

South Australia

# Mental Health Act 2009

An Act to make provision for the treatment, care and rehabilitation of persons with severe 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 inpatient treatment, of such persons where required; to provide protections of the freedom and legal rights of persons with mental illness; 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*.

### 3—Interpretation

- (1) In this Act, unless the contrary intention appears—

***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;

***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 Chief Psychiatrist under Part 12 Division 5 to be an approved treatment centre for the purposes of this Act;

***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;

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

**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;

**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, or a person of a class, approved by the Chief Psychiatrist, by notice in the Gazette, for the purposes of this definition; or
- (e) any other person, or person of a class, prescribed by the regulations for the purposes of this definition;

**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 Department;

**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;

**decision**, of the Tribunal, has the same meaning as in the *South Australian Civil and Administrative Tribunal Act 2013*;

**Department** means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

**director** of a treatment centre means the person for the time being in charge of the mental health services of 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;

**inpatient** in a treatment centre means a person admitted as a patient in a treatment centre;

**inpatient treatment order** means—

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

**internal review** means a review under section 70 of the *South Australian Civil and Administrative Tribunal Act 2013*;

**involuntary inpatient** means an inpatient who is subject to an inpatient treatment order;

**leave of absence**—see section 36;

**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 inpatient treatment order**—see Part 5 Division 2;

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

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

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

**limited treatment centre** means a place determined by the Chief Psychiatrist 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 mental 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**, 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*;

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

**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;

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

**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;

**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;

**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;

**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;

**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;

**Tribunal** means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

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

**voluntary inpatient** means an inpatient who is not subject to an inpatient treatment order.

- (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—
    - (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
    - (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.
- (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
  - (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.

#### 4—Application of Act

- (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;
  - (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;
  - (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.
- (2) Subsection (1) does not affect the operation of a provision of this Act that expressly relates to a child or children.
- (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—
  - (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*.

#### 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 mental health professional includes, if it is not practicable in the circumstances for a medical practitioner or authorised mental 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 mental 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.

#### 5A—Decision-making capacity

- (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—
- (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
    - (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
  - (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 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
  - (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
  - (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.

## **Part 2—Objects and guiding principles**

### **6—Objects**

The objects of this Act are—

- (a) to ensure that persons with severe 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 inpatient treatment, of such persons where required.

## **7—Guiding principles**

- (1) The Minister, the Tribunal, 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;
  - (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;
  - (b) mental health 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) 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
    - (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
    - (v) the cultural and linguistic backgrounds of persons; and
    - (vi) the background, circumstances and particular needs of persons who have experienced torture or trauma;
  - (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) restrictive practices 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 severe 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;

*patient* includes a voluntary community patient.

## Part 3—Voluntary inpatients

### 8—Voluntary inpatients

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

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

- (1) The director of a treatment centre must ensure that a voluntary inpatient in the centre is given, as soon as practicable after admission, a statement in writing 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.
- (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 mental 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 mental 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 (whether physical or mental, and including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and
  - (c) the person has impaired decision-making capacity relating to appropriate treatment of the person's mental 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 Chief Psychiatrist.
- (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 42 days after the day on which it is made.

- (5) On the making of a level 1 community 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 from whomever made the order;
  - (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 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 mental 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 inpatient treatment order under Part 5 Division 2.

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

### **11—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 Chief Psychiatrist is sent or given, within 1 business day, a notice in the form approved by the Chief Psychiatrist.
- (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 mental 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 mental health professional making a level 1 community treatment order must ensure that the patient is given, as soon as practicable, a statement in writing 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.
- (3) If a patient is unable to read or otherwise comprehend the statement of rights, the medical practitioner or authorised mental 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.

## Division 2—Level 2 community treatment orders

### 16—Level 2 community treatment orders

- (1) If the Tribunal 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 (whether physical or mental, and including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and
  - (c) the person has impaired decision-making capacity relating to appropriate treatment of the person's mental illness; and
  - (d) there is no less restrictive means than a community treatment order of ensuring appropriate treatment of the person's illness,the Tribunal 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 Tribunal for the Tribunal'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

- (c) on an application to the Tribunal under Part 5 Division 4 for the revocation of a level 3 inpatient treatment order that applies to the person.
- (4) An application may be made to the Tribunal for the Tribunal'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 Tribunal that he or she has a proper interest in the welfare of the patient.
- (4a) A level 1 community treatment order applying in relation to a person is taken to be revoked on the making of a level 2 community treatment order in relation to the person.
- (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) A registrar of the Tribunal 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 Tribunal 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 Tribunal 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**

A registrar of the Tribunal 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 Tribunal.

## **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 treatment as inpatient of persons with mental illness**

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

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

- (1) A person's refusal or failure to comply with a community treatment order is a relevant consideration in deciding whether an inpatient treatment order should be made in respect of the person under this Part.
- (2) However, nothing in this Act prevents the making of an inpatient 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 an inpatient treatment order is required in the particular circumstances.

## Division 2—Level 1 inpatient treatment orders

### 21—Level 1 inpatient treatment orders

- (1) A medical practitioner or authorised mental health professional may make an order that a person receive treatment as an inpatient in a treatment centre (a ***level 1 inpatient treatment order***) if it appears to the medical practitioner or authorised mental 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 (whether physical or mental, and including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and
  - (ba) the person has impaired decision-making capacity relating to appropriate treatment of the person's mental illness; and
  - (c) there is no less restrictive means than an inpatient treatment order of ensuring appropriate treatment of the person's illness.
- (2) In considering whether there is no less restrictive means than an inpatient 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 inpatient treatment order must be made in writing in the form approved by the Chief Psychiatrist.
- (4) A level 1 inpatient 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 inpatient 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 inpatient treatment order if satisfied that the grounds referred to in subsection (1) exist for the making of a level 1 inpatient treatment order, but otherwise must revoke the order.
- (6) A medical practitioner or authorised mental 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 inpatient treatment order applies may revoke the order at any time.

**Note—**

A psychiatrist or authorised medical practitioner who revokes a level 1 inpatient 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 inpatient treatment order must be effected by notice in the form approved by the Chief Psychiatrist.

## **22—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 inpatient treatment order must ensure that the Chief Psychiatrist is sent or given, within 1 business day, a notice in the form approved by the Chief Psychiatrist.
- (2) If the order is made within 7 days after the expiry or revocation of a previous inpatient treatment order applying to the same person, the Chief Psychiatrist must ensure that the Tribunal is given a copy of the notice referred to in subsection (1) within 1 business day of the making of the order.
- (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 mental health professional making a level 1 inpatient treatment order must ensure that the patient is given, as soon as practicable, a copy of the order.
- (2) A medical practitioner or authorised mental health professional making a level 1 inpatient treatment order must ensure that the patient is given, as soon as practicable, a statement in writing 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.
- (3) If a patient is unable to read or otherwise comprehend the statement of rights, the medical practitioner or authorised mental 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 admitted as an inpatient under a level 1 inpatient 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 inpatient treatment order is revoked, the director of the treatment centre in which the patient is admitted as an inpatient 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 inpatient treatment order applies may be given treatment for his or her mental illness, or for any other illness that may be causing or contributing to the mental 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 inpatient 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 inpatient 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 notice in the form approved by the Chief Psychiatrist.

## Division 3—Level 2 inpatient treatment orders

### 25—Level 2 inpatient treatment orders

- (1) If a level 1 inpatient 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 treatment of the patient as an inpatient in an approved treatment centre (a *level 2 inpatient treatment order*).
- (2) A psychiatrist or authorised medical practitioner may make a level 2 inpatient 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 (whether physical or mental, and including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and
  - (ba) the person has impaired decision-making capacity relating to appropriate treatment of the person's mental illness; and
  - (c) there is no less restrictive means than an inpatient treatment order of ensuring appropriate treatment of the person's illness.
- (3) In considering whether there is no less restrictive means than an inpatient 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 inpatient treatment order must be made in writing in the form approved by the Chief Psychiatrist.
- (6) Subject to subsection (7), a level 2 inpatient 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) 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).
- (8) A psychiatrist or authorised medical practitioner who has examined a patient to whom a level 2 inpatient treatment order applies may revoke the order at any time.

**Note—**

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

- (9) Revocation of a level 2 inpatient treatment order must be effected by notice in the form approved by the Chief Psychiatrist.

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

- (1) A psychiatrist or authorised medical practitioner making or revoking a level 2 inpatient treatment order must ensure that the Chief Psychiatrist is sent or given, within 1 business day, a notice in the form approved by the Chief Psychiatrist.
- (2) If the order extends an inpatient treatment order, the Chief Psychiatrist must ensure that the Tribunal is given a copy of the notice referred to in subsection (1) within 1 business day of the making of the order.
- (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 inpatient 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 an involuntary inpatient 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 Chief Psychiatrist.

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

- (1) A psychiatrist or authorised medical practitioner making a level 2 inpatient 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 inpatient treatment order must ensure that the patient is given, as soon as practicable, a statement in writing 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.
- (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 admitted as an inpatient under a level 2 inpatient 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 inpatient treatment order is revoked, the director of the treatment centre in which the patient is admitted as an inpatient 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 inpatient treatment order applies may be given treatment for his or her mental illness, or for any other illness that may be causing or contributing to the mental 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 inpatient 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 notice in the form approved by the Chief Psychiatrist.

### Note—

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

## Division 4—Level 3 inpatient treatment orders

### 29—Level 3 inpatient treatment orders

- (1) If the Tribunal 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 (whether physical or mental, and including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and
  - (ba) the person has impaired decision-making capacity relating to appropriate treatment of the person's mental illness; and
  - (c) there is no less restrictive means than an inpatient treatment order of ensuring appropriate treatment of the person's illness,the Tribunal may make an order that the person receive treatment as an inpatient in an approved treatment centre (*a level 3 inpatient treatment order*).
- (2) In considering whether there is no less restrictive means than an inpatient 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 inpatient treatment order may be made, on application, in respect of a person to whom a level 1, level 2 or level 3 inpatient treatment order applies.
- (4) An application may be made for the Tribunal to make a level 3 inpatient 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.
- (4a) A level 1 or 2 inpatient treatment order applying in relation to a person is taken to be revoked on the making of a level 3 inpatient treatment order in relation to the person.
- (5) A level 3 inpatient 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 Tribunal may, on application, by order, vary or revoke a level 3 inpatient treatment order at any time.
- (7) An application for variation or revocation of a level 3 inpatient 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 Tribunal that he or she has a proper interest in the welfare of the patient.

**Note—**

If the Tribunal revokes a level 3 inpatient 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**

A registrar of the Tribunal must ensure that the Chief Psychiatrist is notified, within 1 business day, of the making, variation or revocation of a level 3 inpatient treatment order by the Tribunal.

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

- (1) A patient to whom a level 3 inpatient treatment order applies may be given treatment for his or her mental illness, or for any other illness that may be causing or contributing to the mental 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 inpatient 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 notice in the form approved by the Chief Psychiatrist.

**Note—**

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

## **Division 5—General**

### **32—Inpatient treatment orders displace community treatment orders**

If an inpatient 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 inpatient 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 inpatient treatment orders**

- (1) This section applies when—
  - (a) a person to whom an inpatient treatment order applies is in the care and control of treatment centre staff; or
  - (b) an inpatient treatment order is made in respect of a voluntary inpatient.
- (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 inpatient treatment order.

**Note—**

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

### **34—Involuntary inpatients not permitted to leave treatment centre or care and control of staff**

- (1) An involuntary inpatient in a treatment centre is not permitted to leave the treatment centre without being in the care and control of treatment centre staff or having been granted a leave of absence.
- (2) An involuntary inpatient under the care and control of treatment centre staff outside the treatment centre is not permitted to leave that care and control without having been granted a leave of absence.
- (3) If granted a leave of absence, the involuntary inpatient is required to comply with the conditions of the leave of absence.

### **34A—Confinement and other powers relating to involuntary inpatients**

- (1) This section applies to a patient to whom an inpatient treatment order applies who is present at, or has been admitted to, a treatment centre.
- (2) Treatment centre staff may take measures for the confinement of the patient, and exercise powers (including the power to restrain the patient and otherwise use force in relation to the patient), as reasonably required in the circumstances—
  - (a) for carrying the inpatient treatment order applying to the patient into effect and ensuring compliance with this Act; and
  - (b) for the maintenance of order and security at the centre or the prevention of harm or nuisance to others.
- (3) Subsection (2) has effect subject to Part 2 and 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 involuntary inpatients

- (1) If the director of a treatment centre considers it is necessary or appropriate for an involuntary inpatient 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 inpatient treatment order applies, be an approved treatment centre (not a limited treatment centre).

- (2) The director of a treatment centre may give a direction—
  - (a) for an involuntary inpatient 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 an involuntary inpatient 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 Chief Psychiatrist;
  - (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 involuntary patients**

- (1) The director of a treatment centre may, by a statement in writing in the form approved by the Chief Psychiatrist, grant an involuntary inpatient 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 an involuntary inpatient leave of absence from the centre must ensure that the patient is given, before the patient commences the leave, a statement in writing 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.
- (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 Chief Psychiatrist, 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 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 made available to the patient; and
  - (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
  - (c) must comply with the requirements of the regulations as to the making or contents of such plans.
- (3) In this section—

***voluntary patient*** means—

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

### **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—
  - (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
- (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 inpatient treatment orders apply**

- (1) The treatment and care of a patient to whom a level 2 or level 3 inpatient 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 as an inpatient in the approved treatment centre and should describe any rehabilitation services and other significant services that will be provided or available to the patient as an inpatient in 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—
    - (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
  - (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 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.

### **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) 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
    - (ii) if the patient has attained 16 years of age but is incapable of making decisions on his or her own behalf—
      - (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

- (B) in any other case—by a medical agent or guardian of the patient or by the Tribunal on application under this section;  
or
  - (iii) if the patient is under 16 years of age—by a parent or guardian of the patient or by the Tribunal 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) The following provisions apply in relation to consent given to the administration of ECT treatment:
  - (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;
  - (c) consent may be withdrawn at any time by the person by whom consent has been given.
- (5) An application for the Tribunal'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, either with consent under subsection (1) or 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—
  - (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—
    - (i) the person who is to carry it out; and
    - (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
  - (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 Tribunal on application under this section.
- (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—
    - (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
  - (b) a copy of the report of each psychiatrist on examining the patient under subsection (1)(b)(ii).
- (2) An application for the Tribunal's consent under this section may be made by a medical practitioner or mental health clinician.
- (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
  - (b) a copy of a report from a psychiatrist who has examined the patient after the neurosurgery.
- (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.
- (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.

## **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 mental 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 mental 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 inpatient treatment order may be made unless the assistance of an interpreter can be readily arranged by the medical practitioner or authorised mental health professional in the circumstances; or
  - (b) if the medical practitioner or authorised mental health professional and the person can communicate adequately in a language other than English.

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

- (1) A registrar of the Tribunal must ensure that a patient is given, as soon as practicable after the making by the Tribunal 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 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.
- (2) If the patient is unable to read or otherwise comprehend the statement of rights, the registrar 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 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;
  - (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 an inpatient.
- (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 an inpatient.
- (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).

#### **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 inpatient 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 Tribunal;
  - (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.

#### **48A—Prohibition on use of spit hoods**

- (1) A person performing a function or exercising a power under this Act must not place a spit hood on the head of a person.  
Maximum penalty: Imprisonment for 2 years.
- (2) Subsection (1) applies despite any other provision of this Act or any other Act or law.
- (3) In this section—

*spit hood* means a covering (however described) that is intended to be placed over a person's head to prevent the person from spitting on, or biting, another person.

#### **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**

#### **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.
- (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 and powers**

- (1) Community visitors have the following functions:
- (a) to conduct visits to and inspections of treatment centres as required or authorised under this Division;
  - (ab) to conduct visits to and inspections of authorised community mental health facilities 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.
- (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*.

### **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.

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

- (1) Subject to this Division, 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.
- (3) On a visit to a treatment centre under this section, a community visitor 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 inpatient; 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.

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

- (1) Subject to this Division, 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—
  - (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.
- (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.

## **52B—Visits and inspections by audiovisual or other electronic means**

- (1) This section applies to a visit and inspection of a treatment centre, authorised community mental health facility or other premises by a community visitor that is required or authorised under this or any other Act if—
  - (a) in the opinion of the Principal Community Visitor, it is not reasonably practical for a community visitor to physically visit or enter the relevant premises; or
  - (b) the visit or inspection occurs in any other circumstances prescribed by the regulations.
- (2) Without limiting the generality of subsection (1), the reasons that a physical visit or inspection may not be reasonably practical include—
  - (a) a lack of availability of community visitors to conduct a physical visit or inspection; or
  - (b) the remoteness of the relevant premises; or
  - (c) the need to prevent the spread of contagious diseases.
- (3) The following provisions apply in relation to a visit or inspection to which this section applies:
  - (a) the visit or inspection may be conducted by means of audiovisual or other electronic means;
  - (b) despite a provision of this or any other Act requiring the visit or inspection to be conducted by more than 1 community visitor, the visit or inspection may be conducted by a single community visitor;
  - (c) a reference in this or any other Act that contemplates a community visitor being physically on the relevant premises is to be construed accordingly.

- (4) Subject to this Act, a community visitor may, in relation to a visit or inspection to which this section applies, give such directions as the community visitor considers reasonably necessary to enable the visit or inspection to occur by audiovisual or other electronic means, including—
- (a) directions requiring a person, or person of a class—
    - (i) to take reasonable steps to facilitate the visit or inspection; and
    - (ii) to make equipment of a specified kind available for use in the course of the visit or inspection; and
    - (iii) to grant access to such parts of the premises as may reasonably be accessed using the relevant audiovisual or other means; or
  - (b) directions requiring a person, or person of a class, to provide the community visitor with access to a specified patient or resident of the premises, or patients or residents of a specified class, and for an appropriate area within the premises to be made available to enable confidential communication with the community visitor by the relevant audiovisual or other means.
- (5) A person must not, without reasonable excuse, refuse or fail to comply with a direction under subsection (4).  
Maximum penalty: \$5 000.
- (6) A community visitor must ensure that the following information is reported on a publicly accessible website and updated on at least a quarterly basis:
- (a) the number of visits or inspections by the community visitor that have occurred by audiovisual or other electronic means in accordance with this section;
  - (b) except where the Principal Community Visitor or Chief Psychiatrist (as the case requires) is of the opinion that it would be inappropriate to identify the premises or the address of the premises—the name and address of any premises subject to such a visit or inspection;
  - (c) the date on which each such visit or inspection occurred;
  - (d) the reasons why each such visit or inspection was a visit or inspection to which this section applies.
- (7) A report under subsection (6) must be made by—
- (a) in the case where the community visitor is the Chief Psychiatrist—the Chief Psychiatrist; or
  - (b) in any other case—the Principal Community Visitor.
- (8) To avoid doubt, nothing in this section limits a power or function that may be exercised or performed by a community visitor in relation to a visit or inspection.
- (9) For the purposes of this section, the Chief Psychiatrist will be taken to be a community visitor.

### **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 an inpatient, 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 performance of the community visitors' functions 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**

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

- (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.
- (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.
- (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
  - (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.

## 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 mental health professional has made a level 1 inpatient treatment order in respect of the patient at a place other than a treatment centre, the medical practitioner or authorised mental health professional may issue the request for the purpose of the patient's transport to a treatment centre;
  - (c) if the patient is absent without leave, 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 an inpatient 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 Chief Psychiatrist.
- (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, as soon as practicable, be given a copy of—
  - (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.

## 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—
    - (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
  - (b) an authorised officer believes on reasonable grounds that the person is a patient who is absent without leave; 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—
  - (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
  - (a) in the case of a person referred to in subsection (1)(a)(ii)—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)—
    - (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.
- (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—
    - (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
  - (b) a police officer believes on reasonable grounds that the person is a patient who is absent without leave; 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 who is absent without leave.
- (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—
  - (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
  - (a) in the case of a person referred to in subsection (1)(a)(ii)—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 an inpatient 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.

## 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.

## 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—

*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—

- (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;

***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 treatment as an interstate inpatient;

***interstate inpatient*** means a person admitted as a patient in an interstate treatment centre;

***interstate inpatient treatment order*** means an order made under a corresponding law for the purpose of bringing about the treatment as an interstate inpatient 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 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;

***interstate treatment centre*** means a hospital or other facility in which a person may be admitted under an interstate inpatient 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 inpatient treatment order*** means an inpatient 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, or not disallowed under, 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, or does not disallow, 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**

Subject to this Act, a South Australian officer may exercise any power conferred on the officer under this Act, a corresponding law or 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) 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:
- (a) the person may be taken into the care and control of the officer;
  - (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;
  - (c) the person may be taken to an interstate treatment centre by an interstate officer and treated as an involuntary community patient there;
  - (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).
- (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).
- (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—
- (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).

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

- (1) 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 in South Australia in connection with the order.
- (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.

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

- (1) 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.
- (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:
  - (a) the person may be taken into the care and control of a South Australian authorised officer;
  - (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;
  - (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;
  - (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.
- (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).

## **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.
- (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*)—
    - (A) informing the person 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 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—
    - (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.
- (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 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 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 Chief Psychiatrist.
- (4) The Chief Psychiatrist 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 an involuntary inpatient in the South Australian treatment centre under a level 3 inpatient treatment order—notify the Tribunal 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 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 patient's best interests to do so.
- (6) Subject to subsection (7), 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.
- (7) Subsection (6) does not apply if written consent to the transfer has been given—
- (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).

## 71—Transfer to South Australian treatment centres

- (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.
- (2) An approval under this section must be given by writing in the form approved by the Chief Psychiatrist.
- (2a) The Chief Psychiatrist must ensure that, as soon as practicable after the patient is admitted to the South Australian treatment centre—
  - (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
  - (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):
- (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
    - (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 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 patient's best interests to do so.
- (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 inpatient 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 Chief Psychiatrist has given a direction for the transfer of a person to an interstate treatment centre under this Division, the Chief Psychiatrist may issue a patient transport request for the purpose of the person's transport to the interstate treatment centre.
- (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.
- (3) A patient transport request must be in writing in the form approved by the Chief Psychiatrist.

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

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)—

- (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).

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

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

- (1) If a South Australian inpatient treatment order has been made in respect of a person, the person making the order or a South Australian authorised officer may, with the approval of the Chief Psychiatrist, 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 an interstate authorised officer may, for the purpose of the person's transport to an interstate 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).

### **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, with the approval of the Chief Psychiatrist, 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 mental 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 mental health professional.
- (3) Section 63(1) applies to the taking of action under subsection (2).
- (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).

(5) In this section—

*interstate authorised mental health professional* means a person, other than a medical practitioner, on whom power is conferred under a corresponding law to make an interstate inpatient treatment order in respect of a person who has a mental illness.

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

(1) If a South Australian authorised officer believes on reasonable grounds that a person in South Australia is an interstate patient absent without leave, 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, with the approval of the Chief Psychiatrist, be taken to a South Australian treatment centre by a South Australian authorised officer and treated as an involuntary inpatient there pending the person's transport to an interstate treatment centre;
- (e) the person may, with the approval of the Chief Psychiatrist, 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).

(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 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; 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—
  - (i) a guardian, medical agent, relative, carer or friend of the patient 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 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;
  - (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);
  - (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.
- (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 absent without leave, the officer may transport the person to an interstate treatment centre.
- (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—
- (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).
- (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 Chief Psychiatrist 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 inpatient 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 absent without leave, 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 absent without leave, 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 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).
- (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 Chief Psychiatrist 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 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).

## Part 11—Reviews and appeals

### 79—Reviews of treatment orders and other matters

- (1) The Tribunal must conduct the following reviews:
  - (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 inpatient treatment order if the order has been made within 7 days after the expiry or revocation of a previous inpatient treatment order applying to the same person (which review must be conducted as soon as practicable after the making of the level 1 inpatient treatment order);
  - (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);
  - (d) a review of a level 3 inpatient 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 Tribunal may conduct any other review that it considers appropriate relating to a community treatment order or inpatient treatment order or treatment administered to a person to whom an order applies under this Act.
- (3) The Tribunal 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 Tribunal at or before the commencement of the Tribunal's proceedings on the review.
- (5) For the purposes of the *South Australian Civil and Administrative Tribunal Act 2013*, a review under this section will be taken to come within the Tribunal's original jurisdiction.

### 80—Decisions and reports on reviews of treatment orders

- (1) On completion of a review, the Tribunal must revoke, with immediate effect, any community treatment order or inpatient treatment order to which the review relates if the Tribunal is not satisfied that there are proper grounds for it to remain in operation.
- (2) Subject to subsection (1), the Tribunal may, on a review relating to a community treatment order or inpatient 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 an inpatient treatment order, that the Tribunal 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 Tribunal may, on a review, provide to the Minister a written report on any matter the Tribunal considers should be drawn to the Minister's attention.

### **81—Reviews of orders (other than Tribunal orders)**

- (1) Any of the following persons who is dissatisfied with a community treatment order or inpatient treatment order (other than an order made by the Tribunal) may seek a review of the order by the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*:
  - (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 Tribunal that he or she has a proper interest in the matter.
- (2) A review under this section may be instituted at any time during the currency of the order the subject of the review.
- (2a) For the purposes of conducting a review under this section, the Tribunal must be constituted of at least 1 medical practitioner and 1 legal practitioner.
- (2b) If a review under this section relates to a level 1 community treatment order, the Chief Psychiatrist must, if requested by the Tribunal, cause a copy of any notice sent or given to the Chief Psychiatrist under section 11 to be given to the Tribunal within 1 business day of the Tribunal requesting the documents.
- (2c) If a review under this section relates to a level 1 inpatient treatment order, the Chief Psychiatrist must cause a copy of the notice sent or given to the Chief Psychiatrist under section 22 to be given to the Tribunal within 1 business day of the Tribunal requesting the documents.
- (2d) If a review under this section relates to a level 2 inpatient treatment order, the Chief Psychiatrist must cause a copy of the notice sent or given to the Chief Psychiatrist under section 26 to be given to the Tribunal within 1 business day of the Tribunal requesting the documents.
- (3) 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 Tribunal at or before the commencement of the Tribunal's proceedings on the review.

### **83—Review of directions for transfer of patients to interstate treatment centres**

- (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 seek a review of the direction by the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*:
  - (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 Tribunal that he or she has a proper interest in the matter.
- (2) A review under this section must be instituted within 14 days after the giving of the direction.
- (3) The Tribunal may, on hearing a review of a direction, affirm or revoke the direction.

### 83A—Reviews and appeals

The following provisions operate in connection with the application of Part 5 of the *South Australian Civil and Administrative Tribunal Act 2013* in relation to this Act:

- (a) a decision of the Tribunal not to authorise publication of a report of proceedings before the Tribunal may not be the subject of an application for internal review;
- (b) subject to paragraph (a), an application for internal review may be made by—
  - (i) the applicant in proceedings before the Tribunal in the exercise of its original jurisdiction (within the meaning of the *South Australian Civil and Administrative Tribunal Act 2013*) for the purposes of this Act; or
  - (ii) a person to whom the proceedings relate (if not the applicant under paragraph (a)); or
  - (iii) the Public Advocate; or
  - (iv) any person who presented evidence or material before, or made submissions to, the Tribunal in the relevant proceedings; or
  - (v) any other person who satisfies the Tribunal that he or she has a proper interest in the matter;
- (c) the person to whom an application for internal review relates (if he or she is not the applicant) will be a party to those proceedings;
- (d) the Tribunal must hear and determine an internal review as expeditiously as is reasonably practicable and must give priority to hearing and determining internal reviews of decisions relating to an application relating to the detention of any person;
- (e) the constitution of the Tribunal must be consistent with the following requirements for an internal review in the following cases:
  - (i) in the case of an internal review that relates to an order of the Tribunal under section 16 or 29—the Tribunal must not be constituted by a medical practitioner sitting alone;
  - (ii) in the case of an internal review that relates to a review under section 81—the Tribunal must be constituted by 3 members;
- (f) the Tribunal may make an order for costs against a party to proceedings for internal review, but only if the Tribunal is satisfied that the institution of the proceedings, or the party's conduct in relation to the proceedings, was frivolous, vexatious or calculated to cause delay;

- (g) subject to paragraph (h), an appeal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* must be instituted within 14 days—
  - (i) after the making of the decision to which the appeal relates; or
  - (ii) after being furnished with the reasons for that decision,whichever is the later (but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be instituted within that period (even if the time for instituting the appeal has expired));
- (h) the following decisions of the Tribunal are not appealable to the Supreme Court:
  - (i) a decision not to authorise publication of a report of proceedings before the Tribunal;
  - (ii) a decision made by the Tribunal in the exercise of its review jurisdiction under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*;
- (i) no order for costs may be made against an applicant in an appeal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* if he or she is the person to whom the decision appealed against relates.

#### **84—Representation on reviews or appeals**

- (1) In every review or appeal, or application for permission for review or appeal, under this Part (other than a review under section 79), 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 pursuant to this section, he or she is entitled to be represented by a legal practitioner provided pursuant to 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 such person or authority as the scheme contemplates.
- (3) A legal practitioner (not being an employee of the Crown or a statutory authority) who represents a person pursuant to this section is entitled to receive fees for his or her services from the Minister, in accordance with a prescribed scale, 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, by the Public Advocate or by a representative pursuant to any other provision of this Act.

## Part 11A—Special provisions relating to Tribunal

### 85—Tribunal must give notice of proceedings

- (1) Tribunal must give the following persons reasonable notice of the time and place of the hearings of proceedings before the Tribunal:
  - (a) the applicant;
  - (b) the person to whom the proceedings relate;
  - (c) the Public Advocate;
  - (ca) if the proceedings relate to an application for consent to prescribed psychiatric treatment—the Chief Psychiatrist;
  - (d) such other persons as the Tribunal considers have a proper interest in the matter.
- (2) Despite subsection (1)—
  - (a) the Tribunal is not obliged to give notice of proceedings to a person if the person's whereabouts cannot, after reasonable enquiries, be ascertained; and
  - (b) the Tribunal may, if satisfied that urgent action is required in proceedings before the Tribunal, make an order (or any other decision) as a matter of urgency without complying with subsection (1), with effect for a period not exceeding 21 days as directed by the Tribunal.

### 85A—Reasons for decisions

The Tribunal must, on request by a person who has a right of internal review of a decision of the Tribunal or who satisfies the Tribunal that he or she has a proper interest in the matter, furnish the person with a written statement of the Tribunal's reasons for the decision, but not—

- (a) if the request is made after the period for the review has expired; or
- (b) if a review has been instituted—after the review has been decided.

### 85B—Representation of person who is subject of proceedings

- (1) A person who is the subject of proceedings before the Tribunal is entitled to appear before the Tribunal by—
  - (a) the Public Advocate; or
  - (b) except in the case of an internal review—a recognised advocate.
- (2) Subsection (1) applies in addition to section 56(1) of the *South Australian Civil and Administrative Tribunal Act 2013*.
- (3) In this section—

***recognised advocate*** means a person who is, by instrument in writing, recognised by the Tribunal as a person who is qualified to act as an advocate in proceedings before the Tribunal for the person to whom the proceedings relate.

## 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*, or of the Chief Executive under the *Children and Young People (Safety) Act 2017*;
- (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 inpatients and involuntary inpatients, and the use of restrictive practices in relation to such patients;
  - (c) to monitor the administration of this Act and the standard of mental health care provided in South Australia;
  - (d) to advise the Minister on issues relating to mental health 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 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*.
- (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.

## **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 of Chief Psychiatrist**

- (1) The Chief Psychiatrist must, before 30 September in each year, present a report to the Minister containing—
- (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
  - (a) in respect of each level of community treatment order and inpatient 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 and places of treatment; 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 inpatient 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 inpatient treatment orders apply);
      - (H) section 77(1) or (3) (Transport to South Australia when South Australian inpatient 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 Chief Psychiatrist may, by notice in the Gazette, 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 Chief Psychiatrist may—
  - (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.
- (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.

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

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

- (1) The Chief Psychiatrist may, by notice in the Gazette, determine that a specified person, or a person of a specified class, will be an authorised mental health professional for the purposes of this Act.
- (2) The Chief Psychiatrist may—
  - (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.
- (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.

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

- (1) The Chief Psychiatrist may, by notice in the Gazette, approve or endorse a code of practice governing the exercise of powers by authorised mental health professionals under this Act.
- (2) The Chief Psychiatrist 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 Chief Psychiatrist may, by notice in the Gazette, determine that a specified place will be an approved treatment centre for the purposes of this Act.
- (2) The Chief Psychiatrist may—
  - (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.

### **97—Limited treatment centres**

- (1) The Chief Psychiatrist may, by notice in the Gazette, determine that a specified place will be a limited treatment centre for the purposes of this Act.
- (2) The Chief Psychiatrist may—
  - (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.



**97A—Authorised community mental health facilities**

- (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—
  - (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.

**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, a person confirming or varying the instrument, or the Tribunal, 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 mental 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 mental 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 mental 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 mental health professional; or
- (b) otherwise purports to act under this Act in the capacity of a medical practitioner or authorised mental 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 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 mental health professional cannot sign any authorisation, certificate or order under this Act relating to the treatment of a person to whom the medical practitioner or authorised mental health professional is related by blood or marriage, or who is the domestic partner of the medical practitioner or authorised mental health professional.

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

A person must not, without lawful excuse, remove an involuntary inpatient from a treatment 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—

- (a) the Chief Executive; or
- (b) in the case of information obtained while working at an incorporated hospital under the *Health Care Act 2008* or the SA Ambulance Service Inc (*SAAS*)—by the hospital or SAAS (as the case requires).

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 the Department, 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 inpatient 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 Tribunal may, on application by a person who the Tribunal is satisfied has a proper interest in the matter, authorise the publication of a report of proceedings before the Tribunal under this Act.

- (3) A person who is authorised to publish a report under subsection (2) must not, except as authorised by the Tribunal, 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 Tribunal 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 Tribunal or the Chief Psychiatrist.

Maximum penalty: \$1 250.

### **109—Evidentiary provision**

In any legal proceedings—

- (a) an apparently genuine document purporting to be a community treatment order, inpatient 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;
- (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 5 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—Transitional provisions**

### **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

- Amendments of this version that are uncommenced are not incorporated into the text.
- 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).

### Legislation repealed by principal Act

The *Mental Health Act 2009* repealed the following:

*Mental Health Act 1993*

### 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)<br>except s 3 <b>community visitor</b> ,<br>ss 47(2)(d), 48(3)(f) and Pt 8<br>Div 2—11.6.2011 (s 7(5) <i>Acts<br/>Interpretation Act 1915</i> ) |
| 2010 | 5  | <i>Health Practitioner Regulation<br/>National Law (South Australia) Act<br/>2010</i>                       | 1.7.2010   | Sch 1 (cl 22)—1.7.2010 ( <i>Gazette<br/>1.7.2010 p3338</i> )   |
| 2010 | 9  | <i>Mental Health (Repeal of<br/>Harbouring Offence) Amendment<br/>Act 2010</i>                              | 29.7.2010  | 29.7.2010  |
| 2012 | 26 | <i>Mental Health (Inpatient)<br/>Amendment Act 2012</i>   | 21.6.2012  | 23.8.2012 ( <i>Gazette</i> 2.8.2012 p3302)   |
| 2014 | 26 | <i>Statutes Amendment (SACAT)<br/>Act 2014</i>  | 11.12.2014 | Pt 11 (ss 105—131)—29.3.2015<br>( <i>Gazette</i> 5.3.2015 p883)  |
| 2016 | 34 | <i>Mental Health (Review) Amendment<br/>Act 2016</i>  | 14.7.2016  | Pt 2 (ss 4—84)—5.6.2017 ( <i>Gazette<br/>30.5.2017 p1982</i> )   |
| 2017 | 51 | <i>Statutes Amendment (SACAT No 2)<br/>Act 2017</i>   | 28.11.2017 | Pt 29 (ss 174 to 179)—14.12.2017<br>( <i>Gazette</i> 12.12.2017 p4960)   |
| 2017 | 64 | <i>Children's Protection Law Reform<br/>(Transitional Arrangements and<br/>Related Amendments) Act 2017</i> | 12.12.2017 | Pt 16 (s 122)—22.10.2018 ( <i>Gazette<br/>19.12.2017 p5119</i> )   |
| 2021 | 21 | <i>Health Care (Governance)<br/>Amendment Act 2021</i>  | 17.6.2021  | Sch 1 (cl 1)—23.8.2021 ( <i>Gazette<br/>29.7.2021 p2915</i> )  |
| 2021 | 25 | <i>Statutes Amendment (COVID-19<br/>Permanent Measures) Act 2021</i>  | 17.6.2021  | Pt 7 (ss 13 to 15)—9.9.2021 ( <i>Gazette<br/>18.8.2021 p3099</i> )   |



|      |    |   |                  |  |
|------|----|---|------------------|--|
| 2021 | 47 | <i>Statutes Amendment (Spit Hood Prohibition) Act 2021</i>  | 25.11.2021       | Pt 3 (s 4)—25.11.2021  |
| 2023 | 4  | <b><i>Statutes Amendment (Attorney-General's Portfolio and Other Justice Measures) Act 2023</i></b> | <b>23.2.2023</b> | <b>Pt 13 (s 29)—22.6.2023 (<i>Gazette</i> 15.6.2023 p1774)</b> |
| 2023 | 39 | <i>Public Holidays Act 2023</i>   | 7.12.2023        | Sch 1 (cl 14)—1.1.2024: s 2                                    |

## Provisions amended

New entries appear in bold.

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

| Provision                                   | How varied  | Commencement |
|---|---|--------------|
| Long title                                  | amended under <i>Legislation Revision and Publication Act 2002</i> and by 26/2012 Sch 1 | 23.8.2012    |
|   | amended by 34/2016 s 4(1), (2)  | 5.6.2017     |
| Pt 1  |   |              |
| s 2   | <i>omitted under Legislation Revision and Publication Act 2002</i>                      | 23.8.2012    |
| s 3   |   |              |
| s 3(1)                                      | s 3 redesignated as s 3(1) by 34/2016 s 5(18)   | 5.6.2017     |
| absent without leave                        | inserted by 34/2016 s 5(1)  | 5.6.2017     |
| advance care directive                      | inserted by 34/2016 s 5(1)  | 5.6.2017     |
| approved treatment centre                   | amended by 34/2016 s 5(2)   | 5.6.2017     |
| authorised community mental health facility | inserted by 34/2016 s 5(3)  | 5.6.2017     |
| <i>authorised health professional</i>       | <i>deleted by 34/2016 s 5(3)</i>  | 5.6.2017     |
| authorised medical practitioner             | amended by 34/2016 s 5(4)   | 5.6.2017     |
| authorised mental health professional       | inserted by 34/2016 s 5(5)  | 5.6.2017     |
| authorised officer                          | amended by 34/2016 s 5(6)   | 5.6.2017     |
| Chief Executive                             | amended by 34/2016 s 5(7)   | 5.6.2017     |
| <i>Board</i>                                | <i>deleted by 26/2014 s 105(1)</i>  | 29.3.2015    |
| decision                                    | inserted by 26/2014 s 105(2)  | 29.3.2015    |
| Department                                  | inserted by 34/2016 s 5(8)  | 5.6.2017     |
| director                                    | substituted by 34/2016 s 5(9)   | 5.6.2017     |
| <i>detention and treatment order</i>        | <i>deleted by 26/2012 s 4(1)</i>  | 23.8.2012    |
| inpatient                                   | inserted by 26/2012 s 4(2)  | 23.8.2012    |
| inpatient treatment order                   | inserted by 26/2012 s 4(2)  | 23.8.2012    |
| internal review                             | inserted by 26/2014 s 105(3)  | 29.3.2015    |

# Mental Health Act 2009—22.6.2023 to 31.12.2023

## Legislative history

|   |  |                  |
|---|--|------------------|
| involuntary inpatient                           | inserted by 26/2012 s 4(2)   | 23.8.2012        |
| leave of absence                                | inserted by 26/2012 s 4(2)   | 23.8.2012        |
| level 1 inpatient treatment order               | level 1 detention and treatment order amended to read level 1 inpatient treatment order by 26/2012 Sch 1 | 23.8.2012        |
| level 2 inpatient treatment order               | level 2 detention and treatment order amended to read level 2 inpatient treatment order by 26/2012 Sch 1 | 23.8.2012        |
| level 3 inpatient treatment order               | level 3 detention and treatment order amended to read level 3 inpatient treatment order by 26/2012 Sch 1 | 23.8.2012        |
| limited treatment centre                        | amended by 34/2016 s 5(10)   | 5.6.2017         |
| medical examination                             | amended by 34/2016 s 5(11)   | 5.6.2017         |
| medical practitioner                            | substituted by 5/2010 Sch 1 cl 22(1)   | 1.7.2010         |
| patient   | amended by 26/2012 s 4(3), Sch 1   | 23.8.2012        |
|   | substituted by 34/2016 s 5(12)   | 5.6.2017         |
| patient assistance request                      | inserted by 34/2016 s 5(13)  | 5.6.2017         |
| <i>patient at large</i>                         | <i>amended by 26/2012 s 4(4), Sch 1</i>  | <i>23.8.2012</i> |
|   | <i>deleted by 34/2016 s 5(13)</i>  | <i>5.6.2017</i>  |
| Prescribed Psychiatric Treatment Panel or Panel | inserted by 34/2016 s 5(14)  | 5.6.2017         |
| psychiatrist                                    | substituted by 5/2010 Sch 1 cl 22(2)   | 1.7.2010         |
| restrictive practice                            | inserted by 34/2016 s 5(15)  | 5.6.2017         |
| substitute decision-maker                       | inserted by 34/2016 s 5(16)  | 5.6.2017         |
| Tribunal  | inserted by 26/2014 s 105(4)   | 29.3.2015        |
| voluntary community patient                     | inserted by 34/2016 s 5(17)  | 5.6.2017         |
| <i>voluntary patient</i>                        | <i>deleted by 26/2012 s 4(5)</i>   | <i>23.8.2012</i> |
| voluntary inpatient                             | inserted by 26/2012 s 4(5)   | 23.8.2012        |
| s 3(2) and (3)                                  | inserted by 34/2016 s 5(18)  | 5.6.2017         |
| s 4   |  |                  |
| s 4(1)  | amended by 34/2016 s 6(1)  | 5.6.2017         |
| s 4(3)  | inserted by 34/2016 s 6(2)   | 5.6.2017         |
| s 5   |  |                  |
| s 5(1)  | amended by 34/2016 s 7   | 5.6.2017         |
| s 5A  | inserted by 34/2016 s 8  | 5.6.2017         |
| Pt 2  |  |                  |
| s 6   | amended by 26/2012 Sch 1   | 23.8.2012        |
|   | amended by 34/2016 s 9   | 5.6.2017         |

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|                                 |  |            |
|---------------------------------|--|------------|
| s 7                             |  |            |
| s 7(1)                          | amended by 26/2014 s 106               | 29.3.2015  |
|                                 | amended by 34/2016 s 10(1)—(4)         | 5.6.2017   |
| s 7(2)                          |  |            |
| mental health services          | amended by 34/2016 s 10(5)             | 5.6.2017   |
| patient                         | inserted by 34/2016 s 10(6)            | 5.6.2017   |
| Pt 3                            |  |            |
| heading                         | amended by 26/2012 Sch 1               | 23.8.2012  |
| s 8                             |  |            |
| s 8(1) and (2)                  | amended by 26/2012 Sch 1               | 23.8.2012  |
| s 9                             |  |            |
| s 9(1)                          | amended by 26/2012 Sch 1               | 23.8.2012  |
|                                 | amended by 34/2016 s 11                | 5.6.2017   |
| Pt 4                            |  |            |
| s 10                            |  |            |
| s 10(1)                         | amended by 34/2016 s 12(1)—(3)         | 5.6.2017   |
| s 10(3)                         | amended by 34/2016 s 12(4)             | 5.6.2017   |
| s 10(4)                         | amended by 34/2016 s 12(5)             | 5.6.2017   |
| s 10(5)                         | substituted by 34/2016 s 12(6)         | 5.6.2017   |
| s 10(6)                         | amended by 34/2016 s 12(1)             | 5.6.2017   |
| s 10(7), note                   | amended by 26/2012 Sch 1               | 23.8.2012  |
| s 10(8)                         | amended by 34/2016 s 12(7)             | 5.6.2017   |
| s 11                            |  |            |
| s 11(1)                         | amended by 26/2014 s 107(1)            | 29.3.2015  |
|                                 | amended by 34/2016 s 13(1)             | 5.6.2017   |
| s 11(2)                         | <i>substituted by 26/2014 s 107(2)</i> | 29.3.2015  |
|                                 | <i>amended by 34/2016 s 13(2)</i>      | 5.6.2017   |
|                                 | <i>deleted by 51/2017 s 174</i>        | 14.12.2017 |
| s 12                            |  |            |
| s 12(1)                         | amended by 34/2016 s 14(1)             | 5.6.2017   |
| s 12(2)                         | amended by 34/2016 s 14(1), (2)        | 5.6.2017   |
| s 12(3)                         | amended by 34/2016 s 14(1)             | 5.6.2017   |
| s 15 before deletion by 34/2016 |  |            |
| s 15(1)—(3)                     | <i>amended by 26/2014 s 108(1)</i>     | 29.3.2015  |
| s 15(4)                         | <i>inserted by 26/2014 s 108(2)</i>    | 29.3.2015  |
| s 15                            | <i>deleted by 34/2016 s 15</i>         | 5.6.2017   |
| s 16                            |  |            |
| s 16(1)                         | amended by 26/2014 s 109(1)            | 29.3.2015  |
|                                 | amended by 34/2016 s 16(1), (2)        | 5.6.2017   |
| s 16(3)                         | amended by 26/2012 Sch 1               | 23.8.2012  |
|                                 | amended by 26/2014 s 109(1)            | 29.3.2015  |

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|                 |                                  |            |
|-----------------|----------------------------------|------------|
|                 | (b) deleted by 34/2016 s 16(3)   | 5.6.2017   |
| s 16(4)         | amended by 26/2014 s 109(1)      | 29.3.2015  |
| s 16(4a)        | inserted by 51/2017 s 175        | 14.12.2017 |
| s 16(6)         | amended by 26/2014 s 109(1)—(3)  | 29.3.2015  |
| s 16(7) and (8) | amended by 26/2014 s 109(1)      | 29.3.2015  |
| s 17            | amended by 26/2014 s 110(1), (2) | 29.3.2015  |
| Pt 5            |                                  |            |
| heading         | amended by 26/2012 Sch 1         | 23.8.2012  |
| Pt 5 Div 1      |                                  |            |
| heading         | amended by 26/2012 Sch 1         | 23.8.2012  |
| s 20            |                                  |            |
| s 20(1) and (2) | amended by 26/2012 Sch 1         | 23.8.2012  |
| Pt 5 Div 2      |                                  |            |
| heading         | amended by 26/2012 Sch 1         | 23.8.2012  |
| s 21            |                                  |            |
| s 21(1)         | amended by 26/2012 Sch 1         | 23.8.2012  |
|                 | amended by 34/2016 s 17(1)—(3)   | 5.6.2017   |
| s 21(2)         | amended by 26/2012 Sch 1         | 23.8.2012  |
| s 21(3)         | amended by 26/2012 Sch 1         | 23.8.2012  |
|                 | amended by 34/2016 s 17(4)       | 5.6.2017   |
| s 21(4)         | amended by 26/2012 Sch 1         | 23.8.2012  |
| s 21(5)         | amended by 26/2012 Sch 1         | 23.8.2012  |
| s 21(6)         | amended by 34/2016 s 17(1)       | 5.6.2017   |
| s 21(7), note   | amended by 26/2012 Sch 1         | 23.8.2012  |
| s 21(8)         | amended by 26/2012 Sch 1         | 23.8.2012  |
|                 | amended by 34/2016 s 17(5)       | 5.6.2017   |
| s 22            |                                  |            |
| s 22(1)         | amended by 26/2012 Sch 1         | 23.8.2012  |
|                 | amended by 26/2014 s 111(1)      | 29.3.2015  |
|                 | amended by 34/2016 s 18(1)       | 5.6.2017   |
| s 22(2)         | substituted by 26/2014 s 111(2)  | 29.3.2015  |
|                 | amended by 34/2016 s 18(2)       | 5.6.2017   |
|                 | substituted by 51/2017 s 176     | 14.12.2017 |
| s 23            |                                  |            |
| s 23(1)         | amended by 26/2012 Sch 1         | 23.8.2012  |
|                 | amended by 34/2016 s 19(1)       | 5.6.2017   |
| s 23(2)         | amended by 26/2012 Sch 1         | 23.8.2012  |
|                 | amended by 34/2016 s 19(1), (2)  | 5.6.2017   |
| s 23(3)         | amended by 34/2016 s 19(1)       | 5.6.2017   |
| s 23(4)         | amended by 26/2012 Sch 1         | 23.8.2012  |
| s 23(5)         | amended by 26/2012 Sch 1         | 23.8.2012  |
| s 24            |                                  |            |
| s 24(1)         | amended by 26/2012 Sch 1         | 23.8.2012  |

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|               |                                 |            |
|---------------|---------------------------------|------------|
|               | amended by 34/2016 s 20(1)      | 5.6.2017   |
| s 24(3)       | amended by 26/2012 Sch 1        | 23.8.2012  |
| s 24(5)       | amended by 26/2012 Sch 1        | 23.8.2012  |
|               | amended by 34/2016 s 20(2)      | 5.6.2017   |
| Pt 5 Div 3    |                                 |            |
| heading       | amended by 26/2012 Sch 1        | 23.8.2012  |
| s 25          |                                 |            |
| s 25(1)       | amended by 26/2012 Sch 1        | 23.8.2012  |
| s 25(2)       | amended by 26/2012 Sch 1        | 23.8.2012  |
|               | amended by 34/2016 s 21(1), (2) | 5.6.2017   |
| s 25(3)       | amended by 26/2012 Sch 1        | 23.8.2012  |
| s 25(5)       | amended by 26/2012 Sch 1        | 23.8.2012  |
|               | amended by 34/2016 s 21(3)      | 5.6.2017   |
| s 25(6)       | amended by 26/2012 Sch 1        | 23.8.2012  |
|               | amended by 34/2016 s 21(4)      | 5.6.2017   |
| s 25(7)       | deleted by 26/2012 Sch 1        | 23.8.2012  |
|               | inserted by 34/2016 s 21(5)     | 5.6.2017   |
| s 25(8), note | amended by 26/2012 Sch 1        | 23.8.2012  |
| s 25(9)       | amended by 26/2012 Sch 1        | 23.8.2012  |
|               | amended by 34/2016 s 21(6)      | 5.6.2017   |
| s 26          |                                 |            |
| s 26(1)       | amended by 26/2012 Sch 1        | 23.8.2012  |
|               | amended by 26/2014 s 112(1)     | 29.3.2015  |
|               | amended by 34/2016 s 22(1)      | 5.6.2017   |
| s 26(2)       | substituted by 26/2014 s 112(2) | 29.3.2015  |
|               | amended by 34/2016 s 22(2)      | 5.6.2017   |
|               | substituted by 51/2017 s 177    | 14.12.2017 |
| s 26(4)       | amended by 26/2012 Sch 1        | 23.8.2012  |
| s 26(5)       | amended by 26/2014 s 112(3)     | 29.3.2015  |
| s 27          |                                 |            |
| s 27(1)       | amended by 26/2012 Sch 1        | 23.8.2012  |
| s 27(2)       | amended by 26/2012 Sch 1        | 23.8.2012  |
|               | amended by 34/2016 s 23         | 5.6.2017   |
| s 27(4)       | amended by 26/2012 Sch 1        | 23.8.2012  |
| s 27(5)       | amended by 26/2012 Sch 1        | 23.8.2012  |
| s 28          |                                 |            |
| s 28(1)       | amended by 26/2012 Sch 1        | 23.8.2012  |
|               | amended by 34/2016 s 24(1)      | 5.6.2017   |
| s 28(4)       | amended by 26/2012 Sch 1        | 23.8.2012  |
|               | amended by 34/2016 s 24(2)      | 5.6.2017   |
| note          | amended by 26/2012 Sch 1        | 23.8.2012  |
| Pt 5 Div 4    |                                 |            |
| heading       | amended by 26/2012 Sch 1        | 23.8.2012  |

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|-------------------------------|----------------------------------|------------|
| s 29                          |                                  |            |
| s 29(1)                       | amended by 26/2012 Sch 1         | 23.8.2012  |
|                               | amended by 26/2014 s 113         | 29.3.2015  |
|                               | amended by 34/2016 s 25(1), (2)  | 5.6.2017   |
| s 29(2)                       | amended by 26/2012 Sch 1         | 23.8.2012  |
| s 29(3)                       | amended by 26/2012 Sch 1         | 23.8.2012  |
|                               | amended by 34/2016 s 25(3)       | 5.6.2017   |
| s 29(4)                       | amended by 26/2012 Sch 1         | 23.8.2012  |
|                               | amended by 26/2014 s 113         | 29.3.2015  |
| s 29(4a)                      | inserted by 51/2017 s 178        | 14.12.2017 |
| s 29(5)                       | amended by 26/2012 Sch 1         | 23.8.2012  |
| s 29(6), (7) and<br>note      | amended by 26/2012 Sch 1         | 23.8.2012  |
|                               | amended by 26/2014 s 113         | 29.3.2015  |
| s 30                          | amended by 26/2012 Sch 1         | 23.8.2012  |
|                               | amended by 26/2014 s 114(1), (2) | 29.3.2015  |
| s 31                          |                                  |            |
| s 31(1)                       | amended by 26/2012 Sch 1         | 23.8.2012  |
|                               | amended by 34/2016 s 26(1)       | 5.6.2017   |
| s 31(4)                       | amended by 26/2012 Sch 1         | 23.8.2012  |
|                               | amended by 34/2016 s 26(2)       | 5.6.2017   |
| note                          | amended by 26/2012 Sch 1         | 23.8.2012  |
| Pt 5 Div 5                    |                                  |            |
| s 32                          | amended by 26/2012 Sch 1         | 23.8.2012  |
| s 33                          |                                  |            |
| s 33(1), (2) and<br>note      | amended by 26/2012 Sch 1         | 23.8.2012  |
| s 34                          | substituted by 26/2012 s 5       | 23.8.2012  |
| s 34A                         | inserted by 26/2012 s 5          | 23.8.2012  |
| s 34A(2)                      | amended by 34/2016 s 27          | 5.6.2017   |
| s 35                          |                                  |            |
| s 35(1), note, (2)<br>and (3) | amended by 26/2012 Sch 1         | 23.8.2012  |
| s 35(6)                       | amended by 34/2016 s 28          | 5.6.2017   |
| s 36                          |                                  |            |
| s 36(1)                       | amended by 26/2012 Sch 1         | 23.8.2012  |
|                               | amended by 34/2016 s 29          | 5.6.2017   |
| s 37                          |                                  |            |
| s 37(1)                       | amended by 26/2012 Sch 1         | 23.8.2012  |
|                               | amended by 34/2016 s 30          | 5.6.2017   |
| s 38                          |                                  |            |
| s 38(1)                       | amended by 34/2016 s 31          | 5.6.2017   |
| Pt 6                          |                                  |            |
| s 39                          |                                  |            |

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|                 |                                 |           |
|-----------------|---------------------------------|-----------|
| s 39(1)         | amended by 26/2012 Sch 1        | 23.8.2012 |
|                 | amended by 34/2016 s 32(1)      | 5.6.2017  |
| s 39(2)         | amended by 34/2016 s 32(2), (3) | 5.6.2017  |
| s 39(3)         | inserted by 34/2016 s 32(4)     | 5.6.2017  |
| s 40            |                                 |           |
| s 40(2)         | amended by 34/2016 s 33         | 5.6.2017  |
| s 41            |                                 |           |
| s 41(1)         | amended by 26/2012 Sch 1        | 23.8.2012 |
| s 41(2)         | amended by 26/2012 Sch 1        | 23.8.2012 |
|                 | amended by 34/2016 s 34         | 5.6.2017  |
| Pt 7            |                                 |           |
| Pt 7 Div A1     | inserted by 34/2016 s 35        | 5.6.2017  |
| Pt 7 Div 1      |                                 |           |
| s 42            |                                 |           |
| s 42(1)         | amended by 26/2012 s 6(1)       | 23.8.2012 |
|                 | amended by 26/2014 s 115        | 29.3.2015 |
|                 | amended by 34/2016 s 36(1)      | 5.6.2017  |
| s 42(4)         | substituted by 34/2016 s 36(2)  | 5.6.2017  |
| s 42(5)         | amended by 26/2014 s 115        | 29.3.2015 |
| s 42(7)         | amended by 34/2016 s 36(3)      | 5.6.2017  |
| s 42(9)         | (a) deleted by 26/2012 s 6(2)   | 23.8.2012 |
| Pt 7 Div 2      |                                 |           |
| s 43            |                                 |           |
| s 43(1)         | amended by 26/2014 s 116        | 29.3.2015 |
|                 | amended by 34/2016 s 37(1)      | 5.6.2017  |
| s 43(1a)        | inserted by 34/2016 s 37(2)     | 5.6.2017  |
| s 43(2)         | amended by 26/2014 s 116        | 29.3.2015 |
| s 43(2a)        | inserted by 34/2016 s 37(3)     | 5.6.2017  |
| s 44            |                                 |           |
| s 44(4)         | inserted by 34/2016 s 38        | 5.6.2017  |
| Pt 8            |                                 |           |
| s 45            |                                 |           |
| s 45(1)         | amended by 34/2016 s 39         | 5.6.2017  |
| s 45(2)         | amended by 26/2012 Sch 1        | 23.8.2012 |
|                 | amended by 34/2016 s 39         | 5.6.2017  |
| s 46            |                                 |           |
| s 46(1)         | amended by 26/2014 s 117(1)     | 29.3.2015 |
|                 | amended by 34/2016 s 40         | 5.6.2017  |
| s 46(2)—(4)     | amended by 26/2014 s 117(2)     | 29.3.2015 |
| s 47            |                                 |           |
| s 47(1) and (3) | amended by 26/2012 Sch 1        | 23.8.2012 |
| s 48            |                                 |           |
| s 48(2)         | amended by 26/2012 Sch 1        | 23.8.2012 |

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# Mental Health Act 2009—22.6.2023 to 31.12.2023

## Legislative history

|                      |                                   |            |
|----------------------|-----------------------------------|------------|
| s 48(3)              | amended by 26/2014 s 118          | 29.3.2015  |
| s 48A                | inserted by 47/2021 s 4           | 25.11.2021 |
| s 50                 |                                   |            |
| s 50(4)              | <i>deleted by 34/2016 s 41</i>    | 5.6.2017   |
| s 51                 |                                   |            |
| s 51(1)              | amended by 34/2016 s 42(1)        | 5.6.2017   |
| s 51(3)              | inserted by 34/2016 s 42(2)       | 5.6.2017   |
| s 51A                | inserted by 34/2016 s 43          | 5.6.2017   |
| s 52                 |                                   |            |
| s 52(1)              | substituted by 34/2016 s 44(1)    | 5.6.2017   |
|                      | amended by 25/2021 s 13           | 9.9.2021   |
| s 52(2)              | substituted by 34/2016 s 44(1)    | 5.6.2017   |
| s 52(3)              | amended by 26/2012 Sch 1          | 23.8.2012  |
|                      | amended by 34/2016 s 44(2)        | 5.6.2017   |
| s 52(7)              | <i>deleted by 34/2016 s 44(3)</i> | 5.6.2017   |
| s 52A                | inserted by 34/2016 s 45          | 5.6.2017   |
| s 52A(1)             | amended by 25/2021 s 14           | 9.9.2021   |
| s 52B                | inserted by 25/2021 s 15          | 9.9.2021   |
| s 53                 |                                   |            |
| s 53(2)              | amended by 26/2012 Sch 1          | 23.8.2012  |
| s 54                 |                                   |            |
| s 54(1)              | amended by 34/2016 s 46           | 5.6.2017   |
| Pt 9                 |                                   |            |
| s 54A                | inserted by 34/2016 s 47          | 5.6.2017   |
| s 55                 |                                   |            |
| s 55(1)              | amended by 26/2012 Sch 1          | 23.8.2012  |
|                      | amended by 34/2016 s 48(1), (2)   | 5.6.2017   |
| s 55(2)              | amended by 34/2016 s 48(3)        | 5.6.2017   |
| s 55(3)              | amended by 34/2016 s 48(4)        | 5.6.2017   |
| s 56                 |                                   |            |
| s 56(1)              | amended by 34/2016 s 49(1), (2)   | 5.6.2017   |
| s 56(4)              | amended by 34/2016 s 49(3)—(5)    | 5.6.2017   |
| s 57                 |                                   |            |
| s 57(1)              | amended by 34/2016 s 50(1), (2)   | 5.6.2017   |
| s 57(2)              | amended by 34/2016 s 50(3)        | 5.6.2017   |
| s 57(5)              | amended by 34/2016 s 50(4), (5)   | 5.6.2017   |
| s 57(10)             | amended by 26/2012 Sch 1          | 23.8.2012  |
| s 58A                | inserted by 34/2016 s 51          | 5.6.2017   |
| Pt 10                |                                   |            |
| s 61                 |                                   |            |
| another jurisdiction | inserted by 34/2016 s 52(1)       | 5.6.2017   |
| corresponding law    | substituted by 34/2016 s 52(1)    | 5.6.2017   |



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| interstate<br>community<br>treatment order    | amended by 26/2012 Sch 1   | 23.8.2012        |
| interstate inpatient                          | inserted by 26/2012 Sch 1  | 23.8.2012        |
| interstate inpatient<br>treatment order       | interstate detention and treatment order<br>amended to read interstate inpatient treatment<br>order by 26/2012 Sch 1                                 | 23.8.2012        |
| interstate patient<br>absent without<br>leave | inserted by 34/2016 s 52(2)  | 5.6.2017         |
| <i>interstate patient<br/>at large</i>        | <i>amended by 26/2012 Sch 1</i>  | <i>23.8.2012</i> |
|   | <i>deleted by 34/2016 s 52(2)</i>  | <i>5.6.2017</i>  |
| interstate<br>treatment centre                | amended by 26/2012 Sch 1   | 23.8.2012        |
| South Australian<br>inpatient treatment       | South Australian detention and treatment order<br>amended by, and amended to read South<br>Australian inpatient treatment order by,<br>26/2012 Sch 1 | 23.8.2012        |
| s 63  |  |                  |
| s 63(1)                                       | amended by 34/2016 s 53(1)   | 5.6.2017         |
| s 63(2)                                       | amended by 34/2016 s 53(2)   | 5.6.2017         |
| s 64  | amended by 34/2016 s 54  | 5.6.2017         |
| s 66  |  |                  |
| s 66(3) and (4)                               | substituted by 34/2016 s 55  | 5.6.2017         |
| s 66(5) and (6)                               | inserted by 34/2016 s 55   | 5.6.2017         |
| s 67  |  |                  |
| s 67(1)                                       | s 67 amended and redesignated as s 67(1) by<br>34/2016 s 56(1), (2)  | 5.6.2017         |
| s 67(2)                                       | inserted by 34/2016 s 56(2)  | 5.6.2017         |
| s 68  |  |                  |
| s 68(1)                                       | s 68 redesignated as 68(1) by 34/2016 s 57   | 5.6.2017         |
| s 68(2)—(8)                                   | inserted by 34/2016 s 57   | 5.6.2017         |
| s 69  |  |                  |
| s 69(2a) and (2b)                             | inserted by 34/2016 s 58   | 5.6.2017         |
| s 70  |  |                  |
| s 70(1)                                       | amended by 26/2012 Sch 1   | 23.8.2012        |
|   | substituted by 34/2016 s 59(1)   | 5.6.2017         |
| s 70(3)                                       | amended by 34/2016 s 59(2)   | 5.6.2017         |
| s 70(4)                                       | amended by 26/2012 Sch 1   | 23.8.2012        |
|   | amended by 26/2014 s 119   | 29.3.2015        |
|   | amended by 34/2016 s 59(3)   | 5.6.2017         |
| s 70(5)                                       | amended by 34/2016 s 59(4)   | 5.6.2017         |
| s 70(6)                                       | amended by 34/2016 s 59(5)   | 5.6.2017         |
| s 70(7)                                       | inserted by 34/2016 s 59(6)  | 5.6.2017         |
| s 71  |  |                  |

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## Legislative history

|  |   |           |
|--|---|-----------|
| s 71(1)  | amended by 26/2012 Sch 1  | 23.8.2012 |
|  | substituted by 34/2016 s 60(1)  | 5.6.2017  |
| s 71(2)  | amended by 34/2016 s 60(2)  | 5.6.2017  |
| s 71(2a) and (2b)                                      | inserted by 34/2016 s 60(3)   | 5.6.2017  |
| s 71(3)  | amended by 26/2012 Sch 1  | 23.8.2012 |
| s 72   |   |           |
| s 72(1)  | amended by 34/2016 s 61(1), (2)   | 5.6.2017  |
| s 72(2)  | substituted by 34/2016 s 61(3)  | 5.6.2017  |
| s 72(3)  | amended by 34/2016 s 61(4)  | 5.6.2017  |
| s 73   | substituted by 34/2016 s 62   | 5.6.2017  |
| s 74   |   |           |
| s 74(1)  | amended by 26/2012 Sch 1  | 23.8.2012 |
|  | amended by 34/2016 s 63(1)  | 5.6.2017  |
| s 74(3)  | substituted by 34/2016 s 63(2)  | 5.6.2017  |
| s 75   |   |           |
| s 75(2)  | amended by 34/2016 s 64(1), (2)   | 5.6.2017  |
| s 75(4)  | substituted by 34/2016 s 64(3)  | 5.6.2017  |
| s 75(5)  |   |           |
| interstate<br>authorised mental<br>health professional | amended by 26/2012 Sch 1  | 23.8.2012 |
|  | interstate authorised health professional<br>amended to read interstate authorised mental<br>health professional by 34/2016 s 64(4) | 5.6.2017  |
| s 76   |   |           |
| s 76(1)  | amended by 26/2012 Sch 1  | 23.8.2012 |
|  | amended by 34/2016 s 65(1)—(3)  | 5.6.2017  |
| s 76(2a) and (2b)                                      | inserted by 34/2016 s 65(4)   | 5.6.2017  |
| s 76(4)  | amended by 34/2016 s 65(5)  | 5.6.2017  |
| s 76(5)  | substituted by 34/2016 s 65(6)  | 5.6.2017  |
| s 76(6)  | amended by 34/2016 s 65(7)  | 5.6.2017  |
| s 77   |   |           |
| s 77(1)  | amended by 34/2016 s 66(1)  | 5.6.2017  |
| s 77(3)  | amended by 34/2016 s 66(2)  | 5.6.2017  |
| s 77(4)  | substituted by 34/2016 s 66(3)  | 5.6.2017  |
| s 77(5)  | amended by 34/2016 s 66(4)  | 5.6.2017  |
| s 78   |   |           |
| s 78(2)  | substituted by 34/2016 s 67   | 5.6.2017  |
| Pt 11  |   |           |
| <i>Div 1 heading</i>                                   | <i>deleted by 26/2014 s 120</i>   | 29.3.2015 |
| s 79   |   |           |
| s 79(1)  | amended by 26/2012 Sch 1  | 23.8.2012 |
|  | amended by 26/2014 s 121(1)   | 29.3.2015 |
|  | (a) deleted by 34/2016 s 68(1)  | 5.6.2017  |

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|                      | amended by 34/2016 s 68(2)               | 5.6.2017         |
| s 79(2)              | amended by 26/2012 Sch 1                 | 23.8.2012        |
|                      | amended by 26/2014 s 121(1)              | 29.3.2015        |
| s 79(3) and (4)      | amended by 26/2014 s 121(1)              | 29.3.2015        |
| s 79(5)              | inserted by 26/2014 s 121(2)             | 29.3.2015        |
| s 80                 |  |                  |
| s 80(1) and (2)      | amended by 26/2012 Sch 1                 | 23.8.2012        |
|                      | amended by 26/2014 s 122                 | 29.3.2015        |
| s 80(3)              | amended by 26/2014 s 122                 | 29.3.2015        |
| <i>Div 2 heading</i> | <i>deleted by 26/2014 s 123</i>          | 29.3.2015        |
| s 81                 |  |                  |
| s 81(1)              | amended by 26/2012 Sch 1                 | 23.8.2012        |
|                      | amended by 26/2014 s 124(1), (2)         | 29.3.2015        |
|                      | amended by 34/2016 s 69(1)               | 5.6.2017         |
| <i>s 81(1a)</i>      | <i>inserted by 26/2014 s 124(3)</i>      | 29.3.2015        |
|                      | <i>deleted by 34/2016 s 69(2)</i>        | 5.6.2017         |
| s 81(2)              | amended by 26/2014 s 124(4), (5)         | 29.3.2015        |
| s 81(2a)             | inserted by 26/2014 s 124(6)             | 29.3.2015        |
|                      | amended by 34/2016 s 69(3)               | 5.6.2017         |
| s 81(2b)—(2d)        | inserted by 51/2017 s 179                | 14.12.2017       |
| s 81(3)              | amended by 26/2014 s 124(7), (8)         | 29.3.2015        |
| <i>s 81(4)</i>       | <i>substituted by 26/2014 s 124(9)</i>   | 29.3.2015        |
|                      | <i>deleted by 34/2016 s 69(4)</i>        | 5.6.2017         |
| <i>s 81(5)</i>       | <i>amended by 26/2012 Sch 1</i>          | 23.8.2012        |
|                      | <i>amended by 26/2014 s 124(10)—(12)</i> | 29.3.2015        |
|                      | <i>deleted by 34/2016 s 69(4)</i>        | 5.6.2017         |
| <i>s 82</i>          | <i>deleted by 26/2014 s 125</i>          | 29.3.2015        |
| s 83                 |  |                  |
| s 83(1)              | amended by 26/2014 s 126(1), (2)         | 29.3.2015        |
| s 83(2)              | amended by 26/2014 s 126(3)              | 29.3.2015        |
| s 83(3)              | amended by 26/2014 s 126(4)              | 29.3.2015        |
| s 83A                | inserted by 26/2014 s 127                | 29.3.2015        |
| s 84                 | substituted by 26/2014 s 127             | 29.3.2015        |
| <b>s 84(1)</b>       | <b>amended by 4/2023 s 29</b>            | <b>22.6.2023</b> |
| <i>s 85</i>          | <i>deleted by 26/2014 s 127</i>          | 29.3.2015        |
| Pt 11A               | inserted by 26/2014 s 127                | 29.3.2015        |
| s 85                 |  |                  |
| s 85(1)              | amended by 34/2016 s 70                  | 5.6.2017         |
| Pt 12                |  |                  |
| Pt 12 Div 1          |  |                  |
| s 86                 | amended by 64/2017 s 122                 | 22.10.2018       |
| Pt 12 Div 2          |  |                  |
| s 90                 |  |                  |

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|--|---------------------------------|------------------|
| s 90(1)                                    | amended by 26/2012 Sch 1        | 23.8.2012        |
|  | amended by 34/2016 s 71(1)—(3)  | 5.6.2017         |
| s 90(2)                                    | amended by 34/2016 s 71(4)      | 5.6.2017         |
| s 90(5)—(7)                                | inserted by 34/2016 s 71(5)     | 5.6.2017         |
| s 92                                       |                                 |                  |
| s 92(1)                                    | amended by 26/2012 Sch 1        | 23.8.2012        |
|  | amended by 34/2016 s 72         | 5.6.2017         |
| Pt 12 Div 3                                |                                 |                  |
| s 93                                       |                                 |                  |
| s 93(1)                                    | amended by 34/2016 s 73(1)      | 5.6.2017         |
| s 93(2)                                    | amended by 34/2016 s 73(2), (3) | 5.6.2017         |
| s 93(3)                                    | inserted by 34/2016 s 73(4)     | 5.6.2017         |
| Pt 12 Div 4                                |                                 |                  |
| heading                                    | substituted by 34/2016 s 74     | 5.6.2017         |
| s 94                                       |                                 |                  |
| s 94(1)                                    | amended by 34/2016 s 75(1), (2) | 5.6.2017         |
| s 94(2)                                    | amended by 34/2016 s 75(3), (4) | 5.6.2017         |
| s 94(3)                                    | inserted by 34/2016 s 75(5)     | 5.6.2017         |
| s 95                                       |                                 |                  |
| s 95(1)                                    | amended by 34/2016 s 76(1), (2) | 5.6.2017         |
| s 95(2)                                    | amended by 34/2016 s 76(3)      | 5.6.2017         |
| Pt 12 Div 5                                |                                 |                  |
| s 96                                       |                                 |                  |
| s 96(1)                                    | amended by 34/2016 s 77(1)      | 5.6.2017         |
| s 96(2)                                    | amended by 34/2016 s 77(2), (3) | 5.6.2017         |
| s 97                                       |                                 |                  |
| s 97(1)                                    | amended by 34/2016 s 78(1)      | 5.6.2017         |
| s 97(2)                                    | amended by 34/2016 s 78(2), (3) | 5.6.2017         |
| s 97A                                      | inserted by 34/2016 s 79        | 5.6.2017         |
| <i>s 98 before deletion<br/>by 34/2016</i> |                                 |                  |
| s 98(1)                                    | <i>amended by 26/2012 Sch 1</i> | <i>23.8.2012</i> |
| s 98                                       | <i>deleted by 34/2016 s 80</i>  | <i>5.6.2017</i>  |
| <i>s 99 before deletion<br/>by 34/2016</i> |                                 |                  |
| s 99(1) and (2)                            | <i>amended by 26/2012 Sch 1</i> | <i>23.8.2012</i> |
| s 99                                       | <i>deleted by 34/2016 s 80</i>  | <i>5.6.2017</i>  |
| Pt 13                                      |                                 |                  |
| s 101                                      |                                 |                  |
| s 101(2)                                   | amended by 26/2012 s 7          | 23.8.2012        |
|  | amended by 26/2014 s 128        | 29.3.2015        |
| s 102                                      |                                 |                  |
| s 102(1), (3) and (4)                      | amended by 34/2016 s 81         | 5.6.2017         |

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| s 102(5)         | amended by 26/2012 Sch 1   | 23.8.2012 |
| s 103            | amended by 26/2012 Sch 1   | 23.8.2012 |
|                  | amended by 34/2016 s 82  | 5.6.2017  |
| s 104            | amended by 26/2012 Sch 1   | 23.8.2012 |
| s 105            | <i>deleted by 9/2010 s 3</i>                                       | 29.7.2010 |
| s 106            |  |           |
| s 106(1)         | amended by 21/2021 Sch 1 cl 1(1)                                   | 23.8.2021 |
| s 106(2)         | amended by 21/2021 Sch 1 cl 1(2)                                   | 23.8.2021 |
| s 106(4)         | amended by 26/2012 Sch 1   | 23.8.2012 |
| s 107            |  |           |
| s 107(2) and (3) | amended by 26/2014 s 129   | 29.3.2015 |
| s 108            | amended by 26/2014 s 130   | 29.3.2015 |
| s 109            | amended by 26/2012 Sch 1   | 23.8.2012 |
|                  | (f) deleted by 34/2016 s 83  | 5.6.2017  |
| s 111            | amended by 34/2016 s 84  | 5.6.2017  |
| Sch 2            |  |           |
| cl 1             | <i>omitted under Legislation Revision and Publication Act 2002</i> | 23.8.2012 |

## Transitional etc provisions associated with Act or amendments

### *Mental Health (Inpatient) Amendment Act 2012, Sch 2—Transitional provisions*

#### 1—Level 1 detention and treatment order

A level 1 detention and treatment order in force immediately before the commencement of this clause continues in force as a level 1 inpatient treatment order, subject to the provisions of the *Mental Health Act 2009*.

#### 2—Level 2 detention and treatment order

A level 2 detention and treatment order in force immediately before the commencement of this clause continues in force as a level 2 inpatient treatment order, subject to the provisions of the *Mental Health Act 2009*.

#### 3—Level 3 detention and treatment order

A level 3 detention and treatment order in force immediately before the commencement of this clause continues in force as a level 3 inpatient treatment order, subject to the provisions of the *Mental Health Act 2009*.

#### 4—Purported detention and treatment orders after commencement

If a person purports, after the commencement of this clause, to make a detention and treatment order under the *Mental Health Act 2009*, it will be taken for the purposes of that Act to be an inpatient treatment order of the same level as the purported detention and treatment order.

## ***Statutes Amendment (SACAT) Act 2014***

### **131—Transitional provisions**

- (1) In this section—

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

***principal Act*** means the *Mental Health Act 2009*;

***relevant day*** means the day on which this Part comes into operation;

***Tribunal*** means the South Australian Civil and Administrative Tribunal.

- (2) The Tribunal will conduct a review under section 15 of the principal Act in respect of any order for which notice is given on or after the relevant day.
- (3) An order, consent or decision of the Guardianship Board under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be an order, consent or decision of the Tribunal.
- (4) A right to make any application or referral, or to seek a review or to institute an appeal, under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Guardianship Board, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.
- (5) Any proceedings before the Guardianship Board under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.
- (6) The Tribunal may—
- (a) receive in evidence any transcript of evidence in proceedings before the Guardianship Board, and draw any conclusions of fact from that evidence that appear proper; and
  - (b) adopt any findings or determinations of the Guardianship Board that may be relevant to proceedings before the Tribunal; and
  - (c) adopt or make any decision (including a decision in the nature of a consent), direction or order in relation to proceedings before the Guardianship Board before the relevant day (including so as to make a decision or give a consent, direction or order, in relation to proceedings fully heard before the relevant day); and
  - (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.
- (7) Nothing in this section affects a right to appeal to the Administrative and Disciplinary Division of the District Court against a decision, direction or order of the Guardianship Board made or given before the relevant day.
- (8) A reference in subsection (5) to proceedings before the Guardianship Board will be taken to include a reference to a review being conducted under section 79 of the principal Act.

## Historical versions

1.7.2010

11.6.2011

23.8.2012

29.3.2015

5.6.2017

14.12.2017

22.10.2018

23.8.2021

9.9.2021

25.11.2021