

South Australia

Mental Health and Wellbeing Bill 2025

A BILL FOR

An Act to provide for the treatment, care and rehabilitation of people with a mental illness, to protect the rights of people with a mental illness, to provide for the making of treatment orders in respect of people with a mental illness, to promote and improve the mental health and wellbeing of all South Australians, to make related amendments to other Acts, to repeal the *Mental Health Act 2009*, and for other purposes.

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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 and Wellbeing Act 2025*.5 **2—Commencement**

- (1) This Act comes into operation on a day to be fixed by proclamation.
- (2) Section 27(6) of the *Legislation Interpretation Act 2021* does not apply to this Act or a provision of this Act.

3—Interpretation

- 10 (1) In this Act—
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—

- (a) is employed or engaged as a paramedic or ambulance officer with an organisation that provides ambulance services (within the meaning of the *Health Care Act 2008*); and
- (b) is a member of a class of such persons classified by the Chief Psychiatrist as ambulance officers for the purposes of this Act; and
- (c) is authorised by the chief executive officer of SAAS to exercise the powers conferred by this Act on authorised officers;

approved community mental health facility means a place approved as an approved community mental health facility under section 118;

approved treatment centre means a place approved as an approved treatment centre under section 116;

authorised mental health professional means a person authorised as an authorised mental health professional under section 121;

authorised officer—see section 98;

capacity assessment guidelines means the capacity assessment guidelines published by the Chief Psychiatrist under section 128, as in force from time to time;

care and control, of a person with a mental illness—see section 8;

carer means a person who provides ongoing care or assistance to another person as a carer within the meaning of the *Carers Recognition Act 2005* and 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 14 Division 2 (and includes a person acting in the position of Chief Psychiatrist);

child or young person means a person under 18 years of age;

child and young person's treatment order guidelines means the child and young person's treatment order guidelines published by the Chief Psychiatrist under section 128, as in force from time to time;

Code of Conduct for the Treatment of People with a Mental Illness means the code of conduct published under section 194, as in force from time to time;

community treatment order means—

- (a) a level 1 child and young person's community treatment order; or
- (b) a level 2 child and young person's community treatment order; or
- (c) a level 1 community treatment order; or
- (d) a level 2 community treatment order;

community visitor means a person appointed as a community visitor under section 143;

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

5 **decision-making capacity**—see section 6;

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

designated support person, of a person with a mental illness in relation to supported decision-making—see section 7;

10 **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;

15 **ECT** means electroconvulsive therapy;

examination means examination of a person and the person's mental health by a medical practitioner or authorised mental health professional and includes an assessment of the person (however described);

forensic community treatment order means—

- 20 (a) a level 1 child and young person's forensic community treatment order; or
(b) a level 2 child and young person's forensic community treatment order; or
(c) a level 1 forensic community treatment order; or
(d) a level 2 forensic community treatment order;

25 **guardian**, of a person, means a person appointed or acting under an Act or law as the guardian of the person;

Human Rights Coercion and Reduction Committee or **HRCRC** means the Human Rights Coercion and Reduction Committee established under section 152;

inpatient, in a treatment centre, means a person admitted to a treatment centre;

inpatient treatment order means—

- 30 (a) a level 1 child and young person's inpatient treatment order; or
(b) a level 2 child and young person's inpatient treatment order; or
(c) a level 3 child and young person's inpatient treatment order; or
(d) a level 1 inpatient treatment order; or
(e) a level 2 inpatient treatment order; or
35 (f) a level 3 inpatient treatment order;

interim psychiatric practitioner means a medical practitioner authorised as an interim psychiatric practitioner under section 120;

involuntary inpatient means a person to whom an inpatient treatment order applies;

leave of absence means a leave of absence granted under section 45 or 76 (as the case requires);

legal practitioner has the same meaning as in the *Legal Practitioners Act 1981*;

level 1 child and young person's community treatment order means a level 1 child and young person's community treatment order made under section 36, as in force from time to time;

level 2 child and young person's community treatment order means a level 2 child and young person's community treatment order made under section 37, as in force from time to time;

level 1 child and young person's forensic community treatment order means a level 1 child and young person's forensic community treatment order made under section 51, as in force from time to time;

level 2 child and young person's forensic community treatment order means a level 2 child and young person's forensic community treatment order made under section 52, as in force from time to time;

level 1 child and young person's inpatient treatment order means a level 1 child and young person's inpatient treatment order made under section 38, as in force from time to time;

level 2 child and young person's inpatient treatment order means a level 2 child and young person's inpatient treatment order made under section 39, as in force from time to time;

level 3 child and young person's inpatient treatment order means a level 3 child and young person's inpatient treatment order made under section 40, as in force from time to time;

level 1 community treatment order means a level 1 community treatment order made under section 66, as in force from time to time;

level 2 community treatment order means a level 2 community treatment order made under section 67, as in force from time to time;

level 1 forensic community treatment order means a level 1 forensic community treatment order made under section 82, as in force from time to time;

level 2 forensic community treatment order means a level 2 forensic community treatment order made under section 83, as in force from time to time;

level 1 inpatient treatment order means a level 1 inpatient treatment order made under section 68, as in force from time to time;

level 2 inpatient treatment order means a level 2 inpatient treatment order made under section 69, as in force from time to time;

level 3 inpatient treatment order means a level 3 inpatient treatment order made under section 71, as in force from time to time;

limited treatment centre means a place approved as a limited treatment centre under section 117;

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

medical treatment or **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;

mental health—see section 4;

mental health clinician means a person, or person of a class, engaged in the treatment or care of persons with a mental illness and classified by the Chief Psychiatrist as mental health clinicians for the purposes of this Act;

Mental Health Commissioner or **Commissioner** means the person appointed to the position of Mental Health Commissioner under Part 14 Division 3 (and includes a person acting in the position of Mental Health Commissioner);

mental health service means a service that is provided to a person for the primary purpose of supporting the person's mental health and wellbeing, including through prevention, early intervention, treatment, care, recovery, or harm reduction;

mental illness—see section 5;

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;

nominated clinical director, of a treatment centre, approved community mental health facility or mental health service, means—

- (a) in the case of a centre, facility or service that is, or is operated by, a public sector agency—a senior psychiatrist who is, in accordance with any requirements set out in the regulations, from time to time nominated by the public sector agency as the nominated clinical director for the centre, facility or service; or
- (b) in any other case—a senior psychiatrist who provides clinical governance and leadership for the centre, facility or service and who is, in accordance with any requirements set out in the regulations, from time to time nominated by the centre, facility or service as its nominated clinical director;

outpatient approved community mental health facility means an approved community mental health facility at which outpatient treatment is provided;

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

parent, of a child or young person, includes a step-parent or a person acting *in loco parentis* in relation to the child or young person;

patient assistance request means a patient assistance request issued under section 96;

patient transport request means a patient transport request issued under section 97 or Part 16;

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 section 109;

5 **Principal Community Visitor** means the person appointed to the position of Principal Community Visitor under section 140 (and includes a person acting in the position of Principal Community Visitor);

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

- 10 (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*;

public sector agency means—

- 15 (a) a public sector agency within the meaning of the *Public Sector Act 2009*; and
(b) any other person or body prescribed by the regulations,

but does not include a person or body declared by the regulations to be excluded from the ambit of this definition;

relative—a person is a relative of another if—

- 20 (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;

25 **residential approved community mental health facility** means an approved community mental health facility at which mental health services are provided on a residential basis (whether or not outpatient treatment is also provided at the facility);

restrictive practices—see section 9;

30 **restrictive practice guidelines** means the restrictive practice guidelines published by the Chief Psychiatrist under section 128, as in force from time to time;

SAAS means the SA Ambulance Service Inc;

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;

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

40 **State care**—a child or young person is in State care if they are in the custody, or under the guardianship, of the Chief Executive or another person (not being a parent of the child or young person) under the *Children and Young People (Safety and Support) Act 2025* or a repealed Act (within the meaning of that Act);

Statement of Preferences means a Statement of Preferences made under Part 4 Division 3 that is in force;

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;

supported decision-making or **supported decision**—see section 7;

supported decision-making guidelines means the supported decision-making guidelines published by the Chief Psychiatrist under section 128, as in force from time to time;

treatment and care plan means a treatment and care plan prepared under section 31, 55 or 86 that is in force;

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

treatment order means—

- (a) a community treatment order; or
- (b) an inpatient treatment order; or
- (c) a forensic community treatment order;

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 or rehabilitation services for a mental illness in an approved 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 person will be taken to be **absent without leave** if—

- (a) an inpatient treatment order applies to the person; and
- (b) the person—
 - (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 they are an involuntary inpatient, or the care and control of treatment centre staff, without leave of absence granted under section 45 or 76 (as the case requires); or
 - (iii) has been granted leave of absence from a treatment centre under section 45 or 76 (as the case requires) but has not returned to the centre, or been taken under 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 reference to the noncompliance of a person with a treatment order will be taken to be a reference to—
- (a) the person's refusal of, or their failure to receive, any treatment authorised under the order; or
 - (b) any other act or omission of a kind prescribed by the regulations in relation to the order.
- (4) For the purposes of this Act, a reference to ensuring compliance with a treatment order will be taken to be a reference to ensuring that reasonable steps are taken to ensure that any treatment authorised to be given to the person under the order is so given.

4—Meaning of mental health

For the purposes of this Act, a reference to *mental health* will be taken to be a reference to a state of mental wellbeing that enables people to cope with the stresses of life, realise their abilities, learn well, work well, and contribute to their community.

5—Meaning of mental illness

- (1) For the purposes of this Act, a reference to *mental illness* will be taken to be a reference to a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.
- (2) However, a person will not be taken to have a mental illness merely because 1 or more of the following applies:
- (a) the person takes or has taken alcohol or any other drug;
 - (b) the person expresses or refuses or fails to express, or has expressed or refused or failed to express, a particular political opinion or belief;
 - (c) the person expresses or refuses or fails to express, or has expressed or refused or failed to express, a particular religious opinion or belief;
 - (d) the person expresses or refuses or fails to express, or has expressed or refused or failed to express, a particular philosophy;
 - (e) 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;
 - (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 political activity;
 - (g) 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;
 - (h) the person engages in or has engaged in a particular sexual activity or sexual frequency;
 - (i) the person engages in or has engaged in immoral conduct;
 - (j) the person engages in or has engaged in illegal conduct;
 - (k) the person has developmental disability of mind;
 - (l) the person engages in or has engaged in antisocial behaviour;
 - (m) the person has a particular economic or social status or is a member of a particular cultural or racial group.

- (3) Nothing in this section prevents the serious or permanent physiological, biochemical or psychological effects of alcohol or drug consumption from being regarded as an indication that a person has a mental illness.

6—Meaning of decision-making capacity

- 5 (1) For the purposes of this Act, a person has *decision-making capacity* in relation to a decision if the person can, with support if needed—
- (a) understand when a decision about treatment, care or support for the person needs to be made; and
 - (b) understand the facts that relate to the decision; and
 - 10 (c) understand the main choices available to the person in relation to the decision; and
 - (d) weigh up the consequences of the main choices; and
 - (e) understand how the consequences affect the person; and
 - (f) having regard to the preceding paragraphs, make the decision; and
 - 15 (g) communicate the decision in whatever way the person can.
- (2) For the purposes of this Act, a person—
- (a) is, in the absence of evidence or a law of the State to the contrary, presumed to have decision-making capacity in respect of decisions about their health care, residential and accommodation arrangements and personal affairs; and
 - 20 (b) may fluctuate between having decision-making capacity and impaired decision-making capacity; and
 - (c) will only be taken to have impaired decision-making capacity if all reasonably practicable steps to support the person to make the relevant decision have been taken.
- 25 (3) The following principles are to be given effect in any determination of a person's decision-making capacity under this Act:
- (a) a person's decision-making capacity is particular to the decision that the person is to make;
 - (b) a person who has impaired decision-making capacity must, if it is reasonably practicable to do so, be supported to make decisions about their treatment, care or support to the best of their ability;
 - 30 (c) a person will not be taken to have impaired decision-making capacity merely because—
 - (i) the person makes an unwise decision; or
 - 35 (ii) the person has impaired decision-making capacity under another Act, or in relation to another decision;
 - (d) a person will not be taken to have decision-making capacity to consent to the provision of treatment, care or support merely because the person complies with the provision of the treatment, care or support;

- (e) a person with fluctuating decision-making capacity must, if it is reasonably practicable to do so, be given the opportunity to consider matters requiring a decision at a time when the person has decision-making capacity.
- (4) Without limiting subsection (2)(c), a person will be taken to have impaired decision-making capacity in respect of a particular decision if—
- (a) the person is incapable 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 their 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,
- however—
- (c) 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
- (d) 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.
- (5) Without limiting a preceding subsection, in determining whether or not a person has impaired decision-making capacity, a decision-maker is to have regard to the capacity assessment guidelines.

7—Meaning of supported decision-making and supported decision

- (1) For the purposes of this Act, a reference to **supported decision-making** will be taken to be a reference to a person with a mental illness making decisions with the assistance of a designated support person or persons and in accordance with any requirements under the regulations (and a reference to a **supported decision** has a corresponding meaning).
- (2) Without limiting the decisions that may be made by a person with a mental illness using supported decision-making, such decisions may include—
- (a) a decision to consent, or to refuse consent, to an examination or treatment; or
- (b) a decision relating to the person's admission to a treatment centre as an inpatient; or
- (c) a decision relating to the provision of services related to the person's mental illness; or
- (d) any other decision, or decision of a class, prescribed by the regulations.

(3) Despite any other provision of this Act, the following decisions cannot be made by a person with a mental illness using supported decision-making:

(a) a decision that consists of, or includes, the granting of consent to the administration of a prescribed psychiatric treatment;

(b) any other decision, or decision of a class, prescribed by the regulations, (and any such decision purportedly made using supported decision-making will be taken to be void and of no effect as a decision of the person).

(4) For the purposes of the laws of the State, and to the full extent of the extraterritorial legislative capacity of the State, a decision of a person with a mental illness made using supported decision-making will be taken to be a decision of the person.

(5) Without limiting the ways in which a person with a mental illness can be assisted in their decision-making, a person may do so by—

(a) assisting the person with a mental illness to make a decision (including by explaining the nature and consequences of the decision, or otherwise providing advice to the person about the decision); or

(b) handling applications, or dealing with personal information, on behalf of the person with a mental illness; or

(c) obtaining or receiving information on behalf of the person with a mental illness and assisting the person to understand the information; or

(d) communicating on behalf of the person with a mental illness, or assisting the person to communicate, with third parties (including by communicating decisions); or

(e) taking steps to ensure the lawful decisions of the person with a mental illness are given effect.

(6) In the event of a dispute between a person who has made a supported decision under this Act and a decision made, or to be made, by a substitute decision-maker under an advance care directive given by the person, the matter may, on application by an eligible person in respect of the advance care directive (within the meaning of Part 7 of the *Advance Care Directives Act 2013*), be dealt with in accordance with that Part.

(7) For the purposes of this Act, a reference to a supported decision does not include a reference to a substitute or surrogate decision (however described).

Note—

A substitute or surrogate decision is a decision that is made for, or on behalf of, a person by another, rather than being a decision of the person themselves.

(8) Without limiting a preceding subsection, in determining whether a person is, or is not, able to make a supported decision, a person is to have regard to the supported decision-making guidelines.

(9) In this section—

designated support person, in respect of person with a mental illness, means a designated support person appointed by the person in accordance with the regulations.

8—Meaning of care and control

(1) For the purposes of this Act, a person will be taken to be under the *care and control* of another person if—

(a) the person is in the custody of the other person under this Act; or

(b) the other person, in performing a function under this Act in respect of the person—

(i) takes steps to manage or influence the behaviour of the person; or

(ii) makes, or is authorised to make, decisions relating to the day to day activities of the person; or

(iii) controls access to the person,

or attempts or purports to do so; or

(c) the other person, whether under this or any other Act or law, determines, or is primarily responsible for, 1 or more of the following in respect of the person:

(i) determining the person's medical and other health care arrangements;

(ii) determining the person's accommodation arrangements;

(iii) controlling the person's movements (including, in the case of a person to whom an inpatient treatment order applies, their movements while outside of a treatment centre pursuant to a leave of absence),

however, nothing in this section limits the circumstances in which a person may be under the care and control of another.

(2) For the purposes of subsection (1)(b), a person may do the things referred to in that paragraph verbally, physically, by social influence or by any other means.

9—Meaning of restrictive practices

(1) For the purposes of this Act, a reference to *restrictive practices* will be taken to be a reference to—

(a) the seclusion of a person; or

(b) chemical restraint of a person; or

(c) physical restraint of a person; or

(d) mechanical restraint of a person; or

(e) environmental restraint of a person; or

(f) the taking of any other action prescribed by the regulations in relation to a person.

(2) However, nothing in this Act authorises a person to prescribe, sell, supply or administer a drug or other substance in the course of using chemical restraint in relation to a person unless they are authorised to do so under the *Controlled Substances Act 1984*.

(3) In this section—

seclusion means the sole confinement of a person in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted;

chemical restraint means the use of medication or a chemical substance for the primary purpose of influencing a person's behaviour, but does not include the use of medication lawfully prescribed by a medical practitioner or other person for the treatment of, or to enable treatment of, a physical or mental illness, disorder or condition;

mechanical restraint means the use of a device to prevent, restrict or subdue a person's movement for the primary purpose of influencing a person's behaviour, but does not include the use of devices for therapeutic or non-behavioural purposes;

physical restraint means the use or action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of influencing their behaviour, but does not include the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm or injury, consistent with what could reasonably be considered the exercise of care towards a person;

environmental restraint means the restriction of a person's free access to all parts of their environment, including items or activities, and includes the removal of an individual from their immediate environment to an unlocked quiet room for a limited period for the purpose of assisting the person to regain emotional control.

10—Application of Act

Subject to an express provision of this Act or of any other Act to the contrary, 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*,
- or any other Act or law.

Part 2—Parliamentary declarations

11—Parliamentary acknowledgement of importance of mental health and wellbeing

(1) The Parliament of South Australia recognises that—

- (a) mental health and wellbeing is an integral component of the health and wellbeing that underpins our individual and collective abilities to make decisions, build relationships and shape the world we live in; and
- (b) the prosperity of, and quality of life in, the State is inextricably bound to the mental health and wellbeing of all members of the community; and
- (c) it is of vital importance to the future of the State that all South Australians are given the opportunity to enjoy the best mental health possible.

- (2) It is the intention of the Parliament of South Australia that, as far as is reasonably practicable, the performance of functions under this Act be done in collaboration with, and with the cooperation of, people with mental illnesses, rather than simply being done to or for them.

- (3) The Parliament of South Australia recognises the *United Nations Convention on the Rights of Persons with Disabilities* as a document that informs the administration and operation of this Act.

12—Statement of recognition of Aboriginal and Torres Strait Islander people

- (1) The Parliament of South Australia recognises that Aboriginal and Torres Strait Islander people in South Australia are First Nations people of Australia and acknowledges their enduring connection to Country, kin and culture.
- (2) The Parliament of South Australia acknowledges—
- (a) that self-determination serves as a foundational principle to improve the mental health and wellbeing outcomes of Aboriginal and Torres Strait Islander people in South Australia; and
 - (b) that the impact of laws, practices and policies on the mental health and wellbeing outcomes of Aboriginal and Torres Strait Islander people since colonisation endures to this date; and
 - (c) that cultural dislocation, oppression, intergenerational trauma, lack of healing, systemic racism, institutionalised inequity, and the loss of land, lore and language continue to harm the mental health and wellbeing of Aboriginal and Torres Strait Islander people in South Australia; and
 - (d) the strength of Aboriginal and Torres Strait Islander people, culture, kinship and communities in the face of historical and ongoing injustices; and
 - (e) the ongoing connection to culture, community and Country, and the importance of this connection for the mental health and wellbeing of Aboriginal and Torres Strait Islander people in South Australia.
- (3) It is the intention of the Parliament of South Australia that the mental health system recognises, respects and supports the distinct cultural rights of Aboriginal and Torres Strait Islander people and their right to receive culturally safe, holistic mental health and wellbeing services throughout South Australia.
- (4) The Parliament of South Australia supports initiatives which address the ongoing mental health inequities experienced by Aboriginal and Torres Strait Islander people in South Australia.
- (5) The Parliament of South Australia recognises the essential role of Aboriginal community-controlled health organisations in meeting the mental health, wellbeing and care needs of Aboriginal and Torres Strait Islander people.
- (6) The Parliament of South Australia encourages the development of future reforms which further self-determination for Aboriginal and Torres Strait Islander people within mental health and wellbeing services in South Australia.

Part 3—Objects, principles and related matters

13—Objects of Act

(1) The primary objects of this Act are—

- (a) to promote and improve the mental health and wellbeing of all South Australians; and
- (b) to ensure that persons with a mental illness are able to access the most appropriate treatment and services in relation to their mental illness; and
- (c) to ensure that the rights of people with a mental illness, as well as their families and others who may be affected by the person's experiences with mental illness, are respected and protected; and
- (d) to protect and promote the human rights and dignity of people living with mental illness by providing them with examination and treatment in the least restrictive way possible.

(2) The Act has the following additional objects in respect of ensuring that people with a mental illness can access the most appropriate treatment and services in relation to their mental illness:

- (a) to provide services that are accessible, responsive to needs, and consistent with treatment, care and recovery wherever possible;
- (b) to recognise and respond to diverse backgrounds and needs of people;
- (c) to provide culturally safe and responsive services to Aboriginal and Torres Strait Islander people and to strengthen connection to culture, family, community and Country;
- (d) to connect services to appropriately respond to the diverse circumstances that influence mental health and wellbeing, including alcohol and other drug support services and treatment.

(3) It is a further object of this Act to promote continuous improvement in the quality and safety of mental health and wellbeing services, including by ensuring that the experiences of people living with a mental illness and receiving treatment, and their carers, families and supporters, are at the centre of changes in practices and service delivery and the design and evaluation of the mental health system.

14—Guiding principles of Act

(1) The following principles must, to the extent that is reasonably practicable to do so in a particular case, be taken into account and given effect in the administration, operation and enforcement of this Act:

- (a) the dignity and autonomy principle (namely, that the rights, dignity and autonomy of people with a mental illness should be promoted and protected, including by supporting them to exercise their rights and make decisions);

-
- (b) the diversity principle (namely, that mental health and wellbeing services should recognise, respect and respond to the diverse needs of people with a mental illness due to varying attributes such as gender identity, sexual orientation, cultural and linguistic diversity, disability, neurodiversity and socioeconomic status);
- (c) the least restrictive principle (namely, that the provision of services under the Act should restrict the rights, dignity and autonomy of people with a mental illness as little as possible);
- (d) the choice and control principle (namely, that choices offered to people with a mental illness should be informed by their unique needs and preferences, and, where appropriate, their advanced care directives);
- (e) the supported decision-making principle (namely, that people receiving mental health and wellbeing services should be empowered to make decisions and actively participate in their examination, treatment and recovery, even when under compulsory treatment, and their views and preferences prioritised);
- (f) the trustworthiness and transparency principle (namely, that decisions are made with transparency with the goal of building and maintaining trust);
- (g) the compassionate care principle (namely, that services are designed to support care based on empathy, respect and dignity, with organisational support provided to staff delivering this care);
- (h) the family and carers principle (namely, that families, carers and supporters (including children) of people receiving mental health and wellbeing services should be supported in their roles in decision-making regarding the person's examination, treatment and recovery);
- (i) the lived experience principle (namely, that the experiences of persons living with a mental illness or psychological distress, along with their carers, families and supporters, should be acknowledged and valued);
- (j) the health needs principle (namely, that the medical and health needs of persons living with a mental illness or psychological distress should be identified and addressed, including those related to alcohol or drug use, and the importance of considering how a person's physical and mental health needs may intersect);
- (k) the prevention of harm to persons principle (namely, that mental health and wellbeing services should be delivered in a manner that prevents or reduces the risk of harm to persons with a mental illness and others, including their carers, family members, friends and community members);
- (l) the severe mental health conditions principle (namely, that services must consider the needs of individuals with severe and complex mental health conditions, as well as those requiring emergency examination and care);
- (m) the mental health and substance use principle (namely, that effective intervention addresses both mental health care and drug and alcohol care together, and services are to collaborate to deliver treatment and develop voluntary care plans);

- (n) the mental health and neurodevelopmental principle (namely, that the needs of people who experience an autism spectrum disorder or an intellectual disability must be considered when setting policy and designing mental health services that are responsive to those needs);
- 5 (o) the dignity of risk principle (namely, that persons receiving mental health and wellbeing services have the right to take reasonable risks to achieve personal growth, self-esteem, and overall quality of life, and that respecting this right involves balancing the duty of care owed to all people experiencing mental illness or psychological distress with actions that afford each person the
- 10 dignity of risk);
- (p) the wellbeing of children and young people principle (namely, that the health, wellbeing and autonomy of children and young people receiving mental health and wellbeing services should be promoted and supported, including by providing treatment and support in age appropriate and developmentally
- 15 suitable settings);
- (q) the safety principle (namely, that people feel physically and psychologically safe, that physical settings are safe, and that interpersonal interactions promote a sense of safety);
- (r) the gender safety principle (namely, that people receiving mental health and wellbeing services may have specific safety needs or concerns based on their gender and so consideration should be given to these needs and concerns, and access is to be provided to services that—
- 20 (i) are safe; and
- (ii) are responsive to any current experience of family violence and trauma or any history of family violence and trauma; and
- 25 (iii) recognise and respond to the ways gender dynamics may affect service delivery, treatment and recovery; and
- (iv) recognise and respond to the ways in which gender intersects with other types of discrimination and disadvantage);
- 30 (s) the cultural safety principle (namely, that services should be provided in a manner that is culturally safe and responsive and that respects language, values, norms, social structures, spiritual beliefs and cultural practices, particularly for Aboriginal and Torres Strait Islander people, culturally and linguistically diverse communities, and LGBTIQ+ groups);
- 35 (t) the wellbeing of dependents principle (namely, that the needs, wellbeing and safety of the children and other dependents of persons with a mental illness should be protected);
- (u) the proportionality principle (namely, that the provision of services under the Act should be necessary, appropriate, justified and not excessive, having
- 40 regard to the aim of the services);
- (v) the suicide prevention principle (namely, supporting best practice suicide prevention through engagement with individuals, identification of risks, safety planning, follow-up support, and therapy, and recognising that most suicide prevention interventions are voluntary, allowing individuals to take
- 45 risks as part of a therapeutic and supportive approach);

- (w) the recovery principle (namely, that people with a mental illness should be supported through the delivery of a recovery model that enhances health, wellness and self-direction).
- (2) Each entity engaged in the administration, operation or enforcement of this Act must, to the extent that it is reasonably practicable to do so, perform their functions so as to give effect to and further the principles set out in this section.
- (3) However—
- (a) nothing in subsection (1) creates a hierarchy of principles; and
- (b) a failure to comply with subsection (2) does not, of itself, affect the validity of an act or omission under this Act.

Part 4—Protecting the rights of people with a mental illness

Division 1—Protecting the rights of people with a mental illness

15—Best interests of people with a mental illness to be upheld and effected

- (1) An act done, or decision made (including, to avoid doubt, a supported decision), under this Act for a person with a mental illness must be done in the person's best interests.
- (2) Without limiting the matters that may be considered in determining what is in the best interests of a person with a mental illness, consideration should be given to such of the following as may be relevant in the circumstances:
- (a) the person's current and previously expressed views and preferences;
- (b) the person's capacity to make decisions about their treatment and the extent to which they can be supported to do so;
- (c) the impact of the action or decision on the person's overall health, wellbeing and quality of life;
- (d) the need to protect the person from harm and risks of harm (including harm the person may cause to themselves);
- (e) such information relating to the views and preferences of the person with a mental illness as may be conveyed by a designated support person of the person;
- (f) the views of parents, guardians, carers or family members of the person where appropriate;
- (g) the nature, severity and likely consequences of the person's mental illness if treatment is not provided;
- (h) the likely benefits and risks of the proposed treatment, including any less restrictive alternatives;
- (i) the person's cultural background, spiritual beliefs and personal values;
- (j) the importance of promoting the person's recovery, autonomy and participation in community life.

16—Assistance of interpreters and other communication assistance

(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) either—

(i) the person is unable to communicate adequately in English but could communicate adequately with the assistance of an interpreter or by the use of some other communication assistance; or

(ii) the person is, due to their complex communication needs, unable to communicate adequately without communication assistance,

the medical practitioner or authorised mental health professional must take such steps as may be reasonably practicable to arrange for a competent interpreter to assist, or such assistance to be provided, during the examination of the person.

(2) However, a medical practitioner or authorised mental health professional need not comply with subsection (1) in the circumstances prescribed by the regulations.

(3) Without limiting subsection (2), the regulations may require a medical practitioner or authorised mental health professional to—

(a) provide a report on the examination to the person the subject of the examination and such other persons as may be specified; and

(b) arrange for a follow-up examination to be conducted with an interpreter present, or communication assistance provided, as soon as practicable.

(4) For the purposes of this section, a reference to communication assistance will be taken to include a reference to—

(a) the use of interpreters for spoken or signed languages; or

Note—

For example, the use of an Auslan interpreter.

(b) the use of augmentative and alternative communication tools; or

Note—

For example, communication boards, speech generating devices or visual aids.

(c) the presence of another person to assist with understanding and expressing information; or

(d) the use of simplified language, visual formats or culturally appropriate communication methods; or

(e) any other reasonable measures that assist the person to understand, participate in, and communicate during, an examination.

17—Right to be supported by other persons

(1) A person with a mental illness is entitled to be supported, if it is reasonably practicable to do so, in—

(a) the exercise of a right under this Act; or

(b) any communications between the person and—

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- (i) a medical practitioner or authorised mental health professional examining or treating the person; or
- (ii) the nominated clinical director or staff of a treatment centre in which the person is an inpatient.

(2) Support may be provided under this section by—

- (a) if the person is a child or young person—a parent or guardian of the person; or
- (b) a guardian, substitute decision-maker, relative, carer or friend of the person who has been nominated by the person for the purpose, or who has or is assuming responsibility for the care of the person; or
- (c) if the person is an Aboriginal or Torres Strait Islander person—an Aboriginal or Torres Strait Islander person who, in accordance with traditional family, kinship or community structures, has responsibility for the person or otherwise provides care and support to the person; or

Note—

Such a person includes, but is not limited to, Elders, traditional healers, community mentors and other community members who play a significant role in the wellbeing of the person with a mental illness.

- (d) a person who provides advocacy services (whether on a professional or voluntary basis); or
- (e) the Principal Community Visitor or a community visitor.

(3) A person providing support to a person with a mental illness must be allowed access to the person, subject to reasonable limits imposed by the medical practitioner in charge of the person's treatment or by the nominated clinical director or staff of a treatment centre in which the person is an inpatient.

(4) A person providing support to a person with mental illness may be allowed to be present during an examination or treatment of the person, 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 ability of a person with a mental illness to make a supported decision for the purposes of this Act.

Note—

See section 7.

18—Right to communicate with others outside treatment centre etc

(1) A person with a mental illness 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 their communications with others.

- (2) The rights conferred by subsection (1) are subject to any restrictions and conditions that have been approved by the nominated clinical director of the treatment centre as being reasonably required—
- (a) for carrying into effect any inpatient treatment order that applies to the person; 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 person with a mental illness in a treatment centre and any of the following, or to visits to such a person by any of the following:
- (a) the Minister;
 - (b) the Tribunal;
 - (c) the Public Advocate;
 - (d) the Chief Psychiatrist;
 - (e) the Mental Health Commissioner;
 - (f) the Health and Community Services Complaints Commissioner under the *Health and Community Services Complaints Act 2004*;
 - (g) the Principal Community Visitor or a community visitor;
 - (h) a member of Parliament;
 - (i) a legal practitioner (in the practitioner's professional capacity);
 - (j) a person representing, or acting on behalf of, a person or body referred to in any of the preceding paragraphs;
 - (k) any other person, or person of a class, prescribed by the regulations.
- (4) Despite a provision of any other Act or law, this section will be taken to apply in relation to a person to whom a forensic community treatment order applies (and a reference to a treatment centre in a preceding subsection will be taken to include a reference to the training centre or correctional institution in which the person is detained).
- (5) The rights conferred by subsection (4) are subject to any restrictions and conditions that have been approved by the manager of the training centre or correctional institution (as the case requires) as being reasonably required for the maintenance of order and security at the training centre or correctional institution.

Division 2—Statement of Rights

19—Chief Psychiatrist to prepare Statement of Rights

- (1) The Chief Psychiatrist must, in accordance with any requirements set out in the regulations, prepare a written notice (a ***Statement of Rights***) setting out the rights of each of the following categories of people with a mental illness in relation to the operation of this Act:
- (a) children and young people who are subject to a treatment order under this Act;

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Division 2—Statement of Rights

- (b) persons subject to a community treatment order;
 - (c) persons who are voluntary inpatients;
 - (d) persons subject to a inpatient treatment order;
 - (e) persons subject to a forensic community treatment order;
 - 5 (f) any other person, or persons of a class, prescribed by the regulations.
- (2) A Statement of Rights for 2 or more categories of people with a mental illness may, if the Chief Psychiatrist considers it appropriate to do so, be combined into a single Statement of Rights.
- (3) Without limiting the matters that may be included in a Statement of Rights, a
10 Statement of Rights must include—
- (a) information setting out the legal rights of persons of the relevant category; and
 - (b) any other information prescribed by the regulations.
- (4) The Chief Psychiatrist must cause a copy of each Statement of Rights, as in force from
15 time to time, to be published on a website determined by the Chief Psychiatrist.
- (5) For the purposes of this Act, a reference to giving a person of a particular category a Statement of Rights will be taken to be a reference to giving the person a copy of the Statement of Rights of the appropriate category.

20—Statements of Rights to be given to certain persons

- (1) Subject to this section, the following persons and bodies must, as soon as is
20 reasonably practicable after making a treatment order in relation to a person, and in accordance with any requirements in the regulations, ensure that the person is given a copy of a Statement of Rights:
- 25 (a) a medical practitioner, authorised mental health professional, psychiatrist or interim psychiatric practitioner;
 - (b) the Tribunal.
- (2) Subject to this section, an authorised officer must, as soon as is reasonably practicable after detaining, or using a restrictive practice in relation to, a person under section 100,
30 and in accordance with any requirements in the regulations, ensure that the person is given a copy of a Statement of Rights.
- (3) Subject to this section, the nominated clinical director of a treatment centre—
- (a) in which a person is admitted as a voluntary inpatient; or
 - (b) who grants a person to whom an inpatient treatment order applies a leave of absence from the centre; or
 - 35 (c) to which a person is taken under section 180(1)(d), or at which a person is given treatment under section 180(1)(e),
- must, as soon as it is reasonably practicable to do so and in accordance with any requirements in the regulations, ensure that the person is given (before commencing a leave of absence if relevant) a copy of a Statement of Rights.

- (4) Subject to this section, the nominated clinical director of an approved community mental health facility in which a person is admitted or is receiving treatment, care or rehabilitation services as a voluntary community patient must, as soon as it is reasonably practicable to do so and in accordance with any requirements in the regulations, ensure that the person is given a copy of a Statement of Rights.
- (5) The nominated clinical director of—
- (a) a treatment centre in which a person to whom an inpatient treatment order applies is admitted, or from which a person to whom an inpatient treatment order applies is granted a leave of absence; or
 - (b) a mental health service providing, or to provide, treatment under a forensic community treatment order to a person in custody in a correctional institution or training centre,
- must, as soon as it is reasonably practicable to do so and in accordance with any requirements in the regulations, cause a copy of a Statement of Rights to be given to a guardian, substitute decision-maker, relative, carer or friend of the person.
- (6) If a Statement of Rights is required to be given to a child or young person, a copy of the Statement of Rights must also be given to the parents or guardians of the child or young person (unless their whereabouts are not known to, or readily ascertainable by, the person giving the Statement of Rights).
- (7) The following provisions apply in relation to the giving of a Statement of Rights under subsection (5):
- (a) the person to be sent or given a copy of the Statement of Rights must be—
 - (i) a guardian, substitute decision-maker, relative, carer or friend of the person to whom the treatment order applies nominated by the person for the purpose; or
 - (ii) if that is not practicable or appropriate—a guardian, substitute decision-maker, 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, substitute decision-maker, relative, carer or friend of the person to whom it is practicable and appropriate to give the copy of the Statement of Rights;
 - (b) the nominated clinical director is not required to give a copy of the Statement of Rights to a person whose whereabouts are not known to, or readily ascertainable by, the nominated clinical director;
 - (c) the nominated clinical director is not required to give a copy of the Statement of Rights to a particular person if the nominated clinical director has reason to believe that to do so would be contrary to the best interests of the person to whom the treatment order applies.
- (8) The Chief Psychiatrist must, as soon as is reasonably practicable after—
- (a) being advised under section 172(5) that a person to whom an interstate community treatment order applies is being treated in South Australia for their mental illness under section 172(1) or (2); or
 - (b) making an order under section 173(1); or

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(c) approving the transfer of a person to whom an interstate inpatient treatment order applies to a South Australian treatment centre under section 175(1), and in accordance with any requirements in the regulations, ensure that the person is given a copy of a Statement of Rights.

(9) If a person to whom a treatment order applies is unable to read or otherwise comprehend a Statement of Rights, the person required to give the Statement of Rights must ensure that such steps as are reasonably practicable in the circumstances are taken to explain the information contained in the Statement of Rights to the person.

(10) A requirement under this Act that a Statement of Rights be given to a person will be taken to be satisfied if a copy of the Statement of Rights is given to the person in an electronic form.

(11) A person who, without reasonable excuse, refuses or fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: \$5 000.

Division 3—Statement of Preferences**21—Eligible persons**

For the purposes of this Division, an *eligible person* is a person who is 16 years of age or more—

(a) who has a mental illness; and

(b) to whom mental health services are being, or are to be, provided; and

(c) who either—

(i) has decision-making capacity; or

(ii) has impaired decision-making capacity but who is able to express their preferences (including through supported decision-making); and

(d) who satisfies any other requirements prescribed by the regulations.

22—Eligible persons may give Statement of Preferences

(1) Subject to this Act, an eligible person may give a Statement of Preferences setting out their preferences relating to mental health treatment and related matters if—

(a) they understand what a Statement of Preferences is; and

(b) they understand the consequences of giving a Statement of Preferences.

(2) In determining whether an eligible person understands, or is capable of understanding, the matters referred to in subsection (1)—

(a) the eligible person will not be taken not to understand a matter merely because they need support to do so; and

(b) the eligible person may be supported in any way that enables or assists them to understand a matter.

- (3) An eligible person gives a Statement of Preferences by—
- (a) preparing a written statement that sets out the eligible person's preferences in relation to their treatment, care and support (being treatment, care and support relating to or arising out of their mental illness); and
 - (b) having the written statement witnessed in accordance with the requirements set out in the regulations; and
 - (c) complying with any other requirements set out in the regulations.
- (4) A Statement of Preferences, or a provision of a Statement of Preferences, is not invalid merely because—
- (a) the wishes of the eligible person appear unwise, or would result in an adverse outcome for the eligible person; or
 - (b) the eligible person was not fully informed in relation to each mental illness, or any other circumstance, to which the Statement of Preferences relates; or
 - (c) the eligible person did not seek legal or other professional advice in relation to the Statement of Preferences; or
 - (d) the Statement of Preferences contains a minor error that does not affect the ability to understand the wishes of the eligible person; or
 - (e) any instructions in the Statement of Preferences are expressed in informal language rather than medical or technical terminology; or
 - (f) the eligible person expressed their wishes in general terms rather than specific instructions, or their wishes in relation to a particular matter need to be inferred from the Statement of Preferences.
- (5) If an eligible person gives a Statement of Preferences, any previous Statement of Preferences given by the person is revoked.
- (6) A Statement of Preferences cannot be varied.

Note—

If an eligible person wishes to vary their Statement of Preferences, they must give a new Statement of Preferences in accordance with this Division.

- (7) A Statement of Preferences does not create legally enforceable rights or entitlements.

23—Provisions that can, and cannot, be included in Statement of Preferences

- (1) Subject to this Act, a Statement of Preferences given by an eligible person may make provisions setting out the following:
- (a) the preferences of the eligible person regarding particular types of mental health treatment (including medications, therapies or interventions) that they wish to receive, or wish to not receive, in respect of their mental illness;
 - (b) the preferences of the eligible person regarding the setting in which any mental health treatment is provided, including preferences for treatment by a particular mental health service or at a particular mental health facility;
 - (c) the preferences of the eligible person regarding the involvement of specified persons in their mental health treatment or care (including, to avoid doubt, family members or carers of the eligible person);

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- (d) the preferences of the eligible person regarding their communication needs and other supports required to facilitate their participation in decisions about their mental health treatment and care;
- (e) the preferences of the eligible person regarding cultural, religious or spiritual considerations relevant to their mental health treatment and care;
- (f) the preferences of the eligible person regarding their daily routines, dietary needs, or other personal matters that support the person's recovery and wellbeing;
- (g) any other preferences of the eligible person that they consider relevant to their mental health treatment, care and wellbeing.
- (2) Subject to this Act, a Statement of Preferences cannot make provisions of the following kinds:
- (a) a provision—
- (i) that is unlawful, or that would require an unlawful act to be performed; or
- (ii) that would, if given effect, cause a medical practitioner or authorised mental health professional to contravene a professional standard or code of conduct (however described) applying to the medical practitioner or authorised mental health professional;
- (b) a provision that comprises a refusal of mandatory medical treatment;
- (c) any other provision of a kind prescribed by the regulations.
- (3) A provision of a Statement of Preferences that contravenes subsection (2) is, to the extent of the contravention, void and of no effect.
- (4) Without limiting the matters that may be addressed in a Statement of Preferences, the eligible person may (but need not) include their reasons for making a particular provision.
- (5) In this section—

mandatory medical treatment means—

- (a) medical treatment ordered under a treatment order; or
- (b) any other medical treatment of a kind prescribed by regulations for the purposes of this definition.

24—Revocation of Statement of Preferences

- (1) A Statement of Preferences remains in force—
- (a) —
- (i) if an expiry date is specified in the Statement of Preferences—until that day; or
- (ii) if no expiry date is specified in the Statement of Preferences—until it is revoked in accordance with this Act; or
- (b) until the death of the eligible person,
- whichever occurs first.

- (2) An eligible person who has given a Statement of Preferences revokes the Statement of Preferences by—
- (a) indicating, in any manner, that the Statement of Preferences is revoked; or
 - (b) destroying the Statement of Preferences.

25—Statement of Preferences of no effect in certain circumstances

- (1) A Statement of Preferences will be taken not to have effect during any period in which the eligible person who gave the Statement of Preferences—
- (a) is subject to a treatment order; or
 - (b) is in custody in a correctional institution (within the meaning of the *Correctional Services Act 1982*) or a training centre.
- (2) However, nothing in this section prevents a medical practitioner or authorised mental health professional from having regard to a Statement of Preferences given by a person referred to in subsection (1).

26—Medical practitioners and authorised mental health professionals should have regard to Statement of Preferences

Without limiting any other provision of this Act, a medical practitioner or authorised mental health professional who is providing, or is to provide, treatment to a person with a mental illness who has given a Statement of Preferences should, to the extent that it is consistent with this Act to do so—

- (a) have regard to the Statement of Preferences in respect of any treatment provided to the person; and
- (b) seek to avoid outcomes or interventions that the person who gave the Statement of Preferences indicates they would prefer to avoid (whether the indication is expressed or implied).

27—Statement of Preferences not to limit decisions by certain persons and bodies

Despite any other provision of this Division, nothing in a Statement of Preferences given by a person—

- (a) limits the treatment that may be provided to a person under a treatment order; or
- (b) limits the provisions of an advance care directive given by the person; or
- (c) limits a decision that can lawfully be made by—
 - (i) the Tribunal; or
 - (ii) a guardian of the person; or
 - (iii) a person responsible for the person, or other person making a decision in respect of the person, under the *Consent to Medical Treatment and Palliative Care Act 1995*; or
 - (iv) a substitute decision-maker under an advance care directive given by the person; or
 - (v) any other person prescribed by the regulations.

Division 4—Right to peer advocate in Tribunal proceedings etc**28—Right to peer advocate in certain circumstances**

- (1) This section applies in the following circumstances:
- (a) proceedings before the Tribunal;
 - (b) any other circumstances prescribed by the regulations.
- (2) Subject to this section, a person with a mental illness may, in any circumstances in which this section applies, have a person (a *peer advocate*) appointed by the person at their own cost to assist them to present their views.
- (3) Subject to a direction or order of the Tribunal to the contrary, a peer advocate is, in proceedings before the Tribunal relating to the person with a mental illness, entitled to do 1 or more of the following:
- (a) be present at the proceedings;
 - (b) take such steps as the peer advocate considers necessary to assist the person to address the Tribunal effectively;
 - (c) address the Tribunal on behalf of the person.
- (4) To avoid doubt, a peer advocate does not legally represent the person with a mental illness in proceedings.
- (5) However, nothing in this section—
- (a) limits the ability of the Tribunal to conduct or continue proceedings in the absence of a peer advocate, or a particular peer advocate, chosen by a person with a mental illness; or
 - (b) creates legally enforceable rights or entitlements.
- (6) The regulations may make further provision in relation to peer advocates (including, without limiting the generality of this subsection, provisions limiting who may be appointed as such).
- (7) This section is in addition to, and does not derogate from, the *South Australian Civil and Administrative Tribunal Act 2013* or any other Act or law.

Part 5—Voluntary patients**29—Voluntary community patients**

A person may, at their own request—

- (a) be admitted as a voluntary community patient in a residential approved community mental health facility; or
- (b) receive examination and treatment as a voluntary community patient at an outpatient approved community mental health facility.

30—Voluntary inpatients

- (1) A person may be admitted as a voluntary inpatient in a treatment centre at their own request.

- (2) A voluntary inpatient in a treatment centre may leave the centre at any time.

31—Treatment and care plans for voluntary patients

- (1) The treatment and care of a person who is a voluntary patient must, as far as practicable, be governed by a treatment and care plan directed towards the person's recovery.
- (2) The treatment and care plan—
- (a) must describe the treatment and care that will be provided to the person, and should describe any therapy, rehabilitation services and other significant services that will be provided or made available to the person; and
 - (b) must, as far as practicable, be prepared and revised in consultation with—
 - (i) the person and any guardian, substitute decision-maker, relative, carer or friend of the person who is providing support to the person under this Act; and
 - (ii) any service provider or agency that is providing treatment, care or support to the person; and
 - (c) must comply with the requirements of the regulations as to the making or contents of such plans.
- (3) A treatment and care plan prepared under this section in relation to a person with a comorbid substance use disorder may describe treatment relating to the substance use or substance use disorder that will be provided or made available to the person.
- (4) In this section—
- voluntary patient* means—
- (a) a voluntary community patient; or
 - (b) a voluntary inpatient.

Part 6—Treatment orders relating to children and young people

Division 1—Preliminary

32—Observations and opinions

For the purposes of this Part, a medical practitioner or authorised mental health professional may form an opinion about a child or young person based on their own observations and any other available evidence that they consider reliable and relevant (which may include evidence about matters occurring outside the State).

33—Additional factors to be considered in orders etc applying to children and young people

- (1) Before making a treatment order in respect of a child or young person, or a treatment and care plan for a child or young person, the medical practitioner or authorised mental health professional or Tribunal (as the case requires) must have regard to such of the following as may be relevant in the circumstances:
- (a) the views and preferences of the child or young person, having regard to their age, maturity and capacity to express those views;
 - (b) the right of the child or young person to be heard and to participate in decisions affecting them, including, if necessary, with appropriate supports;
 - (c) the impact of the decision on the child or young person's family and other relationships;
 - (d) the impact of the decision on the child or young person's personal, social and educational development;
 - (e) in the case of an Aboriginal or Torres Strait Islander child or young person—the need for culturally safe mental health treatment and care;
 - (f) any cultural, religious or spiritual considerations that may be applicable in the circumstances of the child or young person;
 - (g) the desirability, where appropriate, of the involvement of the child or young person's parent, guardian or carer in supporting the child or young person's mental health treatment and recovery;
 - (h) any trauma-informed care principles that are relevant given the child or young person's history or circumstances;
 - (i) the need to promote the child or young person's recovery, resilience, and long-term wellbeing;
 - (j) any other matter prescribed by the regulations.
- (2) In making a treatment order in respect of a child or young person, a medical practitioner or authorised mental health professional or Tribunal (as the case requires) must comply with the child and young person's treatment order guidelines.
- (3) However, a failure to comply with this section does not, of itself, affect the validity of an order or treatment and care plan under this Part.

34—Inpatient treatment orders displace community treatment orders

If an inpatient treatment order is made in respect of a child or young 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 order will apply again to the child or young person according to its terms).

35—Confirmation of certain treatment orders may occur at same time as making of order

(1) This section applies to—

- (a) a community treatment order applying to a child or young person; and
- (b) a forensic community treatment order applying to a child or young person; and
- (c) any other treatment order prescribed by the regulations.

(2) A requirement under this Part that—

- (a) a child or young person be examined by a different psychiatrist or interim psychiatric practitioner from whomever made a treatment order to which this section applies; or
- (b) a treatment order to which this section applies be confirmed or revoked by a different psychiatrist or interim psychiatric practitioner from whomever made the order,

may occur at the same time, or during the same examination, at which the treatment order to which this section applies is made.

(3) The regulations may make further provision in relation to the examinations, confirmations or revocations referred to in subsection (2) (including provisions setting out circumstances in which that subsection does not apply).

Division 2—Community treatment orders for children and young people**36—Level 1 child and young person's community treatment orders**

(1) A medical practitioner or authorised mental health professional may make an order for the treatment of a child or young person (a ***level 1 child and young person's community treatment order***) if it appears to the medical practitioner or authorised mental health professional, after examining the child or young person, that—

- (a) the child or young person has a mental illness; and
- (b) because of the mental illness, the child or young person requires treatment for their own protection from serious harm (whether physical or mental, and including harm involved in the continuation or deterioration of their condition) or for the protection of others from serious harm; and
- (c) in the case of a child or young person who is 16 years of age or more—the child or young person has impaired decision-making capacity in relation to decisions about treatment of their mental illness; and
- (d) there is no less restrictive means than a community treatment order of ensuring appropriate treatment of the child or young person's mental illness.

(2) For the purposes of subsection (1)(d), consideration must be given to the prospects of the child or young person receiving all appropriate treatment of the mental illness necessary for their own protection and the protection of others on a voluntary basis.

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Division 2—Community treatment orders for children and young people

- (3) Before making a level 1 child and young person's community treatment order, the medical practitioner or authorised mental health professional must have regard to—
 - (a) the matters set out in section 33; and
 - (b) any Statement of Preferences made by the child or young person of which the medical practitioner or authorised mental health professional is aware.
- (4) A level 1 child and young person's community treatment order must be made in writing in the form approved by the Chief Psychiatrist.
- (5) A level 1 child and young person's community treatment order, unless revoked earlier, expires at a time fixed in the order (which must be 2 pm on a specified business day not later than 42 days after the day on which it is made).
- (6) Subject to this Act, the following provisions apply on the making of a level 1 child and young person's community treatment order:
 - (a) the child or young person must be examined by a psychiatrist or interim psychiatric practitioner, who must, if the order was made by a psychiatrist or interim psychiatric practitioner, be a different psychiatrist or interim psychiatric practitioner from whomever made the order;
 - (b) the examination must occur within 24 hours after the making of the order (or, if it is not practicable for the examination to occur within that period, as soon as practicable thereafter);
 - (c) after completion of the examination, the psychiatrist or interim psychiatric practitioner must—
 - (i) if satisfied that the matters set out in subsection (1) are present, confirm the order; or
 - (ii) if not satisfied that the matters set out in subsection (1) are present, revoke the order;
 - (d) in the case where a child or young person refuses or fails to attend an examination, the psychiatrist or interim psychiatric practitioner may confirm or revoke the order without further examination.
- (7) A psychiatrist or interim psychiatric practitioner who has examined a child or young person to whom a level 1 child and young person's community treatment order applies may vary or revoke the order at any time.
- (8) Confirmation, variation or revocation of a level 1 child and young person's community treatment order must occur in a manner and form determined by the Chief Psychiatrist (however, a failure to comply with this subsection does not, of itself, affect the validity of the confirmation, variation or revocation).

37—Level 2 child and young person's community treatment orders

- (1) If the Tribunal is satisfied that—
 - (a) a child or young person has a mental illness; and
 - (b) because of the mental illness, the child or young person requires treatment for their own protection from serious harm (whether physical or mental, and including harm involved in the continuation or deterioration of their condition) or for the protection of others from serious harm; and

- (c) in the case of a child or young person aged 16 years of age or more—the child or young person has impaired decision-making capacity in relation to decisions about treatment of their mental illness; and
- (d) there is no less restrictive means than a community treatment order of ensuring appropriate treatment of the child or young person's mental illness,
- 5 the Tribunal may make an order for the treatment of the child or young person (a ***level 2 child and young person's community treatment order***).
- (2) For the purposes of subsection (1)(d), the Tribunal must consider the prospects of the child or young person receiving all appropriate treatment of the mental illness
- 10 necessary for their own protection and the protection of others on a voluntary basis.
- (3) Before making a level 2 child and young person's community treatment order, the Tribunal must have regard to—
- (a) the matters set out in section 33; and
- (b) any Statement of Preferences made by the child or young person of which the
- 15 Tribunal is made aware.
- (4) A level 2 child and young person's community treatment order may be made in respect of a child or young person—
- (a) on an application to the Tribunal by—
- (i) the Public Advocate; or
- 20 (ii) a medical practitioner; or
- (iii) a mental health clinician; or
- (iv) a parent, guardian, relative, carer or friend of the child or young person; or
- (v) any other person who satisfies the Tribunal that they have a proper
- 25 interest in the welfare of the child or young person; or
- (b) on an application to the Tribunal under section 40 for the revocation of a level 3 child and young person's inpatient treatment order that applies to the child or young person.
- (5) Any other community treatment order applying to a child or young person is taken to be revoked on the making of a level 2 child and young person's community treatment order in relation to the child or young person.
- 30 (6) A level 2 child and young person's community treatment order, unless revoked earlier, expires at a time fixed in the order (which must be 2 pm on a specified business day not later than 6 months after the day on which it is made).
- (7) The Tribunal may, on application by—
- (a) the child or young person to whom the order applies; or
- (b) a parent or guardian of the child or young person; or
- (c) in the case of a child or young person who is in State care—an approved carer in whose care the child or young person is placed under the *Children and*
- 40 *Young People (Safety and Support) Act 2025*; or
- (d) the Public Advocate; or

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- (e) a medical practitioner; or
- (f) a mental health clinician; or
- (g) a relative, carer or friend of the child or young person; or
- (h) any other person who satisfies the Tribunal that they have a proper interest in the welfare of the child or young person,

vary or revoke a level 2 child and young person's community treatment order.

Division 3—Inpatient treatment orders for children and young people**38—Level 1 child and young person's inpatient treatment orders**

- (1) A medical practitioner or authorised mental health professional may make an order for the treatment of a child or young person as an inpatient in a treatment centre (a ***level 1 child and young person's inpatient treatment order***) if it appears to the medical practitioner or authorised mental health professional, after examining the child or young person, that—
 - (a) the child or young person has a mental illness; and
 - (b) because of the mental illness, the child or young person requires treatment for their own protection from serious harm (whether physical or mental, and including harm involved in the continuation or deterioration of their condition) or for the protection of others from serious harm; and
 - (c) in the case of a child or young person who is 16 years of age or more—the child or young person has impaired decision-making capacity in relation to decisions about treatment of their mental illness; and
 - (d) there is no less restrictive means than a inpatient treatment order of ensuring appropriate treatment of the child or young person's mental illness.
- (2) For the purposes of subsection (1)(d), consideration must be given to the prospects of the child or young person receiving all appropriate treatment of the mental illness necessary for their own protection and the protection of others on a voluntary basis, or under a community treatment order.
- (3) Before making a level 1 child and young person's inpatient treatment order, the medical practitioner or authorised mental health professional must have regard to—
 - (a) the matters set out in section 33; and
 - (b) any Statement of Preferences made by the child or young person of which the medical practitioner or authorised mental health professional is aware.
- (4) A level 1 child and young person's inpatient treatment order must be made in writing in the form approved by the Chief Psychiatrist.
- (5) A level 1 child and young person's inpatient treatment order, unless revoked earlier, expires at a time fixed in the order (which must be 2 pm on a specified business day not later than 7 days after the day on which it is made).

- (6) Subject to this Act, the following provisions apply on the making of a level 1 child and young person's inpatient treatment order:
- (a) the child or young person must be examined by a psychiatrist or interim psychiatric practitioner, who must, if the order was made by a psychiatrist or interim psychiatric practitioner, be a different psychiatrist or interim psychiatric practitioner from whomever made the order;
 - (b) the examination must occur within 24 hours after the making of the order (or, if it is not practicable for the examination to occur within that period, as soon as practicable thereafter);
 - (c) after completion of the examination, the psychiatrist or interim psychiatric practitioner must—
 - (i) if satisfied that the matters set out in subsection (1) are present, confirm the order; or
 - (ii) if not satisfied that the matters set out in subsection (1) are present, revoke the order;
 - (d) before confirming or revoking an order, the psychiatrist or interim psychiatric practitioner should, where it is reasonably practicable to do so, have regard to any submissions made by the child or young person, or any other person who may be affected by the decision to confirm or revoke the order, of which the psychiatrist or interim psychiatric practitioner is aware (however, a contravention of this paragraph does not, of itself, affect the validity of a confirmation or revocation).
- (7) A psychiatrist or interim psychiatric practitioner who has examined a child or young person to whom a level 1 child and young person's inpatient treatment order applies may vary or revoke the order at any time.
- (8) Confirmation, variation or revocation of a level 1 child and young person's inpatient treatment order must occur in a manner and form determined by the Chief Psychiatrist (however, a failure to comply with this subsection does not, of itself, affect the validity of the confirmation, variation or revocation).

39—Level 2 child and young person's inpatient treatment orders

- (1) A medical practitioner may make an order for the treatment of a child or young person as an inpatient in an approved treatment centre (a ***level 2 child and young person's inpatient treatment order***) if—
- (a) a level 1 child and young person's inpatient order currently applies to the child or young person; and
 - (b) it appears to the medical practitioner, after examining the child or young person, that—
 - (i) the child or young person has a mental illness; and
 - (ii) because of the mental illness, the child or young person requires treatment for their own protection from serious harm (whether physical or mental, and including harm involved in the continuation or deterioration of their condition) or for the protection of others from serious harm; and

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- (iii) in the case of a child or young person who is 16 years of age or more—the child or young person has impaired decision-making capacity in relation to decisions about treatment of their mental illness; and
 - (iv) there is no less restrictive means than a inpatient treatment order of ensuring appropriate treatment of the child or young person's mental illness.
- (2) For the purposes of subsection (1)(b)(iv), consideration must be given to the prospects of the child or young person receiving all appropriate treatment of the mental illness necessary for their own protection and the protection of others on a voluntary basis, or under a community treatment order.
- (3) Before making a level 2 child and young person's inpatient treatment order, the medical practitioner must have regard to—
- (a) the matters set out in section 33; and
 - (b) any Statement of Preferences made by the child or young person of which the medical practitioner is aware.
- (4) A level 2 child and young person's inpatient treatment order must be made in writing in the form approved by the Chief Psychiatrist.
- (5) A level 2 child and young person's inpatient treatment order, unless revoked earlier, expires at a time fixed in the order (which must be 2 pm on a specified business day not later than 42 days after the day on which it is made).
- (6) A psychiatrist or interim psychiatric practitioner who has examined a child or young person to whom a level 2 child and young person's inpatient treatment order applies may vary or revoke the order at any time.
- (7) A variation or revocation of a level 2 child and young person's inpatient treatment order must occur in a manner and form determined by the Chief Psychiatrist (however, a failure to comply with this subsection does not, of itself, affect the validity of the variation or revocation).

40—Level 3 child and young person's inpatient treatment orders

- (1) If the Tribunal is satisfied that—
- (a) a child or young person has a mental illness; and
 - (b) because of the mental illness, the child or young person requires treatment for their own protection from serious harm (whether physical or mental, and including harm involved in the continuation or deterioration of their condition) or for the protection of others from serious harm; and
 - (c) in the case of a child or young person who is 16 years of age or more—the child or young person has impaired decision-making capacity in relation to decisions about treatment of their mental illness; and
 - (d) there is no less restrictive means than an inpatient treatment order of ensuring appropriate treatment of the child or young person's mental illness,
- the Tribunal may make an order for the treatment of the child or young person (a ***level 3 child and young person's inpatient treatment order***).

(2) For the purposes of subsection (1)(d), the Tribunal must consider the prospects of the child or young person receiving all appropriate treatment of the mental illness necessary for their own protection and the protection of others on a voluntary basis, or under a community treatment order.

(3) Before making a level 3 child and young person's inpatient treatment order, the Tribunal must have regard to—

- (a) the matters set out in section 33; and
- (b) any Statement of Preferences made by the child or young person of which the Tribunal is made aware.

(4) A level 3 child and young person's inpatient treatment order may be made by the Tribunal in respect of a child or young person on an application by—

- (a) the Public Advocate; or
- (b) the nominated clinical director of an approved treatment centre; or
- (c) an employee in an approved treatment centre authorised by the nominated clinical director of the centre for the purpose.

(5) Any other inpatient treatment order applying to a child or young person is taken to be revoked on the making of a level 3 child and young person's inpatient treatment order that applies to the child or young person.

(6) A level 3 child and young person's inpatient treatment order, unless revoked earlier, expires at a time fixed in the order (which must be 2 pm on a specified business day not later than 6 months after the day on which it is made).

(7) The Tribunal may, on application by—

- (a) the child or young person to whom the order applies; or
- (b) a parent or guardian of the child or young person; or
- (c) in the case of a child or young person who is in State care—an approved carer in whose care the child or young person is placed under the *Children and Young People (Safety and Support) Act 2025*; or
- (d) the Public Advocate; or
- (e) a medical practitioner; or
- (f) a mental health clinician; or
- (g) a relative, carer or friend of the child or young person; or
- (h) any other person who satisfies the Tribunal that they have a proper interest in the welfare of the child or young person,

vary or revoke a level 3 child and young person's inpatient treatment order.

41—Nominated clinical director of treatment centre to give effect to child and young person's inpatient treatment orders

(1) This section applies when—

- (a) a child or young person to whom an inpatient treatment order applies is under the care and control of treatment centre staff; or

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(b) an inpatient treatment order is made in respect of a child or young person who is a voluntary inpatient at a treatment centre.

(2) Subject to this Act, the nominated clinical director of the treatment centre must—

(a) if the child or young person is not already admitted to the centre, admit the child or young person to the centre in accordance with the order; and

(b) ensure that any treatment authorised under the order is given to the child or young person; and

(c) comply with the child and young person's treatment order guidelines; and

(d) ensure that the child or young person's rights under this Act are upheld, including the right to be informed of the order and its effect; and

(e) ensure the child or young person is supported to participate in decisions about their treatment, including through the use of communication assistance where required; and

(f) comply with any other requirements set out in the regulations.

42—Noncompliance with community treatment order ground for inpatient treatment order

(1) Without limiting any other provision of this Division, a child or young person's noncompliance with a community treatment order is a relevant consideration in deciding whether an inpatient treatment order should be made in respect of the child or young person.

(2) However, nothing in this Act prevents the making of an inpatient treatment order in respect of a child or young person without a prior community treatment order having been made.

Division 4—Restrictions on movements of children and young people to whom inpatient treatment order applies**43—Removing child or young person from treatment centre**

A person who, without reasonable excuse, removes a child or young person to whom an inpatient treatment order applies from a treatment centre, or aids such a child or young person to leave the centre, is guilty of an offence.

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

44—Child or young person to whom inpatient treatment order applies not permitted to leave treatment centre or care and control of staff

(1) A child or young person to whom an inpatient treatment order applies in a treatment centre is not permitted to leave the treatment centre without being under the care and control of treatment centre staff or having been granted a leave of absence.

(2) A child or young person to whom an inpatient treatment order applies who is 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.

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- (3) A child or young person to whom an inpatient treatment order applies who is granted a leave of absence is required to comply with the conditions of the leave of absence (and, if the child or young person contravenes a condition, the leave of absence is, by force of this subsection, revoked).

45—Leave of absence of involuntary patients

- (1) The nominated clinical director of a treatment centre may, by written notice in the form approved by the Chief Psychiatrist, grant a child or young person to whom an inpatient treatment order applies a leave of absence from the treatment centre for any purpose and period that the nominated clinical director considers appropriate and specifies in the notice.
- (2) Leave of absence may be granted subject to any conditions that the nominated clinical director considers appropriate and specifies in the written notice.
- (3) The nominated clinical director must ensure that the child or young person, and the parents or guardians of the child or young person, are given a copy of the written notice before the child or young person commences the leave of absence.

46—Cancellation of leave of absence

- (1) The nominated clinical director of a treatment centre may, by written notice in the form approved by the Chief Psychiatrist, cancel any leave of absence from the treatment centre granted to a child or young person.
- (2) The nominated clinical director has an absolute discretion to cancel any such leave.
- (3) The nominated clinical director must cause reasonable steps to be taken for the notice of cancellation to be given to the child or young person, and the parents or guardians of the child or young person, before, or as soon as practicable after, the child or young person is taken back under the care and control of treatment centre staff.

47—Use of restrictive practices where inpatient treatment orders apply etc

- (1) This section applies in circumstances where—
- (a) a child or young person to whom an inpatient treatment order applies is present at, or has been admitted to, a treatment centre; or
- (b) a child or young person is present at, or has been admitted to, a prescribed medical facility and—
- (i) a level 1 child and young person's inpatient treatment order has been, or is to be, made in respect of the child or young person; and
- (ii) the child or young person is to be held at the prescribed medical facility before being transported pursuant to a patient transport request (including, to avoid doubt, in circumstances where the child or young person is being, or is to be, examined prior to being so transported).
- (2) However, this section does not apply in circumstances prescribed by the regulations.

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(3) The prescribed clinical staff of a treatment centre or prescribed medical facility may, in circumstances in which this section applies, use restrictive practices in relation to a child or young person if, in the opinion of the prescribed clinical staff, it is necessary to do so to—

- (a) give effect to the inpatient treatment order or ensure compliance with this Act; or
- (b) prevent the child or young person from causing harm to themselves or other persons at the treatment centre or prescribed medical facility; or
- (c) maintain order and security at the treatment centre or prescribed medical facility,

and there is no less restrictive alternative that is reasonably available in the circumstances.

Note—

While this subsection authorises the use of restrictive practices as a last resort, it does not derogate from the desirability of reducing or eliminating the use of restrictive practices in relation to people with a mental illness.

(4) In using restrictive practices under this section, the prescribed clinical staff of a treatment centre or prescribed medical facility—

- (a) in the case of a treatment centre—are subject to any directions of the nominated clinical director of the treatment centre; and
- (b) in any case—must comply with the restrictive practice guidelines and the child and young person's treatment order guidelines.

(5) In using restrictive practices under this section, the prescribed clinical staff of a treatment centre or prescribed medical facility—

- (a) may be assisted by such other persons as the prescribed clinical staff considers appropriate; and
- (b) may use reasonable force.

(6) Nothing in this section limits Part 3 or any other provision of this Act.

(7) In this section—

authorised nursing staff, of a treatment centre or prescribed medical facility, means nursing staff (including nurse practitioners) who are, in accordance with the restrictive practice guidelines, authorised to use restrictive practices;

prescribed clinical staff, of a treatment centre or prescribed medical facility, means—

- (a) in the case of a treatment centre—the nominated clinical director of the treatment centre; and
- (b) psychiatrists, interim psychiatric practitioners or medical practitioners providing treatment at the treatment centre or prescribed medical facility; and
- (c) authorised nursing staff providing treatment or otherwise performing duties at the treatment centre or prescribed medical facility;

prescribed medical facility means—

- (a) an incorporated hospital or private hospital (within the meaning of the *Health Care Act 2008*);
- (b) any other facility, or facility of a class, prescribed by the regulations,

but does not include an incorporated hospital, private hospital or facility declared by the regulations to be excluded from the ambit of this definition.

48—Transfer of child or young person to whom inpatient treatment order applies

- (1) If the nominated clinical director of a treatment centre considers it is necessary or appropriate for a child or young person to whom an inpatient treatment order applies to be transferred from the treatment centre to another treatment centre, the nominated clinical director may (after arranging for the child or young person's admission to the other centre with the nominated clinical director of the other treatment centre) direct that the child or young person be transferred to the other treatment centre.

Note—

The other treatment centre must, in the case of a child or young person to whom a level 2 or level 3 child and young person's inpatient treatment order applies, be an approved treatment centre (not a limited treatment centre).

- (2) The nominated clinical director of a treatment centre may—

- (a) direct (after arranging for the child or young person's admission to the relevant hospital) that a child or young person to whom an inpatient treatment order applies be transferred to a hospital, or between hospitals, in circumstances where the child or young person has or has had an illness other than a mental illness; and
- (b) direct that the child or young person be transferred back to the treatment centre after completion of the hospital treatment.

- (3) If a child or young person has been transferred to a hospital as a result of a direction under this section—

- (a) the child or young person is, while under the care and control of staff of the hospital, taken to continue to be under the care and control of the treatment centre staff; and
- (b) staff of the hospital may exercise the powers conferred by section 44 in relation to the child or young person as if they were treatment centre staff.

- (4) A direction under this section must be given by writing in the form approved by the Chief Psychiatrist.

- (5) The nominated clinical director of a treatment centre in which a child or young person to whom an inpatient treatment order applies is admitted must, on giving a direction under this section for the transfer of the child or young person from the treatment centre, notify—

- (a) a parent, guardian, relative, carer or friend of the child or young person nominated by the child or young person for the purposes of such notification; or

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(b) if that is not practicable or appropriate—a parent, guardian, relative, carer or friend of the child or young person who appears to have or be assuming responsibility for the care of the child or young person; or

(c) if that is not practicable or appropriate—any other parent, guardian, relative, carer or friend of the child or young person whom it is practicable and appropriate to notify,

of that fact.

Maximum penalty: \$5 000.

(6) A notification under subsection (5) must be given by writing in the form approved by the Chief Psychiatrist.

(7) However, a nominated clinical director need not comply with subsection (5) in respect of a particular person if—

(a) the whereabouts of the person are not known to, or readily ascertainable by, the nominated clinical director; or

(b) the nominated clinical director has reason to believe that to do so would be contrary to the best interests of the child or young person to whom the inpatient treatment order applies.

Division 5—Forensic community treatment orders for children and young people

49—Application of Division

(1) This Division applies to—

(a) a child or young person who is a resident of a training centre within the meaning of the *Youth Justice Administration Act 2016*; and

(b) a child or young person who is a prisoner within the meaning of the *Correctional Services Act 1982*; and

(c) any other child or young person, or child or young person of a class, prescribed by the regulations.

(2) This Division does not apply to a child or young person, or child or young person of a class, prescribed by the regulations.

(3) This Division is in addition to, and does not derogate from, the *Correctional Services Act 1982* or the *Youth Justice Administration Act 2016*.

50—Interaction between forensic community treatment orders and other treatment orders

(1) If a forensic community treatment order is made in respect of a child or young 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 forensic community 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).

- (2) An inpatient treatment order applying to a child or young person is taken to be revoked on the making of a forensic community treatment order that applies to the child or young person.

51—Level 1 child and young person's forensic community treatment orders

- 5 (1) A medical practitioner or authorised mental health professional may make an order for the treatment of a child or young person to whom this Division applies (a ***level 1 child and young person's forensic community treatment order***) if it appears to the medical practitioner or authorised mental health professional, after examining the child or young person, that—
- 10 (a) the child or young person has a mental illness; and
- (b) because of the mental illness, the child or young person requires treatment for their own protection from serious harm (whether physical or mental, and including harm involved in the continuation or deterioration of their condition) or for the protection of others from serious harm; and
- 15 (c) in the case of a child or young person who is 16 or more years of age—the child or young person has impaired decision-making capacity in relation to decisions about treatment of their mental illness; and
- (d) there is no less restrictive means than a forensic community treatment order of ensuring appropriate treatment of the child or young person's mental illness.
- 20 (2) For the purposes of subsection (1)(d), consideration must be given to the prospects of the child or young person receiving all appropriate treatment of the mental illness necessary for their own protection and the protection of others on a voluntary basis.
- (3) Before making a level 1 child and young person's forensic community treatment order, the medical practitioner or authorised mental health professional must have regard to—
- 25 (a) the matters set out in section 33; and
- (b) any Statement of Preferences made by the child or young person of which the medical practitioner or authorised mental health professional is aware.
- 30 (4) A level 1 child and young person's forensic community treatment order must be made in writing in the form approved by the Chief Psychiatrist.
- (5) Subject to this Act, a level 1 child and young person's forensic community treatment order, unless—
- (a) revoked earlier; or
- 35 (b) the order is taken to be a level 1 child and young person's community treatment order pursuant to section 53,
- expires—
- (c) at the time the child or young person is released from detention; or
- (d) at the time fixed in the order (which must be 2 pm on a specified business day not later than 42 days after the day on which it is made),
- 40 whichever is the earlier.

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Part 6—Treatment orders relating to children and young people

Division 5—Forensic community treatment orders for children and young people

- (6) Subject to this Act, the following provisions apply on the making of a level 1 child and young person's forensic community treatment order:
- (a) the child or young person must be examined by a psychiatrist or interim psychiatric practitioner, who must, if the order was made by a psychiatrist or interim psychiatric practitioner, be a different psychiatrist or interim psychiatric practitioner from whomever made the order;
 - (b) the examination must occur within 24 hours after the making of the order (or, if it is not practicable for the examination to occur within that period, as soon as practicable thereafter);
 - (c) after completion of the examination, the psychiatrist or interim psychiatric practitioner must—
 - (i) if satisfied that the matters set out in subsection (1) are present, confirm the order; or
 - (ii) if not satisfied that the matters set out in subsection (1) are present, revoke the order.
- (7) A psychiatrist or interim psychiatric practitioner who has examined a child or young person to whom a level 1 child and young person's forensic community treatment order applies may vary or revoke the order at any time.
- (8) Confirmation, variation or revocation of a level 1 child and young person's forensic community treatment order must occur in a manner and form determined by the Chief Psychiatrist (however, a failure to comply with this subsection does not, of itself, affect the validity of the confirmation, variation or revocation).

52—Level 2 child and young person's forensic community treatment orders

- (1) If the Tribunal is satisfied that—

- (a) a child or young person to whom this Division applies has a mental illness; and
- (b) because of the mental illness, the child or young person requires treatment for their own protection from serious harm (whether physical or mental, and including harm involved in the continuation or deterioration of their condition) or for the protection of others from serious harm; and
- (c) in the case of a child or young person who is 16 or more years of age—the child or young person has impaired decision-making in relation to decisions about treatment of their mental illness; and
- (d) there is no less restrictive means than a forensic community treatment order of ensuring appropriate treatment of the child or young person's mental illness,

the Tribunal may make an order for the treatment of the child or young person (a ***level 2 child and young person's forensic community treatment order***).

- (2) For the purposes of subsection (1)(d), the Tribunal must consider the prospects of the child or young person receiving all appropriate treatment of the mental illness necessary for their own protection and the protection of others on a voluntary basis.

- (3) Before making a level 2 child and young person's forensic treatment order, the Tribunal must have regard to—
- (a) the matters set out in section 33; and
 - (b) any Statement of Preferences made by the child or young person of which the Tribunal is made aware.
- (4) A level 2 child and young person's forensic community treatment order may be made by the Tribunal in respect of a child or young person on an application by—
- (a) the Public Advocate; or
 - (b) a medical practitioner; or
 - (c) a mental health clinician; or
 - (d) a parent, guardian, relative, carer or friend of the child or young person; or
 - (e) any other person who satisfies the Tribunal that they have a proper interest in the welfare of the child or young person.
- (5) Any other forensic community treatment order applying to a child or young person is taken to be revoked on the making of a level 2 child and young person's forensic community treatment order in relation to the child or young person.
- (6) Subject to this Act, a level 2 child and young person's forensic community treatment order, unless—
- (a) revoked earlier; or
 - (b) the order is taken to be a level 2 child and young person's community treatment order pursuant to section 53,
- expires—
- (c) at the time the child or young person is released from detention; or
 - (d) at the time fixed in the order (which must be 2 pm on a specified business day not later than 6 months after the day on which it is made),
- whichever is the earlier.
- (7) The Tribunal may, on application by—
- (a) the child or young person to whom the order applies; or
 - (b) a parent or guardian of the child or young person; or
 - (c) in the case of a child or young person who is in State care—an approved carer in whose care the child or young person is placed under the *Children and Young People (Safety and Support) Act 2025*; or
 - (d) the Public Advocate; or
 - (e) a medical practitioner; or
 - (f) a mental health clinician; or
 - (g) a relative, carer or friend of the child or young person; or
 - (h) any other person who satisfies the Tribunal that they have a proper interest in the welfare of the child or young person,
- vary or revoke a level 2 forensic community treatment order.

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Part 6—Treatment orders relating to children and young people

Division 5—Forensic community treatment orders for children and young people

53—Effect of release on child and young person's forensic community treatment order

- (1) This section applies to a forensic community treatment order made in respect of a child or young person where—
- 5 (a) the child or young person to whom the order applies is released from detention; and
- (b) the order had not expired at the time of release.
- (2) A forensic community treatment order to which this section applies will, on the release of the child or young person to whom the order applies from detention—
- 10 (a) in the case of a level 1 child and young person's forensic community treatment order—be taken to continue in accordance with its terms as a level 1 child and young person's community treatment order; and
- (b) in the case of a level 2 child and young person's forensic community treatment order—be taken to continue in accordance with its terms as a level
- 15 2 child and young person's community treatment order; and
- (c) in any case—
- (i) any authorisation of treatment under this Act for the child or young person's mental illness before the child or young person's release from detention will continue to have effect according to its terms; and
- 20 (ii) any treatment and care plan prepared in relation to the child or young person will continue to have effect according to its terms.
- (3) This section does not apply where, on the release of the child or young person from detention, a community treatment order applies to the child or young person pursuant to section 50(1).
- 25

Division 6—Treatment etc of children and young people to whom treatment orders apply**54—Treatment of child or young person to whom treatment order applies**

- 30 (1) Subject to this section, a child or young person to whom a treatment order under this Part applies may be given treatment for their mental illness (including treatment directed at matters causing, contributing to, or otherwise connected with, their mental illness) of a kind authorised by a medical practitioner who has examined the child or young person.
- 35 (2) Authorisation is not required under subsection (1) for treatment if a medical practitioner considers that—
- (a) the nature of the child or young person's mental illness is such that the treatment is urgently needed to ensure the child or young person's safety, or the safety of others; and
- (b) in the circumstances it is not reasonably practicable to obtain authorisation.

- (3) However, before treatment is given without authorisation, the medical practitioner—
- (a) must have regard to any Statement of Preferences made by the child or young person of which the medical practitioner is aware; and
 - (b) must comply with any other requirements set out in the regulations.
- 5 (4) Despite a provision of any other Act or law, treatment may be given despite the absence or refusal of consent to the treatment.
- (5) However, nothing in this section authorises or applies to—
- (a) prescribed psychiatric treatment; or
 - 10 (b) prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.

55—Treatment and care plans for children and young people to whom certain treatment orders apply

- 15 (1) The treatment and care of a child or young person to whom a level 2 child and young person's community treatment order, a level 2 or 3 child and young person's inpatient treatment order or a level 2 child and young person's forensic community treatment order applies must, as far as is reasonably practicable, be governed by a treatment and care plan directed towards the child or young person's recovery.
- (2) The treatment and care plan—
- 20 (a) must describe the treatment and care that will be provided to the child or young person under the requirements of the order and should describe any therapy, rehabilitation services and other significant services that will be provided or available to the child or young person whether under the requirements of the order or through the child or young person's voluntary participation; and
 - 25 (b) must, as far as is reasonably practicable, be prepared and revised in consultation with—
 - (i) the child or young person; and
 - (ii) the parents or guardians of the child or young person; and
 - 30 (iii) in the case of a child or young person who is in State care—any approved carer in whose care the child or young person is placed under the *Children and Young People (Safety and Support) Act 2025*; and
 - (iv) any relative, carer or friend of the child or young person who is providing support to the child or young person under this Act; and
 - 35 (v) any service provider or agency (however described) that is providing treatment, care or support to the child or young person in relation to their mental illness; and
 - (c) must be consistent with the child and young person's treatment order guidelines; and
 - 40 (d) must comply with any other requirements set out in the regulations.

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Division 6—Treatment etc of children and young people to whom treatment orders apply

- (3) However, a failure to comply with subsection (2)(b) does not, of itself, affect the validity of a treatment and care plan.
- (4) A treatment and care plan prepared under this section in relation to a child or young person with a comorbid substance use disorder may describe treatment relating to the substance use or substance use disorder that will be provided or made available to the child or young person.

Division 7—Enforcement of treatment orders**56—Exercise of certain powers under Division to be least restrictive option**

- (1) Without limiting any other provision of this Act, a medical practitioner, authorised mental health professional or authorised officer must, unless it is not reasonably practicable to do so or is otherwise not in the best interests of a child or young person with a mental illness to do so, exercise their powers under this Division in the manner that is the least restrictive of the rights of the child or young person.
- (2) However, a failure to comply with this section does not, of itself, affect the validity of the exercise of a power under this Division.

57—Powers of certain persons to enforce compliance with treatment orders

- (1) A medical practitioner, authorised mental health professional or authorised officer may, if they believe on reasonable grounds that a child or young person to whom a treatment order under this Part applies has contravened the order, using such force as may be reasonably necessary, do 1 or more of the following:
 - (a) enter and remain in a place where the authorised officer reasonably suspects the child or young person may be found;
 - (b) use a restrictive practice in relation to the child or young person;
 - (c) detain the child or young person;
 - (d) search the child or young person's clothing or possessions and take possession of anything that the child or young person may use to cause harm to themselves or others or to damage property;
 - (e) transport the child or young person from place to place (including, to avoid doubt, places within the same premises).
- (2) Before exercising a power under this section, the medical practitioner, authorised mental health professional or authorised officer (as the case requires) must take reasonable steps to inform the child or young person to whom the order applies of the consequences (if any) of contravening the order.
- (3) A person who exercises a power under this section must make and keep records in accordance with any requirements set out in the regulations.
Maximum penalty: \$5 000.
- (4) The powers conferred by this section continue to be exercisable as reasonably required for the purpose of ensuring compliance with the order.
- (5) A search of a child or young person under this section must be carried out expeditiously and in a manner that avoids, as far as is reasonably practicable, causing the child or young person any humiliation or offence.

- (6) Anything taken into the possession of a person under this section may be held for as long as is reasonably necessary for reasons of safety, but must otherwise be returned to the child or young person from whom it was taken or otherwise dealt with according to law.

5 **Division 8—Miscellaneous**

58—Nominated clinical director of treatment centre to be notified of orders under Part

- (1) A medical practitioner or authorised mental health professional must, as soon as is reasonably practicable after making a treatment order under this Part in relation to a child or young person and in accordance with any requirements set out in the regulations—
- (a) notify the nominated clinical director of each treatment centre at or by which treatment is to be provided to the child or young person pursuant to the treatment order; and
- (b) give to the nominated clinical director of each such treatment centre a copy of the order.

Maximum penalty: \$5 000.

- (2) The Tribunal must, as soon as is reasonably practicable after making a treatment order under this Part in relation to a child or young person—
- (a) notify the nominated clinical director of each treatment centre at or by which treatment is to be provided to the child or young person pursuant to the treatment order; and
- (b) give to the nominated clinical director of each such treatment centre a copy of the order.
- (3) However, a failure to comply with this section does not, of itself, affect the validity of the treatment order.

59—Copies of treatment orders and notification to be given to certain persons

- (1) A medical practitioner or authorised mental health professional who makes a treatment order under this Part in relation to a child or young person must ensure that the following persons are, as soon as is reasonably practicable after making the order, given a copy of the order:
- (a) the child or young person;
- (b) the parents or guardians of the child or young person;
- (c) if the child or young person is in State care—an approved carer in whose care the child or young person is placed under the *Children and Young People (Safety and Support) Act 2025*;
- (d) any other person, or person of a class, prescribed by the regulations.
- (2) The Tribunal must, if it makes a treatment order under this Part in relation to a child or young person, ensure that the following persons are, as soon as is reasonably practicable after making the order, given a copy of the order:
- (a) the child or young person;

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- (b) the parents or guardians of the child or young person;
- (c) in the case of a child or young person who is in State care—any approved carer in whose care the child or young person is placed under the *Children and Young People (Safety and Support) Act 2025*;
- 5 (d) any other person, or person of a class, prescribed by the regulations.
- (3) A psychiatrist or interim psychiatric practitioner who confirms a treatment order under this Part must cause a copy of the order to be given to—
- (a) a parent, guardian, relative, carer or friend of the child or young person to whom the order applies nominated by the child or young person for the
- 10 purpose; or
- (b) if that is not practicable or appropriate—a parent, guardian, relative, carer or friend of the child or young person to whom the order applies who appears to have or be assuming responsibility for the care of the child or young person; or
- 15 (c) if that is not practicable or appropriate—any other parent, guardian, relative, carer or friend of the child or young person to whom the order applies.
- (4) However, a psychiatrist or interim psychiatric practitioner need not comply with subsection (3) in respect of a particular person if—
- (a) the whereabouts of the person are not known to, or readily ascertainable by, the psychiatrist or interim psychiatric practitioner; or
- 20 (b) the psychiatrist or interim psychiatric practitioner has reason to believe that to do so would be contrary to the best interests of the child or young person to whom the order applies.
- (5) If a treatment order under this Part is varied or revoked by a psychiatrist or interim psychiatric practitioner, the psychiatrist or interim psychiatric practitioner must ensure that the following persons are, as soon as is reasonably practicable, given a copy of the notice of variation or revocation of the order:
- 25 (a) the child or young person to whom the order applies;
- (b) the parents or guardians of the child or young person;
- 30 (c) in the case of a child or young person who is in State care—any approved carer in whose care the child or young person is placed under the *Children and Young People (Safety and Support) Act 2025*;
- (d) the person given a copy of the order under subsection (3);
- (e) any other person, or person of a class, prescribed by the regulations.
- 35 (6) Subject to the regulations, a copy of an order given under subsection (1) or (3) or a notice given under subsection (5) must be accompanied by a written statement of the reasons for the making of, or the confirmation, variation or revocation of, the order.
- (7) If a treatment order under this Part is varied or revoked by the Tribunal, the Tribunal must ensure that the following persons are, as soon as is reasonably practicable, given
- 40 a copy of the order varying or revoking the order:
- (a) the child or young person to whom the order applies;
- (b) the parents or guardians of the child or young person;

(c) in the case of a child or young person who is in State care—any approved carer in whose care the child or young person is placed under the *Children and Young People (Safety and Support) Act 2025*;

(d) any other person, or person of a class, prescribed by the regulations.

5 (8) A person who, without reasonable excuse, refuses or fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: \$5 000.

(9) To avoid doubt, subsection (8) does not apply to, or in relation to, the Tribunal.

60—Chief Psychiatrist to be notified of treatment orders etc

10 (1) A psychiatrist or interim psychiatric practitioner who makes, confirms, varies or revokes a treatment order under this Part must, within 1 business day after doing so, notify the Chief Psychiatrist of that fact in the manner and form determined by the Chief Psychiatrist.

Maximum penalty: \$5 000.

15 (2) A notice under subsection (1) must be accompanied by a written statement of the reasons for the making of, or the confirmation, variation or revocation of, the order.

(3) The Chief Psychiatrist must, within 1 business day after receiving a notice under subsection (1), by written notice given to the psychiatrist or interim psychiatric practitioner, acknowledge receipt of the notice.

20 (4) A registrar of the Tribunal must, within 1 business day after the Tribunal makes, varies or revokes a treatment order under this Part, notify the Chief Psychiatrist of that fact in the manner and form determined by the Chief Psychiatrist.

61—Nominated clinical director of treatment centre to monitor compliance with community treatment orders

25 The nominated clinical director of a treatment centre must, after receiving notice of the making of a community treatment order under this Part in respect of a child or young person (being a community treatment order pursuant to which treatment is to be provided at or by the treatment centre), ensure that there is a mental health clinician who has ongoing responsibility for monitoring and reporting to the Chief Psychiatrist
30 on the compliance with the order of the child or young person.

62—Designated officer to monitor compliance with forensic community treatment orders

(1) The designated officer must, after receiving notice of the making of a forensic community treatment order under this Part in respect of a child or young person,
35 ensure that there is a mental health clinician who has ongoing responsibility for monitoring and reporting to the Chief Psychiatrist on the compliance with the order of the child or young person.

(2) In this section—

40 *designated officer* means the person who is, from time to time, the designated officer within the meaning of section 269X of the *Criminal Law Consolidation Act 1935*.

Part 7—Treatment orders relating to adults

Division 1—Preliminary

63—Observations and opinions

For the purposes of this Part, a medical practitioner or authorised mental health professional may form an opinion about a person based on their own observations and any other available evidence that they consider reliable and relevant (which may include evidence about matters occurring outside the State).

64—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 order will apply again to the person according to its terms).

65—Confirmation of certain treatment orders may occur at same time as making of order

(1) This section applies to—

- (a) a community treatment order; and
- (b) a forensic community treatment order; and
- (c) any other treatment order prescribed by the regulations.

(2) A requirement under this Part that—

- (a) a person be examined by a different psychiatrist or interim psychiatric practitioner from whomever made a treatment order to which this section applies; or
- (b) a treatment order to which this section applies be confirmed or revoked by a different psychiatrist or interim psychiatric practitioner from whomever made the order,

may occur at the same time, or during the same examination, at which the treatment order to which this section applies is made.

(3) The regulations may make further provision in relation to the examinations, confirmations or revocations referred to in subsection (2) (including provisions setting out circumstances in which that subsection does not apply).

Division 2—Community treatment orders for adults**66—Level 1 community treatment orders**

- (1) A medical practitioner or authorised mental health professional may make an order for the treatment of an adult 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 their own protection from serious harm (whether physical or mental, and including harm involved in the continuation or deterioration of their condition) or for the protection of others from serious harm; and
 - (c) the person has impaired decision-making capacity in relation to decisions about treatment of their mental illness; and
 - (d) there is no less restrictive means than a community treatment order of ensuring appropriate treatment of the person's mental illness.
- (2) For the purposes of subsection (1)(d), consideration must be given to the prospects of the person receiving all appropriate treatment of the mental illness necessary for their own protection and the protection of others on a voluntary basis.
- (3) Before making a level 1 community treatment order, the medical practitioner or authorised mental health professional must have regard to any Statement of Preferences made by the person of which the medical practitioner or authorised mental health professional is aware.
- (4) A level 1 community treatment order must be made in writing in the form approved by the Chief Psychiatrist.
- (5) A level 1 community treatment order, unless revoked earlier, expires at a time fixed in the order (which must be 2 pm on a specified business day not later than 42 days after the day on which it is made).
- (6) Subject to this Act, the following provisions apply on the making of a level 1 community treatment order:
- (a) the person must be examined by a psychiatrist or interim psychiatric practitioner, who must, if the order was made by a psychiatrist or interim psychiatric practitioner, be a different psychiatrist or interim psychiatric practitioner from whomever made the order;
 - (b) the examination must occur within 24 hours after the making of the order (or, if it is not practicable for the examination to occur within that period, as soon as practicable thereafter);
 - (c) after completion of the examination, the psychiatrist or interim psychiatric practitioner must—
 - (i) if satisfied that the matters set out in subsection (1) are present, confirm the order; or

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Division 2—Community treatment orders for adults

(ii) if not satisfied that the matters set out in subsection (1) are present, revoke the order;

(d) in the case where a person refuses or fails to attend an examination, the psychiatrist or interim psychiatric practitioner may confirm or revoke the order without further examination.

(7) A psychiatrist or interim psychiatric practitioner who has examined a person to whom a level 1 community treatment order applies may vary or revoke the order at any time.

(8) Confirmation, variation or revocation of a level 1 community treatment order must occur in a manner and form determined by the Chief Psychiatrist (however, a failure to comply with this subsection does not, of itself, affect the validity of the confirmation, variation or revocation).

67—Level 2 community treatment orders

(1) If the Tribunal is satisfied that—

(a) an adult person has a mental illness; and

(b) because of the mental illness, the person requires treatment for the their own protection from serious 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 serious harm; and

(c) the person has impaired decision-making capacity in relation to decisions about treatment of the their mental illness; and

(d) there is no less restrictive means than a community treatment order of ensuring appropriate treatment of the person's mental illness,

the Tribunal may make an order for the treatment of the person (*a level 2 community treatment order*).

(2) For the purposes of subsection (1)(d), the Tribunal must consider the prospects of the person receiving all appropriate treatment of the mental illness necessary for their own protection and the protection of others on a voluntary basis.

(3) Before making a level 2 community treatment order, the Tribunal must have regard to any Statement of Preferences made by the person of which the Tribunal is made aware.

(4) A level 2 community treatment order may be made in respect of a person—

(a) on an application to the Tribunal by—

(i) the Public Advocate; or

(ii) a medical practitioner; or

(iii) a mental health clinician; or

(iv) a guardian, substitute decision-maker, relative, carer or friend of the person; or

(v) any other person who satisfies the Tribunal that they have a proper interest in the welfare of the person; or

(b) on an application to the Tribunal under section 71 for the revocation of a level 3 inpatient treatment order that applies to the person.

- (5) Any other community treatment order applying to a person is taken to be revoked on the making of a level 2 community treatment order in relation to the person.
- (6) A level 2 community treatment order, unless revoked earlier, expires at a time fixed in the order (which must be 2 pm on a specified business day not later than 12 months after the day on which it is made).
- (7) A registrar of the Tribunal must, not less than 2 months before the expiry of a level 2 community treatment order applying to a person 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 whom it appears to the registrar may have a proper interest in the welfare of the person a written reminder of the date of expiry of the order.
- (8) The Tribunal may, on application by—
- (a) the person to whom the order applies; or
 - (b) the Public Advocate; or
 - (c) a medical practitioner; or
 - (d) a mental health clinician; or
 - (e) a guardian, substitute decision-maker, relative, carer or friend of the person; or
 - (f) any other person who satisfies the Tribunal that they have a proper interest in the welfare of the person,
- vary or revoke a level 2 community treatment order.

Division 3—Inpatient treatment orders for adults

68—Level 1 inpatient treatment orders

- (1) A medical practitioner or authorised mental health professional may make an order for the treatment of an adult person 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 their own protection from serious harm (whether physical or mental, and including harm involved in the continuation or deterioration of their condition) or for the protection of others from serious harm; and
 - (c) the person has impaired decision-making capacity in relation to decisions about treatment of their mental illness; and
 - (d) there is no less restrictive means than an inpatient treatment order of ensuring appropriate treatment of the person's mental illness.
- (2) For the purposes of subsection (1)(d), consideration must be given to the prospects of the person receiving all appropriate treatment of the mental illness necessary for their own protection and the protection of others on a voluntary basis, or under a community treatment order.

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Division 3—Inpatient treatment orders for adults

(3) Before making a level 1 inpatient treatment order, the medical practitioner or authorised mental health professional must have regard to any Statement of Preferences made by the person of which the medical practitioner or authorised mental health professional is aware.

(4) A level 1 inpatient treatment order must be made in writing in the form approved by the Chief Psychiatrist.

(5) A level 1 inpatient treatment order, unless revoked earlier, expires at a time fixed in the order (which must be 2 pm on a specified business day not later than 7 days after the day on which it is made).

(6) Subject to this Act, the following provisions apply on the making of a level 1 inpatient treatment order:

(a) the person must be examined by a psychiatrist or interim psychiatric practitioner, who must, if the order was made by a psychiatrist or interim psychiatric practitioner, be a different psychiatrist or interim psychiatric practitioner from whomever made the order;

(b) the examination must occur within 24 hours after the making of the order (or, if it is not practicable for the examination to occur within that period, as soon as practicable thereafter);

(c) after completion of the examination, the psychiatrist or interim psychiatric practitioner must—

(i) if satisfied that the matters set out in subsection (1) are present, confirm the order; or

(ii) if not satisfied that the matters set out in subsection (1) are present, revoke the order;

(d) before confirming or revoking an order, the psychiatrist or interim psychiatric practitioner should, where it is reasonably practicable to do so, have regard to any submissions made by the person, or any other person who may be affected by the decision to confirm or revoke the order, of which the psychiatrist or interim psychiatric practitioner is aware (however, a contravention of this paragraph does not, of itself, affect the validity of a confirmation or revocation).

(7) A psychiatrist or interim psychiatric practitioner who has examined a person to whom a level 1 inpatient treatment order applies may vary or revoke the order at any time.

(8) Confirmation, variation or revocation of a level 1 inpatient treatment order must occur in a manner and form determined by the Chief Psychiatrist (however, a failure to comply with this subsection does not, of itself, affect the validity of the confirmation, variation or revocation).

69—Level 2 inpatient treatment orders

(1) A medical practitioner may make an order for the treatment of an adult person as an inpatient in an approved treatment centre (a **level 2 inpatient treatment order**) if—

(a) a level 1 inpatient order currently applies to the person; and

(b) it appears to the medical practitioner, after examining the person, that—

(i) the person has a mental illness; and

- (ii) because of the mental illness, the person requires treatment for their own protection from serious harm (whether physical or mental, and including harm involved in the continuation or deterioration of their condition) or for the protection of others from serious harm; and
- 5 (iii) the person has impaired decision-making capacity in relation to decisions about treatment of their mental illness; and
- (iv) there is no less restrictive means than an inpatient treatment order of ensuring appropriate treatment of the person's mental illness.
- 10 (2) For the purposes of subsection (1)(b)(iv), consideration must be given to the prospects of the person receiving all appropriate treatment of the mental illness necessary for their own protection and the protection of others on a voluntary basis, or under a community treatment order.
- 15 (3) Before making a level 2 inpatient treatment order, the medical practitioner must have regard to any Statement of Preferences made by the person of which the medical practitioner is aware.
- (4) A level 2 inpatient treatment order must be made in writing in the form approved by the Chief Psychiatrist.
- 20 (5) Subject to section 70, a level 2 inpatient treatment order, unless revoked earlier, expires at a time fixed in the order (which must be 2 pm on a specified business day not later than 42 days after the day on which it is made).
- (6) A psychiatrist or interim psychiatric practitioner who has examined a person to whom a level 2 inpatient treatment order applies may vary or revoke the order at any time.
- 25 (7) A variation or revocation of a level 2 inpatient treatment order must occur in a manner and form determined by the Chief Psychiatrist (however, a failure to comply with this subsection does not, of itself, affect the validity of the variation or revocation).

70—Extension of level 2 inpatient treatment orders

- (1) A level 2 inpatient treatment order that is in force may, once only, be extended by a psychiatrist or interim psychiatric practitioner (not being the psychiatrist or interim psychiatric practitioner who made the order) who has examined the person 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).
- 30 (2) Before extending an order under this section, the psychiatrist or interim psychiatric practitioner (as the case requires) must be satisfied that there has been no material change in the matters referred to in section 69(1)(b) in respect of the person to whom the order applies.
- 35

71—Level 3 inpatient treatment orders

- (1) If the Tribunal is satisfied that—
- 40 (a) an adult person has a mental illness; and

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- (b) because of the mental illness, the person requires treatment for their own protection from serious harm (whether physical or mental, and including harm involved in the continuation or deterioration of their condition) or for the protection of others from serious harm; and
- (c) the person has impaired decision-making capacity in relation to decisions about treatment of their mental illness; and
- (d) there is no less restrictive means than an inpatient treatment order of ensuring appropriate treatment of the person's mental illness,
- the Tribunal may make an order for the treatment of the person (a ***level 3 inpatient treatment order***).
- (2) For the purposes of subsection (1)(d), the Tribunal must consider the prospects of the person receiving all appropriate treatment of the mental illness necessary for their own protection and the protection of others on a voluntary basis, or under a community treatment order.
- (3) Before making a level 3 inpatient treatment order, the Tribunal must have regard to any Statement of Preferences made by the person of which the Tribunal is made aware.
- (4) A level 3 inpatient treatment order may be made by the Tribunal in respect of a person on an application by—
- (a) the Public Advocate; or
- (b) the nominated clinical director of an approved treatment centre; or
- (c) an employee in an approved treatment centre authorised by the nominated clinical director of the centre for the purpose.
- (5) Any other inpatient treatment order applying to a person is taken to be revoked on the making of a level 3 inpatient treatment order that applies to the person.
- (6) A level 3 inpatient treatment order, unless revoked earlier, expires at a time fixed in the order (which must be 2 pm on a specified business day not later than 12 months after the day on which it is made).
- (7) The Tribunal may, on application by—
- (a) the person to whom the order applies; or
- (b) the Public Advocate; or
- (c) a medical practitioner; or
- (d) a mental health clinician; or
- (e) a guardian, substitute decision-maker, relative, carer or friend of the person; or
- (f) any other person who satisfies the Tribunal that they have a proper interest in the welfare of the person,
- vary or revoke a level 3 inpatient treatment order.

72—Nominated clinical director of treatment centre to give effect to inpatient treatment orders

(1) This section applies when—

- (a) a person to whom an inpatient treatment order applies is under the care and control of treatment centre staff; or
- (b) an inpatient treatment order is made in respect of a person who is a voluntary inpatient at a treatment centre.

(2) Subject to this Act, the nominated clinical director of the treatment centre must—

- (a) if the person is not already admitted to the centre, admit the person to the centre in accordance with the order; and
- (b) ensure that any treatment authorised under the order is given to the person; and
- (c) ensure that the person's rights under this Act are upheld, including the right to be informed of the order and its effect; and
- (d) ensure the person is supported to participate in decisions about their treatment, including through the use of communication assistance where required; and
- (e) comply with any other requirements set out in the regulations.

73—Noncompliance with community treatment order ground for inpatient treatment order

- (1) Without limiting any other provision of this Division, a person's noncompliance with a community treatment order is a relevant consideration in deciding whether an inpatient treatment order should be made in respect of the person.
- (2) However, nothing in this Act prevents the making of an inpatient treatment order in respect of a person without a prior community treatment order having been made.

Division 4—Restrictions on movements of persons to whom inpatient treatment order applies

74—Removing person from treatment centre

A person who, without reasonable excuse, removes a person to whom an inpatient treatment order applies from a treatment centre, or aids such a person to leave the centre, is guilty of an offence.

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

75—Person to whom inpatient treatment order applies not permitted to leave treatment centre or care and control of staff

- (1) A person to whom an inpatient treatment order applies in a treatment centre is not permitted to leave the treatment centre without being under the care and control of treatment centre staff or having been granted a leave of absence.

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Division 4—Restrictions on movements of persons to whom inpatient treatment order applies

- (2) A person to whom an inpatient treatment order applies who is 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) A person to whom an inpatient treatment order applies who is granted a leave of absence is required to comply with the conditions of the leave of absence (and, if the person contravenes a condition, the leave of absence is, by force of this subsection, revoked).

76—Leave of absence of involuntary patients

- (1) The nominated clinical director of a treatment centre may, by written notice in the form approved by the Chief Psychiatrist, grant a person to whom an inpatient treatment order applies a leave of absence from the treatment centre for any purpose and period that the nominated clinical director considers appropriate and specifies in the notice.
- (2) Leave of absence may be granted subject to any conditions that the nominated clinical director considers appropriate and specifies in the written notice.
- (3) The nominated clinical director must ensure that the person is given a copy of the written notice before the person commences the leave of absence.

77—Cancellation of leave of absence

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

78—Use of restrictive practices where inpatient treatment orders apply etc

- (1) This section applies in circumstances where—
- (a) a person to whom an inpatient treatment order applies is present at, or has been admitted to, a treatment centre; or
- (b) a person is present at, or has been admitted to, a prescribed medical facility and—
- (i) a level 1 inpatient treatment order has been, or is to be, made in respect of the person; and
- (ii) the person is to be held at the prescribed medical facility before being transported pursuant to a patient transport request (including, to avoid doubt, in circumstances where the person is being, or is to be, examined prior to being so transported).
- (2) However, this section does not apply in circumstances prescribed by the regulations.

- (3) The prescribed clinical staff of a treatment centre or prescribed medical facility may, in circumstances in which this section applies, use restrictive practices in relation to a person if, in the opinion of the prescribed clinical staff, it is necessary to do so—

- (a) give effect to the inpatient treatment order or ensure compliance with this Act; or
- (b) prevent the person from causing harm to themselves or other persons at the treatment centre or prescribed medical facility; or
- (c) maintain order and security at the treatment centre or prescribed medical facility,

and there is no less restrictive alternative that is reasonably available in the circumstances.

Note—

While this subsection authorises the use of restrictive practices as a last resort, it does not derogate from the desirability of reducing or eliminating the use of restrictive practices in relation to people with a mental illness.

- (4) In using restrictive practices under this section, the prescribed clinical staff of a treatment centre or prescribed medical facility—

- (a) in the case of a treatment centre—are subject to any directions of the nominated clinical director of the treatment centre; and
- (b) in any case—must comply with the restrictive practice guidelines.

- (5) In using restrictive practices under this section, the prescribed clinical staff of a treatment centre or prescribed medical facility—

- (a) may be assisted by such other persons as the prescribed clinical staff considers appropriate; and
- (b) may use reasonable force.

- (6) Nothing in this section limits Part 3 or any other provision of this Act.

- (7) In this section—

authorised nursing staff, of a treatment centre or prescribed medical facility, means nursing staff (including nurse practitioners) who are, in accordance with the restrictive practice guidelines, authorised to use restrictive practices;

prescribed clinical staff, of a treatment centre or prescribed medical facility, means—

- (a) in the case of a treatment centre—the nominated clinical director of the treatment centre; and
- (b) psychiatrists, interim psychiatric practitioners or medical practitioners providing treatment at the treatment centre or prescribed medical facility; and
- (c) authorised nursing staff providing treatment or otherwise performing duties at the treatment centre or prescribed medical facility;

prescribed medical facility means—

- (a) an incorporated hospital or private hospital (within the meaning of the *Health Care Act 2008*);
- (b) any other facility, or facility of a class, prescribed by the regulations,

but does not include an incorporated hospital, private hospital or facility declared by the regulations to be excluded from the ambit of this definition.

79—Transfer of person to whom inpatient treatment order applies

- (1) If the nominated clinical director of a treatment centre considers it is necessary or appropriate for a person to whom an inpatient treatment order applies to be transferred from the treatment centre to another treatment centre, the nominated clinical director may (after arranging for the person's admission to the other centre with the nominated clinical director of the other treatment centre) direct that the person be transferred to the other treatment centre.

Note—

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

- (2) The nominated clinical director of a treatment centre may—

- (a) direct (after arranging for the person's admission to the relevant hospital) that a person to whom an inpatient treatment order applies be transferred to a hospital, or between hospitals, in circumstances where the person has or has had an illness other than a mental illness; and
- (b) direct that the person be transferred back to the treatment centre after completion of the hospital treatment.

- (3) If a person has been transferred to a hospital as a result of a direction under this section—

- (a) the person is, while under the care and control of staff of the hospital, taken to continue to be under the care and control of the treatment centre staff; and
- (b) staff of the hospital may exercise the powers conferred by section 75 in relation to the person as if they were treatment centre staff.

- (4) A direction under this section must be given by writing in the form approved by the Chief Psychiatrist.

- (5) The nominated clinical director of a treatment centre in which a person to whom an inpatient treatment order applies is admitted must, on giving a direction under this section for the transfer of the person from the treatment centre, notify—

- (a) a guardian, substitute decision-maker, relative, carer or friend of the person nominated by the person for the purposes of such notification; or
- (b) if that is not practicable or appropriate—a guardian, substitute decision-maker, relative, carer or friend of the person who appears to have or be assuming responsibility for the care of the person; or
- (c) if that is not practicable or appropriate—any other guardian, substitute decision-maker, relative, carer or friend of the person whom it is practicable and appropriate to notify,

of that fact.

Maximum penalty: \$5 000.

- (6) A notification under subsection (5) must be given by writing in the form approved by the Chief Psychiatrist.

(7) However, a nominated clinical director need not comply with subsection (5) in respect of a particular person if—

(a) the whereabouts of the person are not known to, or readily ascertainable by, the nominated clinical director; or

(b) the nominated clinical director has reason to believe that to do so would be contrary to the best interests of the person to whom the inpatient treatment order applies.

Division 5—Forensic community treatment orders for adults

80—Application of Division

(1) This Division applies to—

(a) an adult person who is a prisoner within the meaning of the *Correctional Services Act 1982*; and

(b) any other person, or person of a class, prescribed by the regulations.

(2) This Division does not apply to an adult person, or adult person of a class, prescribed by the regulations.

(3) This Division is in addition to, and does not derogate from, the *Correctional Services Act 1982*.

81—Interaction between forensic community treatment orders and other orders

(1) If a forensic community 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 forensic community 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).

(2) An inpatient treatment order applying to a person is taken to be revoked on the making of a forensic community treatment order that applies to the person.

82—Level 1 forensic community treatment orders

(1) A medical practitioner or authorised mental health professional may make an order for the treatment of an adult person to whom this Division applies (a ***level 1 forensic 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 their own protection from serious harm (whether physical or mental, and including harm involved in the continuation or deterioration of their condition) or for the protection of others from serious harm; and

(c) the person has impaired decision-making capacity in relation to decisions about treatment of their mental illness; and

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Division 5—Forensic community treatment orders for adults

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- (d) there is no less restrictive means than a forensic community treatment order of ensuring appropriate treatment of the person's mental illness.
- (2) For the purposes of subsection (1)(d), consideration must be given to the prospects of the person receiving all appropriate treatment of the mental illness necessary for their own protection and the protection of others on a voluntary basis.
- (3) Before making a level 1 forensic community treatment order, the medical practitioner or authorised mental health professional must have regard to any Statement of Preferences made by the person of which the medical practitioner or authorised mental health professional is aware.
- (4) A level 1 forensic community treatment order must be made in writing in the form approved by the Chief Psychiatrist.
- (5) Subject to this Act, a level 1 forensic community treatment order, unless—
- (a) revoked earlier; or
 - (b) the order is taken to be a level 1 community treatment order pursuant to section 84,
- expires—
- (c) at the time the person is released from imprisonment; or
 - (d) at the time fixed in the order (which must be 2 pm on a specified business day not later than 42 days after the day on which it is made),
- whichever is the earlier.
- (6) Subject to this Act, the following provisions apply on the making of a level 1 forensic community treatment order:
- (a) the person must be examined by a psychiatrist or interim psychiatric practitioner, who must, if the order was made by a psychiatrist or interim psychiatric practitioner, be a different psychiatrist or interim psychiatric practitioner from whomever made the order;
 - (b) the examination must occur within 24 hours after the making of the order (or, if it is not practicable for the examination to occur within that period, as soon as practicable thereafter);
 - (c) after completion of the examination, the psychiatrist or interim psychiatric practitioner must—
 - (i) if satisfied that the matters set out in subsection (1) are present, confirm the order; or
 - (ii) if not satisfied that the matters set out in subsection (1) are present, revoke the order.
- (7) A psychiatrist or interim psychiatric practitioner who has examined a person to whom a level 1 forensic community treatment order applies may vary or revoke the order at any time.
- (8) Confirmation, variation or revocation of a level 1 forensic community treatment order must occur in a manner and form determined by the Chief Psychiatrist (however, a failure to comply with this subsection does not, of itself, affect the validity of the confirmation, variation or revocation).

83—Level 2 forensic community treatment orders

(1) If the Tribunal is satisfied that—

- (a) an adult person to whom this Division applies has a mental illness; and
- (b) because of the mental illness, the person requires treatment for their own protection from serious harm (whether physical or mental, and including harm involved in the continuation or deterioration of their condition) or for the protection of others from serious harm; and
- (c) the person has impaired decision-making capacity in relation to decisions about treatment of the person's mental illness; and
- (d) there is no less restrictive means than a forensic 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 forensic community treatment order*).

(2) For the purposes of subsection (1)(d), the Tribunal must consider the prospects of the person receiving all appropriate treatment of the mental illness necessary for their own protection and the protection of others on a voluntary basis.

(3) Before making a level 2 forensic community treatment order, the Tribunal must have regard to any Statement of Preferences made by the person of which the Tribunal is made aware.

(4) A level 2 forensic community treatment order may be made by the Tribunal in respect of a person on an application by—

- (a) the Public Advocate; or
- (b) a medical practitioner; or
- (c) a mental health clinician; or
- (d) a guardian, substitute decision-maker, relative, carer or friend of the person; or
- (e) any other person who satisfies the Tribunal that they have a proper interest in the welfare of the person.

(5) Any other forensic community treatment order applying to a person is taken to be revoked on the making of a level 2 forensic community treatment order in relation to the person.

(6) Subject to this Act, a level 2 forensic community treatment order, unless—

- (a) revoked earlier; or
- (b) the order is taken to be a level 2 community treatment order pursuant to section 84,

expires—

- (c) at the time the person is released from imprisonment; or
- (d) at the time fixed in the order (which must be 2 pm on a specified business day not later than 6 months after the day on which it is made),

whichever is the earlier.

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Part 7—Treatment orders relating to adults

Division 5—Forensic community treatment orders for adults

(7) The Tribunal may, on application by—

- (a) the person to whom the order applies; or
- (b) the Public Advocate; or
- (c) a medical practitioner; or
- 5 (d) a mental health clinician; or
- (e) a guardian, substitute decision-maker, relative, carer or friend of the person; or
- (f) any other person who satisfies the Tribunal that they have a proper interest in the welfare of the person,

10 vary or revoke a level 2 forensic community treatment order.

84—Effect of release on forensic community treatment order

(1) This section applies to a forensic community treatment order where—

- (a) the person to whom the order applies is released from imprisonment; and
- (b) the order had not expired at the time of release.

15 (2) A forensic community treatment order to which this section applies will, on the release of the person to whom the order applies from imprisonment—

- (a) in the case of a level 1 forensic community treatment order—be taken to continue in accordance with its terms as a level 1 community treatment order; and
- 20 (b) in the case of a level 2 forensic community treatment order—be taken to continue in accordance with its terms as a level 2 community treatment order; and
- (c) in any case—
 - 25 (i) any authorisation of treatment under this Act for the person's mental illness before their release from imprisonment will continue to have effect according to its terms; and
 - (ii) any treatment and care plan prepared in relation to the person will continue to have effect according to its terms.

30 (3) This section does not apply where, on the release of the person from imprisonment, a community treatment order applies to the person pursuant to section 81(1).

Division 6—Treatment etc of people to whom treatment orders apply**85—Treatment of person to whom treatment order applies**

35 (1) Subject to this section, a person to whom a treatment order under this Part applies may be given treatment for their mental illness (including treatment directed at matters causing, contributing to, or otherwise connected with, their mental illness) of a kind authorised by a medical practitioner who has examined the person.

- (2) Authorisation is not required under subsection (1) for treatment if a medical practitioner considers that—
- (a) the nature of the person's mental illness is such that the treatment is urgently needed to ensure the person's safety, or the safety of others; and
 - (b) in the circumstances it is not reasonably practicable to obtain authorisation.
- (3) However, before treatment is given without authorisation, the medical practitioner—
- (a) must have regard to any Statement of Preferences made by the person of which the medical practitioner is aware; and
 - (b) must comply with any other requirements set out in the regulations.
- (4) Despite a provision of any other Act or law, treatment may be given despite the absence or refusal of consent to the treatment.
- (5) However, nothing in this section authorises or applies to—
- (a) prescribed psychiatric treatment; or
 - (b) prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.

86—Treatment and care plans for people to whom certain treatment orders apply

- (1) The treatment and care of a person to whom a level 2 community treatment order, a level 2 or 3 inpatient treatment order or a level 2 forensic community treatment order applies must, as far as is reasonably practicable, be governed by a treatment and care plan directed towards the person's recovery.
- (2) The treatment and care plan—
- (a) must describe the treatment and care that will be provided to the person under the requirements of the order and should describe any therapy, rehabilitation services and other significant services that will be provided or available to the person whether under the requirements of the order or through the person's voluntary participation; and
 - (b) must, as far as is reasonably practicable, be prepared and revised in consultation with—
 - (i) the person; and
 - (ii) any guardian of the person; and
 - (iii) any substitute decision-maker, relative, carer or friend of the person who is providing support to the person under this Act; and
 - (iv) any service provider or agency (however described) that is providing treatment, care or support to the person in relation to their mental illness; and
 - (c) must comply with any other requirements set out in the regulations.
- (3) However, a failure to comply with subsection (2)(b) does not, of itself, affect the validity of a treatment and care plan.

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Division 6—Treatment etc of people to whom treatment orders apply

- (4) A treatment and care plan prepared under this section in relation to a person with a comorbid substance use disorder may describe treatment relating to the substance use or substance use disorder that will be provided or made available to the person.

Division 7—Enforcement of treatment orders**87—Exercise of certain powers under Division to be least restrictive option**

- (1) Without limiting any other provision of this Act, a medical practitioner, authorised mental health professional or authorised officer must, unless it is not reasonably practicable to do so or is otherwise not in the best interests of a person with a mental illness to do so, exercise their powers under this Division in the manner that is the least restrictive of the rights of the person.
- (2) However, a failure to comply with this section does not, of itself, affect the validity of the exercise of a power under this Division.

88—Powers of certain persons to enforce compliance with treatment orders

- (1) A medical practitioner, authorised mental health professional or authorised officer may, if they believe on reasonable grounds that a person to whom a treatment order under this Part applies has contravened the order, using such force as may be reasonably necessary, do 1 or more of the following:
- (a) enter and remain in a place where the authorised officer reasonably suspects the person may be found;
 - (b) use a restrictive practice in relation to the person;
 - (c) detain the person;
 - (d) search the person's clothing or possessions and take possession of anything that the person may use to cause harm to themselves or others or to damage property;
 - (e) transport the person from place to place (including, to avoid doubt, places within the same premises).
- (2) Before exercising a power under this section, the medical practitioner, authorised mental health professional or authorised officer (as the case requires) must take reasonable steps to inform the person to whom the order applies of the consequences (if any) of contravening the order.
- (3) A person who exercises a power under this section must make and keep records in accordance with any requirements set out in the regulations.
Maximum penalty: \$5 000.
- (4) The powers conferred by this section continue to be exercisable as reasonably required for the purpose of ensuring compliance with the order.
- (5) A search of a person under this section must be carried out expeditiously and in a manner that avoids, as far as is reasonably practicable, causing the person any humiliation or offence.
- (6) Anything taken into the possession of a person under this section may be held for as long as is reasonably necessary for reasons of safety, but must otherwise be returned to the person from whom it was taken or otherwise dealt with according to law.

Division 8—Miscellaneous**89—Nominated clinical director of treatment centre to be notified of orders under Part**

- 5 (1) A medical practitioner or authorised mental health professional must, as soon as is reasonably practicable after making a treatment order under this Part in relation to a person and in accordance with any requirements set out in the regulations—
- (a) notify the nominated clinical director of each treatment centre at or by which treatment is to be provided to the person pursuant to the treatment order; and
- 10 (b) give to the nominated clinical director of each such treatment centre a copy of the order.

Maximum penalty: \$5 000.

- (2) The Tribunal must, as soon as is reasonably practicable after making a treatment order under this Part in relation to a person—
- 15 (a) notify the nominated clinical director of each treatment centre at or by which treatment is to be provided to the person pursuant to the treatment order; and
- (b) give to the nominated clinical director of each such treatment centre a copy of the order.
- (3) However, a failure to comply with this section does not, of itself, affect the validity of the treatment order.

90—Copies of treatment orders and notification to be given to certain persons

- 20 (1) A medical practitioner or authorised mental health professional who makes a treatment order under this Part in relation to a person must ensure that the person is, as soon as is reasonably practicable after making the order, given a copy of the order.
- 25 (2) The Tribunal must, if it makes a treatment order under this Part in relation to a person, ensure that the person is, as soon as is reasonably practicable after making the order, given a copy of the order.
- (3) A psychiatrist or interim psychiatric practitioner who confirms a treatment order under this Part must cause a copy of the order to be given to—
- 30 (a) a guardian, substitute decision-maker, relative, carer or friend of the person to whom the order applies nominated by the person for the purpose; or
- (b) if that is not practicable or appropriate—a guardian, substitute decision-maker, relative, carer or friend of the person to whom the order applies who appears to have or be assuming responsibility for the care of the person; or
- 35 (c) if that is not practicable or appropriate—any other guardian, substitute decision-maker, relative, carer or friend of the person to whom the order applies.

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Division 8—Miscellaneous

- (4) However, a psychiatrist or interim psychiatric practitioner need not comply with subsection (3) in respect of a particular person if—
- (a) the whereabouts of the person are not known to, or readily ascertainable by, the psychiatrist or interim psychiatric practitioner; or
 - (b) the psychiatrist or interim psychiatric practitioner has reason to believe that to do so would be contrary to the best interests of the person to whom the order applies.
- (5) If a treatment order under this Part is varied or revoked by a psychiatrist or interim psychiatric practitioner, the psychiatrist or interim psychiatric practitioner must ensure that the following persons are, as soon as is reasonably practicable, given a copy of the notice of variation or revocation of the order:
- (a) the person to whom the order applies;
 - (b) the person given a copy of the order under subsection (3).
- (6) Subject to the regulations, a copy of an order given under subsection (1) or (3) or a notice given under subsection (5) must be accompanied by a written statement of the reasons for the making of, or the confirmation, variation or revocation of, the order.
- (7) If a treatment order under this Part is varied or revoked by the Tribunal, the Tribunal must ensure that the person to whom the order applies is, as soon as is reasonably practicable, given a copy of the order varying or revoking of the order.
- (8) A person who, without reasonable excuse, refuses or fails to comply with a requirement under this section is guilty of an offence.
Maximum penalty: \$5 000.
- (9) To avoid doubt, subsection (8) does not apply to, or in relation to, the Tribunal.

91—Chief Psychiatrist to be notified of treatment orders etc

- (1) A psychiatrist or interim psychiatric practitioner who makes, confirms, varies or revokes a treatment order under this Part must, within 1 business day after doing so, notify the Chief Psychiatrist of that fact in the manner and form determined by the Chief Psychiatrist.
Maximum penalty: \$5 000.
- (2) A notice under subsection (1) must be accompanied by a written statement of the reasons for the making of, or the confirmation, variation or revocation of, the order.
- (3) The Chief Psychiatrist must, within 1 business day after receiving a notice under subsection (1), by written notice given to the psychiatrist or interim psychiatric practitioner, acknowledge receipt of the notice.
- (4) A registrar of the Tribunal must, within 1 business day after the Tribunal makes, varies or revokes a treatment order under this Part, notify the Chief Psychiatrist of that fact in the manner and form determined by the Chief Psychiatrist.

92—Nominated clinical director of mental health service to monitor compliance with community treatment orders

The nominated clinical director of a treatment centre must, after receiving notice of the making of a community treatment order under this Part in respect of a person (being a community treatment order pursuant to which treatment is to be provided at or by the treatment centre), ensure that there is a mental health clinician who has ongoing responsibility for monitoring and reporting to the Chief Psychiatrist on the compliance with the order of the person.

93—Designated officer to monitor compliance with forensic community treatment orders

- (1) The designated officer must, after receiving notice of the making of a forensic community treatment order under this Part in respect of a person, ensure that there is a mental health clinician who has ongoing responsibility for monitoring and reporting to the Chief Psychiatrist on the compliance with the order of the person.

- (2) In this section—

designated officer means the person who is, from time to time, the designated officer within the meaning of section 269X of the *Criminal Law Consolidation Act 1935*.

Part 8—Duty to warn where risk of harm to other people etc exists**94—Duty to warn**

- (1) This section applies to a prescribed person if—

- (a) the prescribed person suspects on reasonable grounds that a person with a mental illness presents a serious threat to the life, health or safety of another person, or a serious threat to public health or safety; and

Note—

This does not include where the person is only a risk to themselves.

- (b) that suspicion was formed in the course of the prescribed person's employment.

- (2) A prescribed person must, as soon as is reasonably practicable after forming a suspicion referred to in subsection (1)(a)—

- (a) in the case where there is a serious threat to the life, health or safety of a particular person—take reasonable steps to contact the person and warn them of the threat in accordance with any requirements set out in the regulations; and
- (b) in any case—notify each of the following of the threat in accordance with any requirements set out in the regulations:
- (i) South Australia Police;
 - (ii) any other person or body prescribed by the regulations; and
- (c) take such other steps as may be required by the regulations.

Maximum penalty: \$10 000.

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- (3) To avoid doubt, compliance with the requirements of this section does not necessarily exhaust a duty of care that may be owed to a person by a prescribed person.
- (4) A person who, in good faith and without negligence, makes a report under this section will not be liable for any civil or criminal action by reason of the making of the report (including, to avoid doubt, an action for defamation).
- (5) However, a prescribed person need not comply with subsection (2)—
- (a) in the case where there is a serious threat to the life, health or safety of a particular person—if the person has been warned of the threat under this section, or the prescribed person believes on reasonable grounds that the person is otherwise aware of the threat; or
 - (b) in any other circumstances prescribed by the regulations.
- (6) The prescribed person must cause a record of each warning given under this section (including the reasons for the warning) to be kept in accordance with any requirements set out in the regulations.
- (7) For the purposes of this section, a reference to a person being **employed** will be taken to include a reference to a person who—
- (a) is a self-employed person; or
 - (b) carries out work under a contract for services; or
 - (c) undertakes practical training as part of an educational or vocational course; or
 - (d) carries out work as a volunteer,
- and a reference to something occurring in the course of the person's employment is to be construed accordingly.
- (8) In this section—
- prescribed person** means—
- (a) a medical practitioner; or
 - (b) a psychiatrist; or
 - (c) an interim psychiatric practitioner; or
 - (d) an authorised mental health professional; or
 - (e) any other person, or person of a class, prescribed by the regulations,
- but does not include a person declared by the regulations to be excluded from the ambit of this definition.

95—Evidentiary provision

Despite a provision of the *Evidence Act 1929* or any other Act or law, the giving, or the contents, of a warning under section 94 will not be admissible in evidence against the person to whom the report or warning relates in any proceedings for an offence against the *Criminal Law Consolidation Act 1935*.

Part 9—Compliance and other powers of authorised officers and police officers

Division 1—Requests for assistance or transportation where noncompliance with treatment order

96—Patient assistance requests

- (1) If a person to whom a community treatment order applies has not complied with the order, a medical practitioner or mental health clinician may issue a patient assistance request for the purpose of ensuring compliance with the order at the place where the person is located.
- (2) A patient assistance request must—
 - (a) be in writing in the form approved by the Chief Psychiatrist; and
 - (b) comply with any other requirements set out in the regulations.
- (3) A person in respect of whom a patient assistance request has been issued must, as soon as is reasonably practicable, be given a copy of the patient assistance request.

97—Patient transport requests

- (1) A patient transport request may be issued in respect of a person as follows:
 - (a) if a medical practitioner or authorised mental health professional has made an inpatient treatment order in respect of the person 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 person's transport to a treatment centre;
 - (b) if the person is absent without leave, the nominated clinical director of a treatment centre, a medical practitioner or mental health clinician may issue the request for the purpose of the person's transport to a treatment centre;
 - (c) if an inpatient treatment order applies to the person, and the nominated clinical director of a treatment centre has given a direction for the transfer of the person under this Act to another treatment centre or hospital, the nominated clinical director may issue the request for the purpose of the person's transport to the other treatment centre or hospital.
- (2) A patient transport request must—
 - (a) be in writing in the form approved by the Chief Psychiatrist; and
 - (b) comply with any other requirements set out in the regulations.
- (3) Without limiting any other provision of this Act, the transport of a person pursuant to a patient transport request may be deferred to enable the examination of the person in respect of whom the request was issued (including, to avoid doubt, an examination of whether it is appropriate for the person to be transported pursuant to the request).
- (4) A person in respect of whom a patient transport request has been issued must, as soon as is reasonably practicable, be given a copy of the patient transport request.

Division 2—Authorised officers**98—Authorised officers**

- (1) Each of the following is an authorised officer for the purposes of this Act:
- (a) mental health clinicians;
 - (b) paramedics;
 - (c) ambulance officers;
 - (d) persons 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);
 - (e) persons, or persons of a class, authorised by the Chief Psychiatrist, by notice in the Gazette, as an authorised officer;
 - (f) any other person, or person of a class, prescribed by the regulations.
- (2) An authorisation under subsection (1)(e) may be made subject to conditions or limitations specified in the instrument of authorisation.

Division 3—Powers of authorised officers and police officers**99—Exercise of powers under Division to be least restrictive option**

- (1) Without limiting any other provision of this Act, an authorised officer or police officer must, unless it is not reasonably practicable to do so or is otherwise not in the best interests of a person with a mental illness to do so, perform their functions under this Act in the manner that is the least restrictive of the rights of a person with a mental illness.
- (2) However, a failure to comply with this section does not, of itself, affect the validity of the performance of a function under this Act.

100—Powers of authorised officers to detain etc 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—
 - (i) a patient assistance request; or
 - (ii) a patient transport request,has been issued in respect of the person; or
 - (b) an authorised officer believes on reasonable grounds that the person is absent without leave; or
 - (c) an authorised officer believes on reasonable grounds that—
 - (i) a level 1 child and young person's inpatient treatment order or a level 1 inpatient treatment order has been, or is to be, made in respect of the person; and

- (ii) it is appropriate that the powers under this Division be exercised to enable the examination of the person before the person is transported to a treatment centre pursuant to a patient transport request; or
 - (d) an authorised officer is of the opinion that—
 - (i) there is a significant risk of the person causing serious harm to themselves or others or property, or the person otherwise requires examination (including, to avoid doubt, an examination of whether it is appropriate for the person to be transported pursuant to a patient transport request); and
 - (ii) the person has a mental illness.
 - (2) Without limiting the grounds on which an authorised officer may form an opinion, an authorised officer may form an opinion about a person under subsection (1)(d) based on their observations of the person's behaviour or conversation, or reports about the person's behaviour, conversation or history (which may include reports about matters occurring outside the State).
 - (3) An authorised officer may, in relation to a person to whom this section applies and using such force as may be reasonably necessary, do 1 or more of the following:
 - (a) enter and remain in a place where the authorised officer reasonably suspects the person may be found;
 - (b) use a restrictive practice in relation to the person;
 - (c) detain the person;
 - (d) search the person's clothing or possessions and take possession of anything that the person may use to cause harm to themselves or others or to damage property;
 - (e) transport the person from place to place (including, to avoid doubt, places within the same premises).
 - (4) However, nothing in this section authorises an authorised officer to break into a place.
 - (5) Nothing in this section limits any other powers an authorised officer has under this Act.
- Note—**
- For example, a power to enforce compliance with a treatment order.
- (6) Subject to this Act, but without limiting the powers that may be exercised by an authorised officer under this Act, an authorised officer who detains a person under this section must, as soon as is reasonably practicable after doing so—
 - (a) in the case of a person referred to in subsection (1)(a)(i)—provide such assistance as may be reasonably required for the purpose of enabling or facilitating the treatment of the person at the place where the person is located; or
 - (b) 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

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Part 9—Compliance and other powers of authorised officers and police officers

Division 3—Powers of authorised officers and police officers

Note—

This transport can be deferred to enable examination of the person's suitability for transport—see section 97(3).

- 5 (c) 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
- (d) in the case of a person referred to in subsection (1)(d)—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 examination.
- 10 (7) An authorised officer who exercises a power under this section must make and keep records in accordance with any requirements set out in the regulations.
- (8) The powers conferred by this section continue to be exercisable for as long as is reasonably necessary to enable or facilitate the examination, treatment or transport of the person.
- 15 (9) A search of a person under this section must be carried out expeditiously and in a manner that avoids, as far as is reasonably practicable, causing the person any humiliation or offence.
- (10) Anything taken into the possession of an authorised officer under this section may be held for as long as is reasonably necessary for reasons of safety, but must otherwise be returned to the person from whom it was taken or otherwise dealt with according to law.
- 20

101—Powers of police officers to detain etc persons who have, or who appear to have, mental illness

- (1) This section applies to a person if—
 - 25 (a) a police officer believes on reasonable grounds that—
 - (i) a patient assistance request; or
 - (ii) a patient transport request,
 has been issued in respect of the person; or
 - (b) a police officer believes on reasonable grounds that the person is absent without leave; or
 - 30 (c) a police officer is of the opinion that—
 - (i) there is a significant risk of the person causing serious harm to themselves or others or property; and
 - (ii) the person has a mental illness; and
 - 35 (iii) the person requires examination.
- (2) However, this section does not apply to a person in respect of whom a patient transport request has been issued by the nominated clinical director of a treatment centre under section 97(1)(c) unless the person has subsequently become a person who is absent without leave.

- (3) Without limiting the grounds on which a police officer may form an opinion, a police officer may form an opinion about a person under subsection (1)(d) based on the police officer's observations of the person's behaviour or conversation, or reports about the person's behaviour, conversation or history (which may include reports about matters occurring outside the State).
- (4) Subject to this section, a police officer may, in relation to a person to whom this section applies and using such force as may be reasonably necessary, do 1 or more of the following:
- (a) break into a place when that is reasonably required in order to detain the person;
 - (b) enter and remain in a place where the police officer reasonably suspects the person may be found;
 - (c) detain the person;
 - (d) use restrictive practices in relation to the person;
 - (e) search the person's clothing or possessions and take possession of anything that the person may use to cause harm to themselves or others or to damage property;
 - (f) transport the person from place to place (including, to avoid doubt, places within the same premises).
- (5) A police officer who detains a person under this section must, as soon as is reasonably practicable after doing so—
- (a) in the case of a person referred to in subsection (1)(a)(i)—provide such assistance as may be reasonably required for the purpose of enabling or facilitating the treatment of the person at the place where the person is located; or
 - (b) 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 another police officer or by an authorised officer, in accordance with the patient transport request; or
- Note—**
- This transport can be deferred to enable examination of the person's suitability for transport—see section 97(3).
- (c) in the case of a person referred to in subsection (1)(b)—transport the person, or arrange for the person to be transported by another police officer or by an authorised officer, to a treatment centre; or
 - (d) in the case of a person referred to in subsection (1)(c)—transport the person, or arrange for the person to be transported by another police officer or by an authorised officer, to a treatment centre or other place for examination.
- (6) A police officer who exercises a power under this section must make and keep such records as may be required by the Commissioner of Police (being records relating to the officer's observations of the behaviour and conversation of the person in relation to whom the power is exercised).

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Division 3—Powers of authorised officers and police officers

- (7) The powers conferred by this section continue to be exercisable for as long as is reasonably necessary to enable or facilitate the examination, treatment or transport of the person.
- (8) A search of a person under this section must be carried out expeditiously and in a manner that avoids, as far as is reasonably practicable, causing the person any humiliation or offence.
- (9) Anything taken into the possession of a police officer under this section may be held for as long as is reasonably necessary for reasons of safety, but must otherwise be returned to the person from whom it was taken or otherwise dealt with according to law.
- (10) Despite any other Act or law, if a police officer has arrested a person for an offence or apprehended a person under some other Act or law, the person may be released from police custody for the purpose of medical examination or assessment, or treatment, under this Act.
- (11) If a person who has been arrested for an offence is released from police custody in accordance with subsection (10)—
- (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 or forensic community treatment order is not made in respect of the person or ceases to apply to the person.

102—Authorised officers and police officers may be assisted

- (1) Authorised officers and police officers may assist each other in the performance of functions under this Act (and, to avoid doubt, in doing so the authorised officer or police officer so assisting has all of the powers conferred on an officer of the relevant kind under this Act).
- (2) Without limiting any other provision of this Act, or any other Act or law, an authorised officer or a police officer may, in performing a function under this Act, be assisted by such persons as the authorised officer or police officer considers appropriate.

Note—

For example, a police officer may be assisted by a locksmith to enter premises.

Division 4—Miscellaneous**103—Roles of authorised officers and police 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 performance of functions relating to persons who have or appear to have a mental illness; and
 - (b) the provision of other assistance to enable or facilitate the examination, treatment or transport 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) However, a failure to comply with a memorandum of understanding does not, of itself, affect the validity of any action taken by an authorised officer or police officer in the performance of functions under this Act.

104—Offence to hinder or obstruct authorised officer or police officer

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

Maximum penalty: \$30 000.

Part 10—Regulation of certain psychiatric treatments

105—Electroconvulsive therapy (ECT)

- (1) Subject to this section, but despite any other Act or law, ECT must not be administered to a person unless—
- (a) the person has a mental illness; and
 - (b) ECT, or a course of ECT, has been authorised for treatment of the person's mental illness by a psychiatrist who has examined the person; and
 - (c) written consent to the treatment has been given—
 - (i) if the person is 16 or more years of age and has decision-making capacity—by the person; or
 - (ii) if the person is 16 or more years of age and has impaired decision-making capacity—
 - (A) in the case of a person who has given an advance care directive under which a substitute decision-maker has been appointed who is authorised to make decisions of the relevant kind—by each such substitute decision-maker; or
 - (B) by a guardian of the person; or
 - (C) by the Tribunal on application under this section; or
 - (iii) if the person is under 16 years of age—
 - (A) by a parent or guardian of the person; or
 - (B) by the Tribunal on application under this section.
- (2) A person who contravenes subsection (1) is guilty of an offence.
- Maximum penalty: \$50 000 or 4 years imprisonment.
- (3) 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 must be separately consented to after the commencement or completion of the preceding course.

(4) For the purposes of this section, ECT administered to a person 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.

(5) 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;

Note—

This does not, however, prevent restrictive practices from being used in respect of a person—see section 106.

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

(6) An application for the Tribunal's consent under this section may be made by a medical practitioner or mental health clinician.

(7) Consent to a particular episode of ECT is not required if a psychiatrist considers that—

(a) the person has a mental illness of such a nature that administration of that particular episode of ECT is urgently needed for the person's wellbeing; and

(b) in the circumstances it is not practicable to obtain that consent.

(8) A psychiatrist who administers or authorises the administration of an episode of ECT to a person, either with consent under subsection (1) or without consent under subsection (7), must ensure that the Chief Psychiatrist is, within 1 business day after the administration of the episode or the authorisation (as the case requires), given a written notice in the form approved by the Chief Psychiatrist—

(a) advising the Chief Psychiatrist of that action; and

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

Maximum penalty: \$5 000.

(9) For the purposes of this section, a reference to an episode of ECT is a reference to a period during which ECT stimuli are administered under a continuing general anaesthetic.

106—Tribunal may authorise use of restrictive practices where ECT to be administered

(1) This section applies in the following circumstances:

(a) ECT, or a course of ECT, has been authorised for treatment of a person's mental illness by a psychiatrist who has examined the person;

(b) in the opinion of a medical practitioner or mental health clinician, the use of restrictive practices in relation to the person is reasonably necessary for the purposes of administering the ECT treatment.

- (2) The Tribunal may, on application made in accordance with this section by a medical practitioner or mental health clinician, authorise the use of restrictive practices, or the use of restrictive practices of a specified kind, in circumstances in which this section applies.

- (3) An authorisation under this section remains in force until the completion of the relevant episode or course of ECT (unless the Tribunal specifies otherwise).

- (4) An application under this section may be heard at the same time as an application for a treatment order, or for the Tribunal's consent under section 105.

- (5) To avoid doubt, an application may be made under this section whether or not consent to a particular episode of ECT is required.

Note—

See section 105(7).

- (6) If an application under this section relates to a person 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 determination of the application.

- (7) The Tribunal may, on an application under this section, vary or revoke an authorisation under this section.

- (8) For the purposes of the *South Australian Civil and Administrative Tribunal Act 2013*, an application under this section will be taken to come within the Tribunal's original jurisdiction.

- (9) The regulations may make further provisions in relation to the operation of this section (including by limiting the circumstances in which an application can be made, or limiting the kinds of restrictive practices that may be authorised).

107—Neurosurgery for mental illness

- (1) Despite any other Act or law, neurosurgery must not be carried out on a person as a treatment for mental illness unless—

- (a) the person 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 person; and
(iii) the Prescribed Psychiatric Treatment Panel; and

- (c) the person is 16 or more years of age and written consent to the treatment has been given—

- (i) by the person; or
(ii) if consent cannot be given by the person—by the Tribunal on application under this section.

- (2) A person who contravenes subsection (1) is guilty of an offence.

Maximum penalty: \$50 000 or 4 years imprisonment.

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Part 10—Regulation of certain psychiatric treatments

- (3) 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, at least 14 days before the neurosurgery is proposed to be carried out, given—

(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 person under subsection (1)(b)(ii).

- (4) An application for the Tribunal's consent under this section may be made by a medical practitioner or mental health clinician.

- (5) A person who carries out neurosurgery on a person as a treatment for a mental illness must ensure that the Chief Psychiatrist is, within 3 months after carrying out the neurosurgery, given—

(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 person after the neurosurgery.

Maximum penalty: \$5 000.

108—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 11—Prescribed Psychiatric Treatment Panel**109—Prescribed Psychiatric Treatment Panel**

- (1) The *Prescribed Psychiatric Treatment Panel* is established.
- (2) The Panel consists of—
- (a) the Chief Psychiatrist (ex officio); and

- (b) not more than 8 other persons appointed by the Governor on the recommendation of the Minister, of whom at least—
- (i) 1 must be a person with lived experience of mental illness; 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; and
 - (vi) 1 must be a person with credentials and experience in bioethics.

- (3) A member of the Panel appointed under subsection (2)(b) must be a person who, in the opinion of the Minister, is qualified, by reason of their knowledge, expertise or 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) or (5).
- (5) The Governor may, on the recommendation of the Minister, appoint a person to be the deputy of a member of the Panel appointed under subsection (2)(b).
- (6) A deputy may act as a member of the Panel during any period of absence of the member in relation to whom the deputy has been appointed.

110—Terms and conditions of appointment to Panel

- (1) A member of the Panel appointed under section 109(2)(b) will be appointed for a term (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 a member of the Panel appointed under section 109(2)(b) 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 member of the Panel appointed under section 109(2)(b) 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 Panel; 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).

111—Functions of Panel

The Prescribed Psychiatric Treatment Panel has the following functions under this Act:

- (a) to authorise the carrying out of neurosurgery on a person as a treatment for mental illness;
- (b) to conduct reviews of complex cases under section 112;
- (c) to monitor the use of restrictive practices in the administration of ECT;
- (d) to assist, at the request of the Chief Psychiatrist, in the inspection of facilities at which ECT is provided;
- (e) to carry out any other function conferred on the Panel under this or any other Act or by the Minister.

112—Panel to review certain complex cases

(1) A prescribed person—

- (a) must refer a matter consisting of or involving a complex case to the Prescribed Psychiatric Treatment Panel for review under this section if—
 - (i) the matter involves the administration of ECT to a child or young person; or
 - (ii) the matter involves the administration of maintenance ECT to a person for a period of 5 years or more; or
 - (iii) the matter involves the use of restrictive practices in respect of a person; or
 - (iv) the matter involves a significant adverse medical event occurring in the course of an episode of ECT; or
 - (v) the matter is of a kind prescribed by the regulations; and
- (b) may refer any other matter consisting of or involving a complex case to the Prescribed Psychiatric Treatment Panel for review under this section.

(2) A referral under this section must be made in a manner and form determined by the Chief Psychiatrist.

(3) The Prescribed Psychiatric Treatment Panel must, on the referral of a matter under this section and in accordance with any requirements set out in the regulations, conduct a review of the matter and, on completion of a review, must prepare and provide to the person referring the matter a report setting out the findings of the Panel in relation to the review.

(4) In this section—

complex case means a matter to which 1 or more of the following applies:

- (a) the matter relates to whether consent to ECT has, or has not, been given;
- (b) the matter involves the use of restrictive practices in relation to the administration of ECT;
- (c) the matter involves a significant adverse medical event occurring in the course of an episode of ECT;

- (d) the matter involves the administration of maintenance ECT to a person for a period of 5 years or more;
- (e) the matter involves the administration of ECT to a child or young person;
- (f) the matter involves bitemporal ECT being administered as a first treatment to a person who has not previously had ECT administered;
- (g) the matter involves a course of treatment that consists of the administration of at least 24 episodes, or at least 2 episodes per week for a period of at least 6 weeks, of ECT to a person;
- (h) the matter involves the administration of 3 or more acute courses of treatment in any 12 month period;
- (i) the matter involves clinically complex treatment resistance;
- (j) the matter involves clinically complex comorbidities;
- (k) the matter involves treatment provided to a pregnant person;
- (l) the matter is a matter, or matter of a class, prescribed by the regulations;

prescribed person means—

- (a) the Chief Psychiatrist; or
- (b) the Public Advocate; or
- (c) the Tribunal; or
- (d) the Principal Community Visitor; or
- (e) the nominated clinical director of a treatment centre; or
- (f) any other person, or person of a class, prescribed by the regulations.

113—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 Act, the Panel may decide its own procedures;
- (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 the members present at a meeting (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 audio-visual 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 in accordance with any requirements set out in the regulations.
- (3) The Panel may, as it sees fit in relation to a particular matter, be assisted by such persons as the Panel considers appropriate.

Note—

For example, Aboriginal and Torres Strait Islander people, persons from the LGBTIQ+ community or persons from a particular culturally and linguistically diverse community.

114—Panel may require certain public sector agencies to provide report

- (1) The Panel may, if of the opinion that it is necessary or would otherwise assist in the review of a matter under section 112, by notice in writing, require a prescribed public sector agency to prepare and provide a report to the Panel in relation to the matters, and in accordance with any requirements, specified in the notice.
- (2) If a prescribed public sector agency has not complied with a requirement under subsection (1), the Panel may by further notice in writing require the prescribed public sector agency to provide to the Panel within a specified period a report setting out the reasons for noncompliance.
- (3) The Panel may, on receiving a report under subsection (2), submit a copy of the report to the Minister setting out the views of the Panel in respect of the prescribed public sector agency's noncompliance.
- (4) The Minister must, on receiving a report under subsection (3), prepare a report to Parliament setting out—
 - (a) the Minister's response to the Panel's report; and
 - (b) any other information required by the regulations.
- (5) The Minister must, within 6 sitting days after completing a report under subsection (4), cause a copy of both the report and the Panel's report under subsection (3) to be laid before both Houses of Parliament.
- (6) In this section—

prescribed public sector agency means—

- (a) a public sector agency; or
- (b) any other entity prescribed by the regulations,

but does not include an entity declared by the regulations to be excluded from the ambit of this definition.

115—Panel may require information

- (1) The Panel may, by notice in writing, require a specified person (whether or not the person is a public sector agency, or an officer or employee of a public sector agency) to provide to the Panel such information, or such documents, as may be specified in the notice (being information or documents in the possession of the person that the Panel reasonably requires for the purposes of a review under section 112).
- (2) A person of whom a requirement is made under subsection (1) must give the specified information or documents to the Panel within the period specified in the notice.

(3) If a service of a public sector agency is provided by a third party and the information or documents required by the Panel are held by the third party, the person to whom a requirement is made under subsection (1) must take reasonable steps to—

(a) obtain from the third party the information or documents that are the subject of the requirement; or

(b) facilitate the provision by the third party to the Panel of the information or documents that are the subject of the requirement.

(4) A person who, without reasonable excuse, refuses or fails to comply with a notice under subsection (1) is guilty of an offence.

Maximum penalty: \$5 000.

(5) If a public sector agency refuses or fails to comply with a notice under subsection (1), the Panel may, after consultation with the public sector agency report the refusal or failure to the Minister and to the Minister responsible for the public sector agency (if any).

(6) The Minister may, by notice in writing, exempt a specified person or body, or persons or bodies of a specified class, from the operation of this section.

(7) An exemption—

(a) may be conditional or unconditional; and

(b) may be varied or revoked by the Minister by further notice in writing.

Part 12—Treatment centres and approved community mental health facilities

116—Approved treatment centres

(1) The Chief Psychiatrist may, by notice in the Gazette, approve a specified place as an *approved treatment centre* for the purposes of this Act.

(2) An approval under this section—

(a) may be conditional or unconditional; and

(b) may, by subsequent notice in the Gazette, be varied or revoked by the Chief Psychiatrist; and

(c) must comply with any requirements set out in the regulations.

(3) The Chief Psychiatrist may, by notice in the Gazette, suspend the approval of an approved treatment centre if the Chief Psychiatrist believes on reasonable grounds that a condition of the approval has been contravened.

(4) A suspension under subsection (3) has effect until—

(a) the end of the period specified in the notice; or

(b) such action as may be specified by the Chief Psychiatrist has been taken in relation to the contravention; or

(c) further order of the Chief Psychiatrist,

whichever occurs first.

- (5) To avoid doubt, a suspension under this section has effect whether or not a review of the decision to suspend the approval of the approved treatment centre has been, or is to be, sought under Part 17.

117—Limited treatment centres

- (1) The Chief Psychiatrist may, by notice in the Gazette, approve a specified place as a *limited treatment centre* for the purposes of this Act.
- (2) An approval under this section—
- (a) may be conditional or unconditional; and
 - (b) may, by subsequent notice in the Gazette, be varied or revoked by the Chief Psychiatrist; and
 - (c) must comply with any requirements set out in the regulations.
- (3) The Chief Psychiatrist may, by notice in the Gazette, suspend the approval of a limited treatment centre if the Chief Psychiatrist believes on reasonable grounds that a condition of the approval has been contravened.
- (4) A suspension under subsection (3) has effect until—
- (a) the end of the period specified in the notice; or
 - (b) such action as may be specified by the Chief Psychiatrist has been taken in relation to the contravention; or
 - (c) further order of the Chief Psychiatrist,
- whichever occurs first.
- (5) To avoid doubt, a suspension under this section has effect whether or not a review of the decision to suspend the approval of the limited treatment centre has been, or is to be, sought under Part 17.

118—Approved community mental health facilities

- (1) The Chief Psychiatrist may, by notice in the Gazette, approve a specified facility as an *approved community mental health facility* for the purposes of this Act.
- (2) An approval under this section—
- (a) may be conditional or unconditional; and
 - (b) may, by subsequent notice in the Gazette, be varied or revoked by the Chief Psychiatrist; and
 - (c) must comply with any requirements set out in the regulations.
- (3) The Chief Psychiatrist may, by notice in the Gazette, suspend the approval of an approved community mental health facility if the Chief Psychiatrist believes on reasonable grounds that a condition of the approval has been contravened.
- (4) A suspension under subsection (3) has effect until—
- (a) the end of the period specified in the notice; or
 - (b) such action as may be specified by the Chief Psychiatrist has been taken in relation to the contravention; or
 - (c) further order of the Chief Psychiatrist,

whichever occurs first.

- (5) To avoid doubt, a suspension under this section has effect whether or not a review of the decision to suspend the approval of the approved community mental health facility has been, or is to be, sought under Part 17.

119—Delegation by nominated clinical directors of treatment centres

- (1) The nominated clinical director of a treatment centre may delegate a function of the nominated clinical director 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 delegation under this section—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the delegator to act in a matter; and
 - (d) is revocable at will by the delegator.
- (3) A function delegated under this section may, if the instrument of delegation so provides, be further delegated.

Part 13—Interim psychiatric practitioners and authorised mental health professionals

120—Interim psychiatric practitioners

- (1) The Chief Psychiatrist may, by notice in the Gazette, authorise a specified medical practitioner, or a medical practitioner of a specified class, as an *interim psychiatric practitioner* for the purposes of this Act.
- (2) An authorisation—
- (a) may be conditional or unconditional; and
 - (b) may, by subsequent notice in the Gazette, be varied or revoked by the Chief Psychiatrist; and
 - (c) must comply with any requirements set out in the regulations.
- (3) The Chief Psychiatrist must cause records to be kept and maintained of—
- (a) each medical practitioner, or medical practitioner of a class, who has been authorised under this section; and
 - (b) the conditions or limitations attached to each such authorisation.

121—Authorised mental health professionals

- (1) The Chief Psychiatrist may, by notice in the Gazette, authorise a specified person, or a person of a specified class, as an *authorised mental health professional* for the purposes of this Act.
- (2) An authorisation—
- (a) may be conditional or unconditional; and

- (b) may, by subsequent notice in the Gazette, be varied or revoked by the Chief Psychiatrist; and
 - (c) must comply with any requirements set out in the regulations.
- (3) The Chief Psychiatrist must cause records to be kept and maintained of—
- (a) each person, or person of a class, who has been authorised under this section; and
 - (b) the conditions or limitations attached to each such authorisation.

Part 14—Administration

Division 1—Minister and Chief Executive

122—Functions of Minister

The Minister has the following functions under this Act:

- (a) to prepare and maintain the State Mental Health and Wellbeing Plan;
- (b) 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 and wellbeing policies and services;
- (c) to develop or promote a strong and viable system of treatment and care, and a full range of services and facilities, for persons with a mental illness;
- (d) to develop or promote ongoing programmes for optimising the mental health and wellbeing 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* or the *Children and Young People (Safety and Support) Act 2025*;
- (e) to develop or promote services that aim to prevent mental illness and intervene early when mental illness is evident;
- (f) to ensure that information about mental health and wellbeing, and mental illness, is made available to the community and to promote public awareness about mental health and wellbeing, and mental illness;
- (g) to develop or promote appropriate education and training programmes, and effective systems of accountability, for persons delivering mental health and wellbeing services;
- (h) to promote services in the non-government sector that are designed to assist persons with a mental illness;
- (i) to develop or promote programmes to reduce the adverse impact of mental illness on family and community life;
- (j) any other functions assigned to the Minister by this Act.

123—Functions of Chief Executive

(1) The Chief Executive has the following functions under this Act:

- (a) to assist the Minister in connection with the administration of this Act and to exercise statutory powers conferred by this Act;
- (b) to assist and advise the Minister in relation to the provision of mental health and wellbeing services in the State;
- (c) to assist and advise the Minister in the development and implementation of planning for mental health and wellbeing services statewide;
- (d) to promote the effective and efficient use of available resources in the provision of mental health and wellbeing services in the State;
- (e) to monitor and promote improvements in the safety and quality of mental health and wellbeing services in the State;
- (f) at the request of the Minister, to provide advice on any other matter in relation to which the Minister considers that the advice of the Chief Executive should be available;
- (g) such other functions assigned to the Chief Executive by or under this or any other Act, or assigned to the Chief Executive by the Minister in connection with the operation of this or any other Act.

(2) Subject to this Act, the Chief Executive has such powers as may be necessary, expedient or incidental for the performance of their functions.

(3) Subject to this Act, the Chief Executive is, in the performance and exercise of the Chief Executive's functions and powers, subject to the control and direction of the Minister.

124—Delegation

(1) The Minister or Chief Executive may delegate a function of the Minister or Chief Executive (as the case requires) 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 delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the delegator to act in a matter; and
- (d) is revocable at will by the delegator.

(3) A function delegated under this section may, if the instrument of delegation so provides, be further delegated.

Division 2—Chief Psychiatrist**125—Chief Psychiatrist**

(1) There is to 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.

126—Deputy Chief Psychiatrist

- (1) The Governor may appoint a senior psychiatrist (who may be a Public Service employee) to be the Deputy Chief Psychiatrist.
- (2) The Deputy Chief Psychiatrist may act as the Chief Psychiatrist—
- (a) during any period in which no person is appointed as the Chief Psychiatrist; or
 - (b) during any period in which the Chief Psychiatrist is absent or unable to perform their functions under this or any other Act,
- (and, when not so acting, may perform such functions of the Chief Psychiatrist as may be delegated to the Deputy Chief Psychiatrist by the Chief Psychiatrist).
- (3) The terms and conditions of appointment to the position of Deputy Chief Psychiatrist will be as determined by the Governor.

127—Functions of Chief Psychiatrist

The Chief Psychiatrist has the following functions under this Act:

- (a) to promote continuous improvement in the organisation and delivery of mental health and wellbeing services in South Australia;
- (b) to monitor the treatment of persons who are inpatients, and the use of restrictive practices in relation to such persons;
- (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 wellbeing and to report to the Minister any matters of concern relating to the care or treatment of people with a mental illness;
- (e) to assist in raising awareness of, and educating people in relation to, mental health and wellbeing;
- (f) to conduct inspections under section 130;
- (g) any other functions assigned to the Chief Psychiatrist by this Act or any other Act or by the Minister.

128—Guidelines

- (1) The Chief Psychiatrist may, by notice in the Gazette, publish guidelines for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the Chief Psychiatrist must publish the following guidelines:
- (a) guidelines (the *capacity assessment guidelines*) relating to the assessment of a person's decision-making capacity for the purposes of this Act;
 - (b) guidelines (the *supported decision-making guidelines*) relating to supported decision-making for the purposes of this Act;

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- (c) guidelines (the *restrictive practice guidelines*) relating to the use of restrictive practices under this Act;
- (d) guidelines (the *child and young person's treatment order guidelines*) relating to the making of treatment orders under this Act that apply to children and young people;
- (e) any other guidelines prescribed by the regulations.
- (3) The Chief Psychiatrist may, by notice in the Gazette, vary, substitute or revoke guidelines published under this section.

129—Standards

- (1) The Chief Psychiatrist may, by notice in the Gazette, issue standards that are to be observed in the care or treatment of people with a mental illness.
- (2) Without limiting the generality of subsection (1), the Chief Psychiatrist must issue standards in respect of the following:
- (a) sexual safety in mental health services;
- (b) the use of ECT;
- (c) the care of people who are the subject of community treatment orders.
- (3) The Chief Psychiatrist may, by notice in the Gazette, vary, substitute or revoke a standard under this section.
- (4) Any standards issued by the Chief Psychiatrist under this section will be binding—
- (a) on treatment centres and approved community mental health facilities; and
- (b) on each incorporated hospital under the *Health Care Act 2008*; and
- (c) as a condition of the licence in force in respect of any private hospital premises under Part 10 of the *Health Care Act 2008*; and
- (d) any other mental health service, or person or facility that provides a mental health service, or class of such services, persons or facilities, prescribed by the regulations

130—Chief Psychiatrist may inspect hospitals etc

- (1) The Chief Psychiatrist has the authority to conduct inspections of the premises and operations of—
- (a) treatment centres; and
- (b) approved community mental health facilities; and
- (c) incorporated hospitals within the meaning of the *Health Care Act 2008*; and
- (d) private hospitals within the meaning of the *Health Care Act 2008* (and will, for that purpose, be taken to be an inspector under Part 10 of that Act).
- (2) For the purposes of subsection (1), the Chief Psychiatrist may, at any reasonable time, enter premises referred to in that subsection 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.

- (3) A person who, without reasonable excuse, refuses or fails to comply with a requirement made under subsection (2) is guilty of an offence.

Maximum penalty: \$20 000.

- (4) A person must not hinder or obstruct the Chief Psychiatrist in the exercise of the powers conferred by subsection (2).

Maximum penalty: \$20 000.

131—Delegation

- (1) The Chief Psychiatrist may delegate a function of the Chief Psychiatrist 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 delegation under this section—

- (a) must be by instrument in writing; and

- (b) may be absolute or conditional; and

- (c) does not derogate from the power of the Chief Psychiatrist to act in a matter; and

- (d) is revocable at will by the Chief Psychiatrist.

- (3) A function delegated under this section may, if the instrument of delegation so provides, be further delegated.

132—Annual report

- (1) The Chief Psychiatrist must, on or before 30 September in each year, present a report to the Minister containing—

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

- (b) in respect of treatment orders—

- (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 people to whom such orders apply, including information about areas of residence and places of treatment; and

- (c) information about the operations of the Prescribed Psychiatric Treatment Panel during the preceding financial year; and

- (d) in respect of the administration of Part 16 (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:

- 5 (A) section 170(1) (South Australian community treatment orders and treatment in other jurisdictions);
- (B) section 173 (Making of South Australian community treatment orders when interstate orders apply);
- (C) section 174(1) (Transfer from South Australian treatment centres);
- (D) section 175 (Transfer to South Australian treatment centres);
- (E) section 178(1) (Transport to other jurisdictions when South Australian inpatient treatment orders apply);
- 10 (F) section 179(2) (Transport to other jurisdictions of persons with apparent mental illness);
- (G) section 180(1) or (4) (Transport to other jurisdictions when interstate inpatient treatment orders apply);
- (H) section 181(1) or (3) (Transport to South Australia when South Australian inpatient treatment orders apply);
- 15 (I) section 182 (Transport to South Australia of persons with apparent mental illness); and
- (ii) information about the circumstances in which the powers were exercised; and
- 20 (e) information relating to the compliance, or noncompliance, of nominated clinical directors with their obligations under this Act; and
- (f) any other information required by the regulations.
- (2) The Minister must, within 12 sitting days after receiving a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

25 Division 3—Mental Health Commissioner

133—Mental Health Commissioner

- (1) There is to be a position of Mental Health Commissioner.
- (2) The Commissioner is independent of direction or control by the Crown or any Minister or officer of the Crown.
- 30 (3) The Commissioner will be appointed by the Governor on conditions, and for a term (not exceeding 5 years), specified in the instrument of appointment.
- (4) A person appointed to be the Commissioner is, at the expiration of a term of appointment, eligible for reappointment, but cannot hold office for terms (including any term as acting Commissioner) that exceed 10 years in total.
- 35 (5) The appointment of the Commissioner may be terminated by the Governor on the ground that the Commissioner—
- (a) has been guilty of misconduct; or
- (b) has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

- (c) has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
 - (d) is incompetent or has neglected the duties of the position.
- (6) The Governor may suspend the Commissioner from office (with, or without, pay) for—
 - (a) contravention of a condition of appointment; or
 - (b) misconduct or conduct that may bring the position of Commissioner into disrepute; or
 - (c) failure or incapacity to carry out official duties satisfactorily.
- (7) The position of Commissioner becomes vacant if the person appointed to the position—
 - (a) dies; or
 - (b) resigns by written notice given to the Governor; 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.
- (8) The Minister may appoint a person to act in the position of Commissioner—
 - (a) during a vacancy in the position; or
 - (b) when the Commissioner is absent or unable to perform the functions of the position; or
 - (c) if the Commissioner is suspended from the position under subsection (6).

134—Functions of Commissioner

- (1) The Commissioner has the following functions under this Act:
 - (a) to promote and advocate for the rights and interests of all people in relation to mental health and wellbeing;
 - (b) to promote community awareness and understanding about mental health and mental illness, including for the purpose of reducing stigma and discrimination;
 - (c) to promote the participation by those living with mental illness, or with lived experience of mental illness, in the design and delivery of services that affect their lives;
 - (d) to support and promote strategies that facilitate early intervention for mental illness;

- (e) to support and promote the planning and implementation of innovative best practice initiatives relating to mental health and wellbeing across all age groups;
- 5 (f) to advise, and make recommendations to, Ministers, public sector agencies and other bodies (including non-government bodies) on matters related to the rights, care and treatment of people living with mental illness;
- (g) to advise the Minister and the Suicide Prevention Council on matters related to suicide prevention, intervention and postvention;
- 10 (h) to prepare and publish reports on matters related to mental health and wellbeing and issues impacting on, and the care and treatment of, people with mental illness;
- (i) to advocate for continuous improvement of mental health and wellbeing related resources, information, and connection to support services for families and individuals impacted by mental illness and suicide;
- 15 (j) such other functions as may be conferred on the Commissioner by or under this or any other Act.
- (2) In performing their functions under this Act, the Commissioner should consult with and engage people with mental illness, lived experience of mental illness and people involved in the delivery of services to people with mental illness.
- 20 (3) Subject to this Act, the Commissioner has such powers as may be reasonably necessary for the performance of their functions.
- (4) In this section—
postvention has the same meaning as in the *Suicide Prevention Act 2021*.

135—Delegation

- 25 (1) The Commissioner may delegate any of the Commissioner's functions 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 delegation under this section—
- 30 (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the Commissioner to act in a matter; and
- (d) is revocable at will by the Commissioner.
- (3) A function delegated under this section may, if the instrument of delegation so provides, be further delegated.

35 136—Employees

- (1) The Commissioner may engage employees on terms and conditions determined by the Commissioner.
- (2) The employees are not Public Service employees but will, for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*, be taken to be public sector employees employed by the Commissioner.
- 40

137—Use of staff etc of Public Service

The Commissioner may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

138—Annual report

- (1) The Commissioner must, on or before 30 September in each year, present a report to the Minister on the performance of the Commissioner's functions during the preceding financial year.
- (2) The Minister must, within 12 sitting days after receiving a report under subsection (1), cause a copy of the report to be laid before both Houses of Parliament.

139—Commissioner may provide and publish reports

- (1) The Commissioner may prepare and provide to the Minister, or to another Minister responsible for a particular area, reports on matters related to the Commissioner's functions under this Act.
- (2) The Minister to whom a report is provided under subsection (1) must, within 6 sitting days after receiving the report, cause a copy of the report to be laid before both Houses of Parliament.
- (3) The Commissioner may, once a report under this Division has been laid before both Houses of Parliament and after consultation with the Minister, publish all or part of the report as the Commissioner thinks fit.

Division 4—Community visitor scheme

Subdivision 1—Principal Community Visitor

140—Principal Community Visitor

- (1) There will be a position of Principal Community Visitor.
- (2) A person will be appointed to the position of Principal Community Visitor on conditions determined by the Governor and for a term, not exceeding 5 years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.
- (3) The Governor may remove a person from the position of Principal Community Visitor on the presentation of an address from both Houses of Parliament seeking the person's removal.
- (4) The Governor may suspend a person from the position of Principal 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.

(5) The position of Principal 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 (3); 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.

(6) 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 (4).

141—Functions of Principal Community Visitor

(1) The Principal Community Visitor has the following functions under this Act:

- (a) to visit and inspect treatment centres and approved community mental health facilities in accordance with 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 people with a mental illness to the Minister, the Chief Psychiatrist or any other appropriate person or body;
- (c) to act as an advocate for people with a mental illness to promote the proper resolution of issues relating to their care, control and treatment, including issues raised by a guardian, substitute decision-maker, relative, carer or friend of a person with a mental illness or any person who is providing support to a person with a mental illness under this Act;
- (d) to oversee and coordinate community visitors in the performance of functions under this or any other Act;
- (e) to advise and assist community visitors in the performance of their functions, including by referring of matters of concern raised by community visitors to the Minister, the Chief Psychiatrist or any other appropriate person or body;

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- (f) such other functions as may be assigned to the Principal Community Visitor under this or any other Act or by the Minister.
- (2) Subject to this Act, the Principal Community Visitor has such powers as may be necessary or expedient for the performance of their functions.
- 5 (3) A person must not hinder or obstruct the Principal Community Visitor in the performance of functions under this Act.
- Maximum penalty: \$10 000.

142—Delegation

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

Subdivision 2—Appointment of other community visitors**143—Other community visitors**

- (1) The Minister may appoint community visitors for the purposes of this Act.
- 25 (2) A person will be appointed to a position of community visitor on conditions determined by the Minister 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.
- 30 (3) The Minister may, on application by the Principal Community Visitor, or on the Minister's own initiative after consultation with the Principal Community Visitor, suspend or remove a person from a position of community visitor for any reason the Minister thinks fit.
- (4) A position of community visitor, becomes vacant if the person appointed to the position—
- 35 (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 Minister under subsection (3); 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 Minister, mentally or physically incapable of performing satisfactorily the functions of the position.

144—Functions of community visitors

(1) Community visitors have the following functions under this Act:

- (a) to visit and inspect treatment centres and approved community mental health facilities in accordance with this Division;
- (b) to refer matters of concern relating to the organisation or delivery of mental health services in South Australia or the care, control or treatment of persons with a mental illness to the Principal Community Visitor;
- (c) to act as advocates for people with a mental illness to promote the proper resolution of issues relating to their care, control and treatment, including issues raised by a guardian, substitute decision-maker, relative, carer or friend of a person with a mental illness or any person who is providing support to a person with a mental illness under this Act;
- (d) such other functions as may be assigned to community visitors under this or any other Act or by the Minister.

(2) A person must not hinder or obstruct a community visitor in the performance of functions under this Act.

Maximum penalty: \$10 000.

Subdivision 3—Visits and inspections of treatment centres and approved community mental health facilities

145—Visits to and inspections of treatment centres and approved community mental health facilities by Principal Community Visitor

- (1) Without limiting any other provision of this Division, the Principal Community Visitor may, at any time, visit and inspect a treatment centre or an approved community mental health facility (whether in the company of a community visitor or alone).
- (2) A visit and inspection of a treatment centre or an approved community mental health facility under this section will, for the purposes of section 146 or 147 (as the case requires), be taken to be a visit and inspection under the relevant section.

146—Visits to and inspections of treatment centres

- (1) Each approved treatment centre must be visited and inspected under this section at least once in every 2 month period.
- (2) Without limiting subsection (1), a community visitor may visit and inspect a treatment centre at any time.

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- (3) A visit and inspection under this section—
- (a) 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 visitor or the Principal Community Visitor (as the case may be) thinks appropriate; and
 - (b) must be conducted in accordance with any requirements set out in the regulations.
- (4) Without limiting any other provision of this Act, a visit and inspection under this section may be undertaken at the request of 1 or more of the following persons:
- (a) a person who is a voluntary inpatient;
 - (b) a person to whom a treatment order applies;
 - (c) a person to whom section 100 applies;
 - (d) 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*;
 - (e) a guardian, substitute decision-maker, relative, carer or friend of, or a person providing support under this Act to, a person referred to in a preceding paragraph.
- (5) After visiting and inspecting a treatment centre, a community visitor must, if required to do so by the Principal Community Visitor, report to the Principal Community Visitor about the visit in accordance with any requirements of the Principal Community Visitor.

147—Visits to and inspection of approved community mental health facilities

- (1) Each approved community mental health facility must (unless the regulations specify otherwise) be visited and inspected under this section—
- (a) in the case of a residential approved community mental health facility—at least once in every 4 month period; and
 - (b) in the case of an outpatient approved community mental health facility—at least once in every 6 month period.
- (2) Without limiting subsection (1), a community visitor may visit and inspect an approved community mental health facility at any time.
- (3) A visit and inspection under this section—
- (a) 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 visitor or the Principal Community Visitor (as the case may be) thinks appropriate; and
 - (b) must be conducted in accordance with any requirements set out in the regulations.
- (4) Without limiting any other provision of this Act, a visit and inspection under this section may be undertaken at the request of 1 or more of the following persons:
- (a) a person who is a voluntary inpatient;
 - (b) a person to whom a treatment order applies;

- (c) a person to whom section 100 applies;
- (d) 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*;
- (e) a guardian, substitute decision-maker, relative, carer or friend of, or a person providing support under this Act to, a person referred to in a preceding paragraph.

- (5) After visiting and inspecting an approved community mental health facility treatment centre, a community visitor must, if required to do so by the Principal Community Visitor, report to the Principal Community Visitor about the visit in accordance with any requirements of the Principal Community Visitor.

148—Certain visits and inspections may be conducted by audiovisual or other electronic means

- (1) This section applies to a visit and inspection of a treatment centre, approved community mental health facility or any 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 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 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

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(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 person or resident of the premises, or persons 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 who, without reasonable excuse, refuses or fails to comply with a direction under subsection (4) is guilty of an offence.

Maximum penalty: \$5 000.

(6) The Principal Community Visitor must ensure that the following information is reported on a website determined by the Principal Community Visitor and updated on at least a quarterly basis:

(a) the number of visits or inspections that have occurred by audiovisual or other electronic means in accordance with this section;

(b) except where the Principal Community Visitor 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) 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.

(8) In this section—

community visitor includes the Principal Community Visitor.

149—Powers in relation to inspections of treatment centres and approved community mental health facilities

(1) A community visitor or the Principal Community Visitor (as the case may be) may, in relation to the visit and inspection of a treatment centre or approved community mental health facility under this Act, at any reasonable time, enter the premises of the centre or facility 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.

(2) A person who, without reasonable excuse, refuses or fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: \$10 000.

150—Requests to see community visitors

- (1) A person with a mental illness, or a guardian, substitute decision-maker, relative, carer or friend of such a person or any person who is providing support to such a person under this Act may make a request to see a community visitor.
- 5 (2) If such a request is made to the nominated clinical director of a treatment centre in which a person is an inpatient, the nominated clinical director must advise a community visitor or the Principal Community Visitor of the request within 2 days after receipt of the request.

Subdivision 4—Reporting**151—Annual and other reports by Principal Community Visitor**

- 10 (1) The Principal Community Visitor must, on or before 30 September in every year, prepare and submit a report to the Minister on the performance of the functions of the Principal Community Visitor and other community visitors during the preceding financial year.
- 15 (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), cause a copy of the report to be laid before both Houses of Parliament.
- (3) The Principal Community Visitor may, at any time, prepare and submit a special report to the Minister on any matter arising out of the performance of the Principal Community Visitor's or the community visitors' functions.
- 20 (4) The Minister must, within 14 sitting days after receiving a special report, cause a copy of the report to be laid before both Houses of Parliament.

Division 5—Human Rights Coercion and Reduction Committee**152—Establishment of Human Rights Coercion and Reduction Committee**

- (1) The *Human Rights Coercion and Reduction Committee* is established.

- 25 (2) The HRCRC consists of the following members:

Drafting note—

the composition of the HRCRC is to be determined during consultation.

- (3) The Minister must appoint a member to be the presiding member of the HRCRC.
- (4) The Minister may appoint a person to be the deputy of a member of the HRCRC.
- 30 (5) A deputy may act as a member of the HRCRC during any period of absence of the member in relation to whom the deputy has been appointed.
- (6) The HRCRC is, in performing a function or exercising a power under this Act, subject to the direction of the Minister.

153—Terms and conditions of appointment to HRCRC

- 35 (1) Subject to this section, a member of the HRCRC will hold office on conditions, and for a term (not exceeding 5 years), determined by the Minister and specified in the instrument of appointment and is, at the expiration of a term of office, eligible for reappointment.

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- (2) An appointed member of the HRCRC cannot hold office for terms that exceed 10 years in total.
- (3) The office of an appointed member of the HRCRC becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) is convicted of—
 - (i) an indictable offence against a law of this State; or
 - (ii) an offence against a law of this State that is punishable by imprisonment for a term of at least 12 months; or
 - (iii) an offence against a law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding paragraph; or
 - (e) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or
 - (f) is removed from office by the Minister under subsection (4).
- (4) The Minister may remove an appointed member of the HRCRC from office—
- (a) for misconduct or conduct that may bring the HRCRC into disrepute; or
 - (b) for breach of, or noncompliance with, a condition of appointment; or
 - (c) if the member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
 - (d) if the member has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
 - (e) if the member has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
 - (f) for incompetence or neglecting the duties of the position; or
 - (g) any other reason the Minister thinks fit.
- (5) An act or proceeding of the HRCRC is not invalid by reason only of a vacancy in the office of a member or a defect in the appointment of a member.

154—Remuneration, allowances and expenses

An appointed member of the HRCRC is entitled to such remuneration, allowances and expenses as may be determined by the Minister.

155—Functions of HRCRC

The functions of the HRCRC under this Act are—

- (a) to promote a human rights based approach to ensure that all new mental health care initiatives in South Australia are grounded in the principles of human rights, dignity, and respect; and

- (b) to monitor and advise the Minister and the Chief Psychiatrist in relation to practices intended to safeguard, or otherwise affecting, the rights of people receiving mental health care; and
- (c) to advocate for care models and policies that uphold the inherent dignity and wellbeing of people experiencing mental health challenges; and
- (d) to provide guidance on reducing the use of restrictive practices (however described) in mental health settings, including seclusion, restraint and involuntary treatment; and
- (e) to contribute to the development and review of mental health policies to ensure alignment with human rights standards; and
- (f) to review and provide advice on any matter referred to the HRCRC by the Minister; and
- (g) such other functions as may be conferred on the HRCRC by this Act, the Minister or the Chief Psychiatrist.

156—Conflict of interest under Public Sector (Honesty and Accountability) Act

A member of the HRCRC will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with persons engaged in the mental health sector generally or a substantial section of such persons in this State.

157—Procedures of HRCRC

Subject to this Act and any direction of the Minister, the HRCRC may determine its own procedures.

158—Committees

- (1) The HRCRC may establish committees—
- (a) to advise the HRCRC; or
- (b) to carry out functions on behalf of the HRCRC.
- (2) The membership of a committee will be determined by the HRCRC and may, but need not, consist of, or include, members of the HRCRC.
- (3) The HRCRC will determine who will be the presiding member of a committee.
- (4) The procedures to be observed in relation to the conduct of the business of a committee will be—
- (a) as determined by the HRCRC; and
- (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

159—Delegation

- (1) The HRCRC may delegate a function under this Act—
- (a) to a member of the HRCRC; or

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- (b) to a committee established by the HRCRC; or
- (c) to a particular person or body or a person for the time being performing particular duties or holding or acting in a particular position.

(2) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the HRCRC to act in a matter; and
- (d) is revocable at will by the HRCRC.

(3) A function delegated under this section may, if the instrument of delegation so provides, be further delegated.

160—Annual report

- (1) The HRCRC must, on or before 31 October in each year, report to the Minister on the performance of its functions during the preceding financial year.
- (2) Without limiting the matters that may be included in a report, the report specified in subsection (1) must include any information required by the regulations.
- (3) The Minister must, within 6 sitting days after receiving a report under subsection (1), cause a copy of the report to be laid before both Houses of Parliament.

Part 15—Information gathering and sharing**161—Chief Psychiatrist may require certain public sector agencies to provide report**

- (1) The Chief Psychiatrist may, if they are of the opinion that it is necessary or would otherwise assist them in the performance of functions under this Act, by notice in writing, require a prescribed public sector agency to prepare and provide a report to the Chief Psychiatrist in relation to the matters, and in accordance with any requirements, specified in the notice.
- (2) If a prescribed public sector agency refuses or fails to comply with a notice under subsection (1), the Chief Psychiatrist may, after consultation with the prescribed public sector agency—
 - (a) report the refusal or failure to the Minister and to the Minister responsible for the prescribed public sector agency (if any); and
 - (b) include details of the refusal or failure in the annual report of the Chief Psychiatrist.
- (3) In this section—
prescribed public sector agency means—
 - (a) a public sector agency; or
 - (b) any other entity prescribed by the regulations,but does not include an entity declared by the regulations to be excluded from the ambit of this definition.

162—Chief Psychiatrist may require information

- (1) The Chief Psychiatrist may, by notice in writing, require a specified person (whether or not the person is a public sector agency, or an officer or employee of a public sector agency) to provide to them such information, or such documents, as may be specified in the notice (being information or documents in the possession of the person that the Chief Psychiatrist reasonably requires for the performance of functions under this Act).
- (2) A person of whom a requirement is made under subsection (1) must give the specified information or documents to the Chief Psychiatrist within the period specified in the notice.
- (3) If a service of a public sector agency is provided by a third party and the information or documents required by the Chief Psychiatrist are held by the third party, the person to whom a requirement is made under subsection (1) must take reasonable steps to—
- (a) obtain from the third party the information or documents that are the subject of the requirement; or
 - (b) facilitate the provision by the third party to the Chief Psychiatrist of the information or documents that are the subject of the requirement.
- (4) A person who, without reasonable excuse, refuses or fails to comply with a notice under subsection (1) is guilty of an offence.
- Maximum penalty: \$10 000.
- (5) If a public sector agency refuses or fails to comply with a notice under subsection (1), the Chief Psychiatrist may, after consultation with the public sector agency—
- (a) report the refusal or failure to the Minister and to the Minister responsible for the public sector agency (if any); and
 - (b) include details of the refusal or failure in the annual report of the Chief Psychiatrist.
- (6) The Minister may, by notice in writing, exempt a specified person or body, or persons or bodies of a specified class, from the operation of this section.
- (7) An exemption—
- (a) may be conditional or unconditional; and
 - (b) may be varied or revoked by the Minister by further notice in writing.
- (8) In this section—

public sector agency has the same meaning as in the *Public Sector Act 2009*.

163—Sharing of information between certain persons and bodies

- (1) This section applies to the following persons and bodies:
- (a) the Department;
 - (b) the Chief Psychiatrist;
 - (c) the Commissioner;
 - (d) the Principal Community Visitor;
 - (e) the Suicide Prevention Council;

-
- (f) Preventive Health SA;
 - (g) any other person or body, or person or body of a class, prescribed by the regulations.
- (2) Despite any other Act or law, a person or body to whom this section applies (the **provider**) may, in accordance with any requirements set out in the regulations for the purposes of this Act, provide prescribed information and documents to another person or body to whom this section applies (the **recipient**) if the provider reasonably believes that the provision of the information or documents would assist the recipient to perform their functions.
- (3) Despite any other Act or law, information or documents that do not directly or indirectly disclose the identity of any person may be provided by one person or body to whom this section applies to another without restriction.
- (4) Subsection (3) applies—
- (a) whether or not the information or documents consist of or include prescribed information and documents; and
 - (b) whether or not the information or documents ever disclosed the identity of a person, or has been redacted so as to de-identify it.
- (5) Information or documents may be provided under this section whether or not the provider has been requested to provide the information or documents.

164—Interaction with *Public Sector (Data Sharing) Act 2016*

Nothing in this Part affects the operation of the *Public Sector (Data Sharing) Act 2016*.

Part 16—Arrangements between South Australia and other jurisdictions

Division 1—Preliminary

165—Interpretation

- (1) 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 under their 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 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 they are 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;

involuntary community patient means a person to whom a community treatment order applies;

Ministerial agreement means an agreement made under section 166 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 6 or Part 7 (as the case requires);

South Australian inpatient treatment order means an inpatient treatment order under Part 6 or Part 7 (as the case requires);

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.

- (2) For the purposes of this Part, a reference to a South Australian community treatment order will, in the case of a person to whom a forensic community treatment order under Part 6 or Part 7 applies, be taken to include a reference to the forensic community treatment order.

166—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.

167—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 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 person in respect of whom the action is to be taken.

168—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.

169—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

170—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 contravenes 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 person 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 approved 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 their 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 person.

(4) Section 167(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 person 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 104, will apply for the purpose with necessary modifications).

171—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.

172—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 person 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 approved community mental health facility by a South Australian authorised officer and treated as an involuntary community patient there;
 - (d) the person may be given treatment for their 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 person.
- (3) Section 167(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 173 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 and in accordance with any requirements set out in the regulations, a guardian, substitute decision-maker, 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) 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 104, will apply for the purpose with necessary modifications).

173—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 examination of the person, make an order for the treatment of the person's mental illness in South Australia containing requirements based on the requirements of the interstate community treatment order.
- (2) The Chief Psychiatrist may make the order whether or not the person resides in South Australia.
- (3) The Chief Psychiatrist must ensure that, as soon as is reasonably practicable after making the order—
- (a) the person is given a copy of the order; and
 - (b) a guardian, substitute decision-maker, relative, carer or friend of the person is notified of the making of the order and the requirements of the order.
- (4) The following provisions apply for the purposes of subsection (3)(b):
- (a) the person to be notified must be—
 - (i) a guardian, substitute decision-maker, 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, substitute decision-maker, 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, substitute decision-maker, 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.
- (5) If an order is made under subsection (1), this Act applies as if the order were a level 1 child and young person's community treatment order or a level 1 community treatment order made by a psychiatrist or interim psychiatric practitioner under Part 6 or Part 7 (as the case requires).

Division 3—Transfer to or from South Australian treatment centres**174—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 person absent without leave from a South Australian treatment centre.
- (2) Section 167(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) notify a guardian, substitute decision-maker, relative, carer or friend of the person of the transfer of the person to the interstate treatment centre; and
 - (b) if the patient is an involuntary inpatient in the South Australian treatment centre under a level 3 child and young person's inpatient treatment order or 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) in the case of a child or young person—a parent of the child or young person nominated by the child or young person for the purpose, or who appears to have or be assuming responsibility for the care of the child or young person, or whom it is practicable and appropriate to notify; or
 - (ii) a guardian, substitute decision-maker, relative, carer or friend of the person nominated by the person for the purpose; or
 - (iii) if that is not practicable or appropriate—a guardian, substitute decision-maker, relative, carer or friend of the person who appears to have or be assuming responsibility for the care of the person; or
 - (iv) if that is not practicable or appropriate—any other guardian, substitute decision-maker, 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 transferred person's best interests to do so.
- (6) Subject to subsection (7), a person 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 person is 16 years of age or more and has decision-making capacity—by the person; or

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

175—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.
- (3) The Chief Psychiatrist must ensure that, as soon as is reasonably practicable after the person is admitted to the South Australian treatment centre—
- (a) the person is given a copy of the approval; and
- (b) a guardian, substitute decision-maker, relative, carer or friend of the person is notified of the person's admission.
- (4) The following provisions apply for the purposes of subsection (3)(b):
- (a) the person to be notified must be—
- (i) in the case of a child or young person—a parent of the child or young person nominated by the child or young person for the purpose, or who appears to have or be assuming responsibility for the care of the child or young person, or whom it is practicable and appropriate to notify; or
- (ii) a guardian, substitute decision-maker, relative, carer or friend of the person nominated by the person for the purpose; or
- (iii) if that is not practicable or appropriate—a guardian, substitute decision-maker, relative, carer or friend of the person who appears to have or be assuming responsibility for the care of the person; or
- (iv) if that is not practicable or appropriate—any other guardian, substitute decision-maker, 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 transferred person's best interests to do so.
- (5) 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 child and young person's inpatient treatment order or a level 1 inpatient treatment order (as the case requires) 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.

176—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.

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Division 3—Transfer to or from South Australian treatment centres

- (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.

177—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 a 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 104, will apply for the purpose with necessary modifications).

Division 4—Transport to other jurisdictions**178—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) Without limiting any other way in which an approval may be granted for the purposes of subsection (1), the Chief Psychiatrist may grant an approval in relation to a specified class of persons (including, to avoid doubt, persons located in a remote area).
- (3) Section 167(1) applies to the taking of action under subsection (1).
- (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—
- (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 104, will apply for the purpose with necessary modifications).

179—Transport to other jurisdictions of persons with apparent mental illness

- (1) This section applies if a South Australian authorised officer has taken under their care and control a person who appears to have a mental illness and to require 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 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 167(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 104, 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.

180—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 subject to a interstate inpatient treatment order and is absent without leave, 1 or more of the following powers may be exercised in relation to the person:
- (a) the person may be taken under 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;

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Division 4—Transport to other jurisdictions

- (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 a person to whom an inpatient treatment order applies there pending the person's transport to an interstate treatment centre;
- 5 (e) the person may, with the approval of the Chief Psychiatrist, be given treatment for their 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 person.
- (2) Section 167(1) applies to the taking of action under subsection (1)(b) or (c).
- 10 (3) 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 nominated clinical director of the treatment centre or the medical practitioner (as the case requires) must ensure that a guardian, substitute decision-maker, relative, carer or friend of the person is notified of the person's admission.
- 15 (4) The following provisions apply for the purposes of subsection (3):
- (a) the person to be notified must be—
- (i) in the case of a child or young person—a parent of the child or young person nominated by the child or young person for the purpose, or who appears to have or be assuming responsibility for the care of the
- 20 child or young person, or whom it is practicable and appropriate to notify; or
- (ii) a guardian, substitute decision-maker, relative, carer or friend of the person nominated by the person for the purpose; or
- (iii) if that is not practicable or appropriate—a guardian, substitute
- 25 decision-maker, relative, carer or friend of the person who appears to have or be assuming responsibility for the care of the person; or
- (iv) if that is not practicable or appropriate—any other guardian, substitute decision-maker, relative, carer or friend of the person whom it is practicable and appropriate to notify;
- 30 (b) the nominated clinical director or medical practitioner is not required to notify a person whose whereabouts are not known to, or readily ascertainable by, the nominated clinical director or medical practitioner (as the case requires);
- (c) it is not appropriate for the nominated clinical director or medical practitioner
- 35 to notify a particular person if the nominated clinical director or medical practitioner (as the case requires) has reason to believe that it would be contrary to the person's best interests to do so.
- (5) Subsection (1)(e) does not apply to prescribed psychiatric treatment, or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.
- 40 (6) If an interstate authorised officer believes on reasonable grounds that a person in South Australia is a person to whom an interstate treatment order applies and is absent without leave, the officer may transport the person to an interstate treatment centre.

(7) 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 104, will apply for the purpose with necessary modifications).

(8) 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

181—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 person who is absent without leave, the officer may transport the person to a South Australian treatment centre.

(2) Section 167(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 person who is 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 104, 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.

182—Transport to South Australia of persons with apparent mental illness

(1) This section applies if—

- (a) a person has been taken under 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 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 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 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 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 104, will apply for the purpose with necessary modifications).

Part 17—Reviews and appeals etc**Division 1—Tribunal to review certain treatment orders****183—Tribunal to review certain treatment orders**

(1) Subject to this section, the Tribunal must review—

- (a) each level 2 child and young person's community treatment order, level 2 community treatment order, level 2 child and young person's forensic community treatment order or level 2 forensic community treatment order that continues to apply to a person 3 months after the making of the order (and the review must be conducted as soon as practicable after the end of the period of 3 months); and
- (b) the circumstances involved in the making of a level 1 child and young person's inpatient treatment order or 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 (and the review must be conducted as soon as practicable after the making of the level 1 child and young person's inpatient treatment order or level 1 inpatient treatment order); and

- (c) the circumstances involved in the making of an order to extend a level 2 inpatient treatment order (and the review must be conducted as soon as practicable after the making of the order to extend the level 2 inpatient treatment order); and
- 5 (d) each level 3 child and young person's inpatient treatment order that continues to apply to the child or young person 3 months after the making of the order (and the review must be conducted as soon as practicable after the end of the period of 3 months); and
- (e) any other matter prescribed by the regulations.
- 10 (2) Nothing in this section limits the ability of the Tribunal to conduct any other review that it considers appropriate relating to a treatment order, or treatment administered to a person pursuant to a treatment order under this Act.
- (3) The Tribunal may conduct a review under this section in any manner that it considers appropriate.
- 15 (4) If a review under this section relates to a person 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
- 20 jurisdiction.

184—Decisions and reports on reviews of treatment orders

- (1) On completion of a review under section 183, the Tribunal must revoke, with immediate effect, any treatment order to which the review relates if the Tribunal is not satisfied that there are proper grounds for it to remain in operation.
- 25 (2) Without limiting subsection (1), the Tribunal may, on a review relating to a treatment order, do 1 or more of the following:
 - (a) affirm the order;
 - (b) vary the order;
 - (c) revoke the order;
 - 30 (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.

35 Division 2—Review by Tribunal of certain decisions under Act

185—Review by Tribunal of certain decisions under Act

- (1) Subject to this section, the Tribunal is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of the following decisions (*reviewable decisions*):
- 40 (a) a decision of a person to make, confirm, extend, vary or revoke a treatment order;

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Division 2—Review by Tribunal of certain decisions under Act

- (b) a decision of the Chief Psychiatrist under Part 12;
 - (c) a decision of the Chief Psychiatrist, South Australian authorised officer or other person under Part 16;
 - (d) any other decision under this Act prescribed by the regulations,
- 5 (and such matters will come within the Tribunal's review jurisdiction in accordance with section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*).

(2) To avoid doubt, the following decisions are not reviewable decisions:

- (a) a decision of the Tribunal to make, vary or revoke a treatment order;
- (b) a decision of the Tribunal under Division 1;
- 10 (c) any other decision declared by the regulations not to be a reviewable decision.

(3) An application for a review may be made by—

- (a) the person to whom the order applies; or
- (b) in the case of an order that applies to a child or young person—a parent of the child or young person; or
- 15 (c) the Public Advocate; or
- (d) a guardian, substitute decision-maker, relative, carer or friend of the person to whom the order applies; or
- (e) any other person who satisfies the Tribunal that they have a proper interest in the matter.

20 (4) An application for a review under this section may be made—

- (a) in the case where a treatment order to which the review relates is in force—at any time during which the order is in force; or
- (b) in the case of a decision referred to in subsection (1)(c)—within 14 days after the decision; or
- 25 (c) in the case of a decision referred to in subsection (1)(d)—within the period specified by the regulations.

(5) In conducting a review under this section, the Tribunal must be constituted of at least 1 medical practitioner and 1 legal practitioner.

30 (6) If a review under this section relates to a treatment order made, confirmed, varied or revoked by a psychiatrist or interim psychiatric practitioner under Part 6 or Part 7, the Chief Psychiatrist must, if requested by the Tribunal, cause a copy of any notice sent or given to the Chief Psychiatrist under section 60 or 91 (as the case requires) to be given to the Tribunal within 1 business day of the Tribunal requesting the documents.

35 (7) If a review under this section relates to a person 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.

Division 3—Internal review of treatment orders etc made by Tribunal and other appeals

186—Additional provisions relating to internal reviews by Tribunal

The following provisions apply to an internal review conducted by the Tribunal under section 70 of the *South Australian Civil and Administrative Tribunal Act 2013* relating to a decision of the Tribunal under 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) 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 they have a proper interest in the matter;
- (c) the person to whom an application for internal review relates (if 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 37, 40, 52, 67, 71 or 83—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 183—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.

187—Additional provisions relating to appeals from Tribunal

The following provisions apply to an appeal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* in relation to a decision of the Tribunal under this Act:

- 5 (a) an appeal 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,

10 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));
- (b) the following decisions of the Tribunal are not appealable to the Supreme Court:
 - 15 (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*;
- 20 (c) no order for costs may be made against an applicant in an appeal if they are the person to whom the decision appealed against relates.

188—Right to legal 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 183), the person to whom the proceedings relate is entitled to be represented by counsel in accordance with this section.
- 25 (2) If a person chooses to be represented by counsel pursuant to this section, they are 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—
 - 30 (a) chosen by the person; 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 their 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.
- 35 (4) Nothing in this section derogates from the right of the person to whom the proceedings relate to engage counsel at their own expense, or otherwise limits section 56 of the *South Australian Civil and Administrative Tribunal Act 2013*.

189—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) is in addition to, and does not derogate from, 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.

190—Tribunal must give notice of proceedings

- (1) The 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;
 - (d) if the proceedings relate to an application for consent to prescribed psychiatric treatment—the Chief Psychiatrist;
 - (e) such other persons as the Tribunal considers have a proper interest in the matter.
- (2) However—
- (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.

191—Reasons for decisions

The Tribunal must, on request by a person referred to in section 186(b) in relation to a decision of the Tribunal, or who satisfies the Tribunal that they have 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 of the decision has expired; or
- (b) if a review of the decision has been instituted—after the review has been decided.

Part 18—Miscellaneous

192—False or misleading statements

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided under this Act.

Maximum penalty: \$25 000.

193—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 (including, to avoid doubt, provisions authorising the use of restrictive practices in relation to a person).

- (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.

194—Offence to mistreat persons with mental illness

- (1) A person who—

(a) is in a position of responsibility in respect of a person with a mental illness (whether solely or with others and however described); and

(b) intentionally mistreats the person; and

(c) by doing so causes harm to the person,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

- (2) A person who—

(a) is in a position of responsibility in respect of a person with a mental illness (whether solely or with others and however described); and

(b) intentionally or recklessly mistreats the person,

is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

- (3) For the purposes of this section, a person will be taken to be in a **position of responsibility** in respect of a person with a mental illness (the **victim**) if—

(a) the person is an authorised officer performing a function under this Act, or police officer performing a function under this or any other Act or law, in respect of the victim; or

(b) the victim is under the care and control of the person; or

(c) the person is a member of the staff of a prescribed facility at which—

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- (i) the victim resides; or
- (ii) treatment is being provided to the victim (whether or not the treatment is directed at matters causing, contributing to, or otherwise connected with, the victim's mental illness); or
- 5 (iii) services directly arising out of, or relating to, the victim's mental illness are being provided to the person; or
- (d) any other relationship of a kind prescribed by the regulations exists between the person and the victim.
- (4) For the purposes of this section, a person *mistreats* a person with a mental illness if—
- 10 (a) they contravene the Code of Conduct for the Treatment of People with a Mental Illness in the course of performing their functions in respect of, or providing treatment or services to, the victim; or
- (b) they engage in any other conduct (including, to avoid doubt, by failing to act) prescribed by the regulations in the course of performing their functions in
- 15 respect of, or providing treatment or services to, the victim,
- however, an act or omission required or authorised by this or any other Act or law will be taken not to constitute mistreatment.
- (5) In proceedings for an offence against subsection (2), it is a defence for the defendant to prove that they did not know, and could not reasonably be expected to have known,
- 20 that the victim was a person with a mental illness.
- (6) If a defendant is charged with an offence against this section in respect of a course of conduct—
- (a) it is not necessary to prove that the defendant was, or ought to have been, aware that there was an appreciable risk that harm would be caused to the
- 25 victim by each act making up the course of conduct; and
- (b) the information need not—
- (i) allege particulars of each act with the degree of particularity that would be required if the act were charged as an offence under the *Criminal Law Consolidation Act 1935* or any other Act; or
- 30 (ii) identify particular acts or the occasions on which, places at which or order in which acts occurred; or
- (iii) identify particular acts as causing, wholly or partly, particular harm to the victim.
- (7) A defendant may be charged with an offence against this section in respect of a course of conduct even if some of the acts making up the course of conduct occurred before the commencement of this section.
- 35 (8) The Chief Psychiatrist may, by notice in the Gazette and with the approval of the Minister, publish a code of conduct (the *Code of Conduct for the Treatment of People with a Mental Illness*) for the purposes of this section.
- 40 (9) In this section—
- cause*—a person causes harm if their conduct is the sole cause of the harm or substantially contributes to the harm;

harm means physical or mental harm (whether temporary or permanent);

mental harm means psychological harm and does not include emotional reactions such as distress, grief, fear or anger unless they result in psychological harm;

police officer includes a police security officer (within the meaning of the *Police Act 1998*);

prescribed facility means—

- (a) a treatment centre; or
- (b) an approved community mental health facility; or
- (c) an incorporated hospital or private hospital (within the meaning of the *Health Care Act 2008*); or
- (d) any other facility, or facility of a class, prescribed by the regulations (being facilities at which services relating to mental illness are being provided).

195—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 173.

- (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 they describe themselves as, or pretend 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.

196—Offence to hold out as authorised officer etc

- (1) An authorised officer whose authorisation under this Act is limited or subject to a condition must not—

- (a) hold themselves out as having an authorisation that is not limited or not subject to a condition; or
- (b) permit another person to do so.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) A person who is not an authorised officer must not—

- (a) hold themselves out as an authorised officer; or
- (b) permit another person to do so.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (3) A person who falsely represents that they are performing a function under this Act is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (4) A person must not hold out another as an authorised officer unless that other person is an authorised officer.

Maximum penalty: \$10 000 or imprisonment for 2 years.

197—Medical practitioners or authorised mental health professionals not to act in respect of relatives etc

- (1) A medical practitioner or authorised mental health professional must not make a treatment order, or sign any authorisation or certificate, under this Act relating to the treatment of—

- (a) a person to whom they are related by blood or marriage; or
- (b) a person who is the domestic partner of the medical practitioner or authorised mental health professional; or
- (c) in the case of an Aboriginal or Torres Strait Islander person—a person for whom the medical practitioner or authorised mental health professional has, in accordance with Aboriginal or Torres Strait Islander custom and tradition, a relationship of authority.

Maximum penalty: \$5 000.

- (2) Subsection (1) does not apply in relation to the making of a treatment order, or signing of an authorisation or certificate in the circumstances prescribed by the regulations.

- (3) In proceedings for an offence against subsection (1), it is a defence for the defendant to prove that they did not know, and could not reasonably be expected to have known, that the person was a person referred to in that subsection.

- (4) However, a contravention of this section does not, of itself, affect the validity of an order, authorisation or certificate under this Act.

198—Examinations by audio-visual conferencing

- (1) For the purposes of this Act, a reference to an examination of a person will be taken to include, 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.

199—Errors in orders etc

- (1) For the purposes of this Act, a written order, notice or other instrument will be valid and effective despite noncompliance with a requirement of this Act as to the form or contents of the order, notice or instrument if its intended meaning and effect are reasonably apparent from the order, notice or instrument.

- (2) Without limiting subsection (1), if there is a clerical error or omission or a misdescription of a person in an order, notice or other instrument, the author of the order, notice or instrument, a person confirming or varying the order, notice or instrument, or the Tribunal, may make any necessary correction of the order, notice or instrument, and any such correction will be taken to have had effect from the date of the making of the original order, notice or instrument.

200—Self-incrimination

- (1) It is not an excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a document or information as required under this Act on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

- (2) However, if compliance by an individual with a requirement under this Act might tend to incriminate the individual or make the individual liable to a penalty, then—

- (a) in the case of an individual who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or

- (b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the individual in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

201—Protections, privileges and immunities

- (1) No liability attaches to the Chief Psychiatrist, the Mental Health Commissioner, the Principal Community Visitor, a community visitor, an authorised officer, a member of the Prescribed Psychiatric Treatment Panel or any other person for any act or omission in good faith in the performance of functions under this Act.

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- (2) Nothing in this Act affects any rule or principle of law relating to—
- (a) legal professional privilege; or
 - (b) "without prejudice" privilege; or
 - (c) public interest immunity.
- 5 (3) A person who provides information or a document to an inquiry under this Act has the same protection, privileges and immunities as a witness in proceedings before the Supreme Court.
- 10 (4) A person is excused from answering a question or producing a document or other material in connection with an inquiry if the person could not be compelled to answer the question or produce the document or material in proceedings in the Supreme Court.
- 15 (5) A person who does anything in accordance with this Act, or as required or authorised by or under this Act, cannot by so doing be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.

202—Confidentiality

- 20 (1) Subject to this Act, a person engaged or formerly engaged in the administration of this Act must not disclose personal information relating to a person obtained (whether by that person or otherwise) in the course of performing functions under this Act or the repealed Act except—
- (a) as required or authorised by or under this Act or any other Act or law; or
 - (b) with the consent of the person to whom the information relates, or of a guardian or substitute decision-maker of the person; or
 - (c) with the authorisation of the Chief Executive; or
 - 25 (d) in the case of information that relates to an individual person only—with the authorisation of the Chief Psychiatrist; or
 - (e) for the purposes of referring the matter to a law enforcement agency; or
 - (f) to a relative, carer or friend of the person to whom the information relates where—
 - 30 (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
 - (g) subject to the regulations—
 - 35 (i) where the disclosure is made to a health or other service provider and is reasonably required for the treatment, care or rehabilitation of the person to whom the information relates; or
 - (ii) where the disclosure consist of entering the information into an
 - 40 electronic records system established for the purpose of enabling the recording or sharing of information by or between persons or bodies involved in the provision of health services; or

- (iii) where the disclosure is reasonably required in connection with the management or administration of the Department, a hospital or SAAS (including for the purposes of charging for a service); or
- (h) where the disclosure is reasonably necessary for the protection of the lawful interests of the person making the disclosure; or
- (i) where the disclosure is reasonably required to lessen or prevent a serious threat to the life, health or safety of a person; or
- (j) 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
- (k) in any other circumstances prescribed by the regulations.

Maximum penalty: \$25 000.

- (2) To avoid doubt, this section applies despite a provision of the *Health Care Act 2008*.
- (3) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (4) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
 - (a) the person to whom the information was disclosed; or
 - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

- (5) In this section—
repealed Act means the *Mental Health Act 2009*.

203—Victimisation

- (1) A person commits an act of victimisation against another person (the *victim*) if the person causes detriment to the victim on the ground, or substantially on the ground, that the victim—
 - (a) has disclosed or intends to disclose information; or
 - (b) has made or intends to make an allegation,
 that has given rise, or could give rise, to proceedings against the person under this Act.
- (2) An act of victimisation under this Act may be dealt with—
 - (a) as a tort; or
 - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,
 but, if the victim commences proceedings in a court seeking a remedy in tort, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.

- (3) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

- (4) In this section—

detriment includes—

- (a) injury, damage or loss; and
- (b) intimidation or harassment; and
- (c) discrimination, disadvantage or adverse treatment in relation to the victim's employment or business; and
- (d) threats of reprisal.

204—Prohibition of publication of reports of proceedings

- (1) Subject to subsection (3), a person must not publish a report of any proceedings under this Act.

Maximum penalty: \$25 000.

- (2) Subsection (1) does not apply to the publication of a report of a kind, or in circumstances, prescribed by the regulations.

- (3) 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.

- (4) A person who is authorised to publish a report under subsection (3) 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.

205—Evidentiary provision

- (1) In any legal proceedings—

- (a) an apparently genuine document purporting to be a treatment order, patient assistance request or patient transport request will be accepted as such in the absence of evidence to the contrary; and
- (b) an apparently genuine document purporting to be a certificate signed by the chief executive officer of SAAS and certifying that a person was at a specified time employed as a paramedic or ambulance officer, or engaged as a volunteer ambulance officer, with an organisation that provides ambulance services and authorised by the chief executive officer of SAAS 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 evidence to the contrary; and
- (c) an apparently genuine document purporting to be a certificate signed by the Chief Psychiatrist and certifying that—

(i) a specified person was, or was not, at a specified time classified by the Chief Psychiatrist as a mental health clinician for the purposes of this Act; or

(ii) a specified person was, or was not, at a specified time a member of a class of persons classified by the Chief Psychiatrist as ambulance officers for the purposes of this Act,

will be accepted as proof of the matters so certified in the absence of evidence to the contrary; and

(d) an apparently genuine document purporting to be a Ministerial agreement or a request, direction or approval under Part 16 will be accepted as such in the absence of evidence to the contrary.

(2) In proceedings for an offence against this Act, an allegation in an information that—

(a) a specified person was, or was not, an authorised officer at a specified time; or

(b) a specified person was, or was not, a community visitor at a specified time; or

(c) a specified place was, or was not, a treatment centre, an approved treatment centre or a limited treatment centre, at a specified time; or

(d) a specified facility was, or was not, an approved community mental health facility at a specified time; or

(e) a specified person was, or was not, a person to whom a specified treatment order applied at a specified time,

will be accepted as proved in the absence of evidence to the contrary.

206—Regulations and fee notices

(1) The Governor may make such regulations as are contemplated by, or are necessary or expedient for, this Act.

(2) Without limiting the generality of subsection (1), the regulations may provide for—

(a) the exemption of a person, or persons of a class, from the operation of a specified provision or provisions of this Act; or

(b) the making and keeping of records; or

(c) fees or charges in respect of any matter under this Act and their payment, recovery or waiver (including, to avoid doubt, fees in respect of accommodation, treatment or other services provided at treatment centres and the recovery of medical practitioners' fees on the examination of persons contemplated by this Act); or

(d) procedures to be adopted under this Act; or

(e) fines, not exceeding \$10 000, for offences against the regulations; or

(f) facilitation of proof of the commission of offences against the regulations.

(3) The regulations may—

(a) be of general or limited application; and

- (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
- (c) make provisions of a saving or transitional nature consequent on the enactment of this Act or the commencement of specified provisions of this Act or on the making of regulations under this Act; and
- (d) 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 or any other specified person or body; and
- (e) apply or incorporate, wholly or partly and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.
- (4) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.
- (5) If a code, standard, policy or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard, policy or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
- (b) evidence of the contents of the code, standard, policy or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard, policy or other document.

Schedule 1—Related amendments, repeals and transitional etc provisions

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

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

Section 12(4), definition of *mandatory medical treatment*, (a) and (ab)—delete paragraphs (a) and (ab) and substitute:

- (a) medical treatment ordered under a treatment order under the *Mental Health and Wellbeing Act 2025*; or
- (ab) medical treatment provided under section 100 or 101 of the *Mental Health and Wellbeing Act 2025*; or

2—Amendment of section 36—Health practitioners to give effect to advance care directives

- (1) Section 36(1e)(b)(ii), note—delete "*Mental Health Act 2009*" and substitute:
Mental Health and Wellbeing Act 2025
- (2) Section 36(1e)(c)—delete "*Mental Health Act 2009*" and substitute:
Mental Health and Wellbeing Act 2025

Part 2—Amendment of *Carers Recognition Act 2005*

3—Amendment of section 5—Meaning of carer

Section 5(1)(b)—delete "*Mental Health Act 1993*" and substitute:

Mental Health and Wellbeing Act 2025

Part 3—Amendment of *Coroners Act 2003*

4—Amendment of section 3—Interpretation

Section 3(1), definition of **reportable death**, (f)(iii)—after *Mental Health Act 2009* insert:

, or an inpatient in a treatment centre under the *Mental Health and Wellbeing Act 2025*

5—Amendment of section 21—Holding of inquests

(1) Section 21(b)(v)(B)—delete subsubparagraph (B) and substitute:

(B) —

- subject to an inpatient treatment order under the *Mental Health and Wellbeing Act 2025*; and
- held in a ward (however described) of a hospital or other facility that is a treatment centre under the *Mental Health and Wellbeing Act 2025* where the whole of the ward is not set aside for the treatment of persons with a mental illness;

(2) Section 21(4)(a)—delete paragraph (a) and substitute:

(a) subject to an inpatient treatment order under the *Mental Health and Wellbeing Act 2025*; and

(3) Section 21(4)(b)—delete "an approved treatment centre under the *Mental Health Act 2009*" and substitute:

a treatment centre under the *Mental Health and Wellbeing Act 2025*

(4) Section 21(5)(b)(i)—delete subparagraph (i) and substitute:

(i) subject to an inpatient treatment order under the *Mental Health and Wellbeing Act 2025*; and

(5) Section 21(5)(b)(ii)—delete "an approved treatment centre under the *Mental Health Act 2009*" and substitute:

a treatment centre under the *Mental Health and Wellbeing Act 2025*

(6) Section 21(6), definition of **mental illness**—delete "*Mental Health Act 2009*" and substitute:

Mental Health and Wellbeing Act 2025

(7) Section 21(6), definition of **treatment**—delete "*Mental Health Act 2009*" and substitute:

Mental Health and Wellbeing Act 2025

Part 4—Amendment of *Correctional Services Act 1982*

6—Amendment of section 85CA—Disclosure of health information

Section 85CA(1)(b)—delete "*Mental Health Act 2009*" and substitute:

Mental Health and Wellbeing Act 2025

Part 5—Amendment of *Criminal Law Consolidation Act 1935*

7—Amendment of section 269A—Interpretation

Section 269A(1), definition of *Minister*—delete "*Mental Health Act 1993*" and substitute:

Mental Health and Wellbeing Act 2025

8—Amendment of section 269VB—Interpretation

Section 269VB, definition of *Chief Psychiatrist*—delete the definition and substitute:

Chief Psychiatrist means the Chief Psychiatrist under the *Mental Health and Wellbeing Act 2025*;

9—Amendment of section 269X—Power of court to deal with defendant before proceedings completed

Section 269X(4)—delete "*Mental Health Act 2009*" and substitute:

Mental Health and Wellbeing Act 2025

Part 6—Amendment of *Cross-border Justice Act 2009*

10—Amendment of section 95—Terms used in this Part

Section 95, definition of *State treatment centre*—delete the definition and substitute:

State treatment centre means a treatment centre under the *Mental Health and Wellbeing Act 2025*;

Part 7—Amendment of *Disability Inclusion Act 2018*

11—Amendment of section 23F—Interaction with other Acts and laws

Section 23F(3)—delete "*Mental Health Act 2009*" and substitute:

Mental Health and Wellbeing Act 2025

Part 8—Amendment of *Guardianship and Administration Act 1993*

12—Amendment of section 32—Special powers to place and detain etc protected persons

- (1) Section 32(3)(b)—delete "an approved treatment centre under the *Mental Health Act 1993*" and substitute:

a treatment centre under the *Mental Health and Wellbeing Act 2025*

- (2) Section 32(3a)—delete "an approved treatment centre under the *Mental Health Act 2009*" and substitute:

a treatment centre under the *Mental Health and Wellbeing Act 2025*

Part 9—Amendment of *Health Care Act 2008*

5 13—Amendment of section 93—Confidentiality

Section 93(5)—delete "an order under the *Mental Health Act 2009*" and substitute:

a treatment order under the *Mental Health and Wellbeing Act 2025*

Part 10—Amendment of *South Australian Public Health Act 2011*

10 14—Amendment of section 90—Application of Emergency Management Act

- (1) Section 90(3)(c)—delete "*Mental Health Act 2009*" and substitute:

Mental Health and Wellbeing Act 2025

- (2) Section 90(3)(d)—delete "*Mental Health Act 2009*" and substitute:

Mental Health and Wellbeing Act 2025

15 Part 11—Amendment of *Suicide Prevention Act 2021*

15—Amendment of section 3—Interpretation

Section 3(1), definition of *Chief Psychiatrist*—delete "*Mental Health Act 2009*" and substitute:

Mental Health and Wellbeing Act 2025

20 16—Amendment of section 9—Establishment of Suicide Prevention Council

Section 9(2)(h)—delete paragraph (h) and substitute:

(h) the Mental Health Commissioner (ex officio);

Part 12—Amendment of *Voluntary Assisted Dying Act 2021*

17—Amendment of section 3—Interpretation

- 25 (1) Section 3, definition of *prescribed health facility*, (d)—delete "*Mental Health Act 2009*" and substitute:

Mental Health and Wellbeing Act 2025

- (2) Section 3, definition of *mental illness*—delete "*Mental Health Act 2009*" and substitute:

30 *Mental Health and Wellbeing Act 2025*

18—Amendment of section 26—Criteria for access to voluntary assisted dying

Section 26(2)—delete "within the meaning of the *Mental Health Act 2009*"

Part 13—Amendment of *Youth Justice Administration Act 2016***19—Amendment of section 50—Disclosure of health information**

Section 50(1)(b)—delete "*Mental Health Act 2009*" and substitute:

Mental Health and Wellbeing Act 2025

Part 14—Repeal of *Mental Health Act 2009***20—Repeal of Act and regulations**

The *Mental Health Act 2009*, and all regulations under that Act, are repealed.

Part 15—Transitional and saving provisions**21—Application of Part**

This Part is in addition to, and does not derogate from, the operation of Part 4 of the *Legislation Interpretation Act 2021*.

22—Ambulance officers

An authorisation of a person to exercise the powers conferred by this Act on authorised officers under paragraph (b) of the definition of ***ambulance officer*** in section 3(1) of the *Mental Health Act 2009* in force immediately before the repeal of that Act continues in accordance with its terms as an authorisation under paragraph (c) of the definition of ***ambulance officer*** in section 3(1) of this Act.

23—Authorised officers

- (1) Subject to this Act, an approval of the Chief Psychiatrist of a person, or class of persons, for the purposes of paragraph (e) of the definition of ***authorised officer*** in section 3(1) of the *Mental Health Act 2009* in force immediately before the repeal of that Act will be taken to continue in accordance with its terms as an authorisation under section 98(1)(e) of this Act.
- (2) Subject to this Act, a condition or limitation of an approval referred to in subclause (1) continues in accordance with its terms as a condition or limitation of the authorisation under section 98(1)(e).

24—Continuation of community treatment orders

- (1) Subject to this Act, a level 1 community treatment order in force under *Mental Health Act 2009* immediately before the repeal of that Act continues in accordance with its terms—
 - (a) if the order relates to a child or young person—as a level 1 child and young person's community treatment order under this Act; or
 - (b) if the order relates to an adult person—as a level 1 community treatment order under this Act.
- (2) Subject to this Act, a level 2 community treatment order in force under *Mental Health Act 2009* immediately before the repeal of that Act continues in accordance with its terms—
 - (a) if the order relates to a child or young person—as a level 2 child and young person's community treatment order under this Act; or

- (b) if the order relates to an adult person—as a level 2 community treatment order under this Act.

25—Continuation of inpatient treatment orders

- (1) Subject to this Act, a level 1 inpatient treatment order in force under *Mental Health Act 2009* immediately before the repeal of that Act continues in accordance with its terms—

- (a) if the order relates to a child or young person—as a level 1 child and young person's inpatient treatment order under this Act; or

- (b) if the order relates to an adult person—as a level 1 inpatient treatment order under this Act.

- (2) Subject to this Act, a level 2 inpatient treatment order in force under *Mental Health Act 2009* immediately before the repeal of that Act continues in accordance with its terms—

- (a) if the order relates to a child or young person—as a level 2 child and young person's inpatient treatment order under this Act; or

- (b) if the order relates to an adult person—as a level 2 inpatient treatment order under this Act.

- (3) Subject to this Act, a level 3 inpatient treatment order in force under *Mental Health Act 2009* immediately before the repeal of that Act continues in accordance with its terms—

- (a) if the order relates to a child or young person—as a level 3 child and young person's inpatient treatment order under this Act; or

- (b) if the order relates to an adult person—as a level 3 inpatient treatment order under this Act.

26—Leave of absence

Subject to this Act, a leave of absence granted under section 36 of the *Mental Health Act 2009* and in force immediately before the repeal of that Act continues in accordance with its terms as a leave of absence granted under section 45 or section 76 of this Act (as the case requires).

27—Continuation of treatment and care plans

Subject to this Act, a treatment and care plan for a patient prepared under Part 6 of the *Mental Health Act 2009* continues in accordance with its terms as a treatment and care plan for the person of the relevant kind under this Act.

28—Continuation of authorisations of treatment

An authorisation of treatment to be given to a patient to whom a community treatment order or inpatient treatment order under the *Mental Health Act 2009* applies continues in accordance with its terms as an authorisation of treatment to be given to the person to whom a treatment order of the relevant kind under this Act applies.

29—Prescribed Psychiatric Treatment Panel

Subject to this Act, a member of the Prescribed Psychiatric Treatment Panel established under section 41A of the *Mental Health Act 2009* and holding office immediately before the repeal of that Act will continue for the remainder of their term as a member of the Prescribed Psychiatric Treatment Panel established under section 109 of this Act and for that purpose—

- (a) will be taken to have been appointed under Part 11 of this Act; and
- (b) the person's appointment is subject to the same terms and conditions applying to their appointment immediately before the repeal of the *Mental Health Act 2009*.

30—Authorisation of treatment by Prescribed Psychiatric Treatment Panel to continue

An authorisation of particular treatment by the Prescribed Psychiatric Treatment Panel under Part 7 of the *Mental Health Act 2009* continues in accordance with its terms as an authorisation of the relevant kind under Part 11 of this Act.

31—Principal Community Visitor

Subject to this Act, the appointment of the Principal Community Visitor under section 50 of the *Mental Health Act 2009* will be taken to continue as an appointment to the position of Principal Community Visitor under section 140 of this Act, and will be subject to the same terms and conditions as in force immediately before the repeal of the *Mental Health Act 2009*.

32—Community Visitors

Subject to this Act, the appointment of a person as a Community Visitor under section 50 of the *Mental Health Act 2009* will be taken to continue as an appointment to a position of community visitor under section 143 of this Act, and will be subject to the same terms and conditions as in force immediately before the repeal of the *Mental Health Act 2009*.

33—Patient assistance requests

Subject to this Act, a patient assistance request issued under section 54A of the *Mental Health Act 2009* and in force immediately before the repeal of that Act will be taken to continue in accordance with its terms as a patient assistance request issued under section 96 of this Act.

34—Patient transport requests

Subject to this Act, a patient transport request issued under section 55 of the *Mental Health Act 2009* and in force immediately before the repeal of that Act will be taken to continue in accordance with its terms as a patient transport request issued under section 97 of this Act.

35—Standards

A standard issued by the Chief Psychiatrist under section 90 of the *Mental Health Act 2009* and in force immediately before the repeal of that Act will continue in force as a standard issued under section 129 of this Act.

36—Chief Psychiatrist

Subject to this Act, the appointment of the Chief Psychiatrist under section 89 of the *Mental Health Act 2009* will be taken to continue an appointment to the position of Chief Psychiatrist under section 125 of this Act, and will be subject to the same terms and conditions as in force immediately before the repeal of the *Mental Health Act 2009*.

37—Authorised medical practitioners

- (1) Subject to this Act, a determination that a medical practitioner, or class of medical practitioners, will be an authorised medical practitioner under section 93 of the *Mental Health Act 2009* and in force immediately before the repeal of that Act will be taken to continue as an authorisation under section 120 of this Act of the medical practitioner, or class of medical practitioners, as an interim psychiatric practitioner.
- (2) Subject to this Act, a condition or limitation of a determination referred to in subclause (1) continues in accordance with its terms as a condition or limitation of the authorisation under section 120.

38—Authorised mental health professionals

- (1) Subject to this Act, an authorisation of a person, or person of a class, as an authorised mental health professional under section 94 of the *Mental Health Act 2009* and in force immediately before the repeal of that Act will be taken to continue as an authorisation under section 121 of this Act.
- (2) Subject to this Act, a condition or limitation of an authorisation referred to in subclause (1) continues in accordance with its terms as a condition or limitation of the authorisation under section 121.

39—Approved and limited treatment centres

- (1) A determination of the Chief Psychiatrist under section 96 of the *Mental Health Act 2009* that a specified place is an approved treatment centre continues in accordance with its terms as an approval of the place as an approved treatment centre under section 116 of this Act.
- (2) Subject to this Act, a condition of a determination referred to in subclause (1) continues in accordance with its terms as a condition of the approval under section 116.
- (3) A determination of the Chief Psychiatrist under section 97 of the *Mental Health Act 2009* that a specified place is a limited treatment centre continues in accordance with its terms as an approval of the place as a limited treatment centre under section 117 of this Act.
- (4) Subject to this Act, a condition of a determination referred to in subclause (3) continues in accordance with its terms as a condition of the approval under section 117.

40—Authorised community mental health facilities

- (1) A determination of the Chief Psychiatrist under section 97A of the *Mental Health Act 2009* that a specified place is an authorised community mental health facility continues in accordance with its terms as an approval of the place as an approved community mental health facility under section 118 of this Act.

- (2) Subject to this Act, a condition of a determination referred to in subclause (1) continues in accordance with its terms as a condition of the approval under section 118.

41—Provisions relating to operation of Part 10 of *Mental Health Act 2009*

- 5 An agreement, approval, declaration, direction, request or other instrument under Part 10 of *Mental Health Act 2009* that is in force immediately before the repeal of that Act will continue in accordance with its terms as an agreement, approval, declaration, direction, request or other instrument (as the case requires and however described) under Part 16 of this Act.

10 42—Part heard matters may be continued

A review by the Tribunal under Part 11 of the *Mental Health Act 2009*, or any other proceedings before the Tribunal under that Act, commenced but not completed before the repeal of that Act may be continued and completed as if that Act had not been repealed.

15 43—References in orders etc

A reference in an order, notice or other document (however described) made or given under the *Mental Health Act 2009* or any other Act or law to—

- (a) that Act; or
- (b) an order, or kind of order, under a specified provision of that Act,

- 20 will be taken to be a reference to this Act, or the corresponding order or kind of order under this Act (as the case requires).