

South Australia

## **Mental Health Act 2009**

An Act to make provision for the treatment, care and rehabilitation of persons with serious mental illness with the goal of bringing about their recovery as far as is possible; to confer powers to make orders for community treatment, or detention and treatment, of such persons where required; to provide protections of the freedom and legal rights of mentally ill persons; to repeal the *Mental Health Act 1993*; and for other purposes.

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## Legislative history

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Mental Health Act 2009*.

#### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

#### 3—Interpretation

In this Act, unless the contrary intention appears—

***ambulance officer*** means a person who is—

- (a) employed as an ambulance officer, or engaged as a volunteer ambulance officer, with an organisation that provides ambulance services; and
- (b) authorised by the chief executive officer of SA Ambulance Service Inc to exercise the powers conferred by this Act on authorised officers;

***approved treatment centre*** means a place determined by the Minister under Part 12 Division 5 to be an approved treatment centre for the purposes of this Act;

***authorised health professional*** means a person determined by the Minister under Part 12 Division 4 to be an authorised health professional for the purposes of this Act;

***authorised medical practitioner*** means a person determined by the Minister under Part 12 Division 3 to be an authorised medical practitioner for the purposes of this Act;

***authorised officer*** means—

- (a) a mental health clinician; or
- (b) an ambulance officer; or
- (c) a person employed as a medical officer or flight nurse by the Royal Flying Doctor Service of Australia (Central Operations) Incorporated or the Royal Flying Doctor Service of Australia (South Eastern Section); or

(d) a person of a class prescribed by the regulations;

**Board** means the Guardianship Board established under the *Guardianship and Administration Act 1993*;

**business day** means a day other than a Saturday or a Sunday or other public holiday;

**carer**—a person is a carer of another if the person provides ongoing care or assistance to the other as a carer within the meaning of the *Carers Recognition Act 2005*; the term includes a person who was a carer of another before interruption of the provision of care due to the other's illness;

**Chief Executive** means the chief executive of the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

**Chief Psychiatrist** means the person appointed to the position of Chief Psychiatrist under Part 12 Division 2;

**child** means a person under 18 years of age;

**community treatment order** means—

- (a) a level 1 community treatment order; or
- (b) a level 2 community treatment order;

**community visitor** means—

- (a) the person appointed to the position of Principal Community Visitor under Part 8 Division 2; or
- (b) a person appointed to a position of Community Visitor under Part 8 Division 2;

**consent** to treatment means effective consent to the treatment;

**detention and treatment order** means—

- (a) a level 1 detention and treatment order; or
- (b) a level 2 detention and treatment order; or
- (c) a level 3 detention and treatment order;

**director** of a treatment centre means the person for the time being in charge of the centre or a person duly authorised to admit patients to the centre;

**domestic partner**—a person is a domestic partner of another if the person is a domestic partner of the other within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not; the term includes a person who was a domestic partner of another before interruption of their shared living arrangements due to the other's illness;

**ECT** means electro-convulsive therapy;

**guardian**—a person is a guardian of another if the person is acting or appointed under any Act or law as the guardian of the other;

**legal practitioner** means a person admitted and enrolled as a practitioner of the Supreme Court of South Australia;

**level 1 community treatment order**—see Part 4 Division 1;

**level 1 detention and treatment order**—see Part 5 Division 2;

**level 2 community treatment order**—see Part 4 Division 2;

**level 2 detention and treatment order**—see Part 5 Division 3;

**level 3 detention and treatment order**—see Part 5 Division 4;

**limited treatment centre** means a place determined by the Minister under Part 12 Division 5 to be a limited treatment centre for the purposes of this Act;

**medical agent**—a person is a medical agent of another if the person has been appointed under an Act or law to make decisions on behalf of the other about the other's medical treatment;

**medical examination** means examination of a person and the person's mental health by a medical practitioner or authorised health professional;

**medical practitioner** means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

**mental health clinician** means a person of a class of persons who are engaged in the treatment or care of patients and classified by the Chief Psychiatrist as mental health clinicians for the purposes of this Act;

**mental illness** means any illness or disorder of the mind; see also Schedule 1 (Certain conduct may not indicate mental illness);

**neurosurgery** for mental illness means leucotomy, amygdaloidotomy, hypothalamotomy, temporal lobectomy, cingulectomy, electrode implantation in the brain or any other brain surgery for the relief of mental illness by the elimination or stimulation of apparently normal brain tissues;

**patient** means—

- (a) a voluntary patient in a treatment centre; or
- (b) a person to whom a community treatment order applies; or
- (c) a person to whom a detention and treatment order applies;

**patient at large**—a patient is at large if a detention and treatment order applies to the patient but—

- (a) the patient has not been taken into, or remained in, the care and control of treatment centre staff or an authorised officer or police officer after the making of the order and before admission to a treatment centre; or
- (b) the patient has left a treatment centre in which he or she was being detained, or the care and control of treatment centre staff, without leave of absence under Part 5 Division 5; or
- (c) the patient has been granted leave of absence from a treatment centre under Part 5 Division 5, but has not returned to the centre or been taken into the care and control of treatment centre staff or an authorised officer or police officer by the expiry of the leave or after cancellation of the leave;

**patient transport request** means a patient transport request issued under Part 9 or Part 10;

***prescribed psychiatric treatment*** means—

- (a) ECT; or
- (b) neurosurgery for mental illness; or
- (c) any other treatment declared by the regulations to be prescribed psychiatric treatment;

***psychiatrist*** means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the medical profession; and
- (b) holding specialist registration as a psychiatrist;

***Public Advocate*** means the person holding or acting in the office of Public Advocate under the *Guardianship and Administration Act 1993*;

***relative***—a person is a relative of another if—

- (a) the person is related to the other by blood or marriage; or
- (b) the person is a domestic partner of the other; or
- (c) the person is of Aboriginal or Torres Strait Islander descent and related to the other according to Aboriginal kinship rules, or Torres Strait Islander kinship rules, as the case may require;

***senior psychiatrist*** means a person who has, since qualifying for registration as a specialist in psychiatry, had at least 5 years' experience as a practising psychiatrist;

***staff*** of a treatment centre means the director of the centre or any person performing duties involved in the administration or operations of the centre, whether under a contract of employment or some other contractual arrangement;

***treatment*** or ***medical treatment*** means treatment or procedures administered or carried out by a medical practitioner or other health professional in the course of professional practice, and includes the prescription or supply of drugs;

***treatment centre*** means an approved treatment centre or a limited treatment centre;

***voluntary patient*** means a person admitted as a voluntary patient in a treatment centre who is not subject to a detention and treatment order.

**Note—**

***community visitor*** had not come into operation at the date of the publication of this version.

#### **4—Application of Act to children**

- (1) This Act applies to children in the same way as to persons of full age, subject to the following:
  - (a) a right conferred on a person under this Act may, if the person is a child under 16 years of age, be exercised by a parent or guardian of the child on behalf of the child;

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- (b) an obligation under this Act to give a document to a person is, if the person is a child under 16 years of age, to be treated as an obligation to give the document to a parent or guardian of the child, and operates to the exclusion of any further obligation under this Act to send or give the document to a guardian, medical agent, relative, carer or friend.
  - (2) Subsection (1) does not affect the operation of a provision of this Act that expressly relates to a child or children.

## 5—Medical examinations by audio-visual conferencing

- (1) A reference in this Act to medical examination or examination of a person by a medical practitioner or authorised health professional includes, if it is not practicable in the circumstances for a medical practitioner or authorised health professional to carry out an examination of the person in the person's physical presence, a reference to an examination of the person by the medical practitioner or authorised health professional by means of audio-visual conferencing.
- (2) In this section—  
*audio-visual conferencing* means any system of two-way communication linking different places so that a person speaking at any 1 of the places can be seen and heard at the other.

## Part 2—Objects and guiding principles

### 6—Objects

The objects of this Act are—

- (a) to ensure that persons with serious mental illness—
  - (i) receive a comprehensive range of services of the highest standard for their treatment, care and rehabilitation with the goal of bringing about their recovery as far as is possible; and
  - (ii) retain their freedom, rights, dignity and self-respect as far as is consistent with their protection, the protection of the public and the proper delivery of the services; and
- (b) for that purpose, to confer appropriately limited powers to make orders for community treatment, or detention and treatment, of such persons where required.

### 7—Guiding principles

- (1) The Minister, the Board, the Chief Psychiatrist, health professionals and other persons and bodies involved in the administration of this Act are to be guided by the following principles in the performance of their functions:
  - (a) mental health services should be designed to bring about the best therapeutic outcomes for patients, and, as far as possible, their recovery and participation in community life;

- (b) the services should be provided on a voluntary basis as far as possible, and otherwise in the least restrictive way and in the least restrictive environment that is consistent with their efficacy and public safety, and at places as near as practicable to where the patients, or their families or other carers or supporters, reside;
- (c) the services should—
  - (i) be governed by comprehensive treatment and care plans that are developed in a multi-disciplinary framework in consultation with the patients (including children) and their family or other carers or supporters; and
  - (ii) take into account the different developmental stages of children and young persons and the needs of the aged; and
  - (iii) take into account the different cultural backgrounds of patients; and
  - (iv) in the case of patients of Aboriginal or Torres Strait Islander descent, take into account the patients' traditional beliefs and practices and, when practicable and appropriate, involve collaboration with health workers and traditional healers from their communities;
- (d) there should be regular medical examination of every patient's mental and physical health and regular medical review of any order applying to the patient;
- (e) children and young persons should be cared for and treated separately from other patients as necessary to enable the care and treatment to be tailored to their different developmental stages;
- (f) the rights, welfare and safety of the children and other dependants of patients should always be considered and protected as far as possible;
- (g) medication should be used only for therapeutic purposes or safety reasons and not as a punishment or for the convenience of others;
- (h) mechanical body restraints and seclusion should be used only as a last resort for safety reasons and not as a punishment or for the convenience of others;
- (i) patients (together with their family or other carers or supporters) should be provided with comprehensive information about their illnesses, any orders that apply to them, their legal rights, the treatments and other services that are to be provided or offered to them and what alternatives are available;
- (j) information should be provided in a way that ensures as far as practicable that it can be understood by those to whom it is provided.

- (2) In this section—

***mental health services*** means all services involved in the treatment, care and rehabilitation of persons with serious mental illness, including the making and carrying out of orders under this Act and services to assist the recovery of patients after the termination of the orders or the completion of treatment.

## Part 3—Voluntary patients

### 8—Voluntary patients

- (1) A person may be admitted as a voluntary patient in a treatment centre at his or her own request.
- (2) A person admitted as a voluntary patient in a treatment centre may leave the centre at any time unless a detention and treatment order then applies to the person.

### 9—Voluntary patients to be given statement of rights

- (1) The director of a treatment centre must ensure that a voluntary patient in the centre is given, as soon as practicable after admission, a written statement in the form approved by the Minister (a *statement of rights*)—
  - (a) informing the patient of his or her legal rights; and
  - (b) containing any other information prescribed by the regulations.
- (2) If a patient is unable to read or otherwise comprehend the statement of rights, the director must ensure that any steps that are practicable in the circumstances are taken to convey the information contained in the statement to the patient.
- (3) Subject to subsection (4), the director must cause a copy of the statement of rights to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.
- (4) The following provisions apply for the purposes of subsection (3):
  - (a) the person to be sent or given a copy of the statement of rights must be—
    - (i) a guardian, medical agent, relative, carer or friend of the patient nominated by the patient for the purpose; or
    - (ii) if that is not practicable or appropriate—a guardian, medical agent, relative, carer or friend of the patient who appears to have or be assuming responsibility for the care of the patient; or
    - (iii) if that is not practicable or appropriate—any other guardian, medical agent, relative, carer or friend of the patient to whom it is practicable and appropriate to send or give a copy of the statement;
  - (b) the director is not required to send or give a copy of the statement to a person whose whereabouts are not known to or readily ascertainable by the director;
  - (c) it is not appropriate for the director to send or give a copy of the statement to a particular person if the director has reason to believe that it would be contrary to the patient's best interests to do so.

## Part 4—Orders for treatment of persons with mental illness

### Division 1—Level 1 community treatment orders

#### 10—Level 1 community treatment orders

- (1) A medical practitioner or authorised health professional may make an order for the treatment of a person (a *level 1 community treatment order*) if it appears to the medical practitioner or authorised health professional, after examining the person, that—
  - (a) the person has a mental illness; and
  - (b) because of the mental illness, the person requires treatment for the person's own protection from harm (including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and
  - (c) there are facilities and services available for appropriate treatment of the illness; and
  - (d) there is no less restrictive means than a community treatment order of ensuring appropriate treatment of the person's illness.
- (2) In considering whether there is no less restrictive means than a community treatment order of ensuring appropriate treatment of the person's illness, consideration must be given, amongst other things, to the prospects of the person receiving all treatment of the illness necessary for the protection of the person and others on a voluntary basis.
- (3) A level 1 community treatment order must be made in writing in the form approved by the Minister.
- (4) A level 1 community treatment order, unless earlier revoked, expires at a time fixed in the order which must be 2 pm on a business day not later than 28 days after the day on which it is made.
- (5) If a level 1 community treatment order has been made by a person other than a psychiatrist or authorised medical practitioner, the following provisions apply:
  - (a) a psychiatrist or authorised medical practitioner must examine the patient within 24 hours of the making of the order;
  - (b) if it is not practicable to examine the patient within that period, a psychiatrist or authorised medical practitioner must examine the patient as soon as practicable thereafter;
  - (c) after completing the examination, the psychiatrist or authorised medical practitioner may confirm the level 1 community treatment order if satisfied that the grounds referred to in subsection (1) exist for the making of a level 1 community treatment order, but otherwise must revoke the order.
- (6) A medical practitioner or authorised health professional may form an opinion about a person under subsection (1) or (5) based on his or her own observations and any other available evidence that he or she considers reliable and relevant (which may include evidence about matters occurring outside the State).

- (7) A psychiatrist or authorised medical practitioner who has examined a patient to whom a level 1 community treatment order applies may vary or revoke the order at any time.

**Note—**

A psychiatrist or authorised medical practitioner who revokes a level 1 community treatment order may, in substitution, make a level 1 detention and treatment order under Part 5 Division 2.

- (8) Confirmation, variation or revocation of a level 1 community treatment order must be effected by written notice in the form approved by the Minister.

### **11—Board and Chief Psychiatrist to be notified of level 1 orders or their variation or revocation**

- (1) A psychiatrist or authorised medical practitioner making, confirming, varying or revoking a level 1 community treatment order must ensure that the Board and the Chief Psychiatrist are each sent or given, within 1 business day, a written notice in the form approved by the Minister.
- (2) The Registrar of the Board must, within 1 business day, by written notice sent or given to the psychiatrist or authorised medical practitioner, acknowledge receipt by the Board of a notice under subsection (1).
- (3) The Chief Psychiatrist must, within 1 business day, by written notice sent or given to the psychiatrist or authorised medical practitioner, acknowledge receipt by the Chief Psychiatrist of a notice under subsection (1).

### **12—Copies of level 1 orders, notices and statements of rights to be given to patients etc**

- (1) A medical practitioner or authorised health professional making a level 1 community treatment order must ensure that the patient is given, as soon as practicable, a copy of the order.
- (2) A medical practitioner or authorised health professional making a level 1 community treatment order must ensure that the patient is given, as soon as practicable, a written statement in the form approved by the Minister (a *statement of rights*)—
- (a) informing the patient of his or her legal rights; and
  - (b) containing any other information prescribed by the regulations.
- (3) If a patient is unable to read or otherwise comprehend the statement of rights, the medical practitioner or authorised health professional must ensure that any steps that are practicable in the circumstances are taken to convey the information contained in the statement to the patient.
- (4) Subject to subsection (6), a psychiatrist or authorised medical practitioner making or confirming a level 1 community treatment order must cause a copy of the order and statement of rights to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.
- (5) If a level 1 community treatment order is varied or revoked, the psychiatrist or authorised medical practitioner varying or revoking the order must—
- (a) ensure that the patient is given, as soon as practicable, a copy of the notice of variation or revocation of the order; and

- (b) subject to subsection (6), cause a copy of the notice of variation or revocation to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.
- (6) The following provisions apply for the purposes of subsections (4) and (5)(b):
- (a) the person to be sent or given a copy of the order and statement of rights, or notice of variation or revocation, must be—
    - (i) a guardian, medical agent, relative, carer or friend of the patient nominated by the patient for the purpose; or
    - (ii) if that is not practicable or appropriate—a guardian, medical agent, relative, carer or friend of the patient who appears to have or be assuming responsibility for the care of the patient; or
    - (iii) if that is not practicable or appropriate—any other guardian, medical agent, relative, carer or friend of the patient to whom it is practicable and appropriate to send or give the copy of the order and statement, or notice of variation or revocation;
  - (b) the psychiatrist or authorised medical practitioner is not required to send or give a copy of the order and statement, or notice of variation or revocation, to a person whose whereabouts are not known to or readily ascertainable by the psychiatrist or authorised medical practitioner;
  - (c) it is not appropriate for the psychiatrist or authorised medical practitioner to send or give a copy of the order and statement, or notice of variation or revocation, to a particular person if the psychiatrist or authorised medical practitioner has reason to believe that it would be contrary to the patient's best interests to do so.

### **13—Treatment of patients to whom level 1 orders apply**

- (1) Subject to subsection (2), a patient to whom a level 1 community treatment order applies may be given treatment for his or her mental illness of a kind authorised by a psychiatrist or authorised medical practitioner who has examined the patient.
- (2) Authorisation is not required under subsection (1) for treatment if a medical practitioner considers that—
  - (a) the nature of the patient's mental illness is such that the treatment is urgently needed for the patient's well-being; and
  - (b) in the circumstances it is not practicable to obtain that authorisation.
- (3) The treatment may be given despite the absence or refusal of consent to the treatment.
- (4) This section does not apply to prescribed psychiatric treatment, or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.

### **14—Chief Psychiatrist to ensure monitoring of compliance with level 1 orders**

The Chief Psychiatrist must, after receiving notice of the making of a level 1 community treatment order, ensure that there is a mental health clinician who has ongoing responsibility for monitoring and reporting to the Chief Psychiatrist on the patient's compliance with the order.

## 15—Board to review level 1 orders

- (1) The Board must review a level 1 community treatment order as soon as practicable after receiving notice of the order and before the order expires.
- (2) The Board may conduct a review under this section in any manner that it considers appropriate.
- (3) The Board must, on a review of a level 1 community treatment order, revoke the order unless satisfied that grounds exist for a level 2 community treatment order to be made under Division 2 in respect of the patient.

## Division 2—Level 2 community treatment orders

### 16—Level 2 community treatment orders

- (1) If the Board is satisfied that—
  - (a) a person has a mental illness; and
  - (b) because of the mental illness, the person requires treatment for the person's own protection from harm (including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and
  - (c) there are facilities and services available for appropriate treatment of the illness; and
  - (d) there is no less restrictive means than a community treatment order of ensuring appropriate treatment of the person's illness,the Board may make an order for the treatment of the person (a *level 2 community treatment order*).
- (2) In considering whether there is no less restrictive means than a community treatment order of ensuring appropriate treatment of the person's illness, consideration must be given, amongst other things, to the prospects of the person receiving all treatment of the illness necessary for the protection of the person and others on a voluntary basis.
- (3) A level 2 community treatment order may be made in respect of a person—
  - (a) on an application to the Board for the Board's decision as to whether it should make a community treatment order in respect of the person (whether or not a level 1 community treatment order has been made in respect of the person); or
  - (b) on a review by the Board under section 15 of a level 1 community treatment order that applies to the person; or
  - (c) on an application to the Board under Part 5 Division 4 for the revocation of a level 3 detention and treatment order that applies to the person.
- (4) An application may be made to the Board for the Board's decision as to whether it should make a community treatment order in respect of a person by—
  - (a) the Public Advocate; or
  - (b) a medical practitioner; or
  - (c) a mental health clinician; or
  - (d) a guardian, medical agent, relative, carer or friend of the person; or

- (e) any other person who satisfies the Board that he or she has a proper interest in the welfare of the patient.
- (5) A level 2 community treatment order, unless earlier revoked, expires at a time fixed in the order which must be—
  - (a) in the case of an order relating to a child—2 pm on a business day not later than 6 calendar months after the day on which it is made; or
  - (b) in any other case—2 pm on a business day not later than 12 calendar months after the day on which it is made.
- (6) The Registrar of the Board must, not less than 2 months before the expiry of a level 2 community treatment order that has a period of operation of more than 6 months, send to the applicant (if any) for the order, the Public Advocate and to any other person who it appears to the Registrar may have a proper interest in the welfare of the patient a written reminder of the date of expiry of the order.
- (7) The Board may, on application, by order, vary or revoke a level 2 community treatment order at any time.
- (8) An application for variation or revocation of a level 2 community treatment order may be made by—
  - (a) the patient; or
  - (b) the Public Advocate; or
  - (c) a medical practitioner; or
  - (d) a mental health clinician; or
  - (e) a guardian, medical agent, relative, carer or friend of the patient; or
  - (f) any other person who satisfies the Board that he or she has a proper interest in the welfare of the patient.

### **17—Chief Psychiatrist to be notified of level 2 orders or their variation or revocation**

The Registrar of the Board must ensure that the Chief Psychiatrist is notified, within 1 business day, of the making, variation or revocation of a level 2 community treatment order by the Board.

### **18—Treatment of patients to whom level 2 orders apply**

- (1) Subject to subsection (2), a patient to whom a level 2 community treatment order applies may be given treatment for his or her mental illness of a kind authorised by a psychiatrist or authorised medical practitioner who has examined the patient.
- (2) Authorisation is not required under subsection (1) for treatment if a medical practitioner considers that—
  - (a) the nature of the patient's mental illness is such that the treatment is urgently needed for the patient's well-being; and
  - (b) in the circumstances it is not practicable to obtain that authorisation.
- (3) Treatment may be given under this section despite the absence or refusal of consent to the treatment.

- (4) This section does not apply to prescribed psychiatric treatment, or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.

**Note—**

Under Part 6, the treatment and care of a patient to whom a level 2 community treatment order applies is to be governed by a treatment and care plan.

**19—Chief Psychiatrist to ensure monitoring of compliance with level 2 orders**

The Chief Psychiatrist must ensure that for each patient to whom a level 2 community treatment order applies there is a mental health clinician who has ongoing responsibility for monitoring and reporting to the Chief Psychiatrist on the patient's compliance with the order.

**Part 5—Orders for detention and treatment of persons with mental illness**

**Division 1—Non-compliance with community treatment orders and making of detention and treatment orders**

**20—Non-compliance with community treatment orders and making of detention and treatment orders**

- (1) A person's refusal or failure to comply with a community treatment order is a relevant consideration in deciding whether a detention and treatment order should be made in respect of the person under this Part.
- (2) However, nothing in this Act prevents the making of a detention and treatment order under this Part in respect of a person without a prior community treatment order having been made in respect of the person if a detention and treatment order is required in the particular circumstances.

**Division 2—Level 1 detention and treatment orders**

**21—Level 1 detention and treatment orders**

- (1) A medical practitioner or authorised health professional may make an order that a person be detained and receive treatment in a treatment centre (a *level 1 detention and treatment order*) if it appears to the medical practitioner or authorised health professional, after examining the person, that—
- (a) the person has a mental illness; and
  - (b) because of the mental illness, the person requires treatment for the person's own protection from harm (including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and
  - (c) there is no less restrictive means than a detention and treatment order of ensuring appropriate treatment of the person's illness.

- (2) In considering whether there is no less restrictive means than a detention and treatment order of ensuring appropriate treatment of the person's illness, consideration must be given, amongst other things, to the prospects of the person receiving all treatment of the illness necessary for the protection of the person and others on a voluntary basis or in compliance with a community treatment order.
- (3) A level 1 detention and treatment order must be made in writing in the form approved by the Minister.
- (4) A level 1 detention and treatment order, unless earlier revoked, expires at a time fixed in the order which must be 2 pm on a business day not later than 7 days after the day on which it is made.
- (5) On the making of a level 1 detention and treatment order, the following provisions apply:
  - (a) the patient must be examined by a psychiatrist or authorised medical practitioner, who must, if the order was made by a psychiatrist or authorised medical practitioner, be a different psychiatrist or authorised medical practitioner;
  - (b) the examination must occur within 24 hours of the making of the order;
  - (c) if it is not practicable for the examination to occur within that period, it must occur as soon as practicable thereafter;
  - (d) after completion of the examination, the psychiatrist or authorised medical practitioner may confirm the level 1 detention and treatment order if satisfied that the grounds referred to in subsection (1) exist for the making of a level 1 detention and treatment order, but otherwise must revoke the order.
- (6) A medical practitioner or authorised health professional may form an opinion about a person under subsection (1) or (5) based on his or her own observations and any other available evidence that he or she considers reliable and relevant (which may include evidence about matters occurring outside the State).
- (7) A psychiatrist or authorised medical practitioner who has examined a patient to whom a level 1 detention and treatment order applies may revoke the order at any time.

**Note—**

A psychiatrist or authorised medical practitioner who revokes a level 1 detention and treatment order may, in substitution, make a level 1 community treatment order under Part 4 Division 1.

- (8) Confirmation or revocation of a level 1 detention and treatment order must be effected by written notice in the form approved by the Minister.

## **22—Board and Chief Psychiatrist to be notified of level 1 orders or their revocation**

- (1) A psychiatrist or authorised medical practitioner making, confirming or revoking a level 1 detention and treatment order must ensure that the Board and the Chief Psychiatrist are each sent or given, within 1 business day, a written notice in the form approved by the Minister.
- (2) The Registrar of the Board must, within 1 business day, by written notice sent or given to the psychiatrist or authorised medical practitioner, acknowledge receipt by the Board of a notice under subsection (1).

- (3) The Chief Psychiatrist must, within 1 business day, by written notice sent or given to the psychiatrist or authorised medical practitioner, acknowledge receipt by the Chief Psychiatrist of a notice under subsection (1).

### **23—Copies of level 1 orders, notices and statements of rights to be given to patients etc**

- (1) A medical practitioner or authorised health professional making a level 1 detention and treatment order must ensure that the patient is given, as soon as practicable, a copy of the order.
- (2) A medical practitioner or authorised health professional making a level 1 detention and treatment order must ensure that the patient is given, as soon as practicable, a written statement in the form approved by the Minister (a *statement of rights*)—
- (a) informing the patient of his or her legal rights; and
  - (b) containing any other information prescribed by the regulations.
- (3) If a patient is unable to read or otherwise comprehend the statement of rights, the medical practitioner or authorised health professional must ensure that any steps that are practicable in the circumstances are taken to convey the information contained in the statement to the patient.
- (4) Subject to subsection (6), the director of a treatment centre in which a patient is first detained under a level 1 detention and treatment order must cause a copy of the order and statement of rights to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.
- (5) If a level 1 detention and treatment order is revoked, the director of the treatment centre in which the patient is detained must—
- (a) ensure that the patient is given, as soon as practicable, a copy of the notice of revocation of the order; and
  - (b) subject to subsection (6), cause a copy of the notice of revocation to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.
- (6) The following provisions apply for the purposes of subsections (4) and (5)(b):
- (a) the person to be sent or given a copy of the order and statement of rights, or notice of revocation, must be—
    - (i) a guardian, medical agent, relative, carer or friend of the patient nominated by the patient for the purpose; or
    - (ii) if that is not practicable or appropriate—a guardian, medical agent, relative, carer or friend of the patient who appears to have or be assuming responsibility for the care of the patient; or
    - (iii) if that is not practicable or appropriate—any other guardian, medical agent, relative, carer or friend of the patient to whom it is practicable and appropriate to send or give the copy of the order and statement, or notice of revocation;
  - (b) the director is not required to send or give a copy of the order and statement, or notice of revocation, to a person whose whereabouts are not known to or readily ascertainable by the director;

- (c) it is not appropriate for the director to send or give a copy of the order and statement, or notice of revocation, to a particular person if the director has reason to believe that it would be contrary to the patient's best interests to do so.

## **24—Treatment of patients to whom level 1 orders apply**

- (1) A patient to whom a level 1 detention and treatment order applies may be given treatment for his or her mental illness or any other illness of a kind authorised by a medical practitioner who has examined the patient.
- (2) The treatment may be given despite the absence or refusal of consent to the treatment.
- (3) Nothing prevents the treatment of a patient to whom a level 1 detention and treatment order applies before confirmation of the order under this Part.
- (4) This section does not apply to prescribed psychiatric treatment, or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.
- (5) If a medical practitioner authorises treatment of a patient to whom a level 1 detention and treatment order applies that is treatment of a kind prescribed by the regulations, the medical practitioner must ensure that the Chief Psychiatrist is sent or given, within 1 business day, a written notice in the form approved by the Minister.

## **Division 3—Level 2 detention and treatment orders**

### **25—Level 2 detention and treatment orders**

- (1) If a level 1 detention and treatment order has been made or confirmed by a psychiatrist or authorised medical practitioner under Division 2, a psychiatrist or authorised medical practitioner may, after further examination of the patient carried out before the order expires, make a further order for the detention and treatment of the patient (a ***level 2 detention and treatment order***).
- (2) A psychiatrist or authorised medical practitioner may make a level 2 detention and treatment order if satisfied that—
  - (a) the person has a mental illness; and
  - (b) because of the mental illness, the person requires treatment for the person's own protection from harm (including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and
  - (c) there is no less restrictive means than a detention and treatment order of ensuring appropriate treatment of the person's illness.
- (3) In considering whether there is no less restrictive means than a detention and treatment order of ensuring appropriate treatment of the person's illness, consideration must be given, amongst other things, to the prospects of the person receiving all treatment of the illness necessary for the protection of the person and others on a voluntary basis or in compliance with a community treatment order.
- (4) A psychiatrist or authorised medical practitioner may form an opinion about a person under subsection (2) based on his or her own observations and any other available evidence that he or she considers reliable and relevant (which may include evidence about matters occurring outside the State).

- (5) A level 2 detention and treatment order must be made in writing in the form approved by the Minister.
- (6) A level 2 detention and treatment order, unless earlier revoked, expires at a time fixed in the order which must be 2 pm on a business day not later than 42 days after the day on which it is made.
- (7) Detention under a level 2 detention and treatment order may only be in an approved treatment centre (that is, not in a limited treatment centre).
- (8) A psychiatrist or authorised medical practitioner who has examined a patient to whom a level 2 detention and treatment order applies may revoke the order at any time.

**Note—**

A psychiatrist or authorised medical practitioner who revokes a level 2 detention and treatment order may, in substitution, make a level 1 community treatment order under Part 4 Division 1.

- (9) Revocation of a level 2 detention and treatment order must be effected by written notice in the form approved by the Minister.

## **26—Notices and reports relating to level 2 orders**

- (1) A psychiatrist or authorised medical practitioner making or revoking a level 2 detention and treatment order must ensure that the Board and the Chief Psychiatrist are each sent or given, within 1 business day, a written notice in the form approved by the Minister.
- (2) The Registrar of the Board must, within 1 business day, by written notice sent or given to the psychiatrist or authorised medical practitioner, acknowledge receipt by the Board of a notice under subsection (1).
- (3) The Chief Psychiatrist must, within 1 business day, by written notice sent or given to the psychiatrist or authorised medical practitioner, acknowledge receipt by the Chief Psychiatrist of a notice under subsection (1).
- (4) A psychiatrist or authorised medical practitioner making a level 2 detention and treatment order must, as soon as practicable, provide to the director of the approved treatment centre in which the patient is or is to be detained under the order a written report of the results of his or her examination of the patient and of the reasons for making the order.
- (5) On receiving a report under subsection (4), the director must forward a copy of the report to the Board.

## **27—Copies of level 2 orders and notices to be given to patients etc**

- (1) A psychiatrist or authorised medical practitioner making a level 2 detention and treatment order must ensure that the patient is given, as soon as practicable, a copy of the order.
- (2) A psychiatrist or authorised medical practitioner making a level 2 detention and treatment order must ensure that the patient is given, as soon as practicable, a written statement in the form approved by the Minister (a *statement of rights*)—
  - (a) informing the patient of his or her legal rights; and
  - (b) containing any other information prescribed by the regulations.

- (3) If a patient is unable to read or otherwise comprehend the statement of rights, the psychiatrist or authorised medical practitioner must ensure that any steps that are practicable in the circumstances are taken to convey the information contained in the statement to the patient.
- (4) Subject to subsection (6), the director of a treatment centre in which a patient is first detained under a level 2 detention and treatment order must cause a copy of the order and statement of rights to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.
- (5) If a level 2 detention and treatment order is revoked, the director of the treatment centre in which the patient is detained must—
  - (a) ensure that the patient is given, as soon as practicable, a copy of the notice of revocation of the order; and
  - (b) subject to subsection (6), cause a copy of the notice of revocation to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.
- (6) The following provisions apply for the purposes of subsections (4) and (5)(b):
  - (a) the person to be sent or given a copy of the order and statement of rights, or notice of revocation must be—
    - (i) a guardian, medical agent, relative, carer or friend of the patient nominated by the patient for the purpose; or
    - (ii) if that is not practicable or appropriate—a guardian, medical agent, relative, carer or friend of the patient who appears to have or be assuming responsibility for the care of the patient; or
    - (iii) if that is not practicable or appropriate—any other guardian, medical agent, relative, carer or friend of the patient to whom it is practicable and appropriate to send or give the copy of the order and statement, or notice of revocation;
  - (b) the director is not required to send or give a copy of the order and statement, or notice of revocation, to a person whose whereabouts are not known to or readily ascertainable by the director;
  - (c) it is not appropriate for the director to send or give a copy of the order and statement, or notice of revocation, to a particular person if the director has reason to believe that it would be contrary to the patient's best interests to do so.

## **28—Treatment of patients to whom level 2 orders apply**

- (1) A patient to whom a level 2 detention and treatment order applies may be given treatment for his or her mental illness or any other illness of a kind authorised by a medical practitioner who has examined the patient.
- (2) The treatment may be given despite the absence or refusal of consent to the treatment.
- (3) This section does not apply to prescribed psychiatric treatment, or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.

- (4) If a medical practitioner authorises treatment of a patient to whom a level 2 detention and treatment order applies that is treatment of a kind prescribed by the regulations, the medical practitioner must ensure that the Chief Psychiatrist is sent or given, within 1 business day, a written notice in the form approved by the Minister.

**Note—**

Under Part 6, the treatment and care of a patient to whom a level 2 detention and treatment order applies is to be governed by a treatment and care plan.

## **Division 4—Level 3 detention and treatment orders**

### **29—Level 3 detention and treatment orders**

- (1) If the Board is satisfied that—
- (a) a person has a mental illness; and
  - (b) because of the mental illness, the person requires treatment for the person's own protection from harm (including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and
  - (c) there is no less restrictive means than a detention and treatment order of ensuring appropriate treatment of the person's illness,
- the Board may make an order that the person be detained and receive treatment in an approved treatment centre (*a level 3 detention and treatment order*).
- (2) In considering whether there is no less restrictive means than a detention and treatment order of ensuring appropriate treatment of the person's illness, consideration must be given, amongst other things, to the prospects of the person receiving all treatment of the illness necessary for the protection of the person and others on a voluntary basis or in compliance with a community treatment order.
- (3) A level 3 detention and treatment order may be made, on application, in respect of a person to whom a level 2 or level 3 detention and treatment order applies.
- (4) An application may be made for the Board to make a level 3 detention and treatment order in respect of a person by the Public Advocate, the director of an approved treatment centre or an employee in an approved treatment centre authorised by the director of the centre for the purpose.
- (5) A level 3 detention and treatment order, unless earlier revoked, expires at a time fixed in the order which must be—
- (a) in the case of an order relating to a child—2 pm on a business day not later than 6 calendar months after the day on which it is made; or
  - (b) in any other case—2 pm on a business day not later than 12 calendar months after the day on which it is made.
- (6) The Board may, on application, by order, vary or revoke a level 3 detention and treatment order at any time.
- (7) An application for variation or revocation of a level 3 detention and treatment order may be made by—
- (a) the patient; or

- (b) the Public Advocate; or
- (c) a medical practitioner; or
- (d) a mental health clinician; or
- (e) a guardian, medical agent, relative, carer or friend of the patient; or
- (f) any other person who satisfies the Board that he or she has a proper interest in the welfare of the patient.

**Note—**

If the Board revokes a level 3 detention and treatment order, it may, in substitution, make a level 2 community treatment order under Part 4 Division 2.

### **30—Chief Psychiatrist to be notified of level 3 orders or their variation or revocation**

The Registrar of the Board must ensure that the Chief Psychiatrist is notified, within 1 business day, of the making, variation or revocation of a level 3 detention and treatment order by the Board.

### **31—Treatment of patients to whom level 3 orders apply**

- (1) A patient to whom a level 3 detention and treatment order applies may be given treatment for his or her mental illness or any other illness of a kind authorised by a medical practitioner who has examined the patient.
- (2) Treatment may be given under this section despite the absence or refusal of consent to the treatment.
- (3) This section does not apply to prescribed psychiatric treatment, or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.
- (4) If a medical practitioner authorises treatment of a patient to whom a level 3 detention and treatment order applies that is treatment of a kind prescribed by the regulations, the medical practitioner must ensure that the Chief Psychiatrist is sent or given, within 1 business day, a written notice in the form approved by the Minister.

**Note—**

Under Part 6, the treatment and care of a patient to whom a level 2 or level 3 detention and treatment order applies is to be governed by a treatment and care plan.

## **Division 5—General**

### **32—Detention and treatment orders displace community treatment orders**

If a detention and treatment order is made in respect of a person to whom a community treatment order applies and the community treatment order is not revoked, the requirements of the community treatment order do not apply for the period of operation of the detention and treatment order (and if the community treatment order remains in force at the end of that period, the requirements of the order will apply again according to their terms).

### **33—Duty of director of treatment centre to comply with detention and treatment orders**

- (1) This section applies when—
  - (a) a person to whom a detention and treatment order applies is in the care and control of treatment centre staff; or
  - (b) a detention and treatment order is made in respect of a voluntary patient in a treatment centre.
- (2) Subject to section 35, the director of the treatment centre must—
  - (a) if the person is not already admitted to the centre, admit the person to the centre; and
  - (b) comply with the detention and treatment order.

**Note—**

The treatment centre must, in the case of a patient to whom a level 2 or level 3 detention and treatment order applies, be an approved treatment centre (not a limited treatment centre).

### **34—Powers required for carrying detention and treatment orders into effect**

- (1) Treatment centre staff may exercise, in relation to a patient to whom a detention and treatment order applies who is present at, or has been admitted to, the centre, any power (including the power to use reasonable force) that is reasonably required—
  - (a) for carrying the order into effect; or
  - (b) for the maintenance of order and security at the centre or the prevention of harm or nuisance to others.
- (2) Subsection (1) has effect subject to the other provisions of this Act and, in the case of staff other than the director, subject to the directions of the director.

### **35—Transfer of patients to whom detention and treatment orders apply**

- (1) If the director of a treatment centre considers it is necessary or appropriate for a patient to whom a detention and treatment order applies to be transferred from the centre to another treatment centre, the director may give a direction for the patient to be transferred to the other treatment centre, after first arranging with the director of the other centre for the patient's admission to that centre.

**Note—**

The other treatment centre must, in the case of a patient to whom a level 2 or level 3 detention and treatment order applies, be an approved treatment centre (not a limited treatment centre).

- (2) The director of a treatment centre in which a patient has been detained may give a direction—
  - (a) for the patient to be transferred to a hospital, or between hospitals, in circumstances where the patient has or has had an illness other than a mental illness, after first arranging with the person in charge of the relevant hospital for the patient's admission to the hospital; and
  - (b) for the patient's transfer back to the treatment centre after completion of the hospital treatment.

- (3) If a patient to whom a detention and treatment order applies has been transferred to a hospital as a result of a direction under this section—
  - (a) the patient is, while in the care and control of staff of the hospital to be taken to continue in the care and control of the treatment centre staff; and
  - (b) staff of the hospital may exercise the powers conferred by section 34 in relation to the patient as if they were treatment centre staff.
- (4) A direction under this section must be given by writing in the form approved by the Minister.
- (5) Subject to subsection (6), if the patient has been admitted to the centre, the director must notify a guardian, medical agent, relative, carer or friend of the patient on giving a direction under this section for the transfer of the patient from the centre.
- (6) The following provisions apply for the purposes of subsection (5):
  - (a) the notification must be given by writing in the form approved by the Minister;
  - (b) the person to be notified must be—
    - (i) a guardian, medical agent, relative, carer or friend of the patient nominated by the patient for the purpose; or
    - (ii) if that is not practicable or appropriate—a guardian, medical agent, relative, carer or friend of the patient who appears to have or be assuming responsibility for the care of the patient; or
    - (iii) if that is not practicable or appropriate—any other guardian, medical agent, relative, carer or friend of the patient whom it is practicable and appropriate to notify;
  - (c) the director is not required to notify a person whose whereabouts are not known to or readily ascertainable by the director;
  - (d) it is not appropriate for the director to notify a particular person if the director has reason to believe that it would be contrary to the patient's best interests to do so.

### **36—Leave of absence of patients detained under detention and treatment orders**

- (1) The director of a treatment centre may, by written notice in the form approved by the Minister, grant a patient detained in the centre leave of absence from the centre for any purpose and period that the director considers appropriate and specifies in the notice.
- (2) Leave of absence may be granted subject to any conditions that the director considers appropriate and specifies in the notice.
- (3) The director must ensure that the patient is given a copy of the notice by which the patient is granted leave of absence before the patient commences the leave.

### **37—Persons granted leave of absence to be given statement of rights**

- (1) The director of a treatment centre who grants a patient detained in the centre leave of absence from the centre must ensure that the patient is given, before the patient commences the leave, a written statement in the form approved by the Minister (a *statement of rights*)—
  - (a) informing the patient of his or her legal rights; and
  - (b) containing any other information prescribed by the regulations.
- (2) If the patient is unable to read or otherwise comprehend the statement of rights, the director must take any steps that are practicable in the circumstances to convey the information contained in the statement to the patient.
- (3) Subject to subsection (4), the director must cause a copy of the statement of rights to be sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.
- (4) The following provisions apply for the purposes of subsection (3):
  - (a) the person to be sent or given a copy of the statement of rights must be—
    - (i) a guardian, medical agent, relative, carer or friend of the patient nominated by the patient for the purpose; or
    - (ii) if that is not practicable or appropriate—a guardian, medical agent, relative, carer or friend of the patient who appears to have or be assuming responsibility for the care of the patient; or
    - (iii) if that is not practicable or appropriate—any other guardian, medical agent, relative, carer or friend of the patient to whom it is practicable and appropriate to send or give a copy of the statement;
  - (b) the director is not required to send or give a copy of the statement to a person whose whereabouts are not known to or readily ascertainable by the director;
  - (c) it is not appropriate for the director to send or give a copy of the statement to a particular person if the director has reason to believe that it would be contrary to the patient's best interests to do so.

### **38—Cancellation of leave of absence**

- (1) The director of a treatment centre may, by notice in the form approved by the Minister, cancel any leave of absence from the centre granted to a patient under this Division.
- (2) The director has an absolute discretion to cancel any such leave.
- (3) The director must cause reasonable steps to be taken for the notice of cancellation to be given to the patient before, or as soon as practicable after, the patient is taken back into the care and control of treatment centre staff.

## **Part 6—Treatment and care plans**

### **39—Treatment and care plans for voluntary patients**

- (1) The treatment and care of a voluntary patient in a treatment centre must, as far as practicable, be governed by a treatment and care plan directed towards the patient's recovery.
- (2) The treatment and care plan—
  - (a) must describe the treatment and care that will be provided to the patient at the treatment centre and should describe any rehabilitation services and other significant services that will be provided or available to the patient at the treatment centre or following the person's discharge from the centre; and
  - (b) must, as far as practicable, be prepared and revised in consultation with the patient and any guardian, medical agent, relative, carer or friend of the patient who is providing support to the patient under this Act; and
  - (c) must comply with the requirements of the regulations as to the making or contents of such plans.

### **40—Treatment and care plans for patients to whom community treatment orders apply**

- (1) The treatment and care of a patient to whom a level 2 community treatment order applies must, as far as practicable, be governed by a treatment and care plan directed towards the patient's recovery.
- (2) The treatment and care plan—
  - (a) must describe the treatment and care that will be provided to the patient under the requirements of the order and should describe any rehabilitation services and other significant services that will be provided or available to the patient whether under the requirements of the order or through the patient's voluntary participation; and
  - (b) must, as far as practicable, be prepared and revised in consultation with the patient and any guardian, medical agent, relative, carer or friend of the patient who is providing support to the patient under this Act; and
  - (c) must comply with the requirements of the regulations as to the making or contents of such plans.

### **41—Treatment and care plans for patients to whom detention and treatment orders apply**

- (1) The treatment and care of a patient to whom a level 2 or level 3 detention and treatment order applies must, as far as practicable, be governed by a treatment and care plan directed towards the patient's recovery.

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- (2) The treatment and care plan—
- (a) must describe the treatment and care that will be provided to the patient while in detention at the approved treatment centre and should describe any rehabilitation services and other significant services that will be provided or available to the patient while in detention at the treatment centre or following the person's discharge from the centre; and
  - (b) must, as far as practicable, be prepared and revised in consultation with the patient and any guardian, medical agent, relative, carer or friend of the patient who is providing support to the patient under this Act; and
  - (c) must comply with the requirements of the regulations as to the making or contents of such plans.

## **Part 7—Regulation of prescribed psychiatric treatments**

### **Division 1—ECT**

#### **42—ECT**

- (1) Subject to this section, but despite any other Act or law, ECT must not be administered to a patient unless—
- (a) the patient has a mental illness; and
  - (b) ECT, or a course of ECT, has been authorised for treatment of the illness by a psychiatrist who has examined the patient; and
  - (c) written consent to the treatment has been given—
    - (i) by or on behalf of the patient; or
    - (ii) if the patient is under 16 years of age or consent cannot be given by or on behalf of the patient—by the Board on application under this section.
- (2) Consent to a course of ECT must be limited to a maximum of 12 episodes of ECT and a maximum period of 3 months, and any second or subsequent course of ECT for a patient must be separately consented to after the commencement or completion of the preceding course.
- (3) ECT administered to a patient in order to determine the correct dose for future episodes of ECT in a course of treatment must be counted as a single episode of ECT in that course of treatment for the purposes of this section.
- (4) Consent to the administration of ECT extends to the administration of anaesthetics required for the purposes of the ECT treatment.
- (5) An application for the Board's consent under this section may be made by a medical practitioner or mental health clinician.
- (6) Consent to a particular episode of ECT is not required if a psychiatrist considers that—
- (a) the patient has a mental illness of such a nature that administration of that particular episode of ECT is urgently needed for the patient's well-being; and
  - (b) in the circumstances it is not practicable to obtain that consent.

- (7) A psychiatrist who administers or authorises the administration of an episode of ECT to a patient without consent in reliance on subsection (6) must ensure that the Chief Psychiatrist is sent or given, within 1 business day, a written notice in the form approved by the Minister—
- (a) advising the Chief Psychiatrist of that action; and
  - (b) containing any other information prescribed by the regulations.
- (8) A person who contravenes subsection (1) is guilty of an offence.  
Maximum penalty: \$50 000 or 4 years imprisonment.
- (9) In this section—
- (a) a reference to consent to treatment on behalf of a patient is a reference to effective consent given by a medical agent or guardian of the patient, or if the patient is under 16 years of age, a parent of the patient;
  - (b) a reference to an episode of ECT is a reference to a period during which ECT stimuli are administered under a continuing general anaesthetic.

## **Division 2—Neurosurgery for mental illness**

### **43—Neurosurgery for mental illness**

- (1) Despite any other Act or law, neurosurgery must not be carried out on a patient as a treatment for mental illness unless—
- (a) the patient has a mental illness; and
  - (b) the neurosurgery has been authorised for treatment of the illness by the person who is to carry it out and by 2 psychiatrists (at least 1 of whom is a senior psychiatrist), each of whom has separately examined the patient; and
  - (c) the patient is of or over 16 years of age and written consent to the treatment has been given—
    - (i) by the patient; or
    - (ii) if consent cannot be given by the patient—by the Board on application under this section.
- (2) An application for the Board's consent under this section may be made by a medical practitioner or mental health clinician.
- (3) A person who contravenes subsection (1) is guilty of an offence.  
Maximum penalty: \$50 000 or 4 years imprisonment.

## **Division 3—Other prescribed psychiatric treatments**

### **44—Other prescribed psychiatric treatments**

- (1) The regulations may regulate the administration of any prescribed psychiatric treatment (other than ECT or neurosurgery) by imposing requirements for prior authorisations or consents (or both).

- (2) Any requirements of the regulations for prior authorisations or consents (or both) for a treatment of mental illness will have effect despite the provisions of any other Act or law.
- (3) The regulations may impose a maximum penalty of \$50 000 or 4 years imprisonment (or some lesser maximum penalty) for administering a treatment of mental illness without a prior authorisation or consent required under the regulations.

## **Part 8—Further protections for persons with mental illness**

### **Division 1—Patients' rights and protections**

#### **45—Assistance of interpreters**

- (1) If—
  - (a) a medical practitioner or authorised health professional intends to conduct an examination of a person for the purposes of this Act; and
  - (b) the person is unable to communicate adequately in English but could communicate adequately with the assistance of an interpreter,the medical practitioner or authorised health professional must arrange for a competent interpreter to assist during the examination of the person.
- (2) Subsection (1) does not apply—
  - (a) to an examination following which a level 1 community treatment order or level 1 detention and treatment order may be made unless the assistance of an interpreter can be readily arranged by the medical practitioner or authorised health professional in the circumstances; or
  - (b) if the medical practitioner or authorised health professional and the person can communicate adequately in a language other than English.

#### **46—Copies of Board orders, decisions and statements of rights to be given**

- (1) The Registrar of the Board must ensure that a patient is given, as soon as practicable after the making by the Board of an order or decision under this Act in respect of the patient—
  - (a) a copy of the order or decision; and
  - (b) a written statement in the form approved by the Minister (a *statement of rights*)—
    - (i) informing the patient of his or her legal rights; and
    - (ii) containing any other information prescribed by the regulations.
- (2) If the patient is unable to read or otherwise comprehend the statement of rights, the Registrar of the Board must ensure that any steps are taken that are practicable in the circumstances to convey the information contained in the statement to the patient.
- (3) Subject to subsection (4), the Registrar of the Board must ensure that a copy of the order or decision and the statement of rights are sent or given to a guardian, medical agent, relative, carer or friend of the patient as soon as practicable.

- (4) The following provisions apply for the purposes of subsection (3):
- (a) the person to be sent or given a copy of the order or decision and the statement of rights must be—
    - (i) a guardian, medical agent, relative, carer or friend of the patient nominated by the patient for the purpose; or
    - (ii) if that is not practicable or appropriate—a guardian, medical agent, relative, carer or friend of the patient who appears to have or be assuming responsibility for the care of the patient; or
    - (iii) if that is not practicable or appropriate—any other guardian, medical agent, relative, carer or friend of the patient to whom it is practicable and appropriate to send or give a copy of the order or decision and the statement;
  - (b) there is no requirement for a copy of the order or decision and the statement to be sent or given to a person whose whereabouts are not known to or readily ascertainable by the Registrar of the Board;
  - (c) it is not appropriate for a copy of the order or decision and the statement to be sent or given to a particular person if there is reason to believe that it would be contrary to the patient's best interests to do so.

#### **47—Patients' right to be supported by guardian etc**

- (1) A patient is entitled to have another person's support, wherever practicable, in—
- (a) the exercise of a right under this Act; or
  - (b) any communications between the patient and a medical practitioner examining or treating the patient or between the patient and the director or staff of a treatment centre in which the patient is treated or detained.
- (2) The support may be provided by—
- (a) if the patient is a child—a parent or guardian of the patient; or
  - (b) a guardian, medical agent, relative, carer or friend of the patient who has been nominated by the patient for the purpose or who has or is assuming responsibility for the care of the patient; or
  - (c) a person who provides advocacy services whether on a professional or voluntary basis; or
  - (d) a community visitor.
- (3) A person providing support to a patient under this section must be allowed access to the patient subject to reasonable limits imposed by the medical practitioner in charge of the patient's treatment or by the director or staff of a treatment centre in which the patient is treated or detained.
- (4) However, a person providing support to a patient may be allowed to be present during a medical examination or treatment of the patient or may be excluded according to the discretion of the medical practitioner performing or supervising the examination or treatment.

- (5) This section is in addition to and does not derogate from the operation of section 4 (which entitles a parent or guardian of a child under 16 years of age to exercise rights conferred under this Act on behalf of the child).

**Note—**

Subsection (2)(d) had not come into operation at the date of the publication of this version.

#### **48—Patients' right to communicate with others outside treatment centre**

- (1) A patient in a treatment centre is entitled to—
- (a) communicate with persons outside the centre; and
  - (b) receive visitors at the centre; and
  - (c) be afforded reasonable privacy in his or her communications with others.
- (2) The rights conferred by subsection (1) are subject to any restrictions and conditions that have been approved by the Director of the centre as being reasonably required—
- (a) for carrying into effect any detention and treatment order that applies to the patient; or
  - (b) for the maintenance of order and security at the centre or the prevention of harm or nuisance to others.
- (3) No restrictions or conditions are to be applied under this section to communications by post between a patient in a treatment centre and any of the following, or to visits to a patient by any of the following:
- (a) the Minister;
  - (b) the Board;
  - (c) the Public Advocate;
  - (d) the Chief Psychiatrist;
  - (e) the Health and Community Services Complaints Commissioner within the meaning of the *Health and Community Services Complaints Act 2004*;
  - (f) a community visitor;
  - (g) a member of Parliament;
  - (h) a legal practitioner (in the practitioner's professional capacity);
  - (i) a person representing, or acting on behalf of, a person or body referred to in any of the preceding paragraphs;
  - (j) a person of a class prescribed by the regulations.

**Note—**

Subsection (3)(f) had not come into operation at the date of the publication of this version.

#### **49—Neglect or ill-treatment**

A person having the oversight, care or control of a patient who ill-treats or wilfully neglects the patient is guilty of an offence.

Maximum penalty: \$25 000 or imprisonment for 2 years.

## ***Division 2—Community visitor scheme***

*Note—*

*Division 2 had not come into operation at the date of the publication of this version.*

### ***50—Community visitors***

- (1) *There will be a position of Principal Community Visitor.*
- (2) *There will be such number of positions of Community Visitor as the Governor considers necessary for the proper performance of the community visitors' functions under this Division.*
- (3) *A person will be appointed to the position of Principal Community Visitor, or a position of Community Visitor, on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.*
- (4) *However, a person must not hold a position under this section for more than 2 consecutive terms.*
- (5) *The Governor may remove a person from the position of Principal Community Visitor, or a position of Community Visitor, on the presentation of an address from both Houses of Parliament seeking the person's removal.*
- (6) *The Governor may suspend a person from the position of Principal Community Visitor, or a position of Community Visitor, on the ground of incompetence or misbehaviour and, in that event—*
  - (a) *a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and*
  - (b) *if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the person's removal has not been presented to the Governor, the person must be restored to the position.*
- (7) *The position of Principal Community Visitor, or a position of Community Visitor, becomes vacant if the person appointed to the position—*
  - (a) *dies; or*
  - (b) *resigns by written notice given to the Minister; or*
  - (c) *completes a term of appointment and is not reappointed; or*
  - (d) *is removed from the position by the Governor under subsection (5); or*
  - (e) *becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or*
  - (f) *is convicted of an indictable offence or sentenced to imprisonment for an offence; or*
  - (g) *becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or*

- (h) becomes, in the opinion of the Governor, mentally or physically incapable of performing satisfactorily the functions of the position.*
- (8) *The Minister may appoint a person to act in the position of Principal Community Visitor—*
  - (a) during a vacancy in the position; or*
  - (b) when the Principal Community Visitor is absent or unable to perform the functions of the position; or*
  - (c) if the Principal Community Visitor is suspended from the position under subsection (6).*

### **51—Community visitors' functions**

- (1) *Community visitors have the following functions:*
  - (a) to conduct visits to and inspections of treatment centres as required or authorised under this Division;*
  - (b) to refer matters of concern relating to the organisation or delivery of mental health services in South Australia or the care, treatment or control of patients to the Minister, the Chief Psychiatrist or any other appropriate person or body;*
  - (c) to act as advocates for patients to promote the proper resolution of issues relating to the care, treatment or control of patients, including issues raised by a guardian, medical agent, relative, carer or friend of a patient or any person who is providing support to a patient under this Act;*
  - (d) any other functions assigned to community visitors by this Act or any other Act.*
- (2) *The Principal Community Visitor has the following additional functions:*
  - (a) to oversee and coordinate the performance of the community visitors' functions;*
  - (b) to advise and assist other community visitors in the performance of their functions, including the reference of matters of concern to the Minister, the Chief Psychiatrist or any other appropriate person or body;*
  - (c) to report to the Minister, as directed by the Minister, about the performance of the community visitors' functions;*
  - (d) any other functions assigned to the Principal Community Visitor by this Act or any other Act.*

### **52—Visits to and inspection of treatment centres**

- (1) *Each treatment centre must be visited and inspected once a month by 2 or more community visitors.*
- (2) *2 or more community visitors may visit a treatment centre at any time.*
- (3) *On a visit to a treatment centre under subsection (1), the community visitors must—*
  - (a) so far as practicable, inspect all parts of the centre used for or relevant to the care, treatment or control of patients; and*

- (b) *so far as practicable, make any necessary inquiries about the care, treatment and control of each patient detained or being treated in the centre; and*
  - (c) *take any other action required under the regulations.*
- (4) *After any visit to a treatment centre, the community visitors must (unless 1 of them is the Principal Community Visitor) report to the Principal Community Visitor about the visit in accordance with the requirements of the Principal Community Visitor.*
- (5) *A visit may be made with or without previous notice and at any time of the day or night, and be of such length, as the community visitors think appropriate.*
- (6) *A visit may be made at the request of a patient or a guardian, medical agent, relative, carer or friend of a patient or any person who is providing support to a patient under this Act.*
- (7) *A community visitor will, for the purposes of this Division—*
  - (a) *have the authority to conduct inspections of the premises and operations of any hospital that is an incorporated hospital under the Health Care Act 2008; and*
  - (b) *be taken to be an inspector under Part 10 of the Health Care Act 2008.*

### **53—Requests to see community visitors**

- (1) *A patient or a guardian, medical agent, relative, carer or friend of a patient or any person who is providing support to a patient under this Act may make a request to see a community visitor.*
- (2) *If such a request is made to the director of a treatment centre in which the patient is being detained or treated, the director must advise a community visitor of the request within 2 days after receipt of the request.*

### **54—Reports by Principal Community Visitor**

- (1) *The Principal Community Visitor must, on or before 30 September in every year, forward a report to the Minister on the work of the community visitors during the financial year ending on the preceding 30 June.*
- (2) *The Minister must, within 6 sitting days after receiving a report under subsection (1), have copies of the report laid before both Houses of Parliament.*
- (3) *The Principal Community Visitor may, at any time, prepare a special report to the Minister on any matter arising out of the performance of the community visitors' functions.*
- (4) *Subject to subsection (5), the Minister must, within 2 weeks after receiving a special report, have copies of the report laid before both Houses of Parliament.*
- (5) *If the Minister cannot comply with subsection (4) because Parliament is not sitting, the Minister must deliver copies of the report to the President and the Speaker and the President and the Speaker must then—*
  - (a) *immediately cause the report to be published; and*
  - (b) *lay the report before their respective Houses at the earliest opportunity.*

- (6) *A report will, when published under subsection (5)(a), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.*

## **Part 9—Powers relating to persons who have or appear to have mental illness**

### **55—Issuing of patient transport requests**

- (1) A patient transport request may be issued in respect of a patient as follows:
- (a) if a community treatment order applies to the patient and the patient has not complied with the requirements of the order, a medical practitioner or mental health clinician may issue the request for the purpose of the patient's transport for treatment in accordance with the order;
  - (b) if a medical practitioner or authorised health professional has made a level 1 detention and treatment order in respect of the patient at a place other than a treatment centre, the medical practitioner or authorised health professional may issue the request for the purpose of the patient's transport to a treatment centre;
  - (c) if the patient is a patient at large, the director of a treatment centre, a medical practitioner or mental health clinician may issue the request for the purpose of the patient's transport to a treatment centre;
  - (d) if a detention and treatment order applies to the patient and the director of a treatment centre has given a direction for the transfer of the patient under Part 5 Division 5 to another treatment centre or hospital, the director may issue the request for the purpose of the patient's transport to the other treatment centre or hospital.
- (2) A patient transport request must be—
- (a) directed to authorised officers and police officers generally; and
  - (b) in writing in the form approved by the Minister.
- (3) A person in respect of whom a patient transport request has been issued who is taken into the care and control of an authorised officer or police officer under this Part must be given a copy of the patient transport request as soon as practicable.

### **56—Powers of authorised officers relating to persons who have or appear to have mental illness**

- (1) This section applies to a person if—
- (a) an authorised officer believes on reasonable grounds that the person is a patient in respect of whom a patient transport request has been issued under section 55(1); or
  - (b) an authorised officer believes on reasonable grounds that the person is a patient at large; or
  - (c) it appears to an authorised officer that—
    - (i) the person has a mental illness; and

- (ii) the person has caused, or there is a significant risk of the person causing, harm to himself or herself or others or property or the person otherwise requires medical examination.
- (2) An authorised officer may form an opinion about a person under subsection (1)(c) based on the officer's observations of the person's behaviour or appearance or reports about the person's behaviour, appearance or history (which may include reports about matters occurring outside the State).
- (3) An authorised officer may, subject to this section, exercise the following powers in relation to a person to whom this section applies:
  - (a) the authorised officer may take the person into his or her care and control;
  - (b) the authorised officer may transport the person from place to place;
  - (c) the authorised officer may restrain the person and otherwise use force in relation to the person as reasonably required in the circumstances;
  - (d) the authorised officer may restrain the person by means of the administration of a drug when that is reasonably required in the circumstances;
  - (e) the authorised officer may enter and remain in a place where the authorised officer reasonably suspects the person may be found;
  - (f) the authorised officer may search the person's clothing or possessions and take possession of anything in the person's possession that the person may use to cause harm to himself or herself or others or property.
- (4) An authorised officer who takes the person into his or her care and control must, as soon as practicable—
  - (a) in the case of a person referred to in subsection (1)(a)—transport the person, or arrange for the person to be transported by some other authorised officer or by a police officer, in accordance with the patient transport request; or
  - (b) in the case of a person referred to in subsection (1)(b)—transport the person, or arrange for the person to be transported by some other authorised officer or by a police officer, to a treatment centre; or
  - (c) in the case of a person referred to in subsection (1)(c)—transport the person, or arrange for the person to be transported by some other authorised officer or by a police officer, to a treatment centre or other place for medical examination.
- (5) The powers conferred by this section continue to be exercisable as reasonably required for the purpose of enabling or facilitating the medical examination or treatment of the person.
- (6) An authorised officer may not administer a drug to restrain a person under this section unless the officer is authorised to do so under the *Controlled Substances Act 1984*.
- (7) A search of a person must be carried out expeditiously and in a manner that avoids, as far as reasonably practicable, causing the person any humiliation or offence.
- (8) Anything taken into the possession of an authorised officer under this section may be held for as long as is necessary for reasons of safety, but must otherwise be returned to the person from whom it was taken or dealt with according to law.

## **57—Powers of police officers relating to persons who have or appear to have mental illness**

- (1) This section applies to a person if—
  - (a) a police officer believes on reasonable grounds that the person is a patient in respect of whom a patient transport request has been issued under section 55(1); or
  - (b) a police officer believes on reasonable grounds that the person is a patient at large; or
  - (c) it appears to a police officer that—
    - (i) the person has a mental illness; and
    - (ii) the person has caused, or there is a significant risk of the person causing, harm to himself or herself or others or property; and
    - (iii) the person requires medical examination.
- (2) This section does not apply to a patient in respect of whom a patient transport request has been issued by the director of a treatment centre under section 55(1)(d) unless the person has subsequently become a patient at large.
- (3) A police officer is not required to exercise any medical expertise in order to form an opinion about a person under subsection (1)(c) and may form such an opinion based on the officer's observations of the person's behaviour or appearance or reports about the person's behaviour, appearance or history (which may include reports about matters occurring outside the State).
- (4) A police officer may, subject to this section, exercise the following powers in relation to a person to whom this section applies:
  - (a) the police officer may take the person into his or her care and control;
  - (b) the police officer may transport the person from place to place;
  - (c) the police officer may restrain the person and otherwise use force in relation to the person as reasonably required in the circumstances;
  - (d) the police officer may enter and remain in a place where the officer reasonably suspects the person may be found;
  - (e) the police officer may use reasonable force to break into a place when that is reasonably required in order to take the person into his or her care and control;
  - (f) the police officer may search the person's clothing or possessions and take possession of anything in the person's possession that the person may use to cause harm to himself or herself or others or property.
- (5) A police officer who takes the person into his or her care and control must, as soon as practicable—
  - (a) in the case of a person referred to in subsection (1)(a)—transport the person, or arrange for the person to be transported by some other police officer or by an authorised officer, in accordance with the patient transport request; or

- (b) in the case of a person referred to in subsection (1)(b)—transport the person, or arrange for the person to be transported by some other police officer or by an authorised officer, to a treatment centre; or
  - (c) in the case of a person referred to in subsection (1)(c)—transport the person, or arrange for the person to be transported by some other police officer or by an authorised officer, to a treatment centre or other place for medical examination.
- (6) The powers conferred by this section continue to be exercisable as reasonably required for the purpose of enabling or facilitating the medical examination or treatment of the person.
- (7) A search of a person must be carried out expeditiously and in a manner that avoids, as far as reasonably practicable, causing the person any humiliation or offence.
- (8) Anything taken into the possession of a police officer under this section may be held for as long as is necessary for reasons of safety, but must otherwise be returned to the person from whom it was taken or dealt with according to law.
- (9) If a police officer has arrested a person for an offence or apprehended a person under some other law, the person may, despite any other law, be released from police custody for the purpose of medical examination or treatment under this Act.
- (10) If a person who has been arrested for an offence is released from police custody for the purpose of medical examination or treatment under this Act—
  - (a) the Commissioner of Police must be notified in accordance with the regulations of the action taken under this Act in relation to the person; and
  - (b) the person must, at the request of the Commissioner of Police, be held and returned to police custody in the event that a detention and treatment order is not made in respect of the person or ceases to apply to the person.

### **58—Officers may assist each other**

Authorised officers and police officers may assist each other in the exercise of powers under this Act.

### **59—Roles of various officers**

- (1) The Minister may approve a memorandum of understanding between relevant agencies relating to the respective roles of authorised officers (including different classes of authorised officers) and police officers in—
  - (a) the exercise of powers relating to persons who have or appear to have mental illness; and
  - (b) the provision of other assistance to enable or facilitate the medical examination or treatment of such persons.
- (2) The Minister may only approve a memorandum of understanding with the agreement of the Minister responsible for the administration of the *Police Act 1998*.
- (3) Authorised officers, police officers and other persons engaged in the administration of this Act should endeavour to comply with the provisions of a memorandum of understanding approved under this section.

- (4) Nothing in this section is to affect the lawfulness of any action taken by an authorised officer or police officer in the exercise of powers under this Act.

### **60—Offence to hinder etc officer**

A person who hinders or obstructs an authorised officer or police officer in the exercise of powers under this Act is guilty of an offence.

Maximum penalty: \$25 000.

## **Part 10—Arrangements between South Australia and other jurisdictions**

### **Division 1—Preliminary**

#### **61—Interpretation**

In this Part—

*corresponding law* means a law of another State or a Territory of the Commonwealth declared by the regulations to be a corresponding law;

*interstate authorised officer* means a person on whom power is conferred under a corresponding law to take a person who has a mental illness into his or her care and control;

*interstate community treatment order* means an order made under a corresponding law for the purpose of bringing about the treatment of a person who has a mental illness without a requirement for the person's detention in an interstate treatment centre;

*interstate detention and treatment order* means an order made under a corresponding law for the purpose of bringing about the detention and treatment in an interstate treatment centre of a person who has a mental illness;

*interstate officer* means a person on whom any power is conferred under a corresponding law;

*interstate patient at large* means a person to whom an interstate detention and treatment order applies who is absent from an interstate treatment centre in which he or she was being detained, or is otherwise at large, without lawful authority under the relevant corresponding law;

*interstate treatment centre* means a hospital or other facility in which a person may be detained and treated under an interstate detention and treatment order, or a place at which a person to whom an interstate community treatment order applies may be required to be treated under the order;

*Ministerial agreement* means an agreement made under section 62 or an agreement declared under that section to have effect as a Ministerial agreement for the purposes of this Part;

*South Australian authorised officer* means an authorised officer under this Act or a member of South Australia Police under the *Police Act 1998*;

*South Australian community treatment order* means a community treatment order under Part 4;

*South Australian detention and treatment order* means a detention and treatment order under Part 5;

*South Australian officer* means a person on whom any power is conferred under this Act;

*South Australian treatment centre* means a treatment centre under Part 12.

## **62—Ministerial agreements**

- (1) The Minister may make an agreement with a Minister responsible for administering a corresponding law about any matter in connection with the administration of this Part or a corresponding law.
- (2) The Minister may, by notice in the Gazette, declare that a specified agreement made by a Minister before the commencement of this section will have effect as a Ministerial agreement for the purposes of this Part.

## **63—Requests or approvals relating to actions involving other jurisdictions**

- (1) If a provision of this Part provides that this subsection applies to the taking of specified action, the action may only be taken if—
  - (a) such action is contemplated by a Ministerial agreement with a Minister of the other State or the Territory that would be affected by the action; and
  - (b) the action has been requested or approved by an interstate officer under the corresponding law of the State or Territory or the Ministerial agreement; and
  - (c) the action is in the best interests of the patient or person in respect of whom the action is to be taken.
- (2) The Chief Psychiatrist may request or approve action by an interstate officer under the corresponding law of another State or a Territory that would affect South Australia if—
  - (a) there is a Ministerial agreement with a Minister of the State or Territory that contemplates such action; and
  - (b) the action may be taken under the corresponding law or the Ministerial agreement at the request or with the approval of a South Australian officer; and
  - (c) the action is in the best interests of the patient or person in respect of whom the action is to be taken.

## **64—Powers of South Australian officers under corresponding laws or Ministerial agreement**

Subject to this Act, a South Australian officer may exercise any power conferred on the officer under a corresponding law or under a Ministerial agreement.

## **65—Regulations may modify operation of Part**

The regulations may modify the operation of this Part for a purpose related to its interaction with the law of another State or a Territory of the Commonwealth relating to mental health.

## **Division 2—Community treatment orders**

### **66—South Australian community treatment orders and treatment in other jurisdictions**

- (1) A South Australian community treatment order may be made or varied so that the order requires the person to whom the order applies to submit to treatment of the person's mental illness at an interstate treatment centre.
- (2) If a South Australian community treatment order requires treatment of a person's mental illness at an interstate treatment centre and the person fails to comply with the requirements of the order, the Chief Psychiatrist may issue a patient transport request in respect of the person for the purpose of the person's transport to the interstate treatment centre.
- (3) Section 63(1) applies to the taking of action under subsection (1) or (2).
- (4) If a South Australian authorised officer or interstate authorised officer believes on reasonable grounds that a person is the patient in respect of whom a patient transport request has been issued under this section, the officer may exercise the powers of an authorised officer under Part 9, or in the case of a South Australian authorised officer who is a police officer, the powers of a police officer under that Part, for the purpose of the person's transport to an interstate treatment centre, and the provisions of that Part (including section 60) will apply for the purpose with necessary modifications.

### **67—Powers of interstate officers**

An interstate officer who is authorised to exercise powers under a corresponding law in connection with an interstate community treatment order may exercise those powers, other than any power of forcible entry, in South Australia in connection with the order.

### **68—Interstate community treatment orders and treatment in South Australia**

If an interstate community treatment order is made or varied so that the order requires the person to whom the order applies to submit to treatment of the person's mental illness in South Australia, this Act applies as if—

- (a) a community treatment order were in force under this Act in respect of the person requiring the person to submit to treatment of the person's mental illness in South Australia in accordance with the terms of the interstate community treatment order; and
- (b) the community treatment order were to operate, despite the other provisions of this Act, for the period of operation of the interstate community treatment order.

### **69—Making of South Australian community treatment orders when interstate orders apply**

- (1) If an interstate community treatment order applies to a person who is now in South Australia, the Chief Psychiatrist may, without medical examination of the person, make an order for the treatment of the person's mental illness in South Australia containing requirements based on the requirements of the interstate community treatment order.

- (2) The Chief Psychiatrist may make the order whether or not the person resides in South Australia.
- (3) If an order is made under subsection (1), this Act applies as if the order were a level 1 community treatment order made by a psychiatrist or authorised medical practitioner under Part 4 Division 1.

## **Division 3—Transfer to or from South Australian treatment centres**

### **70—Transfer from South Australian treatment centres**

- (1) The director of a South Australian treatment centre may, with the approval of the Chief Psychiatrist, give a direction for the transfer to an interstate treatment centre of a patient who is detained in or a patient at large from the South Australian treatment centre.
- (2) Section 63(1) applies to the giving of a direction under this section.
- (3) A direction under this section must be given by writing in the form approved by the Minister.
- (4) The director must—
  - (a) subject to subsection (5), notify a guardian, medical agent, relative, carer or friend of the patient of the transfer of the patient to the interstate treatment centre; and
  - (b) if the patient is detained in the South Australian treatment centre under a level 3 detention and treatment order—notify the Board of the transfer.
- (5) The following provisions apply for the purposes of subsection (4)(a):
  - (a) the person to be notified must be—
    - (i) a guardian, medical agent, relative, carer or friend of the patient nominated by the patient for the purpose; or
    - (ii) if that is not practicable or appropriate—a guardian, medical agent, relative, carer or friend of the patient who appears to have or be assuming responsibility for the care of the patient; or
    - (iii) if that is not practicable or appropriate—any other guardian, medical agent, relative, carer or friend of the patient whom it is practicable and appropriate to notify;
  - (b) the director is not required to notify a person whose whereabouts are not known to or readily ascertainable by the director;
  - (c) it is not appropriate for the director to notify a particular person if the director has reason to believe that it would be contrary to the patient's best interests to do so.
- (6) A patient must not be transferred to an interstate treatment centre pursuant to a direction under this section until the period allowed for appeal against the direction has expired or, if an appeal has been instituted, until the appeal is finally determined or lapses.

### **71—Transfer to South Australian treatment centres**

- (1) The director of a South Australian treatment centre may approve the transfer to the centre of a person to whom an interstate detention and treatment order applies (including an interstate patient at large).
- (2) An approval under this section must be given by writing in the form approved by the Minister.
- (3) If an approval is given under this section for the transfer of a person to a South Australian treatment centre, this Act applies as if a level 1 detention and treatment order had been made under this Act in respect of the person at the time of admission of the person to the South Australian treatment centre.

### **72—Patient transport requests**

- (1) If the director of a South Australian treatment centre has given a direction for the transfer of a person to an interstate treatment centre under this Division, the director may issue a patient transport request for the purpose of the person's transport to the interstate treatment centre.
- (2) If the director of a South Australian treatment centre has given an approval for the transfer of a person to the centre under this Division, the director may issue a patient transport request for the purpose of the person's transport to the centre.
- (3) A patient transport request must be in writing in the form approved by the Minister.

### **73—Powers when patient transport request issued**

If a South Australian authorised officer or interstate authorised officer believes on reasonable grounds that a person is the person in respect of whom a patient transport request has been issued under this Division, the officer may exercise the powers of an authorised officer under Part 9, or in the case of a South Australian authorised officer who is a police officer, the powers of a police officer under that Part, for the purpose of the person's transport to an interstate treatment centre or South Australian treatment centre, as the case requires, and the provisions of that Part (including section 60) will apply for the purpose with necessary modifications.

## **Division 4—Transport to other jurisdictions**

### **74—Transport to other jurisdictions when South Australian detention and treatment orders apply**

- (1) If a South Australian detention and treatment order has been made in respect of a person, the person making the order or a South Australian authorised officer may, instead of transporting the person to a South Australian treatment centre for admission to that centre—
  - (a) transport the person to an interstate treatment centre; or
  - (b) deliver the person into the care and control of an interstate authorised officer (whether in or outside South Australia) for the purpose of the person's transport to an interstate treatment centre.
- (2) Section 63(1) applies to the taking of action under subsection (1).

- (3) A South Australian authorised officer or interstate authorised officer may exercise the powers of an authorised officer under Part 9, or in the case of a South Australian authorised officer who is a police officer, the powers of a police officer under that Part, for the purpose of the person's transport to an interstate treatment centre, and the provisions of that Part (including section 60) will apply for the purpose with necessary modifications.

### **75—Transport to other jurisdictions of persons with apparent mental illness**

- (1) This section applies if a South Australian authorised officer has taken into his or her care and control a person who appears to have a mental illness and to require medical examination.
- (2) The South Australian authorised officer may, instead of transporting the person to a South Australian treatment centre or other place in South Australia for medical examination—
- (a) transport the person to an interstate treatment centre or an interstate medical practitioner or interstate authorised health professional; or
  - (b) deliver the person into the care and control of an interstate authorised officer (whether in or outside South Australia) for the purpose of the person's transport to an interstate treatment centre or an interstate medical practitioner or interstate authorised health professional.
- (3) Section 63(1) applies to the taking of action under subsection (2).
- (4) A South Australian authorised officer or interstate authorised officer may exercise the powers of an authorised officer under Part 9, or in the case of a South Australian authorised officer who is a police officer, the powers of a police officer under that Part, for the purpose of the person's transport to an interstate treatment centre or an interstate medical practitioner or interstate authorised health professional, and the provisions of that Part (including section 60) will apply for the purpose with necessary modifications.
- (5) In this section—
- interstate authorised health professional* means a person, other than a medical practitioner, on whom power is conferred under a corresponding law to make an interstate detention and treatment order in respect of a person who has a mental illness.

### **76—Transport to other jurisdictions when interstate detention and treatment orders apply**

- (1) If a South Australian authorised officer believes on reasonable grounds that a person in South Australia is an interstate patient at large, 1 or more of the following powers may be exercised in relation to the person:
- (a) the person may be taken into the care and control of a South Australian authorised officer;
  - (b) the person may be transported to an interstate treatment centre by a South Australian authorised officer;

- (c) the person may be delivered by a South Australian authorised officer into the care and control of an interstate authorised officer (whether in or outside South Australia) for the purpose of the person's transport to an interstate treatment centre;
  - (d) the person may be taken to a South Australian treatment centre by a South Australian authorised officer and detained there pending the person's transport to an interstate treatment centre;
  - (e) the person may be given treatment for his or her mental illness or any other illness in South Australia, without any requirement for the person's consent, as authorised by a medical practitioner who has examined the patient.
- (2) Section 63(1) applies to the taking of action under subsection (1)(b) or (c).
- (3) Subsection (1)(e) does not apply to prescribed psychiatric treatment, or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.
- (4) If an interstate authorised officer believes on reasonable grounds that a person in South Australia is an interstate patient at large, the officer may transport the person to an interstate treatment centre.
- (5) A South Australian authorised officer or interstate authorised officer may exercise the powers of an authorised officer under Part 9, or in the case of a South Australian authorised officer who is a police officer, the powers of a police officer under that Part, for the purpose of—
- (a) the person's transport to a South Australian treatment centre or interstate treatment centre; or
  - (b) enabling or facilitating medical treatment of the person,
- and the provisions of that Part (including section 60) will apply for the purpose with necessary modifications.
- (6) This section does not prevent action being taken under Division 3 for the transport of the person to a South Australian treatment centre if the director of the South Australian treatment centre has given an approval under that Division for the transfer of the person to the South Australian treatment centre.

## **Division 5—Transport to South Australia**

### **77—Transport to South Australia when South Australian detention and treatment orders apply**

- (1) If a South Australian authorised officer believes on reasonable grounds that a person in the care and control of an interstate officer outside South Australia is a South Australian patient at large, the officer may transport the person to a South Australian treatment centre.
- (2) Section 63(1) applies to the taking of action under subsection (1).
- (3) If an interstate authorised officer believes on reasonable grounds that a person in the care and control of an interstate officer outside South Australia is a South Australian patient at large, the officer may—
- (a) transport the person to a South Australian treatment centre; or

- (b) deliver the person into the care and control of a South Australian authorised officer for the purpose of the person's transport to a South Australian treatment centre.
- (4) A South Australian authorised officer or interstate authorised officer may exercise the powers of an authorised officer under Part 9, or in the case of a South Australian authorised officer who is a police officer, the powers of a police officer under that Part, for the purpose of the person's transport to a South Australian treatment centre, and the provisions of that Part (including section 60) will apply for the purpose with necessary modifications.
- (5) This section does not prevent action being taken under Division 3 for the transport of the person to an interstate treatment centre if the director of the South Australian treatment centre has given a direction under that Division for the transfer of the person to the interstate treatment centre.

## **78—Transport to South Australia of persons with apparent mental illness**

- (1) This section applies if—
  - (a) a person has been taken into the care and control of an interstate officer under a corresponding law because of the person's apparent mental illness; and
  - (b) instead of action being taken for medical examination of the person under the corresponding law, the person is to be—
    - (i) transported to a South Australian treatment centre or other place in South Australia for medical examination; or
    - (ii) delivered into the care and control of a South Australian authorised officer (whether in or outside South Australia) for the purpose of the person's transport to a South Australian treatment centre or other place in South Australia for medical examination.
- (2) A South Australian authorised officer or interstate authorised officer may exercise the powers of an authorised officer under Part 9, or in the case of a South Australian authorised officer who is a police officer, the powers of a police officer under that Part, for the purpose of the person's transport to a South Australian treatment centre or other place in South Australia for medical examination, and the provisions of that Part (including section 60) will apply for the purpose with necessary modifications.

## **Part 11—Reviews and appeals**

### **Division 1—Reviews**

#### **79—Reviews**

- (1) The Board must conduct the following reviews:
  - (a) a review of the circumstances involved in the making and revocation of a level 1 community treatment order if the order was not reviewed by the Board before its revocation (which review must be conducted as soon as practicable after the revocation of the order);

- (b) a review of a level 2 community treatment order that has been made in respect of a child and continues to apply to the person 3 months after the making of the order (which review must be conducted as soon as practicable after the end of the period of 3 months);
  - (c) a review of the circumstances involved in the making of a level 1 detention and treatment order if the order has been made within 7 days after the expiry or revocation of a previous detention and treatment order applying to the same person (which review must be conducted as soon as practicable after the making of the level 1 detention and treatment order);
  - (d) a review of a level 3 detention and treatment order that has been made in respect of a child and continues to apply to the person 3 months after the making of the order (which review must be conducted as soon as practicable after the end of the period of 3 months);
  - (e) any review that is required under the regulations.
- (2) The Board may conduct any other review that it considers appropriate relating to a community treatment order or detention and treatment order or treatment administered to a person to whom an order applies under this Act.
  - (3) The Board may conduct a review under this section in any manner that it considers appropriate.
  - (4) If a review under this section relates to a patient to whom a treatment and care plan applies, the Chief Psychiatrist must cause a copy of the plan to be submitted to the Board at or before the commencement of the Board's proceedings on the review.

## **80—Decisions and reports on reviews**

- (1) On completion of a review, the Board must revoke, with immediate effect, any community treatment order or detention and treatment order to which the review relates if the Board is not satisfied that there are proper grounds for it to remain in operation.
- (2) Subject to subsection (1), the Board may, on a review relating to a community treatment order or detention and treatment order, do 1 or more of the following:
  - (a) affirm the order;
  - (b) vary the order;
  - (c) revoke the order;
  - (d) make an order, not being a detention and treatment order, that the Board considers should be made in respect of the person, including an order that the treatment and care plan applying to the person be reviewed.
- (3) The Board may, on a review, provide to the Minister a written report on any matter the Board considers should be drawn to the Minister's attention.

## **Division 2—Appeals**

### **81—Appeals to Board against orders (other than Board orders)**

- (1) Any of the following persons who is dissatisfied with a community treatment order or detention and treatment order (other than an order made by the Board) may appeal to the Board against the order:
  - (a) the person to whom the order applies;
  - (b) the Public Advocate;
  - (c) a guardian, medical agent, relative, carer or friend of the person to whom the order applies;
  - (d) any other person who satisfies the Board that he or she has a proper interest in the matter.
- (2) An appeal under this section may be instituted at any time during the currency of the order the subject of the appeal.
- (3) If an appeal under this section relates to a patient to whom a treatment and care plan applies, the Chief Psychiatrist must cause a copy of the plan to be submitted to the Board at or before the commencement of the Board's proceedings on the appeal.
- (4) On hearing an appeal against an order, the Board must revoke the order, with immediate effect, if the Board is not satisfied that there are proper grounds for it to remain in operation.
- (5) Subject to subsection (4), the Board may, on hearing an appeal against an order, do 1 or more of the following:
  - (a) dismiss the appeal;
  - (b) affirm the order;
  - (c) vary the order;
  - (d) revoke the order;
  - (e) make an order, not being a detention and treatment order, that the Board considers should be made in respect of the person, including an order that the treatment and care plan applying to the person be reviewed.

### **82—Operation of orders pending appeal**

- (1) Subject to subsection (2), an order continues to operate despite the institution of an appeal against the order under this Part.
- (2) The Board may, on the application of the appellant, vary or suspend an order, or make an order restricting, or imposing conditions on, the treatment that may be administered to the appellant, pending determination of the appeal, if the Board thinks special reason exists for doing so.

**83—Appeals to Board against transfer to interstate treatment centre**

- (1) Any of the following persons who is dissatisfied with a direction under section 70 for the transfer of a patient to an interstate treatment centre may appeal to the Board against the direction:
  - (a) the patient;
  - (b) the Public Advocate;
  - (c) a guardian, medical agent, relative, carer or friend of the patient;
  - (d) any other person who satisfies the Board that he or she has a proper interest in the matter.
- (2) An appeal under this section must be instituted within 14 days after the giving of the direction.
- (3) The Board may, on hearing an appeal against a direction, affirm or revoke the direction.

**84—Representation on appeals to Board**

- (1) In every appeal to the Board under this Part, the person to whom the proceedings relate is entitled to be represented by counsel in accordance with this section.
- (2) If a person chooses to be represented by counsel, he or she is entitled to be represented by a legal practitioner provided under a scheme established by the Minister for the purposes of this section, being a legal practitioner—
  - (a) chosen by the person himself or herself; or
  - (b) in default of the person making a choice, chosen by a person or authority contemplated by the scheme.
- (3) A legal practitioner (not being an employee of the Crown or a statutory authority) who represents a person under this section is entitled to receive fees for his or her services from the Minister, in accordance with a scale prescribed by the regulations, and cannot demand or receive from any other person any further fee for those services.
- (4) Nothing in this section derogates from the right of the person to whom the proceedings relate to engage counsel at his or her own expense, or to appear personally or by the Public Advocate or other representative in accordance with the *Guardianship and Administration Act 1993*.

**85—Appeals to District Court and Supreme Court**

The *Guardianship and Administration Act 1993* provides certain rights of appeal to the Administrative and Disciplinary Division of the District Court and from that court to the Supreme Court in relation to orders or decisions of the Board made under this Act.

## Part 12—Administration

### Division 1—Minister and Chief Executive

#### 86—Minister's functions

The Minister has the following functions for the purposes of this Act:

- (a) to encourage and facilitate the involvement of persons who currently have, or have previously had, a mental illness, their carers and the community in the development of mental health policies and services;
- (b) to develop or promote a strong and viable system of treatment and care, and a full range of services and facilities, for persons with mental illness;
- (c) to develop or promote ongoing programmes for optimising the mental health of children and young persons who are or have been under the guardianship or in the custody of the Minister pursuant to the *Children's Protection Act 1993*;
- (d) to develop or promote services that aim to prevent mental illness and intervene early when mental illness is evident;
- (e) to ensure that information about mental health and mental illness is made available to the community and to promote public awareness about mental health and mental illness;
- (f) to develop or promote appropriate education and training programmes, and effective systems of accountability, for persons delivering mental health services;
- (g) to promote services in the non-government sector that are designed to assist persons with mental illness;
- (h) to develop or promote programmes to reduce the adverse impact of mental illness on family and community life;
- (i) any other functions assigned to the Minister by this Act.

#### 87—Delegation by Minister

- (1) The Minister may delegate a power or function of the Minister under this Act or another Act to a particular person or body or to the person for the time being performing particular duties or holding or acting in a particular position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation under this section—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will by the delegator.

**88—Delegation by Chief Executive**

- (1) The Chief Executive may delegate a power or function of the Chief Executive under this Act to a particular person or body or to the person for the time being performing particular duties or holding or acting in a particular position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation under this section—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will by the delegator.

**Division 2—Chief Psychiatrist****89—Chief Psychiatrist**

- (1) There will be a position of Chief Psychiatrist.
- (2) The Governor may appoint a senior psychiatrist to the position of Chief Psychiatrist.
- (3) The terms and conditions of appointment to the position of Chief Psychiatrist will be as determined by the Governor.

**90—Chief Psychiatrist's functions**

- (1) The Chief Psychiatrist has the following functions:
  - (a) to promote continuous improvement in the organisation and delivery of mental health services in South Australia;
  - (b) to monitor the treatment of voluntary patients and patients to whom detention and treatment orders apply, and the use of mechanical body restraints and seclusion in relation to such patients;
  - (c) to monitor the administration of this Act and the standard of psychiatric care provided in South Australia;
  - (d) to advise the Minister on issues relating to psychiatry and to report to the Minister any matters of concern relating to the care or treatment of patients;
  - (e) any other functions assigned to the Chief Psychiatrist by this Act or any other Act or by the Minister.
- (2) The Chief Psychiatrist may, with the approval of the Minister, issue standards that are to be observed in the care or treatment of patients.
- (3) Any standards issued by the Chief Psychiatrist under this section will be—
  - (a) binding on any hospital that is an incorporated hospital under the *Health Care Act 2008*; and
  - (b) binding as a condition of the licence in force in respect of any private hospital premises under Part 10 of the *Health Care Act 2008*.

- (4) The Chief Psychiatrist will—
- (a) have the authority to conduct inspections of the premises and operations of any hospital that is an incorporated hospital under the *Health Care Act 2008*; and
  - (b) be taken to be an inspector under Part 10 of the *Health Care Act 2008*.

### **91—Delegation by Chief Psychiatrist**

- (1) The Chief Psychiatrist may delegate a power or function of the Chief Psychiatrist under this Act to a particular person or to the person for the time being performing particular duties or holding or acting in a particular position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation under this section—
- (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will by the delegator.

### **92—Annual report by Chief Psychiatrist**

- (1) The Chief Psychiatrist must, before 30 September in each year, present a report to the Minister containing—
- (a) in respect of each level of community treatment order and detention and treatment order—
    - (i) information about the number and duration of the orders made or in force during the preceding financial year; and
    - (ii) demographic information about the patients, including information about areas of residence, places of treatment and, in the case of detention and treatment orders, places of detention; and
  - (b) in respect of the administration of Part 10 (Arrangements between South Australia and other jurisdictions)—
    - (i) a statement of the number of occasions during the preceding financial year on which powers have been exercised under each of the following provisions:
      - (A) section 66(1) (South Australian community treatment orders and treatment in other jurisdictions);
      - (B) section 69 (Making of South Australian community treatment orders when interstate orders apply);
      - (C) section 70(1) (Transfer from South Australian treatment centres);
      - (D) section 71 (Transfer to South Australian treatment centres);
      - (E) section 74(1) (Transport to other jurisdictions when South Australian detention and treatment orders apply);

- (F) section 75(2) (Transport to other jurisdictions of persons with apparent mental illness);
  - (G) section 76(1) or (4) (Transport to other jurisdictions when interstate detention and treatment orders apply);
  - (H) section 77(1) or (3) (Transport to South Australia when South Australian detention and treatment orders apply);
  - (I) section 78 (Transport to South Australia of persons with apparent mental illness); and
- (ii) information about the circumstances in which the powers were exercised.
- (2) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

### **Division 3—Authorised medical practitioners**

#### **93—Authorised medical practitioners**

- (1) The Minister may, by instrument in writing, determine that a specified medical practitioner, or a medical practitioner of a specified class, will be an authorised medical practitioner for the purposes of this Act.
- (2) The Minister may—
- (a) attach conditions or limitations to a determination under this section; and
  - (b) by subsequent instrument in writing, vary or revoke a determination under this section or a condition or limitation of a determination under this section.

### **Division 4—Authorised health professionals**

#### **94—Authorised health professionals**

- (1) The Minister may, by instrument in writing, determine that a specified person, or a person of a specified class, will be an authorised health professional for the purposes of this Act.
- (2) The Minister may—
- (a) attach conditions or limitations to a determination under this section; and
  - (b) by subsequent instrument in writing, vary or revoke a determination under this section or a condition or limitation of a determination under this section.

#### **95—Code of practice for authorised health professionals**

- (1) The Minister may, by notice in the Gazette, approve or endorse a code of practice governing the exercise of powers by authorised health professionals under this Act.
- (2) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subsection (1).

## **Division 5—Treatment centres**

### **96—Approved treatment centres**

- (1) The Minister may, by instrument in writing, determine that a specified place will be an approved treatment centre for the purposes of this Act.
- (2) The Minister may—
  - (a) attach conditions or limitations to a determination under this section; and
  - (b) by subsequent instrument in writing, vary or revoke a determination under this section or a condition or limitation of a determination under this section.

### **97—Limited treatment centres**

- (1) The Minister may, by instrument in writing, determine that a specified place will be a limited treatment centre for the purposes of this Act.
- (2) The Minister may—
  - (a) attach conditions or limitations to a determination under this section; and
  - (b) by subsequent instrument in writing, vary or revoke a determination under this section or a condition or limitation of a determination under this section.

### **98—Register of patients**

- (1) The director of a treatment centre must cause records to be kept relating to every patient admitted to the centre under a detention and treatment order or as a voluntary patient.
- (2) The records must be kept in a form approved by the Minister and set out—
  - (a) the name and address of each patient; and
  - (b) the nature of any mental or other illness or incapacity from which he or she suffers; and
  - (c) full particulars of the treatment of the patient and of the authorisation for that treatment, including the use of medication, mechanical body restraints or seclusion; and
  - (d) if the person dies, the time, date and cause of death; and
  - (e) any other information prescribed by the regulations.

### **99—Particulars relating to admission of patients to treatment centres**

- (1) The Minister must ensure that the following information is provided, free of charge, to any person who requests the information and has a proper interest in the matter:
  - (a) whether or not a particular person has been admitted to, or is being detained in, a treatment centre under this Act; and
  - (b) if so, the date of the person's admission and (where applicable) the date of his or her discharge or death.

- (2) The director of a treatment centre must, on the discharge of a person from the centre, provide to the person, on request, free of charge, a copy of any orders, certificates or authorisations on which he or she was admitted, detained or treated.

### **100—Delegation by directors of treatment centres**

- (1) The director of a treatment centre may delegate a power or function of the director under this Act to a particular person or to the person for the time being performing particular duties or holding or acting in a particular position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation under this section—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will by the delegator.

## **Part 13—Miscellaneous**

### **101—Errors in orders etc**

- (1) A written order, notice or other instrument will be valid and effective for the purposes of this Act despite non-compliance with a requirement of this Act as to the form or contents of the instrument if its intended meaning and effect are reasonably apparent from the instrument itself.
- (2) Without limiting the effect of subsection (1), if there is a clerical error or omission or misdescription of a person in an order, notice or other instrument, the author of the instrument, or the Board, may make any necessary correction of the instrument, and any such correction will be taken to have had effect from the date of the making of the original instrument.

### **102—Offences relating to authorisations and orders**

- (1) A medical practitioner or authorised health professional who signs any authorisation or order for the purposes of this Act, without having examined the person to whom the authorisation or order relates, is guilty of an offence.

Maximum penalty: \$25 000 or imprisonment for 2 years.

- (2) Subsection (1) does not apply to action of the Chief Psychiatrist under section 69.
- (3) A medical practitioner or authorised health professional who—
  - (a) certifies that a person has a mental illness, not believing the person to have a mental illness; or
  - (b) makes a statement in an authorisation or order given or made under or for the purposes of this Act, or in a record kept in respect of a person to whom such an authorisation or order applies, knowing the statement to be false or misleading,

is guilty of an offence.

Maximum penalty: \$25 000 or imprisonment for 2 years.

- (4) A person who, not being a medical practitioner or authorised health professional—
- (a) signs any certificate or order for the purposes of this Act in which he or she describes himself or herself as, or pretends to be, a medical practitioner or authorised health professional; or
  - (b) otherwise purports to act under this Act in the capacity of a medical practitioner or authorised health professional,

is guilty of an offence.

Maximum penalty: \$25 000 or imprisonment for 2 years.

- (5) A person who, by fraudulent means, procures or attempts to procure any person who does not have a mental illness to be received into, or detained in, a treatment centre, or to be treated as a person to whom an order applies under this Act, is guilty of an offence.

Maximum penalty: \$25 000 or imprisonment for 2 years.

### **103—Medical practitioners or health professionals not to act in respect of relatives**

A medical practitioner or authorised health professional cannot sign any authorisation, certificate or order under this Act relating to the treatment or detention of a person to whom the medical practitioner or authorised health professional is related by blood or marriage, or who is the domestic partner of the medical practitioner or authorised health professional.

### **104—Removing patients from treatment centres**

A person must not, without lawful excuse, remove a patient who is being detained in a treatment centre from the centre, or aid such a patient to leave the centre.

Maximum penalty: \$25 000 or imprisonment for 2 years.

### **106—Confidentiality and disclosure of information**

- (1) Subject to subsection (2), a person engaged or formerly engaged in the administration of this Act must not disclose personal information relating to a person obtained in the course of administration of this Act except to the extent that he or she may be authorised or required to disclose that information by the Chief Executive.

Maximum penalty: \$25 000.

- (2) Subsection (1) does not prevent a person from—
- (a) disclosing information as required by law, or as required for the administration of this Act or a law of another State or a Territory of the Commonwealth; or
  - (b) disclosing information at the request, or with the consent, of the person to whom the information relates or a guardian or medical agent of the person; or
  - (c) disclosing information to a relative, carer or friend of the person to whom the information relates if—
    - (i) the disclosure is reasonably required for the treatment, care or rehabilitation of the person; and

- (ii) there is no reason to believe that the disclosure would be contrary to the person's best interests; or
  - (d) subject to the regulations (if any)—
    - (i) disclosing information to a health or other service provider if the disclosure is reasonably required for the treatment, care or rehabilitation of the person to whom the information relates; or
    - (ii) disclosing information by entering the information into an electronic records system established for the purpose of enabling the recording or sharing of information in or between persons or bodies involved in the provision of health services; or
    - (iii) disclosing information to such extent as is reasonably required in connection with the management or administration of a hospital or SA Ambulance Service Inc (including for the purposes of charging for a service); or
  - (e) disclosing information if the disclosure is reasonably required to lessen or prevent a serious threat to the life, health or safety of a person, or a serious threat to public health or safety; or
  - (f) disclosing information for medical or social research purposes if the research methodology has been approved by an ethics committee and there is no reason to believe that the disclosure would be contrary to the person's best interests; or
  - (g) disclosing information in accordance with the regulations.
- (3) Subsection (2)(c) does not authorise the disclosure of personal information in contravention of a direction given by the person to whom the information relates.
  - (4) Subsection (3) does not apply to a person to whom a community treatment order or detention and treatment order applies.
  - (5) In this section—

*personal information* means information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

### **107—Prohibition of publication of reports of proceedings**

- (1) Subject to subsection (2), a person must not publish a report of any proceedings under this Act.  
Maximum penalty: \$25 000.
- (2) The Board may, on application by a person who the Board is satisfied has a proper interest in the matter, authorise the publication of a report of proceedings before the Board under this Act.
- (3) A person who is authorised to publish a report under subsection (2) must not, except as authorised by the Board, disclose any information in the report that identifies, or could tend to identify, the person to whom the proceedings relate.  
Maximum penalty: \$25 000.

### **108—Requirements for notice to Board or Chief Psychiatrist**

A medical practitioner must not fail, without reasonable excuse, to comply with a provision of this Act requiring the practitioner to send or give a notice to the Board or the Chief Psychiatrist.

Maximum penalty: \$1 250.

### **109—Evidentiary provisions**

In any legal proceedings—

- (a) an apparently genuine document purporting to be a community treatment order, detention and treatment order or patient transport request will be accepted as such in the absence of proof to the contrary;
- (b) an apparently genuine document purporting to be a certificate under the hand of the chief executive officer of SA Ambulance Service Inc and to certify that a person was at a specified time employed as an ambulance officer, or engaged as a volunteer ambulance officer, with an organisation that provides ambulance services and authorised by the chief executive officer of SA Ambulance Service Inc to exercise the powers conferred by this Act on authorised officers will be accepted as proof of the matters so certified in the absence of proof to the contrary;
- (c) an apparently genuine document purporting to be a certificate under the hand of the Chief Psychiatrist and to certify that a person was at a specified time classified by the Chief Psychiatrist as a mental health clinician for the purposes of this Act will be accepted as proof of the matters so certified in the absence of proof to the contrary;
- (d) an apparently genuine document purporting to be a Ministerial agreement or a request, direction or approval under Part 10 will be accepted as such in the absence of proof to the contrary;
- (e) an apparently genuine document purporting to be standards issued by the Chief Psychiatrist with the approval of the Minister under Part 12 will be accepted as such in the absence of proof to the contrary;
- (f) an apparently genuine document purporting to be a determination of the Minister under Part 12 will be accepted as such in the absence of proof to the contrary;
- (g) an apparently genuine document purporting to be a delegation by the Minister, the Chief Psychiatrist or the director of a treatment centre under Part 12 will be accepted as such in the absence of proof to the contrary.

### **110—Regulations**

- (1) The Governor may make any regulations that are contemplated by this Act, or are necessary or expedient for the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may—
  - (a) provide for the keeping of records; or
  - (b) prescribe, and provide for the payment and recovery of, fees in respect of accommodation, treatment or other services provided at treatment centres; or

- (c) provide for the recovery of medical practitioners' fees on the medical examination of persons with apparent mental illness; or
  - (d) provide for the recovery of fees for ambulance services provided in the exercise of powers under this Act; or
  - (e) prescribe any matter relating to procedures to be adopted under this Act; or
  - (f) prescribe a penalty not exceeding \$5 000 for breach of a regulation.
- (3) The regulations may—
- (a) make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Chief Psychiatrist, the director of a treatment centre or any other person or body prescribed by the regulations.

### **111—Review of Act**

The Minister must, within 4 years after the commencement of this Act or any provision of this Act—

- (a) cause a report to be prepared on the operation of this Act; and
- (b) cause a copy of the report to be laid before each House of Parliament.

### **Schedule 1—Certain conduct may not indicate mental illness**

A person does not have a mental illness merely because of any 1 or more of the following:

- (a) the person expresses or refuses or fails to express, or has expressed or refused or failed to express, a particular political opinion or belief;
- (b) the person expresses or refuses or fails to express, or has expressed or refused or failed to express, a particular religious opinion or belief;
- (c) the person expresses or refuses or fails to express, or has expressed or refused or failed to express, a particular philosophy;
- (d) the person expresses or refuses or fails to express, or has expressed or refused or failed to express, a particular sexual preference or sexual orientation;
- (e) the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular political activity;
- (f) the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular religious activity;
- (g) the person engages in or has engaged in a particular sexual activity or sexual promiscuity;
- (h) the person engages in or has engaged in immoral conduct;
- (i) the person engages in or has engaged in illegal conduct;
- (j) the person has developmental disability of mind;
- (k) the person takes or has taken alcohol or any other drug;

- (l) the person engages in or has engaged in anti-social behaviour;
- (m) the person has a particular economic or social status or is a member of a particular cultural or racial group.

However, nothing prevents, in relation to a person who takes or has taken alcohol or any other drug, the serious or permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication that a person is suffering from mental illness.

## **Schedule 2—Repeal and transitional provisions**

### **1—Repeal of *Mental Health Act 1993***

The *Mental Health Act 1993* is repealed.

### **2—Transitional provisions**

- (1) An order in force under section 12(1) of the *Mental Health Act 1993* immediately before the repeal of that Act continues in force as a level 1 detention and treatment order under this Act, subject to the provisions of this Act.
- (2) An order in force under section 12(5) of the *Mental Health Act 1993* immediately before the repeal of that Act continues in force as a level 2 detention and treatment order under this Act, subject to the provisions of this Act.
- (3) An order in force under section 12(6) of the *Mental Health Act 1993* immediately before the repeal of that Act continues in force as a level 2 detention and treatment order under this Act, subject to the provisions of this Act.
- (4) Despite subclause (3), an order continued in force under that subclause will, unless it earlier expires or is revoked, expire at 2 pm on the day 21 days after the day on which it was made.
- (5) An order in force under section 13 of the *Mental Health Act 1993* immediately before the repeal of that Act continues in force as a level 3 detention and treatment order under this Act, subject to the provisions of this Act.
- (6) Despite subclause (5), an order continued in force under that subclause will, unless it is earlier revoked, expire at 2 pm on the last day of the period specified in the order as the period for which the person is to be detained under the order.
- (7) An order in force under section 20 of the *Mental Health Act 1993* immediately before the repeal of that Act continues in force as a level 2 community treatment order under this Act, subject to the provisions of this Act.
- (8) Despite subclause (7), an order continued in force under that subclause will, unless it is earlier revoked, expire at 2 pm on the last day of the period specified in the order as the period for which the person is to be given treatment under the order.
- (9) An authorisation or consent given by the Board, a medical practitioner or any other person under a provision of the *Mental Health Act 1993* continues to have effect for the purpose of the corresponding provision of this Act.
- (10) A proceeding of the Board commenced under a provision of the *Mental Health Act 1993*, but not completed immediately before the repeal of that Act, may be continued and completed for the purpose of the corresponding provision of this Act.

- (11) An appeal commenced under the *Guardianship and Administration Act 1993* in relation to a decision or order of the Board under a provision of the *Mental Health Act 1993*, but not completed immediately before the repeal of the *Mental Health Act 1993*, may be continued and completed as if it related to a decision or order of the Board under the corresponding provision of this Act.

## Legislative history

### Notes

- In this version provisions that are uncommenced appear in italics.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

| Year        | No       | Title  | Assent           | Commencement  |
|-------------|----------|--|------------------|---|
| 2009        | 28       | <i>Mental Health Act 2009</i>  | 11.6.2009        | 1.7.2010 ( <i>Gazette</i> 24.6.2010 p3155) except s 3 <i>community visitor</i> , ss 47(2)(d), 48(3)(f) and Pt 8 Div 2—uncommenced |
| 2010        | 5        | <i>Health Practitioner Regulation National Law (South Australia) Act 2010</i>  | 1.7.2010         | Sch 1 (cl 22)—1.7.2010 ( <i>Gazette</i> 1.7.2010 p3338)   |
| <b>2010</b> | <b>9</b> | <b><i>Mental Health (Repeal of Harboursing Offence) Amendment Act 2010</i></b> | <b>29.7.2010</b> | <b>29.7.2010</b>  |

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision            | How varied                           | Commencement     |
|----------------------|--------------------------------------|------------------|
| Pt 1                 |                                      |                  |
| s 3                  |                                      |                  |
| medical practitioner | substituted by 5/2010 Sch 1 cl 22(1) | 1.7.2010         |
| psychiatrist         | substituted by 5/2010 Sch 1 cl 22(2) | 1.7.2010         |
| Pt 13                |                                      |                  |
| s 105                | <i>deleted by 9/2010 s 3</i>         | <b>29.7.2010</b> |

### Historical versions

1.7.2010