

**Legislative Council—No 116A**

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 5 July 2016

South Australia

**Mental Health (Review) Amendment Bill 2015**

A BILL FOR

An Act to amend the *Mental Health Act 2009*; and to make related amendments to the *Advance Care Directives Act 2013* and the *Health Care Act 2008*.

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- 2 Amendment of section 68—Preliminary
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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 (Review) Amendment Act 2015*.

#### 5 **2—Commencement**

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

#### **3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### 10 **Part 2—Amendment of *Mental Health Act 2009***

#### **4—Amendment of Long title**

- (1) Long title—delete "serious" and substitute:

severe

- (2) Long title—delete "mentally ill persons" and substitute:  
persons with mental illness

### 5—Amendment of section 3—Interpretation

- (1) Section 3—before the definition of *ambulance officer* insert:  
5                    *absent without leave*—see subsection (2);  
                      *advance care directive* means an advance care directive given under the  
                      *Advance Care Directives Act 2013* that is in force;
- (2) Section 3, definition of *approved treatment centre*—delete "Minister" and substitute:  
Chief Psychiatrist
- 10 (3) Section 3, definition of *authorised health professional*—delete the definition and  
substitute:  
                      *authorised community mental health facility* means a facility that is  
                      determined by the Chief Psychiatrist under Part 12 Division 5 to be an  
                      authorised community mental health facility;
- 15 (4) Section 3, definition of *authorised medical practitioner*—delete "Minister" and  
substitute:  
                      Chief Psychiatrist
- (5) Section 3—after the definition of *authorised medical practitioner* insert:  
20                    *authorised mental health professional* means a person determined by the  
                      Chief Psychiatrist under Part 12 Division 4 to be an authorised mental health  
                      professional for the purposes of this Act;
- (6) Section 3, definition of *authorised officer*, (d)—delete paragraph (d) and substitute:  
                      (d) a person, or a person of a class, approved by the Chief Psychiatrist,  
                      by notice in the Gazette, for the purposes of this definition; or  
25                    (e) any other person, or person of a class, prescribed by the regulations  
                      for the purposes of this definition;
- (7) Section 3, definition of *Chief Executive*—delete "administrative unit of the  
Public Service that is, under the Minister, responsible for the administration of this  
Act" and substitute:  
30                    Department
- (8) Section 3—after the definition of *decision* insert:  
                      *Department* means the administrative unit of the Public Service that is  
                      responsible for assisting a Minister in the administration of this Act;
- (9) Section 3, definition of *director*—delete the definition and substitute:  
35                    *director* of a treatment centre means the person for the time being in charge  
                      of the mental health services of the centre;
- (10) Section 3, definition of *limited treatment centre*—delete "Minister" and substitute:  
Chief Psychiatrist

- (11) Section 3, definition of *medical examination*—delete "authorised health professional" and substitute:

authorised mental health professional

- (12) Section 3, definition of *patient*—delete the definition and substitute:

*patient*, in relation to the provision of mental health services, includes (where the context so requires) the following:

- (a) a voluntary inpatient;
- (b) a person to whom a community treatment order applies;
- (c) a person to whom an inpatient treatment order applies;
- (d) a person to whom section 56 applies;
- (e) a person with a mental illness (within the meaning of this Act) who is liable to a supervision order under Part 8A of the *Criminal Law Consolidation Act 1935*;

- (13) Section 3, definition of *patient at large*—delete the definition and substitute:

*patient assistance request* means a patient assistance request issued under Part 9;

- (14) Section 3—after the definition of *prescribed psychiatric treatment* insert:

*Prescribed Psychiatric Treatment Panel* or *Panel* means the Prescribed Psychiatric Treatment Panel established under Part 7 Division A1;

- (15) Section 3—after the definition of *relative* insert:

*restrictive practice*, in relation to a patient, includes—

- (a) the use of physical, mechanical or chemical means to restrain the patient; and
- (b) seclusion or the confinement of the patient on his or her own in an area from which he or she cannot leave of his or her own volition;

- (16) Section 3—after the definition of *staff* insert:

*substitute decision-maker*, in respect of a person, means a substitute decision-maker appointed under an advance care directive given by the person under the *Advance Care Directives Act 2013* that is in force;

- (17) Section 3—after the definition of *Tribunal* insert:

*voluntary community patient* means a person receiving treatment, care and rehabilitation services for a mental illness in an authorised community mental health facility;

- (18) Section 3—after its present contents as amended by this Act (now to be designated as subsection (1)) insert:

(2) For the purposes of this Act, a patient will be taken to be *absent without leave* if—

- (a) an inpatient treatment order applies to the patient; and
- (b) the patient—

- 5
- (i) 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
- (ii) has left a treatment centre in which he or she was an involuntary inpatient, or the care and control of treatment centre staff, without leave of absence under Part 5 Division 5; or
- 10 (iii) 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.
- 15 (3) For the purposes of this Act, a form that has been approved by the Chief Psychiatrist must—
- (a) be published on the Department's website; and
- (b) be used for the purposes specified in the form; and
- 20 (c) contain the information required by, and be presented and completed in accordance with, any instruction contained in the form; and
- (d) be lodged in the manner and form required by the Chief Psychiatrist.

#### **6—Amendment of section 4—Application of Act**

- 25 (1) Section 4(1)—after paragraph (b) insert:
- (c) an obligation under this Act to give information to a person (including information about the person's illness, any order that applies to the person, his or her legal rights, the treatment and other services that are to be provided or offered to the person and what alternatives are available) is, if the person is a child under 16 years of age, to be treated as an obligation to give the information to a parent or guardian of the child.
- 30
- (2) Section 4—after subsection (2) insert:
- (3) Subject to an express provision of this Act or of any other Act, this Act is in addition to and does not derogate from—
- 35 (a) the *Advance Care Directives Act 2013*; and
- (b) the *Consent to Medical Treatment and Palliative Care Act 1995*; and
- (c) the *Guardianship and Administration Act 1993*.

## **7—Amendment of section 5—Medical examinations by audio-visual conferencing**

Section 5—delete "authorised health professional" wherever occurring and substitute in each case:

5 authorised mental health professional

## **8—Insertion of section 5A**

After section 5 insert:

### **5A—Decision-making capacity**

- 10 (1) A person is, in the absence of evidence or a law of the State to the contrary, to be presumed to have full decision-making capacity in respect of decisions about his or her health care, residential and accommodation arrangements and personal affairs.
- (2) For the purposes of this Act, a person will be taken to have impaired decision-making capacity in respect of a particular decision if—
- 15 (a) the person is not capable of—
- (i) understanding any information that may be relevant to the decision (including information relating to the consequences of making a particular decision); or
  - 20 (ii) retaining such information; or
  - (iii) using such information in the course of making the decision; or
  - (iv) communicating his or her decision in any manner; or
- 25 (b) in the case of a person who has given an advance care directive—the person has satisfied any requirement in the advance care directive that sets out when the person is to be considered to have impaired decision-making capacity (however described) in respect of a decision of the relevant
- 30 kind.
- (3) For the purposes of this Act—
- (a) a person will not be taken to be incapable of understanding information merely because the person is not able to understand matters of a technical or trivial nature; and
  - 35 (b) a person will not be taken to be incapable of retaining information merely because the person can only retain the information for a limited time; and
  - (c) a person may fluctuate between having impaired decision-making capacity and full decision-making capacity; and
  - 40



- (d) a person's decision-making capacity will not be taken to be impaired merely because a decision made by the person results, or may result, in an adverse outcome for the person.

### 9—Amendment of section 6—Objects

5           Section 6(a)—delete "serious" and substitute:  
                  severe

### 10—Amendment of section 7—Guiding principles

- (1) Section 7(1)—after paragraph (a) insert:
- 10           (ab) mental health services should meet the highest levels of quality and safety;
- (ac) mental health services should (subject to this Act or any other Act) be provided in accordance with international treaties and agreements to which Australia is a signatory;
- (2) Section 7(1)(b)—delete "the services" and substitute:
- 15           mental health services
- (3) Section 7(1)(c)—delete paragraph (c) and substitute:
- 20           (c) mental health services should 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;
- (ca) mental health services should take into account—
- (i) the different developmental stages of infants, children, young persons, adults and older persons; and
- 25           (ii) the gender or gender identity, or the sexuality or sexual identity or orientation, of persons; and
- (iii) the particular needs of persons with disability; and
- (iv) in the case of persons of Aboriginal or Torres Strait Islander descent—the persons' traditional beliefs and practices and, when practicable and appropriate, involve collaboration with health workers and traditional healers from their communities; and
- 30           (v) the cultural and linguistic backgrounds of persons; and
- (vi) the background, circumstances and particular needs of persons who have experienced torture or trauma;
- (4) Section 7(1)(h)—delete "mechanical body restraints and seclusion" and substitute:
- 35           restrictive practices
- (5) Section 7(2), definition of *mental health services*—delete "serious" and substitute:
- severe

- (6) Section 7(2)—after the definition of *mental health services* insert:

*patient* includes a voluntary community patient.

**11—Amendment of section 9—Voluntary inpatients to be given statement of rights**

- 5 Section 9(1)—delete "written statement in the form approved by the Minister" and substitute:

statement in writing in the form approved by the Chief Psychiatrist

**12—Amendment of section 10—Level 1 community treatment orders**

- 10 (1) Section 10—delete "authorised health professional" wherever occurring and substitute in each case:

authorised mental health professional

- (2) Section 10(1)(b)—delete "including" and substitute:

whether physical or mental, and including

- (3) Section 10(1)(c)—delete paragraph (c) and substitute:

- 15 (c) the person has impaired decision-making capacity relating to appropriate treatment of the person's mental illness; and

- (4) Section 10(3)—delete "Minister" and substitute:

Chief Psychiatrist

- (5) Section 10(4)—delete "28" and substitute:

20 42

- (6) Section 10(5)—delete subsection (5) and substitute:

- (5) On the making of a level 1 community treatment order, the following provisions apply:

- 25 (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 from whomever made the order;

- 30 (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;

- 35 (d) after completion of 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.

- (7) Section 10(8)—delete "written notice in the form approved by the Minister" and substitute:

notice in the form approved by the Chief Psychiatrist

**13—Amendment of section 11—Chief Psychiatrist to be notified of level 1 orders or their variation or revocation**

- (1) Section 11(1)—delete "written notice in the form approved by the Minister" and substitute:

notice in the form approved by the Chief Psychiatrist

- (2) Section 11(2)—delete "by written notice sent or given to the Tribunal,"

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

- (1) Section 12—delete "authorised health professional" wherever occurring and substitute in each case:

authorised mental health professional

- (2) Section 12(2)—delete "written statement in the form approved by the Minister" and substitute:

statement in writing in the form approved by the Chief Psychiatrist

**15—Repeal of section 15**

Section 15—delete the section

**16—Amendment of section 16—Level 2 community treatment orders**

- (1) Section 16(1)(b)—delete "including" and substitute:

whether physical or mental, and including

- (2) Section 16(1)(c)—delete paragraph (c) and substitute:

(c) the person has impaired decision-making capacity relating to appropriate treatment of the person's mental illness; and

- (3) Section 16(3)(b)—delete paragraph (b)

**17—Amendment of section 21—Level 1 inpatient treatment orders**

- (1) Section 21—delete "authorised health professional" wherever occurring and substitute in each case:

authorised mental health professional

- (2) Section 21(1)(b)—delete "including" and substitute:

whether physical or mental, and including

- (3) Section 21(1)—after paragraph (b) insert:

(ba) the person has impaired decision-making capacity relating to appropriate treatment of the person's mental illness; and

- (4) Section 21(3)—delete "Minister" and substitute:

Chief Psychiatrist

- (5) Section 21(8)—delete "written notice in the form approved by the Minister" and substitute:

5 notice in the form approved by the Chief Psychiatrist

**18—Amendment of section 22—Chief Psychiatrist to be notified of level 1 orders or their revocation**

- (1) Section 22(1)—delete "written notice in the form approved by the Minister" and substitute:

10 notice in the form approved by the Chief Psychiatrist

- (2) Section 22(2)—delete "by written notice sent or given to the Tribunal,"

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

- (1) Section 23—delete "authorised health professional" wherever occurring and substitute in each case:

15 authorised mental health professional

- (2) Section 23(2)—delete "written statement in the form approved by the Minister" and substitute:

statement in writing in the form approved by the Chief Psychiatrist

20 **20—Amendment of section 24—Treatment of patients to whom level 1 orders apply**

- (1) Section 24(1)—delete "or any other illness" and substitute:

, or for any other illness that may be causing or contributing to the mental illness,

- 25 (2) Section 24(5)—delete "written notice in the form approved by the Minister" and substitute:

notice in the form approved by the Chief Psychiatrist

**21—Amendment of section 25—Level 2 inpatient treatment orders**

- (1) Section 25(2)(b)—delete "including" and substitute:

30 whether physical or mental, and including

- (2) Section 25(2)—after paragraph (b) insert:

(ba) the person has impaired decision-making capacity relating to appropriate treatment of the person's mental illness; and

- (3) Section 25(5)—delete "Minister" and substitute:

35 Chief Psychiatrist

- (4) Section 25(6)—delete "A" and substitute:

Subject to subsection (7), a

(5) Section 25—after subsection (6) insert:

(7) A level 2 inpatient treatment order may, once only, be extended by a psychiatrist or authorised medical practitioner (other than the psychiatrist or authorised medical practitioner who made the order) who has examined the patient to whom the order applies and, in that case, the order, unless earlier revoked, will expire at a time fixed in the extended order (which must be 2 pm on a business day not later than 42 days from the day on which the order would, had it not been extended, have expired).

(6) Section 25(9)—delete "written notice in the form approved by the Minister" and substitute:

notice in the form approved by the Chief Psychiatrist

## **22—Amendment of section 26—Notices and reports relating to level 2 orders**

(1) Section 26(1)—delete "written notice in the form approved by the Minister" and substitute:

notice in the form approved by the Chief Psychiatrist

(2) Section 26(2)—delete "by written notice sent or given to the Tribunal,"

## **23—Amendment of section 27—Copies of level 2 orders, notices and statements of rights to be given to patients etc**

Section 27(2)—delete "written statement in the form approved by the Minister" and substitute:

statement in writing in the form approved by the Chief Psychiatrist

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

(1) Section 28(1)—delete "or any other illness" and substitute:

, or for any other illness that may be causing or contributing to the mental illness,

(2) Section 28(4)—delete "written notice in the form approved by the Minister" and substitute:

notice in the form approved by the Chief Psychiatrist

## **25—Amendment of section 29—Level 3 inpatient treatment orders**

(1) Section 29(1)(b)—delete "including" and substitute:

whether physical or mental, and including

(2) Section 29(1)—after paragraph (b) insert:

(ba) the person has impaired decision-making capacity relating to appropriate treatment of the person's mental illness; and

(3) Section 29(3)—after "to whom a" insert:

level 1,



(3) Section 39(2)(b)—delete paragraph (b) and substitute:

(b) must, as far as practicable, be prepared and revised in consultation with—

- (i) 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
- (ii) any service provider or agency that is providing treatment, care or support to the patient; and

(4) Section 39—after subsection (2) insert:

(3) In this section—

*voluntary patient* means—

- (a) a voluntary community patient; or
- (b) a voluntary inpatient.

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

Section 40(2)(b)—delete paragraph (b) and substitute:

(b) must, as far as practicable, be prepared and revised in consultation with—

- (i) 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
- (ii) any service provider or agency that is providing treatment, care or support to the patient; and

### **34—Amendment of section 41—Treatment and care plans for patients to whom inpatient treatment orders apply**

Section 41(2)(b)—delete paragraph (b) and substitute:

(b) must, as far as practicable, be prepared and revised in consultation with—

- (i) 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
- (ii) any service provider or agency that is providing treatment, care or support to the patient; and

### **35—Insertion of Part 7 Division A1**

Part 7—before Division 1 insert:

#### **Division A1—Prescribed Psychiatric Treatment Panel**

##### **41A—Prescribed Psychiatric Treatment Panel**

- (1) The Prescribed Psychiatric Treatment Panel is established.

- (2) The Panel consists of—
- (a) the Chief Psychiatrist; and
  - (b) no more than 8 other persons appointed by the Governor on the recommendation of the Minister, of whom at least—
    - (i) 1 must be a patient or former patient; and
    - (ii) 1 must be a carer or former carer; and
    - (iii) 1 must be a senior psychiatrist; and
    - (iv) 1 must be a neurosurgeon; and
    - (v) 1 must be a legal practitioner in this State; and
    - (vi) 1 must be a person with credentials and experience in bioethics.
- (3) A member of the Panel must be a person who, in the opinion of the Minister, is qualified, by reason of his or her knowledge, expertise and experience, to assist the Panel to exercise its functions under this Act.
- (4) The Minister must consult with the Chief Psychiatrist before making a recommendation under subsection (2)(b).
- (5) The Governor may make appointments from time to time in accordance with this section for the purpose of maintaining or increasing the membership of the Panel established under this section.

#### **41B—Conditions of appointment to Panel**

- (1) An appointed member of the Panel will be appointed for a term of office, not exceeding 5 years, and on conditions specified in the instrument of appointment (and is eligible for reappointment at the expiration of a term of office).
- (2) A member of the Panel is entitled to receive such allowances and expenses as the Governor may from time to time determine.
- (3) The Governor may, on the recommendation of the Minister, remove an appointed member from office for—
- (a) mental or physical incapacity to carry out official duties satisfactorily; or
  - (b) neglect of duty; or
  - (c) dishonourable conduct.
- (4) A person appointed to the Panel ceases to be a member if the person—
- (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or



- (d) ceases to satisfy any qualification by virtue of which the person was eligible for appointment to the Tribunal; or
  - (e) is removed from office under subsection (3).
- (5) The Minister must consult with the Chief Psychiatrist before making a recommendation under subsection (3).

#### 41C—Functions of Panel

The Prescribed Psychiatric Treatment Panel has the following functions in relation to the regulation of prescribed psychiatric treatments:

- (a) to conduct a review of the progress of a patient who has, in the course of any 12 month period, received 3 or more courses of ECT treatment;
- (b) to conduct a review of the progress of a patient to whom, in the course of any 12 month period, 2 or more episodes of ECT have been administered without consent in reliance on section 42(6);
- (c) to authorise the carrying out of neurosurgery on a patient as a treatment for mental illness;
- (d) to carry out any other function conferred on the Panel under this Act.

#### 41D—Constitution and proceedings of Panel

- (1) The following provisions apply in proceedings before the Prescribed Psychiatric Treatment Panel under this Act:
- (a) subject to this section, the Panel may decide its own proceedings;
  - (b) the Chief Psychiatrist is the presiding member of the Panel;
  - (c) the Panel will meet at such times and places as required by the Chief Psychiatrist for the purposes of carrying out its functions;
  - (d) the Panel will be constituted, in relation to a particular matter or matters, by the Chief Psychiatrist and at least 2 other members selected by the Chief Psychiatrist;
  - (e) a question the Panel is required to decide will be resolved according to the opinion of the majority of them (but, if the opinions on the question are equally divided, the question is to be resolved according to the opinion of the Chief Psychiatrist);
  - (f) a telephone or video conference between members will, for the purposes of this section, be taken to be a meeting of the Panel at which the participating members are present.
- (2) A decision of the Panel must be recorded in writing and kept by the Chief Psychiatrist.

### 36—Amendment of section 42—ECT

- (1) Section 42(1)(c)(ii)—delete "by a medical agent or guardian of the patient or by the Tribunal on application under this section; or" and substitute:

5 (A) in the case of a patient who has given an advance care directive under which a substitute decision-maker has been appointed—by each substitute decision-maker appointed under the advance care directive or by the Tribunal on application under this section; or

10 (B) in any other case—by a medical agent or guardian of the patient or by the Tribunal on application under this section; or

- (2) Section 42(4)—delete subsection (4) and substitute:

(4) The following provisions apply in relation to consent given to the administration of ECT treatment:

15 (a) the consent extends to the administration of anaesthetics required for the purposes of the ECT treatment;

(b) the consent does not extend to the use of any force for the purposes of administering the ECT treatment;

20 (c) consent may be withdrawn at any time by the person by whom consent has been given.

- (3) Section 42(7)—delete "without consent in reliance on subsection (6)" and substitute:

, either with consent under subsection (1) or without consent in reliance on subsection (6),

### 37—Amendment of section 43—Neurosurgery for mental illness

- 25 (1) Section 43(1)(b)—delete "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" and substitute:

—  
(i) the person who is to carry it out; and

30 (ii) 2 psychiatrists (at least 1 of whom is a senior psychiatrist), each of whom has separately examined the patient; and

(iii) the Prescribed Psychiatric Treatment Panel; and

- (2) Section 43—after subsection (1) insert:

35 (1a) For the purposes of subsection (1)(b)(iii), the person by whom the neurosurgery is to be carried out must ensure that the Chief Psychiatrist is sent or given, at least 14 days before the neurosurgery is proposed to be carried out—

(a) a written notice in the form approved by the Chief Psychiatrist—

40 (i) advising the Chief Psychiatrist of the proposed neurosurgery; and

- (ii) requesting the Prescribed Psychiatric Treatment Panel to authorise the proposed neurosurgery; and
- (iii) containing any other information required by the notice; and

5 (b) a copy of the report of each psychiatrist on examining the patient under subsection (1)(b)(ii).

(3) Section 43—after subsection (2) insert:

10 (2a) A person who carries out neurosurgery on a patient as a treatment for mental illness must ensure that the Chief Psychiatrist is sent or given, within 3 months of carrying out the neurosurgery—

(a) a written report in the form approved by the Chief Psychiatrist containing such information about the neurosurgery as may be required by the Chief Psychiatrist; and

15 (b) a copy of a report from a psychiatrist who has examined the patient after the neurosurgery.

### **38—Amendment of section 44—Other prescribed psychiatric treatments**

Section 44—after subsection (3) insert:

20 (4) No regulation may be made declaring treatment to be prescribed psychiatric treatment, or regulating the administration of any such treatment, except on the recommendation of the Prescribed Psychiatric Treatment Panel.

### **39—Amendment of section 45—Assistance of interpreters**

25 Section 45—delete "authorised health professional" wherever occurring and substitute in each case:

authorised mental health professional

### **40—Amendment of section 46—Copies of Tribunal's orders, decisions and statements of rights to be given**

Section 46(1)(b)—delete "Minister" and substitute:

30 Chief Psychiatrist

### **41—Amendment of section 50—Community visitors**

Section 50(4)—delete subsection (4)

### **42—Amendment of section 51—Community visitors' functions and powers**

(1) Section 51(1)—after paragraph (a) insert:

35 (ab) to conduct visits to and inspections of authorised community mental health facilities as required or authorised under this Division;

(2) Section 51—after subsection (2) insert:

- (3) 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*.

#### **43—Insertion of section 51A**

After section 51 insert:

##### **51A—Delegation by Principal Community Visitor**

- (1) The Principal Community Visitor may delegate a power or function of the Principal Community Visitor under this Act to another community visitor.
- (2) A delegation under this section—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the Principal Community Visitor to act in a matter; and
  - (c) is revocable at will by the Principal Community Visitor.

#### **44—Amendment of section 52—Visits to and inspections of treatment centres**

(1) Section 52(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) Subject to subsection (2), each treatment centre—
  - (a) must be visited and inspected at least once in every 2 month period by 2 or more community visitors; and
  - (b) may be visited at any time by 2 or more community visitors.
- (2) The Principal Community Visitor may, at any time, visit a treatment centre alone.

(2) Section 52(3)—delete "subsection (1), the community visitors" and substitute:

this section, a community visitor

(3) Section 52(7)—delete subsection (7)

#### **45—Insertion of section 52A**

After section 52 insert:

##### **52A—Visits to and inspection of authorised community mental health facilities**

- (1) An authorised community mental health facility—
  - (a) must be visited and inspected at least once in every 2 month period by 2 or more community visitors; and
  - (b) may be visited at any time by 2 or more community visitors.

- (2) However, the Principal Community Visitor may visit an authorised community mental health facility alone at any time.
- (3) On a visit to an authorised community mental health facility, a community visitor must—
- 5           (a) so far as practicable, inspect all parts of the facility used for or relevant to the care, treatment or control of patients; and
- (b) take any other action required under the regulations.
- (4) After any visit to an authorised community mental health facility, 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.
- 10           (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.
- 15           (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.

#### **46—Amendment of section 54—Reports by Principal Community Visitor**

20           Section 54(1)—delete "work of the community visitors" and substitute:  
             performance of the community visitors' functions

#### **47—Insertion of section 54A**

             Before section 55 insert:

##### **54A—Issuing of patient assistance requests**

- 25           (1) If a community treatment order applies to a patient and the patient has not complied with the requirements of the order, a medical practitioner or mental health clinician may issue a patient assistance request for the purpose of treating the patient in accordance with the order at the place where the person is located.
- 30           (2) A patient assistance request must be—
- (a) directed to authorised officers and police officers generally; and
- (b) in writing in the form approved by the Chief Psychiatrist.
- 35           (3) A person in respect of whom a patient assistance request has been issued who is treated under the care and control of an authorised officer or police officer under this Part must, as soon as practicable, be given a copy of—
- (a) the patient assistance request; and
- 40           (b) a written statement in the form approved by the Chief Psychiatrist (a *statement of rights*)—

- (i) informing the patient of his or her legal rights; and
- (ii) containing any other information prescribed by the regulations.

**48—Amendment of section 55—Issuing of patient transport requests**

- 5 (1) Section 55—delete "authorised health professional" wherever occurring and substitute in each case:
- authorised mental health professional
- (2) Section 55(1)(c)—delete "a patient at large" and substitute:
- absent without leave
- 10 (3) Section 55(2)(b)—delete "Minister" and substitute:
- Chief Psychiatrist
- (4) Section 55(3)—delete "be given a copy of the patient transport request as soon as practicable" and substitute:
- , as soon as practicable, be given a copy of—
- 15 (a) the patient transport request; and
- (b) a written statement in the form approved by the Chief Psychiatrist (a *statement of rights*)—
- (i) informing the patient of his or her legal rights; and
  - (ii) containing any other information prescribed by the regulations.
- 20

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

- (1) Section 56(1)(a)—delete "a patient transport request has been issued under section 55(1); or" and substitute:
- 25 —
- (i) a patient assistance request has been issued under section 54A(1); or
  - (ii) a patient transport request has been issued under section 55(1); or
- 30 (2) Section 56(1)(b)—delete "at large" and substitute:
- who is absent without leave
- (3) Section 56(4)—before paragraph (a) insert:
- (aa) in the case of a person referred to in subsection (1)(a)(i)—provide such assistance as reasonably required for the purpose of enabling or
- 35 facilitating the treatment of the person at the place where the person is located; or
- (4) Section 56(4)(a)—delete "subsection (1)(a)" and substitute:
- subsection (1)(a)(ii)

(5) Section 56(4)(c)—delete "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" and substitute:

(i) 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; and

(ii) give the person a copy of a written statement in the form approved by the Chief Psychiatrist (a *statement of rights*)—

(A) informing the patient of his or her legal rights; and

(B) containing any other information prescribed by the regulations.

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

(1) Section 57(1)(a)—delete "a patient transport request has been issued under section 55(1); or" and substitute:

—

(i) a patient assistance request has been issued under section 54A(1); or

(ii) a patient transport request has been issued under section 55(1);  
or

(2) Section 57(1)(b)—delete "at large" and substitute:

who is absent without leave

(3) Section 57(2)—delete "at large" and substitute:

who is absent without leave

(4) Section 57(5)—before paragraph (a) insert:

(aa) in the case of a person referred to in subsection (1)(a)(i)—provide such assistance as reasonably required for the purpose of enabling or facilitating the treatment of the person at the place where the person is located; or

(5) Section 57(5)(a)—delete "subsection (1)(a)" and substitute:

subsection (1)(a)(ii)

### **51—Insertion of section 58A**

After section 58 insert:

#### **58A—Officers to keep records about exercise of powers under Act**

(1) Authorised officers must keep records relating to the exercise of powers under this Act in a manner and form approved by the Chief Psychiatrist.

- (2) Police officers must keep such records relating to the exercise of powers under this Act as may be required by the Commissioner of Police.

### **52—Amendment of section 61—Interpretation**

- 5 (1) Section 61, definition of *corresponding law*—delete the definition and substitute:

*another jurisdiction* means a State (other than South Australia) or a Territory of the Commonwealth;

*corresponding law* means a law of another jurisdiction—

- (a) that—

10 (i) makes provision for the treatment and care of persons with mental illness; and

(ii) corresponds (or substantially corresponds) to this Act; or

- (b) that is declared by the regulations to be a corresponding law for the purposes of this definition;

- 15 (2) Section 61, definition of *interstate patient at large*—delete the definition and substitute:

20 *interstate patient absent without leave* means a person to whom an interstate inpatient treatment order applies who is absent from an interstate treatment centre in which he or she was an interstate inpatient, or is otherwise absent without leave, without lawful authority under the relevant corresponding law;

### **53—Amendment of section 63—Requests or approvals relating to actions involving other jurisdictions**

- (1) Section 63(1)(a)—after "contemplated by" insert:

, or not disallowed under,

- 25 (2) Section 63(2)(a)—after "contemplates" insert:

, or does not disallow,

### **54—Amendment of section 64—Powers of South Australian officers**

Section 64—delete "a corresponding law or under a Ministerial agreement" and substitute:

30 this Act, a corresponding law or a Ministerial agreement



**55—Amendment of section 66—South Australian community treatment orders and treatment in other jurisdictions**

Section 66(3) and (4)—delete subsections (3) and (4) and substitute:

- 5
- (3) Subject to subsection (5), if an interstate authorised officer believes on reasonable grounds that a person in the officer's jurisdiction is a patient to whom a South Australian community treatment order applies (other than an order referred to in subsection (1)), 1 or more of the following powers may be exercised in relation to the person:
- 10
- (a) the person may be taken into the care and control of the officer;
- 15
- (b) the person may be delivered by an interstate officer into the care and control of a South Australian authorised officer for the purpose of the person's transport to a South Australian authorised community mental health facility, the person's usual place of residence or some other place specified in the order;
- 20
- (c) the person may be taken to an interstate treatment centre by an interstate officer and treated as an involuntary community patient there;
- 25
- (d) the person may be given treatment for his or her mental illness in the interstate treatment centre, without any requirement for the person's consent, based on the requirements of the South Australian community treatment order or as authorised by a medical practitioner who has examined the patient.
- (4) Section 63(1) applies to the taking of action under subsection (1), (2) or (3).
- 30
- (5) The powers under subsection (3) may only be exercised for a period not exceeding 42 days pending the making of an interstate community treatment order or the expiry of the South Australian community treatment order (whichever occurs first).
- 35
- (6) If a South Australian authorised officer or an 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 subsection (2), the officer may, for the purpose of the person's transport to an interstate treatment centre—
- 40
- (a) exercise the powers of an authorised officer under Part 9; and
- (b) if the officer is a police officer (however described) in South Australia or another jurisdiction—exercise the powers of a police officer under Part 9,
- (and the provisions of Part 9, including section 60, will apply for the purpose with necessary modifications).

**56—Amendment of section 67—Powers of interstate officers**

- (1) Section 67—delete ", other than any power of forcible entry,"
- (2) Section 67—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
- 5                   (2) Despite subsection (1), a power of forcible entry may only be exercised in South Australia in connection with an interstate community treatment order if the interstate officer is a police officer (however described) in the jurisdiction in respect of which the corresponding law is law.

**10   57—Amendment of section 68—Interstate community treatment orders and treatment in South Australia**

Section 68—after its present contents (now to be designated as subsection (1)) insert:

- 15                   (2) If a South Australian authorised officer believes on reasonable grounds that a person in South Australia is a patient to whom an interstate community treatment order applies (other than an order referred to in subsection (1)), 1 or more of the following powers may be exercised in relation to the person:
- 20                   (a) the person may be taken into the care and control of a South Australian authorised officer;
- 25                   (b) 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, the person's usual place of residence or some other place specified in the order;
- 30                   (c) the person may be taken to a South Australian authorised community mental health facility by a South Australian authorised officer and treated as an involuntary community inpatient there;
- 35                   (d) the person may be given treatment for his or her mental illness in South Australia, without any requirement for the person's consent, based on the requirements of the interstate community treatment order or as authorised by a medical practitioner who has examined the patient.
- 40                   (3) Section 63(1) applies to the taking of action under subsection (2)(b).
- (4) The powers under subsection (2) may only be exercised for a period not exceeding 42 days pending the making of a South Australian community treatment order under section 69 or the expiry of the interstate community treatment order (whichever occurs first).
- (5) The Chief Psychiatrist must, as soon as practicable, be advised by notice in the form approved by the Chief Psychiatrist of a person to whom an interstate community treatment order applies who is being treated in South Australia for the person's mental illness under subsection (1) or (2).

- (6) The Chief Psychiatrist must ensure that, as soon as practicable after being so advised—
- (a) the person is given a copy of a written statement in the form approved by the Chief Psychiatrist (a *statement of rights*)—
    - (i) informing the person of his or her legal rights; and
    - (ii) containing any other information prescribed by the regulations; and
  - (b) subject to subsection (7)—a guardian, medical agent, relative, carer or friend of the person is notified that the person is being treated for the person's mental illness in South Australia under this section.
- (7) The following provisions apply for the purposes of subsection (6)(b):
- (a) the person to be notified must be—
    - (i) a guardian, medical agent, relative, carer or friend of the person nominated by the person for the purpose; or
    - (ii) if that is not practicable or appropriate—a guardian, medical agent, relative, carer or friend of the person who appears to have or be assuming responsibility for the care of the person; or
    - (iii) if that is not practicable or appropriate—any other guardian, medical agent, relative, carer or friend of the person whom it is practicable and appropriate to notify;
  - (b) the Chief Psychiatrist is not required to notify a person whose whereabouts are not known to or readily ascertainable by the Chief Psychiatrist;
  - (c) it is not appropriate for the Chief Psychiatrist to notify a particular person if the Chief Psychiatrist has reason to believe that it would be contrary to the person to whom the order applies best interests to do so.
- (8) A South Australian authorised officer or an interstate authorised officer may, for the purpose of transporting the person to a South Australian treatment centre or interstate treatment centre, or enabling or facilitating medical treatment of the person—
- (a) exercise the powers of an authorised officer under Part 9; and
  - (b) if the officer is a police officer (however described) in South Australia or another jurisdiction—exercise the powers of a police officer under Part 9,
- (and the provisions of Part 9, including section 60, will apply for the purpose with necessary modifications).

## 58—Amendment of section 69—Making of South Australian community treatment orders when interstate orders apply

Section 69—after subsection (2) insert:

5 (2a) The Chief Psychiatrist must ensure that, as soon as practicable after making the order—

(a) the person is given a copy of—

(i) the order; and

(ii) a written statement in the form approved by the Chief Psychiatrist (a *statement of rights*)—

10 (A) informing the person of his or her legal rights; and

(B) containing any other information prescribed by the regulations; and

15 (b) subject to subsection (2b)—a guardian, medical agent, relative, carer or friend of the person is notified of the making of the order and the requirements of the order.

(2b) The following provisions apply for the purposes of subsection (2a)(b):

(a) the person to be notified must be—

20 (i) a guardian, medical agent, relative, carer or friend of the person nominated by the person for the purpose; or

25 (ii) if that is not practicable or appropriate—a guardian, medical agent, relative, carer or friend of the person who appears to have or be assuming responsibility for the care of the person; or

30 (iii) if that is not practicable or appropriate—any other guardian, medical agent, relative, carer or friend of the person whom it is practicable and appropriate to notify;

(b) the Chief Psychiatrist is not required to notify a person whose whereabouts are not known to or readily ascertainable by the Chief Psychiatrist;

35 (c) it is not appropriate for the Chief Psychiatrist to notify a particular person if the Chief Psychiatrist has reason to believe that it would be contrary to the person to whom the order applies best interests to do so.

**59—Amendment of section 70—Transfer from South Australian treatment centres**

(1) Section 70(1)—delete subsection (1) and substitute:

5 (1) The Chief Psychiatrist may give a direction for the transfer to an interstate treatment centre of an involuntary inpatient or a patient absent without leave from a South Australian treatment centre.

(2) Section 70(3)—delete "Minister" and substitute:

Chief Psychiatrist

(3) Section 70(4)—delete "director" and substitute:

10 Chief Psychiatrist

(4) Section 70(5)(b) and (c)—delete "director" wherever occurring and substitute in each case:

Chief Psychiatrist

(5) Section 70(6)—delete "A" and substitute:

15 Subject to subsection (7), a

(6) Section 70—after subsection (6) insert:

(7) Subsection (6) does not apply if written consent to the transfer has been given—

20 (a) if the patient has attained 16 years of age and is capable of making decisions on his or her own behalf—by the patient; or

(b) in any other case—by a person referred to in subsection (5)(a).

**60—Amendment of section 71—Transfer to South Australian treatment centres**

25

(1) Section 71(1)—delete subsection (1) and substitute:

(1) The Chief Psychiatrist may approve the transfer of a person to whom an interstate inpatient treatment order applies (including an interstate patient absent without leave) to a South Australian treatment centre.

30 (2) Section 71(2)—delete "Minister" and substitute:

Chief Psychiatrist

(3) Section 71—after subsection (2) insert:

(2a) The Chief Psychiatrist must ensure that, as soon as practicable after the patient is admitted to the South Australian treatment centre—

35 (a) the patient is given a copy of—

(i) the order; and

(ii) a written statement in the form approved by the Chief Psychiatrist (a *statement of rights*)—

(A) informing the patient of his or her legal rights; and

(B) containing any other information prescribed by the regulations; and

5 (b) subject to subsection (2b)—a guardian, medical agent, relative, carer or friend of the patient is notified of the patient's admission.

(2b) The following provisions apply for the purposes of subsection (2a)(b):

10 (a) the person to be notified must be—

(i) a guardian, medical agent, relative, carer or friend of the person nominated by the patient for the purpose; or

15 (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

20 (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 Chief Psychiatrist is not required to notify a person whose whereabouts are not known to or readily ascertainable by the Chief Psychiatrist;

25 (c) it is not appropriate for the Chief Psychiatrist to notify a particular person if the Chief Psychiatrist has reason to believe that it would be contrary to the patient's best interests to do so.

### **61—Amendment of section 72—Patient transport requests**

30 (1) Section 72(1)—delete "director of a South Australian treatment centre" and substitute:  
Chief Psychiatrist

(2) Section 72(1)—delete "director" second occurring and substitute:  
Chief Psychiatrist

(3) Section 72(2)—delete subsection (2) and substitute:

35 (2) If the Chief Psychiatrist has approved the transfer of a person to a South Australian treatment centre under this Division, the Chief Psychiatrist may issue a patient transport request for the purpose of the person's transport to the centre.

(4) Section 72(3)—delete "Minister" and substitute:

40 Chief Psychiatrist

## 62—Substitution of section 73

Section 73—delete the section and substitute:

### 73—Powers when patient transport request issued

5 If a South Australian authorised officer or an 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, for the purpose of the person's transport to an interstate treatment centre or South Australian treatment centre (as the case requires)—

10 (a) exercise the powers of an authorised officer under Part 9; and

(b) if the officer is a police officer (however described) in South Australia or another jurisdiction—exercise the powers of a police officer under Part 9,

15 (and the provisions of Part 9, including section 60, will apply for the purpose with necessary modifications).

## 63—Amendment of section 74—Transport to other jurisdictions when South Australian inpatient treatment orders apply

(1) Section 74(1)—after "may," insert:

20 with the approval of the Chief Psychiatrist,

(2) Section 74(3)—delete subsection (3) and substitute:

(3) A South Australian authorised officer or an interstate authorised officer may, for the purpose of the person's transport to an interstate treatment centre—

25 (a) exercise the powers of an authorised officer under Part 9; and

(b) if the officer is a police officer (however described) in South Australia or another jurisdiction—exercise the powers of a police officer under Part 9,

30 (and the provisions of Part 9, including section 60, will apply for the purpose with necessary modifications).

## 64—Amendment of section 75—Transport to other jurisdictions of persons with apparent mental illness

(1) Section 75(2)—after "may," insert:

35 with the approval of the Chief Psychiatrist,

(2) Section 75(2)—delete "authorised health professional" wherever occurring and substitute in each case:

authorised mental health professional

(3) Section 75(4)—delete subsection (4) and substitute:

(4) A South Australian authorised officer or an interstate authorised officer may, for the purpose of the person's transport to an interstate treatment centre, or to an interstate medical practitioner or interstate authorised mental health professional—

- (a) exercise the powers of an authorised officer under Part 9; and
- (b) if the officer is a police officer (however described) in South Australia or another jurisdiction—exercise the powers of a police officer under Part 9,

(and the provisions of Part 9, including section 60, will apply for the purpose with necessary modifications).

(4) Section 75(5), definition of *interstate authorised health professional*—after "*authorised*" insert:

*mental*

#### **65—Amendment of section 76—Transport to other jurisdictions when interstate inpatient treatment orders apply**

(1) Section 76(1)—delete "at large" and substitute:

absent without leave

(2) Section 76(1)(d)—after "may" insert:

, with the approval of the Chief Psychiatrist,

(3) Section 76(1)(e)—after "may" insert:

, with the approval of the Chief Psychiatrist,

(4) Section 76—after subsection (2) insert:

(2a) As soon as practicable after the person is taken to a South Australian treatment centre under subsection (1)(d), or given treatment under subsection (1)(e), the director of the centre or the medical practitioner (as the case may be) must ensure that—

(a) the patient is given a copy of—

(i) a written statement in the form approved by the Chief Psychiatrist (a *statement of rights*)—

(A) informing the patient of his or her legal rights; and

(B) containing any other information prescribed by the regulations; and

(b) subject to subsection (2b)—a guardian, medical agent, relative, carer or friend of the patient is notified of the person's admission.



(2b) The following provisions apply for the purposes of subsection (2a)(b):

(a) the person to be notified must be—

5 (i) a guardian, medical agent, relative, carer or friend of the patient nominated by the person for the purpose; or

10 (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 person; or

(iii) if that is not practicable or appropriate—any other guardian, medical agent, relative, carer or friend of the person whom it is practicable and appropriate to notify;

15 (b) the director or medical practitioner is not required to notify a person whose whereabouts are not known to or readily ascertainable by the director or medical practitioner (as the case requires);

20 (c) it is not appropriate for the director or medical practitioner to notify a particular person if the director or medical practitioner (as the case requires) has reason to believe that it would be contrary to the patient's best interests to do so.

(5) Section 76(4)—delete "at large" and substitute:

absent without leave

25 (6) Section 76(5)—delete subsection (5) and substitute:

(5) A South Australian authorised officer or an interstate authorised officer may, for the purpose of transporting the person to a South Australian treatment centre or interstate treatment centre, or enabling or facilitating medical treatment of the person—

30 (a) exercise the powers of an authorised officer under Part 9; and

(b) if the officer is a police officer (however described) in South Australia or another jurisdiction—exercise the powers of a police officer under Part 9,

35 (and the provisions of Part 9, including section 60, will apply for the purpose with necessary modifications).

(7) Section 76(6)—delete "director of the South Australian treatment centre" and substitute:

Chief Psychiatrist

**66—Amendment of section 77—Transport to South Australia when South Australian inpatient treatment orders apply**

(1) Section 77(1)—delete "at large" and substitute:

absent without leave

(2) Section 77(3)—delete "at large" and substitute:

absent without leave

(3) Section 77(4)—delete subsection (4) and substitute:

(4) A South Australian authorised officer or an interstate authorised officer may, for the purpose of the person's transport to a South Australian treatment centre—

(a) exercise the powers of an authorised officer under Part 9; and

(b) if the officer is a police officer (however described) in South Australia or another jurisdiction—exercise the powers of a police officer under Part 9,

(and the provisions of Part 9, including section 60, will apply for the purpose with necessary modifications).

(4) Section 77(5)—delete "director of the South Australian treatment centre" and substitute:

Chief Psychiatrist

**67—Amendment of section 78—Transport to South Australia of persons with apparent mental illness**

Section 78(2)—delete subsection (2) and substitute:

(2) A South Australian authorised officer or an interstate authorised officer may, for the purpose of the person's transport to a South Australian treatment centre or other place in South Australia for medical examination—

(a) exercise the powers of an authorised officer under Part 9; and

(b) if the officer is a police officer (however described) in South Australia or another jurisdiction—exercise the powers of a police officer under Part 9,

(and the provisions of Part 9, including section 60, will apply for the purpose with necessary modifications).

**67A—Amendment of section 79—Reviews of treatment orders and other matters**

(1) Section 79(1)(a)—delete paragraph (a)

(2) Section 79(1)—after paragraph (c) insert:

- (ca) a review of the circumstances involved in the making of an order to extend a level 2 inpatient treatment order (which review must be conducted as soon as practicable after the making of the order to extend a level 2 inpatient treatment order);

**67B—Amendment of section 81—Reviews of orders (other than Tribunal orders)**

(1) Section 81(1)—after "review of the order by the Tribunal" insert:

under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*

(2) Section 81(1a)—delete subsection (1a)

(3) Section 81(2a)—delete "not be constituted by a medical practitioner sitting alone" and substitute:

be constituted of at least 1 medical practitioner and 1 legal practitioner

(4) Section 81(4) and (5)—delete subsections (4) and (5)

**68—Amendment of section 85—Tribunal must give notice of proceedings**

Section 85(1)—after paragraph (c) insert:

- (ca) if the proceedings relate to an application for consent to prescribed psychiatric treatment—the Chief Psychiatrist;

**69—Amendment of section 90—Chief Psychiatrist's functions**

(1) Section 90(1)(b)—delete "mechanical body restraints and seclusion" and substitute:  
restrictive practices

(2) Section 90(1)(c)—delete "psychiatric" and substitute:  
mental health

(3) Section 90(1)(d)—delete "psychiatry" and substitute:  
mental health

(4) Section 90(2)—delete ", with the approval of the Minister,"

(5) Section 90—after subsection (4) insert:

(5) For the purposes of subsection (4)(a), the Chief Psychiatrist may, at any reasonable time, enter the premises of an incorporated hospital and, while on the premises, may—

- (a) inspect the premises or any equipment or other thing on the premises; and  
(b) require any person to produce any documents or records; and  
(c) examine any documents or records and take extracts from, or make copies of, any of them.

- (6) A person must not refuse or fail to comply with a requirement made under subsection (5).

Maximum penalty: \$10 000.

- (7) A person must not hinder or obstruct the Chief Psychiatrist in the exercise by the Chief Psychiatrist of the powers conferred by subsection (5).

Maximum penalty: \$10 000.

#### **70—Amendment of section 92—Annual report of Chief Psychiatrist**

Section 92(1)—before paragraph (a) insert:

- (aa) in respect of the administrative functions conferred on the Chief Psychiatrist under this Act—information about how the Chief Psychiatrist has performed those functions; and

#### **71—Amendment of section 93—Authorised medical practitioners**

- (1) Section 93(1)—delete "Minister may, by instrument in writing" and substitute:

Chief Psychiatrist may, by notice in the Gazette

- (2) Section 93(2)—delete "Minister" and substitute:

Chief Psychiatrist

- (3) Section 93(2)(b)—delete "instrument in writing" and substitute:

notice in the Gazette

- (4) Section 93—after subsection (2) insert:

- (3) The Chief Psychiatrist must cause records to be kept and maintained of—

- (a) each medical practitioner, or medical practitioner or a class, who has been determined to be an authorised medical practitioner under this section; and  
(b) the conditions or limitations attached to each such determination.

#### **72—Substitution of heading to Part 12 Division 4**

Heading to Part 12 Division 4—delete the heading and substitute:

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

#### **73—Amendment of section 94—Authorised mental health professionals**

- (1) Section 94(1)—delete "Minister may, by instrument in writing" and substitute:

Chief Psychiatrist may, by notice in the Gazette

- (2) Section 94(1)—delete "authorised health professional" and substitute:

authorised mental health professional

- (3) Section 94(2)—delete "Minister" and substitute:

Chief Psychiatrist

(4) Section 94(2)(b)—delete "instrument in writing" and substitute:  
notice in the Gazette

(5) Section 94—after subsection (2) insert:

(3) The Chief Psychiatrist must cause records to be kept and maintained  
of—

(a) each specified person, or person of a specified class, who  
has been determined to be an authorised mental health  
professional under this section; and

(b) the conditions or limitations attached to each such  
determination.

#### **74—Amendment of section 95—Code of practice for authorised mental health professionals**

(1) Section 95(1)—delete "Minister" and substitute:

Chief Psychiatrist

(2) Section 95(1)—delete "authorised health professionals" and substitute:

authorised mental health professionals

(3) Section 95(2)—delete "Minister" and substitute:

Chief Psychiatrist

#### **75—Amendment of section 96—Approved treatment centres**

(1) Section 96(1)—delete "Minister may, by instrument in writing" and substitute:

Chief Psychiatrist may, by notice in the Gazette

(2) Section 96(2)—delete "Minister" and substitute:

Chief Psychiatrist

(3) Section 96(2)(b)—delete "instrument in writing" and substitute:

notice in the Gazette

#### **76—Amendment of section 97—Limited treatment centres**

(1) Section 97(1)—delete "Minister may, by instrument in writing" and substitute:

Chief Psychiatrist may, by notice in the Gazette

(2) Section 97(2)—delete "Minister" and substitute:

Chief Psychiatrist

(3) Section 97(2)(b)—delete "instrument in writing" and substitute:

notice in the Gazette

## 77—Insertion of section 97A

After section 97 insert:

### 97A—Authorised community mental health facilities

- 5 (1) The Chief Psychiatrist may, by notice in the Gazette, determine that a specified place will be an authorised community mental health facility for the purposes of this Act.
- (2) The Chief Psychiatrist may—
- 10 (a) attach conditions or limitations to a determination under this section; and
- (b) by subsequent notice in the Gazette, vary or revoke a determination under this section or a condition or limitation of a determination under this section.

## 78—Repeal of sections 98 and 99

Sections 98 and 99—delete the sections

## 79—Amendment of section 102—Offences relating to authorisations and orders

Section 102—delete "authorised health professional" wherever occurring and substitute in each case:

authorised mental health professional

## 80—Amendment of section 103—Medical practitioners or health professionals not to act in respect of relatives

Section 103—delete "authorised health professional" wherever occurring and substitute in each case:

authorised mental health professional

## 81—Amendment of section 109—Evidentiary provision

Section 109(f)—delete paragraph (f)

## 82—Amendment of section 111—Review of Act

Section 111—delete "4 years" and substitute:

5 years

## Schedule 1—Related amendments

### Part 1—Amendment of *Advance Care Directives Act 2013*

#### 1—Amendment of section 12—Provisions that cannot be included in advance care directives

Section 12(4), definition of *mandatory medical treatment*—after paragraph (a) insert:

- 35 (ab) medical treatment provided under section 56 of the *Mental Health Act 2009*; or

## **Part 2—Amendment of *Health Care Act 2008***

### **2—Amendment of section 68—Preliminary**

Section 68(1), definition of *designated authority*—after paragraph (c) insert:

or

5

- (d) in relation to the investigation of an adverse incident involving a mental health patient or mental health services provided by a health services entity—the Chief Psychiatrist;