine the person making the report by way of reply; and
- (g) the Court may order the Chief Forensic Psychiatrist or any other person or body to prepare and submit to the Court a report in respect of such matters relating to the defendant as the Court may specify.

104. Section 31 substituted

Section 31 of the Principal Act is repealed and the following sections are substituted:

31. Apprehension of defendant under supervision order

- (1) In this section –

“prescribed person” means –

- (a) the Chief Forensic Psychiatrist; or
 - (b) a person who administers, or assists in the administration of, medical treatment to the defendant under a supervision order; or
 - (c) a person who is authorised by the Chief Forensic Psychiatrist to supervise, wholly or partly, the administration of a supervision order in respect of the defendant; or
 - (d) an authorised person; or
 - (e) an authorised officer within the meaning of the *Mental Health Act 1996*; or
 - (f) a police officer.
- (2) A prescribed person may apprehend a defendant who is subject to a supervision order if the prescribed person believes on reasonable grounds –
- (a) that –
 - (i) the defendant has contravened, or is likely to contravene, the supervision order; or
 - (ii) there has been, or is likely to be, a serious deterioration in the defendant's mental health; and

- (b) that, because of the breach or likely breach of the supervision order or the deterioration or likely deterioration in the defendant's mental health, there is a risk that the defendant will harm himself, herself or another person.
- (3) As soon as practicable after apprehending a defendant under subsection (2), the prescribed person is to –
 - (a) notify the Chief Forensic Psychiatrist of the apprehension; and
 - (b) take the defendant to a secure mental health unit.
- (4) If after apprehending a defendant under subsection (2) it is not possible or practicable to take him or her to a secure mental health unit immediately, the prescribed person may take the defendant to an approved hospital where he or she is to be admitted and treated as an involuntary patient, within the meaning of the *Mental Health Act 1996*, until such time as he or she can be transferred to a secure mental health unit.
- (5) When apprehending a defendant, taking him or her to a secure mental health unit or an approved hospital or transferring him or her to a secure mental health unit under this section, a prescribed person may –

- (a) be assisted by such persons as he or she considers appropriate; and
 - (b) use such restraint and force as the prescribed person believes appropriate in the circumstances; and
 - (c) enter, without warrant, any premises or part of premises in which the prescribed person reasonably believes the defendant is present.
- (6) A secure mental health unit to which a defendant is taken under subsection (3) is to admit the defendant and may detain the defendant in the unit –
 - (a) for a period not exceeding 24 hours; and
 - (b) if the Chief Forensic Psychiatrist authorises it, for one further period not exceeding 72 hours; and
 - (c) if the Forensic Tribunal authorises it, for one or more further periods each of a length to be determined by the Forensic Tribunal.
- (7) Despite subsection (6), if –
 - (a) within a period referred to in paragraph (a) or (b) of that subsection an application is made to the Forensic Tribunal for an

extension of the period for which
a defendant may be detained
under that subsection; and

- (b) a member of the Forensic
Tribunal authorises it –

the defendant may be detained in the
secure mental health unit until the
application is determined by the Forensic
Tribunal.

- (8) Despite subsection (6), if within any
period for which a defendant may be
detained under that subsection an
application is made to the Supreme Court
under section 30 to vary or revoke the
supervision order in respect of the
defendant, the defendant may be detained
in a secure mental health unit until the
Court has determined the application.
- (9) While a defendant is being detained in an
approved hospital or secure mental health
unit under this section, the supervision
order is suspended.

**31A. Suspension of supervision order while
defendant imprisoned**

If a defendant is sentenced to a term of
imprisonment for an offence while
subject to a supervision order, the
supervision order is suspended while the
defendant is in prison serving the term of
imprisonment.

105. Part 4, Division 5A inserted

After section 31A of the Principal Act, the following Division is inserted in Part 4:

***Division 5A – Continuing care orders and community
treatment orders***

31B. Continuing care orders

- (1) A continuing care order is an order for the detention of the defendant as an involuntary patient in the approved hospital specified in the order for the term not exceeding 6 months specified in the order.
- (2) Once made, a continuing care order is taken to be a continuing care order made under section 28 of the *Mental Health Act 1996*.

31C. Community treatment orders

- (1) In this section –

“specified” means specified in a community treatment order.
- (2) A community treatment order is an order –
 - (a) requiring the defendant to take or submit to the administration of medical treatment as specified or as decided by a specified medical practitioner or a medical

practitioner of a specified class;
or

(b) requiring the defendant to attend as an outpatient at a specified treatment centre at specified intervals or as directed by a specified medical practitioner or a medical practitioner of a specified class; or

(c) requiring the defendant to comply with other specified requirements or other requirements decided by a specified medical practitioner, another specified person or a medical practitioner or other person of a specified class –

for the term, not exceeding one year, specified in the order.

(3) Once made, a community treatment order is taken to be a community treatment order made under Division 2 of Part 7 of the *Mental Health Act 1996*.

106. Section 34 substituted

Section 34 of the Principal Act is repealed and the following section is substituted:

34. Principle on which courts are to act

A court is to apply, where appropriate, the principle that restrictions on the defendant's freedom and personal autonomy should be kept to the

minimum consistent with the safety of the community when determining –

- (a) which order to make under section 18(2) or 21(1) or this Part; or
- (b) whether to discharge or vary such an order; or
- (c) the conditions of such an order.

107. Section 35 amended (Matters to which courts are to have regard)

Section 35(2) of the Principal Act is amended as follows:

- (a) by inserting “section 18(2) or 21(1) or” after “defendant under”;
- (b) by omitting from paragraph (a) “at least 2 psychiatrists,” and substituting “the Chief Forensic Psychiatrist, or a psychiatrist nominated by the Chief Forensic Psychiatrist, and one other psychiatrist,”.

108. Section 36 amended (Appeals)

Section 36(2) of the Principal Act is amended by omitting “Attorney-General” and substituting “Attorney-General, the Secretary of the responsible Department in relation to the *Mental Health Act 1996*”.

109. Part 4, Division 8: Heading amended

Division 8 of Part 4 of the Principal Act is amended by omitting “*restriction*” from the heading to that Division and substituting “*forensic*”.

110. Section 37 substituted

Section 37 of the Principal Act is repealed and the following section is substituted:

37. Review of persons detained under forensic orders

- (1) A forensic order is to be reviewed under the *Mental Health Act 1996* by the Forensic Tribunal within 12 months after the order was made and at least once in each period of 12 months afterwards.
- (2) In reviewing a forensic order, the Forensic Tribunal is to apply the principle in section 34 and to have regard to the matters set out in section 35(1).
- (3) If the Forensic Tribunal, on review, determines that a forensic order is no longer warranted or that the conditions of the order are now inappropriate –
 - (a) the Tribunal must issue the defendant with a certificate to that effect; and
 - (b) the defendant may apply immediately, despite any other provision of this Act, to the

Supreme Court for discharge,
revocation or variation of the
forensic order.

- (4) If the Forensic Tribunal issues a certificate in respect of the discharge of a restriction order, the certificate may include the recommendation of the Tribunal that, should the order be discharged –
 - (a) a supervision order, continuing care order or community treatment order be made in respect of the defendant; or
 - (b) the defendant be released either unconditionally or on the conditions specified in the recommendation.
- (5) If the Forensic Tribunal issues a certificate in respect of the revocation of a supervision order, the certificate may include the recommendation of the Tribunal that, should the order be revoked –
 - (a) a continuing care order or community treatment order be made in respect of the defendant; or
 - (b) the defendant be released either unconditionally or on the conditions specified in the recommendation.

- (6) If the Forensic Tribunal, on review, issues a certificate in respect of the variation of the conditions of a supervision order, the certificate may include the recommendations of the Tribunal as to what conditions should be included in the order.
- (7) If the Forensic Tribunal, on review, determines that a supervision order should be revoked and that, instead, a restriction order should be made in respect of the defendant, the Forensic Tribunal is to –
 - (a) recommend to the Secretary of the responsible Department in relation to the *Mental Health Act 1996* that he or she make an application under section 30(1) for the revocation of the supervision order and the making of the restriction order; and
 - (b) provide a copy of that recommendation to the defendant.

111. Section 39 amended (Power of court to deal with defendant before proceedings completed)

Section 39 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (a), (b), (c) and (d) from subsection (1) and substituting the following paragraphs:
 - (a) admit the defendant to bail –

- (i) on condition that he or she will appear subsequently for the purposes of the investigation; and
 - (ii) on any other condition that the court considers appropriate; or
- (b) if the court considers that it would not be appropriate to admit the defendant to bail –
 - (i) remand the defendant in custody; or
 - (ii) order that the defendant be detained in a secure mental health unit; or
 - (iii) make any other order that the court thinks appropriate for the custody or detention of the defendant.
- (b) by inserting the following subsections after subsection (1):
 - (1A) A court may only make an order that the defendant be detained in a secure mental health unit if –
 - (a) the defendant appears to be suffering from a mental illness within the meaning of the *Mental Health Act 1996*; and

- (b) the court considers that the defendant should be admitted to a secure mental health unit for his or her own health or safety or for the protection of others; and
- (c) the Chief Forensic Psychiatrist has provided a report to the effect that –
 - (i) the admission of the defendant to the secure mental health unit is necessary for his or her care or treatment; and
 - (ii) adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the defendant; and
 - (iii) in the case of a defendant who has not attained the age of 18 years, the secure mental health unit is the most appropriate place available to accommodate him or her in the

circumstances
having regard to
the objectives and
general principles
set out in sections
4 and 5 of the
*Youth Justice Act
1997*.

(1B) When making an order under subsection (1), the court may make any other order it considers appropriate including, but not limited to –

- (a) an order requiring the production of a report in relation to the defendant's fitness to stand trial and his or her medical, psychological or psychiatric condition; and
- (b) an order requiring the defendant to submit to an assessment for the purposes of a report referred to in paragraph (a); and
- (c) an order giving directions in relation to the nature and means of obtaining the assessment referred to in paragraph (b); and
- (d) an order allowing the person who is required to produce a report access to

the defendant's medical records with or without the defendant's consent.

- (1C) If the court under this section orders the production of a report of any kind in relation to the defendant, the person producing the report is to provide a copy of it to both the defendant and prosecutor unless the court orders otherwise.

112. Sections 39A, 39B and 39C inserted

After section 39 of the Principal Act, the following sections are inserted in Part 5:

39A. Limitation on making certain orders in respect of youth

A court may not make a restriction order or any other order under this Act that commits a person who has not attained the age of 18 years to a secure mental health unit unless the court has received a report from the Chief Forensic Psychiatrist to the effect that –

- (a) adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the person; and
- (b) the secure mental health unit is the most appropriate place available to accommodate the youth in the circumstances.

39B. Report of Chief Forensic Psychiatrist

(1) In this section –

“defendant” includes a person who is subject to a restriction order or any other order under this Act that commits a person to, or otherwise requires the detention of a person in, a secure mental health unit.

- (2) If a court requires a report from the Chief Forensic Psychiatrist or is provided with a report by the Chief Forensic Psychiatrist in relation to a defendant, the court may make such orders as to the distribution and security of the report provided as it considers necessary or appropriate.
- (3) Unless the court orders otherwise, the Chief Forensic Psychiatrist must give, as soon as practicable, a copy of any report referred to in subsection (2) to –
- (a) the prosecutor; and
 - (b) the legal practitioner representing the defendant or, if the defendant is unrepresented, the defendant.
- (4) The prosecution or the defence may dispute the whole or any part of the report of the Chief Forensic Psychiatrist.
- (5) If the whole or any part of the report of the Chief Forensic Psychiatrist is disputed, the court must not take into

consideration the report or part in dispute unless the party disputing the report or part has had the opportunity –

- (a) to lead evidence on the disputed matters; and
- (b) to cross-examine on the disputed matters the Chief Forensic Psychiatrist or, if the Chief Forensic Psychiatrist has delegated his or her function of writing the report, the author of the report.

39C. Custody on making of order committing defendant to secure mental health unit

- (1) In this section –

“defendant” means a person who is subject to a restriction order or any other order under this Act that commits a person to, or otherwise requires the detention of a person in, a secure mental health unit;

“specified” means specified in a restriction order or any other order under this Act that commits a person to, or otherwise requires the detention of a person in, a secure mental health unit.

- (2) If a court makes a restriction order or any other order under this Act that commits a defendant to, or otherwise requires the

detention of a person in, a secure mental health unit –

- (a) the court is to specify in the order that the specified person, or a person of the specified class of person, is to be responsible for taking the defendant to the specified secure mental health unit; and
 - (b) the court may specify in the order that the specified person or another specified person, or a person of the specified class or another specified class of person, is to be responsible for bringing the defendant from the specified secure mental health unit before the court in connection with the exercise by the court of its powers under this Act.
- (3) A copy of the restriction order or other order that commits a defendant to, or otherwise requires the detention of the defendant in, a secure mental health unit and any report of the Chief Forensic Psychiatrist or other medical practitioner relevant to the decision of the Court to make the order are to accompany the defendant to the specified secure mental health unit.
- (4) While a defendant is the responsibility of a person as specified in a restriction order or other order that commits the defendant to, or otherwise requires the detention of

the defendant in, a secure mental health unit –

- (a) that person has the custody of the defendant; and
- (b) the defendant is taken to be in detention for the purposes of section 41.

113. Section 41 amended (Arrest of person escaping from detention or absent without leave)

Section 41 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1B) “within the meaning of the *Mental Health Act 1996*”;
- (b) by omitting from subsection (1B)(a) “within the meaning of that Act”;
- (c) by omitting from subsection (2) “or magistrate” twice occurring;
- (d) by inserting in subsection (2) “and has left the State” after “the order”.

114. Section 41A inserted

After section 41 of the Principal Act, the following section is inserted in Part 5:

**41A. Delegations by Secretary of responsible
Department in relation to *Mental Health Act
1996* and Chief Forensic Psychiatrist**

- (1) The Secretary of the responsible Department in relation to the *Mental Health Act 1996* may delegate any of his or her functions and powers under this Act, other than this power of delegation.
- (2) The Chief Forensic Psychiatrist may delegate any of his or her functions and powers under this Act, other than this power of delegation.

115. Section 42A inserted

After section 42 of the Principal Act, the following section is inserted in Part 5:

42A. Provision of reports to certain persons

- (1) In this section –

“defendant” includes a person who is subject to a forensic order, continuing care order or community treatment order.

- (2) On the application of any of the following persons, that person may be provided with a copy of any report in respect of a defendant which is provided to a court under this Act:
 - (a) the controlling authority of a secure mental health unit if the

defendant is admitted to the secure mental health unit;

- (b) the Chief Forensic Psychiatrist if the defendant is subject to a forensic order;
- (c) the Director if the defendant is remanded to a prison;
- (d) the controlling authority of an approved hospital if the defendant is admitted to the approved hospital;
- (e) the Secretary of the responsible Department in relation to the *Mental Health Act 1996* if a community treatment order has been made in respect of the defendant.

116. Sections 43 and 44 substituted

Sections 43 and 44 of the Principal Act are repealed and the following sections are substituted:

43. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any Act that amends this Act.

- (3) Regulations made under subsection (2) may take effect on the day on which the Act amending this Act commences or a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

44. Savings and transitional provisions consequent on the enactment of the *Mental Health Amendment (Secure Mental Health Unit) Act 2005*

- (1) In this section –

“commencement day” means the day on which the *Mental Health Amendment (Secure Mental Health Unit) Act 2005* commences;

“former Act” means this Act as in force immediately before the commencement day.

- (2) Where appropriate, an order made under the former Act that is in force immediately before the commencement day continues in effect in accordance with its terms and is taken to have been made under this Act.
- (3) A supervision order made under the former Act by a court other than the Supreme Court and in force immediately before the commencement day is taken to have been made by the Supreme Court under this Act.

- (4) The Forensic Tribunal is to review a restriction order or supervision order made under the former Act under section 37 but the first review is to be undertaken at a time to be determined by the Forensic Tribunal.
- (5) For the purposes of subsection (4), the Forensic Tribunal is not limited to determining, for the undertaking of the first review of the restriction order or supervision order, a time that is within the period of 12 months commencing on the commencement day.

**PART 7 – FORENSIC PROCEDURES ACT 2000
AMENDED**

117. Principal Act

In this Part, the *Forensic Procedures Act 2000**
is referred to as the Principal Act.

**118. Section 26 amended (Non-intimate forensic
procedure on order of police officer)**

Section 26(3)(a) of the Principal Act is amended
by inserting “or a secure mental health unit,
within the meaning of the *Mental Health Act
1996*,” after “prison”.

**119. Section 28 amended (Forensic procedure carried
out in prison, &c.)**

Section 28(1)(a) of the Principal Act is amended
by inserting “or secure mental health unit, within
the meaning of the *Mental Health Act 1996*,”
after “prison”.

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**PART 8 – GUARDIANSHIP AND ADMINISTRATION
ACT 1995 AMENDED**

120. Principal Act

In this Part, the *Guardianship and Administration Act 1995** is referred to as the Principal Act.

121. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by inserting “and power” after “duty” in the definition of “function”.

122. Part 6, Division 2A inserted

After section 46 of the Principal Act, the following Division is inserted in Part 6:

***Division 2A – Power to make guardianship order or
administration order***

**46A. Power to make guardianship order or
administration order**

At the hearing of an application under this Part for the consent of the Board to the carrying out of medical or dental treatment on a person, the Board, in addition to giving or refusing that consent, may make under section 65 a guardianship order or an administration

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order, or both, if satisfied of the matters
specified in section 20(1) or
section 51(1), or both those sections.

123. Schedule 1 amended (Members of Board)

Clause 4 of Schedule 1 to the Principal Act is
amended by omitting “functions,” and
substituting “functions under this or any other
Act,”.

PART 9 – JUSTICES ACT 1959 AMENDED**124. Principal Act**

In this Part, the *Justices Act 1959** is referred to as the Principal Act.

125. Section 47 substituted

Section 47 of the Principal Act is repealed and the following section is substituted:

47. Place of committal when defendant on remand

(1) In this section –

“Chief Forensic Psychiatrist” means the person appointed as Chief Forensic Psychiatrist under section 11A of the *Mental Health Act 1996*;

“mental illness” has the same meaning as in the *Mental Health Act 1996*;

“specified” means specified in an order under this section that commits a defendant to a secure mental health unit.

(2) Where justices have power to remand a defendant in custody, they may, instead of committing the defendant to a gaol,

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commit him or her to a secure mental health unit if –

- (a) the justices consider that remand is appropriate in the circumstances; and
- (b) the defendant appears to be suffering from a mental illness; and
- (c) the justices consider that the defendant should be admitted to a secure mental health unit for his or her own health or safety or for the protection of others; and
- (d) the Chief Forensic Psychiatrist has provided a report to the effect that –
 - (i) the admission of the defendant to the secure mental health unit is necessary for his or her care or treatment; and
 - (ii) adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the defendant; and
 - (iii) in the case of a defendant who has not attained the age of 18 years, the secure mental health unit is the most appropriate place

available to accommodate him or her in the circumstances having regard to the objectives and general principles set out in sections 4 and 5 of the *Youth Justice Act 1997*.

- (3) If justices make an order under this Act that commits a person to a secure mental health unit –
- (a) the justices are to specify in the order that the specified person, or a person of a specified class, is to be responsible for taking the defendant to the specified secure mental health unit; and
 - (b) the justices may specify in the order that the specified person or another specified person, or a person of the specified class or another class of person, is to be responsible for bringing the defendant from the specified secure mental health unit before justices in connection with the exercise by them of their powers under this Act.
- (4) A copy of the order that commits a defendant to a secure mental health unit and the report of the Chief Forensic Psychiatrist are to accompany the defendant to the specified secure mental health unit.

- (5) While a defendant is the responsibility of a person as specified in an order that commits the defendant to a secure mental health unit –
 - (a) that person has the custody of the defendant; and
 - (b) the defendant is taken to be a forensic patient for the purposes of the application of relevant provisions of Part 10A of the *Mental Health Act 1996*.
- (6) Each of the following persons may apply at any time to justices for the variation or revocation of an order committing a defendant to a secure mental health unit:
 - (a) the Director of Public Prosecutions or prosecutor;
 - (b) the Secretary of the responsible Department in relation to the *Mental Health Act 1996*;
 - (c) the Chief Forensic Psychiatrist;
 - (d) the defendant.
- (7) The Chief Forensic Psychiatrist must apply to justices for the revocation of an order committing a defendant to a secure mental health unit if the Chief Forensic Psychiatrist is of the opinion that the defendant no longer requires such treatment or could no longer benefit from such treatment.
- (8) On hearing an application, the justices –

- (a) may vary, revoke or confirm the order committing the defendant to a secure mental health unit; and
 - (b) if they revoke the order, may make any other order they could have made under subsection (2) or section 35(1).
- (9) An application is to be heard and determined within 14 days after it is made.
- (10) The Secretary of the responsible Department in relation to the *Mental Health Act 1996* may delegate his or her power under subsection (6)(b) to apply for the variation or revocation of an order.
- (11) The justices may make such orders as to the distribution and security of the report provided by the Chief Forensic Psychiatrist as they consider necessary or appropriate.
- (12) Unless the justices order otherwise, the Chief Forensic Psychiatrist must give, as soon as practicable, a copy of his or her report to –
 - (a) the prosecutor; and
 - (b) the legal practitioner representing the defendant or, if the defendant is unrepresented, the defendant.

- (13) The prosecution or the defence may dispute the whole or any part of the report of the Chief Forensic Psychiatrist.
- (14) If the whole or any part of the report of the Chief Forensic Psychiatrist is disputed, the justices must not take into consideration the report or part in dispute unless the party disputing the report or part has had the opportunity –
 - (a) to lead evidence on the disputed matters; and
 - (b) to cross-examine on the disputed matters the Chief Forensic Psychiatrist or, if the Chief Forensic Psychiatrist has delegated his or her function of writing the report, the author of the report.

126. Section 144 amended (Rules of court)

Section 144(4) of the Principal Act is amended by inserting after paragraph (ce) the following paragraph:

- (cf) the practice and procedure relating to matters arising under the *Mental Health Act 1996*;

PART 10 – SENTENCING ACT 1997 AMENDED**127. Principal Act**

In this Part, the *Sentencing Act 1997** is referred to as the Principal Act.

128. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “Administrator of Magistrates Courts”:

“approved hospital” has the same meaning as in the *Mental Health Act 1996*;

- (b) by inserting the following definition after the definition of “area restriction order”:

“assessment order” has the meaning given by section 73;

- (c) by inserting the following definition after the definition of “breach”:

“Chief Forensic Psychiatrist” has the same meaning as in the *Mental Health Act 1996*;

- (d) by inserting the following definition after the definition of “compensation order”:

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“continuing care order” has the meaning given by section 76;

(e) by omitting the definition of “institution”;

(f) by inserting the following definitions after the definition of “restitution order”:

“restriction order” has the meaning given by section 77;

“secure mental health unit” has the same meaning as in the *Mental Health Act 1996*;

“supervision order” has the meaning given by section 77A;

129. Part 10: Heading amended

Part 10 of the Principal Act is amended by inserting in the heading to that Part **“SUPERVISION AND”** after **“CARE,”**.

130. Section 72 amended (Court may make assessment order)

Section 72 of the Principal Act is amended as follows:

(a) by omitting from paragraph (a)(ii) “institution” and substituting “approved hospital or a secure mental health unit”;

(b) by omitting paragraph (b) and substituting the following paragraph:

- (b) the court has received advice in writing from an approved medical practitioner at the approved hospital to which it is proposed to admit the person, or from the Chief Forensic Psychiatrist if it is proposed to admit the person to a secure mental health unit, that –
 - (i) it is appropriate for the person to be so admitted; and
 - (ii) the approved hospital or secure mental health unit has the facilities and staff to undertake an assessment of the person's suitability for an order under section 75.

131. Section 73 amended (What is an assessment order?)

Section 73 of the Principal Act is amended by omitting “institution, for a period not exceeding 72 hours” and substituting “approved hospital or secure mental health unit, for the period”.

132. Section 75 amended (Continuing care order, supervision order and restriction order)

Section 75 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “a psychiatrist” and substituting “the Chief

Forensic Psychiatrist or another psychiatrist”;

- (b) by omitting from subsection (1)(b)(ii) “institution” and substituting “approved hospital or secure mental health unit”;
- (c) by omitting from subsection (1)(c) “or responsible medical officer of the institution to which it is proposed to admit the person” and substituting “at the approved hospital to which it is proposed to admit the person, or from the Chief Forensic Psychiatrist if it is proposed to admit the person to a secure mental health unit,”;
- (d) by inserting the following subsection after subsection (2):

(2A) If, on the trial of a person for an offence –

- (a) the person is found guilty;
and

- (b) the court is satisfied, by the production of the report of the Chief Forensic Psychiatrist and any other evidence that it may require, that –

- (i) the person appears to be suffering from a mental illness that requires treatment;
and

(ii) the treatment can be obtained by releasing the person under the supervision of the Chief Forensic Psychiatrist; and

(c) the report of the Chief Forensic Psychiatrist recommends the release of the person under his or her supervision –

the court, if it is the Supreme Court, may make a supervision order instead of, or in addition to, any sentence it may impose.

(e) by inserting in subsection (3) “or supervision order” after “restriction order”;

(f) by inserting the following subsections after subsection (4):

(5) The court may make such orders as to the distribution and security of the report provided by the Chief Forensic Psychiatrist as it considers necessary or appropriate.

(6) Unless the court orders otherwise, the Chief Forensic Psychiatrist must give, as soon as practicable, a copy of his or her report to –

(a) the prosecutor; and

- (b) the legal practitioner representing the person in respect of whom the report is made or, if that person is unrepresented, that person.
- (7) The prosecution or the defence may dispute the whole or any part of the report of the Chief Forensic Psychiatrist.
- (8) If the whole or any part of the report of the Chief Forensic Psychiatrist is disputed, the court must not take into consideration the report or the part in dispute unless the party disputing the report or the part has had the opportunity –
 - (a) to lead evidence on the disputed matters; and
 - (b) to cross-examine on the disputed matters the Chief Forensic Psychiatrist or, if the Chief Forensic Psychiatrist has delegated his or her function of writing the report, the author of the report.

133. Sections 76, 77 and 78 substituted

Sections 76, 77 and 78 of the Principal Act are repealed and the following sections are substituted:

76. What is a continuing care order?

- (1) A continuing care order is an order for the detention of the person in respect of whom it is made as an involuntary patient in the approved hospital specified in the order for the term not exceeding 6 months specified in the order.
- (2) Once made, a continuing care order is taken to be a continuing care order made under section 28 of the *Mental Health Act 1996*.

77. What is a restriction order?

- (1) A restriction order is an order requiring the person in respect of whom it is made to be admitted to and detained in a secure mental health unit until the order is discharged by the Supreme Court.
- (2) Once made, a restriction order is taken to be a restriction order made under the *Criminal Justice (Mental Impairment) Act 1999*.

77A. What is a supervision order?

- (1) A supervision order is an order releasing the person in respect of whom it is made under the supervision of the Chief Forensic Psychiatrist subject to any conditions specified in the order.

- (2) Without limiting the conditions that may be specified in a supervision order, such conditions may include any one or more of the following conditions:
 - (a) a condition requiring the person to whom it applies to take medication or submit to the administration of medical treatment as specified in the order or as determined by the Chief Forensic Psychiatrist;
 - (b) a condition requiring the person to whom it applies to comply with any directions as to supervision given by the Chief Forensic Psychiatrist.
- (3) Once made, a supervision order is taken to be a supervision order made under the *Criminal Justice (Mental Impairment) Act 1999*.

77B. Principle on which courts are to act

In making an order under this Part in respect of a person, a court is to apply, where appropriate, the principle that restrictions on the person's freedom and personal autonomy should be kept to the minimum consistent with the safety of the community when determining –

- (a) which order to make under this Part; or
- (b) the conditions of such an order.

78. Custody of admitted person

(1) In this section –

“specified” means specified in an order under this Part that commits a person to, or otherwise requires the detention of a person in, an approved hospital or a secure mental health unit.

(2) If a court makes an order under this Part that commits a person to, or otherwise requires the detention of a person in, an approved hospital, the court may specify that a specified person, or a person of a specified class of person, is to be responsible for taking that person –

(a) to the specified approved hospital; and

(b) from the specified approved hospital to the court in connection with the exercise by the court of its powers under this Part.

(3) If a court makes an order under this Part that commits a person to, or otherwise requires the detention of a person in, a secure mental health unit –

(a) it is to specify in the order that the specified person, or a person of a specified class of person, is to be responsible for taking the defendant to the specified secure mental health unit; and

- (b) it may specify in the order that that specified person or another specified person, or a person of that specified class or another specified class of person, is to be responsible for bringing the defendant from the specified secure mental health unit before the court in connection with the exercise by the court of its powers under this Act.
- (4) A copy of the order and the advice or report, as the case requires, of the psychiatrist or Chief Forensic Psychiatrist are to accompany the offender to the specified approved hospital or specified secure mental health unit.
- (5) While an offender is the responsibility of a person as specified in an order referred to in subsection (2), that person has the custody of the offender.
- (6) While an offender is the responsibility of a person as specified in an order referred to in subsection (3) –
 - (a) that person has the custody of the offender; and
 - (b) the offender is taken to be a forensic patient for the purposes of the application of relevant provisions of Part 10A of the *Mental Health Act 1996*.

134. Section 79 amended (Effect of continuing care order)

Section 79(4) of the Principal Act is amended by omitting “institution” and substituting “approved hospital”.

135. Section 79A amended (Arrest of assessment order detainees who abscond)

Section 79A(1) of the Principal Act is amended by omitting “institution” and substituting “approved hospital”.

136. Section 79B amended (Arrest of detainees who flee the State)

Section 79B of the Principal Act is amended by omitting subsection (1).

PART 11 – YOUTH JUSTICE ACT 1997 AMENDED**137. Principal Act**

In this Part, the *Youth Justice Act 1997** is referred to as the Principal Act.

138. Section 25 amended (How youth is to be dealt with if not granted bail)

Section 25(2) of the Principal Act is amended by inserting “but an order is not made under section 47(2) of that Act” after “section 35 of the *Justices Act 1959*”.

139. Section 105 substituted

Section 105 of the Principal Act is repealed and the following section is substituted:

105. Adjournment to determine mental health or disability of youth

(1) In this section –

“**approved hospital**” has the same meaning as in the *Mental Health Act 1996*;

“**assessment centre**” has the same meaning as in the *Mental Health Act 1996*;

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“Chief Forensic Psychiatrist” means the Chief Forensic Psychiatrist appointed under section 11A of the *Mental Health Act 1996*;

“disability” means a restriction or lack of ability to perform an activity in a normal manner that –

(a) is the result of an absence, loss or abnormality of mental, psychological, intellectual, cognitive, physiological or anatomical structure or function; but

(b) is not a mental illness;

“mental illness” has the same meaning as in the *Mental Health Act 1996*;

“secure mental health unit” has the same meaning as in the *Mental Health Act 1996*;

“specified” means specified in an order under this section that commits a youth to a secure mental health unit.

- (2) If at any time during proceedings under this Part it appears to the Court that the youth may be suffering from any mental illness or disability, the Court may adjourn the proceedings for a period not exceeding 7 days and –

- (a) if the Court considers that the youth would be granted bail if the adjournment were for some other reason, make an order granting the youth bail on the condition that he or she present himself or herself at a place the Court considers suitable and allow himself or herself to be observed and assessed; or
 - (b) if the Court considers that the youth would not be granted bail if the adjournment were for some other reason, make an order remanding the youth to be placed in an assessment centre, approved hospital, secure mental health unit or other place, as the Court considers suitable, for observation and assessment.
- (3) If the Court makes an order under subsection (2)(a) or (b), it is to make an order requiring a suitably qualified person at the place at which the youth is to be observed and assessed to provide the Court with a report on the youth's condition and a recommendation as to the youth's future treatment.
- (4) The Court must give any guardian of the youth who is present the opportunity to be heard before making an order under subsection (2)(a) or (b).
- (5) The Court may not make an order under subsection (2)(b) that commits a youth

who has not attained the age of 18 years to an assessment centre or hospital unless the Court is satisfied that adequate facilities and staff exist at the assessment centre or hospital for the appropriate care and treatment of the youth.

- (6) The Court may not make an order under subsection (2)(b) that commits a youth who has not attained the age of 18 years to a secure mental health unit unless the Court has received a report from the Chief Forensic Psychiatrist stating that –
 - (a) adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the youth; and
 - (b) the secure mental health unit is the most appropriate place available to accommodate the youth in the circumstances.
- (7) If the Court makes an order under subsection (2)(b) that commits a youth to an assessment centre, approved hospital or secure mental health unit –
 - (a) the Court is to specify in the order that the specified person, or a person of a specified class of person, is to be responsible for taking the youth to the specified assessment centre, approved hospital or secure mental health unit; and

- (b) the Court may specify in the order that that or another specified person, or a person of that or another specified class of person, is to be responsible for bringing the youth from the assessment centre, approved hospital or specified secure mental health unit before the Court in connection with the exercise by the Court of its powers under this Act.
- (8) A copy of an order under subsection (2)(b) that commits a youth to a assessment centre, approved hospital or secure mental health unit and the report of the Chief Forensic Psychiatrist are to accompany the youth to the specified assessment centre, approved hospital or secure mental health unit.
- (9) While a youth is the responsibility of a person as specified in an order under subsection (2)(b) that commits the youth to a secure mental health unit, that person –
 - (a) has the custody of the youth; and
 - (b) if the youth is committed to an approved hospital, the youth is taken to be an involuntary patient for the purposes of the application of relevant provisions of the *Mental Health Act 1996*; and

- (c) if the youth is committed to a secure mental health unit, the youth is taken to be a forensic patient for the purposes of the application of relevant provisions of the *Mental Health Act 1996*.
- (10) The Court may make such orders in relation to the distribution and security of the report of the Chief Forensic Psychiatrist as it considers necessary or appropriate.
- (11) Unless the Court orders otherwise, the Chief Forensic Psychiatrist must give, as soon as practicable, a copy of his or her report to –
 - (a) the prosecutor; and
 - (b) the legal practitioner representing the youth or, if the youth is unrepresented, the youth.
- (12) The prosecution or the defence may dispute the whole or any part of the report of the Chief Forensic Psychiatrist.
- (13) If the whole or any part of the report of the Chief Forensic Psychiatrist is disputed, the Court must not take into consideration the report or part in dispute unless the party disputing the report or part has had the opportunity –
 - (a) to lead evidence on the disputed matters; and

- (b) to cross-examine on the disputed matters the Chief Forensic Psychiatrist or, if the Chief Forensic Psychiatrist has delegated his or her function of writing the report, the author of the report.

140. Section 108B amended (Application of Part 5)

Section 108B of the Principal Act is amended by omitting “whether that period of detention is being served in a detention centre or a prison.” and substituting “regardless of whether that period of detention, or part of that period of detention, is served in a detention centre, prison or secure mental health unit.”.

141. Sections 134A and 134B inserted

After section 134 of the Principal Act, the following sections are inserted in Division 3:

134A. Removal of detainee to secure mental health unit

- (1) In this section –

“**Chief Forensic Psychiatrist**” means the Chief Forensic Psychiatrist appointed under section 11A of the *Mental Health Act 1996*;

“**controlling authority**” has the same meaning as in the *Mental Health Act 1996*;

“disability” means a restriction or lack of ability to perform an activity in a normal manner that –

(a) results from an absence, loss or abnormality of mental, psychological, intellectual, cognitive, physiological or anatomical structure or function; but

(b) is not a mental illness;

“mental illness” has the same meaning as in the *Mental Health Act 1996*;

“secure mental health unit” has the same meaning as in the *Mental Health Act 1996*.

(2) The Secretary may direct that a detainee who, in the opinion of a medical practitioner or psychologist, appears to be suffering from a mental illness be removed from a detention centre to a secure mental health unit if –

(a) either –

(i) the Secretary determines that it is in the best interests of the detainee, other detainees in the detention centre or the staff of the detention centre for the detainee to

- be removed to a secure mental health unit; or
 - (ii) the detainee has requested that he or she be removed to a secure mental health unit; and
- (b) the Secretary has considered the report of the Chief Forensic Psychiatrist as to whether –
- (i) the detainee is suffering from a mental illness; and
 - (ii) the admission of the detainee to a secure mental health unit is necessary for his or her care or treatment; and
 - (iii) adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the detainee.
- (3) The Secretary may direct that a detainee who has a disability be removed from a detention centre to a secure mental health unit if –
- (a) the Secretary considers that it is necessary for the detainee's care and treatment or for the protection of other persons; and

- (b) the Secretary has considered the report of the Chief Forensic Psychiatrist as to whether –
 - (i) the admission of the detainee to a secure mental health unit is necessary for his or her care or treatment; and
 - (ii) adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the detainee.
- (4) A detainee admitted to a secure mental health unit under a direction under subsection (3) may be detained in the secure mental health unit for no longer than the period specified in the direction.
- (5) If at any time while a youth admitted to a secure mental health unit under a direction under subsection (2) or (3) is so detained in that unit the Chief Forensic Psychiatrist considers that the youth would no longer benefit from being in that unit, the Chief Forensic Psychiatrist may require the Secretary to remove the youth from that unit.
- (6) The Secretary is to comply with a requirement made under subsection (5).
- (7) While a detainee is detained in a secure mental health unit following a direction under subsection (2) or (3), including while the detainee is on authorised leave

from that secure mental health unit, that detainee is taken to be serving his or her sentence of detention.

134B. Appeal against direction under section 134A

(1) In this section –

“Chief Forensic Psychiatrist” means the Chief Forensic Psychiatrist appointed under section 11A of the *Mental Health Act 1996*;

“Forensic Tribunal” means the Forensic Tribunal established under section 73T of the *Mental Health Act 1996*;

“mental illness” has the same meaning as in the *Mental Health Act 1996*;

“secure mental health unit” has the same meaning as in the *Mental Health Act 1996*.

(2) A detainee may appeal to the Forensic Tribunal in respect of –

- (a) the making of a direction under section 134A(2) or (3); or
- (b) the failure to make such a direction if the detainee has requested it under section 134A(2)(a)(ii); or
- (c) the requirement by the Chief Forensic Psychiatrist under section 134A(5).

- (3) The commencing of an appeal does not affect the operation of the direction or requirement appealed against.
- (4) An appeal is to be heard and determined by the Forensic Tribunal within 14 days.
- (5) The *Mental Health Act 1996* applies to the hearing and determination of an appeal, regardless of whether or not the detainee has a mental illness, as if it were an appeal made under that Act.
- (6) On hearing an appeal, the Forensic Tribunal may –
 - (a) revoke the direction or requirement; or
 - (b) amend the direction or requirement; or
 - (c) confirm the direction or requirement; or
 - (d) require the Secretary to make a direction under section 134A(2) or (3).
- (7) The Secretary must comply with a requirement under subsection (6)(d) to make a direction, and a direction made in compliance with that requirement is valid despite the matters specified in section 134A(2) or (3) not being satisfied.
- (8) If the Forensic Tribunal revokes a direction in respect of a detainee made under section 134A(2) or (3) and the

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detainee is at that time in a secure mental health unit, the Secretary is to remove the detainee from the secure mental health unit as soon as may be practicably arranged.