

South Australia

# Mental Health (Inpatient) Amendment Act 2012

An Act to amend the *Mental Health Act 2009*.

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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 (Inpatient) Amendment Act 2012*.

### 2—Commencement

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

### 3—Amendment provisions

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

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

### 4—Amendment of section 3—Interpretation

- (1) Section 3, definition of *detention and treatment order*—delete the definition
- (2) Section 3—after the definition of *guardian* insert:

*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;

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

*leave of absence*—see section 36;
- (3) Section 3, definition of *patient*, (a)—delete "patient in a treatment centre" and substitute:

inpatient
- (4) Section 3, definition of *patient at large*, (b)—delete "being detained" and substitute:

an involuntary inpatient
- (5) Section 3, definition of *voluntary patient*—delete the definition and substitute:

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

### 5—Substitution of section 34

Section 34—delete the section and substitute:

#### **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 use reasonable force), as reasonably required—
  - (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.

### **6—Amendment of section 42—ECT**

- (1) Section 42(1)(c)—delete the paragraph and substitute:
  - (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—by a medical agent or guardian of the patient or by the Board 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 Board on application under this section.
- (2) Section 42(9)(a)—delete paragraph (a)

### **7—Amendment of section 101—Errors in orders etc**

Section 101(2)—after "author of the instrument," insert:  
a person confirming or varying the instrument,

## **Schedule 1—Further amendments of *Mental Health Act 2009***

<b>Provision amended</b>	<b>How amended</b>
Long title	Long title—delete "detention and treatment" and substitute: inpatient treatment

<b>Provision amended</b>	<b>How amended</b>
Act	Act (except Schedule 2)—delete "level 1 detention and treatment order" wherever occurring and substitute in each case: level 1 inpatient treatment order Act (except Schedule 2)—delete "level 2 detention and treatment order" wherever occurring and substitute in each case: level 2 inpatient treatment order Act (except Schedule 2)—delete "level 3 detention and treatment order" wherever occurring and substitute in each case: level 3 inpatient treatment order Act (except sections 35 and 98)—delete "a detention and treatment order" wherever occurring and substitute in each case: an inpatient treatment order Act—delete "the detention and treatment order" wherever occurring and substitute in each case: the inpatient treatment order Act—delete "or detention and treatment order" wherever occurring and substitute in each case: or inpatient treatment order Act—delete "interstate detention and treatment order" wherever occurring and substitute in each case: interstate inpatient treatment order Act—delete "South Australian detention and treatment order" wherever occurring and substitute in each case: South Australian inpatient treatment order
Section 6—Objects	Section 6(b)—delete "detention and treatment" and substitute: inpatient treatment
Heading to Part 3	Heading to Part 3—delete " <b>patients</b> " and substitute: <b>inpatients</b>
Section 8—Voluntary inpatients	Section 8—delete "voluntary patient" wherever occurring and substitute in each case: voluntary inpatient
Section 9—Voluntary inpatients to be given statement of rights	Section 9(1)—delete "voluntary patient" and substitute: voluntary inpatient
Heading to Part 5	Heading to Part 5—delete " <b>detention and treatment</b> " and substitute: <b>treatment as inpatient</b>
Heading to Part 5 Division 1	Heading to Part 5 Division 1—delete " <b>detention and treatment orders</b> " and substitute: <b>inpatient treatment orders</b>
Heading to Part 5 Division 2	Heading to Part 5 Division 2—delete " <b>detention and treatment orders</b> " and substitute: <b>inpatient treatment orders</b>

Provision amended	How amended
Section 21—Level 1 inpatient treatment orders	Section 21(1)—delete "be detained and receive treatment" and substitute:  receive treatment as an inpatient
Section 23—Copies of level 1 orders, notices and statements of rights to be given to patients etc	Section 23(4)—delete "detained" and substitute: admitted as an inpatient Section 23(5)—delete "detained" and substitute: admitted as an inpatient
Heading to Part 5 Division 3	Heading to Part 5 Division 3—delete " <b>detention and treatment orders</b> " and substitute:  <b>inpatient treatment orders</b>
Section 25—Level 2 inpatient treatment orders	Section 25(1)—delete "detention and treatment of the patient" and substitute:  treatment of the patient as an inpatient in an approved treatment centre Section 25(7)—delete subsection (7)
Section 26—Notices and reports relating to level 2 orders	Section 26(4)—delete "detained under the order" and substitute: an involuntary inpatient
Section 27—Copies of level 2 orders and notices to be given to patients etc	Section 27(4)—delete "detained" and substitute: admitted as an inpatient Section 27(5)—delete "detained" and substitute: admitted as an inpatient
Heading to Part 5 Division 4	Heading to Part 5 Division 4—delete " <b>detention and treatment orders</b> " and substitute:  <b>inpatient treatment orders</b>
Section 29—Level 3 inpatient treatment orders	Section 29(1)—delete "be detained and receive treatment" and substitute:  receive treatment as an inpatient
Section 33—Duty of director of treatment centre to comply with inpatient treatment orders	Section 33(1)(b)—delete "voluntary patient in a treatment centre" and substitute: voluntary inpatient
Section 35—Transfer of involuntary inpatients	Section 35(1)—delete "a patient to whom a detention and treatment order applies" and substitute: an involuntary inpatient Section 35(2)—delete "in which a patient has been detained" Section 35(2)(a)—delete "the patient" first occurring and substitute: an involuntary inpatient Section 35(3)—delete "a patient to whom a detention and treatment order applies" and substitute: an involuntary inpatient

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Schedule 1—Further amendments of *Mental Health Act 2009*

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<b>Provision amended</b>	<b>How amended</b>
Section 36—Leave of absence of involuntary inpatients	Section 36(1)—delete "a patient detained in the centre" and substitute: an involuntary inpatient
Section 37—Persons granted leave of absence to be given statement of rights	Section 37(1)—delete "a patient detained in the centre" and substitute: an involuntary inpatient
Section 39—Treatment and care plans for voluntary inpatients	Section 39(1)—delete "voluntary patient in a treatment centre" and substitute: voluntary inpatient
Section 41—Treatment and care plans for patients to whom inpatient treatment orders apply	Section 41(2)(a)—delete "while in detention at" wherever occurring and substitute in each case: as an inpatient in
Section 47—Patients' right to be supported by guardian etc	Section 47—delete "treated or detained" wherever occurring and substitute in each case: an inpatient
Section 48—Patients' right to communicate with others outside treatment centre	Section 48(2)(a)—delete "any detention and treatment order" and substitute: any inpatient treatment order
Section 52—Visits to and inspection of treatment centres	Section 52(3)(b)—delete "patient detained or being treated in the centre" and substitute: inpatient
Section 53—Requests to see community visitors	Section 53(2)—delete "being detained or treated" and substitute: an inpatient
Section 61—Interpretation	Section 61, definition of <i>interstate community treatment order</i> —delete "detention in an interstate treatment centre" and substitute: treatment as an interstate inpatient  Section 61—after the definition of <i>interstate community treatment order</i> insert:  <i>interstate inpatient</i> means a person admitted as a patient in an interstate treatment centre;  Section 61, definition of <i>interstate detention and treatment order</i> (to be amended to <i>interstate inpatient treatment order</i> )—delete "the detention and treatment in an interstate treatment centre" and substitute:  the treatment as an interstate inpatient  Section 61, definition of <i>interstate patient at large</i> —delete "being detained" and substitute:  an interstate inpatient  Section 61, definition of <i>interstate treatment centre</i> —delete "detained and treated" and substitute:  admitted

<b>Provision amended</b>	<b>How amended</b>
Section 70—Transfer from South Australian treatment centres	Section 70(1)—delete "a patient who is detained in" and substitute: an involuntary inpatient Section 70(4)(b)—delete "detained" and substitute: an involuntary inpatient
Section 76—Transport to other jurisdictions when interstate inpatient treatment orders apply	Section 76(1)(d)—delete "detained" and substitute: treated as an involuntary inpatient
Section 79—Reviews	Section 79(1)(c)—delete "previous detention and treatment order" and substitute: previous inpatient treatment order
Section 90—Chief Psychiatrist's functions	Section 90(1)(b)—delete "voluntary patients and patients to whom detention and treatment orders apply" and substitute: voluntary inpatients and involuntary inpatients
Section 92—Annual report by Chief Psychiatrist	Section 92(1)(a)—delete "detention and treatment order" and substitute: inpatient treatment order Section 92(1)(a)(ii)—delete subparagraph (ii) and substitute: (ii) demographic information about the patients, including information about areas of residence and places of treatment; and
Section 98—Register of patients	Section 98(1)—delete "under a detention and treatment order or as a voluntary patient" and substitute: as a voluntary inpatient or involuntary inpatient
Section 99—Particulars relating to admission of patients to treatment centres	Section 99(1)(a)—delete "admitted to, or is being detained in," and substitute: a voluntary or involuntary inpatient in Section 99(2)—delete ", detained"
Section 102—Offences relating to authorisations and orders	Section 102(5)—delete ", or detained in,"
Section 103—Medical practitioners or health professionals not to act in respect of relatives	Section 103—delete "or detention"
Section 104—Removing inpatients from treatment centres	Section 104—delete "a patient who is being detained in a treatment centre from the centre" and substitute: an involuntary inpatient from a treatment centre
Section 109—Evidentiary provisions	Section 109(a)—delete "detention and treatment order" and substitute: inpatient treatment order

## **Schedule 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.